IN THE UPPER TRIBUNAL **Case No.** CUC/2274/2018
ADMINISTRATIVE APPEALS CHAMBER

Before: Mr E Mitchell, Judge of the Upper Tribunal

Decision: The decision of the First-tier Tribunal (ref: *SC 924/15/00408*) taken on 20 June 2018 involved an error of law. However, the Upper Tribunal concludes that the error was not material and under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 decides not to set aside the First-tier Tribunal's decision.

REASONS FOR DECISION

1. In common with other Universal Credit claimants, the Appellant Miss B accepted a claimant commitment. It included the following provision:

- "I'll look for and take any work that I'm able to do";

- "I will apply for vacancies I'm told to apply for by my adviser including any saved by my adviser in the 'Saved Jobs' section of my Universal Jobmatch account"

2. According to the report of Miss B's work coach, on 19 October 2016:

> "I sat with her & looked at vacancies advertised…we found this vacancy on UJ [Universal Jobsmatch] & discussed it and she agreed that she would apply for it later that day. The vacancy was for a Part Time Coffee Assistant/Barista at Coffee 1. The employer was offering an excellent training package so there was no reason that either myself or [Miss B] could think of not to apply so I saved the details to her UJ account for her to action later. However [Miss B] attended her WFR on 26.10.16 & informed me that she had not applied for this vacancy or 3 others issued to her on 19.10.16".

3. On 26 October 2016 the DWP wrote to Miss B. Beginning with the heading "You could lose some or all of your payment", the subsequent contents of the letter included:

- "In exchange for your Universal Credit Payment, you agreed to do those things listed in your Claimant Commitment";

- "We're worried that you didn't do everything you could to find work, and did not apply for Part Time Coffee Assistant/Barista at Coffee 1 that was agreed & saved to your UJ account on 19.10.16";

- "Because of the situation above, you're very likely to lose some or all of your payment if you don't act. We call this being sanctioned";

- "If we agree you had good reason, you won't be sanctioned".

4. Miss B provided a written response on the same day, 26 October 2016, which read:

> "I did not apply to this job because I didn't feel I was suitable for the role. Granted, they would provide training, but I feel I would never be entirely comfortable in the role and that I wouldn't benefit from the training."

5. An undated DWP decision record (p.19 of the First-tier Tribunal bundle) gave the reason for imposition of a sanction as: "I would fully expect Miss [B] to apply for all jobs as per her [claimant commitment] of 27.09.16". The record notes that Miss B's claimant commitment included a requirement to "apply for vacancies I'm told to apply for by my adviser".

6. On 10 November 2016 the DWP notified Miss B in writing that they had decided that she failed without good reason to apply for a Barista vacancy at Coffee 1. A daily sanction of £8.20 would be imposed for 91 days.

7. On 28 November 2016, Miss B responded to the DWP's notification of 10 November 2016. Her response in fact related to six separate sanction decisions notified on that date. Three of these were based on alleged failures to apply for jobs (at Argos, Tesco and Boots) and two were based on alleged failures to provide sufficient work search details for the periods 20 October 2016 to 26 October 2016 and 27 October 2016 to 2 November 2016. Insofar as relevant to the Coffee 1 sanction, Miss B's response stated:

- She had fully complied with her claimant commitment;

- She secured a Christmas job with B & M, starting on 25 September so questioned why she should be expected to apply for other Christmas jobs. The B & M job was described as temporary work on an 8 hour contract;

- Securing the B & M position showed her willingness to work;

- Having read the Coffee 1 website, it was clear that she did not meet the company's minimum requirements. It would waste her and the company's time to make an application that was bound to be rejected but the letter did not explain why an application was bound to be unsuccessful.

8. At the mandatory reconsideration stage, the DWP refused to alter their sanction decision. The DWP decision record includes a statement from Miss B's workcoach:

> "[Miss B] attended WFR on 19.10.16. I was concerned that she stated on her worksearch that she had looked at online websites that included UJ & Indeed but had not found anything suitable to apply for. Because of this I sat with her & looked at vacancies advertised on both websites we found this vacancy on UJ & discussed it and she agreed that she would apply for it later that day. The vacancy was for a Part Time Coffee Assistant/Barista at Coffee 1. The employer was offering an excellent training package so there was no reason that either myself or [Miss B] could think of not to apply so I saved the details to her UJ account for her to action later. However [Miss B] attended her WFR on 26.10.16 & informed me that she had not applied for this vacancy or 3 others issued to her on 19.10.16".

9. The above statements reflected those entered on a DWP claimant database by the work coach on 28 October 2016.

10. Miss B's notice of appeal against the DWP's decision, dated 18 February 2017, argued:

- she had provided a good reason for not applying for a temporary, Christmas job at Coffee 1. 'Good reason' is not defined in legislation. In every case, the DWP is required to consider its individual facts, circumstances and merits;

- she was not inflexible regarding taking suitable paid work. The reason she did not apply to Coffee 1 was that it was not suitable. From Miss B's research, she knew any application would be a waste of her and Coffee 1's time. Her time would be better spent researching and applying for jobs that she was suitable for;

- Coffee 1 expected their employees to have a 'passion for coffee'. Miss B had no such passion so that any application was surely pointless.

11. Miss B's appeal against the Coffee 1 sanction decision was registered by the First-tier Tribunal with the reference SC 206/17/00147.

12. On 20 March 2017 the DWP informed Miss B in writing that they had decided to revise (remove) Miss B's sanctions for failing to apply for jobs at Boots, Tesco and Argos. The First-tier Tribunal papers do not contain a similar notification in respect of the Coffee 1 decision.

13. On 25 March 2017, the First-tier Tribunal informed Miss B in writing that her appeal reference 206/17/00147 (i.e. the Coffee 1 appeal) had lapsed and "no further action" would be taken, due to the DWP having revised the sanction decision in her favour. I think the tribunal's letter must have been written in response to a DWP notice that informed the tribunal that the appeal with reference SC 206/17/00147, amongst others, had lapsed. Subsequently, the DWP argued that this appeal had not lapsed and that. DWP officials had mistakenly informed the tribunal that it had. Someone inserted the incorrect appeal reference number in the notice informing the tribunal that certain of Miss B's appeals had lapsed.

14. In a letter to the tribunal dated 2 June 2018, Miss B wrote:

- Coffee 1 required employees to have a passion for coffee which she did not have. She did not have a passion for stocking shelves either but that was not a requirement of B & M Stores for whom was working part-time when instructed to apply for the Coffee 1 vacancy;

- On a recent visit to the Coffee 1 website Miss B discovered that the previously-specified requirement for employees to have a passion for coffee had been omitted but "that doesn't mean that it is something they no longer want";

- even if she had successfully applied to Coffee 1, Miss B would not have been suited to the job. She was an introvert and did not have the outgoing and confident personality expected of Baristas. No amount of training could change her personality type;

- she had proved her willingness to try different roles;

- if the appeal did not go in her favour then "if I am ever unemployed again I will apply for every single job that DWP say I should irrespective of whether I think the job is suitable as I would not wish to be sanctioned again".

15. Miss B attended the hearing of her appeal before the First-tier Tribunal. The tribunal's record of proceedings contains the judge's note of Miss B's oral evidence, to include:

- "27.9.16. A [appellant] accepted claimant commitment – pg 29 bundle 00148";

- "A accepts that it was recorded in activity search for 20.10.16 to 26.10.16 Coffee 1 Barista job. Didn't apply for it. When she left interview [at jobcentre] & looked into job she decided she wd not be suitable for the position – this was a permanent post, was to be behind the counter serving";

- "Is an introverted person. Doesn't have personality. Need to [be] sociable";

- "req a passion for coffee. Accepts that with training she wd become more knowledgeable. Wouldn't change personality";

- "Didn't make enquiries of Coffee 1 before deciding not to apply. Not interested in coffee".

16. The First-tier Tribunal dismissed Miss B's appeal. The tribunal's statement of reasons included the following findings and other conclusions:

- On 27 September 2016, Miss B "accepted a claimant commitment and agreed all the actions she would take to find work";

- The claimant commitment included a statement that "I will apply for vacancies I'm told to apply for by my job adviser including any saved in the 'Saved Jobs' section of my Universal Credit Jobmatch account". Miss B was told to apply for the Coffee 1 vacancy by her workcoach.;

- The claimant commitment advised Miss B that, if she failed to apply for such vacancies without good reason, her benefit would be cut.

17. The tribunal's statement of reasons recounts Miss B's arguments that she lacked a passion for coffee and that her personality rendered her unsuitable for the post of Barista. The

statement of reasons goes on to say that Miss B's lack of a passion for coffee and her personality "were not good reasons for not applying for the vacancy".

18. An Upper Tribunal Judge (myself) granted Miss B permission to appeal on a limited ground, described as follows in the permission determination:

> "I note that, despite the confusing correspondence sent to Miss [B], she did mount a reasoned challenge to the Barista sanction. Nevertheless, the uncertainty over exactly which sanction appeals had lapsed was, arguably, a matter that the First-tier Tribunal needed to clarify before proceeding to determine the appeal Miss [B] made against the Barista sanction. That is the ground on which I grant Miss [B] permission to appeal to the Upper Tribunal. If the appeal had lapsed, there was nothing for the First-tier Tribunal to decide and, in purporting to determine the appeal, the tribunal would have acted without jurisdiction."

19. The Upper Tribunal also gave case management directions which included:

> "The Secretary of State's response must explain (a) which of Miss [B's] sanction decisions were revised in her favour; and (b) why the DWP seemingly failed to respond to First-tier Tribunal's directions requiring it to clarify which sanction decisions had been revised in Miss [B's] favour."

20. I should mention that Miss B's application for permission to appeal did not challenge the First-tier Tribunal's reasoning in determining that she did not have a good reason for failing to apply for the Coffee 1 vacancy. Her application was concerned solely with the argument that the First-tier Tribunal had no jurisdiction to determine the Coffee 1 sanction appeal.

21. In response to those directions, the Secretary of State informs the Upper Tribunal that the three revised sanction decisions, whose associated appeals had lapsed, concerned vacancies at Tesco, Boots and Argos, as was shown by the revision notices sent to Miss B, none of which related to the Coffee 1 vacancy. However, DWP officials mistakenly informed the First-tier Tribunal that the appeal with reference SC 206/17/00147 (i.e. the Coffee 1 appeal) was amongst those that had lapsed. This mistake did not have any practical consequence because the First-tier Tribunal correctly appreciated that Miss B's Coffee 1 sanction appeal had not lapsed. I should also point out that the Secretary of State's representatives apologises to Miss B for the misleading correspondence sent to the First-tier Tribunal.

22. The Secretary of State's written response, like Miss B's subsequent reply, correctly restricts itself to the ground on which Miss B was granted permission to appeal.

23. Miss B's written reply argues:

(a) there was no case to put before the First-tier Tribunal because her appeal against the Coffee 1 sanction decision had lapsed. The evidence did not support a finding that the DWP simply made a typing error when informing the tribunal which appeals had lapsed;

(b) whether or not the DWP intended to revise their Coffee 1 sanction decision was beside the point. The evidence showed that the decision was revised.

24. Conduct of the proceedings was then transferred from myself to Deputy Upper Tribunal Judge Bano for determination, which is normal practice within the Administrative Appeals Chamber and allows the Upper Tribunal to manage demands on the time of salaried judges such as myself.

25. Instead of determining this appeal, Judge Bano gave further case management directions:

> "I consider that it still remains necessary to establish what decision was actually made in response to the claimant's letter of 28 November 2016 in respect of the job at Coffee 1. I therefore direct the Secretary of State to provide the computer record of all six revision decisions taken on 20 March 2017".

26. I note that those directions presupposed that all six sanction decisions were revised in March 2017.

27. Judge Bano also introduced a new point, which had not been raised in Miss B's application for permission to appeal. Judge Bano described this point in the following terms:

> "Assuming that the tribunal did have jurisdiction to consider the appeal, it may be arguable that its reasons were inadequate in relation to whether the claimant had good cause not to comply with the relevant requirement. Did the tribunal properly take into account the claimant's case that she did not discover the employer's requirements until after she was told by her adviser to apply for the job?"

28. Judge Bano directed the Secretary of State to provide a supplementary written submission.

29. On the revision issue, the Secretary of State's further submission states:

(a) there were not six revision decisions. There were six sanction decisions, three of which were subsequently revised on 20 March 2017. The Secretary of State (re)supplied copies of the notifications given to Miss B of the three revised sanction decisions;

(b) it is not possible to supply computer records for the six revision decisions referred to by Judge Bano for the simple reason that there were only three revision decisions;

(c) while the Secretary of State's representative apologises for the DWP's previous failure to comply with the First-tier Tribunal's directions, their compliance with the Upper Tribunal's earlier directions in these proceedings involved supply of the information that should have been provided to the First-tier Tribunal;

(d) the Secretary of State apologises again for the confusion caused by a DWP clerical error in misidentifying the sanction decisions revised on 20 March 2017;

(d) the First-tier Tribunal had jurisdiction to hear Miss B's appeal against the Coffee 1 sanction decision. That decision was not revised. Miss B's appeal against the decision did not therefore lapse.

30. On the new issue raised by Judge Bano, the Secretary of State's representative submits:

(a) the First-tier Tribunal adequately took into account Miss B's argument that she did not learn of the Barista job requirements (the 'passion for coffee') until after she was advised to apply;

(b) the tribunal noted that Miss B and her work coach discussed the Coffee 1 position before the coach 'requested' that she apply. The tribunal also noted Miss B's argument that she was introverted by nature and had no passion for coffee. The tribunal took these matters into account before concluding that Miss B did not have a good reason for failing to apply for the post. The tribunal's reasoning was adequate;

(c) if, however, the Upper Tribunal was minded to find that the tribunal gave inadequate reasons for its decision, it should conclude that the error was not material. In other words, it could not have affected the ultimate outcome;

(d) once Miss B's work coach requested that she apply for the Coffee 1 vacancy, it was incumbent on her to do so even if she thought her application would not succeed. This is because, in accepting her claimant commitment, Miss B agreed to apply for all jobs as directed by her work coach. Miss B's claimant commitment contained no restrictions or limitations "as per regulation 93 of the UC Regulations 2013";

(e) it was reasonable for Miss B's work coach to 'request' that she apply for the Coffee 1 vacancy especially as this followed a discussion with Miss B about the job;

(f) Miss B's objection to the Coffee 1 vacancy was not founded on a belief that she lacked the necessary skills or qualifications, which the representative accepts would have amounted to a good reason for not applying. Instead, Miss B's objected on the basis that the vacancy was not a suitable one which could not have amounted to a good reason;

(g) the representative refers to what she describes as long-established case law, such as *R(U) 29/53*, that claimants do not show good cause for refusing employment on the ground that they would prefer a different type of work or due to a belief that there are other unemployed people who are more suited to the work. The representative goes on:

> "a claimant's objection to a certain type of employment would only provide good reason if…the claimant provided enough evidence to satisfy the decision maker that the employment would be likely to cause:

(i) Unreasonable stress on their mental health;

(ii) A risk to her mental or physical health or well-being, or

(iii) Give grounds for a sincere religious or conscientious objection";

(h) Miss B's case, as presented to the First-tier Tribunal, did not involve her supplying such evidence. Not having a passion for coffee or being introverted is not a good reason within the law for failing to apply for a vacancy in a coffee shop. Furthermore, consideration of likely prospects of success at interview would be irrelevant.

31. In reply to the Secretary of State's supplementary submission, Miss B submits as follows in relation to the revision / lapsing issue:

(a) the tribunal informed her that the Coffee 1 appeal had lapsed because that was what the DWP told the tribunal. This was evidence that the Coffee 1 decision had been revised in Miss B's favour;

(b) once a decision has been revised, intentionally or not, the automatic legal consequences, where the revised decision is in the appellant's favour, is that an appeal against the decision lapses.

32. Without making any concession on the revision/lapsing issue, Miss B submits as follows in relation to the new issue raised by Judge Bano:

(a) the tribunal's reasons were not adequate. It did not deal with her argument that she did not learn about Coffee 1's requirements, in particular the need for a 'passion for coffee', until after her work coach interview. Of itself, this was a good reason for not applying;

(b) the tribunal found that she did not make enquiries of Coffee 1 before deciding not to apply, which was incorrect. She made enquiries of Coffee 1 "in exactly the way the digital age intends;

(c) currently, the Coffee 1 website states "we're always interested in positive, energetic people who are passionate about coffee". This, or similar wording, was displayed on the website in 2016. Coffee 1's request was not unreasonable given the nature of their business but no amount of training could have overcome Miss B's lack of a passion for Coffee 1's product which explains their "stipulation…that they are not interested in hearing from you unless you are passionate about coffee";

(d) Miss B would not have let her lack of passion for coffee stop her from applying had it not been for the stipulation that such a passion was a job requirement. She had no passion for stacking shelves but this did not stop her from applying for, and obtaining, employment with B & M Stores. The difference was that B & M Stores did not expect employees to have a passion for stacking shelves;

(e) since Miss B lacked a passion for coffee, any application for the Barista vacancy would have been pointless. Of itself, this was a good reason for her failure to apply;

(f) when the Coffee 1 sanction was imposed, the DWP also sanctioned Miss B for failing to apply for vacancies with Boots, Tesco and Argos. Subsequently, however, the DWP accepted that Miss B did have good reason for not applying for these vacancies;

(g) the Secretary of State's submission inaccurately asserts that she failed to apply for the Coffee 1 position because she would prefer another type of work. She would have preferred work other than stacking shelves for B & M Stores but nevertheless applied for the post;

(h) in relation to the Secretary of State's argument that good reason for failing to apply for a vacancy could only be established by evidence showing unreasonable stress, risk to health or well-being a sincere religious or conscientious objection, Miss B accepts that none of these cases are relevant in her case but adds that "none of these reasons are the good reason I have provided for not applying for the job";

(i) Miss B's introverted personality would not have stopped her applying for the Coffee 1 vacancy, although it would surely have meant any application would have been unsuccessful. What stopped her from applying was "the employer wanting applications from people who are passionate about coffee which I am not".

33. Following receipt of the above written submissions, conduct of this case was transferred back to myself, Upper Tribunal Judge Mitchell, Judge Bano having in the meantime retired from office.

Legal framework

34. Section 1(1) of the Welfare Reform Act 2012 ("2012 Act") provides that universal credit is payable in accordance with Part 1 of the Act (sections 1 to 43). A single claimant is entitled to universal credit if the claimant meets the "basic conditions" and the "financial conditions" (section 3(1)). In order to meet the basic conditions, a claimant must, amongst other things, have "accepted a claimant commitment" (section 4(1)(e)).

35. Section 14(1) of the 2012 Act describes a claimant commitment as "a record of a claimant's responsibilities in relation to an award of universal credit". The commitment is prepared by the Secretary of State (section 14(2)). So far as the contents of a claimant commitment are concerned, the legislation is not particularly prescriptive:

(a) the commitment must include a record of the requirements with which a claimant must comply (or such of them as the Secretary of State considers it appropriate to include) (section 14(4)(a);

(b) the commitment must include other information that the Secretary of State considers it appropriate to include (section 14(4)(c)).

36. Section 14(4)(b) of the 2012 Act authorises regulations to require a claimant commitment to include any further information prescribed in regulations. So far as I am aware, no such regulations have been made.

37. Chapter 2 of Part 1 of the 2012 Act (sections 13 to 29) is headed 'claimant responsibilities'. Section 13(1) enacts that the Chapter "provides for the Secretary of State to impose work-related requirements with which claimants must comply for the purposes of this Part".

38. The definition of "work-related requirement" in section 13(2) of the 2012 Act includes "a work search requirement (see section 17)". Under section 17(1)(a) a work search requirement always includes a requirement for a claimant to "take all reasonable action…for the purpose of obtaining paid work (or more paid work or better paid work)". By virtue of section 17(1)(b) of the 2012 Act, a work-related requirement may include a requirement to take any particular action specified by the Secretary of State. The actions which may be specified under section 17(1)(b) include "making applications".

39. Section 17(4) of the 2012 Act provides authority for regulations to limit the range of work search requirements that may be imposed on a claimant. Limitations may also be imposed by the Secretary of State in any particular case. Whether the limitation is imposed by regulations or the Secretary of State, section 17(5) permits a limitation to operate by reference to "work of a particular nature".

40. Regulation 97(2) of the Universal Credit Regulations 2013 ("2013 Regulations") provides for work search requirements to be limited, in terms of the expected number of weekly hours, in the case of a claimant with a physical or mental impairment. Regulation 97(6) deals with cases where a physical or mental impairment has consequences for the work that a person is able to do. If the impairment has a substantial adverse effect on ability to carry out work or a particular nature, a work search requirement must not relate to work of such a nature. I have not identified, nor has my attention been drawn to, any definition of 'impairment' in either the 2013 Regulations nor the 2012 Act.

41. The 2012 Act creates categories of universal credit claimants by reference to, for example, whether a claimant has limited capability for work. The practical difference between the categories is that, for some categories, restrictions are placed on the range of work-related requirements to which persons may be subjected. Miss B fell into the category of 'claimants subject to all work-related requirements', which may be roughly correlated with those who would previously have claimed Jobseekers Allowance.

42. In relation to a claimant subject to all work-related requirements, the Secretary of State is required by section 22(2) of the 2012 Act, except in circumstances prescribed in regulations, to impose a work search requirement on the claimant.

43. Section 24(4) of the 2012 Act provides that, where a requirement under Part 2 of the Act is not included in a claimant commitment, it may be notified in such manner as the Secretary of State may determine.

44. Section 25 of the 2012 Act (headed 'compliance with requirements') provides:

> "Regulations may make provision as to circumstances in which a claimant is to be treated as having—
>
> (a) complied with or not complied with any requirement imposed under this Part or any aspect of such a requirement, or
>
> (b) taken or not taken any particular action specified by the Secretary of State in relation to such a requirement."

45. Section 26 of the 2012 Act identifies those failures that attract a higher-level sanction, including where a claimant "fails for no good reason to comply with a requirement imposed by the Secretary of State under a work search requirement to apply for a particular vacancy for paid work" (section 26(2)).

Conclusions

46. Upper Tribunal Judge Bano did not expressly extend the grounds of appeal to include the issue he referred to in his directions notice. I need to formalise matters. Since the Secretary of State has not objected to the introduction of this new point, and the parties have dealt it in written submissions, I am satisfied it is appropriate to grant Miss B permission to appeal on the additional ground described in Judge Bano's directions notice.

47. I am satisfied that I can determine this appeal fairly and justly without holding a hearing. The Secretary of State does not request a hearing nor does Miss B although she would be willing to attend a hearing, if that would help the Upper Tribunal. I do not consider a hearing necessary. The parties' arguments have been fully rehearsed in writing and I do not consider it likely that a hearing would materially improve the arguments already made in writing.

48. I shall deal first with the question whether the First-tier Tribunal had jurisdiction to determine Miss B's appeal against the DWP's Coffee 1 sanction decision. Had that decision been revised in terms favourable to Miss B, her appeal would have lapsed meaning so that

there would have been nothing for the First-tier Tribunal to determine (regulation 30(1) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999).

49. I am satisfied that the Secretary of State did not revise the Coffee 1 sanction decision. It follows that the First-tier Tribunal did not lack jurisdiction to determine the Coffee 1 sanction appeal. There is no direct evidence of a Coffee 1 sanction revision decision. Had the Coffee 1 sanction decision been revised, I am satisfied that written notification would have been given to Miss B, as happened in the case of the three other sanction decisions relating to vacancies at Boots, Argos and Tesco. Unfortunately, it seems that the DWP, in notifying the tribunal that certain decisions had been revised, so that their associated appeals had lapsed, mistakenly referred to the tribunal registration number for the Coffee 1 sanction appeal. Mistakenly describing a decision as having been revised is not the same thing as making a revision decision. I am satisfied that the Coffee 1 sanction decision was not revised prior to the First-tier Tribunal determining Miss B's appeal against that decision. The initial ground of appeal in this case does not succeed.

50. Turning now to the additional ground of appeal. I remind myself of the terms in which this was described by Judge Bano:

> "The work coach's record of the interview with Miss B on 19 October 2016, which does not appear to have been disputed, states that the coach discussed the Coffee 1 vacancy with Miss B. Neither the coach nor Miss B could think of any reason why she should not apply. The coach reported that Miss B agreed to apply for the vacancy later that day."

51. I note that, initially, Miss B did not in terms argue that her lack of a passion for coffee supplied a good reason for not applying for the Coffee 1 vacancy:

(a) on 26 October, in response to a request from the DWP, Miss B explained why she did not apply for the Coffee 1 vacancy:

> "I did not apply to this job because I didn't feel I was suitable for the role. Granted, they would provide training, but I feel I would never be entirely comfortable in the role and that I wouldn't benefit from the training."

(b) Miss B's letter of 28 November 2016 argued that, after reading the Coffee 1 website, it was clear that she would not meet Coffee 1's minimum requirements but she did not mention a requirement for Baristas to have a passion for coffee.

52. It seems to me that it was not until 18 February 2017, when Miss B drafted her notice of appeal against the sanction decision, that she relied on Coffee 1's reported requirement for employees to have a 'passion for coffee'.

53. Before the First-tier Tribunal Miss B also argued that her introverted personality supplied a separate good reason for her failure to apply for the Coffee 1 vacancy. Miss B's written submissions on this appeal are quite clear that her introverted personality did not stop her from applying for the Coffee 1 vacancy. For that reason and because Judge Bano's permission determination focusses on Miss B's belated (i.e. post-work coach interview) knowledge of Coffee 1's job requirements, I shall not address whether the First-tier Tribunal gave adequate reasons for rejecting the case advanced before that tribunal in relation to introversion.

54. Miss B's case before the First-tier Tribunal was that an application would waste her and Coffee 1's time because she lacked the necessary 'passion for coffee'. It is not clear from the evidence whether this was a formal job requirement, as was I think envisaged by Judge Bano, or simply described Coffee 1's corporate identity in order to assist potential applicants in deciding whether they would be a good fit with the company's values. Miss B's final written submission suggests the latter – she states the requirement flows from Coffee 1's statement that "we're always interested in people who…are passionate about coffee". This would also be consistent with the difficulties an employer would face in identifying individuals who are, and remain, genuinely passionate about coffee. But, in the final analysis, it does not matter whether a 'passion for coffee' was an essential job requirement or something less formal than that.

55. A work-related requirement does not have to be imposed in writing (section 24(2) of the 2012 Act). And Miss B does not argue that the Secretary of State, acting through the work coach, failed to impose a requirement to apply for the Coffee 1 vacancy. Her argument before the First-tier Tribunal was that any application would have been pointless since she lacked a passion for coffee. By pointless, Miss B must have meant that any application was bound to be unsuccessful.

56. The tribunal's statement of reasons reads: "whilst Coffee 1 may have decided that the Appellant was not suitable for the role the fact that she did not have a passion for coffee [was not] good [reason] for not applying for the vacancy". The underlining is the tribunal's. By this, I think the tribunal must have intended to emphasise that, despite Miss B's perception that she would not satisfy Coffee 1's requirements for appointment, she remained obliged to at least apply for the position.

57. The tribunal's statement of reasons did not explain why it rejected Miss B's argument that her inability to meet Coffee 1's requirements, since she had no passion for coffee, was a good

reason for not applying. The argument was recounted in the statement of reasons but not followed by an explanation as to why it was rejected. In my judgment, the tribunal gave inadequate reasons for its decision. I do not see how Miss B could have understood why her argument was rejected. The tribunal's decision therefore involved an error on a point of law. I must now consider the Secretary of State's argument that the tribunal's error was not material.

58. Regulation 97 of the Universal Credit Regulations 2013 places restrictions on the types of work search requirement that may be imposed on a claimant. It seems to me that, if a requirement to apply for a vacancy were imposed contrary to regulation 97, a claimant would have a good reason for subsequently failing to apply for the vacancy. It is not argued in this case, expressly or impliedly, that Miss B's work coach imposed a requirement contrary to regulation 97. But that is not the end of the matter. Had Parliament intended for the range of 'good reasons' to be restricted to failures to comply with requirements imposed in contravention of regulation 97, it would have legislated accordingly. Instead, Parliament enacted a more general test, that of a 'good reason' and did so without providing a definition, or any express guidance as to the meaning, of good reason.

59. I note that, in this case, Miss B did not argue that, after forming the view that Coffee 1 required employees to have a passion for coffee, she asked her work coach to reconsider the requirement to apply for the Coffee 1 vacancy. Instead, one week after being required to apply, Miss B informed her work coach that she had not done so because she felt unsuited for the position and would never feel entirely comfortable in the role. Miss B has not disputed the work coach's statement that she discussed the vacancy with Miss B before informing her to apply for it, nor that Miss B agreed to do so during the same interview. In those circumstances, I do not consider that any reasonable tribunal could have found that Miss B had a good reason for not applying for the vacancy because she had formed the view that, lacking a passion for coffee, any application would be pointless.

60. In evaluating whether a person had a good reason for failing, as directed, to apply for a vacancy a relevant consideration, in the work search context, is always likely to include a claimant's dealings with her work coach. Therefore, Miss B may have had a stronger case had she asked her work coach to reconsider the requirement to apply for the position before making up her own mind about whether to do so. But Miss B did not, and does not, argue that she asked her work coach to reconsider the requirement.

61. A claimant's belief that it would be pointless to apply for a particular vacancy, being a vacancy that she had previously agreed to apply for following discussions with a work coach, cannot in my judgment amount to a good reason for a failure to apply where that belief is arrived at without any subsequent consultation with the official for the time being charged with assisting the claimant to obtain work (i.e. the work coach). Any other result would fail to respect the purpose of legislative provisions that authorise the Secretary of State / her officials

unilaterally to require claimants to apply for particular vacancies. In general, it would not be consistent with Parliament's purpose if, following a work coach interview at which a claimant raised no concerns about the appropriateness of a vacancy, the claimant could, without fear of sanction, subsequently decide for themselves that an application would be pointless.

62. I conclude that the First-tier Tribunal's error on a point of law in determining Miss B's appeal was not material and, accordingly, decline to set aside the tribunal's decision. For the avoidance of doubt, I should point out that these reasons are not to be read as expressing any view as to the correctness of the Secretary of State's arguments as to the limited circumstances in which a claimant would be able to establish a good reason for applying for a vacancy. It has not been necessary, in determining this appeal, for me to consider whether the Secretary of State's analysis is sound.

(Signed on the Original)

Mr E Mitchell
Judge of the Upper Tribunal
19 December 2019