

Neutral Citation Number: [2026] UKUT 432 (AAC)
Appeal No. UA-2025-001263-USTA & UA-2025-001265-USTA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

SECRETARY OF STATE FOR WORK AND PENSIONS

Appellant

-v-

MR JERRONE LINDO

Respondent

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

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

On appeal from:
Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal Panel: Judge DG Vine
Tribunal Case Nos.: 1704-2140-2761-1817; 1711-5564-1570-1449
Tribunal Venue: East London
Decision Date: 3 April 2025

SUMMARY OF DECISION

Universal Credit (45)

This appeal is about the effect that a claimant going to prison has on an existing entitlement to Universal Credit. It considers the proper interpretation of regulation 19(1)(b) of the Universal Credit Regulations 2013 and adopts the interpretation that Judge Wikeley took in ***SSWP v AH (UC)*** [2023] UKUT 274 (AAC).

The First-tier Tribunal was wrong to find that regulation 19(1) (which provides that *"entitlement does not arise"* where the claimant is a prisoner) applied only where a new claim is made by a person who is already a prisoner (and not as here, where the claimant had an existing award when he became a prisoner).
The Upper Tribunal allowed the appeal, set the decisions aside and remade them.

DECISION

The Respondent's application for the appeals to be struck out is dismissed.

As the decisions of the First-tier Tribunal were erroneous in law, they are **SET ASIDE** under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the **"2007 Act"**) and **REMADE** in the terms set out below under section 12(2)(b)(ii).

> **"The claimant's appeals are dismissed.**
>
> **The decisions made by the Secretary of State on 23/12/21 are upheld.**
>
> **Having entered prison on 15/12/21, and remained there on 22/12/21, the claimant ceased to be entitled to Universal Credit from 23/11/2021.**
>
> **Consequently, the claimant was overpaid £324.84 in the assessment period from 23/11/2021 to 22/12/21 (inclusive), and that amount is recoverable from the claimant under section 71ZB(1)(a) of the Social Security Administration Act 1992."**

REASONS FOR DECISION

What this appeal is about

1. This appeal is about the effect that a claimant going to prison has on an existing entitlement to Universal Credit.

Background

2. The Respondent (to whom I shall refer as the **"claimant"**) made a claim to Universal Credit on 23 August 2018. His claim was accepted and he was awarded Universal Credit from 23 August 2018. At the time relevant to this appeal his Universal Credit award comprised the standard allowance only, of £324.84 per assessment period. Each assessment period for the claimant's claim began on the 23rd of the month and ended on the 22nd of the following month.

3. This appeal relates to two linked decisions made by the Secretary of State on 23 December 2021 about the claimant's Universal Credit. The first decision was that, because the claimant had gone to prison on 15 December 2021 and remained in prison on 22 December 2021, he was no longer entitled to Universal Credit from 23 November 2021 and his award was superseded from 23 November 2021 (the **"SoS Entitlement Decision"**).

4. The second decision followed from the SoS Entitlement Decision: because the claimant was not entitled to Universal Credit from 23 November 2021, the payment made to him referable to the assessment period beginning on 23 November 2021 and ending on 22 December 2021 in the amount of £324.84 amounted to an overpayment and fell to be recovered from him (the **"SoS Overpayment Decision"**). The claimant sought mandatory reconsideration of both of these decisions, but both were confirmed on mandatory reconsideration on 13 December 2023.

The decisions under appeal

5. The claimant appealed both the SoS Entitlement Decision and the SoS Overpayment Decision to the First-tier Tribunal. He was successful in both appeals. The First-tier Tribunal set aside the SoS Entitlement Decision, deciding that the claimant remained entitled to Universal Credit from 23 November 2021 notwithstanding that he had gone to prison from 15 November 2021, and his claim should not have been terminated (the **"FtT Entitlement Decision"**). Because the claimant continued to be entitled to Universal Credit after 23 November 2021 the First-tier Tribunal decided to set aside the SoS Overpayment Decision as well (the **"FtT Overpayment Decision"** and, together with the FtT Entitlement Decision, the **"FtT Decisions"**).

6. The Secretary of State applied to the First-tier Tribunal for permission to appeal the FtT Decisions. On 17 July 2025 Judge A-M Tootell refused permission to appeal.

7. On 8 August 2025 the Secretary of State renewed his application for permission to appeal the FtT Decisions to the Upper Tribunal. The matter came before me.

The grounds of appeal

8. The Secretary of State had one simple ground of appeal in respect of the FtT Entitlement Decision: that the Tribunal misdirected itself in law when it held that regulation 19(1)(b) of the Universal Credit Regulations 2013 (the **"UC Regulations"**) had no relevance for UC claimants with an awarding entitlement decision already in place.

9. Because (as the First-tier Tribunal acknowledged) the overpayment decision rested entirely on whether the claimant remained entitled to Universal Credit in the assessment period from 23 November 2021 to 22 December 2021, no other issue arises about the overpayment: if the appeal against the FtT Entitlement Decision succeeds then it follows that the appeal against the FtT Overpayment Decision must also succeed (and vice versa).

10. I granted permission to appeal. In my grant of permission I said:

> "7. The Secretary of State has identified a point of law arising from the FtT Decision that warrants the attention of the Upper Tribunal, namely the proper interpretation and application of regulation 19(1)(b) of the Universal Credit Regulations 2013.
>
> 8. The Secretary of State argues that the Tribunal misdirected itself in law when it decided that regulation 19(1)(b) of the Universal Credit Regulations had no relevance for claimants to Universal Credit who already had an award of Universal Credit. I am satisfied that this ground is arguable with a realistic prospect of success.
>
> 9. This warrants a grant of permission to appeal to the Upper Tribunal. My grant of permission is unrestricted."

11. I made Case Management Directions for the parties to make submissions on the appeal and to indicate whether they wanted an oral hearing.

The positions of the parties

12. The claimant responded to the Upper Tribunal. He expressed his anger and dissatisfaction with the way that the Department for Work and Pensions and HMCTS had treated him, not only in relation to the claims the subject of this appeal but also in relation to other benefits matters. He insisted that “the prison had [severely] messed up” and therefore “had to release me” but he accepted that he went to prison on 15 December 2021 and remained there until 24 December 2021). The claimant alleged bad faith on the part of the Department for Work and Pensions and said he was “instructing” the Upper Tribunal to strike out the Secretary of State’s appeal as an abuse of process. He did not engage with the point of law in respect of which I had given permission to appeal.

13. The Secretary of State responded to say that the grounds of appeal in the original application were relied upon.

14. Neither party requested an oral hearing and I decided that the interests of justice did not require an oral hearing.

The strike out application

15. The claimant’s application to strike out the proceedings lacks merit. The Secretary of State raised an error of law that was realistically arguable and I granted permission to appeal on that basis. The Secretary of State’s pursuit of an appeal on a point of law for which he has been granted permission is not an abuse of process. While the claimant has criticised the Secretary of State’s representative for misaddressing the application for permission to appeal, it appears that the address used was the latest address recorded on the claimant’s Universal Credit account. This is not a proper basis for alleging bad faith and abuse of process. The application for strike out is dismissed.

The relevant statutory provisions

16. 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 respectively in sections 4 and 5 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 the claimant is entitled, including a housing costs element (see section 11 of the WRA).

17. 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).

18. 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).”

19. 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".

20. 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."

21. In such cases, regulation 19(3) provides that "an award of universal credit is not to include any element other than the housing costs element."

22. 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...".

The First-tier Tribunal's Decision

23. The FtT Entitlement Decision proceeded on the basis that the phrase *"entitlement does not **arise**"* in section 6(1) of the WRA and regulation 19(1)(b) of the UC Regulations is limited to cases where a new claim is made by a person who is already a prisoner. However, the Tribunal found (in paragraph [10] of the its statement of reasons) that in the circumstances of this case *"[the claimant's] entitlement has already arisen and so the fact that he [became] a prisoner [had] no bearing on his **existing** UC entitlement"* (emphasis in original).

Why I allow this appeal

24. Regulation 19 of the UC Regulations was considered by Judge Wikeley in ***SSWP v AH*** [2023] UKUT 274 (***"AH"***). While the facts of ***AH*** can be distinguished from those in these appeals, what Judge Wikeley says about what the provision means is nonetheless relevant. In ***AH*** the claimant made a claim to Universal Credit on 17 August 2021. His claim included a claim to the housing costs element of Universal Credit. Shortly thereafter, within what would have been the first assessment period in respect of his claim, AH went to prison, where he remained for several months. The Secretary of State decided that AH was not entitled to Universal Credit, but that decision was set aside on appeal to the First-tier Tribunal, which awarded AH Universal Credit with the housing costs element only on the basis of its finding that on the day prior to AH going to prison he satisfied the conditions of entitlement to an award of Universal Credit with the housing costs element and so he was

"entitled to UC…immediately before becoming a prisoner" for the purposes of regulation 19(2)(a) of the UC Regulations.

25. The tribunal below's reading of regulation 19(1) as not applying to a claimant who had been awarded universal credit before becoming a prisoner was rejected by Judge Wikeley, who explained (at [30]):

> "The 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."

26. Judge Wikeley found that the First-tier Tribunal had erred in law because for an entitlement to Universal Credit to arise, the claimant had to have satisfied the conditions to entitlement for the **entirety** of an assessment period:

> "…in order to be paid UC 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 paragraph [27] of ***AH***)

27. While ***AH*** is distinguishable on its facts, Judge Wikeley's analysis of how regulation 19 operates is correct and applies equally to these appeals. I adopt it. It follows from the requirement that that the claimant must have had an "award" of Universal Credit that "includes the housing costs element" that regulation 19(1)(b) continues to be relevant in circumstances where a decision to award benefit has already been made (and notwithstanding the use of the word "arise" in regulation 19(1) of the UC Regulations and section 6(1) of the WRA).

28. While the claimant's award of Universal Credit was made long before he became a prisoner, he was not "entitled to universal credit as a single person **immediately before** becoming a prisoner" because his entitlement did not subsist for the entirety of the period 23 November 2021 to 22 December 2021. Rather, he ceased to be entitled to Universal Credit from 23 November 2021 (being the day after the end of the last assessment period for which he met the entitlement conditions for the entirety of the period).

29. The outcome for the claimant may well be seen as harsh: a very short period of imprisonment has resulted in the disallowance of his claim, but given the wording of regulation 19 (interpreted as explained above) and given the accepted position that the claimant entered prison after the date of his claim and remained in prison on the last day of what would have been his first assessment period, the claimant did not satisfy the conditions in regulation 19(1)(b) and so regulation 19(2) did not fall to be disapplied. This is an example of the legislator making a "bright line" rule for the legitimate purpose of managing the government's welfare bill, an area in which it enjoys a wide margin of appreciation.

30. I am satisfied that the First-tier Tribunal misdirected itself as to the proper test under regulation 19 of the UC Regulations, misapplied that provision and reached a decision it was not entitled to reach in allowing the appeal against the SoS Entitlement Appeal. That was in material error of law. The First-tier Tribunal's error

in the FtT Entitlement Decision led it into material error in reaching the FtT Overpayment Decision also.

Disposal

31. The interests of justice require me to exercise my discretion to set both the FtT Entitlement Decision and the FtT Overpayment Decision aside and to remake them as they should have been made.

Thomas Church

Judge of the Upper Tribunal

Authorised for issue on: 4 November 2026