



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2023-000712-USTA
[2024] UKUT 196 (AAC)**

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Between:

D.R.

Appellant

– v –

Secretary of State for Work and Pensions (SSWP)

Respondent

Before: Upper Tribunal Judge Wikeley

Decision date: 8 July 2024

Decided on consideration of the papers

Representation:

Appellant: In person

Respondent: Egle Smith, Decision Making and Appeals, DWP

DECISION

The decision of the Upper Tribunal is to dismiss the appeal.

This decision is made under section 11 of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

Introduction

1. In this appeal the Appellant challenges the First-tier Tribunal's decision of 7 September 2022 on the question of her entitlement to universal credit. The First-tier Tribunal decided to refuse the Appellant's appeal against the Secretary of State's decision dated 27 December 2020. The appeal turns on the nature of a payment made to the Appellant by her former employer in settlement of an employment tribunal claim and whether it can be disregarded.
2. The universal credit scheme has a lower capital limit (£6,000) and an upper capital limit (£16,000) (Universal Credit Regulations 2013 (SI 2013/376) regulations 18 and 72). Savings of less than £6,000 have no effect on benefit entitlement. Savings in excess of £16,000 (assuming they are not disregarded) preclude any entitlement to universal credit. Savings between £6,001 and £16,000 are assumed to yield a set monthly income for every £250 (or part thereof) between the lower and upper limits.
3. I conclude that there is no material error of law in the First-tier Tribunal's decision. It follows that the Appellant's further appeal to the Upper Tribunal must be dismissed.
4. In this decision I refer to the Appellant simply as such or as "Miss R" in order to preserve her anonymity and so her privacy.
5. I do not consider an oral hearing of this appeal is necessary. The appeal is ready for determination 'on the papers' and it is fair and just to proceed on that basis.

The key chronology

6. The essential dates in this case are as follows.
7. In or around May 2019 Miss R received a payment of some £27,000 under an ACAS settlement of employment tribunal proceedings that she had brought against her former employer. The ACAS settlement comprised three elements: £6,411.60 for loss of employment, £6,945.90 by way of statutory redundancy payment and £14,142.50 for injury to feelings arising from alleged discrimination.
8. On 20 May 2019 Miss R made a claim for universal credit.
9. On 4 June 2019, in a Jobcentre interview, Miss R declared that she had capital of over £16,000, being the compensation payment from her former employer. According to a subsequent DWP letter, "As such you were not entitled to UC, and your claim was closed" (letter dated 25 September 2021, FTT bundle Addition A Page 1).
10. Some eighteen months later, on 27 November 2020, Miss R made a new claim for universal credit. She declared that she still had capital of £10,700.
11. On 27 December 2020 a decision-maker decided that Miss R was now entitled to universal credit but subject to an assumed yield deduction of £82.65 for each assessment period (AP). This was because she had capital of £10,700 that could not be disregarded under Schedule 10 to the Universal Credit Regulations 2013 (SI 2013/376) or otherwise.
12. Miss R applied for a mandatory reconsideration (MR). The DWP treated this as a request for MR of the decisions on both her May 2019 and November 2020 claims to universal credit. However, the request for MR of the first claim was

refused as it was outside the absolute 13-month time limit. The decision on the second claim (i.e. the decision dated 27 December 2020) was reconsidered but the decision was not changed (letter dated 14 April 2021, FTT bundle Addition A Page 4). Miss R then appealed to the First-tier Tribunal (FTT).

The Secretary of State's response to the appeal to the First-tier Tribunal

13. The DWP decision-maker resisted the Appellant's appeal to the FTT for the following reasons (FTT bundle p.H):

6. [Miss R] writes at length about perceived barriers to her making an appeal of the decision to deduct an assumed yield from her UC payments. I acknowledge these failings by DWP and accept her late appeal as it in the interests of natural justice to do so.

7. The crux of [Miss R]'s appeal is that she feels the residual capital from her award by the court should be disregarded for UC purposes as the capital is not taxable.

8. The court ordered [Miss R]'s previous employers to pay her, within 28 days of 17/04/2019, £6,411.60 for loss of employment, £14,142.50 for injury to feelings arising from alleged discrimination and £6,945.90 statutory redundancy payment. By the time she submitted her claim on 27/11/2020, [Miss R] reported that her capital had diminished to £10,700. It is unreasonable and likely impossible to detail how her capital amount is made up from the three separate awards.

9. Whether or not any of the awards are subject to tax is irrelevant for UC purposes. The key factor in determining whether any of the capital can be disregarded for UC capital purposes is whether or not it falls to be disregarded under Schedule 10 of UC Regulations 2013. The payment for loss of employment cannot be disregarded under Schedule 10 of UC Regulations 2013, nor can the redundancy payment. Regulation 75 of UC Regulations 2013 states that a personal injury payment received as a lump sum may only be disregarded if it is held in trust, administered by the court, paid in the last 12 months or has been used to purchase an annuity - none of these apply. As such, the entirety of [Miss R]'s capital amount at date of claim is to be considered for capital purposes and an assumed yield deduction of £4.35 applied for every complete and incomplete £250 of capital held over £6,000. Thus, an assumed yield deduction of £82.65 applies.

10. I would respectfully submit that the First-tier Tribunal dismiss [Miss R]'s appeal against the decision dated 27/12/2020, which decided that her capital is subject to an assumed yield of £82.65 per AP from 27/12/2020.

The First-tier Tribunal's decision on the Appellant's appeal

14. The First-tier Tribunal, following the hearing on 7 September 2022, refused Miss R's appeal. The essence of the FTT's reasoning was set out in paragraphs 3 and 4 of the FTT's Decision Notice:

3. Miss R's appeal is refused. In my view the Secretary of State correctly reduced Miss R's Universal Credit entitlement to reflect that fact that at the time of the Decision she held £10,700 capital.

4. I find as a fact on a balance of probabilities, placing reliance on the original claim for Universal Credit and having regard to Miss R's oral evidence about her level of capital at particular periods of time, that at the date of the Decision 27 December 2020, Miss R held £10,700 in savings. This sum of money had been derived from a settlement agreement arising out of proceedings in the Employment Tribunal involving issues of discrimination and redundancy. On or around 17 May 2019 Miss R had received £27,000. By 27 December 2020 this sum had diminished to £10,700. Miss R made reference to previous approaches to the job centre in 2019 in which she had been refused Universal Credit entirely. There were no formal decisions about these approaches on the Tribunal's file. I nonetheless find on balance on each occasion she was likely to have held over £16,000 in savings. I have carefully considered whether this money can be disregarded for the purposes of Universal Credit, either under Schedule 10 of the Universal Credit Regulations 2013 or at all. In my view it cannot. It does not fall into any of the exempted categories of capital nor can it otherwise be disregarded. In my view the Secretary of State was therefore correct to take it into account and it correctly applied reductions to Miss R's Universal Credit entitlement.

15. The FTT expanded on this summary account in its Statement of Reasons, as will be seen below.
16. Miss R then applied for permission to appeal to the Upper Tribunal.

The Upper Tribunal's decision to give the Appellant permission to appeal

17. I subsequently gave the Appellant permission to appeal, giving the following reasons:

I am giving permission to appeal as the grounds of appeal are in part arguable and the Applicant's challenge to the FTT decision merits further consideration. The Applicant sets out in some detail her dissatisfaction with both the FTT decision and more generally her treatment by the DWP. That said, there are just two alleged errors of law identified. The first seems to be the stronger point – namely that the FTT arguably failed to recognise that a UC claim had been made in 2019. Even if it had been, the questions remains whether the FTT had jurisdiction to address any decision that had been made on such a claim. Furthermore, would it have made any difference, not least given the FTT's finding of fact about the level of capital that the Applicant held in 2019? I have to say the second ground of appeal is less persuasive at first sight, and as matters stand I cannot see any error of law in the FTT's decision that the capital was not subject to any relevant disregard. It may be, however, that on closer scrutiny the whole application may be at heart no more than an attempt to re-argue issues of fact. If so, the appeal cannot succeed in any event.

18. Both the Secretary of State's representative and the Appellant have made detailed and extensive written submissions on the appeal. I have taken these various submissions into account. I do not need to address all the many points raised in them as the appeal turns on the narrow points discussed in the following section of this decision.

The Upper Tribunal's analysis

Introduction

19. As noted above, the Appellant advances two primary grounds of appeal. The first is that the FTT is said to have erred in law by failing to investigate the circumstances of the 2019 claim (or claims) and indeed by finding that there had been no such claim. The second is that in calculating the Appellant's capital the FTT is said to have erred in law by not disregarding the compensation payment made under the ACAS settlement agreement.

Ground 1: the 2019 claim for universal credit

20. The Appellant argued that she had first made a claim for universal credit in 2019. The FTT addressed this issue as follows in its statement of reasons:

14. I considered whether the Tribunal had jurisdiction to consider Miss R's appeal as far back as 2019 when she first approached the job centre. I find that the Tribunal had no such jurisdiction. Ultimately it is for social security claimants to make sure that they lodge formal claims for the benefit they consider themselves entitled to. If a claim is made then the Secretary of State can make a decision which carries appeal rights (including the right for a mandatory reconsideration and recourse to the First-tier Tribunal). There are numerate free advice agencies that help individuals to do this, which Miss R could have availed herself of, should she have chosen to do so. Even if Miss R was in receipt of poor advice from DWP staff, ultimately it was up to her to seek independent advice and lodge a claim. Miss R acknowledges, and in my view the evidence demonstrates that she did not do this. In my view Miss R's explanation of why she did not make a claim throughout 2019 did not reveal any good reason to depart from this principle.

15. As such, in my view the Tribunal was limited in its jurisdiction to consideration of Miss R's appeal as it stood against the Decision of 27 December 2020 which had been reconsidered and not changed.

21. The Secretary of State's representative now accepts that the FTT's decision involves an error of law in at least one respect. It is true that the FTT bundle did not include a copy of any decision made on a universal credit claim made by Miss R in 2019. However, there was DWP correspondence on file which confirmed that Miss R had indeed made a claim for universal credit on 20 May 2019 (see paragraphs 8 and 9 above). To that extent at least, the FTT made a decision which was not supported by the evidence and so was in error of law.
22. The DWP correspondence in question asserted that "As such you were not entitled to UC, and your claim was closed" (letter dated 25 September 2021, FTT bundle Addition A Page 1). However, as I observed in *PP v Secretary of State for Work and Pensions (UC)* [2020] UKUT 109 (AAC):

7. ... The concept of "case closure" is jurisprudentially highly suspect. Over the years the former Social Security Commissioners and now the Upper Tribunal Judges have done their best to try and eliminate this usage (see *CJSA/2327/2001* at paragraph 12 and *CE/747/2017* at paragraph 4).

8. Unfortunately, the notion of case closure, so beloved of frontline benefits administrators, has proven resistant to all such judicial attempts at erasure. As the written submission by the Secretary of State's representative on the

present appeal frankly concedes: “On the contrary, [the DWP’s] training material and operational guidance for the new benefit ubiquitously describe both the termination of an award and any disposal of a claim as the ‘closing’ of a ‘claim’. As a result, any attempt to understand the legal nature of any given instance of ‘claim closure’ is obliged to have recourse to informed inference (or desperate guesswork).”

23. So, the DWP decision-maker was wrong to talk about the case being “closed” – a concept which does not appear in the Social Security Act 1998 or the Universal Credit etc. (Decisions and Appeals) Regulations 2013 (SI 2013/381) – and apparently to act in a way which may have effectively denied Miss R the right of appeal at the time in 2019. The FTT was also wrong to find that she had not made a claim for universal credit in 2019.
24. However, none of this assists the Appellant in the final analysis. This is because the FTT’s error was not material to the outcome of the appeal. The FTT had in any event made a clear and indisputable finding of fact that Miss R was in possession of capital in excess of £16,000 in 2019 and as such was therefore excluded from entitlement to universal credit (see regulation 18(1) of the Universal Credit Regulations 2013). So, even if the DWP had both followed the correct notification procedures and given accurate advice, and even if Miss R had applied in time for a mandatory reconsideration of the decision on the claim dated 20 May 2019 and then lodged an appeal, the outcome would have been no different. The FTT’s error was thus immaterial.

Ground 2: the compensation payment

25. The Appellant’s argument before the FTT was that her capital should be disregarded as she had been informed that the sum payable under the ACAS settlement agreement would not be subject to tax. However, having found that the compensation payment from the former employer constituted capital, the FTT concluded that there was no basis on which it could be disregarded (footnotes to the original text have been included in square brackets in the passage below). Its reasoning, as set out in the statement of reasons, ran as follows:

21. The only remaining question for the Tribunal therefore, was whether this sum of money could be disregarded for the purposes of Universal Credit entitlement, such that Miss R should have been entitled/should not have had her entitlement reduced. I found that it could not be disregarded.

22. I found that the money did not fall into any of the exemptions (categories of capital which can be disregarded) as set out in the *Universal Credit Regulations 2013* [See Regulations 48, 75-77 and Schedule 10]. It was not, in my view, relevant as to whether the settlement sum was, or was not taxable as this was not a relevant consideration in relation to any of the legal criteria setting out whether the sum could be disregarded.

23. I gave particularly careful consideration as to whether the money could fall into the category of compensation for personal injury [See Regulation 75 of the Universal Credit Regulations 2013], given its provenance and given that Miss R had raised this issue in her appeal. I concluded that it could not. I note that the relevant regulation makes clear that a sum can be awarded or as a result of an agreement – this was therefore not an issue. However, the regulation also makes clear that the payment must derive *in*

consequence of a personal injury to that person. The parts of the settlement related to statutory redundancy and loss of employment clearly fell outside of that definition. The award for injury to feelings due to discrimination was also, in my view, distinct from an award given in consequence of a personal injury. Damages paid to compensate injury to feelings is distinct from an award of damages for actual injury to physical or mental health (by way of, for instance psychiatric injury). I note and have regard to the fact that in the *Judicial Guidelines for the Assessment of General Damages in Personal Injury Cases* [16th Edition] there is no category for injury to feelings which are treated as distinct from psychiatric injury.

24. I also had regard to the fact that the settlement agreement did not limit or terminate Miss R's rights to pursue liability for latent personal injury arising from her employment – suggesting that this type of liability was specifically outside of the scope of the agreement.

25. By the time of the Decision it was also the case that the sum of money had not been placed into a trust – a requirement for compensation for personal injury to continue to be disregarded 12 months after its receipt. However even during the initial 12 months, for example had a claim been made in 2019, in my view the sum could still not be disregarded as it was not, for the reasons stated above, in consequence of a personal injury.

26. I therefore find as a fact on a balance of probabilities, placing reliance on the original claim form for Universal Credit and having regard to Miss R's oral evidence about the level of capital at particular periods of time, that at the date of the Decision 27 December 2020, Miss R held £10,700 in savings. I find that throughout 2019, Miss R likely held over £16,000 in savings. In each case this sum of money derived from a source that could not be disregarded. As such at the date of the Decision I found it was correct for the Department for Work and Pensions to make a yield deduction from Miss R's Universal Credit entitlement to reflect she held £10,700 capital.

26. The FTT was correct to hold that there is no provision in the universal credit legislation which would permit the ACAS settlement agreement funds to be disregarded. The position is as summarised by the decision-maker in the DWP response to the Appellant's FTT appeal (see paragraph 13 above):

Whether or not any of the awards are subject to tax is irrelevant for UC purposes. The key factor in determining whether any of the capital can be disregarded for UC capital purposes is whether or not it falls to be disregarded under Schedule 10 of UC Regulations 2013. The payment for loss of employment cannot be disregarded under Schedule 10 of UC Regulations 2013, nor can the redundancy payment. Regulation 75 of UC

Regulations 2013 states that a personal injury payment received as a lump sum may only be disregarded if it is held in trust, administered by the court, paid in the last 12 months or has been used to purchase an annuity – none of these apply.

27. Regulation 75(1) provides that the regulation applies “where a sum has been awarded to a person, or has been agreed by or behalf of a person, in consequence of a personal injury to that person”. The term “personal injury” must

be given its ordinary meaning, and so includes a disease and any injuries sustained as a result of disease (*R(SB) 2/89* at paragraphs 10, 11 and 15). But, as the FTT ruled, “damages paid to compensate injury to feelings is distinct from an award of damages for actual injury to physical or mental health (by way of, for instance psychiatric injury).”

Conclusion

28. The First-tier Tribunal in this case directed itself properly on the central issue of law and provided a clear and adequate explanation of why it had reached the decision it had. Its decision reveals no material error of law. Accordingly, I must dismiss the Appellant’s appeal to the Upper Tribunal (section 11 of the Tribunals, Courts and Enforcement Act 2007).

**Nicholas Wikeley
Judge of the Upper Tribunal**

Authorised for issue on 8 July 2024