



**NCN: [2026] UKUT 58 (AAC)
Appeal No. UA-2025-000643-UCC**

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Secretary of State for Work and Pensions

Appellant

- v -

Y.N.

Respondent

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

Representation:

Appellant: Ms C. Gratrex, Decision Making and Appeals, DWP

Respondent: In person

On appeal from:

Tribunal: First-Tier Tribunal (Social Security and Child Support)

Judge: Judge D.G. Vine

Tribunal Case No: SC124/24/01447

Digital Case No: 1709727054431556

Tribunal Venue: East London

Hearing Date: 3 December 2024

Judicial summary

This appeal is about entitlement to the childcare costs element (CCE) of an award for Universal Credit (UC) in circumstances where the claimant reports two monthly payments of childcare charges as being made within the same assessment period (AP).

Keywords

45.6 Universal Credit – childcare

DECISION

The decision of the Upper Tribunal is to allow the Secretary of State's appeal. The decision of the First-tier Tribunal dated 3 December 2024 involved an error of law. Under section 12(2)(a) and section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and re-make the decision of the First-tier Tribunal as follows:

The claimant's appeal to the First-tier Tribunal is refused.

The decision made by the Secretary of State on 7 December 2023 is confirmed.

The claimant was entitled to the maximum amount of the childcare costs element (CCE) of Universal Credit for two children available to her in respect of the assessment period from 1 November 2023 to 30 November 2023 (for childcare provided from 30 September 2023 to 31 October 2023 and from 1 November 2023 to 30 November 2023).

REASONS FOR DECISION

Introduction

1. This appeal is about entitlement to the childcare costs element in an award of universal credit in circumstances where the claimant reports two monthly payments of childcare charges as being made within the same assessment period.
2. In this decision I refer to the parties respectively as 'the Secretary of State' and 'the claimant'. This is simply to avoid confusion as they have swapped the roles as Appellant and Respondent respectively in the course of these proceedings before the First-tier Tribunal and now the Upper Tribunal.

A summary of the outcome of this appeal

3. The Secretary of State's appeal to the Upper Tribunal succeeds and so the First-tier Tribunal's decision on the appeal is set aside. It is not necessary to remit the case to a fresh Tribunal for re-hearing as there is sufficient evidence available for the Upper Tribunal to substitute its own decision for that of the First-tier Tribunal (FTT). I therefore re-make the decision under appeal. The Secretary of State's original decision dated 7 December 2023 is reinstated.

The factual background

4. The underlying facts do not appear to be in dispute. The claimant applied for universal credit (UC) with effect from 1 June 2021. Accordingly, her 'assessment period' (AP) ran from the first day of each calendar month until the end of the month in question.

5. On 20 November 2023 the claimant reported to the DWP that she had made a payment of £1,750 on 1 November 2023 ('the first payment') in respect of charges for childcare provided for her two children in the period from 30 September 2023 to 31 October 2023.
6. On 7 December 2023 the claimant reported that she had made a further payment of £1,350 on 3 November 2023 ('the second payment') for childcare charges for her two children in the period from 1 November 2023 to 30 November 2023.
7. On 7 December 2023 the Secretary of State superseded the claimant's UC award for the November AP to include a childcare costs element (CCE) in the sum of £1,630.15, being the amount equal to the maximum amount of that element then allowable.
8. The claimant then queried why her October childcare costs – that is to say, the CCE in respect of any charges attributable to the AP from 1 October 2023 to 31 October 2023 – had not been included in her UC payment for that AP.

The relevant legislation

9. The various possible component elements of an award of universal credit are set out in Part 4 of the Universal Credit Regulations 2013 (SI 2013/376). Within Part 4, regulations 31-35 deal with the childcare costs element of an award of UC. The starting point is the basic rule as set out in regulation 31:

Award to include childcare costs element

31. An award of universal credit is to include an amount in respect of childcare costs ("the childcare costs element") in respect of an assessment period in which the claimant meets both—

- (a) the work condition (see regulation 32); and
- (b) the childcare costs condition (see regulation 33).

10. The 'work condition' is not in issue in this appeal, whereas the 'childcare costs condition' is in point. Regulation 33 (as amended) provides as follows:

The childcare costs condition

33.—(1) The childcare costs condition is met in respect of an assessment period if—

(za) the claimant has paid charges for relevant childcare that are attributable to that assessment period (see regulation 34A) and those charges have been reported to the Secretary of State before the end of the assessment period that follows the assessment period in which they were paid;

- (a) the charges are in respect of—
 - (i) a child, or

(ii) a qualifying young person who has not reached the 1st September following their 16th birthday,

for whom the claimant is responsible; and

(b) the charges are for childcare arrangements—

(i) that are to enable the claimant to take up paid work or to continue in paid work, or

(ii) where the claimant is treated as being in paid work by virtue of regulation 32(2), that are to enable the claimant to maintain childcare arrangements that were in place when the claimant ceased paid work or began to receive those benefits.

(2) The late reporting of charges for relevant childcare may be accepted in the same circumstances as late notification of a change of circumstances may be accepted under regulation 36 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 and, in such cases, subject to regulation 34A below, all or part of any such charges may be taken into account in any assessment period to which they relate.

(3) For the purposes of paragraph (2), “the relevant notification period” in regulation 36 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 means a period of time ending on the last day of the assessment period that follows the assessment period in which the charges for relevant childcare were paid.

11. Regulation 34 then deals with the amount of the CCE:

Amount of childcare costs element

34.—(1) The amount of the childcare costs element for an assessment period is the lesser of—

(a) 85% of the charges paid for relevant childcare that are attributable to that assessment period; or

(b) the maximum amount specified in the table in regulation 36.

(2) In determining the amount of charges paid for relevant childcare, there is to be left out of account any amount—

(a) that the Secretary of State considers excessive having regard to the extent to which the claimant (or, if the claimant is a member of a couple, the other member) is engaged in paid work; or

(b) that is met or reimbursed by an employer or some other person or is covered by other relevant support.

(3) “Other relevant support” means payments out of funds provided by the Secretary of State or by Scottish or Welsh Ministers in connection with the claimant's participation in work-related activity or training but does not include payments made by the Secretary of State where—

(a) the claimant—

- (i) has taken up, or is due to take up, paid work; or
 - (ii) has increased, or is due to increase, their hours of paid work;
 - (b) the claimant is required to pay the charges for relevant childcare before they receive a payment of universal credit that reflects the increase in the claimant's earned income as a result of sub-paragraph (a); and
 - (c) if the payment is not taken into account in determining the charges paid by the claimant for childcare the claimant will be less likely to continue in paid work or maintain the increase in hours of paid work.
12. Finally, for present purposes at least, regulation 34A(1) provides as follows:

Charges attributable to an assessment period

34A.—(1) Charges paid for relevant childcare are attributable to an assessment period where—

- (a) those charges are paid in that assessment period for relevant childcare in respect of that assessment period; or
 - (b) those charges are paid in that assessment period for relevant childcare in respect of a previous assessment period; or
 - (c) those charges were paid in either of the two previous assessment periods for relevant childcare in respect of that assessment period.
13. Regulation 34A(2) deals with the situation where childcare charges are paid in advance for a future AP and is not relevant to the instant appeal. Likewise, regulation 35, which defines the phrase “relevant childcare” as meaning registered with OFSTED or otherwise approved, is not presently in issue and so that text need not be set out here.

The decision of the First-tier Tribunal

14. The FTT allowed the claimant's appeal, finding that while the Secretary of State's original decision of 7 December 2023 was one they were “legally entitled to make”, it was also “open” to the Secretary of State to make a “retrospective” award including the CCE for the AP 1 October 2023 to 31 October 2023 by “applying regulation 33(2)” to treat at least one of the two November payments in question as attributable to the October AP. The FTT referred to this as a “further legal mechanism”, although it added that there was “nothing wrong legally” in the Secretary of State's initial decision.
15. The FTT summarised its reasoning on the Decision Notice as follows:
- 1. The appeal is allowed.
 - 2. The decision made by the Secretary of State on 07/12/2023 is set aside.
 - 3. Appeal allowed. Whilst the Tribunal accepts that the Respondent were legally entitled to make the decision that it has done, it also remained open for them to make a retrospective UC childcare costs payment for the month

of October 2023 payable on 01/11/2023 for the AP 01/10/2023 to 31/10/2023. They could have done so by applying Regulation 33(2) of the UC Regulations where they make October's CCC costs payments claimed on 03/11/2023 under Regulation 34A(1)(b). The Tribunal appreciates this provision has already been applied but that is with regard to her two claims in November 2023 so in effect she has hit her "ceiling" of £1,630 CCC for November 2023 where this created an "underpayment" of £142.65. The Tribunal however requires the appellant to receive her two CCC payments for both October and November under the legal mechanism as set out. This is because she received no CCC payments on 01/11/2023 for the AP in October, that is from 01/10/2023 to 31/10/2023.

4. The Tribunal established from the appellant that she had not been paid on 01/11/2023 her childcare payments for October. When she claimed her October payments on 03/11/2023, the difficulty arose because she had already been paid CCC for November in her claim of 01/11/2023. This meant that she had made two claims both in November hence the Respondent decided that she could only be paid up to her "ceiling" of £1,630 for any month. There is nothing wrong legally in that decision. However as set out in the summary there is a further legal mechanism to apply a retrospective "underpayment" payment for the October AP so that the appellant can receive her correct CCC costs for both October and November.

16. In its Statement of Reasons, the FTT found the following facts:

Findings of fact

3. [The claimant] made a claim for UC dated 01/06/2021. She is a 36 year old single parent with two children ... She reported on 15/05/2023 that she was working 22 hours per week. With effect from 28/06/2023 the UC CCC maximum for two children increased to £1,630 for any one AP.

4. [The claimant] did not claim her UC CCC of £1,750 for the month of October 2023 in that same month. She made this payment on 03/11/2023 and reported them on 20/11/2023. Regulation 34 of the UC Regulations provides that in any given AP month, 85% of a CCC cost is allowable up to the said maximum amount for 2023-2024 of £1,630 for two children. This meant that in her UC payment of 01/12/2023 for the November AP from 01/11/2023 to 30/11/2023 she was allowed CCC amounting to £1,487.50 because this is 85% of the £1,750 she claimed. This meant that her UC November payment paid on 01/12/2023 provided for her October CCC. This is provided for in Regulation 34A(1)(b) where it allows CCC payments paid in an AP in respect of a previous assessment are taken into account to calculate UC entitlement.

5. [The claimant] claimed her November CCC of £1,350 in that same month. She reported and paid them on the same day, 01/11/2023. As this payment was reported in the same month that she received them, this is provided for in Regulation 34A(1)(a). This amounts at 85% of £1,350 to £1,147.50. This

figure was not however used in the November AP for 01/11/2023 to 30/11/2023 payable on 01/12/2023 as this would have meant CCC costs above the maximum provided for of £1,630 in any individual AP. The decision in issue for the Tribunal of 07/12/2023 was however to allow for an extra £142.65 of that potential amount of £1,147.50 to bring the original £1,487.50 up to £1,630.15. This however still meant that as only £142.65 was taken into account rather than the amount she actually paid for her CCC in November of £1,350 this amounts to a “shortfall” of just over £1,000 because [the claimant] claimed in the same month of November for two months of CCC, one for October, the other for November.

6. There is however a legal provision to provide for such circumstances. Regulation 33(2) of the UC Regulations allows for the late reporting of charges for relevant childcare in the same way that Regulation 36 of the UC etc (Decisions and Appeals) allows late reporting of a change in circumstances. As such given on 01/11/2023 the appellant did not receive any CCC for the month of October it would have been possible for the Respondent on 07/12/2023 to have revised her October AP payment issued on 01/11/2023 to have included the aforementioned £1,487.50, as well as then revising her November AP paid on 01/12/2023 so that then on 01/12/2023 she could have received the full amount she was entitled to of £1,147.50 rather than her existing circumstances of having lost over £1,000 in eligible CCC.

17. The FTT then gave the following explanation for allowing the claimant’s appeal:

Reasons for the decision

7. It is perhaps surprising that this type of situation does not come before Tribunals more often. It has arisen simply because a lone parent has claimed two months’ worth of CCC in the same AP. The Respondent claimed in its Response that there is no measure to allow such an exception of her to receive more than £1,630 CCC in any particular AP month. That of course is a statement of fact. It is not possible to receive any more than that in any particular AP, but that does not prevent the Respondent where two months CCC are claimed in the same AP meaning they are above the ceiling limit, revising an earlier AP entitlement thereby preventing that scenario. This statement poses the question as to whether it is really that unusual for struggling lone parents in particular to make sure they do not make two months CCC claims in the same AP. Of course this is provided for legally within UC Regulation 34A (1)(a) and (b), but that Regulation is somewhat denuded with the AP monthly “ceiling”.

8. This is not to suggest that claimants should not be responsible for their own claims and submit all relevant expenses in good time. Indeed as the Decision Notice indicated the Tribunal accepts that the Respondent was legally entitled to make the decision it did. [The claimant] had reached her ceiling, she was at fault for reporting two months’ worth of CCC in the same AP. That however is all she did “wrong”, she claimed a few weeks later than ideally she should have done. As such whilst the Tribunal understands the

Respondent's decision, it does not accept it had no alternative. It did have an alternative, Regulation 33(2) as this statement has set out above. This in the Tribunal's view would have been a more pragmatic legal option for the Respondent to have chosen. That said, this statement appreciates that the said alternative means that the Respondent has to revise two AP payment dates, that of 01/11/2023 and 01/12/2023 but that is surely not such an onerous exercise as to make it unreasonable. This statement stands by its original decision.

18. The District Tribunal Judge then refused the Secretary of State's application for permission to appeal.

The grant of permission to appeal and the parties' submissions

19. I subsequently gave the Secretary of State permission to appeal to the Upper Tribunal. I have not set out the Secretary of State's submissions as they are reflected in my own reasoning for allowing the DWP's appeal in this case. The claimant has not made any submissions on the Secretary of State's appeal and did not avail herself of the possibility of being referred by the Upper Tribunal office to the Free Representation Unit for possible assistance. On 11 November 2025 she sent the Upper Tribunal office an e-mail stating "I don't have to get a representative so will get decision made without me". In all the circumstances I am satisfied it is fair and just to deal with this appeal 'on the papers' and so without holding an oral hearing.

Analysis

20. The FTT's decision in this appeal involves a conundrum. The FTT acknowledged that the Secretary of State "was legally entitled to make the decision it did" (Statement of Reasons, paragraph 8) and yet at the same time it allowed the claimant's appeal on the basis that there was "a more pragmatic legal option for the Respondent to have chosen" (paragraph 8 again). A careful step-by-step analysis will assist in identifying the two essential flaws in the FTT's approach.
21. The starting point is the first payment. This payment was reported on 20 November 2023. On that date the claimant reported that she had made a payment of £1,750 on 1 November 2023 for childcare charges incurred in respect of October 2023.
22. One must then identify the AP to which the first payment is attributed according to the statutory scheme. It is not, as one might reasonably think coming to the matter entirely afresh, simply the month to which the charges relate. This is because regulation 34A(1)(b) provides that "Charges paid for relevant childcare are attributable to an assessment period where—(b) those charges are paid in that assessment period for relevant childcare in respect of a previous assessment period". On that basis the first payment is attributable to the AP in which it was made (i.e. the AP from 1 to 30 November 2023). Regulation 36 then provides that the CCE for any AP is limited to the lesser of 85% of the attributable charges or the specified maximum amount (that figure being, at the material time, £1,630.15 for two or more children). Applying the percentage of 85% to the first payment

produces a figure of £1,487.50, which accordingly is the maximum CCE permissible in respect of the first payment. The figure of £1,487.50 was duly the CCE comprised in the UC award made on 1 December 2023 at the end of the relevant AP.

23. We must then turn to consider the second payment. This was reported on 7 December 2023. On that date the claimant reported that she had made a further payment of £1,350 on 3 November 2023 for childcare charges incurred in relation to November 2023. It follows this payment was made in the same AP as the first payment.
24. One must then identify the AP to which the second payment is attributed. This time regulation 34A(1)(a) (rather than regulation 34(1)(b)) applies: “Charges paid for relevant childcare are attributable to an assessment period where—(a) those charges are paid in that assessment period for relevant childcare in respect of that assessment period”. On that basis the second payment is attributable to the same AP as the first payment, being the AP in which it was made (i.e. the AP from 1 to 30 November 2023). Applying the percentage of 85% to the second payment produces a figure of £1,147.50, which (viewed in isolation) is the maximum CCE permissible. However, the claimant had, of course, already been awarded a CCE of £1,487.50 within the AP from 1 to 30 November 2023. Subtracting that figure from the statutory maximum of £1,630.15 generates an underpayment of £142.65 for the AP from 1 to 30 November. On 7 December 2023 the claimant was therefore awarded the balance of £142.65 in CCE, meaning that she had then been paid the statutory maximum of £1,630.15 for the November AP.
25. It follows that both the first payment and the second payment were properly attributed to the same AP, being the 1 to 30 November 2023 AP, given the definitions in regulation 34A(1)(b) and (a) respectively.
26. The next step is to consider whether the childcare costs condition is satisfied. The relevant requirement is set out in regulation 33(1)(za):
 - 33.—(1) The childcare costs condition is met in respect of an assessment period if—
 - (za) the claimant has paid charges for relevant childcare that are attributable to that assessment period (see regulation 34A) and those charges have been reported to the Secretary of State before the end of the assessment period that follows the assessment period in which they were paid;
27. It follows that the childcare costs condition is met for the 1 to 30 November 2023 AP if three sub-conditions are satisfied. The first is that “the claimant has paid charges for relevant childcare” – which is not in dispute. The second sub-condition is that those charges “are attributable to that assessment period (see regulation 34A)” – which requirement has just been established in the passage above at paragraphs 21 to 25. The third sub-condition is that “those charges have been reported to the Secretary of State before the end of the assessment period that follows the assessment period in which they were paid”. The end of the assessment period following the AP in which they were paid was 31 December

2023. As the two payments were reported on 20 November 2023 and 7 December 2023 respectively this third sub-condition is met as the reporting was in time.

28. However, the fact remains that by virtue of this analysis the claimant did not receive reimbursement for the bulk of her October childcare costs (as paid on 1 November 2023 and as reported to the DWP on 20 November 2023). The FTT's solution to this problem was to rely on regulation 33(2). At paragraph 3 of its Decision Notice, the FTT summarised its approach as follows:

Whilst the Tribunal accepts that the Respondent were legally entitled to make the decision that it has done, it also remained open for them to make a retrospective UC childcare costs payment for the month of October 2023 payable on 01/11/2023 for the AP 01/10/2023 to 31/10/2023. They could have done so by applying Regulation 33(2) of the UC Regulations where they make October's CCC costs payments claimed on 03/11/2023 under Regulation 34A(1)(b).

29. The problem with the FTT's approach is that on closer inspection regulation 33(2) cannot assist in the circumstances of this case. Regulation 33(2) makes provision for "the late reporting of charges for relevant childcare". It provides that such late reporting may be accepted in the same circumstances as late notification of a change of circumstances – i.e. by reference to the five conditions in regulation 36 of the Universal Credit etc. (Decisions and Appeals) Regulations 2013 (SI 2013/381 ('Effective dates for superseding decisions where changes notified late')). In that context, however, "the relevant notification period", mirroring regulation 33(1)(za), means "a period of time ending on the last day of the assessment period that follows the assessment period in which the charges for relevant childcare were paid" (regulation 33(3)).
30. It follows that a precondition for the application of regulation 33(2) is that the charges for relevant childcare must have been reported "late". On a plain English or indeed common sense approach, one might well conclude that the claimant's first payment was reported late. However, the only permissible way in which charges can be found to have been reported late is by reference to the statutory test laid down in the childcare costs condition in regulation 33(1)(za) and 33(3). For the reasons already identified, both the first payment and the second payment were reported within the relevant notification period (which ended on 31 December 2023). As such, they were both reported in time and were not late. That being so, regulation 33(2), which presupposes late reporting (within the meaning of the UC Regulations), could not assist the claimant.
31. In summary, it follows there are two problems with the FTT's decision.
32. First, the FTT fails to explain how the first payment was attributable to the 1 to 31 October 2023 AP. The proper application of regulation 34A can only lead to the conclusion that both the first and second payments were attributable to the 1 to 30 November 2023 AP.

33. Second, the FTT misdirected itself in law as to the scope of regulation 33(2), as on the uncontested facts that provision could not apply to assist the claimant, given that her reporting of the first and second payments was not late within the meaning of regulation 33(1)(za) and 33(3).
34. I am accordingly satisfied that the First-tier Tribunal erred in law for those reasons. I therefore allow the Secretary of State's appeal to the Upper Tribunal and set aside the FTT's decision dated 3 December 2024.
35. I do not consider it necessary to remit the case for re-hearing before a fresh FTT. The facts are not in dispute and the appeal turns on the construction of the complex statutory scheme that makes provision for CCE in awards of UC.
36. Accordingly, the decision that the FTT should have made, and which is now substituted for the decision of the FTT, is as follows:

The claimant's appeal to the First-tier Tribunal is refused.

The decision made by the Secretary of State on 7 December 2023 is confirmed.

The claimant was entitled to the maximum amount of the childcare costs element (CCE) of Universal Credit for two children available to her in respect of the assessment period from 1 November 2023 to 30 November 2023 (for childcare provided from 30 September 2023 to 31 October 2023 and from 1 November 2023 to 30 November 2023).

Final observations

37. The net result is that the claimant is denied the addition of a childcare costs element to her UC award in respect of the bulk of her payment for childcare charges incurred in relation to October 2023. As the FTT observed, this situation has "arisen simply because a lone parent has claimed two months' worth of CCC in the same AP". As such, she "had reached her ceiling, she was at fault for reporting two months' worth of CCC in the same AP. That however is all she did 'wrong', she claimed a few weeks later than ideally she should have done". In those circumstances one can understand why the FTT strived to find an alternative solution to the problem posed by the legislative scheme. However, for the reasons set out above the FTT erred in law in so doing. Even so, it is difficult to discern the policy intention behind such a result. In that context I note that the Explanatory Memorandum to the Universal Credit (Childcare costs and minimum income floor) (Amendment) Regulations 2019 (SI 2019/1249) described amendments to regulation 33 as being "intended to help households with children, giving people more confidence that they will receive support they need in work" (paragraph 7.5). That policy objective is hardly well served by the outcome of the present appeal.

Conclusion

38. I therefore conclude, with some regret, that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. I also re-make the First-tier Tribunal's decision under section 12(2)(b)(ii), as set out above. My decision is also as set out above.

**Nicholas Wikeley
Judge of the Upper Tribunal**

Authorised by the Judge for issue on 5 February 2026