



Neutral Citation Number: [2025] UKUT 344 (AAC)
Appeal No. UA-2024-000857-HB

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

EF

Appellant

– and –

THE LONDON BOROUGH OF BROMLEY

Respondent

Before: Upper Tribunal Judge Nicholas Paines KC

Decision date: 10 October 2025
Decided on consideration of the papers

ON APPEAL FROM:

Tribunal: The First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: SC124/23/02918
Tribunal Venue: East London
Hearing Date: 17 January 2024

SUMMARY OF DECISION

KEYWORD NAME (Keyword Number)

Housing benefit – other (16.9)

Recovery of overpayments - failure to disclose (27.3)

Reviews, revisions and supersessions – supersession: general (30.9)

I allow this appeal. I consider that the First-tier Tribunal's decision involved an error of law because it misapplied the legislation that it considered.

The claimant suffers from a serious mental health condition and was in receipt of various benefits including housing benefit in respect of her then home. She moved out of that property in early November 2022 and into another property in the same borough in early December 2022. She did not tell the Borough Council about either move. The council found out from the DWP and wrote to the claimant suspending her housing benefit. A week later the council wrote again asking her to give information and

enclosing a form for completion within one month; the letter did not refer to the possibility of asking for an extension of the one month deadline. A reminder was sent. The claimant did not reply.

A month later, on 21 February 2023, the council wrote saying that they had “de-suspended and stopped” the claimant’s HB claim and that there had been an overpayment which was recoverable, and an invoice would be raised. Subsequently, following further information, the period of the overpayment was extended backwards in time.

Later, with support from Mind, the claimant made contact with the council and appealed the council’s decision to the First-tier Tribunal, arguing that the decision to stop her HB completely should be replaced by a closed period supersession, stopping HB for the period when she was between tenancies and reinstating it from the time she became eligible for it in respect of the new tenancy. The tribunal dismissed her appeal on the ground that the claimant’s entitlement to HB had ceased as a result of the decision and she now had to claim universal credit.

I have held that that reasoning involved an error of law. The decision stopping the claimant’s HB was under appeal to the tribunal which could replace it with the decision that the council ought to have made. This included a closed period supersession if (as appears to be the case) the claimant was entitled to HB again as at the date of the council’s decision. The position would be different if regulation 14 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 applied. The tribunal did not consider whether regulation 14 applied. I have considered regulation 14 and concluded that it did not apply as some of the requirements for it to apply, as set out in previous decisions of the Upper Tribunal, were not satisfied.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.]

DECISION

The decision of the First-tier Tribunal involved an error of law. Pursuant to section 12(2) of the Tribunals, Courts and Enforcement Act 2007 I set it aside.

Unless notice is received from either party in accordance with the direction below my decision, I remake the decision of the First-tier Tribunal in terms that the claimant’s entitlement to housing benefit is superseded in respect of the period from 14 November 2022 to 5 December 2022 and that payments of housing benefit paid to the claimant in respect of that period are recoverable as an overpayment.

DIRECTIONS

Bromley LBC may notify the Upper Tribunal within 28 days of receipt of this decision if they wish to argue that the claimant did not satisfy the substantive conditions of entitlement to Housing Benefit during any part of the period from 6 December 2022 to 21 February 2023.

The claimant may notify the Upper Tribunal within 28 days of receipt of this decision if she contends that she did satisfy the substantive conditions of entitlement to Housing Benefit during any part of the period from 14 November to 6 December 2022.

In the event that either notice is received the Upper Tribunal will reconsider the disposal of the case.

REASONS FOR DECISION

The facts in outline

1. The claimant suffers from a serious mental health condition and in late 2022 she was in receipt of various benefits including housing benefit in respect of her then home. She moved out of that property in early November 2022. In early December 2022 she moved into another property in the same borough. She did not tell the Borough Council about moving out of the first property or into the second, but on 11 January 2023 the council was told about her move by the DWP. Initially the council were told that the claimant had moved out of the first property and into the second on the same date, 6 December 2022.
2. The council wrote to the claimant on 11 January 2023 suspending her housing benefit with effect from 6 December 2022. In the meantime the claimant had received payments of HB up to 2 January. On 17 January the council wrote again saying that they had been informed that her address had changed and they needed to review her circumstances so as to work out how much benefit she was entitled to. The letter enclosed a change of address form (which I have not seen) and asked for: proof of the rent at her new address; her tenancy start date, the date she moved in; the date she moved out of her last home; and where she stayed in between moves.
3. The letter said “You must do this within one month of the date of this letter. If you do not give me these details within 1 month then you may lose money to which you are entitled.” It did not refer to the possibility of asking the council to extend the deadline, nor to the possibility of explaining why she could not provide the information. A reminder was sent on 25 January. This did offer the possibility of showing that any of the information did not exist or it was not possible to supply it. The claimant did not respond to either letter.
4. The council wrote to the claimant again on 10 February 2023 saying that her claim had been suspended on that date and inviting her to contact their helpline. They wrote again on 21 February saying “Following a review of your application and information received I have de-suspended and stopped your Housing Benefit claim from 12 December 2022. Full rent is now payable. As no ‘change of address’ form has been provided for the new address, it is implied no further claim is required, therefore your existing benefit has been cancelled, based on the available details.” The letter went on to say that the claimant had been overpaid HB from 12 December to 2 January and that the overpayment was recoverable and an invoice would be raised. This letter contains the decision under appeal.

5. On 10 March the council's housing benefit department received an internal memo from the council tax department saying that the claimant's former landlord had advised that the claimant left the first property on 11 November 2022. On 20 April the council write again saying that "Following a review of your application and information received I have stopped your Council tax Support from 11 November 2022 and your Housing Benefit from 14 November 2022." It went on to say that the overpayment of HB from 14 November 2022 to 12 December 2022 was recoverable and an invoice would be raised. This had the effect of revising the earlier decision by extending the termination backwards in time.
6. In May 2023 the claimant contacted the council to book an appointment. The council tried to call her back and left messages but the claimant did not respond. At the same time the claimant contacted the local branch of Mind who corresponded with the council on the claimant's behalf from May onwards. In September 2023 Mind wrote formally asking for a reconsideration of the decision of 21 February on the basis that the claimant was entitled to HB in respect of her new property; the letter enclosed some information about the new tenancy. In an email sent at the same time, the representative suggested that the period between the claimant's move out of the first property and into the second be dealt with by a closed period supersession.
7. The council replied on 21 September; the letter did not deal very fully with what Mind had written, but did refer to the termination of the claimant's HB in the letters of 21 February and 20 April, and contained a reference to the claimant's rights of appeal.
8. Mind completed a Tribunal information sheet on 26 September. They explained that the application was late because of the claimant's mental health condition and stated that the claimant was seeking the reinstatement of her HB with effect from the start of her tenancy at the new property and a closed period supersession superseding her entitlement during the period between the ending of her entitlement in respect of the first property and the beginning of her entitlement in respect of the second. It stated that that period was from 11 November to 1 December 2022. In the meantime, Mind supplied more evidence about the new tenancy. The council confirmed their decision and the appeal was passed to the First-tier Tribunal, which granted an urgent hearing on 17 January 2024. It upheld the council's decision.

The First-tier Tribunal's decision

9. The tribunal gave a careful and detailed decision, supplemented by a statement of reasons that helpfully refers to the page numbers in the First-tier Tribunal file. It is apparent from the statement of reasons that both parties' representatives handed in written submissions at the hearing; I have not been able to locate these, but I do not consider that I am hampered in giving my decision by their absence. The parties' respective contentions are well laid out in their submissions to the Upper Tribunal.
10. The decision notice stated the tribunal's decision as follows:
 1. The appeal is refused.

2. The decision made by the Respondent council on 21.02.2023 and revised on 20.04.2023 in respect of Housing Benefit is confirmed.
 3. [The claimant] was not entitled to Housing Benefit from 14.11.2022.
 4. As a result, [the claimant] has been overpaid Housing Benefit from 14.11.2022 to 8.12.2022 in the sum of £828.88, and from 12.12.2022 to 2.01.2023 in the sum of £617.91.
 5. Both overpayments are recoverable from [the claimant], although taking account of the background circumstances and reasons as set out below, the respondent council may wish to use its discretion not to recover the overpayments.
11. The notice contained a further section headed “Reasons” which set out the basic facts and then concluded:
15. [The claimant’s] representative sought to argue that she should have continued to receive Housing Benefit, as both properties were in the area of the council, and that she continued to satisfy the conditions of entitlement to Housing Benefit, thereby creating a closed period supersession.
 16. The council opposed this argument because the award was terminated on 21.02.2023, before the council became aware of the details of [the claimant’s] new accommodation. Her loss of entitlement to Housing Benefit on the termination of her previous award meant that she was required to claim any future housing costs through Universal Credit under the [Universal Credit (Transitional Provisions) Regulations 2014].
 17. I accept that this is the consequence of [the claimant] leaving her previous accommodation, living elsewhere temporarily before moving to her new accommodation, and not notifying the council of the details of her new accommodation before the award was terminated.
 18. However, the circumstances in this case arose because [the claimant] experienced a significant deterioration in her mental health, and, in these circumstances, the council may wish to use its discretion to consider whether the resulting overpayment or any part of it is not recoverable.
12. The tribunal’s statement of reasons gives, understandably, a more detailed account of the parties’ submissions. It says at paragraph 50 that the council relied on regulations 4, 7, 11 and 13 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001, which I discuss below. Paragraphs 23 and 24 say that the council “clarified the initial appeal response, which had initially indicated that they relied on regulation 14” of the 2001 Regulations, and that the claimant’s representative “made submissions responding to the argument that the decision was made under regulation 14”. It is not clear from this what the council or the claimant’s representative said about regulation 14, either in the written submission or at the hearing. Regulation 14 is not mentioned again in the statement of reasons.
13. In the “Reasons” section of the statement of reasons the tribunal set out the relevant elements of its findings of fact (which had been set out in an earlier section of the statement) and the parties’ arguments. It is not completely clear at what point the tribunal moved from a recitation of the parties’ submissions to

a statement of its conclusions, but on my interpretation of the text the tribunal's conclusions are stated in paragraphs 60-62. These were that

60. As a result, [the claimant] had no continuing entitlement to Housing Benefit after the council's initial decision on 21.02.2023. Pursuant to regulations 5 and 6 of the Transitional Provisions she could not claim Housing Benefit again and was obliged to claim Universal Credit.
61. The council ended the claimant's HB claim in respect of the first property having requested information about her new property and any ongoing claim and received no response (paragraph 61).
62. No information about the claimant's new situation was provided until at least May 2023, and substantive information only from August 2023; in these circumstances her entitlement to HB had ended and pursuant to the Universal Credit (Transitional Provisions) Regulations 2014 she now had to claim universal credit.

The claimant's grounds of appeal

14. The claimant appeals with permission granted by an FTT District Judge. Her grounds of appeal (once again drafted by her representative at Mind) focus on paragraph 58 of the statement of reasons, in which the tribunal said

When the council made the first decision, [the council's representative] said, [the claimant] lost entitlement to housing benefit. There was a break in her entitlement from 14.11.2022 to 5.12.2022 because she did not immediately move into her new address. Because of this she lost entitlement to housing benefit, and pursuant to the Universal Credit (Transitional Provisions) Regulations 2014 she could not reclaim housing benefit because she then became entitled to universal credit.
15. For completeness I also set out paragraph 59 of the statement of reasons in which the tribunal said

[The council's representative] said that at the date of the council's decision, the council had no evidence of [the claimant] having another tenancy as this was not provided until August/September 2023. Even then the information provided was only that she had paid a holding deposit for a property, not actually been granted a tenancy.
16. My preferred reading of both these paragraphs is that they form part of the recitation of the council's arguments, but their content is substantially repeated in the tribunal's conclusion at paragraph 60. The only difference is that paragraphs 58 and 59 refer to the position as at the time the council made the 21 February decision while paragraph 60 refers to the position that existed in consequence of it.
17. The representative goes on to submit that the statement of reasons contains an error of law. He sets out regulation 5 of the Transitional Provisions Regulations, which provides (subject to irrelevant exceptions) that a person is not entitled to HB in respect of any period when they are "entitled to universal credit". He argues, correctly that this provision does not apply to the claimant because, not having applied for universal credit, she was not entitled to it. He goes on to refer

to Judge Rowland's decision in *SSWP v NC* [2023] UKUT 124 (AAC) and to submit that the tribunal could have made the closed period supersession decision that he had contended for.

18. In relation to the claimant's failure to respond to the council's requests for information he points out that nothing in the tribunal's decision or statement of reasons would preclude a closed period supersession. He points out that the council's decision could be revised (or, more appropriately, changed on appeal) to a decision based on evidence that was not available to the council decision-maker but was available to the tribunal. He refers to evidence of the claimant's liability to make rental payments for the new property that was before, and accepted by, the tribunal.
19. In a response submitted pursuant to the Upper Tribunal's case management directions, the council submits that the claimant's entitlement was correctly terminated. Their representative refers to the information request made on 17 January 2023 and the claimant's failure to respond and submits that the claimant's entitlement terminated pursuant to regulation 14 of the 2001 Regulations. He points out that this decision was taken before the claimant submitted evidence of her new rent liability.

My decision

20. First-tier Tribunals operate under great pressure, and I have already noted the care taken by the tribunal in preparing a detailed statement of reasons in addition to a reasoned decision notice. The provisions of the 2001 regulations, particularly regulation 13, are notoriously difficult to follow and have been criticised in previous Social Security Commissioners' and Upper Tribunal decisions. The position in this case is further complicated by the transition from HB to universal credit. But I do not think the tribunal succeeded in teasing out the various legal issues, with the result that its decision involved an error of law.
21. The tribunal's proposition at paragraph 60 of the statement of reasons: seems to be that either at the time of, or by virtue of, the decision of 21 February the claimant had no continuing entitlement to HB. This seems to be based on the fact that in the period between her moves the claimant had no entitlement to HB, from which the tribunal reasons that she had to make a new claim (which had to be for universal credit because of the Transitional Provisions Regulations). The tribunal does not appear to rely on regulation 14 of the 2001 Regulations, but I shall have to deal with that provision later.
22. Paragraphs 60 and 61 of the statement of reasons add the fact that the claimant had not informed the council of her renewed entitlement. It is not entirely clear whether the tribunal's reasoning was based purely on the fact of a gap in entitlement, meaning that the claimant had to make a new claim and was then caught by the Transitional Provisions Regulations, or whether the problem lay in her failure to tell the council about her new entitlement, causing the council to terminate her claim. But in any event I do not consider that the reasoning was correct in law.
23. The fact that the council had issued a termination decision is not determinative. The council's decision of 21 February 2023 (as revised on 20 April 2023) was the subject of the appeal to the First-tier Tribunal, which had the power to

change it if the law required a different decision. The issue is whether the correct decision was the closed period supersession decision for which the claimant had argued, or whether such a decision was prevented by anything in the law governing closed period supersessions or in the 2001 Regulations or the Transitional Provisions Regulations.

24. I have concluded that as at the date of the council's decision, the form of decision on entitlement required by the law was a closed period supersession and that nothing in the various Regulations prevented one on the facts of the claimant's case.
25. I am fortified in my conclusion by the recent decision of Judge Butler in *SSWP v SC and MJ v LB Bromley* [2025] UKUT 299 (AAC), which was not available to the First-tier Tribunal in this case, and its comprehensive review of past Commissioners' and Upper Tribunal decisions, including Judge Rowland's decision in *SSWP v NC* [2023] UKUT 124 (AAC) on which the claimant's representative relied. Although Judge Butler's decision concerned "prospective" closed period supersession decisions (where as the date of the decision, a claimant is temporarily not entitled to benefit, but it is anticipated that they will become entitled again) – and held that such prospective decisions could not be made – her conclusion rests on an analysis of the principles pursuant to which closed period supersession decisions fall to be made.
26. It seems to me to follow from her analysis (and in particular her description at paragraph 195 of the "mechanism" by which closed period supersession decisions are made) is that such a decision falls to be made where, as at the date of the decision, (a) a claimant has an award of a benefit that is still in existence, (b) there are a legal ground and a factual situation that require the award to be retrospectively altered by supersession but (c) the factual situation obtaining as at the date of the decision is such that the claimant is entitled to the benefit.
27. Though some of the decisions on closed period supersessions have noted the desirability and convenience of the closed period supersession mechanism in avoiding the need for claimants to make fresh claims where they have had a finite past period of non-entitlement, as well as the unfairness of treating past payments of benefit in the period after entitlement recommenced as overpayments, I have not found any suggestion in the authorities that a decision maker has to look beyond the three conditions in paragraph 26 above and consider, for example, whether a closed period supersession is fairer than a termination.
28. On what seem to have been the First-tier Tribunal's findings in the present case, conditions (a), (b) and (c) in paragraph 26 above appear to have been satisfied by the claimant on 21 February 2023. The tribunal could only look at the circumstances obtaining as at the time of the council's decision, but was not (as some of its reasoning suggests) confined to the evidence that the council then had. It therefore follows that the tribunal should have set aside the council's decision and substituted a closed period supersession *unless* something else in the law required a termination of the award. It is in that connection that I must look at the Transitional Provisions Regulations and at regulation 14 of the 2001 Regulations.

29. I do not consider that the Transitional Provisions Regulations alter the position. I agree with the claimant's representative that regulation 5 of the regulations is not in point because it applies to people who meet all the conditions of entitlement, including having made a claim. If it applied to all those who met the substantive conditions of entitlement to universal credit, it would have amounted to a simultaneous compulsory migration of everyone to universal credit.
30. If the claimant had needed to make a fresh claim to benefit in February 2023, Regulation 6A (which replaced regulation 6 in July 2022) would have prevented her claiming HB and thus in practice forced her to claim UC. But she did not need to make a fresh claim, given that her existing award could continue by virtue of a closed period supersession.
31. Finally I need to consider whether regulation 14 of the 2001 Regulations required the claimant's award of HB to be terminated rather than continued by virtue of a closed period supersession. Regulation 14 operates in conjunction with other regulations, so in order to explain my conclusion I need to summarise them.
32. First, regulation 7 of the 2001 Regulations gives a council power to supersede an earlier decision awarding benefit where there has been a change of circumstances since the decision had effect. There is no dispute that the claimant moving out of the first property was a change of circumstances.
33. Secondly, regulations 11 to 13 of the Regulations deal with the suspension of payments of housing benefit, and these are followed by regulation 14, headed "Termination in cases of failure to furnish information".
34. In outline, regulation 11 allows a council to suspend payment of HB, in whole or in part, in certain circumstances. One of these sets of circumstances (under regulation 11(2)(a)) is "where it appears to the relevant authority that an issue arises whether the conditions of entitlement to housing benefit ... are or were fulfilled". Regulation 12 then provides for the suspended payments to be made once the council becomes satisfied that benefit is properly payable.
35. Separately, regulation 13 allows a council to suspend payment of housing benefit in relation to persons who fail to comply with "information requirements". These are "requirements to furnish information or evidence needed in order to determine whether an award of benefit should be revised or superseded"; in the case of HB, the council's power to require the information that it sought from the claimant is contained in regulation 86(1) of the Housing Benefit Regulations 2006. Regulation 13 does not contain any separate power to require information.
36. The power to suspend applies where the information requirements are directed to a "prescribed person". The persons prescribed in regulation 86 itself are "a person who makes a claim, or a person to whom benefit has been awarded". Such a person must furnish the information within a period of one month, unless the council allows a longer period.
37. Confusingly, regulation 13(2) contains a different, narrower list of prescribed persons; these include people, like the claimant, whose HB has been suspended under regulation 11(2)(a). Regulation 13(3) applies to "any person to whom paragraph (2) refers" and contains a further requirement for the relevant authority to notify any such person of the requirements of regulation 13.

The requirements themselves are set out in regulation 13(4) in terms close but not identical to those of regulation 86; they are either to (a) to furnish the information of evidence needed within one month or such longer period as the authority considers necessary or (b) satisfy the authority within that period that the evidence or information does not exist or that the person cannot obtain it.

38. Regulation 13 has a complicated and confusing relationship not only with regulation 86 of the HB Regulations, but also with regulation 11 of the 2001 Regulations. Mr Commissioner (later Judge) Rowland pointed it out nearly 20 years ago in CH/2995/2006 (see in particular paragraphs 20 to 24 of his decision). Regulation 13(3) adds a procedural requirement to a requiring authority's power under regulation 86 while regulation 13(4) relaxes the obligation of the recipient where information is not obtainable.
39. It is nevertheless clear, given that the claimant fell within the group of prescribed persons in regulation 13(2), that the council's obligation to give notice of the requirements of regulation 13 applied to her. The council's letter of 17 January did not refer, as the letter of 25 January did, to the possibility of explaining that information did not exist or was not obtainable; the first letter referred to the one month deadline but neither letter referred to the possibility of seeking an extension.
40. The Upper Tribunal has held that failure to give the notice required by regulation 13(3) invalidates any subsequent termination under regulation 14 and that failure to give notice of the possibility of an extension of the deadline or of the possibility of showing that information is not obtainable are examples of such failures: see *AA v Hounslow LBC* [2008] UKUT 13 (AAC), *Secretary of State v North East Lancashire Council* [2011] UKUT 300 and *VW v LB Hackney* [2014] UKUT 277 (AAC).
41. Regulation 14 comes into play in two sets of circumstances. One is where a person whose benefit has been suspended under regulation 11 subsequently fails to comply with an information requirement; the other is where a person's benefit is suspended under regulation 13 as a result of failure to comply with an information requirement. Regulation 14 provides in both cases that the person ceases to be entitled to benefit from the date on which the payment of benefit was suspended or (if earlier) the date on which their entitlement to benefit ceased.
42. Termination under regulation 14 has a penal quality insofar as it bars entitlement even where the substantive conditions of entitlement are otherwise satisfied, and requires a claimant to make a fresh claim. It is thus appropriate that the preconditions to making a permanent supersession under it are strictly applied. They were not satisfied in the respects I have identified in paragraph 39 above. It therefore follows that regulation 14 did not authorise or require the decision that the council made.
43. It appears to have been common ground between the parties that the claimant met the substantive conditions of entitlement to HB in respect of the second property by 21 February 2023, but there is no formal finding to that effect by the First-tier Tribunal. Nor is there a finding as to the precise dates of the closed period. I hope that it will be possible to save effort and expense by my remaking the decision without a remittal to the First-tier Tribunal. I have nevertheless

given directions to cater for the eventuality that either party disagrees with the proposed terms of the remade decision.

Nicholas Paines
Judge of the Upper Tribunal

Authorised for issue on 10 October 2025