Neutral Citation Number: [2026] UKUT 132 (AAC)
Appeal No. UA-2025-000338-USTA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

S.P.

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

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

Representation:
Appellant: Mr J Power, Kirklees Law Centre
Respondent: Mr E Verity, Decision Making and Appeals, DWP

On appeal from:
Tribunal: First-Tier Tribunal (Social Security and Child Support)
Judge / Panel: Tribunal Judge A K Hussain
Tribunal Case No: SC246/23/01125
Digital Case No: 1689682580288414
Tribunal Venue: Wakefield
Hearing Date: 16 May 2024

SUMMARY OF DECISION

CAPITAL – Disregards: home and other premises (4.3)
UNIVERSAL CREDIT – Other (45.9)

This appeal concerned the rules relating to capital disregards under the Universal Credit scheme. The issue was whether the Appellant, in relation to a property which she owned but had rented out, was "taking steps to obtain possession and has commenced those steps within the past 6 months" (or within an extended period which

was reasonable in the circumstances of the case). This involved consideration of regulation 48(2) and paragraph 4(1)(b) of Schedule 10 to the Universal Credit Regulations 2013.

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 to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with this decision and the following directions.

DIRECTIONS

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

2. **The new First-tier Tribunal should not involve the tribunal judge previously involved in considering this appeal on 16 May 2024.**

3. **The new First-tier Tribunal is not bound in any way by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome to the previous tribunal.**

These Directions may be supplemented by later directions by a Tribunal Legal Officer, Tribunal Registrar or First-tier Tribunal Judge.

REASONS FOR DECISION

Introduction

1. This appeal concerns the rules relating to capital disregards under the Universal Credit scheme. The issue was whether the Appellant, in relation to a property which she owned but had rented out, was "taking steps to obtain possession and has commenced those steps within the past 6 months" (or within an extended period which was reasonable in the circumstances of the case).

2. The Appellant's appeal to the Upper Tribunal succeeds as the decision of the First-tier Tribunal (FTT) involves errors of law. Accordingly, I set aside the FTT's decision and send the case back for a completely fresh hearing of the Appellant's appeal before a new FTT.

The factual background

3. The essential timeline of this case is as follows.

4. On 22 June 2021 the Appellant purchased a house ("the property") free of any mortgage. The property's net value was £130,000.

5. On 10 November 2021 the Appellant moved from the property into rented accommodation.

6. On 22 November 2021 the Appellant let the property on a two-year assured shorthold tenancy, with the term expiring on 21 November 2023.

7. On 11 October 2022 the Appellant claimed Universal Credit (UC).

8. On 8 November 2022 a DWP decision-maker decided that the net value of the property should be disregarded for 6 months from the date of claim (i.e. until 10 April 2023) because the Appellant "has advised the tenants that she wants to move into the property and they have agreed to look for another property".

9. On 7 July 2023 a DWP decision-maker decided that the disregard could not be extended beyond the initial 6-month period and so the Appellant was no longer entitled to UC. The decision-maker gave the following explanation in their decision:

> Claimant has confirmed that the property is still let. As a landlord, claimant can serve a 'written notice to quit' giving 4 weeks notice. Claimant has now had over 8 months to take possession of their property. DM has decided it is not reasonable to extend the disregard and [the Appellant] is therefore not entitled to UC from the date their capital was reviewed - 07/07/2023.

10. Following an unsuccessful request for a mandatory reconsideration, the Appellant lodged an appeal with the FTT, with the assistance of the CAB. Her reasons for appealing were explained on her notice of appeal as follows:

> I wish to appeal against your decision not to award universal credit. It is correct our home has been rented out. The contract on the tenancy is for 2 years. I have asked the tenants to leave and the tenant is not leaving. I have sought specialist advice to remove the tenant so that I can re-move back in. I have been advised that at this moment in time I have no way of removing the tenant from the property and I myself could be taken to court for doing so. The tenant is threatening me with court action if I continue to ask them to leave. I have been given advice not to do this until the end of the tenancy contract otherwise I could have court action against me. In light of this, please consider re-instating benefit. I am under great financial hardship and relying on food banks to feed myself and my children. The income from the rental property covers money I owe on the property.

The relevant legislation

11. Regulation 48 of the Universal Credit Regulations 2013 (SI 2013/376) provides as follows:

> **Capital disregarded**
>
> **48.**—(1) Any capital specified in Schedule 10 is to be disregarded from the calculation of a person's capital (see also regulations 75 to 77).
>
> (2) Where a period of 6 months is specified in that Schedule, that period may be extended by the Secretary of State where it is reasonable to do so in the circumstances of the case.

12. Paragraph 4 of Schedule 10 to the Universal Credit Regulations 2013 further provides as regards capital to be disregarded as follows:

> **4.**—(1) Premises that a person intends to occupy as their home where—
>
> (a) the person has acquired the premises within the past 6 months but not yet taken up occupation;
>
> (b) the person is taking steps to obtain possession and has commenced those steps within the past 6 months; or
>
> (c) the person is carrying out essential repairs or alterations required to render the premises fit for occupation and these have been commenced within the past 6 months.
>
> (2) A person is to be taken to have commenced steps to obtain possession of premises on the date that legal advice is first sought or proceedings are commenced, whichever is earlier.

13. Therefore, the issue on this appeal was whether the Appellant could claim the advantage of the capital disregard in paragraph 4(1)(b) of Schedule 10 read together with regulation 48(2).

The First-tier Tribunal's decision

14. The FTT's Decision Notice recorded that the Tribunal dismissed the appeal and confirmed the Secretary of State's decision dated 7 July 2023 to the effect that the Appellant was no longer entitled to UC. The basis for the decision was said to be the finding that the Appellant had capital in excess of £16,000 "in the form of a second unmortgaged property … that she is the sole owner of but does not live in". The FTT's Decision Notice found in that regard that the property had been let on 22 November 2021 and the Appellant had moved back into occupation on 6 September 2023.

15. The FTT subsequently issued a Statement of Reasons. After some introductory matters, this included the following passage in terms of fact-finding (the final sentence of paragraph [6] is as written, but presumably with the omission of "the appellant was excluded from entitlement to UC" at the end):

> *Findings of fact*
>
> 5. The appellant's husband was released on parole in January 2021.
>
> 6. The appellant purchased the property on 22 June 2021. There is no mortgage on the property. Its value on 22 June 2021 was £145,000. Its nett

value for UC purposes, after deducting potential sale costs, was £130,000. This represented capital and as it exceeded £16,000.

7. The property was registered at the Land Registry on 26 October 2021.

8. The appellant is the sole proprietor of the property.

9. On 10 November 2021, some 5 months after purchasing the property, the appellant moved to a property at … ("the rented property") where she paid £500 per month in rent.

10. On 22 November 2021, the appellant let the property for two years on an Assured Short Hold Tenancy with the term expiring on 21 November 2023. The appellant moved back into the property on 6 September 2023. The appellant had taken no legal steps to remove the tenants in the property and had simply persuaded them to leave through intermediaries.

11. In effect the appellant left a mortgage free property to move to a property where she was required to pay a monthly rent of £500. During this time she received the sum of £650 per month in rent from the property.

12. The appellant claimed UC on 11 October 2022. As the property was tenanted, she was given a disregard of the capital value of the property until 10 April 2023.

13. On 7 July 2023, the responded [*sic*] discontinued the disregard of the value of the property.

16. The Statement of Reasons then continued, with the explanation for its decision, as follows:

Reasons

14. The obvious question that arose was why the appellant had moved from a mortgage free property to one where she was required to pay rent. She had to dispel the notion that she had moved out of a mortgage free property so soon after purchasing it in order to derive an income from it whilst getting UC to pay for her accommodation needs.

15. She was asked about her reasons for moving out of the property. She gave inconsistent evidence and was an unreliable witness.

16. Her explanation was that it was all to do with meeting the parole conditions for her husband who was serving an 11 year sentence. She had had to move because her husband could not be released to the property due to his past offending in that area. However, this did not make sense. Her husband was released on licence in January 2021 to a hostel. If he was not permitted to return to the area where the property was located, why was it then that she bought the property in that very same area in June 2021?

17. She said the purpose of moving to the rented property was to enable her husband to live with the family rather than in the hostel. But this was not

supported by the evidence because on her UC claim form at [e36] in confirming who lived at the rented property, she stated that only she and the children lived there with no mention of her husband. She put forward no credible reason for leaving the property to move into the rented property.

18. The evidence also showed that as soon as the property was registered at the Land Registry, it was let for the not insignificant term of 2 years. There may have been a perfectly reasonable explanation for why she had opted for this lengthy term when a 6 month term in her circumstances would have been more appropriate but there was no credible reason put forward by her for this. The let was organised through solicitors.

19. When asked why it was for two years, her explanation was that short term tenants usually caused damage to the property before they left. It was put to her that the remedy for this was to take a bond or one advance payment of rent to cover any future damage.

20. However, closer examination of the tenancy agreement showed that her explanation did not stand up to scrutiny. At clause 5 of the Tenancy agreement it stated that 'no bond and no advance rent' was taken to cover any damage to the property. In opting for this clause the appellant showed that damage to the property by tenants was not a concern and therefore could not have been the reason why she had opted for the two year term. There was no reason why tenants who took a two year term rather than a 6 month term were less likely to cause damage and did not need to provide a bond or an advance payment of rent. This damaged her credibility.

21. The appellant then gave an alternative explanation for why she had moved into the rented property. This was that she had borrowed £18,000 from her sister in law and that the rent from the property was used to pay her sister in law back. The tribunal received no evidence from the sister in law or any documentary evidence to this effect so the tribunal placed little weight on it. Providing an alternative explanation showed inconsistency and further damaged her credibility.

22. Ultimately, a claimant in the appellant's circumstances is only permitted a disregard of capital for 6 months. Thereafter, in the absence of any legal efforts to obtain possession of the property, there could have been no other outcome other than the one that occurred. She moved back into the property after she stopped receiving UC.

23. The above is a statement of reasons for the Tribunal's decision, under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement chamber) Rules 2008.

17. Finally, I note that the Decision Notice recorded that the appeal was heard by way of a remote (telephone) hearing. Although it is not stated on the Decision Notice or Statement of Reasons, I understand from records on the FTT database that the appeal was heard with the assistance of an Urdu interpreter for the Appellant.

18. A District Tribunal Judge refused permission to appeal to the Upper Tribunal on grounds of lateness.

The grant of permission to appeal

19. In subsequently giving the Appellant permission to appeal, I made the following initial observations:

> The Appellant's grounds of appeal are two-fold. The first is that the FTT erred in law by failing to make sufficient findings of fact and/or give adequate reasons in relation to reg.48 and Schedule 10 para 4(1)(b) to the UC Regulations 2013. The second is that the FTT applied the wrong (and too strict a) test in assessing whether the Appellant had taken steps to obtain possession of the tenanted property. Both grounds of appeal are arguable. It is indeed arguable that the FTT got distracted by perhaps asking itself the wrong question, namely the reason why the Appellant had at the outset bought and then let out one property and rented another property.

The Appellant's submissions on the grounds of appeal

20. Mr Joe Power, the Appellant's representative from Kirklees Law Centre, developed the first ground of appeal as follows:

> ERROR OF LAW 1
>
> INADEQUATE FINDINGS AND INSUFFICIENT REASONS IN RELATION TO REGULATION 48 AND SCHEDULE 10 PARA 4(1)(B) OF THE UNIVERSAL CREDIT REGULATIONS
>
> At paragraph 2 of the statement of reasons it was noted that the capital disregard given to the appellant was given to her to enable her to take steps to remove the tenants and move back into the property in question.
>
> The statement of reasons does not specify which legal provision covers this capital disregard but it would appear to be the capital disregard covered by para 4(1)(b) of Schedule 10 of the Universal Credit Regulations which provides for the situation where the claimant intends to occupy the premises in question as their home and has taken steps to occupy that premises.
>
> This capital disregard can be applied for 6 months. In the present case it was given from the date of claim of Universal Credit on the 11 October 2022 until the 10 April 2023.
>
> In the present case the premises in question was occupied by tenants on a two year Assured Shorthold tenancy and the tenancy was due to expire on the 21 November 2023.
>
> It would appear that the capital disregard was extended under Regulation 48 of the Universal Credit Regulations where the Secretary may extend the 6 month capital disregard if it is reasonable to so in the circumstances.

On the 7 July 2023 the capital disregard was discontinued. The statement of reasons does not address why the capital regard was continued but presumably the respondent must have found that it was no longer reasonable (under Regulation 48) to extend the 6 month disregard under para 4(1)(b).

In this respect attention is drawn to paragraph 2 of the statement of reasons, where it was noted that “by the time the period of the disregard ended, she had taken no legal steps to remove her tenants”.

The statement of reasons sets out the findings of fact at paragraphs 5 to 13.

It was noted at paragraph 10 of the statement of reasons that the two year Assured Shorthold tenancy was due to expire on the 21 November 2023 and that although the appellant had taken no legal steps to remove the tenants, the appellant was able to move back into the property on the 6 September 2023 having persuaded the tenants through intermediaries to vacate the property.

At paragraphs 14 to 23 of the statement of reasons the tribunal set out the reasons for its decision.

Unfortunately the statement of reasons does not address at paragraphs 14 to 23 why it was no longer reasonable to apply Regulation 48 and apply the capital disregard covered by para 4(1)(b).

Instead paragraphs 14 to 23 of the statement of reasons addresses the appellant’s possible motives for renting out the property in question in the first place.

It is submitted that the appellant’s motives were not directly relevant to Regulation 48 and the application of the capital disregard covered by para 4(1)(b). The latter deals with identifying what steps the appellant had taken to obtain possession and occupy the premises in question.

The tenants had a legal right to remain in the property under the terms of the tenancy and as was noted above the appellant had to resort to arranging for intermediaries to persuade the tenants to vacate the property prior to the end date of the tenancy agreement.

It is submitted that the tribunal’s focus should have been on the actions of the appellant to persuade the tenants to vacate the property.

In this respect the tribunal should have made adequate findings of fact on what steps the appellant had taken to persuade the tenants to vacate the property and not focus on the appellant's motive for renting out the property in the first place.

In order to establish if it might have been reasonable under Regulation 48 to continue the disregard under para 4(1)(b), the tribunal should have made findings in relation to the circumstances of the tenants and whether their relationship to the appellant was purely a business relationship.

It is submitted that the tribunal failed to make adequate findings of fact in order to have been in a position to adequately apply Regulation 48 and para 4(1}(b) and as a result erred in law.

21. Mr Power then makes the following submissions in support of the second ground of appeal.

ERROR OF LAW 2: "ABSENCE OF ANY LEGAL EFFORTS TO OBTAIN POSSESSION OF THE PROPERTY"

At paragraph 22 of the statement of reasons the tribunal concluded that given the appellant's circumstances and the absence of any legal efforts to obtain possession of the property, the respondent was justified in discontinuing the capital disregard.

The tribunal's conclusion suggests that the appellant should have commenced possession proceedings to regain possession of the property in question.

The tribunal made reference to "legal efforts" to obtain possession. This suggests that the appellant had a duty to commence some kind of civil litigation to obtain possession.

It is submitted that para 4(1)(b) does not make reference to the need to take "legal" steps to gain possession.

Para (4)(1)(b) simply refers to the person "taking steps to obtain possession".

It is submitted that these steps could be legal steps or informal steps which were not necessarily "legal" steps or steps related to litigation and possession proceedings.

By referring to legal steps, it is submitted that the tribunal set the threshold too high when in considered Regulation 48 and the extension of the capital disregard under para 4(1)(b).

After all, the tenants had a two year Assured Shorthold tenancy and it had not been established that there were any legal grounds to terminate this tenancy early in order to justify gaining possession.

It is submitted that the tribunal had given insufficient reasons for its decision in suggesting that just because the appellant had not taken legal steps to obtain possession of the property, then, she could not have complied with para 4(1)(b).

It is submitted that this conclusion by the tribunal amounted to an error of law.

The Respondent's submissions on the grounds of appeal

22. Mr E Verity, the Secretary of State's representative in these proceedings, resists the appeal. He makes the following submissions:

> 8. In making its decision, the FtT have concluded that the claimant has proved an unreliable witness in her description of the events that led to her UC entitlement ending in July 2023. They have stated that there is no evidence for why the claimant had had to rent out her property whilst living elsewhere, and did not take sufficient steps to obtain possession of the property.
>
> 9. The Secretary of State respectfully submits that while there has undoubtedly been issues with the decision making of the FtT in the lead up to its decision, this ultimately has not had a material impact on the outcome of the case. In relation to the grounds of appeal although there are two grounds given, I feel they ultimately amount to the same conclusions, and therefore my submission shall deal with both grounds in one.
>
> 10. Sch 10, para 4(1)(b) of the UC Regs 2013 allows for a disregard of 6 months:
>
> > ***4.***—*(1) Premises that a person intends to occupy as their home where—*
> >
> > *[…]*
> >
> > *b)the person is taking steps to obtain possession and has commenced those steps within the past 6 months;*
>
> This disregard can be extended by a Decision Maker by virtue of Reg 48(2) of the UC Regs:
>
> > *(2) Where a period of 6 months is specified in that Schedule, that period may be extended by the Secretary of State where it is reasonable to do so in the circumstances of the case.*
>
> 11. In the grounds of appeal, made on behalf of [the claimant] by Mr Power of the Kirklees Law Centre, there is a focus on the application of para 4(1)(b) and the lack of an extension under reg 48(2) in that fact that the tribunal should have focused on the actions of the appellant to persuade the tenants to vacate the property. It is stated in the grounds of appeal that
>
> > *The tribunal's conclusion suggests that the appellant should have commenced possession proceedings to regain possession of the property in question. The tribunal made reference to "legal efforts" to obtain possession. This suggests that the appellant had a duty to commence some kind of civil litigation to obtain possession. It is submitted that para 4(1)(b) does not make reference to the need to take "legal steps" to gain possession.*
>
> Whilst it is true that para 4(1)(b) does not make reference to legal steps, a fact that seems to have been missed by both Mr Power is that the legislation does give guidance on what is meant by commencing steps in this context, in para 4(2) of Sch 10:

> *(2) A person is to be taken to have commenced steps to obtain possession of premises on the date that legal advice is first sought or proceedings are commenced, whichever is earlier.*

12. There is no definition given for "proceedings" in para 4(2), however given the wording of this paragraph it may be reasonable to give the word its usual context and take it to mean some kind of legal proceeding. Indeed, para 4 of Sch 10 is the equivalent to para 27 of the Income Support Sch 10, and para 4(2) of the UC Sch 10 make the conditions the same as under the Income Support equivalent, which in turn does make it quite clear that legal proceedings must have commenced.

> *27.—Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice or has commenced legal proceedings, with a view to obtaining possession.*

13. From the evidence supplied in the FtT bundle, there is no evidence that legal proceedings were ever commenced by the claimant in respect of the property, nor that she was aware such proceedings existed, and the delay came down to her tenants simply finding new accommodation. There is discussion of the involvement of an intermediary, however there is no evidence given of their role or depth of their involvement.

14. As such there can be no consideration that claimant met the requirements of para 4(1)(b) of Sch 10 here, nor those for an extension under the grounds of reasonableness as per reg 48(2) here. The claimant had not taken steps to obtain possession of the property as per para 4(2) of Sch 10 and therefore there would be no grounds to extend under reg 48.

15. As a result, the Secretary of State submits that although the FtT has mis-identified the arguments in the decision before them and therefore focussed on the incorrect details, this would be immaterial on the outcome of the appeal, as [the claimant] would not have met the conditions for a disregard under Sch 10, and would have had no entitlement to Universal Credit regardless. If the Upper Tribunal Judge accepts my submission, I invite him to uphold the FtT decision in this instance.

The Appellant's reply

23. The Appellant's representative then made the following points by way of reply:

1 The Respondent has provided a submission containing its observations on the appellant's appeal to the upper tribunal and are to be found at documents 26 to 29 of the appeal bundle.

2 At paragraph 11 of the Respondent's submission the Respondent identified the two grounds for the appellant's appeal to the upper tribunal, namely, the application of para 4(1)(b) of Schedule 10 and Regulation 48(2) of the UC Regulations 2013.

3 At paragraph 9 of the Respondent 's submission, the Respondent notes that both grounds can be dealt in one.

4 In relation to para 4(1)(b) the tribunal had referred to the "legal efforts" to gain possession. The appellant argues that para 4(1)(b) refers to "steps" and not "legal steps".

5 At paragraph 11 of the Respondent's submission, it is accepted that para 4(1)(b) does not make reference to "legal steps". However, the Respondent goes on to point out that the legislation does provide Guidance what commencing steps means at para 4(2) of Schedule 10 where there is reference to seeking legal advice or commencing proceedings.

6 It is submitted that the wording used in para 4(2) where it states "a person is to be taken to have commenced steps" indicates that the example contained para 4(2) is a mere example of one type of step that can be equated with "commencing steps". There is no suggestion that this is the only step that will satisfy the requirement of "commencing steps". In particular the wording "a person is to be taken" strongly suggests that this is just one example of a what will satisfy the requirement of taking a "step" referred to in para (4)(1)(b). After all if the reference to "step" in para 4(1)(b) was meant to be interpreted as a "legal step", then, there was no reason why the wording in para 4(1)(b) did not refer to "legal step".

7 The Respondent also refers to the corresponding regulation in the Income Support Regulations at para 27 of Schedule 10 of those regulations where there is reference in para 27 to "is taking steps to obtain possession and has taken legal advice or has commenced legal proceedings, with a view to obtaining possession".

8 It is submitted that Regulation 27 is different in that it uses the word "and" to emphasise the connection between taking steps and seeking legal advice in relation to obtaining possession. In the case of para 4(1)(b), it was noted above that there is no reference to taking legal advice or commencing legal proceedings. If it was intended that para 4(1)(b) should replicate Regulation 27, then, it simply could have inserted the words "legal steps" instead of "steps" to emphasise that this was what was expected to satisfy this regulation. Instead, para 4(1)(b) relies on para 4(2) to provide an example of what might constitute a "step". It is therefore submitted that the Respondent was not justified in relying on its reference to Regulation 27.

9 Although Reg 48(2) is concerned with the period of time in which the steps must be taken in order to benefit from an extension of time being granted, Reg 48(2) does use the words "reasonable to do so in the circumstances of the case" which would suggest that that the correct interpretation of "steps" in para 4(1)(b) should be interpreted broadly to mean "any steps" instead of being narrowly interpreted to mean "legal steps". In the present case the appellant was an Asian woman and it may not have been culturally reasonable or appropriate for her to jump straight to legal action without first trying to ask the tenants to vacate the

property. In other words, if Regulation 48(2) is using the words "reasonable to do so in the circumstances of the case", it would be consistent for para 4(1)(b) to interpret the word "steps "also "in the circumstances of the case", that is, and not restrict the meaning of taking steps to mean taking legal steps. For example, if the appellant was seeking possession of her property from a large Company with unlimited assets as opposed to seeking possession from another Asian woman who was a single parent on benefits, then, it would be reasonable in these circumstance for her to seek legal advice immediately and take legal steps to obtain possession from the large Company. However, if the tenant was the Asian woman on benefits, it may be more reasonable and appropriate or the appellant to engage with her with a view to obtaining possession in an amicable manner, that is, in a way other than taking legal steps.

10 In granting permission, the upper tribunal judge noted that it was arguable that the first-tier tribunal got distracted by focusing on why the appellant bought one property and let it out and then rented another property. In effect the upper tribunal judge seems to be saying that the first-tier tribunal did not address the relevant issues in order to make a sound decision. The Respondent appears to agree with this observation by the upper tribunal judge. If that is the case, then, it is arguable that the appellant did not have a fair hearing as the first-tier tribunal did not address the issues raised by the appeal. It is submitted that the only way to resolve this error would be to set aside the first-tier tribunal decision and send the case back for a new hearing with Directions from the upper tribunal on the proper interpretation of para 4(1)(b).

Analysis

24. I have concluded that both of the Appellant's grounds of appeal succeed. My reasons follow. I start by considering the FTT's treatment of the relevant statutory provisions in its Decision Notice and its Statement of Reasons.

25. The FTT's Decision Notice makes no reference, directly or indirectly, to any of the relevant legislation. In itself, that is not a problem. The purpose of the Decision Notice is simply to communicate the essential terms of the decision made by the FTT so that its thrust can be understood by the parties and its effect implemented by the DWP. A further explanation in the Decision Notice itself that cites the relevant legislation may well not be necessary. Such an explanation, if needed, belongs more naturally in the Statement of Reasons.

26. However, in this case the FTT's Statement of Reasons also makes no express reference to any legislation (other than the passing nod at the end (in paragraph [23]) to rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008). This absence of any reference to the key legislation is concerning. It at least raises the distinct possibility that the FTT may not have asked itself the correct question(s) in determining the appeal. There are, however, some implied references. There are several mentions in the Statement of Reasons of the £16,000 capital limit (see paragraphs [1], [2], [3] and [6]). There is no reference to regulation 18 of the Universal Credit Regulations 2013 as the

source for this rule prescribing the upper capital limit. However, again this matters not – the level of the capital limit itself was not in issue in this appeal.

27. Much more troubling is the failure of the Statement of Reasons to refer accurately to the relevant rules governing the disputed capital disregard in this appeal. There is no mention of either the statutory source or the specific wording of either regulation 48 or paragraph 4(1)(b) of Schedule 10. The closest we get is the assertion near the end (at paragraph [22] of the Statement of Reasons) that "a claimant in the appellant's circumstances is only permitted a disregard of capital for 6 months. Thereafter, in the absence of any legal efforts to obtain possession of the property, there could have been no other outcome other than the one that occurred." This is, at best, a somewhat garbled version of regulation 48(2) and paragraph 4(1)(b) of Schedule 10. As such, it represents an error of law if it has led the FTT astray. It is therefore important to take the analysis step by step in order to see where the FTT indeed went wrong in this case.

28. As noted above, there was no dispute over the valuation of the property or the level of the capital limit. The question was rather whether the Appellant could rely on one of the capital disregards. The only potential disregard in play was paragraph 4(1)(b) of Schedule 10, which required two conditions to be satisfied. The first is that the property, in accordance with the opening words of paragraph 4(1), constituted "premises that [the Appellant] intends to occupy as their home". Again, this was a matter that was not in dispute, so this requirement did not need to detain the FTT in its Statement of Reasons. The second requirement, as stipulated by paragraph 4(1)(b), was that "the person is taking steps to obtain possession and has commenced those steps within the past 6 months". Notably, the legislation provides for two qualifications to that requirement. The first is the explanation in paragraph 4(2) of Schedule 10 that "a person is to be taken to have commenced steps to obtain possession of premises on the date that legal advice is first sought or proceedings are commenced, whichever is earlier." The second is the caveat in regulation 48(2) that "Where a period of 6 months is specified in that Schedule, that period may be extended by the Secretary of State where it is reasonable to do so in the circumstances of the case".

29. In the instant case a DWP decision-maker on 8 November 2022 had decided that paragraph 4(1)(b) applied and so at the outset of her UC claim the Appellant was entitled to the relevant capital disregard. That decision, of course, was not the decision under appeal to the FTT. Rather, the Appellant was appealing against the subsequent decision taken on 7 July 2023 that the capital disregard no longer applied for the purposes of her UC claim. It will be recalled that the basis for that disallowance decision was stated to be as follows:

> Claimant has confirmed that the property is still let. As a landlord, claimant can serve a 'written notice to quit' giving 4 weeks notice. Claimant has now had over 8 months to take possession of their property. DM has decided it is not reasonable to extend the disregard and [the Appellant] is therefore not entitled to UC from the date their capital was reviewed - 07/07/2023.

30. Now it was certainly the case that at the material time (a) the property was still let and (b) the Appellant had had more than 8 months to take possession. The decision-maker had also correctly identified the nature of the test under regulation

48(2), namely the question was whether it was reasonable to extend the length of the disregard. However, the evidential basis for the finding that "As a landlord, claimant can serve a 'written notice to quit' giving 4 weeks notice" is, putting it mildly, less than clear. The fact of the matter was that the assured shorthold tenancy in question was for a fixed term of two years. Furthermore, the tenancy contained no break clause nor any provision for the landlord to give notice during that fixed term in the absence of default by the tenants. Thus, clause 12 of the tenancy agreement provided only that "THE LANDLORD shall have an automatic right to repossess the said property if at any time the rent is in arrears by four weeks or to the equivalent of four weeks or if any of the terms of this tenancy are broken". Clause 13 then reserved to the tenant the right to give notice to quit. Yet the decision-maker cited no authority for the implied proposition that there is some provision at common law or in the legislation which overrides the contractual position. Thus, the generalised assertion that a landlord can give a tenant 4 weeks' notice to quit, irrespective of the contractual position, lacks any proper foundation. But what then of the FTT's approach to this decision by the Secretary of State's decision-maker?

31. The FTT's approach to the appeal involves an error of law in at least two respects. These two errors reflect the Appellant's grounds of appeal, although it is more convenient to take them in the reverse order to that adopted by Mr Power on her behalf.

32. First, the FTT misstates the statutory test under regulation 48(2) when read together with paragraph 4(1)(b) of Schedule 10. It is simply incorrect to assert that "a claimant in the appellant's circumstances is only permitted a disregard of capital for 6 months. Thereafter, in the absence of any legal efforts to obtain possession of the property, there could have been no other outcome other than the one that occurred." Certainly, the initial 6 months disregard must have been triggered in the first place by the commencement of steps to obtain possession (as defined by paragraph 4(2)). Such commencement is defined by reference to "the date that legal advice is first sought or proceedings are commenced, whichever is earlier" (paragraph 4(2)). That initial 6-month period can then be extended by regulation 48(2) "where it is reasonable to do so in the circumstances of the case". However, the taking of "legal efforts to obtain possession of the property", as the FTT put it, is not the test. The making of such efforts may well render it reasonable to extend the 6-month period, but they are not an essential precondition for satisfying the statutory test. So, for example, it might be reasonable to extend the period if the claimant has taken legal advice in the initial 6-month period and that advice was to the effect that there was no power under the tenancy for the landlord to serve a notice to quit before the end of the fixed term and that encouraging the tenants to move out early ran the risk of being faced with a claim for harassment.

33. It follows that I agree, in part at least, with Mr Power's submissions on Ground 2. I agree with Mr Power to the extent that the FTT's emphasis on the Appellant's failure to take any "legal steps to remove the tenants" (Statement of Reasons at paragraph [10]) misstated the test under regulation 48(2) and paragraph 4(1)(b). However, I disagree with Mr Power when he contends that "taking steps to obtain possession" within paragraph 4(1)(b) need not be steps related to legal advice, litigation or possession proceedings. To hold as much would be to ignore the

clear and express wording of paragraph 4(2). That said, and for the reasons above, the first seeking of legal advice (or commencement of proceedings) just has the effect of triggering the paragraph 4(1)(b) 6-month disregard period. Once one is beyond the initial period of 6 months, the test is one of reasonableness under regulation 48(2) – which need not necessarily involve e.g. further seeking of legal advice or taking of steps in possession proceedings, especially where the nature of the initial legal advice that was received has been clear and unqualified.

34. I would also just observe that the term "legal advice" in paragraph 4(2) is not defined in the legislation. On the face of it, "legal advice" has both a narrow meaning (advice from a professional lawyer) and a broader meaning (advice on the law, e.g. from a CAB adviser who is not a qualified lawyer). The source of the advice sought by the Appellant in this case is not entirely clear from the evidence before the FTT, but the latter meaning is probably the more appropriate (not least as e.g. a CAB specialist may well be both more accessible and better placed than a solicitor to advise on a matter relevant to both housing law and social security law). That said, it must surely be the case that the legal advice in the sense of advice on the law is provided within some type of formal framework (e.g. through solicitors or a CAB) and not e.g. informal advice via some casual acquaintance.

35. Secondly, the FTT failed to find sufficient facts to justify its decision. The Judge was plainly much exercised by the Appellant's decision to move into rented accommodation and to let out the property to tenants. On the basis of the FTT's Statement of Reasons, the Judge appears to have regarded this action on her part as tantamount to benefit fraud. This is the only possible reading of the first paragraph (paragraph [14]) of the passage setting out the FTT's reasoning:

> 14. The obvious question that arose was why the appellant had moved from a mortgage free property to one where she was required to pay rent. She had to dispel the notion that she had moved out of a mortgage free property so soon after purchasing it in order to derive an income from it whilst getting UC to pay for her accommodation needs.

36. One obvious difficulty with this way of framing this purportedly "obvious question" is that it overlooks the simple fact that the Appellant's move into rented accommodation (in November 2021) was made 11 months before she claimed UC (in October 2022). One might be forgiven for thinking that such a lengthy gap (of nearly a year) between engaging in an allegedly suspicious rental transaction and making a claim for UC was hardly consistent with an intention to abuse or defraud the benefits system.

37. Thus, the FTT erroneously focussed on the factual circumstances as at the date (in November 2021) of the Appellant's decision to move to rented accommodation and to rent out the property to the tenants. Instead, the FTT should have been concerned with the position as at the date of the Secretary of State's decision under appeal (in July 2023). There were, for example, no findings of fact at all about the notice provisions in the tenancy agreement (or rather the apparent lack of any power for the landlord to give notice to quit in the absence of default by the tenants) or about when the Appellant had sought legal advice (about which there was certainly evidence; see e.g. paragraph 10 above) and the nature of that advice. The FTT could not properly decide whether it was reasonable in all the

circumstances of the case to extend the disregard period without a firm factual foundation.

38. Therefore, I agree with Mr Power's central submissions on Ground 1. The FTT failed to address the central question as to why it was no longer reasonable (if that was indeed the case) to apply regulation 48(2) when read together with the capital disregard covered by paragraph 4(1)(b). Instead, the reasons passage in the Statement of Reasons focusses on the Appellant's possible motives for renting out the property in question in the first place. I also agree that the Appellant's motives in doing so were not directly relevant to regulation 48(2) and the application of the capital disregard covered by paragraph 4(1)(b).

39. It follows that I do not agree with the analysis of the Secretary of State's representative in his written submission resisting the appeal to the Upper Tribunal. Mr Verity acknowledges that the FTT's fact-finding and reasoning are deficient, but submits that these weaknesses were not material to the outcome. He argues that, in any event, "the claimant had not taken steps to obtain possession of the property as per para 4(2) of Sch 10 and therefore there would be no grounds o extend under reg 48". However, the commencing of "taking steps to obtain possession" can be judged from "the date that legal advice is first sought" – and there was evidence before the FTT that the Appellant had sought such legal advice. The Appellant is entitled to have that evidence properly assessed in the context of the correct legal tests.

Conclusion

40. I therefore conclude 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. The case must be remitted for re-hearing by a new tribunal subject to the directions set out above (section 12(2)(b)(i)). My decision is also as set out above.

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised by the Judge for issue on 23 March 2026