**IN THE UPPER TRIBUNAL** **Case No.** CH/1317/2015
**ADMINISTRATIVE APPEALS CHAMBER**

**Before Upper Tribunal Judge Rowland**

**Decision:** The local authority's appeal is allowed. The decision of the First-tier Tribunal dated 30 January 2015 is set aside and there is substituted a decision that the claimant has been overpaid housing benefit amounting to £947.92 for the period from 13 May 2013 to 29 September 2013 and that the whole of that sum is recoverable from her.

## REASONS FOR DECISION

1. This is an appeal against a decision of the First-tier Tribunal dated 30 January 2015 whereby it allowed in part an appeal by the claimant against a decision of the local authority dated 21 September 2013 (but notified to the claimant on 25 September 2013) to the effect that the claimant had been overpaid housing benefit amounting to £947.92 for the period from 13 May 2013 to 29 September 2013 and that that sum was recoverable from her. The First-tier Tribunal confirmed the amount of the overpayment but held that only the part of it in respect of the period from 13 May 2013 to 30 August 2013 was recoverable.

2. The appeal is brought by the local authority with permission granted by the First-tier Tribunal, but I note that the claimant had also applied to the First-tier Tribunal for permission to appeal. It appears that no ruling was made on that application. However, the claimant has been able to argue her case as the Respondent to the local authority's appeal and there is therefore no need for me formally to consider whether to grant her permission to appeal. Both parties wish me to decide this case on the papers and the claimant has made it clear that she also does not wish the case to be remitted to the First-tier Tribunal for a hearing there.

*The facts and the legislation*

3. The amount of the overpayment has never been in dispute. It arose partly because the claimant ceased to be entitled to disability living allowance from 9 May 2013 and partly because the claimant ceased to be entitled to child benefit in respect of one of her children from 2 September 2013. The question before the First-tier Tribunal was whether the overpayment was recoverable from the claimant. The claimant had notified the local authority on 23 August 2013 both that payment of disability living allowance to her had ended with effect from 5 May 2013 and that payment of child benefit in respect of her daughter was going to end on 3 September 2013 because her daughter was leaving school to take up an apprenticeship. However, the local authority did not make the necessary decision in respect of that information until 21 September 2013, by which time a payment up to 29 September 2013 had already been made. The local authority decided that the whole of the overpayment was recoverable because there had not been any official error.

4. Regulation 100(1) to (3) of the Housing Benefit Regulations 2006 (SI 2006/213) provides that –

> "**100.**—(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.
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> (2) Subject to paragraph (4) this paragraph applies to an overpayment which arose in consequence of 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.
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> (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–
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> (a) the relevant authority;
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> (b) an officer or person acting for that authority;
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> (c) an officer of–
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> (i) the Department for Work and Pensions; or
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> (ii) Revenue and Customs,
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> acting as such; or
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> (d) a person providing services to the Department for Work and Pensions or to the Commissioners for Her Majesty's Revenue and Customs,
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> 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.
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> (4) …"

5. The structure of regulation 100 is complex but its effect is clear and it is important to note two features of it. First, paragraph (2) clearly has the effect that an overpayment is recoverable unless *both* it is due to an official error *and* "the claimant … 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". Secondly, a claimant's position is relevant to two separate issues. The question as to the claimant's position posed by paragraph (2), which is whether the claimant could have realised that the payment was an overpayment, is very different from the question posed by the concluding words of paragraph (3), which is whether the claimant caused or materially contributed to the public authority's mistake, act or omission.

6. The rationale of the provision is presumably principally that recovery of an overpayment puts the claimant in the financial position in which he or she would have been if the correct amount of benefit had been paid in the first place but also that it is recognised that there may be unfairness in applying that approach where claimants unexpectedly find themselves in debt entirely due to errors of public bodies. The potential unfairness arises because claimants might have acted to their detriment on the understanding that they were entitled to the benefit that had been awarded; in other words, they might have made different financial choices had they been aware that their entitlement to benefit was less than the amount that had been awarded. Similar rationales lie behind the law of estoppel and also behind section 71 of the Social Security Administration Act 1992 which governs the recoverability of many overpayments of other social security benefits. However, whereas section 71 of the 1992 Act focuses mainly on the conduct of the claimant, regulation 100 of the

2006 Regulations focuses mainly on the conduct of the local authority and so its application often has a different result. In particular, it is worth observing in relation to regulation 100 that, if the claimant could reasonably have been expected to realise that he or she was overpaid, the conduct of the public authority is irrelevant and, equally, if there was no official error, it is irrelevant whether the claimant could reasonably have been expected to realise that he or she was being overpaid. But there is a connection between the concepts, because acts or omissions of the public authority may have an impact on what the claimant can reasonably be expected to realise, just as acts or omissions by a claimant may have an impact on the public authority's actions and so contribute to a mistake that would otherwise be regarded solely as an official error.

7. In the present case, the claimant appealed to the First-tier Tribunal on the ground that the delay in reporting that payment of disability living allowance had come to an end had been due to her suffering from ill health including depression. She also mentioned that she had appealed against the disability living allowance decision that had led to payment of that benefit ceasing and so hoped that it would be reinstated. Unfortunately for her, that appeal appears to have been unsuccessful. The ending of the claimant's entitlement to child benefit had, of course, been reported before it happened but the claimant mentioned in her grounds of appeal to the First-tier Tribunal that the intended apprenticeship had not materialised and that her daughter had been unemployed. The local authority's response to the appeal argued that the overpayment had not been due to any error by the local authority but had been due initially to the delay in the claimant reporting her change of circumstances and then the reasonable 4-week delay of the local authority in processing the information that she had provided. It also pointed out that the claimant lived with her husband, who was in employment, and several adult children who could have assisted her in advising the local authority of her change of circumstances.

8. Neither party sought an oral hearing before the First-tier Tribunal, which duly considered the case on the papers. Its decision notice showed that it had allowed the claimant's appeal to the extent of finding that the overpayment for the period after 30 August 2013 was not recoverable because it considered that the award of housing benefit should have been superseded so as to reduce the amount of the payments within 7 days of receiving the relevant information on 23 August 2013, rather than not being superseded until 21 September 2013. When asked by the local authority for a statement of reasons, the judge set out the history and explained its rejection of the claimant's case both on the ground that it did not accept as a matter of fact that the claimant had been unable to report in May 2013 that disability living allowance was no longer being paid to her and on the ground that, in any event, any overpayment was recoverable unless there had been an official error, which there had not been before the claimant had provided the relevant information on 23 August 2013. The statement of reasons then continued –

> "11. The Tribunal had to consider whether it was reasonable for the local authority to have taken a month to process that information. It was reasonable for the local authority to take a week to process it so the tribunal concluded that the overpayment from 30/08/2013 was official error. Overpayments arising from official error are still

> recoverable where the claimant or a person acting on her 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 could reasonably be expected to realise that it was an overpayment.
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> 12. The appellant notified the local authority on 23/08/2013. She would have expected the local authority to process that information within a reasonable time. From the submission it appeared that she received notification from them on 25/09/2013 so was not likely to be aware prior to 25th September 2013 that she was being overpaid. The tribunal therefore concluded that the overpayment from 13/05/2013 to 30/08/2013 was recoverable but that the overpayment from 31/08/2013 to 29/09/2013 was not recoverable."

9. The local authority now appeals, with permission granted by the judge of the First-tier Tribunal who had made the substantive decision, on the ground that the First-tier Tribunal erred in law in holding there to have been an official error merely because the award had not been superseded within 7 days and also on the ground that the First-tier Tribunal erred in its consideration of the question whether the claimant could reasonably have been expected to realise that she was being overpaid.

*The local authority's first ground of appeal - delay by the local authority*

10. In support of its first ground of appeal, the local authority relies heavily on the decision of Mr Commissioner Jacobs, as he then was, in CH/858/2006. In that case, the claimant, who had been in receipt of housing benefit for about six months, had disclosed on 17 April an increase of earnings and on 19 April an award of tax credits and was informed by a letter dated 22 April that a new assessment of her entitlement to housing benefit had been made. In fact, the local authority had not taken account of either the increase of earnings or the award of tax credit in that assessment and did not do so until 13 May so that the overpayment continued until 15 May. The appeal tribunal found that the overpayment resulting from not acting on the information relating to the claimant's earnings was not recoverable because the claimant could not reasonably have been expected to realise she was being overpaid but it held that she could reasonably have been expected to realise that the tax credits had not been taken into account. This was because, although the notice of the decision of 22 April included the amount of earnings taken into account, it did so in a way that the appeal tribunal considered meant that the claimant could not reasonably have realised that the increase had not been taken into account, whereas it did not mention tax credits at all.

11. Mr Commissioner Jacobs set the decision aside because the appeal tribunal had failed to consider whether there had been an official error in relation to the increase of earnings and, in the absence of an official error, it was irrelevant whether or not the claimant realised she was being overpaid. He decided that there had not been an official error in relation to the information about the claimant's earnings, saying –

> "20. The local authority was not aware of the increase in the claimant's earnings until she mentioned it at the visit on 19 April; it took it into account on 13 May. That was less than a month later. Delay can be an official error. However, Ms Jackson argued that the local authority had taken a reasonable time to amend the claimant's award. I accept that submission. I note that a decision on a claim must be made within 14 days or as soon as reasonably practicable thereafter: regulation 76(3) of the Housing Benefit (General) Regulations 1987 [now, regulation 89(2) of the 2006 Regulations]. There is no provision for decisions on supersession. Perhaps more leeway is appropriate once an award has been made than on an initial claim. But even applying the standard in regulation 76(3), I consider that the local authority acted sufficiently promptly to avoid an official error."

Thus, insofar as the claimant had been overpaid due to her earnings not having been taken into account, the overpayment was recoverable.

12. However, in relation to the tax credit information, the delay had not just been due to the local authority not having got round to dealing with the information but, as it conceded, because it had overlooked it altogether and therefore was due to an official error. (The basis of the concession is not explained in the Commissioner's decision but it was possibly accepted by the local authority that the information could and should have been taken into account when the decision of 22 April was made.) Moreover, the claimant could not reasonably have been expected to realise that she was being overpaid. Mr Commissioner Jacobs said –

> "29. Now I come to the key issue: although she did not actually know, could she reasonably be expected to realise? The test is an objective one: '*reasonably* have been expected to realise'. But it has to be applied to '*the* claimant'. I must, therefore, consider whether this particular claimant could reasonably have been expected to realise. That involves taking account of her particular experience of the housing benefit scheme and of her knowledge."

The distinction he drew between knowing and realising appears to be between knowing because one has been told and realising because one has worked it out. In any event, the claimant had recently come from abroad and her attempts to find out about housing benefit had not conveyed to her the effect of tax credit. She therefore had no reason to suppose that tax credits should have affected the assessment in her particular case. In those circumstances, Mr Commissioner Jacobs held that the mere fact that the assessment dated 22 April did not mention tax credits was not reasonably to be considered sufficient to make the claimant realise that she was subsequently being overpaid housing benefit due to a failure to take the tax credits into account. Thus, the part of the overpayment attributable to the tax credit not having been taken into account was not recoverable. So, Mr Commissioner Jacobs effectively reached the opposite conclusion from that reached by the appeal tribunal.

13. In respect of the first ground of appeal in the present case, I am told that the local authority has a target for dealing with changes of circumstances within a calendar month of notification, so that the supersession in this case was within that target (although notice of it was not sent to the claimant until 25 September 2013), notwithstanding that it occurred during a busy holiday period when the workload of the relevant staff had been increased by the coming into force of both the legislation

providing for under-occupation reductions and the local authority's new council tax reduction scheme. In the light of having met its target and in the light of CH/858/2006, the local authority submits that there was no official error in this case.

14. However, in *HC -v- Hull City Council (HB)* [2013] UKUT 0330 (AAC), which was a case like the present where the First-tier Tribunal had taken the view that the local authority could have acted on the information provided by the claimant within a week, Upper Tribunal Judge Wright said –

> "26. On the wider point of how long a local authority administering the housing benefit and council tax benefit schemes may have before its inaction may be said to be an official error by omission (and it is not disputed before me, and is settled law in any event (see, for example, para. [20] of *CH/858/2006*), that delay in processing or acting on information received can amount to "official error" on the part of the local authority), the answer, as always, is it will depend on all the facts of the individual case.
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> 27. A relevant consideration in deciding whether a delay does amount to an official error may include the guidance relied on by the Council in this case set out in HB/CTB Circular A24/2008 (assuming it has not been superseded). This is to the effect that "**once a [local authority] receives sufficient information to process a change of circumstances, if they do not process that change of circumstances before the customer's next payday, they will have to make a decision on whether the overpayment, from the Monday following the receipt of all the information, should be classified as [a local authority] official error or Administrative delay**". That, in effect, seems to suggest a one week time period to act on the information received, consistent with the terms of regulation 79 of the Housing Benefit Regulations 2006.
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> 27. However, this is only guidance, and so parties to an appeal may argue that it ought not to apply. Further, a tribunal is not obliged to follow guidance. However, it will need to take it into account if (as here) it is relied upon. In any event, the guidance is subject to a number of qualifications. For example, it is predicated, sensibly in my view, on the local authority receiving <u>sufficient</u> information to process a change of circumstances. What is or is not sufficient will depend on the facts of the individual case. For example, a telephone call from a claimant to say he or she has increased their hours of work of itself is very unlikely to be sufficient as it tells the decision-maker nothing about the increase (if any) in income. But the tax credits information provided in this case on 2.3.09 may have been sufficient information. What the tribunal needed to do, and will need to do, is to find out if it was in fact sufficient information or whether any other steps were required.
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> 28. Additionally, the guidance in the Circular distinguishes between mistakes made by the local authority (such as it putting the sufficient information on one side and then forgetting about it) and matters outwith its control (such as staff shortages due to sickness) or being unable to process the information in time due to a backlog, and suggests the first example would amount to official error but the last two would not. These are, however, no more than relevant considerations, and a tribunal is not bound to follow them. For myself, although I can see that simply forgetting about information provided will in most cases amount to a mistake/official error, I am less certain that the other two examples cannot. For example, if due to chronic staff sickness a local authority was not in a position to deal with reports of changes of

> circumstances in any sense expeditiously and it did not address its mind to how it could address this problem (e.g. by employing temporary staff), then its inaction in processing information received *may* amount to an official error.
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> 29. In addition, the Circular says nothing about suspending payment of benefit. However, in certain cases a failure to suspend payment of benefit may, of itself, in my judgment, amount to an official error under regulation 100(3) of the Housing Benefit Regulations 2006 (the "HB Regs") (and its council tax benefit counterpart). The considerations in play here are likely to be more finely balanced given the importance of continuing payments of housing benefit to meet the rental obligations of the claimant, bearing in mind the consequences that may arise in terms of the relationship of the claimant with his or her landlord if the payments are suspended. But in principle the words in regulation 100(3) of the HB Regs – defining what is meant by "overpayment which arose in consequence of an official error" as an "**overpayment caused by a mistake made whether in the form of an act or omission by...the relevant authority…**" – are wide enough to cover a failure to suspend payment of housing benefit in an appropriate case.
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> 30. Beyond these comments, however, I think it would be unwise and unhelpful to stray. The instances of where delay does (or does not) amount to "official error" are better worked out in the cases in which the issue arises."
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> [Paragraph numbering as in the original.]

15. Judge Wright held that the First-tier Tribunal had failed to record adequate reasons for its view that the local authority had only 7 days to act on the information provided to it before it fell into official error and also for its view that the claimant could not reasonably have been expected to realise that she was being overpaid for part of the period of the overpayment but could reasonably have been expected to realise that she was being overpaid for the rest of it. Accordingly, he remitted the case to the First-tier Tribunal and so did not himself reach a conclusion on the question whether the delay in that case amounted to an official error. Nonetheless, it is implicit in his decision that the First-tier Tribunal's decision was one it could properly have reached had it given further reasons. That is clearly a stricter approach from a local authority's point of view than the approach taken in CH/858/2006.

16. The circular cited by Judge Wright was subsumed into the *HB/CTB Overpayments Guide*, with minor amendments and the addition of a paragraph dealing with suspension, and that has now been replaced, without changes material to the present case, by the *Housing Benefits Overpayments Guide*. These publications are all guidance issued by the Department for Work and Pensions to local authorities. They require local authorities to classify overpayments for administrative and subsidy purposes into such categories as "fraud", "claimant error", "Admin delay", "LA official error", "Departmental official error" and so on. "LA official error" refers to overpayments that are recoverable under regulation 100 of the 2006 Regulations (and equivalent provisions in parallel legislation). Paragraph 2.35 of the current *Guide* says –

> "2.35 An LA might decide an overpayment that was caused by a delay in processing should be classified part as Admin delay and part as LA official error. This might be,

> for example, because they decide that they could not have processed the change of circumstance within a certain period, for example within two weeks of receiving all of the information, given the workloads on their benefit processing teams and therefore those two weeks of the overpayment should be classified as Admin delay.
> Then if the overpayment continued beyond those two weeks they might decide that from that point onwards the delay was due to a mistake, that is, there was an error in that they omitted to process the change when in fact they could have. The overpayment should therefore be classified as an LA official error from that point."

17. If this is the right approach to regulation 100, it has the effect that claimants living in the areas of less efficient, or more overstretched, local authorities are treated less favourably than claimants in other areas. Moreover, it seems odd that recoverability should be determined by factors such as the impact of staff sickness that are not only beyond a claimant's control but also upon which it is difficult for the First-tier Tribunal to make an independent judgement without disproportionate cost to both the local authority and the tribunal. With these factors in mind, I gave the Secretary of State, who made the Regulations and is responsible for the guidance, an opportunity to be joined as a party and to make a submission in the light of my observations. I said –

> "… it is arguably possible to read the legislation so as to remove the anomalies and make adjudication easier and therefore less costly. Thus it could be regarded as a "mistake" not to take action on information (at least if it does not require further evaluation or calculation) provided by the claimant by the next payday (at least if it is not within 7 days), irrespective of pressures on a local authority that make it entirely understandable that it failed to do so in a particular case. It might be said that this approach might require local authorities to prioritise supersessions and revisions likely to reduce entitlement over those likely to increase it, but given the amount of extra work, and therefore delay to other cases, and cost generated by overpayments even if they are recoverable, that might not be a bad thing. Alternatively, as is arguably implied by CH/858/2006, it could generally be accepted that there is no "mistake" if overpayments are stopped within, say, a month, even though some, or perhaps most, authorities could generally manage to act more quickly."

The Secretary of State declined to be joined as a party and merely submitted that the decision in this case should be made in the local authority's favour in line with the guidance.

18. Interesting as this issue is, I have come to the conclusion that I need not decide between the approaches suggested by CH/858/2006 and the *Hull* case. It is not necessary to do so because, for reasons I will explain below, the other condition necessary to make the overpayment irrecoverable – that the claimant could not reasonably be expected to have realised that she was being overpaid – is not satisfied.

19. Indeed, the reason that the apparent tension between the approaches has not hitherto been resolved may be that the other condition will very seldom be satisfied where there is a question whether the local authority has acted promptly enough on information supplied by a claimant. This is because the claimant is likely to have realised that the information being provided would reduce the amount of housing benefit payable, even though he or she is unlikely to have known by how much, and

will therefore have realised that he or she was being overpaid until a new decision was issued. The issue of delay arose in CH/858/2006 – if it truly arose at all – only due to the co-incidence of a decision notice having been issued a few days after the information had been provided so that, given the finding that she could reasonably have believed that the information might not have had an impact on her entitlement, the claimant could reasonably be expected to have thought that the information had been taken into account when that decision was made. The issue of delay needed consideration by the Upper Tribunal in the *Hull* case only because the case was being remitted in circumstances where inadequate reasons had been given for finding that the claimant could reasonably have been expected to realise she was being overpaid and both issues were therefore at large. Moreover, in a case where there has been an earlier official error and the claimant could not reasonably be expected to realise he or she was being overpaid, any subsequent reasonable delay in adjudication after the error has been detected is unlikely to break the chain of causation and thus the overpayment will continue to be attributable to the original official error.

20. The unlikelihood of the issue being determinative in any case makes me even less inclined than I might otherwise be to comment on the extent to which delay in acting on information may amount to an official error. Like Judge Wright, I prefer to wait for a case where it is a live issue in practice.

*The local authority's second ground of appeal and the claimant's ground of appeal – could the claimant reasonably have been expected to realise that she was being overpaid?*

21. In its second ground of appeal, the local authority argues that the First-tier Tribunal's reasoning on the question whether the claimant could reasonably have been expected to realise that the payments made to her were overpayments is flawed and it again refers to CH/858/2006. The First-tier Tribunal's reasoning is compressed but it appears to have considered that the claimant could reasonably have been expected to realise that she was being overpaid only when she received the decision notice issued on 25 September 2013. However, if that is so, the First-tier Tribunal has failed to explain why it considered that the claimant could not reasonably have been expected to know that she was being overpaid before then. Did she not expect the information she provided to result in a reduction in her entitlement to housing benefit? Alternatively, it is conceivable that it considered that she could reasonably have been expected to know she was being overpaid when she had disclosed the information and during the week within which the local authority could reasonably have been expected to make a decision, but that she could no longer have been reasonably expected to realise she was being overpaid once that period had expired. Presumably that would have been on the basis that she was entitled to assume after a week had elapsed that a decision had been made and that the information that she had provided did not affect her entitlement. However, if that was the reasoning, the First-tier Tribunal has not adequately explained why, given that no notice of decision had been issued after a week, the claimant was entitled to assume that a decision had been made to the effect that the information she had provided did not make any difference to her entitlement? Even

if the local authority ought to have made a decision within a week, it does not follow that it was reasonable to assume that it had done so. I am therefore satisfied that the decision that the overpayment from 31 August 2013 – more properly 2 September 2013 as the local authority points out – to 29 September 2013 was not recoverable is wrong in law on the ground that it is either perverse or is inadequately explained.

22. The claimant's ground for applying to the First-tier Tribunal for permission to appeal does not explicitly raise a point of law, merely reiterating the points made in her grounds of appeal to the First-tier Tribunal which had been that she suffered from depression and anxiety and was forgetful. An appeal to the Upper Tribunal lies only on a point of law but, in any event, the claimant's explanation for her delay in disclosing to the local authority the fact that payment of disability living allowance had ceased could be relevant only up to the time the disclosure was made and, as the First-tier Tribunal pointed out, the local authority had plainly not made any mistake in that regard up until then because it could not take that fact into account until it was told about it. In the absence of an official error, the overpayment was recoverable under regulation 100 of the 2006 Regulations however good the claimant's reason for not reporting the change in her circumstances.

23. For this reason, it was unnecessary for the First-tier Tribunal to consider whether the claimant could reasonably have been expected to have realised before 23 August 2013 that she was being overpaid housing benefit. It may have been necessary to consider that question in respect of the period after 23 August 2013. However, the claimant has not argued that, when she reported to the local authority that disability living allowance was no longer being paid and that payment of child benefit for her daughter was also about to stop, she did not realise that that information would lead to a reduction in her entitlement to housing benefit. Nor, in my judgment, could she realistically do so.

24. Perhaps because it was arguing that there had never been any official error at all, the local authority did not provide to the First-tier Tribunal all the evidence it might have done to show what the claimant could reasonably have been expected to realise. It would have been helpful if the local authority had produced before the First-tier Tribunal not only a copy of the decision notice issued to the claimant on 25 September 2013 but also the last decision notice issued to her before the period of the overpayment and any further such notice issued to her during that period, so as to show clearly what information the claimant had as to the basis of the award or awards of housing benefit that included the overpayments. However, I infer from the notice that was produced that the earlier notices would have indicated that the amount of housing benefit was calculated on the basis that the claimant was entitled to include within her applicable amount a disability premium and an amount in respect of the relevant daughter. The documents before the First-tier Tribunal also showed that the claimant had been in receipt of housing benefit for a substantial period of time. In these circumstances, I have no doubt that the general information provided to the claimant and her experience would have been sufficient to show to her that the disability premium was dependent on her continuing to receive disability living allowance, which consisted in her case of the higher rate of the mobility component. She can also reasonably have been expected to realise that her

entitlement to housing benefit would be reduced when she ceased to be entitled to a personal allowance in respect of her daughter. Moreover, I infer from the fact that she reported that payment of disability living allowance had ceased and that payment of child benefit in respect of that daughter was about to cease that she did in fact realise from, at the latest, 23 August 2013 that there were material links between entitlement to those benefits and entitlement to housing benefit and, in the light of her existing knowledge, that her award of housing benefit would be adversely affected when it was recalculated in the light of the information she had been provided. It follows that, she could reasonably have been expected to realise that, until the recalculation was done, she was being overpaid, even though I accept that she is unlikely to have been aware of the extent of the overpayments.

25. In these circumstances, any delay in the local authority's adjudication can have made no difference to the claimant's realisation, because she had no reason to think that the information she had provided on 23 August 2013 and which she expected would lead to a reduction in her entitlement had been considered by the local authority, until she received the decision notice issued on 25 September 2013 informing her that her entitlement had ceased.

*Conclusion*

26. Accordingly, even if the local authority's delay in superseding the award of housing benefit once the claimant had provided the relevant information did amount to an official error, the overpayment caused by the delay is recoverable because, at that time, the claimant could reasonably have been expected to realise that she was being overpaid. I therefore set aside the First-tier Tribunal's decision and substitute a decision in favour of the local authority.

**Mark Rowland**
**10 March 2016**