



Neutral Citation Number: [2026] UKUT 352 (AAC)
Appeal No. UA-2023-000666-UOTH

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Mr Steven Ball (deceased)

Appellant

v

The Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Markus KC (sitting in retirement)

Decision date: 14 September 2026

Decided on consideration of the papers

Representation:

Appellant: Mr Dan Manville, Greater Manchester Law Centre

Respondent: Mr R Whittaker, Decision Making and Appeals, Leeds

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Judge: Judge JL Mack

Tribunal Case No: SC947/22/00052

Tribunal Venue: Rochdale

Hearing Date: 15 February 2023

SUMMARY OF DECISION

The appellant claimed that he had been entitled to the Transitional Severe Disability Premium element of Universal Credit ('UC') because, prior to his entitlement to UC, he had been entitled to the Severe Disability Premium ('SDP') of Employment and Support Allowance ('ESA'). The First-tier Tribunal ('FtT') dismissed the appeal because there had been no award of SDP and so he had not been entitled to it.

During the course of the appeal to the Upper Tribunal, the SSWP superseded the ESA award to include SDP up to the date of migration to UC, on the ground that (contrary to the SSWP's original position) the appellant had reported a relevant change of circumstances.

The Upper Tribunal decides that the FtT erred in law in failing to appreciate that the appellant had reported a relevant change of circumstances and that the ESA award should have been revised at that time. Although section 12(8)(b) of the Social Security Act 1998 meant that the FtT was unable to amend the UC award, the FtT should have adjourned the appeal to allow the SSWP to consider revising the UC award.

The Upper Tribunal allows the appeal, sets aside the FtT's decision and directs the SSWP to consider revising the award of UC. If the award is revised, the appeal will lapse.

Keywords:

30.1 Revisions, supersessions and reviews – change of circumstances

30.7 Revision general

34.12 Tribunal practice

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 from the decision of the First-tier Tribunal dated 15 February 2023 under case number SC 947/22/00052.

In accordance with section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 that decision is set aside.

Before deciding what action to take under section 12 (2)(b) of the 2007 Act, I make the following directions.

DIRECTIONS

Within 28 days of receipt of this Decision, the Respondent should consider revising the original Universal Credit award to include a Transitional Severe Disability Premium Element at the appropriate rate, and to notify the Upper Tribunal of its decision (with an explanation if the Respondent decides not to revise the award).

REASONS FOR DECISION**Introduction**

1. This appeal was commenced when the appellant, Mr Ball, was living. Sadly, he has since died and the Secretary of State for Work and Pensions ('the SSWP') has appointed his sister, Mrs Janette Quinlan, to continue with the appeal. Mrs Quinlan has provided authority for the representative, Mr Manville, to continue to act on her behalf.

Factual background and First-tier Tribunal

2. As the parties are now in agreement as to the outcome of this appeal, I can deal with the background fairly briefly.
3. The appeal concerns the appellant's claim for Universal Credit ('UC') . He had previously been in receipt of Employment and Support Allowance (Income related) - 'ESA' - including the Enhanced Disability Premium but not the Severe Disability Premium ('SDP'). He did not receive the transitional protection payment, Transitional Severe Disability Premium Element ('TSDPE') because the SSWP took the view that he had not been "entitled" to an award of ESA that included SDP during the month preceding his entitlement to UC (see Regulation 63 and Schedule 2 of the Universal Credit (Transitional Provisions) Regulations 2014). The appellant appealed to the First-tier Tribunal ('FtT').
4. In the FtT the appellant said that he had been entitled to SDP even though it was not in payment. The FtT decided that there was no entitlement because there had been no entitlement decision.
5. The appellant appealed on the ground that a) There can be entitlement to SDP even if it's not in payment; b) He had notified the SSWP that his mother had died (which had generated his entitlement to SDP) through the "Tell us Once" service but that had not been acted upon.
6. The FtT refused permission to appeal. Permission was then given by the Upper Tribunal.
7. Both parties have stated that they do not require an oral hearing of the appeal and I am satisfied that I can fairly determine the appeal without a hearing. The parties have provided detailed written submissions and I would not be further assisted by having a hearing.

The parties' submissions in the Upper Tribunal

8. The initial position of the SSWP in written submissions was not to support the appeal. In summary he submitted that there had been no award of SDP before the appellant claimed UC, and that any change to the award to take account of SDP could only be done by way of supersession. The notification of the appellant's mother's death through "Tell us Once" did not qualify as an application for supersession. The appellant would have to apply for a supersession but, if successful, the effective date would be from the date of notification of the change of circumstances (the non-dependent no longer living with the appellant) and so would not affect entitlement to TSDPE
9. Following further submissions on behalf of the appellant and observations by Upper Tribunal Judge Grey KC, the SSWP changed his position. While he maintained his position that entitlement to SDP requires an actual award and there was none, contrary to the previous position he said that the appellant's report of his mother's death through the "Tell us Once" service did amount to a valid report of a change of circumstances and so the SSWP was required to supersede the ESA decision to include SDP from the date of that report. The UC award could then be remade to include TSDPE.

10. Mr Manville on behalf of the appellant questioned the legal route by which the Secretary of State's position could be achieved given the Upper Tribunal's appellate jurisdiction. In addition he submitted that, once notified of the change of circumstances, the SSWP had been obliged to supersede the award of ESA. Finally he maintained his position that "entitlement" was not dependent upon receipt of the benefit and so the appellant was in any event entitled to TSDPE
11. Following further Case Management Directions by UT Judge Grey KC and further written submissions of the parties, the position now is as follows.
12. On 6 November 2025 the SSWP superseded the ESA award to include SDP from the date of the appellant's mother's death to the final date of the ESA award prior to migration to UC.
13. The SSWP submits that the UC award can now be revised to include TSDPE. As the appellant had SDP at the point of transfer to UC, he met the terms of paragraphs 2 and 3 of Schedule 2 of the Transitional Provisions Regulations 2014. As he was entitled to the LCWRA element from the start of the UC award, paragraph 5(a) of the Schedule provided for the amount to which the appellant was entitled.
14. The SSWP submits that that result can be achieved by the Upper Tribunal setting aside the FtT's decision on grounds of error of law and remaking it to the above effect. The SSWP submits that there was an error of law in accordance with the decision in *E and R v Secretary of State for the Home Department* [2004] QB 1044 at [66] where Carnwath LJ said:

"In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result...First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning."
15. The SSWP submits that the mistake of fact for these purposes was that the FtT was ignorant of the fact that the appellant's report of his mother's death through "Tell us Once" was in fact a supersession application in relation to his ESA award and which was relevant to their entitlement to the SDP. Had the FtT known of this fact, it would have been incumbent on it to have adjourned in order to await the supersession decision.

Discussion and conclusion

16. I do not agree that the circumstances relied on by the SSWP amounted to a mistake of fact. As the SSWP has pointed out, the FtT's statement of reasons includes the following:

"22. The respondent comment within the bundle that "it appears on the evidence that the appellant was entitled, he used the "tell us once

system” but did not specifically apply for the SDP”. This sentence is unhelpful as on the face of it, it appears internally inconsistent.”

17. Clearly the FtT was aware that the appellant had reported his mother's death through that service. It was also obvious that the SSWP had not treated that notification as a supersession application. There was no mistake of fact by the FtT in this regard.
18. While I do not find an error of law on the basis advanced by the SSWP, there is another basis for finding that the FtT erred in law. The FtT failed to take into account and address the potential and very significant implications of the appellant having reported his mother's death through Tell us Once. Indeed, as the last sentence of its comment above shows, it considered that fact to have been irrelevant. On the contrary, that fact was highly relevant. The appellant's mother's death meant that he would have become entitled to SDP with his award of ESA. If reporting her death through Tell us Once amounted to notification of a change of circumstances (as the SSWP now accepts it did), the SSWP would have been bound to consider supersession of the ESA award. Although the ESA award was not the subject of the appeal to the FtT, the possibility of supersession of that award so as to include SDP was highly relevant to the outcome of the appeal that was before the FtT. This is because, if SDP was awarded by way of supersession of the ESA award, the appellant would have been entitled to transitional protection in the UC award. In these circumstances the FtT should have adjourned the appeal so as to allow the SSWP to consider superseding the ESA award. It is now clear that, had that been done, the SSWP would have superseded the ESA award to include SDP.
19. Of course, by reason of section 12(8)(b) of the Social Security Act 1998, the FtT could not have awarded transitional protection on the basis of the superseded ESA award because that supersession would have occurred after the date of the UC decision. But, once the ESA award was superseded, it would have been clear to the FtT (and to the SSWP) that the appellant should have been awarded transitional protection. The only reasonable course for the FtT to have taken in those circumstances was to adjourn the appeal again so as to allow the SSWP to consider revising the UC award in accordance with regulation 11(1) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013. Had the SSWP revised the UC award, the appeal to the FtT would have lapsed – section 9(6) Social Security Act 1998.
20. The FtT's failure to address the obvious significance of the appellant's report of his mother's death was an error of law in that it was a failure to take into account material factors and it was unfair. It affected all that followed. It meant that no steps were taken to enable the SSWP to take the steps required to award the TSDPE to which the appellant was clearly entitled.
21. In the light of this material error of law, I allow the appeal and set aside the FtT's decision. Under section 12(2)(b) of the Tribunals Courts and Enforcement Act 2007, I must either remit the case to the FtT for reconsideration or re-make the decision. Before I proceed to exercise either of those powers. I have decided that it is appropriate to do what the FtT should have done once the ESA award was superseded to add the SDP: I direct the SSWP to consider revising the award of Universal Credit to include TSDPE and to notify the Upper Tribunal of

its decision. Consistently with paragraph 19 above, if the decision under appeal is revised by the SSWP, the appeal will lapse and therefore there will then remain nothing to be redecided or remitted. See, for a similar approach, the decision of Mr Commissioner Mesher in *R(IS) 4/04* at paragraphs 32-35.

Other matters

22. Mr Manville had previously asked the Upper Tribunal to provide a reasoned decision as to the entitlement question (ground (a) set out at paragraph 5 above). On 12 September 2025 UT Judge Grey KC said she was not minded to determine it, for various reasons including that it was no longer necessary and it was preferable for the issue to be addressed in a case where it is necessary to determine the appeal. Mr Manville has not made any further observations on that matter. I agree with Judge Grey.

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

Authorised by the Judge for issue on 14 September 2026