



**Appeal No. UA-2025-001585-BB**

**Neutral Citation Number: [2026] UKUT 71 (AAC)**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**SECRETARY OF STATE FOR WORK AND PENSIONS**

**Appellant**

**- v -**

**E**

**Respondent**

**Before: Upper Tribunal Judge Scolding KC**

**Decided on consideration of the papers**

**Representation:**

**Appellant:** Decision Making and Appeal Department, Leeds of the SSWP

**Respondent:** Norfolk Community Law Centre.

*On appeal from :*

**Tribunal:** Social Entitlement Chamber

**Tribunal Case No:**

**Digital Case No.:** 1728833231307318

**Tribunal Venue:** Luton

**Decision Date:** 3 June 2025

**SUMMARY OF DECISION**

**Application for Bereavement Support Payment. Whether the Tell Us Once service was obliged to pass on information about application for bereavement support payments to clients. Nature of claim for bereavement support payment**

*Social Security Benefits*

*Bereavement support payment*

*Making a claim*

Judicial summary

Mrs E applied for Bereavement Support Payment nearly 4 years after the death of her husband. The SSWP refused the claim on the basis that it was out of time. The First Tier Tribunal allowed the claim on the basis that the Tell Us Once service should have proactively advised her of her right to ability to claim such payments, and a failure to do so was negligent and discriminatory. The FTT also found that using the Human Rights Act 1998, the relevant regulations for making such a claim must be read so as to give a discretion to extend time to make a claim where it would otherwise be a breach of the European Convention on Human Rights not to do so.

The FTT approach was wrong in law. There is no compulsory obligation for the Tell Us Once service to advise people of their right to claim benefit. Moreover, it is not negligent not to do so. It was also not a failure to make a reasonable adjustment under the Equality Act 2010. Whilst E suffered from mental health problems, having a rule which had a cut off date for BSP was not a breach of Article 1 of the First Protocol read with Article 14.

**DECISION**

**The decision of the Upper Tribunal is to allow the appeal.** The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remake the decision, because there is unfortunately only one answer which can be given which is the E does not qualify for bereavement support payments and the decision of 28 August 2024 was correct in law.

## REASONS FOR DECISION

### Introduction

1. This is an appeal by the Secretary of State for Work and Pensions (“SSWP”) against a decision of the First Tier Tribunal which allowed the Respondent, who I shall call “E” for the purposes of this judgment, to receive bereavement support allowance. The SSWP had decided in 2024 that she should not be entitled to such support as she applied out of time.
2. I anonymise the name of the Respondent in this case on the basis of *Adams v Secretary of State for Work and Pensions and Green* (CSM) [2017] UKUT 9 (AAC) [2017] AACR 28. No party has addressed me on this issue. I have considered the weighing of the principle of open justice and the rights enshrined under Article 10 of the European Convention on Human Rights in respect of freedom of expression against the rights of E and her family in respect of their private and family life under Article 8 of the European Convention on Human Rights. There is a requirement to uphold the fundamental common law principle of open justice and to depart from such only where such is necessary on the facts and circumstances. In this case, the facts concern a widow’s entitlement to bereavement benefit. It involves consideration of highly personal and sensitive information involving E. Whilst some of this can be redacted, much of it is relevant to the arguments presented to the First Tier Tribunal. The balance in this case lies in favour of protecting E’s right to privacy as against the principle of open justice. The principle of open justice is met in this case by the publication of this judgment. There is no requirement in the public interest for this person’s name to be known. If the Respondent wishes to identify herself, then she can do so, and if someone wished to know the name of the Respondent the parties will be notified and give an opportunity to object.
3. The structure of this decision is as follows:-

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## **Factual background**

4. E’s husband passed away on 11 September 2020 (in the middle of the Covid pandemic). E spoke to the Government’s “Tell us once” service less than a week after his demise on 18 September 2020. This was to report his death. During this conversation with this service – which is organised by the Appellant, the SSWP, she was not told to apply for Bereavement Support Payment – called BSP in this judgment.
5. In the immediate aftermath of the untimely passing of her spouse, E told the First Tier Tribunal that she had severe mental health problems. The First Tier Tribunal’s factual conclusions on this issue (which are not challenged by the SSWP in this appeal) are that these problems required hospital admission and suicidal ideation (i.e. thoughts of harming herself). This went on for several years thereafter.
6. The First Tier Tribunal found that E was unable to undertake research. She also did not have any access to the internet and lived in a rural area. It should also be noted that this took place in the middle of the Covid pandemic, when many public services were not open face to face or had limited openings (of which I set out more below).

## **Legal framework**

7. The Upper Tribunal’s may only allow an appeal under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007) if it finds that the

making of the decision by the First-tier Tribunal involved the making of an error on a point of law.

8. Errors of law include misunderstanding or misapplying the law, taking into account irrelevant factors or failing to take into account relevant factors, procedural unfairness or failing to give adequate reasons for a decision.
9. An error of fact is not an error of law unless the First-tier Tribunal's conclusion on the facts is perverse. That is a high threshold: it means that the conclusion must be irrational or wholly unsupported by the evidence. An appeal to the Upper Tribunal is not an opportunity to re-argue the facts of the case.
10. These principles are set out in many cases, including *R (Iran) v SSHD* [2005] EWCA Civ 982 at [9]-[13].
11. In scrutinising the judgment of a First-tier Tribunal, the Upper Tribunal is required to read the judgment fairly and as a whole, remembering that the First-tier Tribunal is not required to express every step of its reasoning or to refer to all the evidence, but only to set out sufficient reasons to enable the parties to see why they have lost or won and that no error of law has been made: cf *DPP Law Ltd v Greenberg* [2021] EWCA Civ 672 at [57]. That case also makes the point (at [58]) that where the First-tier Tribunal has correctly stated the law, the Upper Tribunal should be slow to conclude that it has misapplied it.

#### Legal Framework for the claiming of BSP

12. Section 30 – 32 of the Pensions Act 2014 along with the Bereavement Support Payment Regulations 2017 provides the statutory basis upon which BSP payments can be made. There are various qualifying conditions for payment to be made. The First Tier Tribunal and the SSWP accepted that E would have qualified for the payment under the Act and Regulations if she had applied in time. Unfortunately, she only applied for the benefit in 2024.

13. The relevant rules are that to get bereavement support payment for the maximum period possible (which is 18 months), a claim must be made within 3 months of the date that a spouse has died. To get the initial lump sum payment, a claim must be made within 12 months of their death (Regulation 3(2) and 3(5) of the BSP regulations).
14. Regulation 2(1) and 2(2) of the Bereavement Support Regulations provides that the period for which such payments are to be paid on the date that the person died if a claim is made three months or less after that date, or the beginning of the period three months prior to the date that the person claims the payment, if the person claims the payment more than 3 months after a spouse's death (regulation 2(b)(i). Reading Regulation 2(b)(i) and 2(3) together, the "period" for which BSP is payable finishes at the end of the period of 18 months beginning with the day that someone's partner died. A claim can be made (looking at Regulation 2(b)(ii)) up to 21 months after the death of the person, but the amount to be claimed can only extend to the 18<sup>th</sup> month - i.e. if someone makes a claim for payment in month 20 will start three months prior to that under the Regulations but will end at the end of the 18 month period - i.e. one would only get one month's payment. In effect therefore, one can receive no more than 18 months worth of benefit in total as a maximum, but that reduces for every month after death that one claims and the claim is extinguished after 21 months if no claim has been made.
15. There are exceptions to this if someone does not find out straight away that their spouse had died but find out within 12 months of their death, and there are also rules about the DWP being able to make a presumption of death. Neither of those are relevant to this situation.
16. Regulation 19(2) of the Claims and Payments Regulations 1987 provides that the prescribed time for claimant bereavement support allowance is three months beginning with any day the claimant is entitled to the benefit concerned (and in this case this would be 18 months given the BSP Regulations set out above). Regulation 19(3BA) of the 1987 Regulations sets out that the rate to be paid as set out in Regulation 3(2) or (5) and the date on which the claimant's spouse died

is 12 months beginning with the date of that death (which is not applicable to this claim).

Legal Framework for making a claim for benefit

17. A claim for BSP can be made by either phoning the DWP bereavement service or in writing. The DWP bereavement service is different to the Tell Us One arrangement. The Tell Us Once arrangement does, however, enable a person who has reported such to that body to be given a reference number which can then be used if a claim is then made to the DWP via the DWP Bereavement Service.
18. Under the Social Security Administration Act, s1(1), to be entitled to benefit, a claim must be made for it. In this case, no claim was made until 2024.
19. Section 1(1) of the Social Security Administration Act says as follows:  
“ **1.— Entitlement to benefit dependent on claim.**  
(1) Except in such cases as may be prescribed, and subject to the following provisions of this section and to section 3 below, no person shall be entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied—
  - (a) he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under this Part of this Act; or
  - (b) he is treated by virtue of such regulations as making a claim for it.(1A) No person whose entitlement to any benefit depends on his making a claim shall be entitled to the benefit unless subsection (1B) below is satisfied in relation both to the person making the claim and to any other person in respect of whom he is claiming benefit.  
(1B) This subsection is satisfied in relation to a person if—
  - (a) the claim is accompanied by—
    - (i) a statement of the person's national insurance number and information or evidence establishing that number has been allocated to the person; or
    - (ii) information or evidence enabling the national insurance number that has been allocated to the person to be ascertained; or

(b) the person makes an application for a national insurance number to be allocated to him which is accompanied by information or evidence enabling such a number to be so allocated.

(1C) Regulations may make provision disapplying subsection (1A) above in the case of—

(a) prescribed benefits.

(b) prescribed descriptions of persons making claims; or

(c) prescribed descriptions of persons in respect of whom benefit are claimed, or in other prescribed circumstances.

(2) Where under subsection (1) a person is required to make a claim or to be treated as making a claim for a benefit in order to be entitled to it, the person is not entitled to it in respect of any period more than 12 months before the date on which the claim is made or treated as made.

(2A) But subsection (2) does not apply—

(a) to disablement benefit or reduced earnings allowance, or

(b) in a case where a claim for the benefit is made or treated as made by virtue of section 3(2).

(3) Where a person purports to make a claim on behalf of another—[

(za) for personal independence payment by virtue of section 82 of the Welfare Reform Act 2012; or

(a) for an attendance allowance by virtue of section 66(1) of the Contributions and Benefits Act ; [...]<sup>3</sup>

[...]<sup>3</sup> that other shall be regarded for the purposes of this section as making the claim, notwithstanding that it is made without his knowledge or authority.

(4) In this section and section 2 below “*benefit*” means — [

(za) universal credit.

(zb) state pension or a lump sum under Part 1 of the Pensions Act 2014.

(zc) bereavement support payment under section 30 of the Pensions Act 2014.

(a) benefit as defined in section 122 of the Contributions and Benefits Act ; [...]<sup>7</sup>

[ (aa) a jobseeker's allowance.

(ab) state pension credit.

(ac) an employment and support allowance.

(ad) personal independence payment.

(b) any income-related benefit.

(5) This section (which corresponds to section 165A of the 1975 Act, as it had effect immediately before this Act came into force) applies to claims made on or after 1st October 1990 or treated by virtue of regulations under that section or this section as having been made on or after that date.

(6) Schedule 1 to this Act shall have effect in relation to other claims.”

20. Regulation 3 of the Claims and Payments Regulations set out where claims are not required for entitlement to benefit in certain cases (largely in respect of retirement pensions but also widowed parent’s allowance). Bereavement Support payments are not . Regulation 4 of the Claims and Payment Regulations 1987 says as follows:

*“4.— Making a claim for benefit*

(1) Subject to paragraphs (10)<sup>3</sup> and (11B), every claim for benefit other than a claim for income support or jobseeker's allowance shall be made in writing on a form approved by the Secretary of State or the Board for the purpose of the benefit for which the claim is made, or in such other manner, being in writing, as the Secretary of State or the Board may accept as sufficient in the circumstances of any particular case.

.....

(11) A claim for the following benefits may be made by telephone call to a telephone number specified by the Secretary of State for the purpose of the benefit for which the claim is made, unless the Secretary of State directs, in any particular case, that the claim must be made in writing—

(e) widowed parent's allowance.

(ea) bereavement support payment.

(f) a social fund payment for funeral expenses or winter fuel payment.

(12) A claim made by telephone in accordance with paragraph (11) or (11A) is properly completed if the Secretary of State is provided with all the information required to determine the claim and the claim is defective if not so completed.

(13) Where a claim made by telephone is defective—

(a) in the case of a claim other than a claim for income support or jobseeker's allowance, paragraph (7) applies;

(b) in the case of a claim for income support, paragraph (7A) applies; and

(c) in the case of a claim for jobseeker's allowance, paragraph (7B) applies,

except that references to a defective claim being received or received in an appropriate office or office specified in paragraph (6B) where that paragraph applies are to be read as references to a defective claim being made by telephone and the reference in paragraph (7)(b) to a properly completed claim being received is to be read as a reference to a claim made by telephone being properly completed.”

21. Paragraph 4(7) of the Claims and Payment Regulations provides that if a claim is defective at the date it is received in the relevant SSWP office, then the Secretary of State shall advise the person of that defect, and if a properly completed claim is received within one month (or longer as the Secretary of State may consider to be reasonable), then the Secretary of State will treat the claim as properly made.

22. Regulation 19 of the Claims and Payment Regulations says as follows:

**19.**—(1) Subject to the following provisions of this regulation, the prescribed time for claiming any benefit specified in column (1) of Schedule 4 is the appropriate time specified opposite that benefit in column (2) of that Schedule.

(2) The prescribed time for claiming the benefits specified in paragraph (3) is three months beginning with any day on which, apart from satisfying the condition of making a claim, the claimant is entitled to the benefit concerned.

(3) The benefits to which paragraph (2) applies are—

.....

(g) widow's benefit.

(ga) subject to paragraph (3B), widowed parent's allowance;

(gb) subject to paragraph (3BA), bereavement support payment.

(h). any increase in any benefit (other than income support or jobseeker's allowance) in respect of a child or adult dependant.

(3B) The time prescribed for claiming a widowed parent's allowance in respect of the day on which the claimant's spouse or civil partner has died or may be presumed to have died where—

(a) less than 12 months have elapsed since the day of the death; and

(b) the circumstances are as specified in section 3(1)(b) of the Social Security Administration Act 1992 (death is difficult to establish), is that day and the period of 12 months immediately following that day if the other conditions of entitlement are satisfied.

(3BA) The prescribed time for claiming bereavement support payment in respect of—

(a) the rate set out in regulation 3(2) or (5) of the Bereavement Support Payment Regulations 2017 (rate of bereavement support payment); and

(b) the date on which the claimant's spouse or civil partner died, is 12 months beginning with that date of death.

(3C) In any case where the application of paragraphs (16) to (34) of regulation 6 would be advantageous to the claimant, this regulation shall apply subject to those provisions.”

23. This requirement in Regulation 19(3) in respect of bereavement support payment is to be contrasted with a claim for income support or job seeker's allowance, where there is the basis to extend time for a month if various circumstances have taken place (such as for example problems with transport or bereavement) - see Regulation 19(6).

What is the Tell us Once service.

24. The First Tier Tribunal in its decision infers that the Tell Us Once service should, or ought to have signposted E to claim . I have looked at open-source material

available on the gov.uk website as to the nature of the service. The service is designed to report a death to most government organisations in one go. A death must have either been registered or reported to a coroner, and information is given by the Registrar of deaths upon registration of the death as to how to use the service. The service will contact relevant government bodies to cancel for example, relevant benefits, driving licences etc. The current gov.uk website (accessed January 2026) provides as part of its advice to indicate that people should check if they are eligible for bereavement payments, but this is seen as a separate step to the “Tell us Once service”. The website sets out eligibility for Bereavement Support Payments and makes reference to both the timescales for making a claim and has reference to the Bereavement Service Helpline (which is the DWP service enabling people to make a claim).

### **The First-tier Tribunal’s decision**

25. The First Tier Tribunal allowed E’s appeal. It accepted that E contacted the Tell us Once service to report her husband’s death promptly after his untimely demise, and that service is administered by the respondent. The First Tier Tribunal’s statement of reasons says as follows (this is not the complete statement of reasons, but merely salient extracts):

“ (iv) The point of this service [the Tell us Once service# is to save bereaved relatives, at a time of heightened grief and sadness, from having to make contact with multiple agencies.

(v) during the call with Tell us Once, E was not advised to make an application for BSP.

(vi) The failure to advise E about her potential entitlement to BSP and to make an application, is at best extremely unhelpful, and at worst negligent.

(vii) The lack of advice given to E also potentially amounts to a breach of a duty of care towards her, and disability discrimination as no reasonable adjustments were put in place.

(viii) Around the time of her husband’s death and for several years thereafter,[E] experienced severe mental health problems, which included being taken to hospital because of suicidal thoughts.

(ix) E was unable to research potential entitlement to BSP after husband's death due to her lack of access to the internet, and the Covid pandemic which would have made it difficult, if not impossible, to visit a local library. It should be noted that she lives in a very remote location at that time.

(X) Even if E had access to the internet, the advice on the website regarding when to apply for BSP is misleading in that it refers to a claimant usually needing to apply for BSP within 21 months.

(XI) E finally made an application for BSP in August 2024, when she became aware of her right to apply for BSP.

(XII) This is not a case of someone simply being unaware of her right to a benefit. This is a case where E should have been properly advised about her potential entitlement to BSP, at a time when she was both vulnerable and distressed.

(xiii) In the exceptional circumstances of this case, the tribunal found that had E been advised correctly about her potential entitlement to BSP she would have made her application shortly thereafter, and certainly within the required time limits. Therefore, the tribunal deemed that she had made her application within the required time limit. “

26. The Statement of Reasons goes on to set out the legal framework for the decision made. It says:

“17. The Tribunal applied the legal principles and case law referred to below to its findings of fact in order to make its decision to allow E's appeal against the decision of the respondent made on 28 August 2024.

18. The Tribunal is entitled to consider the European Convention on Human Rights (ECHR) when making its decisions – Section 6 of the Human Rights Act 1998. The Court of Appeal decision in *SSWP v AT* (2022) supported the application of the ECHR in UK benefits law.

19. In making its decision the Tribunal considered Article 14 and Article 1 Protocol 1 of the ECHR.

20. Article 1 Protocol 1 of the ECHR (A1P1) covers the right to peaceful ownership of possessions. In *Stec and others v UK* (2006) the European Court of Human Rights found that A1 P1 applies to UK benefits, including non - contributory benefits, such as BSP.

21. The Tribunal found that in refusing E's application for BSP on the sole ground that it was submitted late was made without sufficient regard to A1 P1

22. Similarly, the Tribunal considered Article 14 of the ECHR, which concerns the Right not to be discriminated against. In this case, the Tribunal found that by not making the provisions relating to entitlement to BSP more accessible, the respondent was potentially discriminating against E in relation to her age bearing in mind the social exclusionary nature of expecting claimants to have access to the Internet in order to find out about their potential entitlement to BSP. It is generally accepted that older people have less understanding of, and access to, the Internet.

23. The Tribunal also found that, by taking insufficient account of E's severe mental health problems. It has paid insufficient regard to Article 14 as regards potential disability discrimination.

24. The Tribunal noted that the Respondent is the Government department with responsibility for the 'Tell Me Once' service, and therefore E had a legitimate expectation that she would be given accurate and appropriate advice by its agent or employee, and therefore a duty of care was owed to her. it should be added that even the current guidance on BSP appears to be misleading about when an application for BSP must be made. "

#### Summary and Conclusion

25. In summary the Tribunal decided that, taking into account all of the facts and factors set out in this document, E should be deemed to have made her application for BSP at the time when she contacted the Respondent's 'Tell Me Once' service and the Tribunal found that if she had been given the correct advice about her potential entitlement to BSP, she would have applied immediately, or very soon thereafter, for BSP. 26. Therefore, the Tribunal is not extending the time for making an application for BSP, it is deeming that the

application was made within the time limits on the basis that had she been given the correct advice she would have applied in time, and the Tribunal is seeking to avoid both disability discrimination through E's severe mental health problems, and age discrimination as regards the access to information about BSP.

27. The Tribunal would suggest that all Government departments have discretion within their decision-making. This Tribunal is bound to deal with cases fairly and justly under its own procedure rules. It is hoped that the Respondent will have the legitimate interests of E in mind when considering its next steps as regards this case. The above is a statement of reasons for the Tribunal's decision under Rule 34 of the Tribunal Procedure.

27. The FTT granted permission to appeal

### **The grounds of appeal and the parties' submissions**

28. The submissions on appeal by the SSWP are as follows:

29. First, in respect of the Tell Us Once service, that UT Judge Hemingway in *SSWP v CS* [2017] UKUT 0021 at [25 – 29] found that a call to the Tell us Once service is not a claim for BSP in the prescribed manner for the purposes of s1(1) of the Social Security Administration Act 1992.

30. Second, the FTT when granting permission to appeal the FTT observed that the Tribunal deemed the claim to be made because the Respondent in its tell us once service failed to tell E that a claim for BSP could be made, and partly because of the unique circumstances of the pandemic and so indicated that the CS case was not applicable. The SSWP submits that a mistake or omission by the Secretary of State does not make the requirements of the SS (Claims and Payments) Regulations 1987 to be waived and varied.

31. Second in respect of the European Convention on Human Rights that Article 1 of the First Protocol does not assist E. The SSWP relies upon *SSWP v EB* (UA-2024-001059 – MA at [26] ) that for the purposes of that provision, there is no

right to BSP unless and until the domestic conditions of entitlement to that benefit are met. In this case, one of the fundamental conditions of entitlement was not met as no claim had been made – the SSWP relies upon SSWP v Nelligan [2003] EWCA Civ 555 – R(P) 2/03 at [25].

32. E responded to this submission by saying that she relied upon the decision of the FTT and its reasoning. The SSWP stated that it wished to make no further submissions in reply.

### Analysis

33. There are the following issues of law which arise on this appeal:
- (a) Did the FTT err in law in finding that the Tell Us Once service had an obligation to inform the Appellant that she could apply for BSP and if it did, does that failure permit a claim to be brought out of time?
  - (b) Do the circumstances of the covid pandemic create a force majeure situation such that the SSWP can or should waive the criteria needed for a claim?
  - (c) Did the FTT err in law in finding that Article 1 of the First Protocol either alone or with Article 14 make it necessary to waive the requirements of a claim ?

- **Issue one: The Tell Us Once service and its obligations**

34. In *SSWP v CS* [2017] UKUT 0021, Upper Tribunal Judge Hemingway had to consider a situation where a registrar had told someone when registering their death that the Tell us Once service would deal with notification to all parts of the DWP. The FTT had found that this was because the DWP had erroneously sent out notifications to the relevant Registrars of Deaths along with a letter which registrars were to give to relatives. which implied such (at [18]). A couple of weeks after this notification (but after CS had registered her husband's death) , the DWP corrected the notification to make it clear that Tell Us Once was not a claim to the benefits service. CS therefore had been expressly told that she did not need to contact the DWP (at [8]). She applied for her claim some 2 years and 3 months after her husband passed away after having been told by a friend about the right to benefit. The FTT found that the DWP had misled the Appellant and

that the registrar therefore should have filled in a form and/or that she made her claim as at the date she registered the death.

35. I am of the view that the FTT was wrong to consider that the Tell Us Once service was the equivalent of or is responsible for alerting individuals to their potential claim for benefit. It is a service operated by the DWP. It does pass information on to the DWP, but that is about ending claims rather than about providing information about entitlement to benefit. The FTT sought to imply a legitimate expectation on the part of the Tell Us Once service that they would provide information to those who telephoned that they may be entitled to bereavement support payments/other bereavement benefits.
36. The Tell Us once service was introduced because of the Welfare Reform Act 2012 . Section 135 of the Welfare Reform Act sets up the power for Registrars to provide information to the Secretary of State for the purposes of the Tell Us Once service. This is described under s19A(20 of the Registration Service Act 1953 (s135 of the Welfare Reform Act) as the service operated by the Secretary of State which allow information about births and deaths to be transmitted to the Secretary of State and that can be transmitted to other people by the Secretary of State. Sections 127 – 134 of the WRA 2012 provides for information sharing for welfare purposes between HMRC, the DWP, other local authorities and more generally (as set out as well in s72 of the Welfare Reform and Pensions Act 1999). It is an information sharing service, not a claims service.
37. Local authorities – through their registrars – can provide a Tell Us Once interview immediately after the registration of the death and provide a confirmation letter as to the fact that the service had been used. A standard internet search brings up information provided by many local authorities which explains the service and how it works.
38. There is not statutory obligation under the statute (that I can find) which requires the Tell Us Once service to refer people to claim benefits. Had that been the case one may have expected that the Tell Us Once service would have been able

to help the person to fill in the claim form or do it on their behalf (saving them from having to contact the relevant telephone line or to make a claim).

39. A government department does not owe a general duty of care to those who use its services even in cases where there is maladministration (*Murdoch v Department of Work and Pensions* [2010] EWHC 1988 : *Jones v Department of Employment* [1989] QB 1: *Rowley v Secretary of State for Work and Pensions* [2007] EWCA Civ 598: *Poole BC v GN* [2019] UKSC 19). The FTT's conclusion that such a duty is owed in these circumstances is incorrect in law (although I am aware that the FTT judge was not using it as a term of art necessarily but to identify that there was a responsibility to point people in the right direction).

*What does CS say?*

40. In CS, Judge Hemingway decided that in order to establish entitlement to a benefit, it must be made in the manner and within the time set out in the regulations unless someone can be "treated" as having made a claim as set out in s1(1) of the Social Security Administration Act 1992. Regulation 4(1) of the Claims and Payments Regulations 2007 (which apply here) lays down a general rule that a claim must be made in writing or by way of telephone claim (under Regulation 4(11)). No written document was sent in by E to the Secretary of State during the relevant period. There was no telephone claim.
41. Judge Hemingway concludes that the legislative provision for a claim to have been made was not met on the facts of CS (which are not identical to those of E, but both do involve an absence of written or telephone claim of any description). At paragraph 30, Judge Hemingway says:

" In my judgment therefore, the tribunal did err in law because it did not have proper regard to the legislative requirements for making of a claim before deciding that one had effectively been made through the interaction the claimant had with the deputy registrar....."

42. I am of the view that the FTT in the case of E fell into the same error. The claim was only made well after the final date for claiming could have been made (which would have been within 3 months of the last day that there would be entitlement).
43. In *SSWP v Abdul Miah* [2024] EWCA Civ 186 at [8] and at [50] , which cited *SSWP v Nelligan* [2003] EWCA Civ 555 [2004] 1 WLR 894, the Court of Appeal iterated that the effect of section 1(1) of the SSAA was that a claim was a precondition to entitlement and that entitlement depends on the claim being made in the manner and within the time set out in the regulations – if someone makes a claim out of time they will not be entitled to benefit.
44. The FTT also found that the failure to give advice was “disability discrimination as no reasonable adjustments were put in place” – (vii). I cannot see what reasonable adjustments would have been put in place which would have enabled her to have claimed save for telling her that she could. I assume what the FTT mean is that had the issue being raised proactively then the Claimant would have known she could have claimed and sought to do so. Given that the Tell Us Once service would not necessarily have known of her mental health problems, I do not consider that an obligation bites on the organisation on the particular facts of this case. Whilst it is the case that every public organisation must make anticipatory reasonable adjustments for those who may come into contact with its service (for example offering services in Braille: providing easy read versions of texts), that cannot extend to anticipating every adjustment that every person will or may require on the specific facts of their specific case. Again, in my view it cannot be discriminatory not to raise an issue about the ability to claim benefit when the body concerned is not authorised to deal with the claim. It may be good and sensitive practice to alert individuals to the right to claim such benefits, but it cannot be considered to be negligent and/or discriminatory not to do so.

### ***Issue Two - The Covid Pandemic***

45. The FTT judge when granting permission sought to distinguish the position of Mrs. CS to that of Mrs. E because of the Covid Pandemic. Mr. E passed away in September 2020. I have examined and given judicial notice to a report produced by the House of Commons Library which provides information as to which

coronavirus regulations were in place and what was therefore open both in September 2020 and at dates after September 2020.

46. In September 2020, there were limited lockdown restrictions and public buildings were open – such as libraries and other places where information could be obtained – for example the registrar of deaths. However, libraries and other places like them often operated appointment systems and /or had limited hours and greater cleansing/hygiene and social distancing requirements. Whilst there were local restrictions in place between September – November 2020, they did not apply to the regional area where E lived. On 5 November 2020, national restrictions, came into effect, public building were closed and there was limited social mixing. On 2 December 2020, a tiering system was introduced, so that some restrictions were relaxed. From 30 December 2020 most of the country was placed under strict restrictions and there was a 3<sup>rd</sup> national lockdown in place on 6 January 2021. In March 2021, there was a phased exist with a four-step plan, and civic buildings reopened in April 2021 was the reopening of most organisations and businesses. Civic buildings were closed during national lockdowns, save for the provision of essential services such as support for vulnerable people.
47. I accept entirely that Mrs. E did not have access to the internet in the immediate aftermath of her husband's death and this would have been a difficult time for her. Digital exclusion is a very real problem in a society where so much is placed online . Public services often assume that people have access to digital services when that is not always the case. However, services were still available by telephone at the time (for example the CAB or other organisations) and public buildings were open for the 2-month period immediately after Mr. E's tragic passing. Furthermore, after April 2021 most public buildings – such as libraries etc – were open again. That would have been within the period when a claim could have been made (albeit that the sums involved diminish if one does not claim them within 3 months of the date of death).
48. I do not consider that the covid pandemic was an insuperable difficulty to being able to find out about a claim (albeit it would have been a difficulty).

**Issue Three - Article 1 of the First Protocol read with Article 14**

49. The FTT found that the Secretary of State's decision to refuse entitlement to BSP failed to consider or have regard to E's disabilities and therefore Article 1 of the First Protocol read with Article 14 and the Equality Act 2010.
50. Section 3 of the Human Rights Act 1998 provides that as far as it is possible to do so, primary and subordinate legislation must be read and given effect to in a way which is compatible with Convention Rights. A public authority (which would include the SSWP in making decisions about benefit entitlement) and the FTT as a court (s6(3)(a)) must not act in a way incompatible with rights under the Convention.
51. Article 1 of the First Protocol provides as follows:  
"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law, and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties."
52. Article 14 concerns the prohibition on discrimination, and sets out:  
"the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".
53. Other status includes disability (*Guberina v Croatia* (App.23682/130 at [73]). There is no right under Article 1 of the First Protocol to receive a particular social security payment (*Stec v UK* [Apps No 6573/01 and 65900/01 and see *R(RJM) v SSWP* [2008] UKHL 63 at [31]). If, however, the state – in this case the SSWP – does create entitlement to a benefit – that must be done in a manner which is compatible with Article 14. That means that people in a relevantly similar situation should not be treated differently without objective and reasonable justification

(Burden v UK (App.13378 (05))). It is not therefore a breach of Article 1 of the First Protocol for someone not to be given a social security benefit if they do not meet the criteria for entitlement.

54. In this case, there can be no entitlement because there was no claim made until some 4 years later when entitlement to the benefit had been extinguished some time before (one can only receive the benefit until the 21st month (at most) after the death of a spouse /civil partner), as it is designed to provide some financial subsistence during the difficult transitional period for those under pensionable age from a double income to a single income- or from a single income to no income.
55. The fact that someone has mental health difficulties or diagnosed mental health disorders is likely to amount to there being disabled (under s5 of the Equality Act 2010). They may well have more difficulties making any kind of benefits claim because of their problems. The issue is whether having a time limit for the cut off such benefits treats those with mental health difficulties differently to others in an analogous situation. It does not do so directly. In my view it does not. There is a time limit for the claiming of all benefits. There is nothing in the relevant statutes that makes it harder or more difficult for those with mental health difficulties to claim- given the length of time that such a claim may be made. In practical terms, this benefit allows someone up to 21 months to make a claim. I also recognise that there are steps which are put into place for those who may have such difficulties (such as having an appointee) who is able to manage these things for those who cannot claim themselves because of health (or other extenuating) circumstances.
56. Even if I am wrong about this, I consider that any such differential in treatment would, following *R(SC) v SSWP* [2021] UKSC 26 be justifiable . Lord Reed's speech in that case summarised [at 15] the approach of the European Court to the question of justification , identifying that a wide margin of discretion is allowed to UK governments when deciding general measures of social and economic strategy. The court will generally respect the policy decision made by the UK government unless it is "manifestly without reasonable foundation". The phrase "manifestly without reasonable foundation" is meant to be a "lower threshold" test

than the test of proportionality which would be applied in other cases concerning the Human Rights Act 1998, but there where it discriminates on “suspect” grounds, the court may require stronger justification and adopt a more rigorous approach, but will still consider the appropriateness of a wide margin of judgment in light of the case’s context.

57. In this context, whilst it may have a harsh effect on Ms. E, it seems to me that having a measure which provides a cut-off date for the provision of benefits aimed at the immediate post bereavement period is proportionate and the government’s policy of having such a cut-off date is not “manifestly without reasonable foundation”. Benefits claims often have bright line rules which lead to some individuals being able to claim and some not. That can have significant financial consequences for those involved.
58. I therefore consider that the FTT erred in law in considering that Article 1 of the First Protocol and Article 14 were engaged. In effect, the FTT’s decision was that the legislation should be read as to provide a discretion to allow a claim some 2 years after the last date upon which it could have been made on the basis of someone’s personal ill health. That goes beyond , in my view, reading the legislation compatibly with the Convention right where possible under s3 of the HRA 1998 and to construing the legislation to create a discretion where none exists at present. Whilst it would be possible (see *RR v SSWP* [2019] UKSC 52) to disapply the time limit if such were required to do so under the Convention (as indeed happened in *RR*) as this is secondary legislation, and not primary legislation, the factual circumstances do not justify such being made on the facts of this case.

## Conclusion

59. Nothing in this judgment detracts from the deep sympathies that this Tribunal has with E’s tragic loss, and her obvious health problems during and in the aftermath of such, coupled with the difficulties caused by the Covid pandemic. The law in this area prefers certainty to flexibility. That has had detrimental consequences for E. I well understand why the FTT acted in the way that it did, but the decision

of the SSWP was not an error of law. I therefore set aside the decision of the FTT.

60. Whilst I would usually not remake the decision made by the FTT, I consider that in this case, as I have the facts as found by the First Tier Tribunal (and as no-one disputes them) , that there is only one answer to the appeal which is that E was out of time to make a claim for bereavement support payment and her appeal against the SSWP decision of 28 August 2024 must fail.

**Upper Tribunal Judge  
Scolding KC  
Judge of the Upper Tribunal**

Authorised by the Judge for issue on 12 February 2026