

**IN THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

Appeal No. CUC/1617/2019

BEFORE JUDGE WEST

DECISION

The decision of the First-tier Tribunal sitting at Southampton dated 5 November 2018 under file reference SC266/18/00323 involves an error on a point of law. The appeal against that decision is allowed and the decision of the Tribunal is set aside.

The decision is remade.

The claimant is entitled to the limited capability for work related activity element as part of his universal credit award only from 6 December 2017 and not from the date of claim on 6 September 2017.

This decision is made under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

REASONS

Introduction

1. An appeal to the Upper Tribunal lies only on “any point of law arising from a decision” (section 11(1) of the Tribunals, Courts and Enforcement Act 2007), not on the facts of the case. The Upper Tribunal has a discretion to give permission to appeal if there is a realistic prospect that the First-tier Tribunal’s decision was erroneous in law or if there is some other good reason to do so (Lord Woolf MR in *Smith v. Cosworth Casting Processes Ltd* [1997] 1 WLR 1538). In the exercise of its discretion the Upper Tribunal may take into account whether any arguable error of law was material to the First-tier Tribunal’s decision.

2. This is an appeal, with the permission of District Tribunal Judge Brownhill, against the decision of the Tribunal sitting at Southampton on 5 November 2018.

3. The appellant is the Secretary of State for Work and Pensions. I shall refer to her hereafter as “the Secretary of State”. I shall refer to the respondent hereafter as “the claimant”. I shall refer to the tribunal which sat on 5 November 2018 as “the Tribunal”.

4. Prior to making his claim for universal credit, the claimant had been entitled to income support until 8 March 2016. He was awarded universal credit with effect from 6 September 2017. On 22 December 2017 he took part in a work capability assessment and was found to have limited capability for work and limited capability for work-related activity (pages 237 to 239). On 3 February 2018 a decision was made to supersede his award of universal credit, with the result that the universal credit award comprised the limited capability for work-related activity element from and including 6 December 2017 (pages 241 to 242). Two days later the claimant sought mandatory reconsideration of that decision, requesting that the limited capability for work-related activity element be backdated to 6 September 2017 (pages 243 to 254). The decision was reconsidered, but not revised, on 26 February 2018 (pages 275 to 280). On 5 March 2018 the claimant appealed against the decision of 3 February 2018 that he was entitled to the limited capability for work-related activity element of universal credit from and including 6 December 2017 (pages 202 to 210 with attachments). He contended that he satisfied the requirements of the regulation 22 of the Universal Credit (Transitional Provisions) Regulations 2014 so that the additional element should have been awarded from the date on which he made his universal credit claim on 6 September 2017.

5. The hearing of the claimant’s appeal before the Tribunal took place in Southampton on 5 November 2018. As a result of that hearing, the appeal was allowed and the decision made by the Secretary of State on 3 February 2018 was set aside. The claimant was entitled to receive the limited capability for work-related activity element of universal credit from and including 6 September 2017.

6. On the same date the Tribunal heard the claimant's appeal against a housing benefit decision under reference number SC266/18/00322. That appeal was successful and the decision made by the Secretary of State on 7 February 2018 was set aside. The claimant was entitled to receive a housing element of £263.01 in addition to the standard element of universal credit for the assessment period from and including 6 January 2018 to 5 February 2018. The sum of £263.01 was calculated as monthly rent for £400.00 multiplied by 12 and divided by 365 to give a daily rate of £13.15 for the period from 6 January 2018 to 5 February 2018. There was no appeal against that decision and it does not call for further comment, save to note that papers relevant to that appeal were mixed up with the instant appeal and that some confusion was engendered thereby, but I have now separated out the relevant sets of papers and am able to reach a conclusion in this appeal.

The Statement of Reasons

7. In the statement of reasons the Tribunal held as follows (I have anonymised the decision and taken the liberty of correcting certain minor typographical errors, but have not otherwise altered the text of the statement, although I note that paragraphs 6, 18 and 30 are more in the nature of headings than substantive paragraphs):

“1. [The claimant] was awarded Universal Credit (UC) with effect from 6.9.2017. After some initial alterations to his award the [Secretary of State] determined that his assessment period ended on the 5th of the month.

2. On 22.12.2017 [he] took part in a Work Capability Assessment and was found to have both Limited Capacity for Work (LCW) and Limited Capability for Work Related Activity (LCWRA).

3. On 3.2.2018 the [Secretary of State] superseded the earlier decision awarding [him] UC by adding the LCW and LWRA element of UC to his standard award from and including 6.12.2017.

4. [The claimant] was dissatisfied with that decision. He believed that the additional element should have been added with effect from 6.9.2017 and pursued the point vigorously in his mandatory reconsideration request, in a subsequent complaint to the DWP and in his letter of appeal to the Tribunal.

5. It would appear that [the claimant] is well versed in social security law and procedure or is receiving diligent assistance from someone who is. Sufficient to say at this stage that his principal ground of appeal relies upon the interpretation of two particular statutory provisions.

6. The competing arguments

7. In reaching its decision it is likely that the [Secretary of State] was applying Regulation 28 of the Universal Credit Regulations 2013 (the UC Regs). Reading sub-sections (1) and (2) together they provide “An award of UC is not to include the LWRA element until the beginning of the assessment period that follows the assessment period in which the relevant period ends. The relevant period is the period of three months beginning with (a) ... the date on which the claimant applies for the LCWRA element to be included in the award or (b) ... the first day on which the claimant provides evidence of their having limited capability for work...”.

8. [The claimant] has based his appeal on Regulation 22 of the Universal Credit (Transitional Provisions) Regulations 2014 (UCTP Regs). Paraphrasing this Regulation it provides that “ ... where an award of UC is made to a claimant who was entitled to income support on the grounds of incapacity or disability on the date that the claim for UC was made or treated as made ... (2)(a)(i) the claimant is to be treated as having LCW ... from the beginning of the first assessment period [and] (ii) Regulation 28 of the UC Regs does not apply and (iii) the LCW element is to be included in the award with effect from the beginning of the first assessment period”.

9. The Tribunal noted that this Regulation does not require there to have been a finding of LCW or LCWRA at the time that the Regulation is applied. It is sufficient that one of the reasons for the prior award of income support (IS) was that the claimant was disabled.

10. [The claimant] referred to Regulation 22 in his request for mandatory reconsideration. The author of the subsequent decision (which confirmed the original decision) wrote “I acknowledge that you were previously claiming IS however this claim was closed on 22.3.2016. At the time of your benefit being closed you had no entitlement due to being indisposed”.

11. The delicate reference to [the claimant] “being indisposed” referred to the fact that he was serving a sentence of

imprisonment which appears to have begun on or before 22.3.2016 and ended with his release from prison on 6.9.2017.

12. The seemingly indefatigable [claimant] responded that his entitlement to benefits was suspended during his term of imprisonment but not extinguished.

13. Which benefits was [the claimant] entitled to before he was imprisoned?

14. The documents attached to [his] letter of appeal include a scanned copy of what appears to be an uprating letter showing [his] entitlement to Income Support (IS) with effect from 15.4.2016. The actual date of the letter is not clear but it is headed by [the claimant's] name and national insurance number. The Tribunal was willing to accept that copy shown in the papers was a faithful copy of the original.

15. The letter indicated that [his] IS award was made up of his personal allowance together with a disability premium, severe disability premium and carers' premium.

16. In order to be entitled to the disability premium it would have been necessary for [the claimant] to have been in receipt of a personal independence payment (PIP) at that time.

17. In order to be entitled to the severe disability premium it would have been necessary for [him] to have been in receipt of the daily living component of PIP at the standard or enhanced rate at that time. As can be seen from paragraph 19 of this statement [the claimant] had been in receipt of PIP at the standard rate since 13.5.2013.

18. Award of PIP

19. At the hearing of this appeal [the claimant] provided the tribunal with a copy of a decision notice made by another Tribunal on 17.7.2015 which overturned a decision of the [Secretary of State] by awarding [him] both the daily living and mobility components of PIP each at the standard rate. Although there is a question as to the intended duration of this award it is clear that it remained effective at the commencement of [his] term of imprisonment.

20. The decision notice dated 17.7.2015 expressed the duration of the award of each component as being from 13.5.2013 to 12.5.2017 at paragraphs 3 and 5 of the decision. However paragraph 11 of the notice stated that the award was intended to run until 11.12.2017.

21. The date of expiry of the award of PIP could be significant to the success of [his] submission since, if the award expired before he was released from prison, it might prejudice his claim by removing the disability and severe disability premiums from any award of IS which was effective immediately before he made his claim for UC.

22. The Tribunal checked the electronic record of the earlier appeal before the hearing and noted that the decision of 17.7.2015 was subsequently corrected to remove the reference to 11.12.2017 and it also noted that the [Secretary of State] did not believe that there was an award of PIP in force when [the claimant] claimed UC.

23. However, the extensive papers copied by [the claimant] included a copy of a letter from the DWP dated 6.8.2017 and addressed to [him] in HM Prison Winchester and which begins “We’re writing to remind you that your Personal Independence Payment will end on 12.11.2017...” and alerting him to the need to renew his claim if he wished to continue to receive that benefit.

24. The Tribunal chose to accept the copy of the letter dated 6.8.2017 at face value even though [he] was unable to provide the original letter from his file and notwithstanding the information in paragraph 22 above. The Tribunal chose not to adjourn the appeal to investigate this issue further because it considered that any prejudice to the [Secretary of State] could be easily corrected. If the evidence relied on to prove this material fact should prove to be inaccurate [she] has the option of superseding this Tribunal’s decision rather than appealing it further.

25. What happened to [the claimant’s] benefits while he was imprisoned?

26. Section 87 of the Welfare Reform Act 2012 provides that “No amount in respect of PIP is payable in respect of a person for a period during which the person is undergoing imprisonment”. The legislation does not speak of the award being terminated in the event of imprisonment but instead prohibits payment during the term of imprisonment.

27. The legislation relating to IS deals with the issue by focussing on the payment of benefit rather than the question of underlying entitlement. The combined effect of Regulation 21(1) and Schedule 7 of the Income Support (General) Regulations 1987 is to substitute ‘NIL’ for the amount of IS

that he would otherwise have been entitled to receive. Again there is nothing to suggest that the claim is extinguished.

28. Section 113 of the Social Security Contributions Act 1992 states that a person shall be disqualified from receiving any benefit for any period during which the person is undergoing imprisonment. This section applies to a wide range of contributory and non-contributory benefits. Its operation is described in a decision of Mr Commissioner Howell in the case reported as *CDLA/1930/2004*. The Commissioner makes it clear that a person's rights to the benefits referred to in that section are only suspended during imprisonment and can be revived on request once the prisoner has been released.

29. Although section 113 does not extend to IS it appears to show a consistency of policy relating to imprisonment in respect of all the commonly encountered benefits, namely, that while payment is suspended during imprisonment the prisoner retains underlying entitlement to benefits that had previously been awarded. In [the claimant's] case this meant that although no amount could be paid to him while he was in custody he retained entitlement to both PIP and IS which remained dormant until such time as he was released from custody at which point entitlement was revived.

30. Conclusion

31. Returning to Regulation 22 of the UCTP Regulations the Tribunal considered that but for the fact that [the claimant] had given an address in a full service area as his address on release from prison he would have been entitled to receive IS from 6.9.2017 which included the disability and severe disability premiums.

32. As such his circumstances met the requirements of Regulation 22 and he was entitled to receive the LCW element of UC with effect from the beginning of the first assessment period namely the period beginning on 6.9.2017.”

The Application for Permission to Appeal

8. The Secretary of State sought permission to appeal against the decision of the Tribunal on 22 February 2019, although it is misdated 22 January 2019 (pages 134 to 137). The application by the Secretary of State for permission to appeal against the decision of the Tribunal was granted by District Tribunal Judge Brownhill on 18 March 2019 (pages 174 to 176). The Secretary of State's case was that the claimant

was only entitled to the limited capability for work-related activity element of universal credit from and including 6 December 2017.

9. The decision of the District Tribunal Judge granting permission to appeal was issued to the parties on 29 March 2019. The Secretary of State completed the notification of the grant of permission to appeal to the Upper Tribunal in form UT2 on 24 July 2019 and sent it by email that day, but under rule 23(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 it ought to have been received by 29 April 2019. The notification of the grant of permission to appeal was therefore submitted almost 3 months out of time. The Secretary of State asserted, however, that the Department did not receive notification that permission had been granted until 19 July 2019 as a result of a request for an update on the status of the appeal to HMCTS on the same date (see attachment 4 to the form UT2). She was unable to explain how or why the notification was not received at the appropriate office, but nevertheless sought acceptance of the late submission.

10. In a submission dated 29 July 2019, the claimant submitted that the appeal should be dismissed amongst other reasons because the notice of appeal was submitted out of time.

11. Given, however, that the delay in submitting the application for permission to appeal might have been due to loss in the postal system, that permission to appeal had already been granted, that the points sought to be argued in the appeal were ones of general importance relating to inter alia s.113 of the Social Security Contributions and Benefits Act 1992, the decision in *CDLA/1930/2004* and regulation 22 of the Universal Credit (Transitional Provisions) Regulations 2014 and applying the overriding objective, on 10 September 2019 I was satisfied that it was in the interests of justice to extend time for lodging the notice of appeal under rule 5(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to 24 July 2019. I therefore extended time for the submission of the notice of appeal and made further directions for the conduct of the appeal. Amongst his other arguments the claimant still contends that that decision was wrong and that time should not have been extended. It now appears that the Department may have had notification of the grant of permission to

appeal on or about 26 June 2019 (page 286). I am, however, satisfied for the other and more substantive reasons which I originally gave that time was properly extended in the circumstances of this case. In any event, I am now seised of the substantive appeal and will determine it on its merits given its general importance.

12. The time for lodging the notice of the grant of permission to appeal by the Secretary of State was therefore extended to 24 July 2019. I directed that the notice of appeal and the attachments numbered 1-6 appended to the form UT2 dated 24 July 2019 were to be paginated, circulated to the parties and added to the appeal bundle, as was the claimant's email dated 29 July 2019.

13. At that stage it appeared that no hearing papers relating to the appeal in SC266/18/00323 could be produced by HMCTS. I therefore directed that the Secretary of State had one month in which to produce the decision maker's response to the appeal in SC266/18/00323 and the schedule of evidence thereto, beginning with the date on which the directions were sent to the parties by the Upper Tribunal. Those documents were also to be paginated, circulated to the parties and added to the appeal bundle.

14. The claimant was given one month in which to make any further response to the appeal, beginning with the date when the Upper Tribunal sent to the parties the relevant documents produced pursuant to the direction in paragraph 11 above. The Secretary of State had one month after the date on which the response was sent to her in which to reply. That reply was to deal with matters raised by the claimant on 14 March 2019, 29 July 2019 and any additional matters raised by him in any further response.

15. On 30 October 2019 the Secretary of State responded with the additional documentation required from SC266/18/00323 (which were in fact still extant). The claimant replied to the Secretary of State's submission on 28 November 2019, but did not support the appeal. The Secretary of State replied to that submission on 3 February 2020.

16. The submissions also raised a discrete issue about whether the claimant should or should not have been directed to claim universal credit or whether he was in fact still able to claim or be awarded income support.

17. Neither party sought an oral hearing of the appeal and I do not consider that it is necessary to hold one in order to decide the matter.

The Issues

18. The following issues accordingly arise for decision:

(i) notwithstanding his claim for universal credit and his subsequent award, would the claimant in fact have been able to claim or be awarded income support?

(ii) was the claimant entitled to income support as a person incapable of work or by virtue of disability at the material time of claiming universal credit on 6 September 2017 so as to engage regulation 22 of the Universal Credit (Transitional Provisions) Regulations 2014 (“the 2014 TP Regulations”)?

(iii) if the claimant was entitled to income support as a person incapable of work or by virtue of disability at the material time of claiming universal credit on 6 September 2017 so as to engage regulation 22 of the 2014 TP Regulations, was he entitled to benefit from regulation 22 and be awarded the limited capability for work-related activity from 6 September 2017 because his entitlement to income support was merely suspended for the duration of his imprisonment and revived on his release on 6 September 2017 or did his entitlement to income support altogether cease when he became a prisoner in March 2016?

(iv) have the claimant’s human rights been violated on the basis that he has been discriminated against by virtue of his disability?

19. The claimant has pursued a number of complaints about maladministration relating to the handling of his claims, including failures to give advice and erroneous advice given to him both when he was in prison and thereafter, but they are outside

the ambit of this decision which is solely concerned with the question of whether the decision of the Tribunal on 5 November 2018 was or was not erroneous in law.

The Legislative Framework

20. So far as material, the Universal Credit Regulations 2013 (“the 2013 Regulations”) provide that

“28(1) An award of universal credit is not to include the LCW or 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”.

21. Again so far as material, the Universal Credit (Transitional Provisions) Regulations 2014 (“the 2014 TP Regulations”) provide that

“Transition from income support payable on the grounds of incapacity for work or disability

22(1) This regulation applies where an award of universal credit is made to a claimant who was entitled to income support on the grounds of incapacity for work or disability on the date on which the claim for universal credit was made or treated as made.

(2) Where this regulation applies—

(a) if it is determined in accordance with Part 5 of the Universal Credit Regulations that the claimant has limited capability for work—

(i) the claimant is to be treated as having had limited capability for work for the purposes of regulation 27(1)(a) of the Universal Credit Regulations (award to include LCW and LCWRA elements) from the beginning of the first assessment period;

(ii) regulation 28 of those Regulations (period for which the LCW or LCWRA element is not to be included) does not apply; and

(iii) the LCW element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award with effect from the beginning of the first assessment period.

(b) if it is determined in accordance with Part 5 of the Universal Credit Regulations that the claimant has limited capability for work and work-related activity—

(i) the claimant is to be treated as having had limited capability for work and work-related activity for the purposes of regulation 27(1)(b) of the Universal Credit Regulations from the beginning of the first assessment period;

(ii) regulation 28 of those Regulations does not apply; and

(iii) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period.

(3) In this regulation—

“income support on the grounds of incapacity for work or disability” means an award of income support which is an “existing award” within the meaning of Schedule 4 to the 2007 Act”.

22. Schedule 4 of the Welfare Reform Act 2007 (“the 2007 Act”), so far as material, provides that

“11 In this Schedule—

...

“existing award” means—

- (a) an award of incapacity benefit,
- (b) an award of severe disablement allowance, and
- (c) an award of income support made to a person to whom regulation 6(4)(a) or 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, the Income Support (General) Regulations 1987 (S.I. 1987/1967) (persons incapable of work or disabled) applies”.

23. S.113 of the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) provides that

“General provisions as to disqualification and suspension

(1) Except where regulations otherwise provide, a person shall be disqualified for receiving any benefit under Parts II to V of this Act, and an increase of such benefit shall not be payable in respect of any person as the beneficiary’s wife or husband, for any period during which the person—

- (a) is absent from Great Britain; or
- (b) is undergoing imprisonment or detention in legal custody.

(2) Regulations may provide for suspending payment of such benefit to a person during any period in which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution.

(3) Regulations may provide for a person who would be entitled to any such benefit but for the operation of any provision of this Act or the Administration Act to be treated as if entitled to it for the purposes of any rights or obligations (whether his own or another’s) which depend on his entitlement, other than the right to payment of the benefit”.

24. S.87 of the Welfare Reform Act 2012 (“the 2012 Act”) provides that

“Prisoners and detainees

87 Except to the extent that regulations provide otherwise, no amount in respect of personal independence payment is payable in respect of a person for a period during which the

person is undergoing imprisonment or detention in legal custody”.

25. So far as material, the Income Support (General) Regulations 1987 (“the 1987 Regulations”) provide that

“21(1) Subject to paragraph (1B), regulation 21ZB (treatment of refugees) and regulation 22A (reductions in applicable amounts) in the case of a person to whom any paragraph in column (1) of Schedule 7 applies (applicable amounts in special cases), the amount included in the claimant’s weekly amount in respect of him shall be the amount prescribed in the corresponding paragraph in column (2) of that Schedule

...

(3) In Schedule 7

“prisoner” means a person who–

(a) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or

(b) is on temporary release in accordance with the provisions of the Prison Act 1952 or the Prisons (Scotland) Act 1989

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983, or, in Scotland, under the provisions of the Mental Health (Scotland) Act 1984 or the Criminal Procedure (Scotland) Act 1995

SCHEDULE 7

APPLICABLE AMOUNTS IN SPECIAL CASES

Column (1)

Column (2)

Prisoners

8. A person

(a) except where sub-paragraph (b) applies, who is a prisoner;

(a) Nil

(b) who is detained in custody pending trial or sentence following conviction by a court

(b) only such amount, if any, as may be applicable under regulation 17(1)(e)”.

A Preliminary Issue

26. Like the Tribunal, I am content to proceed to determine this appeal on the basis that the letter of 6 August 2017 should be accepted at face value (paragraph 24 of the statement of reasons), even though the claimant was unable to provide the original letter from his file and notwithstanding the investigation referred to in paragraph 22 of its statement of reasons. For the purposes of this appeal I shall regard the claimant's entitlement to personal independence payment (both the daily living component and the mobility component at the standard rate) as running from 13 May 2013 to 11 December 2017 rather than from 13 May 2013 to 12 May 2017.

The First Issue

27. The claimant asserted that universal credit had not been rolled out in the area in which he was residing at the time in Chichester when he made his claim for universal credit on 6 September 2017 (page 166). I am, however, satisfied for the reasons relied on by the Secretary of State that assertion is not in fact correct.

28. The postal area in which he was residing at the time (which was identified for universal credit purposes as the "number 56 relevant district") became a "live service" area on 12 October 2015 by virtue of the Welfare Reform Act 2012 (Commencement No. 24 and Transitional and Transitory Provisions and Commencement No. 9 and Transitional and Transitory Provisions (Amendment)) Order 2015 (SI 2015/1537). That meant that the claimant would have been able to claim universal credit in the area of Fishbourne, provided that he was able to satisfy the "gateway conditions" in force at the time for universal credit live service areas.

29. The relevant postal area later became a "full service" universal credit area on 4 July 2018 by virtue of the Welfare Reform Act 2012 (Commencement No. 17, 19, 22, 23 and 24 and Transitional and Transitory Provisions (Modification)) Order 2018 (SI 2018/532) (see the seventh box on page 901 of the *Social Security Legislation 2019/20, vol. 5: Universal Credit*). When a live service area became a full service area, there were no longer any gateway conditions for a claimant to have to satisfy. Had the claimant entered his address in Chichester when he made his universal credit claim, he would have been presented with gateway questions and may or may not

have been entitled to universal credit depending on the answers which he gave to those questions.

30. However, the *postal* address in Southampton which the claimant *in fact* provided when he originally made his claim for universal credit (page 234) had *already* become a full service area on 22 February 2017 by virtue of the Welfare Reform Act 2012 (Commencement No. 11, 13, 16, 22, 23 and 24 and Transitional and Transitory Provisions (Modification)) Order 2017 (SI 2017/57) (Schedule Part 13: *op.cit.*, page 839). The effect of that order was that when he made his universal credit claim and provided the Southampton postcode as his address, he did not need to satisfy any gateway conditions and his claim for universal credit was subsequently accepted since he also satisfied the conditions for entitlement to universal credit.

31. Notwithstanding this, article 3A of the Welfare Reform Act 2012 (Commencement No. 9 and Transitional and Transitory Provisions and Commencement No. 8 and Saving and Transitional Provisions (Amendment)) Order 2013 (SI 2013/983) provides that where incorrect information is provided by a claimant concerning his residence in a relevant district or whether he met the gateway conditions, he would remain entitled to universal credit if a decision had been made on the claim and one or more payments of universal credit had been made in respect of him.

32. Applying those provisions to the claimant's circumstances, the fact that he was not residing in a full service area, but was instead residing in a live service area when he made his claim for universal credit, does not alter the fact that (a) the postal address in Southampton which he claimant had in fact provided when he originally made his claim for universal credit had already become a full service area (b) a decision had been made on the claim and (c) one or more payments of universal credit had been made in respect of him. Thus, following his claim for universal credit having been accepted and payment having been made to him in respect thereof, he would not have been able to claim (or to be awarded) income support by virtue of regulations 5 and 6 of the 2014 TP Regulations.

33. I am therefore satisfied that, given that his original claim for universal credit and his subsequent award which had already been adjudicated upon and which had started to be paid, the claimant would not in fact have been able to claim (or be awarded) income support, contrary to his submission.

The Second Issue

34. It is apparent that the claimant's income support award as at the date of his imprisonment was made up of his personal allowance together with a disability premium, a severe disability premium and a carer's premium (page 159).

35. In order to be awarded the disability premium he would have had to be in receipt of personal independence payment at that time. In order to be awarded the severe disability premium he would have had to be in receipt of the daily living component of personal independence payment at either the standard or the enhanced rate at that time. On the basis of the assumption which I have made in paragraph 26 the claimant was entitled to both the disability premium and the severe disability premium as at the date when he first applied for universal credit on 6 September 2017.

36. However, for the transitional provisions of the 2014 TP Regulations to apply, the award of universal credit must be made to a claimant who was entitled to income support *on the grounds of incapacity for work or disability* on the date on which the claim for universal credit was made or treated as made. By regulation 22(3) those grounds are not freestanding and must be construed on the basis that "income support on the grounds of incapacity for work or disability" means an award of income support which is an "existing award" within the meaning of Schedule 4 to the 2007 Act".

37. An existing award within the meaning of paragraph 11 of Schedule 4 of the 2007 Act is an award of income support made to a person to whom regulation 6(4)(a) or 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, the 1987 Regulations (SI 1987/1967) (persons incapable of work or disabled) applies.

38. It is apparent that the claimant's original award of income support from 2008 was made on the basis that he was paid carer's allowance (the letter at page 156 refers to a specific disallowance of carer's allowance from 22 November 2008 to 21 December 2008, but the extract from the letter overleaf at page 157 makes it clear that the award of income support from 18 December 2008 to 8 April 2009 was based on the fact that he was caring for his daughter). His entitlement to the disability premium and the severe disability premium arose from his *subsequent* award of personal independence payment, but they were not part of the original award in 2008. As the claimant himself put it (at page 158)

“I was on Income Support before I received PIP and the Disability Premiums were added after I started receiving PIP”.

39. As to the recipients of an existing award within the meaning of paragraph 11 of Schedule 4 of the 2007 Act

(i) regulation 6(4)(a) applied to a person who was not to be treated as being engaged in remunerative work if he was mentally or physically disabled and by reason of that disability – (i) his earnings were reduced to 75% or less of what a person without that disability and working the same number of hours would reasonably be expected to earn in that employment or in comparable employment in the area or (ii) his number of hours of work were 75% or less of what a person without that disability would reasonably be expected to undertake in that employment or in comparable employment in the area

(ii) regulation 13(2)(b) applied to children and qualifying young persons in relevant education

(iii) regulation 13(2)(bb) also applied to children and qualifying young persons in relevant education

and as to Schedule 1B to the 1987 Regulations

(iv) paragraph 7(a) applied to persons who were incapable of work under the 1992 Act

(v) paragraph 7(b) applied to persons who were treated as being incapable of work under the 1992 Act

(vi) paragraph 10 applied to disabled students

(vii) paragraph 12 applied to deaf students

(viii) paragraph 13 applied to blind persons.

40. None of these provisions applied to the claimant. It is therefore apparent that the claimant was not in receipt of an existing award within the meaning of paragraph 11 of Schedule 4 of the 2007 Act and consequently he was not in receipt of income support on the grounds of incapacity for work or disability on the date on which the claim for universal credit was made or treated as made.

41. That he may also have been in receipt of disability premium and severe disability premium by virtue of his award of personal independence payment does not avail him; the requirement under regulation 22 of the 2014 TP Regulations is the receipt of *income support on the grounds of incapacity for work or disability* on the date on which the claim for universal credit was made or treated as made.

42. I am therefore satisfied that the second issue is to be determined in favour of the Secretary of State.

The Third Issue

43. The claimant submitted that he was entitled to benefit from regulation 22 and be awarded the limited capability for work-related activity from 6 September 2017 because his entitlement to income support was merely suspended for the duration of his imprisonment and revived on his release on 6 September 2017. He argued that his entitlement to income support did not altogether cease when he became a prisoner on 6 March 2016. In support of that contention he relied on s.113 of the 1992 Act and the decision of Mr Commissioner Howell QC in *CDLA/1930/2004*. He also relied on paragraph 29 of the decision of the Tribunal that

“Although section 113 does not extend to IS it appears to show a consistency of policy relating to imprisonment in

respect of all the commonly encountered benefits, namely, that while payment is suspended during imprisonment the prisoner retains underlying entitlement to benefits that had previously been awarded. In [the claimant's] case that meant that although no amount could be paid to him while he was in custody he remained entitled to both PIP and IS which remained dormant until such time as he was released from custody at which point entitlement was revised”.

44. The Tribunal Judge had concluded that the legislation dealt with the issue by focussing on payment of benefit rather than the question of underlying entitlement and that, although the combined effect of regulation 21(1) and Schedule 7 of the 1987 Regulations was to substitute “nil” for the amount of income support which a claimant would otherwise be entitled to receive, there was nothing to suggest that the claim was extinguished.

45. He had not, however had cited to him the decision in *R(IS) 1/94* and *R(IS) 2/95* which make it clear that it is the *underlying entitlement* to income support which is extinguished, not merely suspended, by imprisonment.

46. In *R(IS) 1/94* the claimant's income support included a transitional addition, but no housing costs. In March 1989 he was charged with a criminal offence (threatening to kill a named person) and was remanded in custody for 5½ weeks. Before the matter came to trial the proceedings were discontinued. The adjudication officer decided that he was no longer entitled to the transitional addition under regulation 14(2)(a)(i) of the Income Support (Transitional) Regulations. This was because his income support entitlement had ceased while he was held in custody on remand. The appeal tribunal upheld the adjudication officer's decision.

47. The Commissioner, Mr Hoolahan QC, disallowed the appeal and held that a person is detained in custody pending trial once he has been charged and notwithstanding that the mode of trial has not been decided. It does not matter that the proceedings are discontinued before trial and in fact no trial takes place. For the period he was in custody the claimant was a “prisoner” within regulation 21(3) of the Income Support (General) Regulations. His applicable amount was nil under paragraph 8(b) of Schedule 7 to those regulations. Accordingly, he ceased to be

entitled to a transitional addition under regulation 14(2)(a)(i) of the Income Support (Transitional) Regulations.

48. The Commissioner said

“16. I appreciate that the claimant feels considerably aggrieved. He says that there was no good reason for the proceedings as is shown by the fact that they were discontinued against him and that not only did he suffer 5½ weeks on remand in prison but under the decision of the appeal tribunal he has also suffered the loss of the transitional addition. In other words, he suffered a loss of liberty and now a financial loss and that is very unfair. I full sympathise with him. However, I am bound by the regulations and have no discretion in the matter. I have given the matter very careful thought and have come to the conclusion, albeit reluctantly, that the claimant was detained in custody pending trial. He was, therefore, a person who was “detained in custody pending trial” within the meaning of paragraph 8(b) of Schedule 7 and his applicable amount was nil, because, for the reasons given above, he was not entitled to any housing costs. It follows that he ceased to be entitled to income support “for a reason other than that his applicable amount does not exceed his income” and he ceased to be entitled to the transitional addition: regulation 14(2)(a)(i) of the Income Support (Transitional) Regulations. It follows that the social security appeal tribunal came to a correct decision and there was no error of law therein.”

49. Mr Commissioner Rice reached the same decision in *R(IS) 2/95*. In that case the claimant had income support which included a transitional addition and a special transitional addition. In November 1989 he was sentenced to a term of imprisonment. On appeal probation was substituted. He was released on 10 April 1990 and income support was awarded from that date. The adjudication officer refused to reinstate the transitional additions and the appeal tribunal upheld that decision.

50. The Commissioner held that under Schedule 7 of the 1987 Regulations the claimant’s applicable amount as a prisoner was nil and as such he was not entitled to income support. He was not entitled to the transitional additions and could not have them reinstated as of 10 April 1990. In paragraphs 5 and 6 of that case he said (the emphasis is in the original):

“5. ... In the present case, the claimant was a prisoner ..., and as a result his applicable amount was nil. And if he was entitled to nothing, I do not see how he was entitled to income support (see section 124(1)(b) of the Social Security 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 Transitional Regulations ... That provision reads as follows:

“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. If the applicable amount is also nil, it can never exceed the claimant’s income, even if his income is also nil. The implication must be that, where the applicable amount is insufficient to give rise to an award, there is no entitlement to income support.”

51. Although I am not technically bound by those decisions, as a matter of judicial comity a judge should generally follow a decision of a court or tribunal of co-ordinate jurisdiction unless there is a powerful reason for not doing so. Albeit that the case of *R (Jollah) v. Home Secretary* [2017] EWHC 330 (Admin) was decided in the High Court, the principles there reiterated are of equal application to the Upper Tribunal. In that case Lewis J had to consider whether the imposition of an unlawful curfew pursuant to paragraph 2(5) of Schedule 3 to the Immigration Act 1971 constituted the tort of false imprisonment. He held that it did and followed the decision on the point of Edis J in an earlier case. In the course of his judgment Lewis J that:

“45. The starting point is that Edis J, sitting as a judge of the High Court, has held that a restriction comprising a

requirement that a person stay at a specified address for a specified number of hours a day, where failure to comply without reasonable excuse amounted to a criminal offence, does constitute the element of detention for the purpose of the tort of false imprisonment. That judgment has not been the subject of detailed consideration by the Court of Appeal.

46. A judgment of a judge of the High Court is not binding on another judge of the High Court but that judge will follow the earlier decision unless he or she is convinced that it is wrong: see *R v Manchester Coroner ex p. Tal* [1985] 1 QB 67 at 81A-C and *Police Authority for Huddersfield v Watson* [1947] 1 KB 842 at 848. The Privy Council has observed that High Court judges are not technically bound by decisions of other High Court judges "but they should generally follow a decision of a court of co-ordinate jurisdiction unless there is a powerful reason for not doing so" (see paragraph 9 of the judgment of the Privy Council in *Willers v Joyce (No. 2)* [2016] 3 WLR 534). Such principles contribute to coherence and certainty within the legal system. They are likely to contribute to efficient and more cost-effective use of resources as the same point will not normally be re-argued at length and cost before different High Court judges.

47. Applying those principles here, I am not convinced that the judgment of Edis J was wrong, nor has any powerful reason been advanced to justify this court not following that judgment."

52. Accordingly he followed the decision of Edis J and proceeded on the basis that the restriction imposed in that case, requiring the claimant to spend eight hours a day in a particular place, that restriction being reinforced by criminal sanctions and electronic monitoring, did amount to a detention for the purposes of the tort of false imprisonment. Similarly here, I am not convinced that the decisions of Mr Commissioner Hoolahan QC and Mr Commissioner Rice on the question of the extinctive effect of the 1987 Regulations were wrong, nor has any powerful reason been advanced to justify me not following those decisions.

53. I am in any event satisfied that those cases were correctly decided on the construction of the income support legislation and that on that question they are not distinguishable. I am therefore also satisfied that the Tribunal was wrong to conclude as it did in paragraph 27 of its statement of reasons that the legislation relating to

income support dealt with the issue by focussing on the payment of benefit rather than the question of underlying entitlement.

The Decision in CDLA/1930/2004

54. In *CDLA/1930/2004* Mr Commissioner Howell QC (as he then was) said that

“3. Under section 113 **Social Security Contributions and Benefits Act 1992** a person in that position is disqualified while actually undergoing his sentence of imprisonment from receiving the benefit to which he is otherwise entitled. The entitlement itself however is not forfeited, and unless some other change or event occurs to justify its removal, the right to receive benefit under the life award ought simply to revive when the term of imprisonment ends without any need for a fresh claim or a medical assessment.

4. In fact this was not treated as such a case, even though according to the claimant’s recollection all he did was surrender his payment book in accordance with the standard instructions when he went into prison, and ring up saying he wanted to start getting his benefits again when he came out in 2003. Such departmental records as now survive appear to show his entire *entitlement* as having been terminated, not just payment suspended, with effect from 16 June 2000. When his telephoned request for the restoration of his benefit was received on 10 February 2003, he was therefore treated as a fresh claimant and sent a completely new claim form to fill in.

...

6. ... Despite taking detailed evidence from the claimant himself and the lady who cares for him and assists him when he goes out, the tribunal rejected his appeal and confirmed the award of only the care component for a limited period. The tribunal expressly recorded that in reaching this decision they had approached the appeal as one entirely relating to a fresh claim, saying:

“[the claimant’s] mobility component had correctly previously been terminated due to him serving a period of imprisonment. The appeal therefore *[sic]* relates to a new claim with the decision date of 13 June 2003 being the subject of this appeal.”

7. The significance of that is that on such a fresh claim it would have been for the claimant to show the tribunal on the new evidence that he did affirmatively meet the conditions for entitlement and not the other way round, and there is no doubt from the terms of the tribunal’s decision and statement of

reasons sent to the parties on 14 March 2004 at pages 154-155 that this was the way the tribunal did approach it ...

8. There is in my judgment no doubt that ... the tribunal did misdirect themselves on the effect of the claimant's period of imprisonment when referring to the question of his previous entitlement in the passage quoted above. If the period of imprisonment itself was the only thing that had happened to affect his previous benefit under the life award as the tribunal appears to suggest, then it could not have been “correct” in terms of section 113 cited above for the benefit entitlement itself to have been “terminated” as the tribunal stated. All that could lawfully have happened would have been the suspension of payment of the claimant’s benefit for the period while he was in prison and temporarily disqualified from receiving it. In making that incorrect premise the basis for going on to determine the appeal before them as one on a fresh claim the claimant had been lawfully obliged to make, the tribunal in my judgment erred in law by failing to establish that there was a proper legal basis for the Secretary of State's decision they purported to confirm. For that reason, I set their decision aside.”

55. However, that was a decision on the interpretation of s.113 of the 1992 Act which provides that

“(1) ... a person shall be disqualified for receiving any benefit *under Parts II to V of this Act*, and an increase of such benefit shall not be payable in respect of any person as the beneficiary’s wife or husband, for any period during which the person—

...

(b) is undergoing imprisonment or detention in legal custody”.

56. Eligibility for income support arises under Part VII of the 1992 Act, not Parts II to V and s.113 is of no application to it. The purported reliance on the decision of Mr Commissioner Howell QC is therefore misplaced.

57. I am therefore satisfied that the Tribunal fell into error when it held that there is a consistent policy relating to imprisonment in respect of all of the commonly encountered benefits, namely that, while payment of the benefit is suspended during imprisonment, the prisoner retains the underlying entitlement to benefits which had previously been awarded. There is no such general policy, as the treatment of income

support demonstrates. In the case of certain benefits, while payment of the benefit is suspended during imprisonment, the prisoner nevertheless retains the underlying entitlement to benefits which had previously been awarded. In at least one other case, that of income support, the prisoner's underlying entitlement to benefit which had previously been awarded is altogether extinguished.

58. On the one hand, there are provisions such as s.113 of the 1992 Act (a person shall be disqualified from *receiving* any benefit for any period during which he person is undergoing imprisonment or detention in legal custody) and s.87 of the 2012 Act (no amount in respect of personal independence payment is *payable* in respect of a person for a period during which he is undergoing imprisonment or detention in legal custody). Their effect is purely suspensory. On the other hand, there are provisions such as the 1987 Regulations (reducing the applicable amount to nil so that if the claimant is entitled to nothing, he is no longer entitled to income support) which are extinctive in effect.

59. Although s.87 of the 2012 Act also has suspensory, rather than extinctive, effect in relation to personal independence payment, that does not avail the claimant here since it is the entitlement to income support, not personal independence payment, which triggers the effect of regulation 22 of the 2014 TP Regulations.

60. Thus the claimant did not fall within the ambit of regulation 22 of the 2014 TP Regulations. It did not apply since an award of universal credit was not made to a claimant who was entitled to income support on the grounds of incapacity for work or disability on the date on which the claim for universal credit was made or treated as made. Moreover, even if he had previously been entitled to income support on the grounds of incapacity for work or disability prior to his imprisonment, he was no longer so entitled once his term of imprisonment had commenced. His underlying entitlement ceased; it was not merely suspended during the term of his imprisonment. He was not therefore to be treated as having had limited capability for work and work-related activity from the beginning of the first assessment period; regulation 28 of the 2013 Regulations did apply and the limited capability for work-related activity

element was not to be included in the award of universal credit with effect from the beginning of the first assessment period.

The Fourth Issue

61. The claimant's final argument was that his human rights had been violated on the basis that he had been discriminated against by virtue of his disability.

62. However, as I have explained above, the claimant ceased to be entitled to income support when he became a prisoner. The consequence of the ending of that entitlement was that he was not within the ambit of regulation 22 of the 2014 TP Regulations when he claimed universal credit.

63. The consequence of falling outside the ambit of regulation 22 was that he had to serve the relevant period in accordance with regulation 28 of the 2013 Regulations in order to be awarded the limited capability for work-related activity element as part of his universal credit award. The relevant legislation would, however, have been applied to another individual with the same circumstances as the claimant, so that there was no discrimination against him on the ground of disability. He ceased to be entitled to disability premiums, such as severe disability premium, because he ceased to be entitled to income support.

64. The reality is that the claimant ceased to be entitled to income support, not because he was disabled, but because he was sentenced to a term of imprisonment and served a period of time as a prisoner. The consequence of the imprisonment was that his entitlement to income support was not merely suspended, but actually extinguished.

R (TP and AR) v. Secretary of State for Work and Pensions

65. The claimant sought to rely on the decision of Lewis J in *R (TP and AR) v. Secretary of State for Work and Pensions* [2018] EWHC 1474 (Admin) in support of this submissions, but I do not see that that decision is in fact of assistance to him.

66. The facts of that case were very different from this, as Lewis J explained:

“1. These are two claims challenging aspects of the regulations creating and implementing the system of universal credit, which is intended to replace the existing system of welfare benefits. The claimants are both individuals who, under the previous system governing welfare benefits, had been in receipt of an income related employment and support allowance ("the basic allowance"). In addition, as they met certain additional criteria, they had been in receipt of certain additional premiums (known as Severely Disability Premium ("SDP") and Enhanced Disability Premium ("EDP")).

2. On moving to a new local housing authority area, the claimants had to apply for universal credit which replaced both housing benefit and the former income related benefits (including the basic allowance, and SDP and EDP) which the claimants had been receiving. The amount of the standard allowance payable as part of universal credit was higher than the basic allowance formerly payable but as universal credit does not include the additional disability premiums (the SDP and EDP) the total cash payment received by way of income related support under universal credit was less than the income related support that the claimants had been receiving under the former system. The claimants received over £170 a month less as a result of the transfer to universal credit.

3. The claimants contend that the way in which the system of universal credit is constructed, in that it does not include additional disability premiums, constitutes unlawful discrimination contrary to Article 14 read with Article 1 of the First Protocol to the European Convention on Human Rights ("ECHR"). The claimants further contend that, in any event, the implementation arrangements gave rise to unlawful discrimination contrary to Article 14 read with Article 1 of the First Protocol to the ECHR as they had to apply for universal credit but there was no element of protection to reflect the difference between the amount they received under the former system and what they received by way of universal credit whereas other groups would not be treated in that way and would either continue to receive SDP and EDP or would receive an additional cash payment by way of transitional protection. The defendant denies that there is any unlawful discrimination.”

67. The first challenge, namely that universal credit is unlawfully discriminatory in that it does not include additional disability premiums, failed:

“67. Applying the approach favoured by the claimants, the defendant has demonstrated that the differential treatment, resulting from the 2013 Regulations, is objectively justified.

The aim is a legitimate one, to provide for the proper allocation of resources and an appropriate structure of welfare benefits. The measures adopted are rationally connected with that aim. In truth, the different method advocated by the claimants, namely the inclusion of a component within universal credit which is similar to the SDP and EDP, is not a less intrusive means of achieving that aim; it involves achieving a different aim.

68. In terms of whether the measures strike a fair balance it is appropriate to bear in mind that the context is the allocation of cash payments as part of the welfare system. That involves questions of social and welfare policy. The measure reflects the conscious and deliberate assessment by the government of the appropriate balance between the competing interest groups. That assessment has been considered and approved by the legislative bodies. The claimants, and others, are seeking an allocation of resources to assist with their needs. They are not entitled to insist upon the continuation of the previous level of resources they received under a previous system particularly where that system is considered by government, and the legislature, to be unduly complex and not to achieve the appropriate aims of a welfare benefits system in the present day. In all those circumstances, the 2013 Regulations do strike a fair balance in the way that it deals with needs arising out of disability and the community interest.”

68. By contrast, the second challenge succeeded. That concerned the implementation arrangements for replacing the existing benefit system with universal credit. The claimants contended that the implementation arrangements for them did not provide for any element of transitional protection, with the result that the total amount of money for income related support which they received by way of universal credit was less than the amount which they had previously received when in receipt of the basic allowance and SDP and EDP. As Lewis J explained:

“82. The difficulty that arises in the present case, however, is the way in which the Transitional Regulations achieve that for the present group of claimants. The trigger is moving local housing authority area. Such a move however, has far-reaching consequences in relation to the income related benefits that the person receives. In particular, those who were in receipt of income related benefits in the form of the basic allowance and the SDP and EDP cease to be able to continue receiving those, and move to universal credit, and consequently suffer a considerable loss of income – but

without any consideration, apparently, being given as to whether or not an element of transitional protection is appropriate for persons in this position. There is nothing in the contemporaneous material before this court to indicate that the decision-maker addressed the consequences of this method of implementation or whether, and if so what, element of protection might be appropriate.”

69. He concluded that

“85. Despite that, there is nothing in the material before me to indicate that the issue had been considered before the making of the Transitional Regulations either by the Government or by Parliament when the draft regulations were laid before it. There is no material indicating why the Transitional Regulations do not include any element of protection and why it is considered that the financial burden arising out of the differences between amounts received in respect of income related benefits for those with severe disabilities under the former system and payable universal credit should now fall on those who have moved from one local housing authority area to another. A change in housing circumstances may provide an explanation as to why it was appropriate to require them at that point to switch to universal credit. It does not explain why they should do so without any apparent consideration of whether any element of transitional protection should be provided in those circumstances in relation to the income related element of universal credit.

86. Applying the approach to justification favoured by the defendant, the decision to move a group of persons previously eligible for SDP and EDP onto universal credit because they move to another local housing authority area, without considering the need for any element of transitional protection (particularly in the light of earlier Government statements that an element of protection may be needed and the circumstances in which it should continue needed to be defined) is manifestly without reasonable foundation.”

70. That, however, is entirely different from the present situation in which the claimant’s limited capability for work-related activity element of his universal credit award was payable from 6 December 2017 rather than 6 September 2017 because (a) he was not in receipt of income support on the grounds of incapacity for work or disability on the date on which the claim for universal credit was made or treated as made and (b) in any event, even if he had previously been entitled to income support

on the grounds of incapacity for work or disability prior to his imprisonment, he was no longer so entitled once his term of imprisonment had commenced; his underlying entitlement ceased and was not merely suspended during the term of his imprisonment.

Conclusion

71. The decision of the First-tier Tribunal sitting at Southampton dated 5 November 2018 under file reference SC266/18/00323 involves an error on a point of law. The appeal against that decision is allowed and the decision of the Tribunal is set aside.

72. The decision is remade.

73. The claimant is entitled to the limited capability for work related activity element as part of his universal credit award only from 6 December 2017 and not from the date of claim on 6 September 2017.

Signed

**Mark West
Judge of the Upper Tribunal**

Dated

13 February 2020