

Neutral Citation Number: [2026] UKUT 402 (AAC)
Appeal No. UA-2025-001261-UHC

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

SECRETARY OF STATE FOR WORK AND PENSIONS

Appellant

v

KARLEY MYERS

Respondent

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

Representation:
Appellant: Not represented
Respondent: Clare Gratrex, Decision Making and Appeals (DMA) Leeds

On appeal from:
Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal Panel: Judge K Edwards
Tribunal Case No.: 1734-3444-8821-2757
Tribunal Venue: Fox Court
Decision Date: 25 February 2025

SUMMARY OF DECISION

45 - Universal Credit

This appeal is about the proper interpretation and application of section 19(1)(b) of the Universal Credit Regulations 2013 (the **"UC Regulations"**), which places restrictions on the entitlement of prisoners to Universal Credit.

The claimant was awarded Universal Credit from 2019 with a standard allowance, the child element and the housing costs element.

In 2024 she was sentenced to a period of 27 months imprisonment. The Secretary of State superseded the decision to award her Universal Credit and ended her entitlement with effect from 27 April 2024 on the basis of a change of circumstances, namely that she had become a prisoner and her term in custody was expected to extend beyond 6 months.

The claimant, having successfully appealed her sentence of immediate imprisonment and received a suspended sentence, appealed to the First-tier Tribunal.

The First-tier Tribunal allowed the claimant's appeal on the basis that it interpreted regulation 19 of the UC Regulations to apply only to cases in which a new claim is made by a person who is already a prisoner.

The Secretary of State appealed on the basis that the First-tier Tribunal had erred in law in its application of regulation 19(1)(b) of the UC Regulations and in its approach to the effect of the Court of Appeal's decision overturning the claimant's sentence.

The Upper Tribunal allowed the appeal, set aside the decision of the First-tier Tribunal, and remade the decision.

DECISION

As the decision of the First-tier Tribunal involved the making of an error of law, it is **SET ASIDE** under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the **"2007 Act"**) and **REMAKE** the decision in the following terms under section 12(2)(b)(ii):

> "The appeal is **allowed.**
>
> The decision made by the Secretary of State on 29/05/2024 is **set aside**.
>
> While the claimant became a prisoner on 22/05/24, the effect of the ultimately successful appeal against her sentence at the Court of Appeal is that her sentence was not "expected to extend beyond 6 months" in the terms of regulation 19(2)(b) of the UC Regulations 2013.
>
> As a result, the claimant was entitled to the housing costs element only in the two assessment periods from 27/04/24-26/06/24 (inclusive).
>
> Having been released from prison on 10/07/24, the claimant became entitled to all elements of her UC award from 27/06/24."

REASONS FOR DECISION

What this appeal is about

1. This appeal is about the proper interpretation and application of section 19(1)(b) of the Universal Credit Regulations 2013 (the **"UC Regulations"**), which places restrictions on the entitlement of prisoners.

Background

2. The respondent to this application (referred to below as the **"claimant"**) made a claim for universal credit (**"UC"**), and was awarded UC from, 27 September 2019. At the time relevant to this appeal, the claimant's UC award included a standard allowance, an amount for the child element in respect of two children for whom she was responsible, and an amount for the housing costs element.
3. On 22 May 2024, the claimant entered prison, having been sentenced to a term of 27 months' imprisonment. Once the Secretary of State became aware of this, a

decision was made on 29 May 2024 superseding the decision awarding the claimant UC to end her entitlement with effect from 27 April 2024, on account of her having become a prisoner (the **"29 May 2024 Supersession Decision"**). That decision was upheld in a mandatory reconsideration on 07 November 2024.

4. The claimant appealed to the First-tier Tribunal.

5. Meanwhile, the claimant applied for leave to appeal against her sentence to the Court of Appeal. In a decision handed down on 10 July 2024, the Court quashed the original sentence and substituted a sentence of 21 months' imprisonment, which was suspended for 24 months.

6. As far as relevant to this appeal, the effect is that the claimant was then released from prison. Shortly afterwards the claimant made a new claim for UC on 16 July 24, which led to a new awarding decision.

7. This appeal is therefore concerned only with the effect of the 29 May 2024 Supersession Decision on the claimant's entitlement from 27 April 2024-15 July 2024 inclusive.

The decision under appeal

8. On 25 February 2025, Tribunal Judge K Edwards, sitting alone (the **"Tribunal"**) decided on the papers without a hearing that section 19(1)(b) has of the UC Regulations had no relevance for claimants to Universal Credit who already had an award of Universal Credit. The Tribunal allowed the claimant's appeal and set aside the Secretary of State's decision, restoring the claimant's UC entitlement in full (the **"FtT Decision"**).

The permission stage

9. The Secretary of State applied to the First-tier Tribunal for permission to appeal on 30 April 2025. While the Tribunal admitted the application, District Tribunal Judge Tootell refused to set aside the Tribunal's decision and refused permission to appeal to the Upper Tribunal.

10. The Secretary of State renewed the application for permission to appeal to the Upper Tribunal, and the matter came before me.

The grounds of appeal

11. The Secretary of State sought permission to appeal on two grounds:

    (1) the Tribunal erred in law in its application of regulation 19(1)(b) of the UC Regulations, when it decided that regulation 19(1)(b) had no relevance for UC claimants with an awarding entitlement decision already in place; and

    (2) the Tribunal erred in law in its approach to the effect of the Court of Appeal's decision overturning the claimant's sentence.

12. The Secretary of State asked the Upper Tribunal to set aside the FtT Decision and to substitute its own decision, under section 12(2)(b)(ii) of the Tribunal, Courts and Enforcement Act 2007.

13. I granted permission to appeal on the basis that the Secretary of State had identified a point of law that warrants the attention of the Upper Tribunal, namely the proper interpretation and application of regulation 19(1)(b) of the UC Regulations.

The positions of the parties

14. I made Case Management Directions for the claimant to make a submission indicating her position on the appeal and for the parties to indicate whether they requested an oral hearing of the appeal and whether they requested an order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the **"UT Rules"**) as to anonymity.

15. The claimant had no comment to make on the appeal and relied on the same arguments that she had made before the Tribunal. Neither party applied for an oral hearing or a rule 14 order.

16. I decided that the interests of justice did not require an oral hearing and opted to determine the appeal on the papers, being the course which best furthered the overriding objective under rule 2 of the UT Rules to deal with the case fairly and justly.

The relevant statutory provisions

17. Universal Credit was introduced by Part 1 of the Welfare Reform Act 2012 (the **"WRA"**). Under section 3(1) of the WRA, a person is entitled to Universal Credit as a single claimant if they meet the basic and financial conditions, laid out in sections 4 and 5, respectively of the WRA. Awards of Universal Credit include (see section 8(2) of the WRA) a standard allowance, along with any other elements to which a claimant may be entitled, including a housing costs element (section 11 of the WRA).

18. Under section 7(1) of the WRA, when read with section 7(4), Universal Credit is payable "in respect of each complete assessment period within a period **during which entitlement to universal credit subsists"** (emphasis added). An assessment period is defined, by regulation 21(1) of the UC Regulations, as "a period of one month beginning with the first date of entitlement and **each subsequent period** of one month during which entitlement subsists" (emphasis added).

19. Section 6 of the WRA, of particular relevance to this appeal, is entitled *"Restrictions on entitlement"* and provides at subsection (1)(a) that (emphasis added):

> "(1) Entitlement to universal credit **does not arise**—
>
> (a) in prescribed circumstances (even though the requirements in section 3 are met)."

20. Those circumstances are prescribed in regulation 19(1) of the UC Regulations:

> "(1) Entitlement to universal credit **does not arise** where a
>
> person is—
>
> (a) …
>
> (b) a prisoner; …",
>
> where a prisoner is defined (as far as relevant) in regulation 2 of the UC Regulations as "a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court".

21. However, regulation 19(2) provides an exception, as follows (emphasis added):

> "(2) Paragraph (1)(b) does not apply during the first 6 months when the person is a prisoner where—
>
> (a) the person was entitled to universal credit as a single person **immediately before** becoming a prisoner, and **the calculation of their award included** an amount for the housing costs element; and
>
> (b) the person has not been sentenced to a term in custody that is expected to extend beyond that 6 months."

22. If regulation 19(2) applies, regulation 19(3) provides that "an award of universal credit is not to include any element other than the housing costs element."

23. Finally, paragraph 20 of Schedule 1 to the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (the **"D&A Regulations"**) provides (as far as material) that "a superseding decision made on the ground of a change of circumstances takes effect from the first day of the assessment period in which that change occurred...".

Why I allow this appeal

24. The Tribunal proceeded on the basis that the inclusion of the words "entitlement does not arise" in section 6(1) if the WRA and regulation 19(1) of the UC Regulations means that the disapplication in regulation 19(2) is "limited to cases in which a new claim is made by a person who is already a prisoner because it is only in such cases that there is any issue about whether entitlement has arisen" (see paragraph [4] of the Decision Notice and paragraph [19] of the statement of reasons).

25. The wording in section 19 of the UC Regulations was considered by the Upper Tribunal in ***SSWP v AH*** [2023] UKUT 274 (AAC) (***"AH"***). In that case the claimant AH made a claim for Universal Credit but shortly after making that claim (and in what would have been the first assessment period in respect of his claim) entered prison. The Secretary of State decided that AH was not entitled to Universal Credit but that decision was set aside by the First-tier Tribunal. Judge Wikeley restored the Secretary of State's decision on appeal to the Upper Tribunal on the basis that "…in order to be paid Universal Credit in respect of an assessment period, a claimant needs to be entitled to the benefit throughout that assessment period. Entitlement must subsist throughout, or the period in question is not an assessment period as so defined" (see ***AH*** at [27]).

26. While the First-tier Tribunal in ***AH*** considered that the words "entitled to UC … immediately before" in regulation 19(2)(a) of the UC Regulations referred to the claimant's entitlement on the day prior to entering prison, this interpretation was rejected by Judge Wikeley, who explained:

> "[t]he requirement in regulation 19(2)(a) that the claimant 'was entitled to universal credit as a single person immediately before becoming a prisoner' must mean in the immediately preceding assessment period. This interpretation is supported by the further condition that 'the calculation of their award included an amount for the housing costs element'. The use of the past tense demonstrates that the claimant **must have already had one prior complete assessment period."**

27. While the facts of ***AH*** were materially different from those in this case (there was no award of Universal Credit in the claimant's favour by the date of his entry into prison while the claimant in this case already had an award by the date she entered prison), the logic of Judge Wikeley's approach still applies. Judge Wikeley held that a claimant could only benefit from the partial exception in regulation 19(2) to the application of regulation 19(1)(b) of the UC Regulations when they had "already had one prior assessment period".

28. Further, the fact that to be applicable regulation 19(2)(a) requires that the claimant's "award included an amount for the housing costs element" indicates that regulation 19(1)(b) must still be relevant when an award decision has already been made despite the use of the word "arise" in both section 6(1) if the WRA and regulation 19(1) of the UC Regulations.

29. The claimant's entry into prison during the assessment period that began on 27 April 2024 and her remaining in prison on the last day of that assessment period amounted to a relevant change of circumstances which, under paragraph 20 of Schedule 1 to the D&A Regulations, took effect on the first day of the assessment period.

30. The introduction of Universal Credit was intended to rationalise a multiplicity of means-tested benefits into a single benefit. One of the benefits that Universal Credit replaced was income support. Income support was established by Part II of the Social Security Act 1986 (the **"1986 Act"**), and was replaced by Universal Credit under section 33(1)(c) of the WRA. As enacted, section 20(3)(b) of the 1986 Act provided that "[a] person in Great Britain is entitled to income support if … he has no income or his income does not exceed the applicable amount". The applicable amount was an amount that varied depending on the claimant's circumstances. In the case of prisoners (save in limited circumstances that do not reflect the claimant's circumstances in this appeal), the applicable amount was nil (see paragraph 8(a) of Schedule 7 to the Income Support (General) Regulations 1987 (the **"IS Regulations"**).

31. The Secretary of State has drawn my attention to the case of ***R(IS) 1/94***, in which Commissioner Houlahan considered the purpose of the provisions in the IS Regulations that made special provision for prisoners:

> "The reason why a person detained in custody is not entitled to income support is not difficult to understand. While he is in custody, his food and accommodation are provided by the State, He is being kept by the State and he has no need for income support. However, if the person is in custody pending trial or pending sentence, he will be entitled to claim any housing costs presumably because he may soon be released ad be allowed to return home…" (at [14]).

32. I was also referred to the decision of Commissioner Rice in ***R(IS) 2/95*** (which is quoted with the emphasis provided in the original):

> "5. ,,,Except where they are detained in custody pending trial or sentence following conviction by a court, prisoners are entitled, under Schedule 7 to the Income Support (General) Regulations 1987, to an applicable amount of "nil". And if he was entitled to nothing, I do not see how he weas entitled to income support (see section 124(1)(b) of the Social Security Contributions and Benefits

Act 1992). This is not a case where **payment** was denied of an underlying **entitlement**. Here there was no entitlement in the first place.

"6. Support for the above construction can be seen in regulation 15(3)(c) of the [Income Support (Transitional) Regulations 1987] …

'15. (3) Subject to paragraph (4) a claimant shall cease to be entitled to a special transitional addition under paragraph (1) if –

(c) in the case of a claimant who is entitled to income support as well as a transitional addition he ceases to be entitled to income support and a transitional addition for a reason other than that his applicable amount under Part IV of the General Regulations does not exceed his income.'

"Manifestly, the draftsman contemplated the loss of entitlement to income support where a claimant's applicable amount did not exceed his income…"

33. I agree with the Secretary of State that the same logic that Commissioner Houlahan applied in ***R IS) 1/94*** and Commissioner Rice applied in ***R (IS) 2/95*** is also applicable to the situation of prisoners under Universal Credit and should inform the interpretation of Regulation 19.

34. For these reasons I am persuaded that the Tribunal erred materially in law in its finding that regulation 19(2) operates to disapply regulation 19(1) only where a new claim is made by a person who is already a prisoner because it is only in such cases that there is any issue about whether entitlement has arisen. I therefore allow Ground 1.

35. Turning to Ground 2, which relates to the effect of the Court of Appeal's decision on the claimant's appeal against sentence, the Tribunal considered what regulation 19(2)(b) means by "a term in custody that is expected to extend beyond that 6 months". It observed that the UC Regulations did not specify whose expectation was relevant to the requirement in Regulation 19(2)(b):

"16. There is no assistance in the regulation as to whose expectation is envisaged in regulation 19(2)(b). In this case it is very clear that [the claimant] and her solicitor did not expect her to be given a custodial sentence at all. Neither did the Court of Appeal (Criminal Division) who concurred with [the claimant] and her legal advisors in the view that a custodial sentence was "manifestly excessive" and substituted a suspended sentence. The only person who expected that a custodial sentence was appropriate was the crown court judge imposing the sentence…

19. …At the very least therefore the housing costs element of UC should have continued to be in payment even whilst she was in custody pending the appeal against sentence."

36. The "expectation" in terms of how long a claimant is expected to spend in custody must be the expectation of the person who is applying the regulations. On 29 May 2024 that was the decision maker on behalf of the Secretary of State, and on 25 February 2025 it was the Tribunal standing in the shoes of the Secretary of State. When the decision maker for the Secretary of State made the decision on 29 May 2024 the evidence available was that the claimant had been sentenced to 27 months in prison, of which she could be expected to serve 13.5 months. On that

basis the decision maker on behalf of the Secretary of State was correct to expect that the claimant's term in custody would extend beyond 6 months. It cannot have been intended that the decision maker would have to weigh up the prospects of success of any appeal against sentence. However, by the time the Tribunal came to consider the appeal there was more evidence: the Court of Appeal had made its decision overturning the claimant's immediate custodial sentence and replacing it with a suspended sentence, with the consequence that the claimant was released from custody. The Secretary of State concedes that while that evidence was not before the original decision maker, the Tribunal was entitled to take it into account as long as it did not fall within the requirement in section 12(8)(b) of the Social Security Act 1998 (the **"1998 Act"**) not to "take into account any circumstances not obtaining at the time when the decision appealed against was made". Because the decision of the Court of Appeal related to a period relevant to the decision under appeal, even though it was made after the date of the original decision, it was open to the Tribunal to form an "expectation" that took into account the claimant's successful appeal against sentence. The Tribunal should therefore have found that regulation 19(2)(b) applied to the claimant's circumstances, which had the effect of disapplying regulation 19(1). It therefore followed that regulation 19(3) would apply to restrict the claimant's entitlement to Universal Credit to the housing costs element for the duration of her time in prison.

37. The claimant's release from custody following her successful appeal against sentence then represented a further change of circumstances that would (per paragraph 20 of Schedule 1 to the D&A Regulations) take effect from 27 June 2024 (being the first day of the assessment period in which the change occurred or was expected to occur).

38. I therefore allow Ground 2.

39. Having found that the Tribunal erred in law in a way that was material, I consider that the interests of justice require me to exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the **"2007 Act"**) to set the FtT Decision aside.

Disposal

40. Having decided to set aside the FtT Decision under section 12(2)(a) of the 2007 Act I have a discretion whether to remit the matter to the First-tier Tribunal for redetermination, or to remake the decision for myself. I exercise that discretion in favour of remake the decision as the Tribunal should have made it. This is the course that best serves the overriding objective of deciding cases fairly and justly. I therefore remake the FtT Decision in the terms set out at the beginning of this decision.

Thomas Church
Judge of the Upper Tribunal

Authorised for issue on: 19 October 2026