

Neutral Citation Number: [2026] UKUT 395 (AAC)
Appeal No. UA-2025-001406-USTA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

WENDY ECCLES

Appellant

- v -

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

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

Representation:

Appellant:	Luke Dukinfield (Engage Leeds), with help from the CPAG Upper Tribunal Project
Respondent:	Uroosa Ali (DMA Leeds)

On appeal from:

Tribunal:	First-tier Tribunal (Social Entitlement Chamber)
Judge/Panel:	Tribunal Judge R A C Heatley
Tribunal Case No:	SC007/24/01056
Digital Case No.:	1724317730812899
Tribunal Venue:	Leeds (in person)
Decision Date:	3 June 2025

SUMMARY OF DECISION

UNIVERSAL CREDIT - other (45.9)

The appellant is a Universal Credit claimant who manages her claim by telephone and has no access to her electronic journal. She appealed to the First-tier Tribunal against a decision of the Secretary of State of 22 May 2024 that she had limited capability for work-related activity (LCWRA). At the appeal hearing, it was identified that the Secretary of State had made a prior decision on her claim on 18 September 2023, which had been uploaded to her electronic journal. The claimant had been notified by text message that there was a letter for her on her electronic journal, but was not sent the decision in writing, or provided with written notice of the requirement for mandatory reconsideration or the right of appeal. It was argued for the appellant that the 18 September 2023 decision was accordingly a nullity or, if not a nullity, that it was not an

appealable decision and the First-tier Tribunal should deal with the appeal as if the decision did not exist. The First-tier Tribunal did not deal with that argument, but proceeded on the basis that the 18 September 2023 decision was a final decision that had not been appealed and accordingly limited the scope of the appeal.

The Upper Tribunal held:

(1) The decision of 18 September 2023 was a decision that the appellant did not have LCWRA, made as required by regulation 43(3) of the UC Regulations in response to the appellant's failure to provide fit notes when requested. It was a refusal to supersede her previous award, not merely a decision not to proceed with a work capability assessment;
(2) The failure to notify the decision did not make it a legal nullity. It was a final decision for the purposes of section 17 of the Social Security Act 1998 (**SSA 1998**) and appealable under section 12;
(3) However, the failure to notify meant that the time for seeking mandatory reconsideration of that decision had not yet started to run; nor had the time limit for appealing it;
(4) The First-tier Tribunal had nonetheless made a material error of law by failing to deal with the appellant's nullity argument. That argument was properly raised in the appeal against the 22 May 2024 decision and the First-tier Tribunal had jurisdiction to deal with it. The First-tier Tribunal's error in not dealing with the argument was a material error because the First-tier Tribunal ought to have considered, and raised with the parties, the options of: (a) staying the proceedings to allow the appellant to seek mandatory reconsideration and, if necessary, appeal the 18 September 2023 decision; and/or (b) inviting the Secretary of State to consider revising the decision of his own motion.

Decision of the First-tier Tribunal set aside and remade by disposing of the appeal by consent on a basis agreed between the parties.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(ii) and (4) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and re-make the decision by disposing of the appeal under rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008/2698 on the terms agreed between the parties:

The appellant has limited capability for work-related activity (LCWRA) from 8 March 2022 and is entitled to the inclusion of the LCWRA element within her Universal Credit award with effect from 8 June 2022.

REASONS FOR DECISION

Introduction

1. This case concerns a claim for Universal Credit (**UC**) made by telephone where the benefit claimant (**the appellant**) does not have access to an electronic journal with the Department for Work and Pensions (**DWP**).

2. The appellant appeals against the First-tier Tribunal's decision of 3 June 2025 refusing her appeal against the decision of the Secretary of State of 22 May 2024 that the appellant was not entitled to the Limited Capability for Work Related Activity (**LCWRA**) element of UC under Part 1 of the Welfare Reform Act 2012 (**WRA 2012**) and The Universal Credit Regulations 2013 (SI 2013/376) (**the UC Regulations**) prior to 8 January 2024.

3. The First-tier Tribunal's Statement of Reasons (**SoR**) was issued on 15 July 2025 and permission to appeal was refused by the First-tier Tribunal in a decision issued on 14 August 2025. By decision sent to the parties on 1 December 2025 I granted permission to appeal on three grounds as follows:

   (1) Whether the First-tier Tribunal erred in law in treating a decision made by the Secretary of State on 18 September 2023 not to put the appellant forward for a work capability assessment (**WCA**) as a decision refusing to supersede that could be appealed to the First-tier Tribunal (subject to mandatory reconsideration);
   (2) Whether the First-tier Tribunal erred in law in treating the decision made on 18 September 2023 as final given that it was not communicated to the appellant;
   (3) Whether the First-tier Tribunal erred in law in failing to apply *KS v SSWP* [2025] UKUT 015 (AAC) (***KS***) and to consider whether it was reasonable to expect the appellant to provide medical evidence and/or in failing to conclude that she had provided sufficient evidence.

4. The Secretary of State responded to the appeal and supported it, initially only on the basis that the First-tier Tribunal's reasons were inadequate. On the application of the appellant, on 4 April 2026 I issued directions for further submissions from both parties. The position now reached in those further submissions is that the parties are in agreement that I should allow the appeal and remake the decision. Both parties are content for me to make a decision on the papers without a hearing. Given the agreement between the parties, I consider it is appropriate that I do so.

5. I am also publishing this decision on the Upper Tribunal (Administrative Appeals Chamber) website because I accept the submission of the appellant's representative that what has happened in this case may be of relevance to other cases where a claim to UC is made by telephone and the claimant does not have access to an electronic journal.

Factual background

6. The appellant has rheumatoid arthritis that affects her hands and makes it difficult to use a smart phone or computer.

7. The appellant claimed UC by telephone on 8 March 2022. In making this claim, the appellant declared that she had a health problem that affected her ability to work. She does not appear to have been asked to provide medical certificates at that point.

8. She was awarded UC. Thereafter, the appellant would receive a text message when DWP added a message or letter to her electronic journal. However, she did not have access to the electronic journal. In order to find out what information had been placed on the journal, she would therefore need to telephone DWP.

9. On 13 July 2022, after a work coach noticed that the appellant had not supplied any medical certificate, the appellant submitted a medical certificate that was valid until 4 October 2022.

10. On 3 October 2022, the appellant had a telephone conversation with somebody from DWP in which she was told she needed to provide another fit note.

11. On 5 October 2022, DWP referred the appellant for a WCA.

12. On 9 October 2022, the appellant obtained another fit note valid for the period 3 October 2022 to 2 January 2023. It appears that she attempted to hand this medical certificate in at the Jobcentre but was told it would not be acceptable. The First-tier Tribunal found as a fact (at [10]) that this fit note was not submitted to DWP.

13. On 18 August 2023, DWP placed a message on the appellant's electronic journal (to which the appellant still had no access) telling her to submit a new fit note by 15 September 2023. According to the appellant's representative, a text message was sent to the appellant as follows:

> 18 Aug 2023 at 1:41pm
> Your fit note expired on 05/10/2022.
> You need to provide a new fit note by 15/09/2023
> If you do not provide a fit note, or a good reason for failing to do so, we will consider you to be capable for work.
> This means you may be asked to look for, and be available for, work and work-related activity.
> You can report a fit note in your Universal Credit account home page.
> You must continue to provide fit notes until we tell you otherwise.
> If something has changed
> You need to tell us if:
> • you are no longer ill
> • you are returning to work
> • your health condition or disability no longer restricts your ability to work
> You will need to 'Report a change' from your home page:

> • enter the date
> • check the health conditions are correct
> • when you get to 'Do any of your conditions restrict your ability to work?', select 'No'
> • answer any remaining questions
> • confirm your answers are correct
> Canterbury Service Centre
> No action available

14. On 9 September 2023, DWP put another message on the journal asking for a new fit note. A text message was sent to the appellant as follows:

> 9 Sept 2023 at 1:09pm
> Further to our previous reminder, which you have not responded to, you still need to provide a fit note.
> You need to provide a new fit note by 15/09/2023
> You can report a fit note in your Universal Credit account home page.
> You must continue to provide fit notes until we tell you otherwise.
> If you do not provide a fit note or give a good reason by the deadline, we will send you a letter to say we consider you to be capable for work and work-related activity.
> You will be asked to attend a Claimant Commitment Review.
> If something has changed You need to tell us if:
> • you are no longer ill
> • you are returning to work
> • your health condition or disability no longer restricts your ability to work
> If you are no longer ill, or your health condition no longer restricts your ability to work, you must 'Report a change' from your home page:
> - Select Report a change
> • confirm your answers are correct
> Canterbury Service Centre
> No action available

15. On 18 September 2023, the Secretary of State made a decision that the appellant did not have LCW or LCWRA. A decision letter was uploaded to the appellant's electronic journal and, as I understand it, a text message was sent to the appellant as follows:

> Hi
> Please see the attached letter regarding your health journey
> Kind regards
> UC Team
> Read the attached file. If the letter asks you to call us, please try using your journal instead.
>
> Canterbury Service Centre

16. The appellant telephoned the DWP on 18 September 2023 at 11:21am. The First-tier Tribunal found as a fact that during this telephone call the DWP told her that she needed to submit a fit note. It does not appear that the appellant was informed

(or, if she was informed, that she understood) that a decision had been made in her case in respect of which she needed to seek mandatory reconsideration or appeal.

17. On 22 September 2023, the appellant provided another medical certificate for the period 20 September 2023 to 17 January 2024.

18. Following submission of the fit note on 22 September 2023, the appellant was referred for a WCA and assessed by a Healthcare Practitioner (**HCP**) on 14 May 2024.

19. On 22 May 2024, the Secretary of State decided that the appellant had LCWRA and that she was entitled to the LCWRA element from the assessment period beginning 8 January 2024 (but not earlier). The appellant appealed to the First-tier Tribunal.

The First-tier Tribunal hearing and decision

20. At the hearing before the First-tier Tribunal on 3 June 2025, the presenting officer for the Secretary of State alerted the appellant and the First-tier Tribunal to the existence of the decision of 18 September 2023, and produced a copy of it.

21. The First-tier Tribunal refused the appellant's appeal. The First-tier Tribunal considered that, when the appellant first submitted a fit note, and reported a health condition, on 13 July 2022, she was making an application for the LCWRA element to be included in her UC, and thus "in decision-making terms, she was applying for a supersession based on a change of circumstances".

22. The First-tier Tribunal found DWP's decision of 18 September 2023 to be a refusal of that application for supersession under section 10 of the Social Security Act 1998 (**SSA 1998**), that it was a final decision for the purposes of section 17 of the SSA 1998 and thus that it was a decision that in principle carried a right of appeal to the First-tier Tribunal, subject to compliance with the requirement for mandatory reconsideration. As no application for mandatory reconsideration had been made, the First-tier Tribunal concluded it had no jurisdiction to treat the case as being an appeal against that decision. It noted that it may be open to the appellant to make a late request for mandatory reconsideration.

23. The First-tier Tribunal noted that there was "certainly a question mark over whether not placing an electronic version of a letter on the journal of a claimant who was managing their Universal Credit claim by telephone amounted to proper notification of the decision", but the Tribunal concluded "that was not an issue for me to consider".

24. The First-tier Tribunal determined that the decision of 22 May 2024, against which the appellant appealed, was correct, and complied with regulation 28 of the UC Regulations.

Legal framework

25. Regulation 28 of the UC Regulations provides:

> **Period for which the LCWRA element is not to be included**
>
> **28.**—(1) An award of universal credit is not to include the LCWRA element until the beginning of the assessment period that follows the assessment period in which the relevant period ends.
>
> (2) The relevant period is the period of three months beginning with—
> (a) if regulation 41(2) applies (claimant with monthly earnings equal to or above the relevant threshold) the date on which the award of universal credit commences or, if later, the date on which the claimant applies for the LCWRA element to be included in the award; or
> (b) in any other case, the first day on which the claimant provides evidence of their having limited capability for work in accordance with the Medical Evidence Regulations.
>
> (3) But where, in the circumstances referred to in paragraph (4), there has been a previous award of universal credit—
> (a) if the previous award included the LCWRA element, paragraph (1) does not apply; and
> (b) if the relevant period in relation to that award has begun but not ended, the relevant period ends on the date it would have ended in relation to the previous award.
>
> (4) The circumstances are where—
> (a) immediately before the award commences, the previous award has ceased because the claimant ceased to be a member of a couple or became a member of a couple; or
> (b) within the six months before the award commences, the previous award has ceased because the financial condition in section 5(1)(b) (or, if it was a joint claim, section 5(2)(b)) of the Act was not met.
>
> (5) Paragraph (1) also does not apply if—
> (a) the claimant is terminally ill; or
> (b) the claimant—
> (i) is entitled to an employment and support allowance that includes the support component, or
> (ii) was so entitled on the day before the award of universal credit commenced and has ceased to be so entitled by virtue of section 1A of the Welfare Reform Act 2007 (duration of contributory allowance).
> (6) Paragraph (1) does not apply where a claimant has limited capability for work and it is subsequently determined that they have limited capability for work and work-related activity.
> (7) Where, by virtue of this regulation, the condition in section 5(1)(b) or 5(2)(b) of the Act is not met, the amount of the claimant's income (or, in the case of joint claimants, their combined income) is to be treated during

the relevant period as such that the amount payable is the prescribed minimum (see regulation 17).

26. Regulation 43 of the UC Regulations provides:

> **Information requirement**
>
> **43.**—(1) The information required to determine whether a claimant has limited capability for work or for work and work-related activity or is a severe conditions criteria claimant is—
>
> (a) any information relating to the descriptors specified in Schedule 6 or 7 requested by the Secretary of State in the form of a questionnaire; and
> (b) any additional information that may be requested by the Secretary of State.
>
> (2) But where the Secretary of State is satisfied that there is enough information to make the determination without the information mentioned in paragraph (1)(a), that information is not required.
>
> (3) Where a claimant fails without a good reason to comply with a request under paragraph (1), the claimant is to be treated as not having limited capability for work or for work and work-related activity or as not being a severe conditions criteria claimant (as the case may be).
>
> (4) But paragraph (3) does not apply unless the claimant was sent a further request to provide the information at least 3 weeks after the date of the first request and at least 1 week has passed since the further request was sent.

Ground (1): Whether the First-tier Tribunal erred in law in treating a decision made by the Secretary of State on 18 September 2023 not to put the appellant forward for a WCA as a decision refusing to supersede that could be appealed to the First-tier Tribunal (subject to mandatory reconsideration)

The parties' submissions

27. The appellant argues that, when properly analysed, the decision of the Secretary of State on 18 September 2023 was not a refusal to supersede the previous award, but a refusal to make a decision on the appellant's application. In the original grounds of appeal, the appellant argued that there was no provision in the UC Regulations equivalent to regulation 28 of the Employment and Support Allowance Regulations 2013 (**the ESA Regulations**), which provides (among other things) that: "(1) Where the Secretary of State is satisfied that it is appropriate in the circumstances of the case, a claimant may be treated as not having limited capability for work if …(c) the Secretary of State has requested further medical evidence; and (d) the claimant has not … (i) supplied further medical evidence; or (ii) otherwise made contact with the Secretary of State to

indicate that they wish to have the question of limited capability for work determined".

28. In response, the Secretary of State pointed to regulation 43(3) of the UC Regulations (set out above) and submitted that there was no error in the First-tier Tribunal treating the 18 September 2023 decision as a refusal to supersede.

29. In reply, the appellant's argument shifted somewhat. The appellant argued that the text messages sent by DWP to the appellant in August and September 2023 were insufficient to impose a legal duty on the appellant to provide the medical certificates as it was not clear enough to the appellant what she needed to do: cf *PPE v SSWP (ESA)* [2020] UKUT 59 (AAC) (***PPE***) *per* Upper Tribunal Judge Poynter. The appellant further submitted that the Secretary of State in asking for the medical certificates was not requiring them in order "to determine whether a claimant has [LCW/LCWRA]" under regulation 43(1), but only in order to determine whether or not he should make a determination about whether a claimant has LCW or LCWRA. The appellant contrasted regulation 17 of the ESA Regulations which provides a specific power for medical certificates to be requested, while regulation 28 provides a power for ESA to be stopped when certificates are not provided.

My conclusion

30. I reject the appellant's submission on this ground. I understand why it was raised as a ground of appeal. This is because the decision letter of 18 September 2023 expresses the decision made (no doubt, in standard terms) as being a decision that DWP "could not assess your health condition or disability". It therefore looks on its face as if it is a refusal to make a decision, rather than itself a refusal to supersede. However, it goes on to say that DWP "will consider" her fit for work and work-related activity, and once the letter is read with the terms of regulation 43 of the UC Regulations in mind it is clear that it is in law a decision refusing to supersede.

31. Regulation 43 of the UC Regulations and regulations 17 and 28 of the ESA Regulations make very similar provision in this respect. Both provide for evidence (including, but not limited to, medical certificates) to be requested from a benefit claimant, and, if there is a failure to provide that evidence, for a decision to be taken that the claimant should be treated as not having LCW or LCWRA. The only difference between the two sets of regulations that is material on this appeal is that, whereas regulation 28 of the ESA Regulations gave the Secretary of State a **discretion** to treat the claimant as not having LCW, if satisfied that is appropriate, regulation 43(3) of the UC Regulations **mandates** that the Secretary of State treat the claimant as not having LCW or LCWRA if the claimant has failed "without a good reason" to comply with a request under paragraph (1).

32. The suggestion that the Secretary of State made the request for information in this case for some purpose other than that set out in regulation 43(1) is without foundation. This was a routine request for information to enable the Secretary of State to determine the appellant's application for the LCW/LCWRA element. Nor was the Secretary of State merely deciding not to make a decision in the appellant's case on 18 September 2023. Regulation 43(3) required the Secretary

of State to make a decision on the appellant's application and the Secretary of State did make a decision. That decision was correctly characterised by the First-tier Tribunal as a refusal to supersede under section 10 of the SSA 1998.

33. The arguments that the appellant makes about whether the text messages were effective in this case to impose an obligation on the appellant to provide medical certificates do not assist the appellant in relation to Ground (1). They potentially provide grounds for challenging the decision of 18 September 2023 on the basis that the claimant had "good reason" for failing to comply with the requests made by text message because DWP had failed to explain how she, who did not have access to an online journal, should provide the requested certificates. That is the role that this sort of argument played in the decision of Upper Tribunal Judge Poynter in *PPE*. I do not consider that the omission of the information about how to provide the medical certificates rendered the text message requests so deficient that they were legal nullities, as the appellant appears to suggest. The requests put the appellant on notice of the information required, and she could reasonably be expected to make enquiries about how the information was to be provided if in doubt.

34. Ground (1) is therefore dismissed.

Ground (2): Whether the First-tier Tribunal erred in law in treating the decision made on 18 September 2023 as final given that it was not communicated to the appellant

35. The parties are in agreement that the appeal should be allowed on this ground and I agree with the parties, albeit that my analysis is different.

36. In this case, the First-tier Tribunal judge regarded the existence of the 18 September 2023 decision as a limit on the potential scope of the appellant's appeal, because he considered it to be a refusal to supersede in respect of which the appellant had failed to request mandatory reconsideration. At the hearing it was argued by the appellant's representative on her behalf that the failure to notify her of the decision rendered it a nullity. However, the First-tier Tribunal judge regarded the question of whether the 18 September 2023 decision had been properly notified to the appellant as being outside his jurisdiction. He indicated that the appellant may be able to make a late request for mandatory reconsideration of the decision.

37. I am satisfied that it was an error of law for the First-tier Tribunal to fail to engage with the appellant's argument that the decision was a nullity. It is well established that the First-tier Tribunal stands in the shoes of the Secretary of State on an appeal and is thus empowered to adjudicate on any findings of fact necessary to determine the appeal before it (see *R (IB) 2/04* at [14]). If an argument such as this is made which has a direct bearing on the scope of the appeal, the First-tier Tribunal must determine it.

38. In this case, because the First-tier Tribunal declined to engage with the appellant's argument about nullity, the First-tier Tribunal did not make detailed findings of fact about the text messages the appellant received or what she was

told when she telephoned the DWP. However, so far as it appears from the material before me, and as is agreed between the parties for the purposes of this appeal, the appellant was not notified of the 18 September 2023 decision in writing. The text message that she received told her only that there was a letter in existence concerning her "health journey". It did not tell her that a decision had been made, or what it was, stipulate any requirement for mandatory reconsideration or set out any right of appeal.

39. It is generally a public law error for a decision-maker to fail to notify a person of a decision concerning them (see *R (Anufrijeva) v SSHD* [2003] UKHL 36, [2004] 1 AC 604 (***Anufrijeva***) at [35] *per* Lord Steyn), but the effect of that error in a particular context depends on the construction of the relevant legislative provisions: see [54]-[58] *per* Lord Scott. As already noted, the First-tier Tribunal erred in law by not considering the consequences of the failure to notify in this case. However, I should only allow the appeal on this ground if the error was material.

40. The First-tier Tribunal Judge placed emphasis on the fact that the decision letter of 18 September 2023 (produced by the DWP presenting officer at the hearing) imposed a requirement for mandatory reconsideration, with which the appellant had not complied. However, the effect of section 12(3A) of the SSA 1998 and regulation 7 of The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (**the D&A Regulations**) is that the requirement for mandatory reconsideration only applies "where the Secretary of State gives a person written notice of a decision … and that notice includes a statement to the effect that there is a right of appeal in relation to the decision only if the Secretary of State has considered an application for a revision of the decision". In *PP v SSWP (UC)* [2020] UKUT 0109 (AAC) (***PP***) Upper Tribunal Judge Wikeley held that, in circumstances where the Secretary of State communicated a decision by publishing a note in the claimant's electronic journal, but not sending a full decision letter including the stipulation about mandatory reconsideration, the requirement for mandatory reconsideration did not apply and the decision was appealable without an application for mandatory reconsideration having been made.

41. If the First-tier Tribunal judge had made detailed findings of fact in this case about the nature of the communication with the appellant regarding the 18 September 2023 decision, it is possible that this case may have turned out to be one like *PP* where the decision had been communicated, but not the requirement for mandatory reconsideration. In those circumstances, it would in principle have been open to the First-tier Tribunal to use rule 7 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685) (**FtT Rules**) to waive the procedural irregularity of lack of a notice of appeal against that decision and permit the appeal to be amended under rule 5(3)(c) to proceed additionally as an appeal against the 18 September 2023 decision.

42. Based on the material that I have before me, however (set out above), it seems to me that the appellant's case is different from that of *PP* because the text message to her did not communicate a decision at all. What happened in this

case was not just a failure to include the requirement for mandatory reconsideration. In the appellant's case, she was not sent anything other than a text alert that 'something' had happened. She was not (so far as I can tell) sent the decision itself, or information about the requirement for mandatory reconsideration or the right of appeal. Nor was she told about it on the telephone in a way that might reasonably have put her on notice of these matters.

43. As such, there was a failure to comply with the procedural requirements for notification of a decision. By section 12(6) of the SSA 1998 a person with a right of appeal under that section "shall be given such notice of a decision to which this section applies and of that right as may be prescribed". Regulation 51(2) of the D&A Regulations requires the Secretary of State to give the person with a right of appeal under the 1998 Act "written notice of the decision and of the right to appeal against that decision".

44. The question, applying *Anufrijeva*, is what the consequences are of failure to comply with the notification requirements in regulation 51. Section 12 of the SSA 1998 provides that decisions under sections 8 and 10 of that Act are decisions carrying a right of appeal, without making the existence of that right dependent upon compliance with the notification requirements. In this respect, the significance of the general notification requirements in regulation 51 is quite different to the mandatory reconsideration requirement under regulation 7. The latter has the effect of making the decision unappealable until mandatory reconsideration has been completed. Not so, the general notification requirements in regulation 51. In my judgment, therefore, the decision of 18 September 2023 was not a legal nullity and was in principle appealable.

45. Further, it was in my judgment "final" and "conclusive" for the purposes of section 17. That is because it was a decision that was "made in accordance with the foregoing provisions of this Chapter" for the purposes of section 17(1), in the sense that it was a decision made by the Secretary of State on a claim to benefit in accordance with that Chapter. It had not yet been notified as required by that Chapter, but there is in my judgment a valid distinction between making a decision and notifying it: the 18 September 2023 decision had been made, but not notified. I observe that this interpretation is also consistent with section 12(8)(b) of the SSA 1998 which refers to the "time when the decision … was made", thus underscoring the distinction it seems to me that the legislation makes between making a decision and notifying it.

46. However, importantly, although the decision had been made on 18 September 2023 and was not a nullity, time for seeking mandatory reconsideration of it had not begun to run and nor (if mandatory reconsideration did not apply) had the time for appeal. The judge was wrong to suggest that any request for mandatory reconsideration would now be late.

47. I note that the standard wording on the Secretary of State's decision letters is that the time limit for seeking reconsideration is one month from the date on the decision letter. However, regulation 5(1)(b)(i) of the D&A Regulations stipulates that the time limit for seeking reconsideration on "any grounds" (i.e. mandatory reconsideration) is within "one month of the date of notification of the original

decision". By regulation 2, "the date of notification", in relation to a decision of the Secretary of State, means the date on which the notification of the decision is treated as having been given or sent in accordance with regulation 3 (service of documents); or, if sent electronically, in accordance with Schedule 2 to The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013/380) (**the C&P Regulations**). Regardless of whether paper or electronic communication is used, the effect of these provisions is that the "date of notification" depends on the day the communication is sent by the Secretary of State. Time does not start running until the decision is sent.

48. Further, under rule 22 of the FtT Rules, the time limit for appealing a decision runs from the date on which notice of the outcome of mandatory reconsideration (or, if that requirement does not apply, from the date on which notice of the decision) "was sent" to the appellant (see rule 22(2)(d) and Schedule 1, paragraph 4).

49. As the decision of 18 September 2023 was not sent, the time limit for seeking mandatory reconsideration had not started to run, nor could any time limit for appeal have started to run. I note that my analysis in this respect is consistent with that of Mr Commissioner D Williams in *R(P) 1/04* (***R(P)***) at [29] (not referred to by the parties). The conclusion I have reached is also consistent with a more recent decision of the Upper Tribunal not referred to by the parties (*AS v SSWP (UC)* [2025] UKUT 249 (AAC) (***AS***) at [61]-[66] *per* Upper Tribunal Judge Brewer), albeit that Upper Tribunal Judge Brewer reached her decision by a somewhat different route.

50. Although I have held that the First-tier Tribunal erred in failing to deal with the appellant's nullity argument, and in suggesting that any application for mandatory reconsideration would now be late, I still have to consider whether the judge's error was material. Given that, on the facts as they appear to me have been: (i) the judge was right that there was not at that stage a valid appeal before him against the 18 September 2023 decision; and, (ii) the appellant could have submitted a mandatory reconsideration request and appealed that decision after the hearing, it could be argued that the error was not material.

51. However, in my judgment the error <u>was</u> material. The First-tier Tribunal exercises an inquisitorial jurisdiction, and it must seek always to further the overriding objective in rule 2. If the First-tier Tribunal had not mistakenly regarded the argument about nullity as being outside its jurisdiction, or mistakenly regarded the appellant as being out of time to appeal the 18 September 2023 decision, it would (or should) have realised there were two options open to it. In my judgment, it was incumbent on the First-tier Tribunal to raise these options with the parties, given the circumstances in which the 18 September 2023 decision had come to light for the first time at the First-tier Tribunal hearing.

52. First, the First-tier Tribunal could have stayed the proceedings to allow the Secretary of State to send the appellant the decision of 18 September 2023 so as to start the time limit running for her to seek mandatory reconsideration of it, and then appeal if necessary.

53. Secondly, although the First-tier Tribunal could not 'go behind' the 18 September 2023 decision in the absence of a valid appeal being made against it, it was in principle open to the Secretary of State at any time to revise or supersede that decision on an appropriate ground either of his own motion or in response to the matters raised by the appellant on appeal. The First-tier Tribunal could have given the Secretary of State an opportunity to consider doing so at the hearing, or by staying the matter.

54. In substance, the Secretary of State has taken the second option in response to this appeal to the Upper Tribunal. The parties have in substance reached agreement as to a disposal of the appeal as if the Secretary of State had agreed to revise the 18 September 2023 decision of his own motion, or as if it were an appeal against the decision of 18 September 2023 as well as the decision of 22 May 2024.

55. It seems to me, therefore, that the First-tier Tribunal's error in failing to address the appellant's argument that the 18 September 2023 decision was a nullity was a material error. The First-tier Tribunal judge's failure to engage with the appellant's argument led to a failure to recognise that an appeal against the 18 September 2023 decision would not be out of time, and that there were case management options open to him that needed to be raised with the parties. Doing so might have avoided the need for this appeal. The error was thus material. Ground (2) succeeds.

Ground (3): Whether the First-tier Tribunal erred in law in failing to apply *KS v SSWP* [2025] UKUT 015 (AAC) (*KS*) and to consider whether it was reasonable to expect the appellant to provide medical evidence and/or in failing to conclude that she had provided sufficient evidence.

56. The appellant argues that the First-tier Tribunal erred in accepting, without analysis, that 22 September 2023 was the date from which the relevant period under regulation 28 of the UC Regulations should run, on the basis that this was the first day on which the claimant provided a medical certificate and thus evidence of her having limited capability for work in accordance with the Social Security (Medical Evidence) Regulations 1976 (**Medical Evidence Regulations**). The appellant argues that the First-tier Tribunal should have applied the decision of Upper Tribunal Judge Church in *KS*. In that case, Upper Tribunal Judge Church held at [22] that "regulation 28(2)(b) of the UC Regulations does not preclude a self-certification from starting the 3-month waiting period before a claimant may be entitled to the LCWRA element of Universal Credit." The appellant argues that the First-tier Tribunal in this case should also have gone on, as happened in *KS*, to consider whether it was "unreasonable" for the purposes of regulation 2(1A) of the Medical Evidence Regulations to require the appellant to provide medical certificates in this case, given the chronic nature of her medical condition, and/or whether the claimant had provided "such other evidence as may be sufficient to show that [she was] incapable of work or [had] limited capability for work" for the purposes of that same regulation.

57. The Secretary of State agrees that the First-tier Tribunal erred in law in failing to address these issues, but I do not. This is because the issues arising from *KS*

and the Medical Evidence Regulations only needed to be addressed in the context of an appeal against the 18 September 2023 decision. As the First-tier Tribunal did not err in regarding the decision of 18 September 2023 as a final decision that had not been appealed, its decision as regards the 22 May 2024 decision was correct. For the reasons set out under Ground (2), the First-tier Tribunal did err in law in its approach to this appeal, but it did not make any separate error as alleged in Ground (3).

Conclusion and disposal

58. For all these reasons, I am satisfied that there is an error of law in the decision of the First-tier Tribunal and I set the decision aside. The parties invite me to remake the decision on the basis that the appellant has LCWRA from the date of her claim on 8 March 2022 and that, applying regulation 28 of the UC Regulations, she is therefore entitled to the inclusion of the LCWRA element in her UC award with effect from 8 June 2022.

59. The parties are in agreement that this is the appropriate outcome in this case on the basis that the appellant provided the necessary evidence for the purposes of regulation 2(1A) of the Medical Evidence Regulations for the period 8 March 2022 onwards through a combination of:

    a. the filing of fit notes;
    b. periods when it was unreasonable for her to file fit notes because she had not been asked for them;
    c. periods when it was unreasonable for her to file fit notes because she was ill and unable to leave the house, or was in hospital; and
    d. there being sufficient other evidence, including her self-report and evidence as to the nature of her condition, to show that she continued to have LCWRA throughout the period.

60. For the reasons set out above, it seems to me that, as a matter of law, the Secretary of State's proposal for disposal of this appeal may be construed as agreement by the Secretary of State of his own motion to revise the decision of 18 September 2023 at the same time as disposing of the appeal against the 22 May 2024 decision by revising that decision. The Secretary of State's approach is a pragmatic approach that is in accordance with the overriding objective as it avoids the need for a further set of proceedings challenging the 18 September 2023 decision.

61. Having considered the evidence, I am satisfied that the parties' agreement properly reflects the appellant's entitlement to benefit in this case and that it is appropriate for me to re-make the decision by disposing of the appeal by consent under rule 39 in the terms the parties have agreed.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 6 October 2026