Neutral Citation Number: [2025] UKUT 249 (AAC)

Appeal No. UA-2024-000003-USTA

RULE 14 Order:

Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is prohibited for any person to disclose or publish any matter likely to lead members of the public to identify the Appellant in these proceedings.

IN THE UPPER TRIBUNAL

ADMINISTRATIVE APPEALS CHAMBER

Between:

AS

Appellant

- v -

Secretary of State for the Department of Work and Pensions

Respondent

Before: Upper Tribunal Judge Brewer
Hearing date: 18 February 2025
Mode of hearing: Oral Hearing by video-link

Representation:
Appellant: Mr Paul Stockton, Citizen's Advice Bureau
Respondent: Ms Jackie McArthur (counsel)

On appeal from
Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: SC242/23/02976
Tribunal Venue: Fox Court (in person)
Decision Date: 16 October 2023

SUMMARY OF DECISION

REFUSAL TO REVISE FOR OFFICIAL ERROR, OVERPAYMENTS

The Respondent failed to notify the Appellant that her entitlement to Income Support was revised prior to pursuing recovery of alleged overpayments. Each step: revision of entitlement, notification of revised decision and recovery served as a statutory precondition for the next; failure to satisfy the statutory pre-conditions in section 71(5A) of the Social Security Administration Act 1992 deprived the Respondent of lawful authority to recover the overpayments (LL v Secretary of State for Work and Pensions [2017] UKUT 324 (AAC) considered). The above acts constituted official errors under regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

The Respondent did notify the Appellant of the decisions to recover overpayment pursuant to section 71 of the 1992 Act (the "recoverability decisions").

The First-tier Tribunal Judge correctly held that there was no jurisdiction to consider an appeal against either the unnotified revised entitlement decision or the 2007 recoverability decisions. This is because: (i) notification of a revised decision is a necessary precondition before a decision is appealable (section 12(1) of the Social Security Act 1998, and sections 8 and 17 considered), and no such notification was made; (ii) section 12 of the 1998 Act does not confer a right of appeal against a refusal to revise, nor is it necessary to interpret it as doing so to ensure compliance with Article 6 of the European Convention of Human Rights (the Convention) (see R(IS)15/04; section 3(1) of the Human Rights Act 1998; Wood v Secretary of State for Work and Pensions [2003] EWCA Civ 53; Secretary of State for Business and Trade v Mercer [2024] UKSC 12); (iii) section 9(5) of the Social Security Act 1998 is confined to decisions which have in fact been revised, and cannot be extended to include refusals to revise (obiter observation at paragraph 13 of PH and SM v Department of Work and Pensions [2018] UKUT 404 not followed; R(IS) 15/04 applied); and (iv) the Appellant was notified of the 2007 recoverability decisions and had, but did not exercise, a right of appeal within the statutory time-limit against those decisions. The facts of this case do not justify any extension of the statutory appeal time-limit (Adesina v Nursing and Midwifery Council [2013] EWCA Civ 818 considered).

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 Upper Tribunal is to dismiss the appeal. The decision of the First-tier Tribunal dated 16 October 2023 involved no material error of law.

REASONS FOR DECISION

Introduction

1. This appeal concerns the jurisdiction of the First-tier Tribunal to hear the Appellant's appeal against six decisions made on 22 June 2007 and 13 September 2007 under section 71 of the Social Security Administration Act 1992. These decisions notified the Appellant that the Secretary of State intended to recover amounts of Income Support to which the Appellant was not entitled (the 'recoverability decisions').

2. The First-tier Tribunal declined jurisdiction, rejecting the Appellant's submission that the time limit for appealing the 2007 recoverability decisions should run from the date she was notified of the refusal to revise for official error. The judge observed that the recoverability decisions pre-dated the mandatory reconsideration regime and therefore PH and SM v Secretary of State for Work and Pensions (DLA)(JSA) [2018] UKUT 404 (AAC); [2019] AACR 14, did not apply. The judge further held that section 12 of the Social Security Act 1998 did not confer a right of appeal against a refusal to revise for official error, (R(IS) 15/04 and R(TC) 1/05 applied). Furthermore, he did not consider it necessary to extend the time to appeal the recoverability decisions to ensure compliance with Article 6 (right to a fair trial) of the European Convention on Human Rights (the Convention) (Adesina v Nursing and Midwifery Council [2013] EWCA Civ 818, considered).

3. The judge granted permission to appeal to the Upper Tribunal seeking guidance on the application of PH and SM to cases which pre-date the commencement of regulation 3ZA of the Social Security and Child Support (Decision and Appeals) Regulations 1999 (the 1999 Regulations).

4. For the reasons I give below, the decision of the judge on jurisdiction was correct and no material error of law arises in the refusal of the First-tier Tribunal to admit the appeal stands.

5. At the outset I would like to thank Mr Stockton, from Citizens Advise Bureau who represented the Appellant, and Ms Mc Arthur, counsel instructed on behalf of Secretary of State. I was greatly assisted by their well-structured, clear and focused written and oral advocacy, thus making my task of reaching conclusions on the complex issues arising in this appeal, much easier.

Issues

6. The six issues to be decided in this appeal are as follows:

    i. The first issue is whether the Respondent failed to notify the Appellant of the decision taken on 7 June 2007 to revise her entitlement to Income Support. The Respondent accepts that this

was an appealable decision under section 12(1) of the Social Security Act 1998, which required written notification.

ii. If a revised entitlement decision was not, and has not been, notified to the Appellant, what is the legal effect of that revised entitlement decision for the purposes of the First-tier Tribunal's jurisdiction to hear an appeal against it. Further, does non-notification constitute an official error as defined by regulation 1(3) of the Social Security and Child Support (Decision and Appeals) Regulations 1999 (1999 Regulations)?

iii. If the Respondent did not notify the Appellant of the revised entitlement decision, as required by section 71(5A) of the Social Security Administration Act 1992, did the subsequent recoverability decisions and the recovery of overpayment constitute official errors?

iv. The fourth issue is should the Upper Tribunal pursuant to section 3(1) of the Human Rights Act 1998 (HRA), interpret section 12 of the Social Security Act 1998, to confer a right of appeal against the Respondent's refusal to revise the recoverability decisions for official error, to give effect to the Appellant's Article 6 ECHR rights?

v. Or in the alternative, does section 3(1) of the HRA, require the Upper Tribunal to interpret section 9(5) of the Social Security Act 1998, to enable time for appealing the 2007 recoverability decisions to run from the date the Respondent refused to revise those decisions for official error.

vi. Finally, if it is found that the revised entitlement decision was never notified and the recoverability decisions were issued without such notification; and I find against the Appellant on (iv) and (v) above, should time be extended to permit the Appellant to appeal the 2007 recoverability decisions, now well beyond the 13-month statutory time limit, having regard to the principles set out in Adesina v Nursing and Midwifery Council [2013] EWCA Civ 818?

Background facts

7. The Appellant was first awarded Income Support in 1991. In May 2007, the Department for Work and Pensions (DWP) decided to revise her entitlement to Income Support on the basis that she had received income from a sub-tenant and held capital above the prescribed limit during specified periods from July 2002 to 29 June 2006. This revision of her entitlement led to six decisions made on 22 June and 13 September 2007 identifying the amounts of overpaid Income Support ("the recoverability decisions"). The Appellant contends that she was never notified of the revised entitlement decision, which should have preceded the recoverability decisions, a position she states is supported by the absence of any record of notification of that decision in the DWP's internal

documentation. Nor has the DWP provided a copy of the revised entitlement decision. She cannot recall whether she received the recoverability decisions. The Respondent maintains that the Appellant was notified of the revised entitlement decision.

8. The Respondent confirmed that the Appellant was also notified of the recoverability decisions dated 22 June and 13 September 2007, which identified the amount of overpayment for a specified period. These letters also informed the Appellant of the reason why the Respondent concluded there had been overpayment of Income Support for the identified period (i.e. because of her (or her family's) savings or because of income received from a tenant or boarder). Each letter concluded that there was a right of appeal against the decision. However, the Respondent confirmed that the documents in the appeal bundle entitled 'Overpayment Decision', which referred to the preceding revised entitlement decision of 7 June 2007 and set out the legal framework for making the recoverability decisions would not have been provided to the Appellant.

9. It is not in dispute that the Appellant had a repayment arrangement with the DWP between 2 October 2007 until 10 August 2009 concerning the putative overpayment of Income Support. A monthly direct debit was set up from the Appellant's bank account to the DWP during that period.

10. On 26 March 2008, the Appellant contacted the DWP concerning criminal proceedings which had been instituted (see Debt Management Records) and she was directed to the fraud section. There is no evidence or information before the Upper Tribunal of what criminal charge(s) the Appellant had been indicted and prosecuted for, albeit in a letter from her representative to the Respondent, dated 25 November 2021, the charge was described as a "*failure to disclose*".

11. On 23 June 2009, the Appellant was acquitted following a jury trial. According to the Appellant, it was accepted at trial that the sub-tenant income was covered by the "Rent a Room" scheme and that the capital she had was used for home repairs and debt repayment. She states that the significance of the verdict was that these sources of funds should not have been construed as 'income' by the DWP for the purposes of assessing whether she had been overpaid Income Support during the specified periods. She states, this is consistent with her being advised by her trial counsel, following her acquittal, that she did not owe the DWP any money. She therefore cancelled the direct debit to DWP on 10 August 2009.

12. Debt management records from the DWP reflect this sequence of events. A 2009 entry noted the acquittal and stated that no further action would be taken. Three entries between 2011 and 2012 record:

> "[1 November 2011]

Encloses a letter from a solicitor, checked contact history and CIS, it seems a court has decided in her favour that she does not owe this amount, checked INDS and it appears these do not have to be repaid.

[5 December 2011]
Says she sent in a letter to say she did not owe the money…on checking the notes, the only action that will not be taken further is the prosecution. Email sent to agent who dealt with letter on 1/11/11 as I'm unsure if the letter was about the prosecution or the actual recover of o/p …ask for clarification. Rang cust back to see if she may have the letter but no answer.

[10 November 2012]
Copy of letter frm Sols Achillea & Co to customer traced. Discussed with T/L. Letter confirms that customer was found not guilty, bringing an end to court proceedings. Does not mention recoverability of o/p's so these are still o/s. Advised to issue new C2"

13. Between 2015 and 2020, there was no contact from the DWP. In 2020, the Appellant began receiving her state pension, deductions were made from this by the DWP to recover the alleged overpayments.

Procedural history

14. On 12 November 2020, the Appellant requested an "any time" revision of the six recoverability decisions for official error. She argued that she had never been notified of the revised entitlement decision, as required by section 71(5A) of the Social Security Administration Act 1992, and that the DWP had failed to apply relevant capital disregards.

15. The Respondent refused the request in a letter dated 26 October 2021, concluding no official error had occurred. A decision dated 19 October 2021 was attached to this correspondence explaining why the anytime revision request was refused. This summarised the evidence the Appellant gave during interviews with the Respondent in 2006. In the letter the Respondent rehearsed different permutations of mandatory reconsideration cases where the Tribunal had jurisdiction to hear an appeal and concluded with "*I am unable to revise/supersede the original decision dated 29/5/2007 as per DMG above*".

16. The Appellant treated the above correspondence as an invitation to seek mandatory reconsideration of the refusal to revise and submitted a request for mandatory reconsideration on 25 November 2021. After receiving no response, her representative wrote again on 4 August 2022, reiterating the grounds of official error and explaining the delay in seeking revision of the recoverability decisions. The Respondent treated this as a late appeal against the 2007 recoverability decisions and referred it directly to the First-tier Tribunal, applying for it to be struck out for lack of jurisdiction. The Appellant in submissions to the Tribunal, maintained that the Tribunal had jurisdiction to deal with an appeal on the grounds that revision was sought for official error and therefore the 13-

month appeal time limit did not apply (GJ v SSWP [2022] UKUT 340 and PH and SM v SSWP [2018] UKUT 404 relied upon).

17. The judge concluded that the Tribunal had no jurisdiction to hear an appeal against the 22 June 2007 and 13 September 2007 recoverability decisions. He observed that the authorities relied upon by the Appellant applied only to decisions governed by the post-2013 mandatory reconsideration regime. As the decisions the Appellant sought to appeal, predated that regime, the judge concluded that no right of appeal existed more than 13 months after the original decisions were made. He declined to extend time to appeal those decisions under Adesina v Nursing and Midwifery Council [2013] EWCA Civ 818, noting the Appellant had not appealed the recoverability decisions (dated June and September 2007) within the prescribed limits, had she done so she could have raised the legality of those decisions (and the revised entitlement decision) on appeal.

18. The First-Tier Tribunal granted permission to appeal on 13 December 2023, on the basis that the case raised legal issues requiring guidance from the Upper Tribunal, regarding the application of PH and SM v SSWP [2018] UKUT 404 to pre-2013 mandatory reconsideration cases.

Submissions

The Appellant's submissions

19. The Appellant submits that she was never notified of the revised entitlement decision, which she identifies as the first official error by the Secretary of State. This is supported by the absence of any decision letter in the Respondent's records, an unticked notification box in the internal decision record, inconsistent Debt Management notes regarding recoverability, and her recollection of being told at her criminal trial that she owed no money to the DWP. Collectively, this evidence supports her claim that the revised entitlement decision was never notified to her.

20. It was submitted that the following legal consequences flow from the non-notification of the revised entitlement decision:

21. A decision affecting rights has no legal effect until it is communicated and cannot trigger legal consequences or appeal time limits (R(Anufrijeva) v Secretary of State for the Home Department [2003] UKHL 36, [2004] 1 AC 604 relied). Notification is a constitutional requirement for access to justice. Without it, her benefit to entitlement could not be lawfully altered, nor could her statutory appeal rights arise under section 12 of the Social Security Act 1998. As a result, she was deprived of her right to appeal, and judicial review is not an adequate substitute, as confirmed in R(CJ) and SG v Secretary of State for Work and Pensions [2017] UKUT 324 (AAC).

22. The Secretary of State's power to recover overpayments depends on a valid, notified revised entitlement decision. Without notification, there is no lawful

basis for recovery, making the recoverability decisions ultra vires and unenforceable (LL v Secretary of State for Work and Pensions [2017] UKUT 324 (AAC) relied). The initial failure to notify that the entitlement was revised irreversibly tainted the subsequent recoverability decisions (R(DN(Rwanda) v Secretary of State for the Home Department [2020] UKSC 7; [2020] AC 698 relied).

23. Consequently, the notification of the recoverability decisions and subsequent recovery of overpayment was ultra vires and constituted further official errors. The errors are attributable solely to the Secretary of State and fall within the definition of "official error" under regulation 1(3) of the 1999 Regulations.

24. This case is distinguishable from R(IS) 15/04, the Appellant was never notified of the revised entitlement decision upon which the recoverability decisions were predicated. Article 6 ECHR compliance required, in the absence of an opportunity to appeal the revised entitlement decision, a right of appeal against a refusal to revise the recoverability decisions (Wood v. v Secretary of State for Work and Pensions [2003] EWCA Civ 53 relied). This approach is reinforced by R(CJ) and SG v Secretary of State for Work and Pensions, where the Upper Tribunal held that judicial review cannot replace a statutory appeal in cases of official error, and that a merits-based appeal before the Tribunal is essential for compliance with Article 6 ECHR.

25. PH and SM v Secretary of State for Work and Pensions established that time for appealing a decision will run from refusal to revise for official error, even where the application for revision is made outside of the 13-month appeal window. This principle should apply equally to decisions made before the mandatory reconsideration regime. Restricting appeal rights to the mandatory reconsideration regime would allow the Secretary of State to circumvent appeal rights by refusing to revise on official error grounds and not providing a written notice under section 3ZA of the 1999 regulations. Section 9(5) of the 1998 Act should be interpreted to mirror the effect of the mandatory reconsideration legislative provisions, providing that the time to appeal runs from a decision to refuse to revise.

26. Alternatively, if the Tribunal finds a right of appeal only arises against the 2007 recoverability decisions, and any appeal is out of time, the Appellant submits time should be extended under Adesina v Nursing and Midwifery Council. She contends her case is exceptional: she was unaware of the revised entitlement decision and could not have known the recoverability decisions were legally invalid. Once aware, she acted promptly to challenge them. The statutory basis for appealing entitlement and recoverability decisions differs, and these factors, she submits, satisfy the Adesina threshold for admitting a late appeal in the interests of justice and to give effect to her Article 6 rights.

The Respondent's submissions

27. The Respondent's starting position is that the Appellant was properly notified of both the revised entitlement decision and the subsequent recoverability decisions. Notification is said to be standard procedure following the internal decision-making process, and the internal record supports that a revision decision was made. One month after the record, the Appellant was notified of the recoverability decisions. The Respondent explains the absence of the revised entitlement decision letter by reference to document destruction policies. Correspondence between Debt Recovery and the Appellant from 2007 to 2023, as well as her involvement in criminal proceedings, support that she understood the distinction between entitlement and recovery decisions. The Respondent challenges the Appellant's credibility in claiming no knowledge or paperwork regarding the overpayments. The Respondent also cautions against placing undue weight on the empty notification check box, as other sections of the record were also blank, where that information had been known to the decision-maker. The Respondent relies on analogous factual findings in Secretary of State for Work and Pensions v AM (IS) [2010] UKUT 438 (AAC), at paragraphs 32 and 39.

28. The Respondent concedes that if the Appellant was not notified of the revised entitlement decision by written notice, this could constitute an "official error" under regulation 1(3) of the 1999 Regulations. Applying the principles from R(Anufrijeva), the Secretary of State accepts that without notification, the entitlement decision could not have legal effect and there would have been no valid basis to reduce the Appellant's Income Support.

29. Consequently, if the revised entitlement decision was not notified, there is no valid appeal before the Tribunal regarding that decision. The Respondent's submissions are twofold: either the internal record of the revision does not amount to a 'decision' for appeal purposes, or, if there was a valid entitlement decision, it has no legal effect until notified, consistent with the House of Lords' approach in R(Anufrijeva).

30. The Secretary of State acknowledges the Tribunal's authority to determine the validity and legal effect of the revised entitlement decision as the basis for the recoverability decisions. This stems from the statutory requirement under section 9 of the Social Security Act 1998 that a recoverability decision is only lawful if preceded by a formal revision or supersession of the underlying entitlement. The Supreme Court in R (Child Poverty Action Group) v Secretary of State for Work and Pensions [2011] 2 AC 15 confirmed that overpayment recovery cannot proceed without first correcting the original award through proper procedures. Here, any invalidity in the revised entitlement decision arises from a failure to notify, not from errors in calculation or law.

31. On jurisdiction, the Respondent submits that the appeal rights arose from the revised and notified entitlement decision of 7 June 2007 and the recoverability decisions of 22 June and 13 September 2007, there is no right of appeal against a refusal to revise the recoverability decisions for official error (R(IS) 15/04 relied), this adjudication process is Article 6 compliant. The time limits for appealing the recoverability decisions were governed by regulations 31 and 32 of the 1999 Regulations, and the Appellant did not appeal within the prescribed

time. These decisions predate the mandatory reconsideration regime, PH and SM v Secretary of State for Work and Pensions and CJ and SG are not applicable. The Tribunal Procedure Rules do not create a statutory right of appeal against a refusal to revise the recoverability decisions, nor do they apply to an appeal against decisions made in 2007, irrespective of an anytime application for revision for official error.

32. Alternatively, even if the Appellant was not notified of the revised entitlement decision, the Respondent submits she was aware of the recoverability decisions, which is relevant to the Adesina analysis. There are no exceptional circumstances to justify the Appellant's fifteen-year delay in appealing the original recoverability decisions. The Appellant's claim that she lacked awareness of her appeal rights is contradicted by documentary evidence showing proper notification of both the recoverability decisions and her appeal rights. The record confirms she received clear procedural notifications, undermining any basis for extending the time limit under Adesina principles.

Analysis and reasons

Factual findings on notification of the decisions to revise and recover

A: Notification of the Revised Entitlement Decision

33. On 29 May 2007, the Respondent's decision maker recorded in an internal document, reasons for revising the Appellant's entitlement to Income Support. On 7 June 2007, in the same document, the same decision-maker confirmed that a revised entitlement decision had been made pursuant to Section 9 of the Social Security Act 1998. The Appellant maintains that she had no recollection of receiving this decision and there is no record of the decision, said to have been notified to the Appellant, only an internal record which left blank the section on notification.

34. As an aside, although it is immaterial to jurisdiction, for accuracy of terminology, I observe that the decision maker identified only specific periods during which the Appellant either had no entitlement or a reduced entitlement to Income Support. The decision maker referred to these as closed periods that required the entitlement to be superseded, adopting that language. Accordingly, the internal record of the 7 June 2007 suggests that the decision on entitlement was superseded for certain closed periods under section 10 of the 1998 Act, rather than revised under section 9. The need to clarify this distinction was emphasised in R(IB) 2/04 at paragraphs 53 to 55. However, for the purposes of this appeal, nothing turns on whether the 7 June 2007 decision was a revision or a supersession decision, it does not affect my analysis of jurisdiction (see paragraph 6(5) of LL).

35. The record of the reasons for revising (or superseding) the entitlement decision is contained in the internal record headed '*Entitlement Decision'*. It documented the changes in circumstances as periods where the Appellant's capital exceeding prescribed limits because of a loan or receipt of rental income.

36. Despite the comprehensive internal record detailing reasoning and outcome, the section to record customer notification was left blank. No evidence in the internal documentation confirms that the Appellant was notified of the revised entitlement decision, and there is no record of the notified decision itself, diverging from other contemporaneous decision letters (such as the recoverability decisions), which were retained and disclosed to the Appellant years later.

37. Furthermore, while the Respondent submitted that notification could be inferred based on standard procedures and the existence of subsequent recoverability notices, there remains no direct evidence of such notification to the Appellant regarding the revised entitlement decision. Practice, as recognised in LL, required both an internal record and a clear notification to the claimant, with the internal document being structured to capture both. In this instance, the failure to complete the notification section, in an otherwise comprehensive document, is significant.

38. The Respondent submitted that, even absent a notification of revised entitlement letter, it was reasonable to infer that notification was given because retention policies could explain missing documents. However, the Appellant identified that several other documents from the time, including the above detailed internal record and recoverability decisions, were retained and later disclosed, undermining this submission when other important contemporaneous documents survived document retention policies in this case.

39. I observe that the Appellant's actions, as reflected in the debt management records, indicate that she never denied being subject to recovery actions but instead consistently maintained, following her acquittal in the criminal trial, that she did not owe the debts in question. She engaged with the process and provided documentation to support her position. The telephone records, as recorded within the Debt Management Records and relied upon by the Respondent, when viewed in the broader context of communications between the Appellant and the Department, do not undermine her credibility, nor do they suggest that she denied knowledge of the overpayments sought.

40. Considering the totality of the evidence, including the incomplete internal notification record and the absence of the revised entitlement notification letter, and the Appellant's evidence on notification, which has remained consistent, I am satisfied on the balance of probabilities that she was not notified of the revised entitlement decision.

B: Notification of the Recoverability Decisions

41. By contrast, I am satisfied that it is more likely than not that the Appellant did receive the recoverability decisions.

42. I note that the Appellant's evidence at its highest, is that she is unable to recall whether she received the recoverability decisions. In reaching my finding that she was notified of the recoverability decisions I have considered the following: the Respondent has produced an internal record documenting the staged decision-making process used to determine whether the Appellant had been overpaid (as analysed above). The Respondent has also provided the recoverability decisions themselves, along with calculations for each specific period of alleged overpayment. Debt management records show that on 28 August 2007, an arrangement was made for the Appellant to pay the DWP £5 per month by Bank Giro Credit, starting from 28 September 2007. The Respondent has produced evidence that from 2 October 2007, the Appellant made monthly £5 payments to the DWP. There is also evidence that around 11 October 2007, the Appellant stated to the Respondent an intention to contact the Citizens Advice Bureau (CAB) to assist her in contesting the amount being recovered. Subsequently, on 6 November 2007, the CAB contacted the DWP about the balance owed, having sent a letter to this effect to the DWP. On 7 November 2007, the Appellant set up a direct debit *viz* payment toward the money owed. No further contact was made by the Appellant or CAB with the DWP until she made contact following the initiation of criminal proceedings against her in March 2008. There is no evidence or suggestion that the recovery of overpayments was stayed pending the outcome of the criminal prosecution, and the Appellant continued to pay £5 per month by direct debit throughout the period of the criminal proceedings, from around 26 March 2008 until 14 September 2009. It was only on her acquittal that she cancelled that direct debit.

43. Considering all the evidence above, I am satisfied to the civil standard that, while the Appellant cannot recall receiving the recoverability decisions, the Appellant accepts (or doesn't dispute) that she set up a payment plan with the DWP and had sought advice from the CAB about the overpayments. I find therefore that it is more probable than not that the Appellant was notified of the recoverability decisions.

44. I observe for the purpose of my analysis below, that those recoverability decisions all confirmed that the Appellant had a right of appeal, which she did not exercise timeously following notification.

<u>The Statutory Framework: Failure to notify and recoverability</u>

45. The legislative scheme governing the making and alteration of benefit decisions is, for these purposes provided for in the <u>Social Security Act 1998</u>. Section 8 of the 1998 Act enables the Secretary of State to determine entitlement to relevant benefits. Such decisions acquire legal finality by virtue of section 17 of the 1998 Act, save where altered on appeal, revision, or supersession.

46. The process by which entitlement decisions may be varied is specifically prescribed. Section 9 of the 1998 Act permits the revision of a decision,

generally with retrospective effect, upon application or the Secretary of State's own initiative and within a set time frame. Of particular significance for present purposes, regulation 3(5)(a) of the 1999 Regulations expressly permits a decision to be revised at any time if it was made in consequence of official error. This is defined in regulation 1(3) of the 1999 Regulations as an error made by an officer of the Department of Social Security, not materially contributed to by anyone outside the department, and excluding errors of law only identified by later court or tribunal decisions.

47. Supersession is governed by section 10 of the 1998 Act and regulation 6(2) of the 1999 Regulations, arising where a change of circumstances is established. The distinction is not merely procedural: revision retrospectively corrects an error arising when the original decision was made, whereas supersession responds to a subsequent change of circumstances after the decision was made which bears on entitlement to that benefit and is not retrospective in effect.

48. The right of appeal against the above decisions is embedded within the 1998 Act. Section 12 confers upon the First-tier Tribunal jurisdiction to hear appeals against entitlement decisions (original or revised), supersession decisions (including a refusal to supersede), and decisions as to recoverability made under section 71 of the Social Security Administration Act 1992. Section 12(6) requires written notice of both the operative decision and the right of appeal, as further set out in regulation 28(1) of the 1999 Regulations.

49. The Secretary of State's statutory power to recover overpayments, central to this appeal, is conferred by section 71(1) of the 1992 Act. Recovery is permitted where overpayment results from misrepresentation or failure to disclose material facts.

Notification as a Precondition for Recovery

50. It is a principle both of statutory construction and constitutional fairness that recovery of overpayments cannot occur without due process. Section 71(5A) of the 1992 Act imposes two mandatory preconditions before recovery of overpayment: first, there must have been a revised or superseded entitlement decision; second, the claimant must have been notified of that decision.

51. Two separate rights of appeal follow: first a right of appeal arises against the revised entitlement decision which crystallises on notification of a substantive decision under section 12(1) and (2) of the 1998 Act. Second, a further and separate right of appeal arises against the decision(s) to recover overpayments under section 71 of the 1992 Act (see section 12(4) of the 1998 Act).

52. The Supreme Court in CPAG v Secretary of State for Work and Pensions [2010] UKSC 54 is authoritative as to the rigorous requirements to which the Secretary of State is held. Lord Brown at paragraph [6] observed that until a benefit award

is formally corrected, it remains payable, regardless of any internal departmental view to the contrary. Recovery is not permissible until the award is lawfully varied or reversed.

53. These principles were reaffirmed in LL v Secretary of State for Work and Pensions [2013] UKUT 208 (AAC), where Judge Fordham KC (as he then was) confirmed that notification of revised entitlement is essential if a revised decision is to be legally effective. Decision-making without effective notice is of no legal effect and attempts at recovery of overpayment in its absence is unlawful.

Findings: Official Error

54. I find that the Respondent did not make a final decision to revise or supersede the Appellant's entitlement to Income Support before moving to recover sums alleged to have been overpaid. The documentation demonstrates an absence of notification to the Appellant of any revised entitlement decision in advance of the recoverability decisions of June and September 2007.

55. The failure to make and notify the Appellant of a valid revised or superseded decision vitiated the subsequent step of seeking recovery. The statutory preconditions in section 71(5A) of the 1992 Act were simply not met. The Respondent's recovery of overpayment was, therefore, without lawful authority and amounted to official error, as defined in regulation 1(3) of the 1999 Regulations.

56. The fact that each step: revised entitlement decision, notification, recovery serves as a statutory precondition for the next is not a mere formality. Together, they form the "architecture of legality", ensuring that the claimant's rights are properly protected and that state authority is exercised only within lawful bounds. The legal obligation upon the Secretary of State to notify the claimant of any revised or superseded entitlement decision before embarking upon recovery is not an optional standard, but a statutory imperative. Failure to observe it vitiates the foundation for recovery, and such disregard constitutes official error of the most basic kind.

57. However, it does not follow that the First-tier Tribunal or Upper Tribunal has jurisdiction to do more than make the above factual findings and apply these to a decision whether to extend time for appealing the recoverability decisions, applying the principles in Adesina.

Jurisdiction

The Issues for Determination

58. The appeal raises the following four jurisdictional questions:

i. Whether the First-tier Tribunal had jurisdiction to consider an appeal against an alleged revised entitlement decision that was never notified to the Appellant.
ii. Whether the Appellant has a right of appeal against the Secretary of State's refusal to revise the recoverability decisions for official error.
iii. Whether section 9(5) of the Social Security Act 1998, properly construed, permits an in-time appeal to be brought against the 2007 recoverability decisions on the basis that time runs from the date of a refusal to revise those decisions for official error.
iv. Whether an extension of time should be granted, applying the principles in Adesina, to appeal the unnotified revised entitlement decision or the recoverability decisions.

Statutory Foundations of Tribunal Jurisdiction

59. The starting point is that tribunals are a creature of statute and circumscribed accordingly. The point is made plain in Fish Legal v Information Commissioner [2015] UKUT 0052 (AAC), in which the Upper Tribunal held that parties cannot by consent endow a statutory tribunal with jurisdiction which Parliament has not conferred. The question of whether jurisdiction is present is one for the tribunal to determine on the basis of the relevant primary legislation.

60. The guiding statutory provisions for present purposes are to be found in the Social Security Act 1998. Any subordinate legislation or procedural rule must be construed to align with the policy and intention underlying the primary legislation and must be interpreted compatibly with the limitations identified by the Supreme Court in Secretary of State for Business and Trade v Mercer [2024] UKSC 12, particularly where section 3(1) of the Human Rights Act 1998 is concerned.

Issue 1: Legal Effect and Jurisdictional Consequences of an Unnotified Revised Entitlement Decision

61. I am satisfied that the Secretary of State's internal record of the 7 June 2007 decision manifests a determination to revise or supersede the Appellant's Income Support award, rather than a mere provisional or preparatory step. Lord Millett's observations at paragraph 40 of R(Anufrijeva) provide support for treating such a determination as having immediate, albeit limited, legal consequences. Specifically, such a determination is sufficient to trigger the statutory obligation to notify the claimant in writing of the revised decision, which is an appealable decision, as required by section 12(6) of the 1998 Act and regulation 28 of the 1999 Regulations.

62. I adopt the analysis of Judge Fordham KC in LL v Secretary of State for Work and Pensions, echoing the constitutional principle that legal validity is contingent on notification of the decision. The absence of notification offends against the basic tenets of legality and access to justice, such that the decision is devoid of legal effect; it will become legally effective only upon lawful notification, as confirmed in SD v Newcastle City Council [2010] UKUT 306 (AAC).

63. The relevant legislation does not define "decision" for the purposes of section 12(1) or (2) of the Act. However, the Upper Tribunal in BM v Secretary of State for Work and Pensions (DLA) [2022] UKUT 101 (AAC) made clear that the statutory structure is designed to safeguard against arbitrary removal of awards, ensuring finality save for alteration by the prescribed statutory mechanisms of appeal, revision, or supersession.

64. Effective notification is thus an absolute requirement before any revised or superseded decision assumes the status of a decision invoking a right of appeal under section 12(1). While the Respondent’s internal record may suffice to trigger a notification obligation, where that obligation is not fulfilled, the intended alteration to the finality of the original entitlement decision simply fails. The original decision remains in full force and is the sole basis for any right of appeal.

65. I therefore conclude that unless and until notification of a revision or supersession of the Appellant’s entitlement to Income Support takes place in accordance with regulation 28, such a decision cannot be appealed under section 12(1). This result is consistent with preserving the finality of entitlement decisions under sections 8 and 10 read with section 17, as any contrary interpretation would subvert this important safeguard.

66. Accordingly, there was no final and notified decision to revise or supersede the Appellant’s entitlement to Income Support, and thus no jurisdiction for the Tribunal to entertain an appeal against it.

Issue 2: Appeal Rights and Refusal to Revise for Official Error: Statutory and Convention Analysis

67. The next issue is whether there exists a right of appeal under section 12(1) of the 1998 Act against the Secretary of State's refusal to revise the recoverability decisions for official error, particularly when read alongside section 9(5) of the 1998 Act and with due regard to Article 6 of the Convention; applying a human rights compliant interpretation pursuant to section 3(1) of the HRA.

68. R(Kaitey) v Secretary of State for the Home Department [2021] EWCA Civ 1875 confirms that the proper approach to interpretation of statute is to first apply common law principles of statutory construction, turning to section 3(1) of the HRA only so far as is necessary to secure compatibility with Convention rights. The approach in Ghaidan v Godin-Mendoza [2004] UKHL 30 provides latitude to "read in" or "read down" statutory words for compatibility, provided that the legislative purpose is not contradicted or reversed (see also Secretary of State for Business and Trade v Mercer).

69. The material statutory provisions in this appeal are sections 9 and 12 of the Social Security Act 1998. Section 9 establishes, inter alia, the power and process for revision. It further provides in subsection (5) that, for time limits to appeal purposes, the decision is treated as made on the date of the revised

decision. Section 12 sets out which species of decision can be appealed to the First-tier Tribunal.

70. The Appellant did not submit, nor could it plausibly have been argued, that common law statutory interpretation principles enabled a reading of the above sections as conferring a right of appeal against a decision refusing to revise an earlier decision (see analysis in R(IS)15/04 at [29]). Instead, the Appellant invites the Upper Tribunal to interpret, pursuant to section 3(1) of the HRA, section 9(5) and section 12(1) of the 1998 Act as conferring a right of appeal against a refusal to revise a decision for official error, in order to give effect to the Appellant's Article 6 Convention rights.

71. The adjudication process as it applies to a refusal to revise for official error and its compliance with Article 6 of the Convention has already been analysed at length by the Tribunal of Commissioners in R(IS) 15/04, Commissioners which included the then Chief of Commissioners. The Commissioners considered whether section 3(1) HRA required section 12(1) to be construed as conferring a right of appeal against a refusal to revise a decision for official error, so as to give effect to Article 6 of the Convention. The submission was dismissed, following careful analysis of the statutory architecture then in force.

72. It was common ground in R(IS)15/04 that, under the statutory scheme, a decision under section 9 either to revise or not to revise is not itself an "appealable decision"; the decision susceptible to appeal is the decision as either revised or unrevised. Regulation 31(2) of the 1999 Regulations allowed for an extension of time in cases of "any ground" revision under regulation 3(1) or (3), but not for a refusal to revise for official error under regulation 3(5)(a) (an "any time" revision).

73. The Commissioners did accept that a refusal to revise for official error is a determination of a claimant's "civil right" within Article 6. There was, however, no necessary requirement for a standalone right of appeal against a refusal to revise. Instead, the Commissioners concluded that the procedural safeguards embedded in the legislative scheme: the opportunity for a full appeal against the original decision within time, and recourse to judicial review if required were considered sufficient to satisfy Article 6. The Commissioners observing that judicial review filled the remedial gap for claimants discovering official errors after the expiry of the appeal window, thereby maintaining access to justice.

74. The Appellant submits that her circumstances are distinguishable from those considered in R(IS) 15/04. She contends that she was deprived of the right to appeal the revised entitlement decision which formed the foundation for the later recoverability decisions, and that, as a result, she was denied the critical procedural safeguard relied upon by the Commissioners in that case. The Appellant draws support from the reasoning of the Upper Tribunal in CJ and SG.

75. I do not accept this submission. In her correspondence with the Respondent and again in her grounds of appeal before the Upper Tribunal, the Appellant

claimed that the Secretary of State misconstrued her letter of 12 November 2020 as a request to revise the entitlement decision for official error. She maintains that her representations to revise for official error were in fact aimed at what she described as an official error in seeking recovery where no entitlement decision had been properly issued in the first place. Regardless of this distinction, the central point advanced by the Respondent remains: at the material time, the Appellant was notified of the later recoverability decisions and, upon being so notified, had a clear statutory right of appeal which she did not exercise.

76. I am satisfied, for the reasons set out above, that the Appellant did receive notification of the recoverability decisions issued on 22 June and 13 September 2007. The debt management records indicate that, during the period when an appeal could have been lodged, the Appellant contacted the Citizens Advice Bureau specifically about the overpayments in question. She had a right, under section 12(4) of the Social Security Act 1998, to appeal those decisions within 13 months of notification, yet did not take up this opportunity. Had she appealed within the statutory time limit, it would have fallen to the tribunal to consider, as part of its assessment, whether the legal requirements for recovery, including the necessity of notification in respect of the revised entitlement decision, had been met. This is consistent with the approach adopted by Judge Fordham KC in LL v Secretary of State for Work and Pensions, which makes clear that a failure to notify a claimant of a revised entitlement decision renders the subsequent recoverability decision(s) unlawful. Thus, non-notification would have constituted a material and determinative issue in any full merits appeal against the recoverability decisions. Moreover, as noted by the Commissioners in R(IS)15/04, where official error is established, a claimant is entitled, not simply as a matter of discretion, to a revision of any decision which has disadvantaged them.

77. In these circumstances, I do not accept that the Appellant had been deprived of a full merits appeal. The lack of notification of the revised entitlement decision was inextricably connected to the lawfulness of the recoverability decisions themselves, against which the Appellant indisputably had a right of appeal. She accordingly had the protection of a full rehearing on the merits of the recoverability decisions before the First-tier Tribunal, which she ultimately did not pursue; had she done so, the absence of notification would rightly have been an issue for the tribunal to determine.

78. Further, in 2020 the Appellant sought revision of the 2007 recoverability decisions on grounds of official error pursuant to regulation 3(5)(a) of the 1999 Regulations. Any refusal by the Secretary of State to revise those decisions is a determination susceptible to judicial review.

79. The Appellant relies upon the Court of Appeal judgment in Wood v Secretary of State for Work and Pensions, to support the submission, that a right of appeal should be conferred against a refusal to revise. In Wood the primary concern was the absence of an appeal against a refusal to supersede, rather than a refusal to revise. The Respondent having accepted in that appeal that the lack

of an appeal against the refusal to supersede breached Article 6 of the Convention.

80. The distinction between revision and supersession in this context is material. Revision corrects an error in the original decision with retrospective application; supersession concerns a process where new or changed facts arise only after the entitlement decision which may require that decision to be replaced (see Arden LJ's (as she then was) analysis in Wood set out at [83] below). The factual basis for revision can be considered on appeal against the original decision; the same cannot be said about facts giving rise to an application for supersession, because the change of circumstances arise only post decision. In the latter case, section 12(8) of the 1998 Act applies, and precludes consideration by the tribunal.

81. Further, it is notable that critical to the Court of Appeal's analysis in Wood was the purpose behind the statutory amendment to section 12(9) *viz* supersession. Rix LJ (with whom Dyson LJ agreed) observed at paragraph 47:

> In the House of Commons on 13 May 1998 the amendment was introduced in similar terms, viz
>
> > "Lords amendment No 16 is technical and puts beyond doubt the circumstances that will attract a right of appeal under Clause 11…Appeal rights will be granted where the Secretary of State acts on an application for a decision to be superseded, even if ultimately the amount of the award is not changed…"

82. Arden LJ (as she then was), adopted a different approach, stating:

> I thus agree with the following analysis by the Tribunal of Social Security Commissioners (Mr W M Walker QC, Mr J M Henty and Mr E Jacobs) in decision R (DLA) 6/02 (20 December 2001) in case number CDLA/3466/2000:
>
> > Supersede means replace. It refers to a process. There is no implication that the decision superseded must be wrong in fact or law, out of date or deficient in any other respect. **That leaves no scope for a refusal to supersede.**" [emphasis added]

83. There was no equivalent rationale or proposed statutory amendment in the context of revision akin to section 12(9) of the 1998 Act. I am satisfied that the rationale of the Court of Appeal cannot be read across to import an appeal right against a refusal to revise a decision into section 12(1) of the 1998 Act. In the circumstances, the ratio and analysis in Wood does not assist the Appellant.

Issue 3: Statutory Interpretation of section 9(5) of the Social Security Act 1998 - PH and SM v Secretary of State for Work and Pensions

84. The Appellant adopts the obiter observations of Judge Poole KC (as she then was) in PH and SM, in particular that the changes in the statutory framework

following the repeal of Regulations 31 and 32 of the 1999 Regulations and the introduction of mandatory reconsideration support the view that, for official error cases without a time bar, the right to appeal is preserved, with time running from notification of the refusal to revise. Notably, Judge Poole KC observed at paragraph 13:

> Further, the commentary to Volume III of Sweet and Maxwell's Social Security Legislation 2018/19 paragraph 1.401 notes that no attempt was made in *R(IS)*15/04 to argue that **Section 9(5) of the 1998 Act** (concerning the time periods for appeals) **should be read as including a refusal to revise (which would have the effect that the decision for the purpose of an appeal is regarded as made on the date of the refusal to revise, consistently with my interpretation of Rule 22 of the Tribunal Rules set out below). If that argument was made now, the reasoning in *CJ and SG* tends to suggest it would be accepted.** This is consistent with the new approach to the commencement of the limitation period in Rule 22 of the Tribunal Rules. [emphasis and underlining added]

Statutory Framework

85. Section 9(5) of the Social Security Act 1998 provides that where a decision is revised under this section, the date the revision is made is, for any purpose as to the time allowed for bringing an appeal, to be treated as the date of the decision.

86. Sections 102(1)-(4) of the Welfare Reform Act 2012 amended section 12 of the Social Security Act 1998, introducing a precondition to exercising a right of appeal: in cases prescribed by the 1999 Regulations, a right of appeal under section 12(2) does not arise unless and until the Secretary of State has considered whether to revise an appealable decision (section 12(3A) of the 1998 Act).

87. The procedural detail is developed by regulation 3ZA of the 1999 Regulations. In substance, this provision requires that, where a written notice of a decision is given under section 8 or 10 and includes a statement explaining that a right of appeal is conditional on the Secretary of State's prior consideration of an application for revision, an appeal lies only if such an application has, in fact, been considered.

88. Rule 22 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 ("the Tribunal Procedure Rules") further establishes the procedural architecture of the mandatory reconsideration regime, providing that, where mandatory reconsideration applies, an appeal must be commenced within one month from the date on which the outcome of that reconsideration was sent to the claimant; where it does not apply, the relevant period is that stipulated by Schedule 1 of the Tribunal Procedure Rules.

89. Under Schedule 1, paragraph 5, the prescribed time limit to appeal for cases not otherwise specified is the latest of:

- One month from the date on which notice of the decision being challenged was sent;
- Fourteen days after the provision of a written statement of reasons, if requested within the initial month;
- Where a revision application is made under regulation 3(1) or (3) or 3A(1)(a) of the 1999 Regulations 1999 but unsuccessful, one month from the notification of that refusal.

Case Law on Mandatory Reconsideration

90. The Appellant relies upon the following two Upper Tribunal authorities.

R(CJ) and SG

91. The Upper Tribunal in R(CJ) and SG addressed the position where a claimant seeks mandatory reconsideration within 13 months of the original decision, yet the Secretary of State declines to extend time and refuses to consider the application. The Tribunal concluded that such a refusal is properly characterised as a refusal to revise the decision, within the terms of section 12(3A). The statutory right of appeal is thereby engaged, ensuring the claimant is not deprived of a right of appeal due to the Secretary of State's decision not to entertain a late, but otherwise procedurally permissible, application.

PH and SM

92. The scope of the right of appeal when a mandatory reconsideration for official error is requested more than 13 months after the original decision was squarely addressed in PH and SM. The Upper Tribunal observed that regulation 3(5)(a) of the 1999 Regulations does not impose any temporal restriction on applications for revision on grounds of official error. Accordingly, if such a request is refused, an appeal may proceed even though the original application fell outside the typical 13-month appeal time limit, provided the appeal is initiated within one month of being notified of the outcome of the application to revise. This makes clear that the absence of a time bar for official error revision applications preserves access to the appeal route in such circumstances.

93. It follows from these authorities that a right of appeal endures both where the Secretary of State refuses to consider a mandatory reconsideration application within 13 months and, in some scenarios, beyond 13 months where the tribunal's jurisdiction so allows. In both situations, it is the notification of the outcome of mandatory reconsideration that starts the running of the appeal period.

Analysis of the Appellant's Proposed Statutory Construction of Section 9(5) of the 1998 Act:

94. First, the Appellant contends for the purposes of calculating the appeal time limits, that time running from the '*decision being challenged'* (wording of schedule 1(5)(a) of the Tribunal Procedure Rules), properly construed,

encompasses a decision refusing to revise for official error, thereby aligning with the expansive reading of section 9(5) of the 1998 Act, posited by Judge Poole KC in PH and SM.

95. First, Judge Poole KC's observation of the reading of section 9(5), was obiter. Notably the Upper Tribunal in R(CJ) and SG at paragraph 63, made plain that they were concerned with materially different statutory provisions than that considered in R(IS)15/04, making the point that the circumstances arising under the mandatory reconsideration regime did not present the same issues as that considered by the Tribunal of Commissioners.

96. Second, the Appellant does not advance a submission that orthodox common law statutory construction requires section 9(5) or schedule 1(5)(a) to be read as re-setting the appeal time-limit to operate from the date of a refusal to revise for official error. The authoritative analysis in R(IS) 15/04, as well as guidance on statutory interpretation from Uber BV v Aslam [2021] UKSC 5 (especially Lord Leggatt JSC at paragraph 70), reinforce the conclusion that section 9(5) of the 1998 Act's intended purpose and the plain reading of '*where a decision is revised under this section*…' does not extend to a decision to refuse to revise for official error.

97. Therefore, to sustain the interpretation submitted, the Appellant must establish that '*where a decision is revised'* in section 9(5) and the '*decision being challenged*' in paragraph 5(a) of Schedule 1 should be read as extending to a decision refusing to revise is both necessary and permissible under section 3(1) of the HRA 1998 to give effect to the Appellant's Article 6 rights. For the reasons already rehearsed, including those examined in R(IS)15/04 I do not consider that such a reading is necessary to ensure compatibility with the Convention.

Article 6 ECHR and the Previous Adjudication Scheme

98. The disparity between the time-restarting effect for claimants who seek revision for official error under the mandatory reconsideration regime and those whose appealable decisions predate that regime does not, without more, render the earlier scheme incompatible with Article 6. It has been held by the Tribunal of Commissioners in R(IS)15/04 that the pre-2013 scheme was Article 6 compliant, and I find no reason to depart from that conclusion.

99. The argument that the Appellant was unfairly deprived of a right of appeal is not borne out by the evidence. The documentary record demonstrates that the Appellant was notified of the 2007 recoverability decisions and, upon that notification, acquired a statutory right of appeal under section 12(4) of the 1998 Act, which was not exercised within the available timeframes. Accordingly, this is not a case where judicial review constituted the only mechanism for redress. Crucially, in any such appeal, the tribunal would have been required to evaluate, as a matter of substance, the lawfulness of the notification of the revised entitlement decision, and any failure in notification would have vitiated the recoverability action, as established in LL. In the circumstances, it is not necessary to interpret section 9(5) of the 1998 Act to give the effect advanced in PH and SM to ensure compatibility with Convention rights.

100. The legislative time limits for appealing recoverability decisions are those that applied at the time of notification of such decisions. Legal certainty requires that the right to appeal and its associated time limit are determined by the law in force when the appealable decision is notified unless Parliament has provided otherwise. At the relevant time, no mechanism existed permitting an extension of time to appeal a refusal to revise for official error. The applicable time limit for appeals against the 2007 recoverability decisions remained that prescribed by regulation 31 of the 1999 Regulations: one month from notice of the original decision, subject to an extension up to a total of 13 months.

Issue 4: Application of Adesina and the Principles Governing Time-Limits

101. I have determined that official errors occurred as a consequence of the Respondent's failure to notify the Appellant of the decision to revise entitlement and the subsequent attempt to recover overpaid Income Support in the absence of such notification (as considered in LL). The Commissioners in R(IS) 15/04 provide authoritative guidance as to the treatment of established official errors arising from acts or omissions of the Respondent.

102. However, the presence of official errors in the context of the recoverability decisions does not, on the proper application of the principles set out in Adesina, provide a basis for extending the time allowed for the Appellant to appeal those recoverability decisions which were notified in 2007. The relevant appeal periods commenced following notification of the recoverability decisions in June and September 2007. During that time the Appellant was indisputably aware of the overpayment allegations, sought advice from the Citizens Advice Bureau, but did not submit an appeal within the prescribed time.

103. As established in LL, had the Appellant exercised her right to appeal within the statutory period, the tribunal would have been positioned to determine the relevant issues contemporaneously with the underlying events. I adopt and endorse the Upper Tribunal's reasoning in PM and SM at paragraph 6, which sets out the rationale underpinning strict adherence to time-limits:

> I acknowledge that time limits can appear harsh to Appellants who fall foul of them. However, time limits are a normal feature of legal systems and arise because of wider considerations of justice. Where decisions are made by public bodies, it is recognised that the public interest in good administration requires that public authorities, third parties and others are not kept in suspense as to the legal validity of decisions for longer than necessary (King v East Ayrshire Council 1998 SC 182 p 196). In social security appeals, the focus is on circumstances as they existed at the time of the SSWP's decision under appeal (section 12(8)(b) of the 1998 Act). Given the difficulty of looking back in time to determine cases once a considerable time has elapsed, and consequent adverse effects on justice, time limits operate to prevent stale cases proceeding. Time limits also operate to safeguard a system in which vulnerable claimants of subsistence benefits can apply to tribunals for decisions close in time to the original decision.
>
> There are three mitigating factors for benefit claimants adversely affected by time limits. First, new claims for the benefits in the appeals before me, disability living allowance (DLA) or Jobseeker's Allowance (JSA), may be made at any time. This may not completely redress the effects of adverse time-barred decisions, because backdating of

> claims is limited (in general, no backdating of DLA to a date prior to a claim is permissible under section 76(1) of the Social Security Contributions and Benefits Act 1992, and backdating of JSA claims is restricted to three months: Social Security (Claims and Payments) Regulations 1987, regulation 19(1) and (4)). Nevertheless, rights to these benefits are not lost for all time if an appeal against one particular decision is time-barred.
>
> Second, there is a very limited ability in the tribunal to extend at least time limits under the Tribunal Rules in truly exceptional circumstances under the Adesina principle. Third, there is a residual right in any litigant to apply for judicial review. The Court of Session in Scotland possesses a supervisory jurisdiction and, in cases where there are exceptional circumstances, may exercise this jurisdiction, even where there was a potential alternative remedy (the statutory appeal) which has now been lost due to the lapse of time.

104. In these circumstances, I am not satisfied that the facts of the Appellant's case justify an extension or departure from the statutory one-month time-limit (extendable by a maximum of twelve months) for lodging an appeal against the recoverability decisions. The Appellant's failure to act within that period, notwithstanding awareness of the relevant allegations and seeking advice, cannot be remedied by reference to official error alone. The statutory scheme and the authorities require adherence to procedural finality and cannot support the extension of time sought in this instance.

Conclusion

105. For the reasons given I conclude that the First-tier Tribunal Judge's decision involved no error of any point of law. This is because:

(i) The First-tier Tribunal and the Upper Tribunal has no jurisdiction to entertain an appeal against an unnotified revised entitlement decision.
(ii) The Appellant does not have a right of appeal under section 12(1) of the 1998 Act against a refusal to revise recoverability decisions for official error.
(iii) The refusal to revise the original decision was not a "decision" capable of re-setting the appeal time limit, falling out with the mandatory reconsideration regime.
(iv) The Appellant was notified of the recoverability decisions in 2007 and had an opportunity to challenge them through a merits appeal at the time. There is no basis for an extension of time or other enlargement of her rights based on the claim of official error or non-notification of an antecedent entitlement revision decision.
(v) Judicial review remains the proper mechanism to challenge refusal to revise for official error outside the statutory appeal pathway.

106. Accordingly, I dismiss the appeal.

Authorised for issue on 28 July 2025

Michelle Brewer

Judge of the Upper Tribunal

(*amended pursuant to the slip rule on 8 May 2026*)