



Neutral Citation Number: [2024] EWCA Civ 1509

Case No: CA-2022-002229

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (ADMINISTRATIVE APPEALS
CHAMBER)
UPPER TRIBUNAL JUDGE PEREZ

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 December 2024

Before :

LADY JUSTICE NICOLA DAVIES
LORD JUSTICE STUART-SMITH
and
MR JUSTICE COBB

Between :

TENDRING DISTRICT COUNCIL **Appellant**
- and -
(1) SECRETARY OF STATE FOR WORK AND PENSIONS **Respondents**

- and -

(2) CD

Kelvin Rutledge KC (instructed by Tendring Council) for the Appellant
The First Respondent did not appear and was not represented
The Second Respondent appeared in person (CD)

Hearing date: 23 October 2024

Approved Judgment

This judgment was handed down remotely at 2pm on 9 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Nicola Davies, Lord Justice Stuart-Smith and Mr Justice Cobb:

1. The appellant (Tendring), an administering authority for Housing Benefit purposes, appeals from a decision dated 30 June 2022 of Judge Perez (‘the Judge’) sitting in the Upper Tribunal, Administrative Appeals Chamber (‘UT’) which overturned in part a determination of the First tier Tribunal (‘FTT’) that an overpayment of £67,421.79 of Housing Benefit was recoverable from both AB (formerly the first respondent) and his wife, CD, the third respondent. The Judge set aside that part of the FTT’s decision relating to the recoverability of overpayment from CD but maintained the FTT’s decision concerning recoverability from AB.
2. This appeal is directed to the issue of recoverability of the overpayment of Housing Benefit from CD, who is a person other than a person to whom the Housing Benefit was paid. The liability of AB to repay the monies has been established. Pursuant to determinations by this court that AB lacked capacity to litigate and was a protected party who should be represented by the Official Solicitor as litigation friend and to an order pursuant to CPR 19.2(3), AB ceased to be a party in these proceedings on 18 October 2024: [2024] EWCA Civ 1248.
3. The litigation history is protracted. This case has taken more than nine years in the tribunal system where it has been heard twice by a FTT and an UT. The Secretary of State was joined to the proceedings in 2019 and took part in the tribunal proceedings but has taken no active part in the appeal. At this hearing, the appellant was represented by Mr Rutledge KC. CD represented herself.

Factual background

4. Prior to 2000, AB claimed Housing Benefit in respect of a rented property at 118 Holly Way, Elmstead, Colchester. In March 2000, CD applied for a pre-tenancy determination. On 31 March 2000, AB and CD jointly purchased the freehold of 12 Catherine Close, Clacton-on-Sea, Essex, which became their home. Between 17 April 2000 and 29 January 2012, AB received Housing Benefit from Tendring in respect of 12 Catherine Close. On 30 April 2005 in a benefit declaration, AB ticked “Rent it” in respect of the question “Do you rent the property or own it?”. AB subsequently made a written request for Housing Benefit payments to be paid by BACS in a document received by Tendring on 1 June 2007. On 21 October 2007 AB suffered a stroke which resulted in severe neurological impairment. On 19 December 2007 AB appears to have signed a form confirming that rent charged by his landlord remained at £475. In August and September 2008, CD sent two letters (which stated that they were sent by AB and CD) to Tendring seeking a review of AB’s Housing Benefit award on the ground that their ‘landlord’ was increasing their ‘rent’ from £475pm to £625pm.
5. In February 2012, AB and CD submitted an application to Tendring for a Disabled Facilities Grant which led to the suspension of AB’s Housing Benefit and an investigation into potential benefit fraud. In a document entitled “Housing Benefit Fraud Prosecution Report” dated 17 July 2012, issued by Tendring as part of the fraud investigation, it was noted that CD dealt with all her husband’s financial affairs and directed: “Please ensure all paperwork goes out in the name of [CD] on behalf of [AB].”

6. CD was subsequently charged and convicted at Chelmsford Crown Court of two counts of dishonesty under section 111A(1)(b) of the Social Security Administration Act 1992 in respect of the two 2008 letters (para 4 above). On 22 July 2014, following her conviction on both counts, CD was sentenced to 18 months' imprisonment concurrent on each count suspended for two years. These convictions became "spent" on 21 December 2019 after the relevant FTT determination but before the UT decision, the subject of this appeal.
7. On 18 July 2012 Tendring issued a series of notices headed: "Benefit Decision Notice". They were all addressed to CD at 12 Catherine Close but continued:

"Re [AB], 12 Catherine Close, Clacton-on-Sea, Essex, CO15 4AX."

The first notice stated:

"REASON FOR CALCULATION: Change of Circumstances. You have been overpaid Housing Benefit. The amounts you have been overpaid are shown below...."

The subsequent notices further detail the dates and the sums overpaid. An 'Overpayment Statement' dated 18 July 2012 identified £67,421.79 as the total amount of overpayment of which Tendring sought recovery. On 19 July 2018 Tendring issued an invoice for overpayment of Housing Benefit in the sum of £67,421.79. No payment has been made by AB or CD.

8. Following correspondence from Tendring, it would appear that AB and CD instructed solicitors. An email dated 30 August 2012 was sent by their solicitor to Tendring's Housing Benefit Recovery, the subject being AB and CD. In a reply dated 4 September 2012 Tendring states:

"AB and CD are jointly and severally liable as a couple, HB and CTB was paid at a previous address as a couple and this continued for the current address. The fact shows that AB and CD are the beneficial owners and therefore not entitled to receive HB for this reason..."

TC would have requested repayment of these amounts with or without the decision to instigate criminal proceedings."

9. Appeals were lodged in the FTT in respect of claims by Tendring relating to Housing Benefit, Council Tax and State Pension Credit. In May 2015 the FTT upheld the Housing Benefit Decision Notices following an appeal by AB. In September 2017 the UT remitted all appeals to the FTT for re-hearing. In March 2018 the FTT (second hearing) found that AB and CD were liable for the Housing Benefit overpayment. In July 2022 the UT (second hearing) found that AB was liable for Housing Benefit overpayment but CD was not. Permission to appeal the decision of the UT was granted by Coulson LJ on 13 July 2023. On 10 November 2023 Coulson LJ granted Tendring's application to join CD to the appeal.

10. The relevant legislation, statutes and regulations, is set out in Appendix 1 to this judgment.
11. For the purpose of this appeal two decisions are of relevance: the FTT order dated 21 March 2018 and the UT order which was sealed on 14 July 2022.

The FTT decision (21 March 2018)

12. The appeal before the FTT comprised five linked appeals against five decisions which related to entitlement and overpayment decisions in relation to State Pension Credit, Housing Benefit and Council Tax Benefit. For the purpose of these proceedings the relevant decision is Decision 5 in respect of overpayment of Housing Benefit and Council Tax Benefit. The appeal in relation to Decisions 1 and 2 (State Pension Credit) was withdrawn. The identification of the parties in the Statement of Reasons include: “Appellant: (CD) (Appointee for (AB)).” Paragraph 1 states, “This is the appeal by AB in five linked appeals against five decisions.” Paragraph 9 recorded that AB and CD were represented by Mr Elahi, a lay person with a background in welfare advice and representation.
13. The FTT considered the issue of CD’s authority to act as appointee for AB. It recorded that CD had been appointed as Deputy in relation to AB following his stroke in 2007, but her appointment had subsequently been rescinded by the Court of Protection as AB was deemed by the Court to have capacity to grant a Power of Attorney. Accordingly, on 27 January 2015 AB had made a property and financial affairs Lasting Power of Attorney in favour of his wife and his son which was registered with the Office of the Public Guardian on 25 June 2015. The FTT concluded (para 17):

“... the Tribunal had, to date, been proceeding upon the basis that [CD]’s authority to act as Appointee was derived from her appointment as Deputy in relation to her husband. There appeared to be no evidence before the Tribunal that she had formally been appointed as Appointee for either the claim for State Pension Credit or the Housing Benefit And Council Tax Benefit applications...

Accordingly, as no one present, including (AB) indicated any objections, and as the Tribunal was satisfied that (CD) was validly appointed and was clearly representing (AB’s) best interest, it would not be in the interests of justice or of furthering the overriding objective to adjourn the hearing in order that issues relating to capacity and the appointment of appointees and litigation friends might be considered further. The Tribunal was satisfied that (CD’s) authority to act on behalf of her husband was derived from the Deputyship and then, in due course, from the Lasting Power of Attorney rather than from a formal appointment as appointee. Whilst, strictly speaking, it may not be the case that this gives authority to conduct litigation, none of the parties present took issue with the jurisdiction of the Tribunal to hear the appeal in the light of the nature (CD’s) appointment. The Tribunal was satisfied that it was in order to proceed.”

14. The FTT noted CD's convictions (para 65 above) and was concerned that CD might be at risk of further prosecution. The FTT advised CD that she had a right not to answer any questions which might incriminate her. CD indicated that she would not wish to answer any questions, following which "the Tribunal explained to her that as it was anticipated that her evidence would be entirely exculpatory and that the Tribunal would be assisted by hearing her evidence and would seek, as an enabling Tribunal, to protect her, she relented and helpfully assisted the Tribunal by giving evidence" (para 18).
15. In addressing Decision 5, the FTT noted that: "it was common ground that [AB] & [CD] owned 12 Catherine Close, Clacton-on-Sea, which meant that there could never have been an entitlement to Housing Benefit in respect of this property" (para 36).
16. The FTT considered whether any overpayment of Housing Benefit and/or Council Tax Benefit was recoverable from AB alone or whether it was also, or in the alternative, recoverable from CD. It stated (para 40):

"Although there seems to have been some confusion in this regard on the part of [Tendring], there is not, and as at all relevant times in this case, never was an ability to make a joint claim for Housing Benefit. Therefore, if, as appears to have been the case, [Tendring], has contended that this was a joint claim, this is incorrect in law (CH3817-2004 para 8). Regulation 71(1) of the [Housing Benefit (General) Regulations 1987] provided that:

71(1) – In the case of [a couple] or members of a polygamous marriage a claim shall be made by whichever one of them they agree should so claim or, in default of agreement, by such one of them as the [relevant authority] shall determine."

It noted that the claim in respect of the previous property at Holly Way was made by AB. It also traced how housing benefit had continued to be paid to AB after his move to 12 Catherine Close (paras 45-48)

17. The FTT also addressed the issue of whether Tendring's failure to check upon AB's entitlement to Housing Benefit for a period of 12 years amounted to an official error and, if it did, whether the overpayment could be recovered from AB and/or CD.
18. In addressing the issue of recoverability of Housing Benefit, specifically from whom it was recoverable, the FTT noted that Tendring had been proceeding upon the basis that the liability of AB and CD was joint and several "without giving any thought to the legal basis upon which it had reached this conclusion." The FTT was clear that pursuant to section 75(3)(a) of the Social Security Administration Act 1992, the overpayment was recoverable from AB (para 50).
19. The FTT considered Regulation 82(2)(b) and (c) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (HB (SPC) Regulations 2006) namely that:

"(b) in a case where an overpayment arose in consequence of misrepresentation of or a failure to disclose a material fact (in either case, whether fraudulently or otherwise) by or on behalf

of the claimant, or by or on behalf of any person to whom the payment was made, the overpayment is only recoverable from any person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made; or in (c) in a case where an overpayment arose in consequence of an official error where the claimant, or a person acting on the claimant's behalf, or any person to whom the payment was paid, or any person acting on their behalf, could reasonably have been expected, at the time of receipt of the payment or of any notice relating to that payment, to realise that it was an overpayment, the overpayment is only recoverable from any such person instead of, if different, the person to whom the payment was made.”

20. The FTT determined that AB had failed to disclose his change of circumstances and that CD had misrepresented the position when notifying Tendring of the change of circumstances in 2000, facts which were compounded from 2005 onwards when AB failed to disclose the change of circumstances and in 2008 when representations were made which were the subject of CD’s convictions for fraudulently claiming Housing Benefit. It concluded that: “This thereby provided the legal basis upon which both [AB] & [CD] were liable from the outset for the overpayment of Housing Benefit.” (para 51).

21. The FTT considered whether overpayment could be recovered from AB and CD. It stated (para 52):

“... If [Tendring] is to be able to recover an overpayment from someone instead of or in addition to the claimant, R(H) 6/06 sets out clear rules as to the procedural steps that must be followed. Paragraph 60 of R(H) 6/06 provides that, “in every case where a recoverable overpayment has been made, the local authority should make a single decision referring to all of those from whom the overpayment is recoverable, rather than separate decision addressed to each of them”. ... Paragraph 65 of R(H) 6/06 makes it clear that the purpose of this finding was to ensure that all those from whom the overpayment may be recovered are able to challenge the decision. This led the Upper Tribunal in CH/3744/2006, when applying R(H) 6/06, to apply the Tribunal of Commissioner’s decision R(H) 3/04 in holding that a mere failure to meet the notification conditions does not invalidate an otherwise valid overpayment recoverability decision and require an appeal tribunal to declare that there is no effective decision. Once a properly constituted appeal had got to an appeal tribunal, any prejudice to the claimant from the lack of proper notification could usually be cured by a full hearing before the appeal tribunal. This may be of relevant in this case where the 2nd respondent had clearly been rather confused.”

22. The FTT found that Tendring’s letters dated 18 July 2012 contained no express statement that recovery was sought from both AB and CD; nor was the notice addressed to CD as deputy or, alternatively, in her own right. However, the FTT was satisfied that by the time of the appeal, it was clear that Tendring was seeking recovery from

both of them and accordingly the liability of AB and CD was an issue before the FTT. It determined that any defect in notification: (i) should not be fatal to Tendring's decision; (ii) should not prevent the FTT from considering the liability of both AB and CD; and (iii) had been cured by CD's active participation in the proceedings before the FTT (para 52).

23. The FTT dismissed AB's appeal against Tendring's decision to recover the overpayment of £67,421.49 holding that it was recoverable from AB and CD. In summary, that decision was based (inter alia) on the following findings of fact: (i) AB and CD had each caused or contributed to the overpayment; (ii) AB had failed to inform Tendring that he had no rental liability; (iii) CD had represented in 2000 that she had a pre-tenancy determination for 12 Catherine Close for which Housing Benefit was payable, and used this to ensure the payment of Housing Benefit; (iv) CD had sent the 2008 letters which were the basis of her criminal convictions for dishonesty; (v) neither AB nor CD had informed Tendring that they owned their own home at 12 Catherine Close; and (vi) AB and CD had each been dishonest (para 52).
24. Upon review of its decision, the FTT granted AB permission to appeal on the ground that "it may arguably have been an error of law to find that both CD and AB are jointly liable in respect of an overpayment of Housing Benefit".

The UT proceedings

Case management hearings and directions

25. The UT held a number of case management hearings prior to its hearing on 20/21 March 2022. In directions dated 9 November 2018, the UT directed CD or her representative to inform the UT within six weeks of the date on which the notice was sent whether she wished to be joined as a party to the appeal. Further directions were given on 4 and 9 February 2021 and revised on 8 March 2021. It is clear from the revised directions that the UT was identifying CD as the representative of AB and described her as acting on behalf of AB. At para 2 of these directions the Judge stated that she has "kept the references to "the Appellant" because the requirement is technically on him as a party; [CD] will be providing material on his behalf. But I have included this explanation to address [CD's] point on this."
26. Notwithstanding the invitation of the UT to CD to be joined as a party, CD did not apply. There is no further direction which includes CD as a party in the proceedings.

The UT decision (30 June 2022)

27. Following an oral hearing on 29 and 31 March 2022, the UT decision was made on 30 June 2022, stamped 14 July 2022. The appellant was AB. He was noted as being represented by CD. For the purpose of this appeal, the relevant UT decision is Decision 6, entitled "Housing benefit overpayment, recoverability from CD". The UT allowed AB's appeal against the FTT's decision that the Housing Benefit overpayment is recoverable from CD, and set aside that part of the FTT's decision.
28. The UT refused permission to AB to appeal in respect of his Housing Benefit entitlement. The position regarding Housing Benefit entitlement remained governed by the FTT decision dated 31 July 2015 (para 62).

29. The Secretary of State accepted that it might have been procedurally irregular, and possibly an error of law, for the FTT to consider the application of Regulation 82(2) of the HB (SPC) Regulations 2006 to CD had she not been present at the hearing and engaged with the appeal before it. However, the Secretary of State adopted Tendring's submission that the failure to notify CD of her appeal rights had been cured by a full hearing as envisaged by the Tribunal of Commissioners in *R(H) 3/04*, as CD was aware of, and intimately involved in the FTT proceedings (para 86(2),(3)).
30. Tendring accepted that CD was not expressly notified that the overpayment was recoverable from her personally (para 87(1)), it relied upon the Commissioners' decision in *R (H) 3/04* at [75] namely that:

“Failures by a local authority to provide relevant particulars or to notify the appellant of the existence of appellate rights will for practical purposes in normal cases have ceased to cause any significant injustice to an appellant if a properly constituted appeal is before the tribunal. This is because the appeal process affords the appellant the opportunity to adduce evidence and to have a full re-hearing before a judicial body which is able to examine the factual basis of the claim that the money is legally recoverable from the appellant and to consider as well as challenges to the law arising from the process...”
31. CD's position was that she did not wish to be joined as a party in her own right. She had not been issued with a decision notice by Tendring, she was not notified in writing of a decision affecting her under the 2006 Regulations. CD maintained that she had been litigating on behalf of AB, before the FTT she was a witness and did not have an opportunity to present her own case.
32. The UT found that: (i) Tendring's Benefit Decision Notices dated 18 July 2012 did not represent a decision by Tendring that there was recoverability from CD in addition to recovery from AB (para 102); (ii) the Benefit Decision Notices were addressed to CD but its subject was AB (para 103); (iii) Tendring's letter of 17 July 2012 had indicated that CD acts for AB and should be sent all correspondence (para 104); (iii) Tendring's letter of 4 September 2012 to CD's solicitors post-dated the 18 July decision. The UT did not accept that any post 18 July 2012 letters or phone calls sufficed to amount to a decision that there was recoverability of Housing Benefit from CD. (para 106)
33. The UT concluded that there was a single decision date by Tendring namely 18 July 2012 (para 110). Addressing letters to CD at a time when she was acting as appointee or Deputy (or was believed to be so acting) for AB and in the absence of letters addressed to AB personally were not decisions as to recoverability by Tendring from CD (para 111). The UT reasoned that Tendring's letters regarding its recoverability decision were directed to AB, thus, any right of appeal mentioned in them was AB's.
34. The UT found that Tendring's failure to make a decision in respect of CD was not necessarily cured by her attendance at the FTT hearing as AB's representative. That was identified as a mischief which needed curing (para 120). The UT did not accept that a non-party could be bound by a tribunal decision when there had been no agreement to that effect. It found that being involved as a wife and representative for the purposes of instructing a professional advocate is not akin to knowing that one is

fighting for oneself. Giving instructions for someone else is not the same as giving them for oneself as such instructions may differ. CD was noted by the FTT to be “clearly representing [AB’s] best interests”, the UT stated that arguments which CD herself might raise could involve a conflict of interest (paras 121, 122).

35. Finally, following post hearing submissions, the UT referred to Paragraph 6 of Schedule 7 of the Child Support Pensions and Social Security Act 2000 which provides that: “Where any amount of housing benefit ... is determined to be recoverable ... any person from whom it is being determined that it is so recoverable shall have a right of appeal to the [FTT]”. The UT identified such an appeal as being by a person from whom Tendring had determined that the amount is recoverable. Without a determination that an amount is recoverable from a person, that individual cannot appeal to the FTT as there is no basis for an appeal. The UT regarded the point as conclusive and stated that as CD was not a party to the appeal there could not be a binding adverse result in respect of CD (para 123).

Grounds of appeal

36. Tendring advances five grounds of appeal:

- (1) The UT erred in law in its application of reg. 71(1) of the HB (SPC) Regulations 2006 by conflating “decision” and “notification” and holding that, as CD had not been notified that it was seeking the recovery of the overpayment of Housing Benefit from her, the appellant had not taken a decision to that effect.
- (2) The UT erred in law in reading the 2012 Notices, amongst other documents, as notification that recovery of the overpayment was sought from AB alone.
- (3) The UT erred in law in its application of *R(H)3/04* at 74-76 and the principles enunciated in *R(H)3/04* to the circumstances of the present case and/or fettered the full and proper exercise of its jurisdiction by treating as determinative its finding that Tendring had not taken a decision to recover the overpayment from CD.
- (4) The UT erred in law in concluding that no adverse finding could be made against CD as she was not a party to the appeal, in circumstances where either she could have applied to become a party or the UT could have added her as a party had it considered that her status as a non-party would inhibit its ability to determine the appeal.
- (5) The UT erred in law in rejecting the relevance of CD’s now-spent criminal convictions for Housing Benefit fraud and/or failing to carry out any or any lawful balancing exercise as required under s.7(3) Rehabilitation of Offenders Act 1974 (ROA 974).

37. Tendring and Coulson LJ sought to consolidate the grounds as follows:

- (1) The decision by Tendring to seek recovery of overpayment against CD (*Grounds 1 and 2*).
- (2) Whether or not the decision was notified to CD (*Grounds 3 and 4*).

- (3) Whether CD's criminal convictions should have held greater weight (*Ground 5*).

Tendring's submissions

38. Tendring's primary submission is that:

- i) There was a "recoverable overpayment" of Housing Benefit in the sum claimed in respect of both AB and CD, the latter's liability arising by reason of the Administration Act 1992 section 75(3)(b) and HB (SPC) Regulations 2006, Reg.82(2)(b) and/or (c);
- ii) Tendring was required to take a decision that the overpayment of Housing Benefit to AB was a "recoverable payment" (HB (SPC) Regulations 2006, Reg.81(1) read with Schedule 8, para 15(1)). That Tendring took such a decision is evidenced by the 18 July 2012 Benefit Decision Notices which are said to be compliant with the requirements of para 15(1);
- iii) Tendring contends that CD was notified of the decision under Regulation 81(1) because the July 2012 Benefit Decision Notices were sent to her;
- iv) The Benefit Decision Notices referred only to AB as the Housing Benefit account was in his sole name. This was a requirement of the Regulations applicable at the time the account was opened namely the Housing Benefit (General) Regulations 1987 (Applicable before 6 March 2006);
- v) The Benefit Decision Notices should be read as notification to CD in relation to a claim registered in the name of AB, as AB and CD are husband and wife and Tendring had to nominate one claimant. The notices were treated as notification to both and instigated a statutory request for reasons which resulted in an appeal. Tendring relies upon (i) the Dispute Statement submitted by CD to Tendring on 22 September 2012, which stated "a final demand has been sent to us for payment"; and (ii) Tendring's letter dated 17 July 2012 addressed to CD, which reflected Tendring's position namely that it was considering both an overpayment recovery and a criminal prosecution.

39. In response to questions from the court, Mr Rutledge accepted that:

- i) The 18 July 2012 Benefit Decision Notices are the single notice of the decision to seek recovery of overpayment;
- ii) There was no document directed to CD which stated that she was personally liable for recovery of the overpayment as distinct from AB;
- iii) The main purpose of notification to a person affected by a decision is to allow that person to exercise appeal rights; and
- iv) No express notification was given to CD which conferred appeal rights upon her. Tendring relies on the fact of a 'full' FTT hearing, at which evidence was presented and called. At the hearing Tendring's counsel was clear that recovery was sought in respect of AB and CD and the hearing proceeded on that basis.

That, submits Tendring, cured any defect in notification of a claim being made against CD.

40. Tendring submits that there was nothing wrong with a party appearing both as a representative for another party and also in order to defend their own position. CD was a party in all but name and case management decisions were made on that basis. CD was invited to join as a party but chose not to do so. Section 11(2) of the Tribunals, Courts and Enforcement Act 2007 (The T, C and E Act 2007) gives CD a right of appeal to the UT.
41. Tendring's secondary position is that if the court finds that CD was not notified of a decision to claim the overpaid housing benefit from her in July 2012 or shortly thereafter, it is necessary to consider grounds 3 and 4 as there was on the part of Tendring a "mindset" that AB and CD were liable, as evidenced by its letter dated 4 September 2012, which asserted that AB and CD were jointly and severally liable as a couple. Mr Rutledge accepted that Tendring could not establish evidence of the mindset in July 2012 but submitted that the UT was wrong to find that there was no decision as that finding is inconsistent with the way in which Tendring went about recovering the overpaid housing benefit e.g. by its 4 September 2012 letter, its enforcement action against both AB and CD, and its approach at the FTT.
42. Finally, in addressing the issue of whether Tendring's failure to make a decision and notify CD of its intention to recover overpayment, Mr Rutledge submitted that the court should consider whether such a failure caused substantial harm.

CD's submissions

43. CD denies that there exists any claim against her as Tendring failed to follow the procedures set out in the relevant legislation in order to conclude that an overpayment has occurred.
44. CD submits that Tendring has never made a decision to recover the overpaid housing benefit from her. The 18 July 2012 Benefit Decision Notices were addressed to CD because following AB's stroke all communications from Tendring were addressed to CD. Since 2009 all communications from Tendring have been addressed to CD even though they relate to AB, this has become Tendring's normal practice, and was introduced into its system by an employee. Tendring's invoice dated 19 July 2012 is addressed to CD, but AB is identified as the claimant.
45. CD relies on the fact that she was not named as a party at the hearings before the FTT and the UT. Both appeals were in respect of AB and not CD. Tendring had an opportunity to make CD a party but chose not to do so. She draws support from the fact that, before the FTT, the Secretary of State took the view that the appeal related to AB and not CD. She did not wish to be joined at a party as this would involve consideration of AB's capacity, he would require a litigation friend which CD could not afford. Thus it is CD's contention that her role before the FTT and the UT was as a representative for AB and not in her own right. She says she was not given an opportunity to make representations on her own behalf before the FTT as she was a witness. Before the UT she was again noted to be a representative for AB and that is how CD conducted herself.

46. In summary, it is CD's case that she was not provided with a Benefit Decision Notice which in turn prevented her rights of appeal. She was invited to join her husband's appeal but was prevented from conducting her own appeal in her own right having been given permission to do so.

CD's criminal convictions

47. CD relies upon the fact that her criminal convictions, in respect of which she maintains her innocence, are now spent. She contends that the Upper Tribunal was obliged to make its decision without taking account of her convictions as they were spent by 2019.

Discussion and conclusion

48. Between 2000 and 2012 a claim for Housing Benefit was made by AB to Tendring in respect of the property at 12 Catherine Close, Clacton-on-Sea. AB had no legal entitlement to Housing Benefit as from March 2000 the property was jointly owned by AB and CD, a fact which was not disclosed to Tendring by AB or CD.
49. The issue on this appeal is whether the overpayment sought by Tendring can be claimed from CD, it having been determined that it can be legally claimed from AB. At the outset we note that the fundamental difficulty for Tendring is that its documentation, which is the only evidence of its asserted decision to recover overpayment, indicates that the person against whom the claim for overpayment was being made was AB. We also note that before the FTT, the Secretary of State made the point that Tendring had wrongly understood that AB and CD could be jointly and severally liable in respect of an overpayment claim.
50. Pursuant to Regulation 71(1) of the Housing Benefit (General) Regulations 1987 (The 1987 Regulations), in the case of a couple, Housing Benefit can be claimed by only one person. The 1987 Regulations were in force when AB originally made a claim for Housing Benefit in respect of the previous property at Holly Way: he was the only claimant. Further, there is no documentation to support a contention that the 2000 claim for Housing Benefit in respect of 12 Catherine Close was other than in the name of AB. Until his stroke in 2007, AB was in correspondence with Tendring on his own behalf. As a result of AB's resultant incapacity, CD was initially appointed as his Deputy and when that was rescinded, she was granted a Lasting Power of Attorney with her son to act on AB's behalf in respect of financial and property matters.
51. CD contends that from 2009 onwards Tendring would write to her in respect of matters concerning her husband. Evidence of that practice is borne out by Tendring's "Housing Benefit Fraud Prosecution Report" dated 17 July 2012 in which it was recorded that: "[CD] has a court of protection document regarding [AB] and means that [CD] deals with all her husband's financial affairs. (see attached for your reference only). Please ensure all paperwork goes out in the name of [CD] on behalf of [AB]." There is no evidence that contradicts CD's contention. We accept it.
52. Consistent with its practice, Tendring's Benefit Decision Notices, all of which are dated 18 July 2012, were addressed to CD at 12 Catherine Close but were directed to AB (see para 7 above). Tendring accepts that it is the Benefit Decision Notices dated 18 July

2012 which, taken collectively, are the documents which represent its single decision to recover Housing Benefit overpayment. Its contention that the Notices comply with the requirement of Schedule 8, para 15 of the HB (SPC) Regulations 2006, namely no requirement of identification of the party against whom the overpayment is sought, is of no real force on the facts of this case. Tendring addressed the service of the Notices to CD but indicated that it was referable to AB, consistent with its practice since 2009. Contained within the Notices is the reference to “your Claim”. The only documented claimant for Housing Benefit was AB. Of note is the statement in one of these Notices that: “you have been overpaid Housing Benefit. The amounts you have been overpaid are shown below.” This is consistent with the previous regulatory requirement that only one person can claim Housing Benefit. On the facts of this case, that person was AB. In our view, there is nothing in the form or the wording of the Housing Benefit Notices dated 18 July 2012 which references, evidences or relies upon any decision by Tendring to recover overpayment from CD.

53. Since the 18 July 2012 Housing Benefit Notices are the only documents upon which Tendring can rely as being notice of or evidencing its decision to recover overpayment, it follows that it fails on its first submission namely that there was a decision to recover overpayment from CD. We are satisfied that the UT was correct so to find.
54. As to any subsequent notification to CD for the purpose of recovery, we agree with the UT that any reference in later correspondence to the joint liability of AB and CD cannot overcome the fact that a single decision was made to recover from the claimant AB. In our judgment, the UT was correct to conclude that narrating a different position retroactively (e.g. by Tendring’s letter of 4 September 2012 to CD’s solicitors) cannot change the original decision.
55. Further, the appellant’s attempt to rely on a ‘mindset’ on the part of Tendring, falls far short of the sound evidential basis required to satisfy the court that there was a specific decision to recover overpayment from CD or any notification of such a decision to her.
56. Tendring’s final submission that any defect in its decision making or notification was cured by the full hearing before the FTT and thereafter the UT, requires scrutiny. It is correct that the hearing before the FTT in 2018 and the UT hearing in 2022 were full re-hearings. The issue on this appeal is whether CD was a party before either tribunal and if she was not, whether the rights and protections which she had before those tribunals were equivalent to the rights and protections she would have enjoyed had she been a party to the proceedings.
57. We have been taken to, and reviewed, many of the decisions, reasons and orders of the FTT and UT. There is no order that formally defines CD’s status in the proceedings. The judges of the FTT and UT appear to have accepted that CD was acting as an ‘appointee’ or quasi-litigation friend for AB, albeit only informally. The FTT and UT appear (implicitly but not expressly) to have allowed CD to present argument on her own behalf as well as on behalf of her husband, while not at any time granting her party status in her own right.

What was CD’s authority to represent the interests of AB?

58. On 18 October 2024 we determined, by reference to the statutory criteria set out in the Mental Capacity Act 2005, that AB lacks capacity to litigate in this appeal: see para 2

above. With the benefit of an expert report prepared specifically for this purpose, we were satisfied (it was uncontroversial as between the parties) that a stroke in 2007 had significantly adversely impacted AB's capacity in a number of domains of his life, including for present purposes, his capacity to litigate.

59. It appears that neither the FTT nor the UT formally ruled on AB's litigation capacity, and/or on his need for a representative or litigation friend, in order for him properly to participate in the proceedings before the tribunals. The issue of litigation capacity was not as far as we know even investigated; in any case where there is reason to suspect a lack of capacity an investigation would and should generally be the practice: see *Masterman-Lister v Brutton* [2002] EWCA Civ 1889 at [22] per Kennedy LJ, and *AB v RBS* [2019] (UKEAT/0266/18/DA). Within this litigation, before the FTT and/or the UT, CD was never formally appointed as AB's Litigation Friend.
60. The Deputyship status which CD had acquired by orders of the Court of Protection in January 2008 and in March 2014 in relation to AB's property and financial affairs (the latter order in similar terms to the former, but joining the parties' son as an additional Deputy) did not expressly confer on CD any rights to conduct litigation for or on behalf of AB. Expert medical opinion prepared in late-2014 revealed that AB was sufficiently capacitous to grant a Lasting Power of Attorney to CD and the parties' son in relation to his property and financial affairs; such a document was therefore executed in early 2015 and registered with the Office of the Public Guardian in June 2015. The Lasting Power of Attorney did not give CD (as attorney) the power to litigate on AB's behalf. We note that AB was once again assessed as lacking capacity in relation to his property and financial affairs in 2017. In its reasoned decision in July 2022, the UT referred to CD having argued before her that:

“it was part of [CD's] heavy responsibility, as a court-appointed representative and later holding a lasting power of attorney, to ensure that [AB's] rights were adhered to at every single level. His rights: not hers”
(emphasis by underlining added).

While we have no doubt that CD conscientiously fulfilled her duties as a Deputy and as an Attorney for AB outside of the tribunal system, we do not believe that the duties imposed on her by the court orders or the Lasting Power of Attorney extended to conducting litigation on AB's behalf.

61. The rules of procedure governing the appointment of a litigation friend for a protected party in the civil and family courts, and in the Court of Protection, are clear and unambiguous: see Part 21 of the Civil Procedure Rules 1998, Part 15 of the Family Procedure Rules 2010, and Part 17 of the Court of Protection Rules 2017. Each jurisdiction requires that a protected party (i.e., a party, or an intended party, who lacks capacity to conduct the proceedings) “must” (the language is clear) have a litigation friend to conduct the proceedings on that party's behalf. We noted that in civil enforcement proceedings arising from the claims by Tendring for repayment of sums overpaid, HHJ Moloney QC sitting in the Chelmsford County Court ruled that AB needed a Litigation Friend but that CD “may not” fulfil that role. It is unclear to us why he took that view, and who, if anyone, ultimately fulfilled it.

62. The rules of procedure in the tribunals permit for a wider range of representatives to support protected and vulnerable parties, including but not limited to litigation friends; these rules are anchored in the overriding objective to deal with all cases fairly and justly (rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('TP(UT)R 2008), and rule 11 *ibid.*). There is no specific provision in the tribunal rules equivalent to Part 21 of the Civil Procedure Rules 1998. The tribunal rules concerning support for protected and vulnerable parties are applied more flexibly than in the courts; there is less formality in its processes, consistent with the quasi-inquisitorial nature and requirements of each jurisdiction (*AM (Afghanistan) v SSHD* [2017] EWCA Civ 1123). The orders and decisions/reasons which have been made in the FTT and UT in this case reassure us that the judges were acutely aware of the need for AB's interests to be protected, and were alert for any risk that they were not. Neither the FTT nor the UT judges appear to have seen any reason to prevent CD from representing her husband, nor did they see a need to deploy their case management powers otherwise to protect the interests of AB.
63. CD was most commonly described on the face of the applications and orders as AB's 'appointee', and a flexible approach was taken to her status before the FTT. In its March 2018 decision the FTT spoke of her appointment being derived from her appointment as Deputy but deliberately refrained from pursuing a course that might clarify issues of capacity and CD's appointment: see [13] above.
64. In the later directions order of 9 November 2018 the UT recorded (para 8) that:
- “...the cover sheet of my decision of 22 September 2017 recorded only [AB] as the appellant. It must have been established by then that [CD] was strictly speaking not his appointee.”
- In the same directions document, the UT recorded (para 16) that:
- “[CD] was not a party to the First Tier Tribunal proceedings of 20 and 21 March 2018 in her own right (nor even, strictly speaking, as appointee.)” (Emphasis by underlining added).
- In its reasoning to support a directions order issued on 29 October 2020, the UT observed that the Appellant and the Second Respondent had referred to CD as AB's "appointee"; the UT remarked that it “could not see that [CD] was an appointee for the purposes of the first-time-around UT appeal... she appeared to be his representative”. In March 2021 the UT referred in its order to having sought “submissions on the appointee question”. We were unclear how this was resolved.
65. Neither the FTT nor the UT specifically addressed the nature of CD's status as a representative of AB. Undoubtedly, the judges proceeded on the basis that CD was AB's 'representative', and acquiesced in the informal arrangements which were long established by the time of the 2022 UT determination against which this appeal is brought.

Was CD ever a party in her own right before the FTT and/or UT?

66. In our judgment, the short answer to this question is no. It is common ground that CD was never made a party to the proceedings. It is apparent that in many of the hearings before the FTT and UT, CD played a significant role, making extensive oral and written representations on behalf of AB; before the FTT she gave oral evidence and was cross-examined. However, CD specifically and repeatedly renounced any suggestion by the tribunal or by Tendring, that she had been made (or should be made) a party in her own right. Tendring contends that CD could have applied to be joined as a party; however, she never did so. In this regard, we were, for example, taken to the order made by the UT on 9 November 2018 which opened with the following paragraph (para 2):

“If and to the extent that [CD] needs express permission to appeal to the Upper Tribunal in her own right (rather than on behalf of [AB]), and if she wishes to be joined as a party to this appeal, I grant her that permission.”

This was translated into a specific direction at the conclusion of the same order (para 26):

“[CD] or her representative must come up within six weeks of the date on which this notice is sent, tell the upper tribunal whether [CD] wishes to be joined as a party to this appeal...”

67. CD responded to this order with written submissions (on 20 December 2018), in which she said in terms:

“I thank the Upper Tribunal Judge for her clarity. I do not wish to be joined in these proceedings and I will explain why”.

It is recorded in the order that CD did go on to explain why she did not wish to be joined, and the Judge added:

“So, [CD] was not already a party... and neither respondent had requested that she be made a party”.

68. A further order made on 2 January 2019 states (para 4):

“... the parties will also see that I repeat, throughout these directions, that [CD]’s submissions are on behalf of husband. I do so to avoid any doubt in the minds of any tribunal panel as to who is the “target” of this case, and as to who was the “target” of the first time round Upper Tribunal appeal. [CD] has not been a party to any of the First Tier Tribunal or Upper Tribunal proceedings so far. And she has ... confirmed that she does not wish to be joined as a party”.

The UT repeated these points in orders made on 29 October 2020.

69. A further formal invitation to CD to join as a party to the proceedings was issued by a directions order on 9 February 2021. Prior to that hearing, CD had lodged a document in which she had flagged up a potential conflict of interest if she were to be a party while also acting as AB’s representative. The UT directed CD to explain further the conflict of interest point if CD wished to be joined. She did not.

70. Further directions given on 8 March 2021 provided (para 2) that:

“Everything to be provided by the Appellant pursuant to these directions will in reality be provided by [CD]. I have kept references to “the Appellant” because the requirement is technically on him, as a party; [CD] will be providing material on his behalf.”

This caused CD to file a submission in the UT in May 2021. In this she states:

“[CD] is not a party to these proceedings... This appeal is raised and presented by [CD] on behalf of [AB]...”
(Emphasis by underlining in the original).

71. Thus, in its later written submissions before the final pre-trial directions hearing in the UT (March 2022), Tendring had observed that:

“... [h]ad [CD] wished to take advantage of the permission granted by this Tribunal in 2018, it was incumbent on her to do so with alacrity. Not only has she failed to do so, she has repeatedly taken the opportunity to remind the parties and the Tribunal that she is not and does not wish to be a party to these proceedings.”
(Emphasis by underlining added).

72. We are satisfied that the fact that CD had acted as a representative or quasi-litigation friend for AB did not invest her with the status of a party. Mr Rutledge referred us in this regard to *R (JS) Secretary of State for the Home Department (litigation friend – child)* [2019] UKUT 64 (IAC) in which the UT had in turn (at [92]-[93]) applied the judgment of Sir Robert Megarry VC in *Re E* [1984] 1 WLR 320. In *Re E*, Sir Robert Megarry VC had said this at p324:

“The main function of a next friend appears to be to carry on the litigation on behalf of the plaintiff and in his best interests. For this purpose the next friend must make all the decisions that the plaintiff would have made, had he been able ... It is the next friend who is responsible to the court for the propriety and the progress of the proceedings. The next friend does not, however, become a litigant himself; his functions are essentially vicarious”. (Emphasis by underlining added).

Would it be sufficient, for the Appellant to succeed, if CD were merely ‘treated as a party?’

73. It is clear that CD played a significant part in the hearings before the FTT and UT. By the time the litigation reached the UT for the second time (March 2022), it had been made clear that the Appellant’s appeal in respect of liability for the repayment of housing benefit would be pursued specifically against CD. It was Tendring’s submission to this court that CD was therefore “treated as a *de facto* party”, and that she has had the benefit of participating in two substantial hearings, both of which were tribunals of full jurisdiction, in which she could (and indeed did) provide argument, documents and skeleton arguments. The Appellant’s case is that CD “had her day in court” and cannot now hide behind her lack of formal party status to defeat Tendring’s argument that the procedural deficits had been cured.
74. These submissions echo the conclusions of Coulson LJ when he granted party status to CD on this appeal ([2023] EWCA Civ 1319 at [14]/[15]); for reasons set out in his judgment, Coulson LJ did not hear from CD on that application.
75. In our judgment, Tendring’s submissions fail to take properly into account the following points:
- i) As a non-party, CD did not have the opportunity to avail herself of independent legal representation before the tribunal;
 - ii) As the UT observed (when considering the fleeting appearance of a representative for AB by his appointee, CD):

“... being involved, even intimately involved, in another person’s appeal does not of itself mean that the person who is not a party must, when instructing a representative for the appellant, be taken to have put every point that the non-party wished to make in defence of the non-party. Giving instructions for someone else is simply not the same as giving them for oneself... indeed, in the present case, instructions given on [AB]’s behalf would necessarily be different from those given on [CD]’s behalf...”;
(Emphasis by underlining added);
 - iii) It is recorded by the UT that CD had informed the UT that AB’s wider family were effectively instructing her, and it was “not she who was making decisions on [AB]s’ behalf”;
 - iv) CD had a right not to incriminate herself when giving evidence before the tribunal. A representative acting in AB’s best interests may however have wanted to ask her questions which may have incriminated her. CD could not realistically fulfil that role;

- v) There was at least the potential for a conflict of interest between AB and CD, as to liability for the return of the overpayment, and/or enforcement of any award; this had been flagged by CD at an earlier stage of the process;

and finally, for present purposes, as the UT observed:

- vi) “... without [CD] being a party to the appeal, there could not be a binding adverse result on her. The solution was in Tendring’s gift; Tendring could have rectified the position by making a decision that the housing benefit overpayment was recoverable from [CD].”

76. In our judgment throughout the process in the FTT and the UT, CD was at all times exercising what Sir Robert Megarry VC referred to as ‘vicarious’ functions on behalf of AB, and was not participating in the litigation in her own right. Put shortly, she was not a party to nor treated as a party to the proceedings.

77. Further, given that the remedy sought by Tendring (i.e., recovery of housing benefit overpayment) was specifically targeted against CD as well as against AB, in our view it was incumbent upon Tendring to ensure that it could make good its demand against her. Had Tendring or the tribunal judge wished to exercise powers under rule 9(1) of the TP(UT)R 2008, this could have been done irrespective of CD’s own views. In our judgment, that this step was never taken is another reason why the procedural defects referred to earlier were not effectively cured by the legal process through the FTT and the UT. It also follows that any harm which Tendring claims to have sustained as a result of an inability to recover overpayment from CD, is the result of its own acts or omissions.

78. It follows, and we so find, that:

- i) Tendring did not make a single decision to recover overpayment of housing benefit from AB **and** CD;
- ii) the 18th July 2012 Housing Benefit Notices were directed to AB who was recognised and identified by Tendring in the Notices as the claimant for Housing Benefit purposes; later correspondence did not change the position;
- iii) CD’s role before and/or her participation in proceedings before the FT (2018) and the UT (2022) was as AB’s representative/appointment. She was never a party in her own right nor was her status elevated to that of a *de facto* party;
- iv) Tendring’s failure to make a decision and/or to notify CD in her own right in respect of a claim for overpayment was not cured by CD’s participation as AB’s representative/appointee in the FT and/or the UT proceedings.
- v) By reason of its own procedural and substantive failures, Tendring has failed to satisfy the court that it is legally entitled to claim overpayment of Housing Benefit from CD.

79. Given our findings, the issue of whether CD’s spent convictions should be taken into account does not fall for determination.

80. Accordingly, and for the reasons given, the appeal is dismissed.

Appendix I

Legislation

The Housing Benefit, Social Security Contributions and Benefits Act 1992, section 130:

- “(1) A person is entitled to housing benefit if—
- (a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home;
 - (b) there is an appropriate maximum housing benefit in his case; and
 - (c) either—
 - (i) he has no income or his income does not exceed the applicable amount; or
 - (ii) his income exceeds that amount, but only by so much that there is an amount remaining if the deduction for which subsection (3)(b) below provides is made.
- (2) In subsection (1) above “*payments in respect of a dwelling*” means such payments as may be prescribed, but the power to prescribe payments does not include power to prescribe [
 - (a) payments to a billing authority or to a local authority in Scotland in respect of council tax; or]
 - (b) mortgage payments, or, in relation to Scotland, payments under heritable securities.]”

The Social Security and Administration Act 1992 (The Administration Act 1992):

- “75.— Overpayments of housing benefit.
- (1) Except where regulations otherwise provide, any amount of housing benefit [determined in accordance with regulations to have been] paid in excess of entitlement may be recovered [...] either by the Secretary of State or by the authority which paid the benefit.
 - (2) Regulations may require such an authority to recover such an amount in such circumstances as may be prescribed.
 - (3) An amount recoverable under this section shall be recoverable—
 - (a) except in such circumstances as may be prescribed, from the person to whom it was paid; and
 - (b) where regulations so provide, from such other person (as well as, or instead of, the person to whom it was paid) as may be prescribed.”

The Housing Benefit (General) Regulations 1987 (Revoked 6 March 2006)

“71(1) – In the case of [a couple] or members of a polygamous marriage a claim shall be made by whichever one of them they agree should so claim or, in default of agreement, by such one of them as the [relevant authority] shall determine.”

The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. (The HB (SPC) Regulations 2006)

Explanatory note.

These Regulations consolidate existing provisions relating to housing benefit for claimants who have attained the qualifying age for state pension credit. In the case of a woman that age is pensionable age and in the case of a man it is the age which is pensionable age in the case of a woman born on the same day as the man.

12 – Rent:

(1) Subject to the following provisions of this regulation, the payments in respect of which housing benefit is payable in the form of a rent rebate or allowance are the following periodical payments which a person is liable to make in respect of the dwelling which he occupies as his home—

(a) payments of, or by way of, rent...”

80 - Meaning of overpayment:

“... “*overpayment*” means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations....

81 – Recoverable payments:

(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4) this paragraph applies to an overpayment [which arose in consequence of] 1 an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), [“*overpayment which arose in consequence of an official error*”] means an overpayment caused by a mistake made whether in the form of an act or omission by—

(a) the relevant authority;

(b) an officer or person acting for that authority...

where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission....

82 – Persons from whom recovery may be sought:

(2) For the purposes of section 75(3)(b) of the Administration Act (recovery from such other person, as well as or instead of the person to whom the overpayment was made), where recovery of an overpayment is sought by a relevant authority—

(a) subject to paragraph (1) and where sub-paragraph (b) or (c) does not apply, the overpayment is recoverable from the claimant as well as the person to whom the payment was made, if different;

(b) in a case where an overpayment arose in consequence of a misrepresentation of or a failure to disclose a material fact (in either case, whether fraudulently or otherwise) by or on behalf of the claimant, or by or on behalf of any person to whom the payment was made, the overpayment is only recoverable from any person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made; or

(c) in a case where an overpayment arose in consequence of an official error where the claimant, or a person acting on the claimant's behalf, or any person to whom the payment was paid, or any person acting on their behalf, could reasonably have been expected, at the time of receipt of the payment or of any notice relating to that payment, to realise that it was an overpayment, the overpayment is only recoverable from any such person instead of, if different, the person to whom the payment was made.

70 – Decisions by a relevant authority:

“(1) Unless provided otherwise by these Regulations, any matter required to be determined under these Regulations shall be determined in the first instance by the relevant authority.

(2) The relevant authority shall make a decision on each claim within 14 days of the provisions of regulations 64 and 67 (time and manner in which claims are to be made and evidence and information) being satisfied or as soon as reasonably practicable thereafter.”

71 – Notification of decision:

“(1) An authority shall notify in writing any person affected by a decision made by it under these Regulations—

[...]

(b) in any other case, within 14 days of that decision or as soon as reasonably practicable thereafter,

and every notification shall include a statement as to the matters set out in Schedule 8.”

Schedule 8, paragraph 15:

“Where the appropriate authority makes a decision that there is a recoverable overpayment within the meaning of regulation 81 (recoverable overpayments), the decision notice shall include a statement as to—

- (a) the fact that there is a recoverable overpayment; and
- (b) the reason why there is a recoverable overpayment; and
- (c) the amount of the recoverable overpayment; and
- (d) how the amount of the recoverable overpayment was calculated; and
- (e) the benefit weeks to which the recoverable overpayment relates; and
- (f) where recovery of the recoverable overpayment is to be made by deduction from a rent allowance or rebate, as the case may be, that fact and the amount of the deduction.”

Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001/1002:

Regulation 3

“(1) For the purposes of Schedule 7 to the Act and subject to paragraph (2), a person is to be treated as a person affected by a relevant decision of a relevant authority where that person is—”

- (a) a claimant;
- (b) in the case of a person who is liable to make payments in respect of a dwelling and is unable for the time being to act—
 - (i) a [deputy] appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf,
.....
- (d) a person from whom the relevant authority determines that—
 - (i) an overpayment is recoverable in accordance with Part 13 of the Housing Benefit Regulations or Part 12 of the Housing Benefit (State Pension Credit) Regulations”

Statutory rights of appeal

The Child Support, Pensions and Social Security Act 2000

Schedule 7, para 6. Appeal to First-tier Tribunal

“(1) Subject to sub-paragraph (2), this paragraph applies to any relevant decision (whether as originally made or as revised under paragraph 3) of a relevant authority which—

(a) is made on a claim for, or on an award of, housing benefit or council tax benefit; or

[...]

(3) In the case of a decision to which this paragraph applies, any person affected by the decision shall have a right to appeal to [the First-tier Tribunal].

...

(6) Where any amount of housing benefit or council tax benefit is determined to be recoverable under or by virtue of section 75 or 76 of the Administration Act (overpayments and excess benefits), any person from whom it has been determined that it is so recoverable shall have a right of appeal to [the First-tier Tribunal].

(7) A person with a right of appeal under this paragraph shall be given such notice of the decision in respect of which he has that right, and of that right, as may be prescribed.

(8) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.”

The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001:

“10. (1) A person affected who has a right of appeal against a relevant decision shall be given written notice—”

(a) of the decision against which the appeal lies;

[...]

(c) of his right of appeal against that decision.”

The Tribunals, Courts and Enforcement Act 2007 (The T, C and E Act 2007)

“11. Right to appeal to Upper Tribunal.

(1) For the purposes of subsection (2), the reference to a right of appeal is to a right to appeal to the Upper Tribunal on any point of law arising from a decision made by the First-tier Tribunal other than an excluded decision.

(2) Any party to a case has a right of appeal, subject to subsection (8).

11A. Finality of decisions by Upper Tribunal about permission to appeal.

- (1) Subsections (2) and (3) apply in relation to a decision by the Upper Tribunal to refuse permission (or leave) to appeal further to an application under section 11(4)(b).”
- (2) The decision is final, and not liable to be questioned or set aside in any other court.
- (3) In particular—
 - (a) the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;
 - (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.
- (4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether—
 - (a) the Upper Tribunal has or had a valid application before it under section 11(4)(b),
 - (b) the Upper Tribunal is or was properly constituted for the purpose of dealing with the application, or
 - (c) the Upper Tribunal is acting or has acted-
 - (i) in bad faith, or
 - (ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.

12. Proceedings on appeal to Upper Tribunal:

- (1) Subsection (2) applies if the Upper Tribunal, in deciding an appeal under section 11, finds that the making of the decision concerned involved the making of an error on a point of law.
- (2) The Upper Tribunal—
 - (a) may (but need not) set aside the decision of the First-tier Tribunal, and
 - (b) if it does, must either—
 - (i) remit the case to the First-tier Tribunal with directions for its reconsideration, or
 - (ii) re-make the decision.
- (4) In acting under subsection (2)(b)(ii), the Upper Tribunal—

- (a) may make any decision which the First-tier Tribunal could make if the First-tier Tribunal were re-making the decision, and
- (b) may make such findings of fact as it considers appropriate.”