



Neutral Citation Number: [2026] UKUT 367 (AAC)
Appeal No. UA-2024-001594-PIP

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**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

HYM

Appellant

- v -

The Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Butler
Decided following an oral hearing by CVP video on 21 May 2026.

Representation:

Appellant: YJO (the Appellant's husband)

Respondent: Mr Richard Howell (counsel)

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: 1669-8920-0952-8217

Tribunal: Judge K. Kneale, Ms C. Blunt and Dr H. Cheesebrough

Tribunal Venue: Blackpool

Decision Date: 19 March 2024

SUMMARY OF DECISION

Personal Independence Payment (41) and mobility activities (43).

The Upper Tribunal considered the meaning and effect of regulation 27A of the Personal Independence Payment (Transitional Provisions) Regulations 2013 ('the TP Regulations') when applied to a PIP claimant who has reached pensionable age, whose PIP award is being superseded and who is not entitled to the mobility component in their original award.

The Upper Tribunal decided regulation 27A(2) of the TP Regulations only applies where a claimant's original award (their existing PIP award) contains a mobility component and is being superseded. As the Appellant's original award did not include the mobility component, regulation 27A(2) did not apply to him. The FTT therefore made an error of law in concluding that the Appellant was not eligible for the mobility component due to having reached pensionable age.

The Upper Tribunal rejected the SSWP's arguments that regulation 27A(2) should be read as applying to claimants whose original award does not include the PIP mobility component.

*Giving weight to the principle of comity expressed in paragraph 38 of **Dorset Healthcare NHS Foundation Trust v MH** [2009] UKUT 4 (AAC), the Upper Tribunal concluded it was determining a separate and distinct question from that addressed in **SC v SSWP (PIP)** [2022] UKUT 97 (AAC) or **MM v SSWP (PIP)** [2024] UKUT 288. Those decisions considered the operation of regulation 27. It had not been necessary in either decision to determine the meaning of regulation 27A of the TP Regulations and the circumstances in which it incorporates regulation 27 of the 2013 Regulations.*

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) and (b)(ii) and (4) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remake the decision as follows:

- 1. The appeal is allowed.*
- 2. The Secretary of State's decision dated 16 June 2022, as revised on 04 November 2022, is set aside.*
- 3. The Appellant is entitled to the daily living component of PIP at the enhanced rate from 02 April 2022 on an ongoing basis. It is inappropriate to fix the length of the award.*
- 4. The Appellant is entitled to the mobility component of PIP at the enhanced rate from 02 April 2022 on an ongoing basis. It is inappropriate to fix the length of the award.*
- 5. Regulation 27A(1) of the Personal Independence Payment (Transitional Provisions) Regulations 2013 applies to the Appellant, with the effect that section 83(1) of the Welfare Reform Act 2012 does not prevent him being entitled to personal independence payment ("PIP") despite having reached pensionable age at the date when the Respondent made its supersession decision on 16 June 2022.*
- 6. However, regulation 27A(2) of those regulations does not have any effect in relation to the Appellant's entitlement to the mobility component of PIP. The Appellant's original award of PIP was the award made on 14*

October 2020. At the date of DWP's supersession decision on 16 June 2022, the Appellant's original award of PIP did not include the mobility component of PIP.

- 7. Since the Appellant satisfied the requirements in regulation 27A(1) and was not caught by the provisions in regulation 27A(2) of the Personal Independence Payment (Transitional Provisions) Regulations 2013, the fact he had reached pensionable age did not mean he was prevented from having any entitlement to the mobility component with effect from 02 April 2022 onwards.*
- 8. The parties do not dispute the basis on which DWP awarded the Appellant 12 points for daily living activities, which gives rise to the award of the daily living component at the enhanced rate.*
- 9. It is not disputed between the parties that at 02 April 2022, the effective date of DWP's decision dated 16 June 2022, the Appellant had long-standing medical conditions that severely restricted his ability to perform the activities assessed for entitlement to the mobility component of PIP. Nor is it disputed between the parties that the resulting restrictions on his functional ability to carry out those activities meant the Appellant would score sufficient points for an award of the enhanced rate of the mobility component of PIP, and that those restrictions were unlikely to change.*

REASONS FOR DECISION

A. Introduction and factual background

1. The Department for Work and Pensions ("DWP") administers benefits on behalf of the Secretary of State for Work and Pensions and makes decisions on his behalf ("SSWP"). In this decision, I use "DWP" throughout as shorthand for the Secretary of State's decision makers and benefits administrators. Where I refer to "the SSWP" I refer to the Secretary of State in terms of the arguments advanced on his behalf, including at the oral hearing on 21 May 2026.
2. The relevant regulations discussed in this decision include regulations 27 and 27A of the Social Security (Transitional Provisions) Regulations 2013 and regulation 27 of the Social Security (Personal Independence Payment) Regulations 2013. As acknowledged in previous Upper Tribunal decisions, it is confusing that the relevant provisions are similarly numbered but appear in different sets of regulations. To reduce confusion, I have adopted the same abbreviations used in the earlier Upper Tribunal decisions. They are that the Social Security (Transitional Provisions) Regulations 2013 (SI 2013/387) are "the TP Regulations" and the principal Social Security (Personal Independence Payment) Regulations 2013 (SI 2013/377) are "the 2013 Regulations".

3. HYM was born on 03 June 1949. He was awarded Disability Living Allowance (“DLA”) for life from 01 March 1993. The award included the higher rate mobility component. The DLA award was made following HYM receiving a permanent spinal injury in an industrial accident in 1989.
4. In 2016, HYM was transferred from DLA to personal independence payment (“PIP”). Section 83(1) of the Welfare Reform Act 2012 (“the 2012 Act”) prevents persons of pensionable age being entitled to either the daily living component or the mobility component of PIP. However, section 83(3) provides a power to make regulations setting out exceptions to this rule.
5. Section 83 was relevant to HYM because at the date DWP invited him to claim PIP, he was over the (then) pensionable age of 65. DWP decided, however, that regulation 27 of the TP Regulations applied to HYM. This was because:
 - (a) HYM had not yet reached 65 on 08 April 2013 and was aged 63 at that date;
 - (b) he was a DLA entitled person; and
 - (c) he claimed PIP in response to a notification from DWP under regulation 3(1) of the TP Regulations.
6. The effect of regulation 27 of the TP Regulations applying to HYM was that the restriction in section 83(1) of the 2012 Act did not apply to him when he was moved from DLA. He was eligible to claim PIP in 2016, despite being above pensionable age at that time. In this decision, I refer to DLA claimants who reach pensionable age and are subsequently able to claim PIP through the application of regulation 27 of the TP Regulations as “*transfer claimants*”.
7. On 23 December 2016, DWP awarded HYM the daily living component and mobility component of PIP, both at the enhanced rate. His award was made on an ongoing basis, meaning DWP had not listed an end date for it. HYM’s DLA entitlement also ended, because a person cannot be entitled to both benefits at the same time.
8. DWP subsequently changed HYM’s entitlement to PIP. On 14 October 2020, DWP superseded its earlier entitlement decision, removing HYM’s entitlement to any rate of the PIP mobility component. DWP maintained HYM’s award of the PIP daily living component at the enhanced rate but gave it an end date of 27 May 2027. A supersession decision is one of the ways in which a benefit decision can be changed. It generally takes effect from the date the changing decision is made. DWP decided to supersede HYM’s PIP award because he had recently moved abroad to Spain (in October 2020).
9. HYM subsequently returned to the UK in early 2022. He asked DWP to restore the mobility component to his PIP award. On 16 June 2022, DWP superseded HYM’s PIP entitlement. HYM was now aged 73. DWP superseded HYM’s PIP entitlement with effect from 02 April 2022. Although the decision did not change which PIP components HYM was entitled to receive or the relevant rate, it

changed his overall PIP entitlement by shortening the length of the daily living component award, so it now ended on an earlier date of 27 November 2026.

10. HYM asked DWP to reconsider its decision. On 04 November 2022, DWP maintained its position that HYM was not entitled to any rate of the PIP mobility component. However, DWP decided HYM's award of the daily living component should be for an ongoing period. It appears DWP therefore revised its decision dated 16 June 2022, to give HYM a longer award of the PIP daily living component. For the benefit of HYM and YJO, revisions and supersessions provide different ways in which DWP decisions can be changed. The difference lies in the reasons why the change is made, and the date from which the change takes effect.
11. The revised form of the PIP entitlement decision dated 16 June 2022 still superseded DWP's earlier decision dated 14 October 2020. The change it made to that decision was to remove the end date of 27 May 2027 for HYM's daily living component and award him that component on an ongoing basis.

B. The proceedings before the First-tier Tribunal and its decision

12. On 01 December 2022, HYM appealed to the First-tier Tribunal. He appealed on the basis that DWP staff had informed him, both before and after he moved to Spain, that the effect of moving would suspend payment of the PIP mobility component, but it would be reinstated automatically if he came back. HYM argued that had he been given the correct advice and information by the relevant DWP PIP department, he would never have gone to Spain. Moreover, HYM argued the reasons given for not reinstating the mobility component contradicted the advice he had been given repeatedly by DWP representatives.
13. On 19 March 2024, a First-tier Tribunal ("FTT") refused HYM's appeal and confirmed DWP's decision. The FTT confirmed HYM scored 12 points for daily living activities and awarded him the daily living component of PIP on an indefinite basis. The FTT refused HYM's appeal in relation to the mobility component.
14. The FTT decided its Decision Notice should stand as its Statement of Reasons. It explained the PIP daily living component was awarded for an indefinite period to reflect that HYM had longstanding medical conditions that severely restrict his activities of daily living and this was highly unlikely to change in the future. The FTT also explained it was not disputed that HYM would score sufficient points for an award of the enhanced rate of the mobility component at the date of (DWP's) decision and this was unlikely to change in the future.
15. The FTT stated that because HYM had been out of the UK for more than 12 months, his entitlement to the mobility component of PIP had ended. It stated that HYM did not satisfy the requirements to reapply for the mobility component of PIP because he was over pension age and did not satisfy the requirements of UK residence at the time of the application/decision. The FTT stated the relevant law was set out in DWP's response and in the guidance note provided by DWP just prior to the hearing. The FTT wrote that it could find no other legal provisions that would enable the decision regarding the mobility component to change. It wrote

that **SSWP v DS** [2019] UKUT 238 (AAC) suggested entitlement ends when a person moves abroad rather than there being an underlying entitlement that stops being payable while a person is abroad.

16. The FTT also wrote that DWP gave HYM incorrect information at various times when he contacted it for advice about what would happen to his PIP if he moved abroad, and on his return. The FTT explained this was not a factor that could, however, alter its interpretation of the law as it related to the case.

C. The Upper Tribunal proceedings

17. On 03 March 2025, I gave HYM permission to appeal to the Upper Tribunal. Given the factual circumstances, it was arguable he came within regulation 27A of the TP Regulations. This was because:
 - (a) at the date of DWP's entitlement decision dated 16 June 2022, HYM was a person of pensionable age;
 - (b) he met the conditions in regulation 27(2) of the TP Regulations. HYM had not reached 65 on 08 April 2013, was entitled to DLA at the time DWP decided he was entitled to PIP, and claimed PIP in response to a notification DWP had sent him;
 - (c) it appeared the position in (b) above would satisfy regulation 27A(1)(a) because that provision uses the past tense by referring to a claimant having "*met*" regulation 27(2) or (3) of the TP Regulations; and
 - (d) HYM was entitled to an award of PIP and that award was superseded by DWP's decision dated 16 June 2022. This would satisfy regulation 27A(1)(b).
18. Regulation 27A(1) is stated to be subject to paragraph (2) of regulation 27A. Regulation 27A(2) states that where an original award (of PIP) includes the mobility component, regulation 27(2) and (3) of the 2013 Regulations apply. The phrase "*original award*" is not defined in the TP Regulations, but the Upper Tribunal has previously interpreted it as referring to a claimant's current PIP award (see paragraph 51 of **SC v SSWP (PIP)** [2022] UKUT 97 (AAC)).
19. If that meaning of "original award of PIP" were applied to HYM, it would appear to refer to the award made when DWP superseded his PIP entitlement on 14 October 2020. On that basis, HYM's original award did not include the mobility component.
20. Given the wording used in regulation 27A(2) of the TP Regulations, one possible reading was that, if HYM did not satisfy the conditions in that provision, regulation 27(2) and (3) of the 2013 Regulations would not apply to him.
21. The FTT appeared to proceed on the basis that once HYM's earlier entitlement to the mobility component had ended there was no legal route by which he could regain that component after pensionable age. It did not expressly consider regulation 27A of the TP Regulations or what that regulation provided. It was therefore arguable that the FTT had misdirected itself in law or, alternatively, had failed to make adequate factual findings or give adequate reasons.
22. I also decided the appeal raised an issue of wider legal significance that should be determined by the Upper Tribunal. I explained I was aware of the Upper

Tribunal decisions in **SC v SSWP** (see paragraph 18 above) and **MM v SSWP (PIP)** [2024] UKUT 288. I considered, however, that those decisions appeared to look at the 2013 Regulations rather than the effect of the relevant provisions in the TP Regulations, which used different legislative wording. I considered it was possible the wording in regulation 27A of the TP Regulations might produce a different outcome in HYM's particular circumstances. In any event, I considered it arguable the effect of regulation 27A would benefit from further analysis generally.

23. I considered that these matters represented good reasons for granting HYM permission to appeal within the meaning of **Smith v Cosworth Casting Processes Ltd** [1997] 1 WLR 1538.

D. The hearing before the Upper Tribunal

24. The Secretary of State for Work and Pensions ("SSWP") does not support the appeal. Having seen the Response filed on his behalf, I directed that an oral hearing should take place by video. It took place on 21 May 2026. HYM took part, represented by his husband YJO, who made helpful submissions and representations on his behalf. I also heard from HYM directly, despite him experiencing symptoms from his medical conditions during the hearing. The SSWP was represented by Mr Howell of Counsel, and I am very grateful to him for his thoughtful and precise submissions on behalf of the SSWP, which have assisted me in considering the issues involved. I thank all those who participated in the hearing for their arguments and the discussion we had.
25. I made some adjustments to the hearing to help HYM take part. He has a long-term painful spinal condition and a range of other conditions that affect him. At the start of the hearing, HYM told me he had undergone surgery that week, from which he was recovering and which was causing him (additional) pain.
26. I emphasised that HYM should feel able to move around during the hearing in whichever way would relieve his pain, and that if he needed breaks, he should tell me. I also made some adjustments in the form of checking that YJO and HYM understood what had been said about the legal issues being discussed. These were complicated and they were not legally represented. Where appropriate, I summarised and reiterated the legal points being discussed so that HYM and YJO felt able to comment upon them.
27. Before the hearing took place, I made directions asking whether HYM wanted me to consider making an anonymity order. Having received representations from YJO, I made an anonymity order on 12 May 2026, which anonymises the names of both HYM and YJO. The initials used were chosen at random and do not reflect their names.
28. It has taken additional time to consider all the arguments and make my decision, for which I apologise to the parties.

E. The legal framework

29. The following provisions of the Welfare Reform Act 2012 ('the 2012 Act') are relevant to this appeal. The version of section 77 is that in force at the date of the DWP's decision and the FTT's Decision.

“77. Personal independence payment

(1) An allowance known as personal independence payment is payable in accordance with this Part.

(2) A person's entitlement to personal independence payment may be an entitlement to—

(a) the daily living component (see section 78);

(b) the mobility component (see section 79); or

(c) both those components.

(3) A person is not entitled to personal independence payment unless the person meets prescribed conditions relating to residence and presence in Great Britain.

(4) A person is not entitled to personal independence payment while they are entitled to adult disability living payment or child disability payment.

83. Persons of pensionable age

(1) A person is not entitled to the daily living component or the mobility component for any period after the person reaches the relevant age.

(2) In subsection (1) “the relevant age” means—

(a) pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995); or

(b) if higher, 65.

(3) Subsection (1) is subject to such exceptions as may be provided by regulations.”

30. The following provisions of the TP Regulations are relevant to this appeal.

“Persons aged 65 and over to be entitled to personal independence payment in certain circumstances**27.—**

(1) Section 83(1) (persons of pensionable age) of the Act does not apply to a person to whom this regulation applies.

(2) This regulation applies to a person who—

(a) had not reached 65 on 8th April 2013,

(b) is a DLA entitled person, and

(c) claims personal independence payment—

- (i) in response to a notification sent to the person by the Secretary of State under regulation 3(1), or
 - (ii) under regulation 4.
- (3) This regulation also applies to a person who—
- (a) had not reached 65 on 8th April 2013,
 - (b) claims personal independence payment, and
 - (c) is not entitled to disability living allowance on the day the claim is made but was so entitled on the day falling twelve months before that day or at any time between those days.

Revision and supersession of an award of personal independence payment in certain circumstances

27A.—

- (1) Subject to paragraph (2), section 83(1) of the Act (persons of pensionable age) does not apply to a person who —
 - (a) met the conditions at paragraph (2) or (3) of regulation 27, and
 - (b) is entitled to an award of personal independence payment ("the original award"), and that award is revised or superseded within the meaning of section 9 or 10 of the 1998 Act respectively.
 - (2) Where the original award includes the mobility component of personal independence payment and is superseded, paragraphs (2) and (3) of regulation 27 of the PIP Regulations apply in relation to the supersession.
 - (3) In this regulation, the references to an original award are to be read as including a concessionary payment made in lieu of personal independence payment under arrangements by the Secretary of State with the consent of the Treasury."
31. Regulation 27A was introduced with effect from 04 July 2019. It was introduced because of an unintended gap in the PIP legislation where a claimant transferred from DLA to PIP after reaching pensionable age, and the SSWP subsequently revised or superseded the PIP award that had been made via that transfer process. The unintended gap was identified while the Upper Tribunal was considering the appeal in **RJ v SSWP** [2020] UKUT 107 (AAC) ("**RJ**"). Regulation 27A was introduced before the Upper Tribunal made its final decision in that case. The SSWP committed to make concessionary payments to the group of claimants identified as falling within the unintended gap. Regulation 27A(3) of the TP Regulations makes provision for claimants who were given those concessionary payments because they could not have any entitlement to PIP as a result of the gap in the original legislation.

32. Regulation 27A(2) refers to, and applies, paragraphs (2) and (3) of regulation 27 of the 2013 Regulations. The relevant provisions in the 2013 Regulations, including regulation 27, are set out below. While regulation 27 of the 2013 Regulations refers to claimants being entitled to an award pursuant to regulation 25 or 26, I have not set out those provisions below. Those provisions did not apply to HYM in any form and his route to entitlement was through the TP Regulations 2013 instead.

“16. Conditions relating to residence and presence in Great Britain

Subject to the following provisions of this Part, the prescribed conditions for the purposes of section 77(3) of the Act as to residence and presence in Great Britain are that on any day for which C claims personal independence payment C —

- (a) is present in England and Wales;
- (b) has been present in Great Britain for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks immediately preceding that day;
- (c) is habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands; and
- (d) is a person —
 - (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999; or
 - (ii) to whom, by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, section 115 of that Act does not apply for the purpose of personal independence payment.

23. Persons residing in an EEA state or in Switzerland to whom a relevant EU Regulation applies

Regulation 16(a) to (c) does not apply in relation to entitlement to the daily living component of personal independence payment where on any day —

- (a) C is habitually resident in —
 - (i) an EEA state; or
 - (ii) Switzerland;
- (b) a relevant EU Regulation—
 - (i) applies to C; or
 - (ii) except where C has been habitually resident in the United Kingdom after 31st December 2020, applied to C on 31st

December 2020 and they have been continuously in receipt of the daily living component of personal independence payment on and from that date; and

- (c) C can demonstrate a genuine and sufficient link to the United Kingdom.

27.— Revision and supersession of an award after the person has reached the relevant age

- (1) Subject to paragraph (2), section 83(1) of the Act (persons of pensionable age) does not apply where —

- (a) C has reached the relevant age and is entitled to an award (“the original award”) of either or both components pursuant to an exception in regulation 25 or 26; and

- (b) that award falls to be revised or superseded.

- (2) Where the original award includes an award of the mobility component and is superseded—

- (a) pursuant to regulation 23 of the Decisions and Appeals Regulations for a relevant change of circumstance which occurred after C reached the relevant age; or

- (b) pursuant to regulation 26(1)(a) of the Decisions and Appeals Regulations, where—

- (i) the application for supersession was made by C after C reached the relevant age, or

- (ii) the supersession proceedings were initiated by the Secretary of State after C reached the relevant age,

the restrictions in paragraph (3) apply in relation to the supersession.

- (2A) In paragraph (2), “the Decisions and Appeals Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.

- (3) The restrictions referred to in paragraph (2) are —

- (a) where the original mobility component award is for the standard rate then, regardless of whether the award would otherwise have been for the enhanced rate, the Secretary of State —

- (i) may only make an award for the standard rate of that component; and

- (ii) may only make such an award where entitlement results from substantially the same condition or conditions for which the mobility component in the original award was made.
- (b) where the original mobility component award is for the enhanced rate, the Secretary of State may only award that rate of that component where entitlement results from substantially the same condition or conditions for which the mobility award was made.
- (4) Where the original award does not include an award of the mobility component but C had a previous award of that component, for the purpose of this regulation entitlement under that previous award is to be treated as if it were under the original award provided that the entitlement under the previous award ceased no more than 1 year prior to the date on which the supersession takes or would take effect.”

G. Analysis

Should DWP have superseded HYM’s entitlement to the PIP mobility component on 14 October or suspended it?

- 33. A person must meet specific conditions about residence and presence in Great Britain to be entitled to PIP (section 77(3) of the 2012 Act). These requirements are set out in regulation 16 of the 2013 Regulations. It states a person must: be present in England and Wales on any day for which they claim PIP, have been present in Great Britain for specific periods of time before they claim, and be habitually resident in the UK, Republic of Ireland, the Isle of Man or the Channel Islands. The person must also not be subject to immigration control.
- 34. It is not disputed between the parties that HYM remained entitled to the daily living component of PIP while he was in Spain. It is unnecessary for the purposes of this appeal to decide the detailed basis on which the applicable social security coordination provisions preserved that entitlement.
- 35. HYM’s appeal concerns the mobility component. Regulation 23 of the 2013 Regulations disapplies the residence conditions in regulation 16(a) to (c) only in relation to entitlement to the daily living component. It does not create an equivalent exception for the mobility component.
- 36. By the date of DWP’s decision on 14 October 2020 HYM had moved to Spain and was not habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands. He therefore ceased to satisfy regulation 16(c) of the 2013 Regulations in respect of the mobility component.
- 37. YJO made some arguments in his written submissions that suggested HYM should have continued being paid the PIP mobility component during the time he lived in Spain. These arguments relied on the wording of regulation 23 of the PIP Regulations 2013 and DWP’s published advice to its decision makers (called ‘ADM’) about that regulation and how it applies in determining entitlement to the daily living component.

38. Regulation 16 of the PIP Regulations 2013 requires a person to be habitually resident in the UK to be entitled to PIP. Regulation 23 provides an exception to that requirement. The opening wording of regulation 23 confirms the exception only extends to the daily living component of PIP. It does not provide any exception to the habitual residence requirement in regulation 16(c) for the PIP mobility component. In the absence of an applicable exception for the mobility component, the entitlement conditions in section 77(3) of the 2012 Act prevented HYM being entitled to it once he had moved to Spain.
39. YJO also argued that HYM was told that payment of his mobility component was being suspended and he retained an underlying entitlement to it. The wording in section 77(3) of the 2012 Act deals with entitlement to PIP, not payment of it. The relevant provisions in the 2013 Regulations are worded consistently with this. See regulation 16, which deals with circumstances determining whether a person will be entitled to PIP. See also the opening wording of regulation 23.
40. The effect of regulations 16 and 23 of the 2013 Regulations, read with section 77(3) of the 2012 Act, was therefore that HYM ceased to meet the entitlement conditions for the PIP mobility component in October 2020. The Secretary of State was therefore required to supersede the existing award and change HYM's entitlement to the mobility component.
41. Part 5 of the Universal Credit etc. (Decisions and Appeals) Regulations 2013 ("the UC (D&A) Regulations") deals with suspension of payment of benefits, including PIP. Regulation 44 of those regulations allows DWP to suspend payment of benefit in specific cases. These cases are set out at regulation 44(2). They concern the following: where there is doubt about whether the person fulfils the conditions of entitlement, an issue arises whether the award should be revised or superseded, an issue arises about whether benefit is recoverable from the claimant under the Social Security Administration Act 1992, where the claimant has moved address and DWP does not have their current address, and where DWP decisions, or FTT decisions are being appealed.
42. None of the grounds in regulation 44(2) allowing payment of PIP to be suspended applied to HYM at the time DWP made its decision dated 14 October 2020. There was therefore no basis on which DWP could suspend payment of HYM's PIP mobility component. I acknowledged that DWP staff described suspending payment of that component. Those statements were factually wrong because DWP's decision of 14 October 2020 was that HYM ceased to be entitled to the mobility component when he moved to Spain. They were also legally wrong, because there was no legislative basis for DWP to be able to suspend payment of the mobility component instead of deciding HYM was not entitled to it.

Was the supersession decision about HYM's PIP award made under the 2013 Regulations or the TP Regulations?

43. When I granted HYM permission to appeal, my analysis was that the supersession decision DWP made on 16 June 2022 about his PIP award appeared to have been made under regulation 27A of the TP Regulations. See the analysis at paragraph 17(a) to (d) above.

44. In the SSWP's initial Response to HYM's Upper Tribunal appeal, the SSWP's representative argued that the supersession decision made on 16 June 2022 was made under regulation 27 of the 2013 Regulations. The SSWP's representative submitted it would be erroneous to determine that regulation 27A of the TP Regulations applied to HYM when he returned to the UK in 2022.
45. At the hearing on 21 May 2026, however, Mr Howell confirmed the SSWP's position was that regulation 27A of the TP Regulations applied to HYM on 16 June 2022. Mr Howell argued this was the position because:
- (a) HYM met the conditions in regulation 27(2) of the TP Regulations (regulation 27A(1)(a));
 - (b) HYM was entitled to an award of the PIP daily living component, namely the award made on 14 October 2020 (regulation 27A(1)(b)); and
 - (c) that award was revised or superseded by the decision dated 16 June 2022 (regulation 27A(1)(b)).
46. This broadly reflected the position in Mr Howell's written skeleton argument, with the exception that the skeleton argument argued DWP's decision dated 16 June 2022 was a decision refusing to supersede the earlier decision made on 14 October 2020. At the hearing, however, Mr Howell agreed the 16 June 2022 decision had superseded the earlier decision, by changing the length of the award of the PIP daily living component. See the factual background at paragraphs 9 to 11 above.
47. I am satisfied that when DWP made its decision on 16 June 2022, it used the provision in regulation 27A of the TP Regulations. That regulation allowed HYM to remain entitled to PIP, despite having previously moved from DLA to PIP while he was above pensionable age.
48. The use of the word "*met*" in regulation 27A(1)(a) is relevant. It means regulation 27A(1) applies to a person who met regulation 27(2) (or (3)) of the TP Regulations at an earlier point in time. In 2016, HYM met all the requirements of regulation 27(2) of the TP Regulations to be awarded PIP, despite having already reached pensionable age.
49. As HYM met the requirement in regulation 27A(1)(a) of the TP Regulations and was entitled to the PIP daily living component at the time DWP made its supersession decision on 16 June 2022, he also met the requirements of regulation 27A(1)(b).
50. The effect of HYM meeting the requirements of both regulation 27A(1)(a) and (b) was that the restriction in section 83(1) of the 2012 Act did not apply to him. He therefore remained entitled to PIP when his award was superseded in 2022, despite being above pensionable age.

How should regulation 27A of the TP Regulations be interpreted?

51. HYM's appeal involves a transfer claimant, someone who transferred from DLA to PIP after reaching pensionable age. The issue is whether, where that claimant's original award of PIP does not include the mobility component, regulation 27A prevents them becoming entitled to the mobility component when that original award is subsequently revised or superseded.
52. Section 83(1) of the 2012 Act provides that a person is not entitled to either component of PIP for any period after reaching pensionable age. Regulation 27A creates an exception for certain transfer claimants. The question is the extent to which paragraph (2) qualifies that exception.

The parties' positions

53. The SSWP accepts that, read on its own, regulation 27A(1) is capable of disapplying section 83(1) in relation to both components. Mr Howell described this as a literal interpretation of it. Mr Howell submitted that regulation 27A must, however, be read as a whole, and in the light of its purpose. Applying that approach, he said, a claimant who has reached pensionable age cannot establish entitlement to the mobility component for the first time, or recover it after a break exceeding 12 months, subject to the limited exceptions allowed by the legislation.
54. Mr Howell structured his arguments around four matters. First, he argued that regulation 27(3) of the 2013 Regulations makes careful provision restricting a claimant with a mobility component in their PIP award continuing to be entitled to it, or having it increased (if it is standard rate) after pensionable age. Regulation 27(4) of the 2013 Regulations extends the group of claimants affected by regulation 27(3) to include those whose existing PIP award (which Mr Howell submitted is the original award) does not include a mobility component, but had that component in a previous award ending no more than one year before the supersession takes (or would take) effect.
55. Mr Howell argued that if regulation 27A(2) were read as not applying to a claimant without a mobility component in the award being superseded, it would mean a claimant who had never been entitled to the mobility component or had not been entitled to it for a period of some years, could claim it, including arising out of a new medical condition that might simply represent the effects of a person ageing.
56. At the hearing, Mr Howell introduced an additional hypothetical example of a claimant with an existing mobility award who, facing the restrictions imposed by regulation 27(3), could ask to have it superseded to remove that component. That claimant could wait 13 months and then ask to have the mobility component reinstated. In terms of whether that is a realistic possibility, a claimant may ask to have an award superseded but has no control over whether DWP changes the award in the way they have asked. A claimant who argued for this by arguing that their condition had improved might risk also having their entitlement to any daily living component changed. I have considered, however, the hypothetical argument in the terms in which Mr Howell put it.

57. Mr Howell argued that an interpretation allowing these groups of claimants to be entitled to the mobility component after reaching pensionable age would be inconsistent with the express language of the provisions and conflict with the presumption against absurdity. He cited Lord Sales' judgment at paragraph 43 of **R(PACCAR) v Competition Appeal Tribunal** [2023] 1 WLR 2594. Mr Howell argued that Lord Sales confirmed that while statutory construction ordinarily involves using the literal words read in their context as an example of what Parliament intends, where this would produce potentially absurd results, one can depart from that literal construction.
58. Mr Howell argued it is necessary to read regulation 27A(2) consistently with the SSWP's interpretation to protect against the absurd result that someone who had never been entitled to the PIP mobility component or had not been entitled to it for more than 12 months, would be eligible to claim it at any rate and for any medical condition. He argued that regulation 27A(2) of the TP Regulations and regulation 27(2) and (3) of the 2013 Regulations should be interpreted in the same way to prevent the same absurd results arising.
59. When asked about other interpretative approaches, including those mentioned by Lady Rose in **R(PACCAR)**, Mr Howell explained the SSWP also relied on the purposive approach. He argued there are a number of well-established principles of statutory interpretation which can be used as building blocks for interpreting regulation 27A, starting with purpose and context. Mr Howell then referred to relying on the more powerful tool of the presumption against absurdity that does permit a degree of violence to be done to the language of the provisions, but also the tool of necessary implication.
60. The second matter relied on by Mr Howell is that the consultation materials preceding the 2013 Regulations set out a broad policy that strongly supports the SSWP's interpretation. Mr Howell relied specifically on the public consultation by DWP in March 2012 prior to making the PIP Regulations 2013 ("*DLA reform and Personal Independence Payment – completing the detailed design*") and the following statements in paragraphs 4.3 and 4.4:
- "4.3 DLA claimants over the upper age limit cannot establish a new entitlement to either rate of the mobility component or move between rates where they are entitled to one.*
- 4.4 Like DLA, where someone does not have an entitlement to the mobility component of Personal Independence Payment, they will not be able to establish an entitlement once they are past the upper age limit."*
61. Mr Howell pointed out that in its post-consultation response in December 2012 ("*Government's response to the consultation on DLA reform and Personal Independence Payment – completing the detailed design*"), the Government stated it maintained its proposal: "*...that more detailed rules for people over the upper age limit should broadly follow those applying in DLA, that is – no one can establish an entitlement to the mobility component unless previously entitled within the last 12 months*" (paragraph 3.55).

62. Mr Howell argued the SSWP's position was not simply that there would be absurd results by reading regulation 27A(2) literally, but also that the clear policy disclosed by the pre-legislative material produced by DWP was that a new entitlement could not be established unless there had been entitlement within the past 12 months. Mr Howell submitted that he relied both on the presumption against absurdity, and the purposive interpretation, which complemented each other in this matter.
63. The third matter relied on by Mr Howell is that the policy for PIP reflects the earlier DLA scheme (which limited entitlement to the mobility component on reaching 65) and that since at least 1975, the policy has been to focus assistance on working age people with mobility difficulties (see **R(DLA)1/09**).
64. Mr Howell argued this policy is promoted by preventing a claimant above pensionable age becoming entitled to the mobility component of PIP unless they were previously entitled to that component within the past 12 months. Mr Howell's skeleton argument argued that for this purpose, the reason why entitlement to the mobility component may never have arisen, or has been lost, is immaterial. Mr Howell wrote that this extended to situations where the mobility component of DLA was lost for more than 12 months as a result of moving abroad.
65. The fourth matter raised by Mr Howell related to Upper Tribunal case law about the effect of regulation 27(2) to (4) of the 2013 Regulations. He relied on **SC v SSWP (PIP)** [2022] UKUT 97 (AAC) ("**SC**"), **GH v SSWP (PIP)** [2023] UKUT 104 (AAC) ("**GH**"), and **MM v SSWP (PIP)** [2024] UKUT 288 (AAC) ("**MM**"). Mr Howell argued these cases had considered the effect of the substance of regulation 27 and were relevant to how regulation 27A of the TP Regulations should be construed.
66. In his skeleton argument, Mr Howell argued that **SC** had very recently been followed in **MM**, where its reasoning had been called into question. At the hearing, Mr Howell acknowledged that **MM** did not specifically address the reasoning in **SC** and appeared to have reached a similar result by its own reasoning. Mr Howell also indicated the SSWP did not fully endorse the reasoning in paragraph 19 of **MM** to the extent that it might suggest regulation 27(4) provides an exception to the general rule. Mr Howell argued that regulation 27(4) instead operates as a deeming provision, linking an earlier period of entitlement to the PIP mobility component and allowing it to be taken into account.
67. Mr Howell submitted that the outcomes reached in the cases represented a tenable construction given the various tools of statutory interpretation to hand. He argued that applying **Dorset NHS Foundation Trust v MH** [2009] UKUT 4 (AAC), as a single Judge of the Upper Tribunal, I should follow the reasoning in **SC** in the interests of comity and to avoid confusion on questions of legal principle, unless satisfied this would perpetuate error.
68. At the hearing, Mr Howell qualified his written arguments about the policy intention in two respects.

69. He acknowledged that regulation 27A(2) of the TP Regulations refers only to “*supersessions*” and therefore would not be satisfied by an award being revised, using the example of revision for official error under regulation 9 of the UC (D&A) Regulations 2013. Mr Howell acknowledged a revision decision made on the ground of official error might mean a claimant was entitled to the mobility component of PIP for the first time after reaching pensionable age. He confirmed the SSWP accepted a revision decision on those grounds is not covered by the terms of regulation 27A(2). This acknowledgment meant Mr Howell qualified his argument that the policy intention is that no person should be entitled to the mobility component for the first time after reaching pensionable age.
70. Mr Howell also acknowledged that the wording of regulation 27(2) of the 2013 Regulations (which will apply if the conditions in regulation 27A(2) are met) only focuses on specific named supersession grounds. He accepted that, consistently with the decision in ***MH v SSWP (PIP)*** [2020] UKUT 185 (AAC) (“***MH***”), where a decision is superseded on grounds not set out in regulation 27(2) of the 2013 Regulations, regulation 27(3) does not apply to it. Mr Howell therefore qualified his written argument that the reason why entitlement to the mobility component may never have arisen (or has been lost) is immaterial.
71. Before the hearing, I had arranged for the parties to be sent a copy of ***MH*** as well as the Explanatory Memorandum for the Social Security (Personal Independence Payment) (Amendment) Regulations 2020. The 2020 Regulations amended the 2013 Regulations in response to the decision in ***MH***. I asked why the SSWP had amended the 2013 Regulations rather than arguing in ***MH*** that regulation 27(2) should be construed as applying to a wider range of supersession decisions than the one listed in regulation 27(2).
72. Mr Howell explained that regulation 27 of the 2013 Regulations focused on supersession for change of circumstances and the SSWP’s case was that it applied where one was in the world of supersession for change of circumstances, which had been extended in a limited way after ***MH***. He submitted this might answer why the SSWP had thought there was a lacuna identified in ***MH*** and sought to correct it rather than to argue the provision should be interpreted differently to its wording based on the stated policy intention.
73. Mr Howell’s acknowledgment that regulation 27A(2) does not extend to revision decisions, and that regulation 27(2) of the 2013 Regulations intentionally lists specific types of supersession decision (and does not extend to ones not listed), qualified his written argument that the reason why a PIP award is being changed after pensionable age is immaterial.
74. On behalf of HYM, YJO submitted that the Secretary of State’s construction cannot be reconciled with the language used in the regulations. YJO argued the SSWP is asking the Upper Tribunal to supply a prohibition and exceptions which the regulations do not contain. YJO argued that the whole language of the law is based on language and on interpretation of that language. He argued that the SSWP’s position seeks to cherry pick how a point will apply to justify a decision made, without being coherent.

The relevant provisions

75. Regulation 27A provides:

- “(1) Subject to paragraph (2), section 83(1) of the Act (persons of pensionable age) does not apply to a person who:
- (a) met the conditions at paragraph (2) or (3) of regulation 27 [*of the TP Regulations*], and
 - (b) is entitled to an award of personal independence payment (‘the original award’), and that award is revised or superseded within the meaning of section 9 or 10 of the 1998 Act respectively.
- (2) Where the original award includes the mobility component of personal independence payment and is superseded, paragraphs (2) and (3) of regulation 27 of the PIP Regulations apply in relation to the supersession.
- (3) In this regulation, the references to an original award are to be read as including a concessionary payment made in lieu of personal independence payment under arrangements by the Secretary of State with the consent of the Treasury.”

76. Regulation 27(1) of the 2013 Regulations disapplies section 83(1) where a person has reached the relevant age, has an original award of either or both components under regulation 25 or 26 of the 2013 Regulations, and that award falls to be revised or superseded. Regulation 27(2) applies the restrictions in paragraph (3) where the original award includes the mobility component and is superseded on one of the specified grounds. Regulation 27(3) limits the rate that may be awarded and requires entitlement to arise from substantially the same condition or conditions. Regulation 27(4) provides that, for the purpose of regulation 27, a qualifying previous mobility award which ended no more than one year before the supersession is to be treated as if it were included in the original award. See the text of regulation 27, set out at paragraph 32 above.

Principles of interpretation

77. The modern approach towards interpretation requires the Tribunal to ascertain the meaning of the words used in the light of their context and purpose: ***News Corp UK & Ireland Ltd v Revenue and Customs Commissioners*** [2023] UKSC 7 at paragraph 27; ***R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department*** [2022] UKSC 3, [2023] AC 255 at paragraphs 29 and 31. The statutory words remain the primary source of meaning.
78. A court may depart from the ordinary meaning where that is necessary to avoid an absurd result or to correct an obvious drafting error. That power is exceptional. In ***Inco Europe Ltd v First Choice Distribution*** [2000] 1 WLR 586 at 592 to 593, Lord Nicholls stated:

*"I freely acknowledge that this interpretation of section 18(l)(g) involves reading words into the paragraph. It has long been established that the role of the courts in construing legislation is not confined to resolving ambiguities in statutory language. The court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative function the court will add words, or omit words or substitute words. Some notable instances are given in Professor Sir Rupert Cross's admirable opusculum, *Statutory Interpretation*, 3rd ed. (1995), pp. 93-105. He comments, at p. 103:*

"In omitting or inserting words the judge is not really engaged in a hypothetical reconstruction of the intentions of the drafter or the legislature, but is simply making as much sense as he can of the text of the statutory provision read in its appropriate context and within the limits of the judicial role."

This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So the courts exercise considerable caution before adding or omitting or substituting words.

*Before interpreting a statute in this way the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance. Otherwise any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation: see per Lord Diplock in *Jones v. Wrotham Park Settled Estates* [1980] A.C. 74, 105-106. In the present case these three conditions are fulfilled.*

*Sometimes, even when these conditions are met, the court may find itself inhibited from interpreting the statutory provision in accordance with what it is satisfied was the underlying intention of Parliament. The alteration in language may be too far-reaching. In *Western Bank Ltd. v. Schindler* [1977] Ch. 1, 18, Scarman L.J. observed that the insertion must not be too big, or too much at variance with the language used by the legislature. Or the subject matter may call for a strict interpretation of the statutory language, as in penal legislation. None of these considerations apply in the present case. Here, the court is able to give effect to a construction of the statute which accords with the intention of the legislature."*

79. Lord Sales gave the same constitutional warning in ***R (PACCAR Inc) v Competition Appeal Tribunal*** [2023] UKSC 28, [2023] 1 WLR 2594 at paragraph 43. He emphasised that the courts give a wide meaning to absurdity in this context: "...using it to include virtually any result which is impossible, unworkable or impracticable, inconvenient, anomalous or illogical, futile or

pointless, artificial, or productive of a disproportionate counter-mischief". Lord Sales stated:

"I would add that the courts have to be careful that they do not rely on the presumption against absurdity in order to substitute their view of what is reasonable for the policy chosen by the legislature, which may be reasonable in its own estimation. The constitutional position that legislative choice is for Parliament cannot be undermined under the guise of the presumption against absurdity."

80. The case law makes clear that applying the presumption against absurdity is not a licence to substitute a judicial view of what would be reasonable policy in place of the legislative choice(s) used in the words enacted.

The ordinary meaning and structure of regulation 27A of the TP Regulations

81. Apart from the references to "*the Act*" or "*the 1998 Act*", none of the terms in regulation 27A are defined in the TP Regulations. They are therefore to be given their ordinary meaning rather than a specific defined meaning.
82. The term "*original award*" is not defined in the TP Regulations or in the 2013 Regulations. It is used in regulation 27A(1) and in regulation 27A(2). Both times, it is used in the present tense. Both times, regulation 27A is describing an award in the present tense being changed in some way. Standing back and considering what regulation 27A is doing, the phrase "original award" will only make sense if it means the PIP award that is being changed through supersession.
83. Mr Howell supported applying this interpretation. It is also consistent with part of the reasoning applied by Upper Tribunal Judge Wikeley in **SC**. I say "part of the reasoning" because Judge Wikeley was considering the meaning of "original award" in regulation 27 of the 2013 Regulations and his reasoning also relied on the wording in regulation 27(4), which is not replicated in regulation 27A.
84. Regulation 27A(1)(b) refers to entitlement to an award of personal independence payment (the original award). In terms of the structure of the benefit, under section 77(2) of the 2012 Act, an award of PIP may consist of one or both components (the daily living component and the mobility component). The natural meaning of regulation 27A(1) therefore extends to a qualifying original award that contains either or both components.
85. The equivalent wording used in regulation 27(1) of the 2013 Regulations is more specific, by referring to "*an award ("the original award") of either or both components*". This explicitly recognises that the benefit structure allows for the award to consist of one or both components. Although regulation 27A(1) refers to "*an award*" without the textual detail in regulation 27(1), this does not change the natural meaning of that phrase. A PIP award can consist of one or both components, and therefore the reference to it in regulation 27A(1) captures those possibilities. The wording used in regulation 27(1) of the 2013 Regulations emphasises this, rather than changing the meaning.

86. Regulation 27A(1) identifies a class of transfer claimants to which section 83(1) does not apply when their original award is revised or superseded. It refers to an “award” of PIP without limiting that expression to a particular component. The words “*subject to paragraph (2)*” in regulation 27A(1) mean that paragraph (2) qualifies the exception created by paragraph (1).
87. Regulation 27A(2) sets out two conditions which, if met, mean paragraphs (2) and (3) of regulation 27 of the PIP Regulations 2013 apply to the supersession decision being made. These conditions are that:
- (a) the original award includes the mobility component of PIP; and
 - (b) that award is superseded.
88. The natural meaning of the wording in regulation 27A(2) is that it is confined to an original award which includes the mobility component and is superseded. I have considered whether regulation 27A(2) imposes a universal condition that must be met by all claimants after reaching pensionable age to remain entitled to any award of PIP. I do not consider it does. If regulation 27A(2) imposed a universal condition of that type, the reference to revision in paragraph (1) would have no effective operation, since a claimant whose award is revised will never meet the condition in regulation 27A(2) of having it superseded. In addition, a claimant whose original award consists only of the daily living component would not be able to satisfy the condition of having the mobility component in their original award and therefore could not remain entitled to an award of PIP where the proposed decision is for them to remain entitled to that single component. The SSWP has not suggested that regulation 27A should be read in this way.
89. I have also considered whether the wording in regulation 27A(1) is designed to create an exception to section 83(1) in the 2012 Act for awards of the daily living component, and regulation 27A(2) is intended to do the same for mobility components. Once again, the wording does not support this construction. The only provision in regulation 27A that disapplies section 83(1) is the opening wording of regulation 27A(1). Regulation 27A(2) does not state it disapplies section 83(1) and cannot operate as a freestanding exception to it.
90. All transfer claimants must therefore go through, and satisfy, the gateway in regulation 27A(1) before section 83(1) is disapplied allowing them to remain entitled to PIP where their award is being revised or superseded. Where a transfer claimant satisfies the conditions in regulation 27A(2), they will have regulation 27(2) and (3) of the 2013 Regulations applied to the supersession decision. However, regulation 27A does not make paragraph (2) a condition which every claimant must satisfy before paragraph (1) can operate.
91. Each part of regulation 27A(2) has a distinct function. The phrase “*the original award*” identifies the award being changed. The wording “*includes the mobility component*” identifies the class of awards to which paragraph (2) applies. The words “*is superseded*” identify the form of decision which engages the paragraph. The concluding words “*apply in relation to the supersession*” identify the decision to which paragraphs (2) and (3) of regulation 27 of the 2013 Regulations are applied.

92. The two expressed conditions in regulation 27A(2) are therefore cumulative requirements to meet before it applies. Given its natural meaning, the wording in regulation 27A(2) indicates it only applies where the original award includes the mobility component and that award is superseded. It does not apply where the original award only includes the daily living component, even if the proposed supersession decision would add the mobility component. Nor does it apply where the original award is being revised.
93. This reading gives effect to the distinction between the person-focused gateway in regulation 27A(1) and the award-specific qualification in regulation 27A(2). Paragraph (1) disapplies section 83(1) for the qualifying person. The words “*subject to paragraph (2)*” cannot enlarge the factual scope of paragraph (2). They establish the priority of paragraph (2) where it applies, but do not identify additional cases in which it applies. Paragraph (2) then imports particular restrictions for the narrower class of supersessions which it identifies, namely those where the original award includes the mobility component. Nothing in paragraph (2) states that it is an exhaustive condition that all claimants must meet to be able to be entitled to the mobility component after pensionable age.
94. Regulation 27A(3) provides that references to “an original award” are to be read as including a concessionary payment made in lieu of PIP. It therefore extends the references to an original award in regulation 27A(1) and (2) to something which would not otherwise constitute an award of PIP. In that respect, regulation 27A(3) is an express deeming provision directed to the meaning of “original award” within regulation 27A.
95. Mr Howell acknowledged that regulation 27A(2) does not expressly apply regulation 27(4) of the 2013 Regulations. He submitted that express incorporation is unnecessary because paragraph (4) applies “*for the purpose of this regulation*”, meaning regulation 27 of the 2013 Regulations. On that basis, he said, where paragraphs (2) and (3) of regulation 27 are applied through regulation 27A(2), they must be applied subject to the deeming provision in paragraph (4).
96. HYM’s mobility component ended on 14 October 2020. The SSWP does not argue that he had a previous award of the mobility component which ended less than one year before the relevant supersession decision in June 2022. In this appeal, it is unnecessary to decide whether regulation 27(4) affects the operation of regulation 27(2) and (3) *after* regulation 27A(2) has otherwise been engaged.
97. The relevant question I have to address is whether regulation 27(4) of the 2013 Regulations enlarges the class of cases in which regulation 27A(2) is engaged beyond those where the original award includes a mobility component. In my judgment, it does not.
98. Regulation 27A(2) contains two antecedent conditions (meaning ones that must be satisfied before other conditions can apply). These are that the original award includes the mobility component and the proposed change is through supersession. It is only where these conditions are satisfied that regulation 27A(2) imports paragraphs (2) and (3) of regulation 27 of the 2013 Regulations.

99. The phrase “*the original award*” in regulation 27A(2) refers back to the award identified and defined in regulation 27A(1)(b). As explained above, in regulation 27A(1)(b), this must mean the existing PIP award which is being revised or superseded. As explained above, the wording in regulation 27A(1) and (2) describes the original award as one that “includes”, using the present tense. The wording used neither states, nor indicates, that a previous award would count as an original award.
100. Like regulation 27A(3), regulation 27(4) is a deeming provision. It operates to extend the meaning of original award in regulation 27 of the 2013 Regulations to include certain previous mobility awards that would not otherwise fall within the meaning of that phrase. The TP Regulations do not provide an equivalent deeming provision to regulation 27(4) when defining the cases in which regulation 27A(2) is engaged.
101. Regulation 27A therefore contains an express deeming provision governing the meaning of “original award” for the purposes of that regulation. That provision extends the phrase to cover concessionary payments. However, regulation 27A contains no provision treating a previous mobility award as included in the original award. This does not, by itself, determine the effect of regulation 27(4) when paragraphs (2) and (3) of regulation 27 are applied to a claimant who meets the antecedent conditions in regulation 27A(2). It is nevertheless consistent with the conclusion that the condition in regulation 27A(2) concerning what is included in the original award is determined by reference to the existing PIP award, subject only to the extension made expressly by regulation 27A(3).
102. To make a material difference to which claimants are caught by regulation 27A, Mr Howell’s construction would require regulation 27(4) of the 2013 Regulations to apply at an earlier stage within the regulation 27A(2) process. It would have to alter the meaning given to the original award in regulation 27A(2) *before* paragraphs (2) and (3) of regulation 27 are applied to it. There is nothing in regulation 27A or in the TP Regulations more generally to indicate this. Regulation 27(4) refers to operating “*for the purpose of this regulation*”. This confirms its deeming effect is confined to the meaning of original award in regulation 27 of the 2013 Regulations. That wording cannot be stretched to mean that regulation 27(4) applies to a different set of regulations when determining whether conditions in them are separately met.
103. The Explanatory Memorandum accompanying the 2019 Amendment Regulations states that regulation 27A was intended to provide transfer claimants with the same entitlement rights following revision or supersession as those available under regulation 27 of the 2013 Regulations. This general statement supports the Secretary of State’s account of the broad objective. The Memorandum’s more specific explanation of the mobility restriction, however, refers to a transfer claimant who “*is in receipt of the mobility component*” (see paragraph 119 below and the wording quoted in bold). The use of the present tense corresponds to the condition actually enacted in regulation 27A(2), namely that the original (i.e. existing) award includes the mobility component.
104. The Explanatory Memorandum therefore identifies an intention to achieve broad equivalence between transfer claimants and claimants falling within regulation 27

of the 2013 Regulations. It does not follow, however, that the two provisions must produce identical outcomes in every factual situation irrespective of the language used to define their respective scope. The specific explanation of the mobility restriction in the Explanatory Memorandum refers to a transfer claimant who is already in receipt of the mobility component. This is consistent with the wording used in the opening part of regulation 27A(2). The explanation does not address whether regulation 27(4) was intended to enlarge that condition by treating a previous mobility award as included in the original award before regulation 27A(2) is engaged. The general statement about equivalent entitlement rights cannot determine that specific question. Nor can it displace the distinction, created by the wording used, between the conditions that engage regulation 27A(2) and the provisions of regulation 27, which are only applied after those conditions are satisfied.

105. The outcome is that when determining whether the antecedent conditions in regulation 27A(2) are met, the phrase “original award” in that paragraph means the existing PIP award and is not enlarged to include the class of awards identified in regulation 27(4) of the 2013 Regulations.

The operation of regulation 27(2) and (3) of the 2013 Regulations

106. Once the two antecedent conditions in regulation 27A(2) of the TP Regulations are satisfied, regulation 27(2) and (3) of the 2013 Regulations are applied. The current version of regulation 27(2) identifies at (a) and (b) the supersession grounds which trigger the restrictions in regulation 27(3). In **MH** (see paragraph 70 above), the Upper Tribunal held that the supersession ground of “*relevant change of circumstances*” set out in (the then version of) regulation 27(2) did not extend to a supersession decision based on receipt of new medical evidence (regulation 26(1)(a) of the UC (D&A) Regulations 2013).
107. The Government subsequently amended regulation 27(2) to list specific grounds in the UC (D&A) Regulations 2013, namely the grounds in regulation 23 (change of circumstances) and regulation 26(1)(a) (receipt of medical evidence). As discussed with Mr Howell at the hearing, while regulation 27(2) of the 2013 Regulations now lists two supersession grounds, it does not list the other supersession grounds in the UC (D&A) Regulations 2013, or any revision ground listed in those regulations. Following on from the reasoning in **MH**, with which I agree, the effect of regulation 27(2) expressing an exhaustive list of supersession grounds is that it does not apply to ones not listed. This means changing an award using a supersession ground not listed in regulation 27(2) would not trigger the application of regulation 27(3).
108. I note that when the Upper Tribunal decided **MH**, the SSWP did not argue that principles of statutory interpretation, in particular the presumption against absurdity, meant regulation 27(2) should be read as applying to a wider range of decisions changing an original award. Where the perceived gap was identified and confirmed, it was corrected by Parliament amending the regulation in question, to give effect to the stated policy intention.
109. Regulation 27(2) explains that where its conditions are met (meaning those set out in regulation 27(2)(a) or (b)), “*the restrictions in paragraph (3) apply in relation*”

to the supersession". In my assessment, the word "restriction" accurately reflects what regulation 27(3) does. It places limits on whether the change to the original award can lead to the inclusion of the mobility component at all, and the rate at which it could be awarded. The restrictions in regulation 27(3) operate by comparing the proposed award that would be made under the supersession decision with: (i) the rate of the mobility component included in the original award (or eligible previous award) and (ii) the basis on which it was made.

110. Regulation 27(3) means that if the original award of the mobility component (including an eligible previous award of it) was at the standard rate, it cannot be increased and entitlement must arise from substantially the same condition or conditions (regulation 27(3)(a)(i) and (ii)). If that award was at the enhanced rate, continuing entitlement must likewise arise from substantially the same condition or conditions (regulation 27(3)(b)). Paragraph (3) does not state what will happen if a claimant's original award does not include the mobility component (including an eligible previous award of it). This is consistent with the wording of regulation 27(2), which also does not state what happens in that situation.

Purpose and legislative history

111. The published 2012 consultation materials demonstrate a broad policy that mobility entitlement should not ordinarily be established for the first time after a person reaches pensionable age and that the PIP rules should broadly follow those for DLA.
112. The relevant DLA provisions are in Schedule 1 to the Social Security (Disability Living Allowance) Regulations 1991 ("the DLA Regulations"). Paragraphs 3, 5, 6 and 7 of Schedule 1 deal with decisions that would give entitlement to DLA after the age of 65. Paragraph 3 deals with entitlement to the care component where a claimant has an existing award of that component or is making a renewal claim to it within 12 months of a previous award ending. It applies to both revision and supersession decisions, as well as to certain types of renewal claim.
113. Paragraph 5 of Schedule 1 provides for entitlement to the mobility component where a claimant has an existing award of the higher rate mobility component and has reached 65. Paragraph 6 provides for entitlement to the mobility component where the existing award is the lower rate component. Both paragraphs deal with the award being revised or superseded. Paragraph 5 requires a renewal claim to be made within 12 months of a previous award ending but paragraph 6 (lower rate mobility) allows for renewal claims without including that time-based requirement.
114. Paragraph 7 of Schedule 1 provides for entitlement to the care component where a person is entitled to the mobility component and has reached 65. It confirms that the person can become entitled to the care component at that time.
115. The DLA regulations therefore make separate provision for each component of DLA. Each of the provisions draws a relatively narrow group of claimants at the outset (in sub-paragraph (1)). It is narrow because the paragraph specifies that the claimant is already entitled to a particular component. Paragraph (2) then

disapplies the section of the Social Security Contributions and Benefits Act 1992 that prevents entitlement to the component after reaching the age of 65.

116. Comparing the relevant provisions in the DLA regulations with the equivalent ones for PIP, the PIP provisions draw a relatively wide group of claimants at the point where they disapply section 83(1). The PIP group is relatively wide because it includes a claimant entitled to *any* component of PIP whose award is revised or superseded. The DLA provisions take the opposite approach and use dedicated paragraphs to deal with each component and specify (existing) entitlement to that component at the start.
117. Having considered what the DLA provisions achieve, they show the regulations favoured the continuation or renewal of an existing mobility award. They made no reciprocal provision for a person with only a care award to acquire the mobility component after age 65. That material is relevant context.
118. It does not, however, establish the precise rule for which the Secretary of State contends. The DLA provisions do not distinguish between the different kinds of revision and supersession grounds, even though these exist under the Social Security and Child Support (Decisions and Appeals) Regulations 1999, which apply to DLA. The PIP provisions distinguish between revision and supersession and, within supersession, between specified grounds and unspecified grounds. The SSWP accepts that those distinctions may permit mobility entitlement to arise after pensionable age in some circumstances. The broad policy implemented for DLA therefore cannot itself determine the extent of the policy intended for PIP.
119. Mr Howell focused on the explanatory material for the 2013 Regulations in the form of the 2012 consultation documents. There is, however, more specific explanatory material concerning regulation 27A of the TP Regulations, provided by the SSWP. Regulation 27A was inserted by the Personal Independence Payment (Transitional Provisions) Amendment Regulations 2019 (“the 2019 Amendment Regulations”) to address the gap identified in the context of the appeal in **RJ**. The Explanatory Memorandum provided the following wording at paragraphs 6.5 and 6.6 (my emphasis added in bold):

“6.5...Therefore, on a strict reading of the legislation, claimants who have transferred to PIP from DLA aged 65 or over, and who have an award which is subject to revision or supersession, cannot benefit from the provisions in the PIP Regulations that would otherwise apply to those of the relevant age and accordingly, due to the lack of an exemption to s.83(1), would no longer be entitled to receive PIP. That situation is not in accordance with the pre-existing policy position and, if applied, would disadvantage claimants aged 65 or over, who had previously been in receipt of DLA, whereas others of a similar age, who had claimed PIP prior to age 65, would not be similarly disadvantaged.

6.6 This instrument therefore closes the gap by adding in a new provision, Regulation 27A, to the Transitional Regulations. The new provision will provide the same entitlement rights following revision or supersession, as provided for claimants who fall under Regulation 27 of the PIP Regulations for supersessions and revisions, of the awards of claimants who transferred

*from DLA to PIP aged 65 or over (“a transfer claimant”). **Regulation 27A also applies the same limitations to the mobility component as regulation 27 of the PIP Regulations. The effect of this is that where a transfer claimant is in receipt of the mobility component then that award of the mobility component cannot be increased to a higher rate of award than that originally awarded at the date of transfer. Furthermore, that rate of the mobility component can only continue to be awarded where entitlement results from substantially the same condition or conditions for which it was originally made. This is in accordance with pre-existing policy and mirrors the position provided for claimants who fall under regulation 27 of the PIP Regulations.***

120. The Explanatory Memorandum for the 2019 Amendment Regulations was produced to provide a clear explanation of the regulations, including to help Parliament in scrutinising and understanding what it was being asked to make into legislation. The wording I have highlighted in bold provides a description that corresponds to the meaning of regulation 27A I have set out above: that it imposes an antecedent condition of having an existing award of the mobility component, to which the same limitations (then) apply as in regulation 27 of the 2013 Regulations. It does not describe creating a general prohibition for a claimant whose original award contains no mobility component at all.
121. I therefore accept there is a broad policy against a person establishing new entitlement to the mobility component after reaching pensionable age. I do not, however, accept that the policy justifies disregarding the specific antecedent conditions expressed clearly in regulation 27A(2). The Upper Tribunal’s task is to interpret the chosen language by making as much sense as it can of the text of the statutory provision read in its appropriate context and maintaining the limits of its judicial role. The Upper Tribunal’s role is not to reconstruct a more comprehensive version of the policy intentions, or to substitute its own view of what would be a reasonable policy to apply.

The earlier Upper Tribunal decisions

122. **SC**, **GH** and **MM** (see paragraph 65 above) dealt with regulation 27 of the 2013 Regulations. The opening words of regulation 27(2) are materially the same as those in regulation 27A(2). Regulation 27(2) applies: “[w]here the original award includes an award of the mobility component and is superseded”, while regulation 27A(2) applies: “[w]here the original award includes the mobility component of personal independence payment and is superseded”.
123. The relevant questions for me are how those decisions treated the failure to satisfy the opening condition in regulation 27(2), whether they regarded regulations 27(2) to (4) as exhaustively identifying the circumstances in which mobility entitlement could arise after pensionable age, and whether that construction should be applied to regulation 27A.
124. In **GH**, the original award already included the standard rate of the mobility component. The condition in regulation 27(2) that the original award includes the mobility component was therefore satisfied. It was unnecessary for the Upper Tribunal to decide whether that condition could be met where the existing award

contained only the daily living component. Given the factual differences, **GH** does not deal with the relevant issue in HYM's appeal.

125. In **SC** and **MM**, the Tribunal treated regulation 27 of the 2013 Regulations as preventing a claimant becoming entitled to the mobility component after reaching pensionable age in circumstances where their existing PIP award (or a relevant previous award) did not include that component.
126. In **SC**, the claimant had been entitled to the higher rate of the DLA mobility component and transferred to PIP before reaching pensionable age. She was awarded the PIP daily living and mobility components at the standard rate from 2015 to 2017. A supersession decision made in October 2016 maintained the standard rate daily living component award but did not award SC the mobility component. SC appealed a later decision by DWP in October 2018 that indicated she was not entitled to the mobility component but would have been entitled to it had she been below pensionable age.
127. A First-tier Tribunal heard and dismissed SC's appeal against the DWP's 2018 supersession decision. The Upper Tribunal decided the restrictions on entitlement set out in regulation 27(2) and (3) of the 2013 Regulations take effect where an original award does not include the mobility component. The Upper Tribunal accepted the SSWP's argument that regulation 27(4) is designed as a linking rule for cases where the original award does not include an award of the mobility component but an eligible previous award did. The Upper Tribunal decided this provided assistance, at least on a very limited basis, for claimants who have a short-term improvement in their mobility followed by a deterioration.
128. The Upper Tribunal decided that read as a whole, the effect of regulation 27 was that where the original award does not include entitlement to the mobility component and the regulation 27(4) linking rule is not met, there is no entitlement to the mobility component on any supersession and section 83 of the 2012 Act applies. The Upper Tribunal stated this reading was consistent with the parallel 12-month linking rule in regulation 26 and the overall policy intention.
129. In **MM**, the claimant was awarded the daily living component at the standard rate from July 2015. She reached pensionable age in September 2015. In 2019, DWP superseded her award, extending the daily living component award and awarding her the mobility component at the standard rate. DWP later revised its supersession decision for official error.
130. The Upper Tribunal decided that regulation 27 and its restrictions applied to MM. It stated regulation 27 envisaged two possibilities, one in regulation 27(2)-(3) if the original award includes an award of the mobility component. The Upper Tribunal decided the original award was the one made on the July 2015 claim and did not include the mobility component, so this possibility did not apply. The Upper Tribunal decided the other possibility was in regulation 27(4) but that as the original award was the July 2015 one and there was no previous award of PIP, this possibility did not apply either. It reasoned that regulation 27 provides for exceptions when an award is revised or superseded, containing two provisions permitting an award of the mobility component. The Upper Tribunal decided

neither applied to the claimant and section 83 of the 2012 Act applied to her so she could not be entitled to an award including the mobility component.

131. Neither decision specifically analysed the opening condition in regulation 27(2). Both decisions nevertheless proceeded on the basis that regulations 27(1) to (4), read together, exhaustively identify the circumstances in which an award of the mobility component may be made after the claimant has reached pensionable age. On that construction, where the original award does not include the mobility component and no qualifying previous award is treated under regulation 27(4) as included in it, section 83(1) of the 2012 Act prevented a superseding decision from awarding the mobility component.
132. A judge of the Upper Tribunal should ordinarily follow the decision of another judge of the Upper Tribunal on a question of legal principle unless satisfied that doing so would perpetuate error: **Dorset Healthcare NHS Foundation Trust v MH** [2009] UKUT 4 (AAC), [2009] PTSR 1122 ("**Dorset**") at paragraph 38. The materially similar opening words of regulations 27(2) and 27A(2), and the reliance placed in **SC** and **MM** on the structure and policy of regulation 27, mean I must consider whether the approach adopted in those decisions extends to the particular structure and wording of regulation 27A.
133. The conclusions reached in **SC** and **MM** concern the operation of regulation 27 of the 2013 Regulations. The question in this appeal is about the circumstances in which regulation 27(2) and (3) of the 2013 Regulations are applied to a transfer claimant through the separate gateway enacted in regulation 27A(2) of the TP Regulations.
134. This distinction is important. Regulation 27A(1) disapplies section 83(1) where its conditions are satisfied. Regulation 27A(2) then provides that paragraphs (2) and (3) of regulation 27 apply where the original award includes the mobility component and is superseded. Regulation 27A does not incorporate regulation 27 generally, nor does it provide for the effect of regulation 27(4) when considering what original award means. It applies regulation 27(2) and (3) where a person meets the conditions expressed in regulation 27A(2).
135. I recognise that regulation 27(1) of the 2013 Regulations, like regulation 27A(1), disapplies section 83(1) subject to paragraph (2), and that the opening words of regulation 27(2) and regulation 27A(2) are materially the same. That similarity is an important part of the statutory context. It does not, however, answer the anterior question arising under regulation 27A(2), which is whether the conditions stated in that paragraph have been satisfied so as to incorporate regulation 27(2) and (3) at all. The words "*subject to paragraph (2)*" in regulation 27A(1) give priority to paragraph (2) when it applies; they do not enlarge the cases in which its expressed conditions are met.
136. Neither **SC** nor **MM** involved a claimant whose entitlement depended on regulation 27A of the TP Regulations. It was therefore unnecessary in either case to determine the relationship between regulation 27A(1) and (2), or whether regulation 27(4) could enlarge the meaning of "*original award*" when deciding whether the antecedent conditions in regulation 27A(2) were met. These

questions arise because of the particular means by which regulation 27A incorporates specified parts of regulation 27.

137. Addressing the relevant issue about regulation 27A in this appeal does not require me to address the construction of regulation 27 adopted in **SC** or **MM**. It proceeds on the basis that, in the case of a transfer claimant, regulation 27(2) and (3) only become applicable to a supersession to the extent provided for by regulation 27A. Where the antecedent conditions in regulation 27A(2) are met, regulation 27(2) and (3) apply in accordance with their terms. Where those antecedent conditions are not met, regulation 27A contains no wording that nevertheless applies the restrictions in regulation 27(2) and (3), or restores the effect of section 83(1) in relation to entitlement to the mobility component.
138. Accordingly, giving full weight to the principle of comity explained in **Dorset**, I do not regard **SC** or **MM** as determining the distinct statutory question before me. The present decision concerns the logically prior question of whether the antecedent conditions in regulation 27A(2) are met so as to apply the restrictions in regulation 27(2) and (3) of the 2013 Regulations.

Purposive construction and the presumption against absurdity

139. The Secretary of State's proposed construction is, in substance, that regulation 27A(2) should apply where a decision would mean a claimant who has reached pensionable age is entitled to the mobility component for the first time (or entitled to it after a gap of more than a year), subject to exceptions for at least some types of revision and certain grounds for supersession. That is not an interpretation which can be expressed by giving an existing word or words a wider or narrower meaning, or even by adding wording to, or removing it from, the existing provisions. It requires the creation of a prohibition and the selection of its exceptions. As Lord Reed observed in **Shahid v Scottish Ministers** [2016] AC 429, at paragraph 20: "*No amount of purposive interpretation can however entitle the court to disregard the plain and unambiguous terms of the legislation*". As Lady Simler categorised this in paragraph 189 in **R(PACCAR)**, "*purposive construction can only go so far*". I do not consider it goes as far as the SSWP contends.
140. Turning to the presumption against absurdity, giving regulation 27A(2) its natural meaning (that it does not apply to transfer claimants whose original award includes only the daily living component) is not absurd in the relevant sense. Having considered the examples put forward by Mr Howell, the natural reading of regulation 27A may produce differential treatment that appears anomalous when compared with the broad policy he described. I recognise that this construction may permit a transfer claimant whose current award contains no mobility component to obtain a more favourable outcome than a claimant whose current award contains the mobility component at the standard rate. That consequence is counterintuitive. It nevertheless follows from the different conditions expressed in regulation 27A(2).
141. Furthermore, the wording of regulation 27A(2) excludes revision decisions. Regulation 27(2) of the 2013 Regulations, which applies where the conditions in regulation 27A(2) are met, only applies to specified grounds of supersession. The

SSWP accepts that those distinctions may permit mobility entitlement to arise after pensionable age in some circumstances. The legislation therefore does not implement the broad policy as an unqualified rule and already produces different outcomes according to the legal mechanism by which an award is changed.

142. In my assessment, this further weakens the SSWP's argument that applying the ordinary meaning of regulation 27A produces an absurd result. The natural reading of regulation 27A does not make the scheme impossible, unworkable, unintelligible or internally incoherent. The legislation can operate according to its terms.
143. The history of the amendment made to regulation 27(2) of the 2013 Regulations following the Upper Tribunal's decision in **MH** also demonstrates that where the Upper Tribunal has identified that regulation 27 does not operate in the way the SSWP expected based on his or her policy intention, the SSWP's response was to amend that provision to make clear what the intended policy would be, rather than to argue for a meaning not supported by the regulation's wording.
144. Applying the principles set out by Lord Nicholls in **Inco**, I am not abundantly sure that the three factual matters it identified are satisfied in this case. Although the broad intended purpose is discernible, this is in general, rather than specific, terms. I cannot be satisfied that the wording of regulation 27A(2) resulted from an inadvertent failure to give effect to that purpose in the legislation. The 2019 Explanatory Memorandum, which specifically describes the provision as applying to a transfer claimant already receiving the mobility component, makes it particularly difficult to treat the enacted threshold as an obvious mistake.
145. Nor can I identify the substance of the provision which would have been enacted had the supposed error been noticed. The SSWP's construction proposes a broad rule to be read into regulation 27A, based on the legislation and policy materials. These do not identify the content of that implied rule with the certainty required by **Inco**. They do not establish which revisions should be excepted, which grounds of supersession should be included, how a previous mobility award should be treated outside regulation 27(4) of the 2013 Regulations, or whether other qualifications should apply. Given this, I cannot be satisfied what the substance of the provision would be. The Upper Tribunal could only answer these questions by choosing what it regarded as sensible or reasonable policy. To do so would cross the boundary between interpretation and legislation identified in **Inco** and would breach the warning given in **R(PACCAR)** against using interpretative presumptions to replace legislative policy with a judicial formulation.
146. Taking all these matters into account, the presumption against absurdity and the purposive approach do not permit the Upper Tribunal to supply the provisions for which the SSWP contends, but which are missing from the wording, and the natural meaning, of regulation 27A of the TP Regulations.

Conclusion on the construction of regulation 27A of the TP Regulations

147. I do not accept the Secretary of State's construction. It cannot be reached without departing materially from the language of regulation 27A and the Upper Tribunal

supplying restrictions whose intended scope cannot be identified with the necessary certainty.

148. Regulation 27A(1) of the TP Regulations disapplies section 83(1) of the 2012 Act where its specified conditions are met and the original award is being revised or superseded. Regulation 27A(2) qualifies that exception only where antecedent conditions are met. These are that the original award includes the mobility component and that award is being superseded. It does not apply where a proposed supersession decision would add the mobility component to an award that does not presently include it. Nor does it apply to a revision decision.
149. In deciding whether the antecedent conditions in regulation 27A(2) are met, regulation 27(4) does not extend the original award to include previous awards that included the mobility component. In this appeal, it has not been necessary to decide whether regulation 27(4) applies after those antecedent conditions are met and paragraphs (2) and (3) of regulation 27 of the 2013 Regulations are applied.
150. It follows that where a transfer claimant's original award of PIP only contains the daily living component, regulation 27A(2) does not prevent that award being revised or superseded to include the mobility component. Nor does such a restriction apply under regulation 27A(1). The rate of any mobility component awarded will remain dependent on the claimant satisfying the applicable substantive conditions.
151. Applying regulation 27A(1) of the TP Regulations to HYM, when DWP made its supersession decision on 16 June 2022, the age-related restriction in section 83(1) of the 2012 Act was disapplied to him, and he was eligible to have his PIP award superseded or revised to continue being entitled to that benefit. When DWP superseded his PIP award, there was nothing in the wording of regulation 27A that prevented HYM being eligible for an award of the mobility component by reason of having reached pensionable age.

What was the effect of DWP assuring HYM that he remained entitled to the PIP mobility component and payment of it was being suspended?

152. This issue concerns the assurances DWP gave HYM. YJO's written representations emphasised what DWP staff had told HYM about the position with the mobility component and that he would automatically regain entitlement to it if he returned to the UK.
153. YJO argued that he and HYM relied on these assurances and had they not been made, they would never have moved to Spain. He argued DWP should be bound by the assurances it had made, because HYM and YJO had relied on them when making the decision to move to Spain and had been affected by the consequences that no one warned them against.
154. In some respects, this issue falls away because I have decided that when HYM returned to the UK, he was not prevented from being entitled to the PIP mobility component solely because of his age. I have decided to address it, however, because I do not consider that HYM could automatically become re-entitled to

PIP when he returned. It would require DWP to decide whether, at that time, HYM met the conditions of entitlement. I also address it for the benefit of YJO and HYM, so they can understand the legal position about whether DWP is bound by promises it has made or assurances it has given.

155. I agree with Mr Howell that the argument YJO raised is dealt with in the Upper Tribunal's recent decision in **(1) SSWP v SC and (2) MJ v London Borough of Bromley** [2025] UKUT 299. As I decided at paragraph 248 of that decision:

"The starting point is that a person cannot create an entitlement to benefit they do not have through being given incorrect advice. Instead, where DWP gives incorrect advice, which a claimant relies on to their disadvantage, the claimant can make a complaint, which should be investigated and may result in a compensatory payment being made. If a claimant remains unhappy with the outcome of their complaint, they can complain to the Independent Case Examiner, who will look again at their complaint."

156. I am satisfied the same analysis applies here. DWP staff should not have assured HYM repeatedly that he would remain entitled to the PIP mobility component once he moved to Spain. However, those assurances could not create an entitlement to PIP that the legislation did not provide. As explained at paragraphs 33 to 42 above, HYM's entitlement to the PIP mobility component ended when he moved to Spain and ceased to satisfy regulation 16 of the 2013 Regulations. The position set out in clear terms in the 2013 Regulations could not be displaced by any representation DWP made to the contrary.
157. When HYM returned to the UK, DWP needed to decide whether his PIP award could be changed through revision or supersession to give him entitlement to the mobility component. In this case, I have decided that HYM's age did not prevent DWP awarding him the mobility component after he returned to the UK. But I have not made that decision on the basis that DWP made an assurance to that effect, or that its promises are binding. They cannot be, where they are not matched by the effect of the relevant legislation about that benefit.
158. This is also a convenient place to record that DWP staff made a number of other incorrect statements to HYM and YJO. Several of them caused HYM and YJO significant distress, including the incorrect assertion that HYM's medical conditions had improved or that he had contacted DWP to report an improvement. A particularly distressing statement was that HYM was in residential care when YJO was providing care to him at home. I recognise how distressing those statements were for them. Their impact on YJO at the hearing was palpable. On behalf of the SSWP, Mr Howell acknowledged that those statements had been made, were incorrect and would have been distressing to HYM and to YJO. I record this for the parties' benefit.

H. Conclusions about this appeal, including disposal

159. The FTT's decision involved a material error of law. It failed to consider regulation 27A of the TP Regulations and proceeded on the basis that because HYM's earlier mobility entitlement had ended and had not been restored within 12 months, no legal route remained by which he could regain that component after

reaching pensionable age. For the reasons given above, that was a material misdirection. Had the FTT applied regulation 27A correctly, it would have reached a different decision about that issue.

160. Having identified a material error of law, it is appropriate to exercise my discretion to set aside the Tribunal's decision dated 19 March 2024 under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Section 12(2)(b) of that Act requires me either to remit the case to the First-tier Tribunal with directions for reconsideration or to remake the decision.
161. Paragraph 7 of the FTT's Decision Notice dated 19 March 2024 recorded it was not in dispute HYM would score sufficient points under the PIP mobility activities for an award of the enhanced rate of the mobility component at the date of DWP's decision and that his condition was unlikely to improve. At the hearing on 21 May 2026, Mr Howell referred to this and confirmed it was not in dispute before the FTT, or the Upper Tribunal, that HYM would score enough points for the award of the mobility component. This is consistent with the medical evidence in the FTT bundle from a PIP medical assessment on 24 November 2016, which recommended awarding HYM mobility descriptor 12.e (12 points). The healthcare professional recorded examining HYM, showing significant weakness in both legs and moderate muscle wasting, and made observations about his walking speed and the effort it required, including having to stop.
162. Mr Howell's written arguments express the SSWP's position as one where the sole issue in HYM's appeal is whether he is entitled to the mobility component of PIP and that this turns on the proper construction of section 83 of the 2012 Act, read with regulation 27A of the TP Regulations and regulation 27 of the 2013 Regulations. I have addressed that issue, and I have decided how regulation 27A falls to be interpreted. I am therefore satisfied there is no unresolved issue concerning HYM's appeal to the FTT that prevents me remaking the decision.
163. I have therefore decided it is appropriate to remake the FTT's decision rather than remit it to a new First-tier Tribunal. In view of the age of the proceedings and applying the overriding objective, I consider this is a fair, just and proportionate disposal of HYM's appeal.
164. I decide that HYM is entitled to the mobility component of PIP, at the enhanced rate, from 02 April 2022 onwards on an ongoing basis. It is inappropriate to fix the length of the award. As I am remaking the FTT's decision by setting aside DWP's decision dated 16 June 2022, it follows that I need to provide for HYM's entitlement to the daily living component as well, which is not in dispute between the parties. I have set out the terms of my decision at pages 2 and 3 above.
165. I thank the parties and their representatives, including YJO and Mr Howell, for the assistance provided by their submissions in dealing with the legal issues in this appeal.

Judith Butler
Upper Tribunal Judge

Authorised for issue: 25 September 2026