NCN: [2025] UKUT 337 (AAC)
Appeal No. UA-2025-001318-HB

IN THE UPPER TRIBUNAL

ADMINISTRATIVE APPEALS CHAMBER

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

Between:

Luton Borough Council

Applicant

- v -

C. M.

Respondent

Before: Upper Tribunal Judge Wikeley

Case decided on the papers
Decision date: 8 October 2025

ON APPEAL FROM:

Applicant:	Luton Borough Council
Respondent:	CM
Tribunal:	First-Tier Tribunal (Social Security and Child Support)
Tribunal Case No:	SC242/24/05531
Tribunal Venue:	London Fox Court
Hearing Date:	3 March 2025

NOTICE OF DETERMINATION OF LOCAL AUTHORITY'S APPLICATION FOR PERMISSION TO APPEAL TO THE UPPER TRIBUNAL

The application by the local authority for permission to appeal to the Upper Tribunal was made late. I refuse to extend the time for making the application to the Upper Tribunal (rule 5(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008). I therefore do not admit the application for permission to appeal.

Even if the application were to be admitted, I would refuse permission to appeal.

I do not consider it appropriate for the application to be dealt with at an oral hearing, as I consider that it can be properly determined on the papers.

This determination is made under section 11 of the Tribunals, Courts and Enforcement Act 2007 and rules 2, 5, 21, 22 & 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Judicial Summary

The claimant was overpaid housing benefit because the local authority failed to process the claimant's reported change of circumstances. The First-tier Tribunal allowed the claimant's appeal against the local authority's decision that the overpayment was recoverable, finding that the overpayment was caused by official error. The local authority applied for permission to appeal to the Upper Tribunal, but its application was six days late. The Upper Tribunal refused to extend time as it was not fair and just to do so, in part because the local authority had taken over five years to forward the claimant's appeal to the First-tier Tribunal. Accordingly, the local authority's application for permission to appeal was not admitted.

Keywords

16.7 Housing and council tax benefits – recovery of overpayments
27.8 Recovery of overpayments – other
34.4 Tribunal procedure and practice – leave/permission to appeal

REASONS FOR DETERMINATION

Introduction

1. The Applicant local authority (from now on, simply "the LA") applies for permission to appeal against the decision of the First-tier Tribunal ("the FTT"). The FTT had allowed the claimant's appeal against the LA's decision that she was subject to a recoverable overpayment of housing benefit ("HB"). The LA's application for permission to appeal to the Upper Tribunal is late so it applies for an extension of time. It also requests an oral hearing. For the reasons that follow, I refuse the LA's application for an extension of time and refuse the request for an oral hearing. Furthermore, even if time were to be extended to admit the late application, I would have refused permission to appeal. The net result is that the FTT's decision stands.

The background to the local authority's application for permission to appeal

2. On 4 April 2019 the LA decided that the claimant had been overpaid HB amounting to the sum of £672.74 for the period from 5 November 2018 to 1 April 2019 as she had ceased to pay for childcare. This had had the effect of increasing the amount of her earnings for the purposes of her HB claim, resulting in the overpayment, which the LA decided was recoverable. Following a reconsideration, the claimant lodged an appeal with the LA on 31 May 2019.

3. On 2 October 2024 – so more than five years later – the LA referred the claimant's appeal to the FTT along with its response and the appeal bundle.

4. The FTT heard the claimant's appeal on 3 March 2025. The FTT allowed the appeal and set aside the LA's decision of 4 April 2019. In its summary Decision Notice, the FTT explained its findings and reasoning as follows (with a typo as to one date corrected):

> 3. [The Appellant] has shown that she notified the respondent, on 2 December 2018, that childcare costs for her daughter … had ceased on 1 December 2018. [The Appellant] followed up this initial report with further telephone calls and email to the respondent. She provided written proof from the childcare provider that childcare costs had ceased.
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> 4. The appeal submission confirms in writing that officers at Luton Council reassured [the Appellant] that the change in circumstances was recorded on her file and that it is an official error that the change has not been implemented. The Tribunal has identified at least four notifications of this change.
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> 5. A further factor is that the decision was made on 4 April 2019, [the Appellant] lodged an appeal on 31 May 2019. The appeal was not forwarded to the Tribunal Service until 2 October 2024 - over five years later.
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> 6. The overpayment is not recoverable from [the Appellant]. The Tribunal finds that [the Appellant] could not have done any more. Both parties have provided proof that she queried the award notification that she received after having notified the change in circumstances.

5. The FTT also issued a full Statement of Reasons for its decision. In reality, this said little more than the Decision Notice. Its tenor was remarkably restrained in the circumstances.

The local authority's delay in forwarding the appeal to the First-tier Tribunal

6. In broad terms, a HB claimant is required to lodge any notice of appeal with the relevant council no later than one month after the date of the decision under challenge (Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685) rule 23(2)). Rule 24(1A) then provides as follows (emphasis added):

> (1A) Where a decision maker receives a notice of appeal from an appellant under rule 23(2), the decision maker must send or deliver a response to the Tribunal so that it is received *as soon as reasonably practicable* after the decision maker received the notice of appeal.

7. The notion of what is "as soon as reasonably practicable" is not further defined by the legislation, although an Ombudsman's decision suggests that councils should have a target of forwarding HB appeals to the FTT within 28 days. In *MB v Wychavon DC (HB)* [2013] UKUT 67 (AAC) the delay by the council in preparing the response to the appeal had been either about six months or approximately one year (the facts were unclear). Against that background, Deputy Upper Tribunal Judge Mark observed as follows:

> 8. It would appear from the tribunal file that the case was not referred to tribunal until 21 November 2011, there being a note on the notification of appeal form "We believe this appeal has been submitted in July but no trace has been made." According to the claimant in his submissions to the First-tier Tribunal, during the period of delay Wychavon continually stated to him that they could take as long as they liked in submitting the appeal and that their internal resources were such that they had to externally source the preparation of the tribunal application. Whatever the truth of this, and Wychavon has not had the opportunity to respond to this claim, the delay by Wychavon in notifying the appeal to the tribunal was wholly unacceptable. I also note from the bundle of documents submitted by the claimant to the tribunal at the tribunal hearing that the reference to the tribunal only occurred after intervention by the claimant's MP in November 2011.
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> 9. There is no excuse whatsoever for such delay by Wychavon. Claimants can suffer severe hardship if a claim for benefit is refused. The duty to initiate the appeal proceedings that might lead to the amelioration of that hardship is placed on the council whose decision is being appealed. Independently of any special provision in the regulations, there is a duty on them to act with reasonable speed in forwarding notification of the appeal to the tribunal. They cannot simply do it as and when they please and while some allowance may be made for temporary staff shortages or similar problems, a delay even from

> late December to July would be unacceptable, let alone one until the following November which is then only remedied after the local MP has intervened.
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> 10. The Local Government Ombudsman has made it clear in *Complaint No 01/C/13400* against Scarborough BC that authorities should aim to refer all appeals to HMCTS within 28 days. As I also pointed out in *CH/3497/2005*, a claimant is entitled under Article 6 of the European Convention on Human Rights to have his or her appeal heard within a reasonable time, and this could be particularly important in housing benefit cases where a delay could cost a tenant his home. It is unlawful for a local authority or any other public authority to act (which includes a failure to act) in a way which is incompatible with a Convention right (Human Rights Act 1998, s.6(1), (6)). The conduct of Wychavon in this case was wholly unacceptable and inconsistent with the proper conduct of this appeal.
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> 11. In addition, it appears to me that taking the administrative step normally required to commence proceedings before the tribunal is a duty of the relevant council which now falls within regulation 2(4) of the Tribunal Procedure (First-tier Tribunal) (SEC) Rules 2008 which provides that parties must help the tribunal to further the overriding objective and co-operate with the tribunal generally. The overriding objective is defined in regulation 2(1) as dealing with cases fairly and justly and regulation 2(2) provides that this includes ensuring so far as practicable that the parties are able to participate fully in the proceedings and avoiding delay so far as compatible with proper consideration of the issues. A failure for almost a year to take the simple administrative step needed to commence the proceedings, the tribunal already having jurisdiction (*R(H) 1/07*) clearly prevented the claimant from participating in the proceedings during that time and caused serious delay which was not compatible with the proper consideration of the issues.

8. In the present case the FTT asked the LA's presenting officer for an explanation for the very long delay; "His response was that it was due to lack of staff and other more pressing tasks such as Valuation Tribunal deadlines" (statement of reasons ("SoR"), paragraph [14]). Words (almost) fail me. If the delay of six months or a year by Wychavon in *MB v Wychavon DC (HB)* was, as Judge Mark understandably found, "wholly unacceptable and inconsistent with the proper conduct of this appeal" then the present case is off the scale in terms of unacceptability. To say that a five-year delay was egregious – shockingly or extraordinarily bad – does not begin to do justice to the LA's handling of the matter. On the face of it there has been a plain and very serious breach of the claimant's ECHR Article 6 rights. The LA's conduct is tantamount to an abuse of process. It is also such that any request it may make for a discretion to be exercised in its favour is likely to be viewed with some scepticism. The notion that a party should come to court with clean hands is not confined to the former courts of Equity. It is against that context

that I consider the LA's application for an oral hearing and for an extension of time.

The local authority's application for an oral hearing

9. The LA has requested an oral hearing of its application, in short so it can "provide clarification to disputed facts and provide oral testimony". I interpose that it is not the function of the Upper Tribunal to receive evidence as to the facts on an application for permission to appeal on a point of law.

10. I have had regard to the LA's request (as required by rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the UT Rules")). The decision to grant an oral hearing is a matter of judicial discretion. The test I must apply in deciding whether to hold an oral hearing is whether "fairness requires such a hearing in the light of the facts of the case and the importance of what is at stake": see *R (Osborn) v Parole Board* [2014] AC 1115 at paragraph 2(i). I have also considered whether an oral hearing would be likely to assist me to understand the proposed grounds of appeal better. I do not think that it would. The core issues in this application are essentially straightforward, for the reasons above and for further reasons that will become apparent.

11. I consider that the overriding objective of the Upper Tribunal to deal with cases fairly and justly (see rule 2 of the UT Rules, which includes "dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties" as well as "avoiding delay, so far as compatible with proper consideration of the issues"), would best be furthered by my deciding this application on the papers. This is to avoid both delay and an inappropriate use of scarce judicial and administrative resources. Accordingly, I refuse the application for an oral hearing of the application for permission to appeal.

The local authority's application for an extension of time

12. The District Tribunal Judge, on behalf of the FTT, refused the LA's application for permission to appeal on 21 July 2025. Her ruling was issued to the LA (and the claimant) on 22 July 2025. The LA therefore had until 22 August 2025 to lodge an application directly with the Upper Tribunal. In fact, the LA's renewed application for permission to appeal, although it was dated 21 August 2025, was not received by the Upper Tribunal until 28 August 2025. It was therefore six days late.

13. The LA's application for an extension of time was put in the following terms:

> We respectfully ask that the application to appeal is accepted if it is a few days late. The current appeal team members have been under an increasing workload and time constraints. This is because the 3.5 members deal with Housing Benefit, Council Tax liability, Council Tax

> Reduction and NNDR appeals. We are given strict deadlines by the Valuation Tribunal Service and have to respond to directions received by the HMTBS. We are currently down a full-time member of staff due to a medical emergency and it is also the holiday season and there are childcare responsibilities within the team members.

14. The proper approach to deciding whether to admit applications which are out of time was set out by the Court of Appeal in *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 WLR 795, *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926 and *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1663. The approach was aptly summarised in *Secretary of State for the Home Department v SS (Congo) & Others* [2015] EWCA Civ 387 as comprising three stages. First, the seriousness of the delay must be assessed. Second, the reason for the delay must be considered. Third, all the circumstances of the case must be weighed so as to deal with the matter fairly and justly.

15. The relevant principles from the case law were helpfully set out by the Upper Tribunal (Immigration and Asylum Chamber) in *R (Onowu) v First-tier Tribunal (Immigration and Asylum Chamber) (extension of time for appealing: principles) (IJR)* [2016] UKUT 185 (IAC):

> 10. Turning to the first in time of the three recent and relevant decisions of the Court of Appeal, *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 WLR 795. The Court of Appeal therein upheld a Master's decision that a claimant who had served a costs budget six days late required relief from sanctions under CPR 3.9 before the costs budget could be considered by the court.
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> 11. The decision in *Mitchell* was followed shortly thereafter by that of *Denton v White* [2014] EWCA Civ 906, [2014] 1 WLR 3926, which concerned three conjoined appeals each of which involved the application of CPR 3.9. to cases where the claimants had failed to comply with court orders or rules. For the purposes of our decision it is only necessary to draw attention the following passages:
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> > [35] [The court] will take account of the seriousness and significance of the breach (which has been assessed at the first stage) and any explanation (which has been considered at the second stage). The more serious or significant the breach the less likely it is that relief will be granted unless there is good reason for it. Where there is good reason for a serious or significant breach, relief is likely to be granted. Where the breach is not serious or significant, relief is also likely to be granted.
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> > [36] But it is always necessary to have regard to all the circumstances of the case. The factors that are relevant will vary

> from case to case. As has been pointed out in some of the authorities that have followed *Mitchell*, the promptness of the application will be a relevant circumstance to be weighed in the balance along with all the circumstances. Likewise, other past or current breaches of the rules, practice directions and court orders by the parties may also be taken into account as a relevant circumstance.

12. The decisions in both *Mitchell* and *Denton* had as their contextual setting private law civil proceedings. However, in *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1663 the Court concluded that the same approach should be adopted in the public law arena, acknowledging when doing so that a public law claim may raise important issues for the public at large and that this should be a factor taken into account when considering whether there is a good reason for extending time.

13. At [93] of its decision in *Secretary of State for the Home Department v SS (Congo) & Others* [2015] EWCA Civ 387, the Court of Appeal drew together the learning from *Mitchell, Denton* and *Hysaj*, in these terms:

> "…a Judge should address an application for relief from sanction in three stages, as follows:
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> i) The first stage is to identify and assess the seriousness or significance of the failure to comply with the rules. The focus should be on whether the breach has been serious or significant. If a judge concludes that a breach is not serious or significant, then relief will usually be granted and it will usually be unnecessary to spend much time on the second or third stages; but if the judge decides that the breach is serious or significant, then the second and third stages assume greater importance.
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> ii) The second stage is to consider why the failure occurred, that is to say whether there is a good reason for it. It was stated in *Mitchell* (at para. [41]) that if there is a good reason for the default, the court will be likely to decide that relief should be granted. The important point made in *Denton* was that if there is a serious or significant breach and *no* good reason for the breach, this does not mean that the application for relief will automatically fail. It is necessary in every case to move to the third stage.
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> iii) The third stage is to evaluate all the circumstances of the case, so as to enable the court to deal justly with the application. The two factors specifically mentioned in CPR rule 3.9 are of particular importance and should be given particular weight. They are (a) the need for litigation to be conducted efficiently and at proportionate

> cost, and (b) the need to enforce compliance with rules, practice directions and court orders…
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> 14. The following further guidance can also be distilled from the judgment in *Hysaj*:
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> > (i) There is no merit in constructing a special rule for public authorities; they have a responsibility to adhere to the court's rules even if their resources are 'stretched to breaking point' [42];
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> > (ii) A solicitor or public body having too much work will rarely be a good reason for failing to comply with the rules [42];
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> > (iii) Particular care needs to be taken in appeals concerning claims for asylum and humanitarian protection to ensure that appeals are not frustrated by a failure by a party's legal representatives to comply with time limits. The nature of the proceedings and identification of responsibility for a failure are matters to be considered at the third stage of the process [42];
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> > (iv) The inability to pay for legal representation cannot be regarded as providing a good reason for delay [43];
> >
> > (v) In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process [46].
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> …
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> 16. Although none of the decisions cited above were made in the specific context that presents itself in the instant matter, we can see no good reason, and none was advanced by the parties, as to why the approach commended in *Mitchell, Denton* and *Hysaj* should not equally be applied to the First-tier Tribunal's, and Upper Tribunal's, consideration of an application for an extension of time to apply for permission to appeal (assuming of course that the notice of appeal was actually filed out of time). Nothing in the approach rehearsed above is in discord with the overriding objective of either the 2014 FtT Rules or 2008 UT Rules to deal with cases *justly and fairly;* indeed, it is the aspiration of achievement of these very objectives which was identified by the court in *Denton*, at [24], as underpinning the rationale for the third stage of the process of consideration."

16. Applying the three-stage test set out in paragraph [13] of the Upper Tribunal's decision in *Owusu*, I recognise first that the delay in question is relatively

modest (six days as against a statutory time limit of one month). That said, it is not a question of a day or two but nearly a week.

17. I then turn to consider whether there was any good reason for the delay. I bear in mind the observations of the Court of Appeal in *Hysaj*. In particular, "public authorities have a responsibility to adhere to the court's rules even if their resources are 'stretched to breaking point'" and a "public body having too much work will rarely be a good reason for failing to comply with the rules". Judged by those considerations, the LA's reasons for requesting an extension of time are less than compelling. For example, the LA appears for whatever reason to have decided to prioritise work related to proceedings in the Valuation Tribunal over HB appeals.

18. Moving to the third and final stage of the process of consideration, I must consider whether it would be fair and just to grant an extension of time, taking a holistic approach to all relevant factors. Finality in litigation is an important principle. In that regard I consider that the claimant was justifiably entitled to consider that the matter was closed after the time for lodging a renewed application for permission to appeal had been passed. As the Court also explained in *Hysaj*, maintaining the integrity of procedural requirements is essential to the a court or tribunal's ability to deal with all its cases justly and in accordance with the overriding objective. Last but not least, the LA's shocking delay in forwarding the appeal and its response to the FTT means that it would be an affront to justice for the LA to be granted an extension of time.

19. On the basis of all of these considerations, I am satisfied that it is fair and just and in the interests of justice and in accordance with the overriding objective to refuse to grant an extension of time to admit the LA's late application for permission to appeal. The factors relied upon for extending time are in my view insufficiently weighty to justify re-opening the dispute after the time for submitting an application for permission to appeal has passed. The matters relied on by the LA are far outweighed in this case by the importance of finality in litigation and the integrity of procedural time limits.

20. I therefore refuse to extend time for lodging the application for permission to appeal under rule 5(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

21. Accordingly, the LA's application for permission to appeal to the Upper Tribunal is not admitted.

22. However, for completeness I proceed to explain briefly why I would have refused permission to appeal in any event.

The LA's application for permission to appeal

23. An appeal to the Upper Tribunal lies only on "any point of law arising from a decision" of the FTT (section 11(1) Tribunals, Courts and Enforcement Act 2007). The Upper Tribunal may only give permission to appeal if there is a realistic prospect of an appeal succeeding, unless there is exceptionally some other good reason to do so: see by analogy Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538. It follows that simply disagreeing with the FTT's conclusions on the facts or with the overall outcome is not itself a point of law, however unreasonable or wrong a dissatisfied party may think the decision was. Moreover, it is not the Upper Tribunal's role to "set the appeal tribunal to rights by teaching them how to do their job of weighing the evidence" (*Fryer-Kelsey v Secretary of State* [2005] EWCA Civ 511, reported as *R(IB) 6/05*, at paragraph [25]). So, put shortly, an appeal to the Upper Tribunal on a point of law is not an opportunity to re-argue the case on its facts.

24. The LA argues that the delay in processing the claimant's reported change of circumstances did not amount to an "official error" within regulation 100(2) of the Housing Benefit Regulations 2006 (SI 2006/213). In support of that submission, the LA rely on *CH/858/2006*, stating that the Social Security Commissioner held there that a 26-day delay in processing a change was not unreasonable and did not amount to an official error.

25. The LA further argue that the delay in processing the claimant's reported change of circumstances "occurred during a period of exceptional operational pressure. It coincided with the end of the financial year during which this authority was receiving bulk data updates from the DWP and HMC including tax credits renewals, uprating and Real Time Information (RTI). In addition, Luton was subject to the rollout of Universal Credit locally. Staffing resources were limited due to the UC rollout as resources were being diverted and the volume of incoming changes exceeded normal processing capacity."

26. This excuse has echoes of the reasons that the LA gave for the outrageous delay in submitting the claimant's original appeal to the FTT and for seeking an extension of time in the instant proceedings. Leaving that aside, there are at least three proposed difficulties with these grounds of appeal.

27. First, it does not appear from the FTT appeal bundle that the LA ran the argument at first instance based on *CH/858/2006*, which it now seeks to run on appeal.

28. Second, the grounds of appeal are in essence an attempt to re-argue the factual merits of the appeal as to whether there was an official error by the LA.

29. Third, and in any event, although the LA's decision was taken on 4 April 2019 at the end of the financial year, the FTT found as a fact that the claimant's childcare costs had ceased on 1 December 2018 and she had notified the change to the LA on 2 December 2018 (SoR paragraph [9]). The FTT also found that she had notified the change on at least four further occasions (SoR paragraph [10]).

Conclusion

30. The local authority's late application for permission to appeal is not admitted. Even if an extension of time were to be granted, permission to appeal would be refused.

31. As this is a decision on an application for permission to appeal, this determination is not precedent-setting. As such, it would not usually be published on the Administrative Appeals Chamber's public-facing decisions website (or on The National Archive [TNA] Find Case Law site). However, I have directed that the determination should be allocated an NCN (neutral citation number) so that it can appear on both websites, not least because of the extraordinary delay involved on the part of the local authority.

Nicholas Wikeley
Judge of the Upper Tribunal

Approved for issue on 8 October 2025