



Neutral Citation Number: [2026] UKUT 214 (AAC)

Appeal No. UA-2025-000425-HB

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Gateshead Council

Appellant

- v -

Frederick Avery

Respondent

Before: Upper Tribunal Judge Markus KC (sitting in retirement)

Decision date: 4th June 2026

Decided on consideration of the papers

Representation:

Appellant: Principal Benefit Officer

Respondent: Citizens Advice Gateshead

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Judge: Judge C Wood

Tribunal Case No: SC292/24/00071

Tribunal Venue: Durham

Decision Date: 25 June 2024

SUMMARY OF DECISION

The Claimant had taken a planned holiday abroad of over 4 weeks. He had not notified the Council of his absence and was paid housing benefit for that period, although he had not been entitled to it. It was common ground that this was an overpayment. The Council decided the overpayment was recoverable and the Claimant appealed to the First-tier Tribunal (FtT) which decided that there had been no overpayment.

On the Council's appeal to the Upper Tribunal, The Upper Tribunal decided that the FtT had erred in law in that it was accepted that there had been an overpayment but that the FtT had failed to address whether the overpayment was recoverable. Instead, it had considered whether the Claimant had failed to notify the Council of a relevant change of circumstances.

The Upper Tribunal remade the decision. It decided:

1. The information provided by the Council pursuant to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, regulation 71 and Schedule 8 paragraph 9(1)(g) as to the kind of changes of circumstances to be notified was misleading and amounted to an “official error” within the meaning of regulation 81.
2. The overpayment arose “in consequence of” the official error. The Claimant had not been at fault and it was likely that, if the Claimant had been provided with clearer information, he would have notified his absence as a change of circumstances or alternatively would have absented himself for a shorter period.
3. The Claimant had not caused or materially contributed to the error.
4. The Claimant could not at the time of the payment or notice relating to the payment reasonably have been expected to realise that it was an overpayment. This was the unchallenged finding of the FtT and the Upper Tribunal agreed. A lay person could not be expected to know the complex rules regarding occupation of a dwelling.
5. Therefore the overpayment was not recoverable.

KEYWORDS:

- 16 Housing and council tax benefits
16.7 Recovery of overpayments

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 allow the appeal. The decision of the First-tier Tribunal made on 25 June 2024 under case number SC292/24/00071 was made in error of law.

I set that decision aside and remake the decision as follows:

The appeal is allowed.

The decision of Gateshead Council dated 17 October 2023 is set aside. The overpayment of housing benefit for the period 4 September to 9 October 2023 is not recoverable.

REASONS FOR DECISION

Factual background

1. Mr Avery, the respondent to this appeal, had been in receipt of housing benefit, administered by Gateshead Council (“the Council”) which is the appellant in this appeal, since 2016. I refer to him in this decision as “the Claimant”. On 3 September 2023 the Claimant left the UK to attend a family wedding in Malaysia. He returned on 5 October and so was absent for over 4 weeks. After his return,

his absence came to the attention of the Council. On 17 October the Council decided that the Claimant's housing benefit was terminated for the relevant period (4 September to 9 October 2023) as he had been out of the country for over four weeks. Housing benefit for that period had already been paid and the Council decided that this was a recoverable overpayment.

2. The Claimant appealed to the First-tier Tribunal (FtT). There was no dispute that the Claimant had been absent from Great Britain for the dates in question and that this had at all times been the intended length of the holiday. It was also accepted that he had not realised that an absence of over 4 weeks would affect his entitlement to housing benefit and that he should have notified the Council of such an absence. The evidence before the FtT was that the letter from the Council notifying the Claimant of the award of housing benefit had stated that he needed to inform them of a change of circumstances and that "some examples of changes are increases in your or your partner's income/savings, starting or ending a job, if someone leaves or joins your household, and any rent changes". The Claimant had not been informed that he needed to report an absence from Great Britain of over four weeks as a change of circumstances, nor that such an absence would affect his entitlement to housing benefit. Indeed, the Council subsequently (and in consequence of the issues that arose in this case) amended the information provided to housing benefit claimants to clarify that requirement. It was agreed that the Government website did explain that holidays or leaving the country should be notified, but the Claimant had not been aware of this at the time.
3. The FtT allowed the appeal. The Decision Notice dated 25th June 2024 included:
 - "3. ...The housing benefit letters from Gateshead Council give examples of changes to be notified but they do not include notifying the council of absence abroad. The duty on Mr Avery is to report any change in his circumstances which he might reasonably be expected to know might affect his right to the amount of/payment of Housing Benefit.
 4. The Tribunal found...that Mr Avery could not be expected to know that he needed to report his holiday abroad as a change of circumstances."
4. The FtT's statement of reasons explained that the examples given, in the Council's letter, of changes of circumstances that needed to be notified "referred mainly to finances or people and there is nothing to suggest that going on holiday is a change of circumstances."
5. The FtT concluded:
 - "7. The tribunal found that Mr Avery had a duty to report any change of circumstances which he might reasonably be expected to know might affect his rights such as the payment of Housing Benefit. However, he could not reasonably be expected to know that leaving the country for 4 weeks to attend a family wedding and have a holiday amounted to a change of circumstances which he had a duty to report because the Council's letter did not contain any reference to holidays or periods of 4 weeks outside the UK nor did it contain details of the Government website where members of the public can check the provisions. The examples given in the letter relate only to finances and people and no other examples are given and members of the public are therefore entitled to assume that

these and similar are the sort of changes which need to be notified....The Tribunal found that the information provided by the Council was not clear and unambiguous and Mr Avery could not have reasonably been expected to know that he had to report his holiday and being outside the UK for 4 weeks.

8. The decision made by the Respondent on 17 October 2023 is set aside. Mr Avery is entitled to Housing Benefit for the period 4 September 2023 to 8 October 2023 and as a result no overpayment has occurred.”

Permission to appeal and submissions in the Upper Tribunal

6. The FtT having refused permission to appeal, the Council made an application to the Upper Tribunal. Upper Tribunal Judge Wright gave permission to appeal. The parties have made written submissions in response to the grant of permission and, subsequently, in response to further directions by me.
7. The Council submits that there was no doubt that the Claimant had not been entitled to housing benefit for the relevant period and that the benefit paid for that period was accordingly an overpayment. The only issue in the FtT appeal was whether the overpayment was recoverable. The FtT appears to have conflated the question of the existence of the overpayment with its recoverability. As regards recoverability, the FtT failed to apply the correct legal test and so the FtT erred in law.
8. The Council further submits that the Upper Tribunal should remake the decision to the effect that: a) there was no official error by the Council; b) if there was, any error did not give rise to the overpayment.
9. The Claimant submits that the FtT did not err in law. It is not disputed that there was an overpayment. However, the overpayment arose by way of official error in that the Council had failed adequately to inform him of his reporting obligation, he could not reasonably have been expected to realise that there was an overpayment and so the overpayment is not recoverable. If the Upper Tribunal allows the appeal and sets aside the FtT’s decision, the Claimant invites the Upper Tribunal to substitute a decision accordingly.
10. Neither party has requested an oral hearing of this appeal and I am satisfied that it is appropriate to decide it without a hearing. The parties have made detailed written submissions, I do not require further evidence and I would not be assisted by having a hearing. Holding a hearing would simply generate further delay and expense and it would be disproportionate to have one.
11. The Upper Tribunal (Administrative Appeals Chamber) had previously operated a practice of only using the initials of parties in published decisions in social security and child support cases. That practice ceased on 30 March 2026. The claimant was referred to the Open Justice Practice Guidance issued by the Chamber President on 26 March 2026 and given an opportunity to seek anonymity. His representative wrote to state that the Claimant was content that the Open Justice principle be applied in this case.

Legal framework

12. Given the Claimant's age, the applicable regulations are the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 ("the Regulations").
13. A person is entitled to housing benefit in respect of certain payments that they are liable to make in relation to the dwelling they occupy as their home: section 130 Social Security Contributions and Benefits Act 1992.
14. Regulation 7 of the Regulations provides for circumstances in which a person is or is not to be treated as occupying a dwelling as his home. Relevant provisions of regulation 7 for the purpose of this appeal are:

"7(13C). This paragraph applies to a person who is temporarily absent from Great Britain and who occupied the main dwelling as his home, or was treated as occupying that dwelling as his home, immediately before the period of absence from Great Britain.

(13D). Subject to paragraphs (13E), (13G), (17C), (17D) and (17E) a person to whom paragraph (13C) applies shall be treated as occupying the main dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 4 weeks beginning with the first day of that absence from Great Britain, provided that—

(a) the person intends to return to occupy the main dwelling as his home;

(b) the part of the main dwelling normally occupied by the person has not been let or, as the case may be, sub-let; and

(c) the period of absence outside Great Britain is unlikely to exceed 4 weeks."
15. Paragraphs (13E), (13G), (17C), (17D) and (17E) have no application in this appeal.
16. Regulation 69(1) provides for the duty to notify a change of circumstances:

"69 (1) ... if at any time between the making of a claim and a decision being made on it, or during the award of housing benefit, there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by way of housing benefit are receivable, might reasonably be expected to know might affect the claimant's right to, the amount of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice to the designated office."
17. Regulation 71 and Schedule 8 paragraph 9 require an authority to notify a claimant of a housing benefit decision, and that the notification must include a statement of specified matters. Those matters include:

"(1) (g) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of, housing benefit and (without prejudice to the extent of the duty under regulation 69 (duty to notify change of circumstances) the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application and without charge;"

18. Regulation 80 defines an overpayment as “any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations (whether on the initial decision or as subsequently revised or superseded or further revised or superseded).…”
19. Regulation 81 addresses recoverable overpayment. It includes:
- “81 (1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.
- (2) Subject to paragraph (4) this paragraph applies to an overpayment which arose in consequence of an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.
- (3) In paragraph (2), “overpayment which arose in consequence of an official error” means an overpayment caused by a mistake made whether in the form of an act or omission by—
- (a) the relevant authority;
- (b) an officer or person acting for that authority;
- (c) an officer of—
- (i) the Department for Work and Pensions;
- (ii) Revenue and Customs,
- acting as such; or
- (d) a person providing services to the Department for Work and Pensions or to the Commissioners for Her Majesty's Revenue and Customs,
- where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission.”

The FtT's error

20. Regulation 7(13D) preserves a person's entitlement to housing benefit for a period of not more than 4 weeks, provided the conditions therein are satisfied. In the present case, condition (c) was not satisfied as there was never a likelihood of the absence being no longer than 4 weeks: the return flights had been booked prior to the start of the holiday, with a return date more than 4 weeks after the outward flight. Accordingly, the Claimant could not be treated as occupying his dwelling as his home for any of the period of his absence, and so was not entitled to housing benefit during that period. By reason of regulation 80, the housing benefit paid to which the Claimant was not entitled was an overpayment.
21. The Claimant rightly accepts the above. The sole issue for the FtT to address was whether the overpayment was recoverable.
22. Recoverability was to be determined according to regulation 81. Unless regulation 81(2) applied, the overpayment was recoverable. Regulation 81(2)

requires consideration of two principal issues: a) whether the overpayment arose in consequence of an official error, as defined in regulation 81(3); b) whether the claimant could not, at the time of receipt of the payment or of notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

23. As regards (a), regulation 81(3) requires findings as to the following:
 - a. Whether there was an official error, namely a mistake in the form of an act or omission by the relevant authority or an officer or person acting for the authority (there was no issue here of one of the other persons specified in the regulation having caused the overpayment);
 - b. Whether the mistake caused the overpayment; and
 - c. Whether the Claimant caused or materially contributed to the mistake.
24. It is clear that, in the light of the above brief analysis, the FtT erred in law in two respects.
25. First, at paragraph 8 of the statement of reasons the FtT decided that the Claimant had been entitled to housing benefit for the period of his absence and so there was no overpayment. This was simply wrong, as explained above.
26. Second, the FtT failed to address the provisions of regulation 81 in regard to recoverability of the overpayment. It addressed only whether the Claimant had failed to report a change of circumstances (ie whether the requirements of regulation 69 were satisfied. Regulation 69 was not dispositive of the appeal in this case. Even if the Claimant was not required to notify his absence as a change of circumstances because he could not reasonably have been expected to know that it might affect his entitlement, that would not of itself mean that the overpayment was not recoverable (although it may be relevant to the question of recoverability -see for example paragraph 25 of *Sier* in the Court of Appeal, addressed in more detail below). Moreover, other matters arise under regulation 81(2) which do not arise under regulation 69.
27. It follows that the FtT erred in addressing the test under regulation 69(1) but failing to address that under regulation 81(2). These errors go to the heart of the FtT's decision and so I set it aside.

I remake the decision

28. In case management directions I had indicated that, were I to set aside the FtT's decision, I was minded to re-make it rather than remit the case to the FtT for reconsideration. Both parties agree. The relevant facts are undisputed. The parties have addressed the legal issues fully in writing. Even if I were to remit the case to the FtT, I would address those issues so as to provide guidance to that tribunal as to the law and its application. Remittal will give rise to further delay. Taking these matters into account, I consider the proportionate course is for the Upper Tribunal to remake the decision.
29. The decision to be made is whether the overpayment is recoverable in accordance with regulation 81. I have set out the issues at paragraphs 22 and 23 above. In summary, these are:

- a. Whether there was an official error, namely a mistake in the form of an act or omission by the relevant authority or an officer or person acting for the authority;
- b. Whether the mistake caused the overpayment;
- c. Whether the Claimant caused or materially contributed to the mistake;
- d. Whether the Claimant could not, at the time of receipt of the payment or of notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

a) Whether there was an official error

30. \The Claimant asserts that there was an official error in the nature and content of the information provided to him pursuant to regulation 71 and paragraph 9(1)(g) of Schedule 8 regarding the changes of circumstances that needed to be notified by him.
31. In this appeal, the FtT bundle contained examples of the form of words that would have been included in decision notifications at the relevant time. The FtT cited that wording in part. It is convenient to set it out in full here:

“You must also tell the Benefit Section of Gateshead Council immediately, in writing, of any changes. Some examples of changes are increases in your or your partner’s income/savings, starting or ending a job, if someone leaves or joins your household, and any rent changes. You may lose housing benefit if you do not tell us within one calendar month of any changes..

If you are overpaid housing benefit because you failed to report changes straight away you will have to pay it back.”
32. The Council accepts that failure to comply with the requirement in paragraph 9(1)(g) could amount to official error. However, it submits, the information provided as above did comply with paragraph 9(1)(g) and it submits that, having complied with those requirements, it could not be in official error for failing to provide other information in the decision notification that was not required by the regulations.
33. In addressing this matter I have found some assistance from the decision in *MB v Christchurch Borough Council* [2014] UKUT 201, [2014] AACR 38. That case concerned whether, if a housing benefit claim form fails to ask a question which would have elicited information affecting entitlement, that amounts to official error.
34. Judge Wikeley reviewed the case law and then said at [35] that “It is entirely consistent with the definition of “official error” in regulation 100, which extends to omissions as well as acts and is not confined to eg a particular act or omission of an individual member of staff, but is sufficiently broad to encompass more systematic failings such as the design of standard claim forms (subject always of course, also to issues of causation).”.
35. Judge Wikeley agreed with Mr Commissioner Powell in *CH/4428/2006* that not every failure to ask the correct questions will amount to official error. Too high a burden should not be placed upon authorities and, as stated in *SN v LB Hounslow* [2020] UKUT 57 (AAC at [19], “a claimant who has got benefit by not disclosing

relevant facts is not able to turn the case into one of ‘overpayment caused by official error’ by saying that if only officialdom had been more vigilant he would have been spotted”. He proceeded to observe that whether a failure to ask a particular question in a claim form is an “official error” is very much a question of fact and degree and the number of cases likely to be affected by the “missing question” had been a very important consideration in the cases considered.

36. Judge Wikeley noted that claimants “cannot be assumed to have an encyclopaedic knowledge of the rules of entitlement to housing benefit or a paranormal ability to read the minds of council staff”. He also said that any decision whether a failure to ask a specific question on a claim form amounts to official error must bear in mind the principles established by the House of Lords in *Kerr v Department for Social Development* [2004] UKHL 23, as explained by Baroness Hale at [62]: “The department is the one which knows what questions it needs to ask and what information it needs to have in order to determine whether the conditions of entitlement have been met. The claimant is the one who generally speaking can and must supply that information.”
37. Turning then to the case before him, Judge Wikeley decided that the claim form omitted to ask a crucial question as to the assessment of housing benefit. The claimant answered the questions on the claim form correctly. The onus was on the authority to ask the relevant questions and the relevant information could have been elicited by a simple question. He concluded that the omission of the relevant question was an “official error”:
38. The present appeal is not about the design of the claim form. But the design of claim forms was only one example of the sort of systemic failings which might amount to official error (see Judge Wikeley at [35] cited at paragraph 26 above). Another such systemic failing could arise from the information provided to claimants as to the nature of their obligation to report changes of circumstances. If that information was misleading or incomplete, that might amount to official error by way of either act or omission. Whether it is will involve consideration of the range of factors identified by Judge Wikeley and summarised above.
39. I recognise that the design or content of the claim form is not specified by legislation and regulation 67(1) leaves it to the authority to decide what information or evidence it reasonably requires in order to determine entitlement. In contrast, the information to be provided to a claimant is specified by legislation, namely regulation 71 and Schedule 8. Paragraph 9(1)(g) requires notification of “the kind of change which is to be notified”. This does not require an exhaustive or comprehensive list of all such changes. The letter from the Council was on its face compliant in that it made it clear that the changes listed were examples of those to be notified. However, the content of the letter could nonetheless constitute an “official error” if, for example, it was misleading. Whether it was an official error will be a question of fact and degree.
40. In deciding in the present case whether the information provided in the statement was an “official error”, I take into account that the legislation leaves it to local authorities to decide what information to provide. I take into account, as identified by Judge Wikeley, that too high a burden should not be imposed on authorities and claimants should not be able to turn their own failure into a case of official error by asserting that the authority should have done more.

41. On the other hand there are a number of factors which support a finding of “official error” in this case.
42. First, I find that the content of the statement was misleading, broadly for the reasons identified by the FtT judge. The listed examples were of a wholly different nature to going on holiday. There was no indication in the information that temporary absences of any sort could affect entitlement, and that could not have been gleaned from the examples provided.
43. Second, the circumstances in regulation 7 in which a person is or is not to be treated as occupying their dwelling as a home would not be obvious to an ordinary claimant. The rules are complex and some may seem surprising to the lay person. Many claimants would not realise that a holiday overseas of more than 4 weeks, when they fully intend to return to their home, could mean that they no longer occupy their dwelling as a home and so would disentitle them from benefit. They could not be assumed or expected to know that the threshold for the length of a permitted absence is different depending on whether they are absent overseas or within Great Britain (it is 13 weeks if absent within Great Britain).
44. Third, temporary absence from home for several weeks, whether for holiday or for other purposes, cannot be so rare an occurrence that it could be said to be a reasonable omission from the statement. Moreover, occupation of the dwelling as a home is a fundamental requirement of entitlement to housing benefit and it was not reasonable for the statement to have omitted any reference to changes in the claimant’s occupation of the dwelling.
45. Fourth, I take into account that the information required by paragraph 9(1)(g) can be either in the decision notice or “by reference to some other document available to him on application and without charge”. The standard wording on the letter from the Council provided a link to the Council’s website. I have not seen an extract from the website as it was at the relevant time but the Council states that the link provided information about reporting a change of circumstances including a more detailed list of examples of changes including “you are temporarily absent from your address for more than four weeks because you are outside Great Britain”. However, the link to the website was included in a paragraph dealing only with challenging a decision by way of revision and then appeal. It is not reasonable to assume that ordinary claimants would go to that link unless they were unhappy with a decision. The paragraph addressing the duty to report changes of circumstances could have stated that further details of relevant changes could be found on the website, but it did not.
46. Finally, there is no suggestion or indication that the Claimant was in any way at fault. It appears on the evidence that his failure to report his absence was due solely to his ignorance of the requirement to do so.
47. Taking all these factors into account, I conclude that the omission of any reference to absences for holiday or even to breaks in a claimant’s occupation of the dwelling in the statement of the changes of circumstances which might affect entitlement was an “official error”.

b) Did the overpayment arise “in consequence of” the official error?

48. The leading case on causation of an overpayment is *R (Sier) v Housing Benefit Review board of Cambridge City Council* in the High Court and Court of Appeal: [2001] EWHC Admin 160 and [2001] EWCA Civ 1523 respectively.

49. In *Sier*, the claimant had simultaneously rented and claimed housing benefit in respect of two properties, one in London and one in Cambridge. Cambridge City Council sought to recover the housing benefit paid as an overpayment. The claimant asserted that the cause of the overpayment was due to the failure of the Department of Social Security to send a relevant form to Cambridge City Council which would have alerted the Council to the fact that London was his main residence.
50. In the High Court, Richards J held that there had been an official error but that it had not caused the overpayment. At [27] he said:
- “I accept that something can cause an overpayment without being the sole cause of that overpayment. I also accept that it is, of course, possible on one analysis to describe the DSS's failure as a cause of the overpayment on the basis that the overpayment would probably not have occurred if the DSS had provided the notification. But, in my view, that is an over-technical approach and one that produces an unsatisfactory result. If one asks oneself why overpayments were made in this case, the sensible answer is because the claimant had previously established his entitlement to benefits but did not inform the local authority of the change in his circumstances that brought that entitlement to an end. As a matter of common sense that was the cause of the overpayments and the DSS's failure is not to be seen as an additional cause.”
51. The Court of Appeal agreed. Latham LJ explained the position as follows:
- “25. ... In the present case, one has to have regard to the general legislative purpose, which seems to me to be clear. Parliament has laid down in the Regulations that a person is to be relieved of the obligation to repay an overpayment when that has been occasioned by an administrative mistake and not by any fault on the part of the recipient. That seems to me to be the basic thrust of the Regulation and one should approach the meaning of the word "cause" and its application to the facts on that basis.
26. Bearing that in mind, I consider that Richards J was correct in concluding that the failure to send form NHB8 to Cambridge City Council had not caused" the overpayment even if that failure did amount to an official error. The overpayment occurred because the appellant continued to claim Housing Benefit for the Cambridge property and failed, in breach of his duty under Regulation 75 of the 1987 Regulations, to notify the Cambridge City Council of what in my judgment was clearly a relevant change in his circumstances and one which he would have appreciated. The administrative failure, if that is the appropriate way of describing it, to send form NHB8 of the Cambridge City Council did not cause any payments to be made. The most that could be said is that as a result of that failure Cambridge City Council was not alerted to the fact that the appellant was no longer entitled to the relevant payments. But it seems to me that the answer to the question posed by the Regulation is clear: this was not an overpayment caused by official error and accordingly the Regulations do not relieve the appellant of the obligation

to repay the overpayment, which is the primary rule in such circumstances.

52. In a concurring judgment Simon Brown LJ said:

“30. ...In my judgment a single composite question falls to be asked... One must ask: "was the overpayment the result of a wholly uninduced official error, or was it rather the result of the claimant's own failings, here his failure in breach of duty to report a change of circumstance?" The answer to that question on the facts of this case is, of course, self-evident.

31. ...If one asks the purpose for which the question arises under regulation 99(3) as to whether the overpayment was caused by an uninduced official error, the common-sense answer is so as to distinguish that sort of case from a case where the claimant himself is substantially responsible for the overpayment. It would be remarkable indeed if the claimant was liable to make repayment in a case where he merely contributed to what might be a fundamental error on the part of the department, and yet wholly escapes such liability even when himself primarily responsible for the overpayment.”

53. In *SN v London Borough of Hounslow (HB)* [2010] UKUT 57 (AAC); [2010] AACR 27 Judge Howell QC referred to the above and summarised the effect as follows:

“10. ...In each case what matters is the real or substantial cause that triggers the overpayment of the amount in question, not anything more remote, recondite or speculative in the facts before or after that might be said to have a connection with or that might have operated to stop it but did not.”

54. In this case the Council submits that the overpayment was not caused by any action or inaction of the Council. The Council had no control over or knowledge of the Claimant's proposals to go on holiday and could have done nothing about it. The Council did not provide any assurance that the trip did not need to be reported. The Council also submits that, even if it had provided clearer information to the Claimant, it is speculative as to whether the Claimant would have read the information or recalled it some time later when it became relevant and as to whether, if he had read and recalled it, it would have made a difference to his plans.

55. The Council submits that a “claim form” case such as *MB* is different. In that case, the claimant completed the claim form correctly. If the claim form had asked the correct question, MB would have provided the correct information and entitlement would have been correctly decided. Thus the overpayment was a direct result of the failure to ask a question.

56. I do not agree with the Council's position. It is no more speculative to say that the overpayment was caused by the official error than to say that it was not. Either conclusion involves a finding as to what was likely to have occurred had there not been an official error. The tribunal must make that finding on the balance of probabilities. Nothing would be served by asking the Claimant now what he would have done had the Council provided clearer or more accurate information about the changes of circumstances to be notified. It seems to me that, if the Claimant

were asked, he would be very likely to say that he would have notified the change if he had known that he was required to do so. So I shall make the finding on the basis of the available evidence. There is not the slightest suggestion that the Claimant was negligent of his responsibilities in regard to providing relevant information to the Council let alone that he was dishonest. I find that it is likely that the Claimant would have notified the Council of his planned holiday, or that he would have taken a holiday of a few days shorter, if he had known that this would affect his entitlement.

57. In *Sier*, Latham LJ relied on the speech of Lord Hoffman in *Environmental Agency v Empress Car Co Ltd* [1999] 2 AC 22 to the effect that what or who has caused an event to occur is essentially a practical question of fact and the answer will differ according to the purpose for which the question is answered. He then identified the purpose of the rule regarding recovery of overpayments (see his judgment at [25] and [26] cited above). He contrasted an overpayment occasioned by an administrative mistake and one occasioned by a fault on the part of the claimant, and it was relevant in that case that the appellant had failed in his duty to notify the change of circumstances. Simon Brown LJ also emphasised that the appellant was in breach of his duty to disclose a change of circumstances.
58. In contrast, the Claimant in the present case was not in breach of his duty to notify a change of circumstances because, in accordance with my finding above, he could not have reasonably been expected to know that his holiday would have affected his entitlement to housing benefit. Indeed, the Council has not challenged the decision of the FtT that he was not in breach of that duty. Taking this into account and my finding that it was likely that clearer notification of his responsibilities would have led to a different outcome, I conclude that the Claimant was not “substantially responsible for the overpayment.”
- c) *Whether the Claimant caused or materially contributed to the mistake;*
59. Provision of the information in question was the sole responsibility of the Council. The Claimant had no role in that.
- d) *Whether the claimant could not, at the time of receipt of the payment or of notice relating to that payment, reasonably have been expected to realise that it was an overpayment.*
60. There is only one answer to this question. I have found that the Claimant could not reasonably have known that his absence abroad for over 4 weeks would have affected his entitlement to housing benefit. Therefore he could not reasonably have been expected to realise at the relevant times that the payment of housing benefit was an overpayment.
- e) *Conclusion*
61. In the light of the above, I conclude that regulation 81(2) applied and the overpayment is not recoverable.
62. I remake the decision accordingly.

Kate Markus KC
Judge of the Upper Tribunal

Authorised by the Judge for issue on 4th June 2026