Neutral Citation Number: [2026] UKUT 224 (AAC)
Appeal No. UA-2025-000781-USTA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

Gordon Bowen

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

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

Representation:
Appellant: In person
Respondent: Mrs A Hutchinson, Decision Making and Appeals, DWP

On appeal from:
Tribunal: First-Tier Tribunal (Social Security and Child Support)
Judge / Panel: Tribunal Judge A Davies
Digital Case No: 1733-9249-2742-5705
Tribunal Venue: Llandudno
Hearing Date: 25 March 2025

<u>SUMMARY OF DECISION</u>

EARNINGS AND OTHER INCOME – Calculation: employed (13.5)
UNIVERSAL CREDIT – Sanctions (45.1)
UNIVERSAL CREDIT – Other (45.9)

This appeal concerned the rules governing the calculation of the Administrative Earnings Threshold (AET) in the universal credit (UC) regime. The DWP decision-

maker and the FTT both decided that a claimant's "monthly earnings" for the purposes of calculating their AET involved the deduction of pension contributions. The claimant appealed to the Upper Tribunal, which decided that "monthly earnings" are the person's earned income before any deductions are made for income tax, national insurance contributions or pension contributions. This appeal involved consideration of regulations 55, 90 and 99 of 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)(ii) and (3) 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 Appellant's appeal against the Secretary of State's decision dated 2 September 2024 is allowed.*
>
> *The Appellant had "monthly earnings" above the AET at the relevant time and therefore regulation 99(6) applied. This meant that no work search or work availability requirements could be imposed on the Appellant. Likewise, there can be no medium-level sanction applied to the Appellant's UC award for failing to take all reasonable action to search for work where no work search requirement was validly imposed on him.*
>
> *I further direct the Secretary of State to remove the 28-day sanction applied from 21 August 2024 and to calculate and pay any underpayment of UC owed to the Appellant. My decision is also as set out above.*

REASONS FOR DECISION

Introduction

1. This appeal concerns the rules governing the calculation of the Administrative Earnings Threshold (AET) in the universal credit (UC) scheme. A claimant whose monthly earnings (excluding self-employed earnings) exceeds their AET is exempt from the imposition of work-related requirements and corresponding sanctions. As the Low Incomes Tax Reform Group explains:

> If you are in the all work-related requirements group, you'll usually need to show your work coach that you're actively looking for work, more work or better paid work. However, if you earn above the AET threshold, you will have less intensive work requirements placed on you and will not have to have regular meetings with your work coach. If you earn under the AET you will have to show you're actively looking or more or better paid work and be available for work and meet with your work coach regularly.
>
> https://www.litrg.org.uk/benefits/universal-credit/work-requirements

2. The Secretary of State's representative, in her written submission on the appeal to the Upper Tribunal, helpfully sums up the Appellant's case in this appeal:

> In summary, the appellant submits that the Tribunal erred in law in its misapplication of regulation 99(6)(b) of the UC Regulations 2013. His position is that as a couple they have exceeded the Administrative Earnings Threshold (AET) set out in regulation 99(6)(b) because their joint monthly earnings should have been calculated using gross income (i.e. before income tax, NI contributions and pensions contributions have been deducted). If calculated properly, their earnings were £1,508.41 per month, and so above the AET. Therefore, he argues, no work-related UC requirements should have been imposed on him.

3. The Appellant's appeal to the Upper Tribunal succeeds as the decision of the First-tier Tribunal (FTT) involves an error of law. Accordingly, I set aside the FTT's decision. There is no need to send the case back for a completely fresh hearing of the Appellant's appeal before a new FTT as the facts are not in dispute.

4. I allow the underlying appeal as the Appellant did in fact have "monthly earnings" above the AET at the relevant time and therefore regulation 99(6) applied. This means that no work search or work availability requirements could be imposed on the Appellant. Likewise, there can be no medium-level sanction applied to the Appellant's award for failing to take all reasonable action to search for work where no work search requirement was validly imposed on him. Accordingly, I direct the Secretary of State to remove the 28-day sanction applied from 21 August 2024 and to calculate and pay any underpayment owed to the Appellant.

The grounds of appeal to the First-tier Tribunal

5. The Appellant set out his reasons for appealing to the FTT in his notice of appeal:

> The Decision Maker has failed to address the AET. Please see below abstract taken from Regulation 99 of the Universal Credit Regulations 2013 (S.I. 2013/376) which states, and I quote:- Where a claim is made by a couple, a sum equivalent to the couple working a combined total of 29 hours per week at NLW. This is equivalent to £1437 PCM between a couple at 2024/2025 NLW rate. My circumstances are :- A couple - working 32.5 hours/week at £11.98. This is equivalent to £1508 PCM. (Payslip forwarded to confirm earnings) As this is above the AET there is no requirement to seek additional work, and therefore a sanction should not have been imposed for failing to do so. No deductions should be made to the gross earnings. The Decision Maker has totally ignored Regulation 99 of the Universal Credit Regulations 2013.

The First-tier Tribunal's decision

6. The essence of the FTT's decision was explained in the Decision Notice:

> 4. Mr Gordon Bowen had claimed Universal Credit (UC) and was placed on the intensive work search group. The Secretary of State indicated that he had not provided any details of a job search or conducted any work search

or work preparation activities. Mr Bowen took the view, however, that he did not need to do so since regulation 99 of the 2013 Universal Credit Regulations provided that where joint earnings of £1437 were achieved the work-related requirement was not applicable. The case was that the joint earnings were £1508 per calendar month. However, the respondent's response was to point to regulation 55(5)(a) of the 2013 Regulations. In calculating the employed earnings, there was to be deducted any relievable pension contributions made by the person in that period. Taking account of the earnings of the partner and the pension element resulted in a deduction of £87.49 which resulted in a figure of £1420.92.

7. The FTT's Statement of Reasons reiterated that "regulation 55 allows the Secretary of State to take account of any relievable pension contributions in the relevant period [that] fall to be deducted. When the deductible pension contributions of £87.49 are taken into account, the net figure falls to £1420.92. This is below the applicable AET". As will be seen, it is on this point that the FTT fell into error.

The grounds of appeal to the Upper Tribunal

8. The Appellant further set out his grounds of appeal to the Upper Tribunal with admirable clarity and concision as follows:

> The Administrative and Conditionality Earnings Threshold: Guidance (taken from UK Parliament website) clearly states the following:-
>
> The AET is set at both an individual and a household level based on gross earnings (earnings before any deductions).
>
> From the 13 May 2024 the rates are:
>
> Single £892.00
>
> Couple £1437.00
>
> Our household earnings at the time of sanction (payslip forwarded to DWP) was £1508.00 / month
>
> This was based on working 32.5 hrs/week @ £11.99/hour
>
> The minimum required as set out in paragraph 6, of Regulation 99 of the Universal Credit Regulations 2013 is:
>
> Couple - 29 hrs/week @ £11.44 (NLW) = £1437.00 / month
>
> However DWP have made deductions to the gross income (pension contributions have been deducted)
>
> The consequence of this deduction is that even though we work more hours / week than the minimum required and earn a higher hourly rate than the minimum required we are deemed to be below the Administrative Earnings Threshold.

I respectfully request that the sanction imposed be overturned on the grounds that the DWP have not applied the regulations correctly as outlined in the UK Parliament Guidance.

The Upper Tribunal's grant of permission to appeal

9. I gave the Appellant permission to appeal, setting out my provisional thinking in the following terms:

Introduction

1. This is an application for permission to appeal from the decision of the First-tier Tribunal (FTT) dated 25.03.25, refusing the Appellant's appeal and confirming the decision of the Secretary of State dated 02.09.24 imposing a medium level sanction (i.e. a reduction of the UC payment by £10.10 per day) because the Appellant had failed to undertake all reasonable work search in the period 21.08.24-27.08.24 (as required by his UC Claimant's Commitment).

Background

2. The facts are not in dispute. For completeness, the Appellant had claimed UC from 18.01.24 (a joint claim) and was placed in the Intensive Worksearch Group. On 18.07.24, the Appellant accepted the Claimant's Commitment, undertaking that he would spend 35 hours a week looking and preparing for work. He had not done so in the period of 21.08.24 to 27.08.24. The Secretary of State accordingly imposed a sanction of 28 days from 21.08.24. The decision was not changed on Mandatory Reconsideration. The Appellant appealed to the FTT, which decided the case without an oral hearing.

3. The Appellant argued that in the relevant period the couple worked 32.5 hours per week at £11.98 per hour. The total monthly earnings were £1,508.41 per month. The Secretary of State accepted that for the period of 05.07.24-04.08.24, the employed earnings of the couple were £1,420.92. The difference of £87.49 was a pensionable deduction (as per data from HMRC). The actual figures and the consequential arithmetic are not in dispute.

4. The FTT accepted the Secretary of State's position that the couple had not exceeded the Administrative Earnings Threshold (AET) set out in regulation 99(6)(b) of the Universal Credit Regulations 2013 (SI 2013/376) (the "2013 Regulations"), which, taking into account the National Minimum Wage for 2023/2024, was set at £1,437 per month. This was because the relievable pensionable contribution was – the FTT decided – correctly deducted under regulation 55(5)(a) of the 2013 Regulations. The FTT summarised its decision thus on its decision notice (at para 4):

> [The Appellant] had claimed Universal Credit (UC) and was placed on the intensive work search group. The Secretary of State indicated that he had not provided any details of a job search or conducted any work

search or work preparation activities. Mr Bowen took the view, however, that he did not need to do so since regulation 99 of the 2013 Universal Credit Regulations provided that where joint earnings of £1,437 were achieved the work-related requirement was not applicable. The case was that the joint earnings were £1,508 per calendar month. However, the respondent's response was to point to regulation 55(5)(a) of the 2013 Regulations. In calculating the employed earnings, there was to be deducted any relievable pension contributions made by the person in that period. Taking account of the earnings of the partner and the pension element resulted in a deduction of £87.49 which resulted in a figure of £1,420.92.

Grounds of appeal

5. In summary, the Appellant submits that the FTT erred in law in its misapplication of regulation 99(6)(b) of the 2013 Regulations. His position is that as a couple they have exceeded the Administrative Earnings Threshold set out in regulation 99(6)(b) because their joint monthly earnings should have been calculated using gross income (i.e. before income tax, NI contributions and pensions contributions have been deducted). If so calculated properly, their earnings were £1,508.41 per month, and so above the AET. Therefore, he argues, no work-related UC requirements should have been imposed on him.

Law

6. The Explanatory Memorandum to the Universal Credit (Administrative Earnings Threshold) (Amendment) (No 2) Regulations 2024 (2024/536) provides (at para 5.19) that the Universal Credit AET has been increased to a sum equivalent to a level of an individual claimant working 18 hours per week at National Living Wage (NLW) and, additionally, where a claim is made by a couple, a sum equivalent to the couple working a combined total of 29 hours per week at NLW. This is equivalent to £892 PCM for an individual and £1,437 for a couple at 2024/2025 NLW rates. This statutory instrument (SI) was effective from 13 May 2024. The SI seems not provide any information on calculating the AET figure, but refers only to the numbers of hours and the NLW rate per hour.

7. Regulation 99(6) of the 2013 Regulations provides that:

This paragraph [paragraph 6] applies where—

a. the claimant has monthly earnings (excluding any that are not employed earnings) that are equal to, or more than, the amount that a person would be paid at the hourly rate set out in regulation 4 of the National Minimum Wage Regulations for [18 hours] per week, converted to a monthly amount by multiplying by 52 and dividing by 12; or
b. the claimant is a member of a couple whose combined monthly earnings (excluding any that are not employed earnings) are equal to, or more than, the amount that a person would be paid at the hourly

rate set out in regulation 4 of the National Minimum Wage Regulations for [229 hours] per week, converted to a monthly amount by multiplying by 52 and dividing by 12.

8. Regulation 99(6A) provides that in paragraph (6) “employed earnings” has the meaning in regulation 55.

9. Regulation 55 in turn provides that:

55.—(1) This regulation applies for the purposes of calculating earned income from employment under a contract of service or in an office, including elective office (“employed earnings”).

(2) Employed earnings comprise any amounts that are general earnings, as defined in section 7(3) of ITEPA, but excluding—

(a) amounts that are treated as earnings under Chapters 2 to 11 of Part 3 of ITEPA (the benefits code); and

(b) amounts that are exempt from income tax under Part 4 of ITEPA.

(3) In the calculation of employed earnings the following are to be disregarded—
(a) expenses that are allowed to be deducted under Chapter 2 of Part 5 of ITEPA; and
(b) expenses arising from participation as a service user (see regulation 53(2)).

(4) The following benefits are to be treated as employed earnings—
a. statutory sick pay;
b. statutory maternity pay;
c. statutory paternity pay;
d. . . . .
e. statutory adoption pay; .
f. statutory shared parental pay;.
g. statutory parental bereavement pay
h. statutory neonatal care pay.]
…

(5) In calculating the amount of a person's employed earnings in respect of an assessment period, there are to be deducted from the amount of general earnings or benefits specified in paragraphs (2) to (4)—

(a) any relievable pension contributions made by the person in that period;

(b) any amounts paid by the person in that period in respect of the employment by way of income tax or primary Class 1 contributions under section 6(1) of the Contributions and Benefits Act; and

(c) any sums withheld as donations to an approved scheme under Part 12 of ITEPA (payroll giving) by a person required to make deductions or repayments of income tax under the PAYE Regulations.

10. Regulation 90(6) further provides that a person's <u>monthly earnings</u> are—

a. the person's earned income calculated or estimated in relation to the current assessment period before any deduction for income tax, national insurance contributions or relievable pension contributions.

11. I note that the following excerpt from the DWP Universal Credit Guidance provides in very general terms as follows:

> *Universal Credit and earnings - GOV.UK*
>
> The 'Administrative Earnings Threshold' (AET)
>
> The AET is an amount you can earn that affects what you're asked to agree to. It is the total amount you earn <u>**before**</u> deductions for:
>
> - Income Tax
> - National Insurance contributions
> - pension contributions eligible for tax relief (known as 'relievable pension contributions').
>
> (The guidance does not appear to refer to "monthly" or "earned" earnings).

12. The following excerpt (which I acknowledge is no more than guidance) from the *DWP Advice for Decision Making Guide – H. Universal Credit. Chapter H3: Earned income - employed earnings* (last updated 22.10.25) provides that:

> **Chapter H3**
> *Calculating the amount of earnings*
>
> H3170 When taking into account <u>employed earnings</u> (and the benefits treated as earnings) in respect of an assessment period, **the decision maker should allow a deduction for**
> 1. the total relievable pension contributions made in that period and
> 2. any amounts of
>   a. income tax and
>   b. class 1 contributions that have been deducted or paid in that assessment period and
> 3. any amounts withheld as donations to charity in a scheme approved by His Majesty's Revenue and Customs in that assessment period.

H3171 A relievable pension contribution means[1] a contribution paid to a registered pension scheme by or on behalf of a member of that scheme. This means that the contribution can be paid by the individual member, who must be a relevant United Kingdom individual, or by a third party on behalf of the individual member.

([1]UC Regs (NI) 16, reg 52; Finance Act 2004, s 188)

H3172 A relevant United Kingdom individual means[1]
1. a person with earnings chargeable to United Kingdom income tax or
2. a person resident in the United Kingdom for some time of the year or
3. a person was resident in the United Kingdom both at some time during the five tax years immediately before that year and when that person became a member of the pension scheme or
4. a person, or their spouse, who has for the tax year general earnings from overseas Crown employment subject to United Kingdom tax.

[1](Finance Act 2004, s 189)

H3173 A contribution will not be a relievable pension contribution if it falls into

1. contributions after age 75[1]
2. life assurance premium contributions[2]
3. contributions paid by employers[3]
4. age related or minimum payments[4]

([1]Finance Act 2004, s 188(3)(a); [2]s 188(3)(aa); [3]s 188(3)(b); [4]s 188(3)(c))

Summary

13. The DWP argument at first instance in this case, and as accepted by the FTT, seems to be that (i) the AET is fixed by regulation 99(6) of the 2013 Regulations and (ii) regulation 55(5)(a), which is incorporated by regulation 99(6A) into regulation 99(6), mandates deduction of relievable pension contributions in that calculation. However, this interpretation is at least questionable, for the reasons advanced by the Appellant. It is true that regulation 99(6) incorporates the definition of ‘employed earnings’, but that is just an exception in regulation 99(6). The starting point in regulation 99(6) are the claimant’s ‘monthly earnings’ (excluding any that are not employed earnings) – and ‘monthly earnings’ are defined as being assessed gross and without deduction of pension contributions – see regulation 2 and especially regulation 90(6)(a).

Conclusion

14. At this stage I do not need to be satisfied that the Appellant’s grounds of appeal will necessarily succeed, only that they may succeed. The point

of construction is plainly arguable, and I therefore grant the application for permission to appeal to the Upper Tribunal.

10. The Secretary of State's representative was then invited to make submissions on the appeal.

The Respondent's submissions on the grounds of appeal

11. Mrs A Hutchinson, the Secretary of State's representative in these proceedings, supports the appeal. She submits that the FTT misunderstood the reference to regulation 55 and misapplied regulation 99(6) of the Universal Credit Regulations 2013. She points out that regulation 2 gives "monthly earnings" the definition in regulation 90(6), which clearly states that 'monthly earnings' are the person's earned income **before** any deductions are made for income tax, national insurance contributions or pension contributions. She continues:

> 7. Regulation 99(6) does refer to the term 'employed earnings' and regulation 99(6A) gives the meaning of 'employed earnings' as that in regulation 55 of the UC regulations.
>
> 8. It is true that regulation 55(5) provides that in calculating the amount of a person's employed earnings in respect of an assessment period, income tax, national insurance and any relievable pension contributions are to be deducted. However, I respectfully submit that this does not apply when considering whether a claimant's 'monthly earnings' meet the threshold set out in regulation 99(6).
>
> 9. The reference to 'employed earnings' in regulation 99(6) is simply to make it clear that any income that is not considered to be 'employed earnings' under regulation 55 will not be taken into account when calculating a claimant's 'monthly earnings'. For example, self-employed income is excluded from a claimant's 'monthly earnings' when considering whether the threshold in regulation 99(6) is met. The reference to 'employed earnings' goes no further than this and does not mean that a net monthly figure is to be used when considering the threshold in regulation 99(6).
>
> 10. In the instant case, the appellant had gross 'monthly earnings' of £1,508.41 which is above the AET of £1,437. The DM incorrectly deducted a pension contribution of £87.49 which resulted in a net figure of £1,420.92 in monthly earnings being considered instead. As this is below the AET, the DM decided that regulation 99(6) did not apply to the appellant and therefore the DM erroneously concluded that the appellant was required to search for and be available for work.
>
> 11. The DM relied upon regulation 55 of the UC regulations for this deduction and the Tribunal agreed with this interpretation. As per the reasons outlined above, I respectfully submit that the Tribunal erred in law in their interpretation of regulation 99(6) and its reference to 'employed earnings'.

The Appellant's reply

12. The Appellant then made the following points by way of reply:

I hope this clarification of the AET Legislation will now be disseminated to all relevant personnel in the Department of Work and Pension and the Lower Tribunal.

As it has now been established that there was no legal requirement for myself to seek additional work, can you please confirm that due to the maladministration of my joint claim, the financial reimbursement will also take into account compensation for :-

All travel costs incurred by myself in attending unnecessary appointments at Jobcentre Plus, Job Fayre and Job Interviews.

The financial stress caused by the sanction (no UC benefit payment received for that month)

The unnecessary distress caused by the DWP personnel's refusal to accept the criteria as stipulated in the AET Legislation, which resulted in myself requesting a formal Mandatory Reconsideration (failed), a further appeal to the Lower Tribunal (failed) and finally an appeal to the Upper Tribunal.

This has been a long drawn out process over two years (UC claim started Jan 2024 – Upper Tribunal judgement received Jan 2026) and has been extremely stressful having to constantly battle with the DWP to adhere to the AET Legislation

13. On a minor matter of detail as to the final paragraph of this reply, I would just add that this document is the Upper Tribunal's judgment – it was the Secretary of State's submission which was received in January 2026. As to the more substantive points that the Appellant makes about potential compensation for maladministration etc, such matters fall outside the jurisdiction of both the FTT and the Upper Tribunal. Any such claims for compensation (above and beyond the underpayment of UC which must be corrected in consequence of this judgment) would have to be pursued by the Appellant through the DWP's complaints regime and the Independent Case Examiner system.

Analysis

14. I have concluded that the Appellant's grounds of appeal succeed. My reasons are as foreshadowed above.

15. In summary, the starting point for the calculation of a claimant's Administrative Earnings Threshold (AET) for the purposes of regulation 99(6) of the Universal Credit Regulations 2013 is the figure representing their "monthly earnings". The concept of "monthly earnings", according to regulation 2, "has the meaning in regulation 90(6)". In the usual case the default position under regulation 90(6) is that a person's "monthly earnings" are "the person's earned income calculated or estimated in relation to the current assessment period **before any deduction** for income tax, national insurance contributions or relievable pension contributions" (see regulation 90(6)(a), emphasis added). It follows that "monthly earnings" for the purposes of the AET are calculated gross rather than net of the specified deductions (such as pension contributions). However, regulation 99(6) excludes

from the calculation of "monthly earnings" any earnings "that are not employed earnings" – for example, self-employed earnings. For the purpose of that carve-out, "employed earnings" are assessed net of relevant deductions – see regulation 99(6A) and regulation 55(5). However, this does not affect the starting point that "monthly earnings" are calculated gross.

Conclusion

16. I therefore conclude that the decision of the First-tier Tribunal involves an error of law. I allow the Appellant's appeal and set aside the FTT's decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. I remake the FTT's decision under section 12(2)(b)(ii) in the following terms:

> *The Appellant's appeal against the Secretary of State's decision dated 2 September 2024 is allowed.*
>
> *The Appellant had "monthly earnings" above the AET at the relevant time and therefore regulation 99(6) applied. This meant that no work search or work availability requirements could be imposed on the Appellant. Likewise, there can be no medium-level sanction applied to the Appellant's UC award for failing to take all reasonable action to search for work where no work search requirement was validly imposed on him.*
>
> *I further direct the Secretary of State to remove the 28-day sanction applied from 21 August 2024 and to calculate and pay any underpayment of UC owed to the Appellant. My decision is also as set out above.*

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised by the Judge for issue on 15 June 2026