

Before Upper Tribunal Judge Perez

Decision

1. The claimant's appeal is allowed.
2. The decision of the First-tier Tribunal dated 28 June 2019 (heard under reference SC238/18/01369) is set aside. I substitute my own decision that the £867 housing benefit overpayment (relating to how the Teachers' Pension was taken into account) is not recoverable.
3. There was another appeal decided by the First-tier Tribunal for this claimant, on the same date and by the same panel, under number S238/18/01370. That related to an asserted overpayment of housing benefit said to be due to a failure to disclose industrial injuries disablement benefit. I address that to a limited extent at the end of this decision.

REASONS

Introduction

4. The claimant appeals to the Upper Tribunal with my permission (granted 13/1/20, pages 166 to 178).
5. The respondent local authority is East Dorset District Council ("the council"). In my grant of permission, I proposed that I substitute my own decision that the overpayment relating to how the Teachers' Pension was taken into account is not recoverable (I will call this "the TP-related overpayment"). The council says, in a submission dated 31 March 2020, that the council does not object to my making a decision to that effect and that the council is content for me to do so solely on the grounds mentioned in my grant of permission.
6. The council's representative also very helpfully draws to my attention the claimant's other appeal that went to the First-tier Tribunal under reference SC238/18/01370. That appeal related to what was said to be an overpayment of housing benefit for failure to disclose industrial injuries disablement benefit (I will call this "the IIDB-related overpayment"). I return to that other appeal at the end of this decision. Unless I say otherwise, my page references are to the pages in the TP-related overpayment file.
7. The broad question for the First-tier Tribunal on this appeal was whether an overpayment of £867 in housing benefit – the TP-related overpayment – was

recoverable from this first-time claimant, who was 82 at the time he was awarded housing benefit.

8. The claimant and his wife were asked to leave their daughter's home. He claimed housing benefit for accommodation he and his wife occupied after leaving their daughter's home. He declared, among other things, income in the form of a Teachers' Pension of £419.33 net per month (page 45). The council awarded him housing benefit by letter dated 10 November 2017 (page 50). That letter was accompanied by three pages of figures and headings (pages 51 to 53). The council sent the claimant a separate letter dated the same day, 10 November 2017 (page 54). That separate letter explained that the council would not restrict the claimant's eligible rent for the first 13 weeks of the award.

9. Four months later, the council sent the claimant a letter dated 20 March 2018 (pages 111 and 112). That letter was accompanied by two pages of figures and headings (pages 113 and 114). The letter said on the first line that the claimant's housing benefit had been changed "because your Teacher's [sic] Pension has been corrected from annually to monthly for the following periods" (it did not say what "correcting it from annually to monthly" meant). The letter said halfway down the same page that, "As a result of the change in your Housing Benefit you have been overpaid the sum of £867.00, which I consider to be recoverable from you".

10. The claimant replied saying, among other things, "Having studied the very complicated calculations, we still do not understand the following statement "the overpayment has occurred because your Teacher's Pension has been corrected from annually to monthly for these periods"." (claimant's letter 28/3/18, page 115). In response to the claimant's letter, the council in a decision letter dated 4 April 2018 reconsidered the council's 20 March 2018 decision (page 117). The council told the claimant in that letter that the council had decided to uphold the decision notified to him on 20 March 2018. The claimant appealed to the First-tier Tribunal on a form he completed on 18 May 2018 (page 119). (I return to that form, at the end of this decision, in relation to the IIDB-related overpayment decision.)

11. The 20 March 2018 decision letter revised entitlement. That resulted in an overpayment of housing benefit which arose under regulation 80 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. But by virtue of regulation 81(1), (2) and (3) of those regulations, the overpayment is not recoverable from the claimant if there was a mistake made by or on behalf of an authority mentioned in regulation 81(3), which includes the council in this case, and if the claimant (i) did not cause or materially contribute to the mistake, and (ii) could not, at the time of receipt of the payment or of a notice relating to the payment, reasonably have been expected to realise that it was an overpayment.

12. The council accepted that it had "made an error" in treating the declared Teachers' Pension of £419.33¹ net per month as an annual figure (record of

¹ The figure £449.33 for the declared Teachers' Pension in the record of proceedings on page 131 seems to be an error that has crept in from an erroneous correction of a transposition error. It seems to have been written as "£149.33" initially, then

proceedings, page 132). The council's presenting officer told the First-tier Tribunal that the council had "calculated [it] wrongly as £8.04 pw instead of £96.77 pw" (record of proceedings, page 131).

13. The council also appeared to accept, at the First-tier Tribunal hearing, that the claimant had not caused or materially contributed to the council's mistake (record of proceedings, pages 132 and 133). And that appears to have been the basis of the tribunal's decision notice at page 135. It seems the only issue before the First-tier Tribunal, from the council's point of view (although less clearly from the tribunal's point of view – see paragraphs 37 and 38 of this decision), was whether the claimant could, at the time of receipt of the 10 November 2017 letter – which was "a notice relating to the payment" – reasonably have been expected to realise that the payment was an overpayment. The tribunal found that he could and that the overpayment was therefore recoverable from him.

Errors of law

14. With the council's agreement, I find as follows.

15. The tribunal erred in law in giving inadequate reasons, in failing to make adequate enquiry and in making inadequate findings in relation to whether the claimant could, at the time of receipt of the 10 November 2017 notice relating to the payment, reasonably have been expected to realise that it was an overpayment. I say that for the reasons at paragraphs 16 to 35 of this decision. I include in the annex to this decision a redacted copy of the 10 November 2017 letter, taken from pages 50 to 53.

Inadequate reasons, inadequate enquiry and inadequate findings

Introduction

16. The tribunal's record of proceedings records the following oral evidence from the claimant—

"Q P.50 – Award letter of 10/11/2017
P.51.

Did you read the letter?

A Didn't read the letter – lots of different figures
So much came through
Didn't realise until Council brought to notice

Q. When get official letter normally read

A Yes – but bundles of figures – if I'd noticed I would have said something about it" (page 131)

"Q. Background –

the 1 has been changed to a 4 rather than swapping the 1 and 4 around. The Teachers' Pensions document at page 45 of the TP file shows the net figure to be £419.33, as does paragraph 16 of the statement of reasons (page 138 of the TP file).

A Taught/lecturer at college – skills based” (page 133)

“I am drowned in paper-work –
If not skilled → I can't work out paper-work. Coming up 84. now.”
(page 134).

17. The tribunal accepted the claimant's evidence that he had not read the pages showing the wrong weekly income: “Had [he] read the accompanying pages of the entitlement letter it would have been clear to him ...” (paragraph 29, page 139). The tribunal also accepted that this was the claimant's first application for housing benefit and that “the 4 pages of the award letter of 10/11/17 were not easy to follow” (decision notice, paragraph 4, page 135).

18. So it was just a question of whether this 82-year-old first-time claimant, who had said he was drowned in paperwork and that he saw the pages as bundles of figures, could reasonably have been expected to realise from the 10 November 2017 award letter at pages 50 to 53 that the payment mentioned in it was an overpayment.

19. The tribunal found that “it would have been reasonable for him to [check whether the information in the 10/11/17 award letter was correct] and to have noted the error which is clear” (paragraph 30, page 139).

20. The tribunal said in its statement of reasons (pages 138 and 139)—

“17. The Respondent accepted that they had wrongly attributed this [£419.33] as an annual figure and added income of £8.04 per week rather than £96.77 per week.

18. This was set out in the entitlement letter dated 10 November 2017 (Pages 50).

19. The details of the assessment for the housing benefit award was [sic] set out in the accompanying schedules at pages 51-54 [sic].

20. In the second paragraph of the letter the Respondent wrote “Please read on the following pages for details of how your benefit is worked out. If you think anything is wrong please tell me immediately”.

21. On page 52 a central and underlined section is headed “About your income”. Three income sources are shown all sub headed “weekly income”, two state retirement pensions of £194.62 and £86.11 and one occupational pension of £8.04. The state pension figures are correct as weekly figures. The occupational pension (Teacher's pension) weekly figure has been wrongly shown calculated on an annual rather than a monthly basis. This is restated on Page 52 and 53.

[...]

25. This was the first time that [the claimant] had applied for housing benefit and he was aged 84. He had a background as a lecturer at [...] College. He told the Tribunal that he was drowned in Paperwork.

[...]

27. In making its decision the Tribunal took account of [the claimant's] lack of knowledge of the Housing Benefit system but weighed against that the fact of his literacy and his clear statement that he usually read official letters.

28. The covering letter from the Council was clearly written and the obligation on the Claimant to read all the letter and to let the Council know if anything was wrong set out in straightforward prose. The mistake was not hidden and the income used clearly set out. The other two pensions were correctly shown and this highlighted the substantial mis-statement of the occupational pension. The variance was £88.77. The correct recording of the state pensions flags up the incorrect statement of the occupational pension.

29. Had [the claimant] read the accompanying pages of the entitlement letter it would have been clear to him that an error had been made and that an error of this magnitude in the recording of income would lead the Council to overpay him.

30. This was not a matter of the Council making an incorrect calculation on accurately shown income where it might have been difficult for a claimant to follow the mathematics leading to an award. This is a case where the Council wrongly set out the income of which they had been informed ... The figures are clearly shown as is the obligation on [the claimant] to check the letter and report anything that is wrong. He did not read the letter, nor check to see whether the information contained in it was correct. He was clearly told in writing to do so and it would have been reasonable for him to do this and to have noted the error which is clear.”.

(1) Inadequate reasons for finding that the letter and mistake were “clear” and that the claimant would have noted the mistake

21. When I first read the above parts of the statement of reasons, it did sound as if the claimant ought reasonably to have spotted the misstatement of the Teachers' Pension from the “clear” letter at page 50 and its three accompanying pages which the tribunal had described.

22. And then I turned to pages 50 to 53, and that impression instantly changed. Those pages are a shock to the eye. They are written in what appears to be “courier” font with serifs (and a version in which each letter is wide). They are set out in a busy way that is by no means easy on the eye. The narrow side margins – especially the very narrow left margin – mean the reader has to scan from left to right more than with wider margins and so may less readily pick up the sense by looking centrally at the paragraph. Clarity is not served either by the broken dash lines used to underline headings, or by the spaces (apparently produced by the font) before punctuation, especially before full-stops and colons.

23. These factors were compounded by the following additional aspects of the letter.

“Obligation to check”

24. As to the “obligation to check the letter and report anything that is wrong”, the tribunal relied on what it called the second paragraph of the letter on page 50 as telling the claimant that he must check the remaining pages. That text said—

“Please read on the following page(s) for details of how your benefit is worked out. If you think anything is wrong please tell me immediately”.

25. In fact, this text is at the end of the fourth or fifth paragraph in the letter, depending on how you count them, and is by no means “clearly shown” as the tribunal said. While the prose itself – in terms of the words used – is “straightforward”, as the tribunal said, that is not enough. The layout and font of the letter, and the location within it of the “Please read” text, render that text not readily accessible in my judgment.

Misstatement of Teachers’ Pension

26. As to the misstatement of the Teachers’ Pension on the pages accompanying the 10 November letter on page 50, I do not agree that the “mistake was not hidden and the income used clearly set out”. Nor do I agree that, “Had [the claimant] read the accompanying pages of the entitlement letter it would have been clear to him that an error had been made and that an error of this magnitude in the recording of income would lead the Council to overpay him”.

27. Page 51 does say “ABOUT YOUR INCOME”. Then it says “Weekly Income”, and lists “Occupational Pension” as £8.04. But that is on the same page as headings such as “Disregarded”, “Personal Allowance”, and “Your Applicable Amount is”. Even without the claimant’s evidence that he was drowned in paperwork, I can readily see that, even if he had read page 51 and noticed the £8.04 among all the other figures on that page – the “bundles of figures” as he put it – the claimant would not realise that that was wrong. It is apparent from page 51 onwards (the first of the three accompanying pages) that the council is using figures in certain ways, and is breaking them down in ways that the claimant had not done in supplying them to the council. For example, “Your income after disregards is more than your applicable amount by £30.62, this is called your excess income”. And that page 51 goes on, for example, to show a calculation that the “Rent Amount used” has had deducted from it “65% of excess income”.

28. The claimant’s evidence that the letter was “bundles of figures” was apt. All four pages are off-putting to the eye.

29. I mention below that the tribunal did not find out what the claimant had lectured in or say what it made of his evidence of being drowned in paperwork. But even without those additional factors, the tribunal needed to explain why, despite the factors at paragraphs 22 to 28 of this decision, the tribunal found (a) that the 10 November letter and enclosures at pages 50 to 53 were “clearly written”, and (b) that this first-time claimant aged 82 would have noticed the mistake in how the Teachers’ Pension had been taken into account had he read the letter. Such an explanation was especially required given that the tribunal did not appear to think, when writing its decision notice two months earlier, that those pages were clearly written—

“the 4 pages of the award letter of 10/11/2017 were not easy to follow”
(decision notice, 28/6/19, paragraph 4, page 135).

30. Bear in mind too that the legislation requires not merely that the claimant notice the mistake, but also that he could “reasonably have been expected to realise that” the mistake would result in an overpayment (regulation 81(2)). Given (a) the complex ways in which figures are used in the 10 November letter and enclosures on pages 51 to 53, and (b) that this was a first-time claimant, that conclusion required much more explanation than the tribunal gave.

(2) Failure to enquire as to what the claimant had lectured in

31. The record of proceedings says the claimant said his teaching (before he retired) was “skills based” (page 133). The tribunal should have enquired further into that before relying on the claimant’s having been a lecturer. The claimant says his “main duties were instructing apprentices in the art of bricklaying” (letter 16/9/19, page 141, paragraph 25). I accept that he would have answered to that effect had the tribunal asked him what he had taught at college. The tribunal could well have given less weight to the “lecturing” had the tribunal elicited and accepted that evidence.

(3) Failure to take account of, and make findings as to, other relevant factors

32. The tribunal said it “took account of [the claimant’s] lack of knowledge of the Housing Benefit system but weighed against that the fact of his literacy and his clear statement that he usually read official letters” (statement of reasons, paragraph 27, page 139).

Age

33. The tribunal did not also however appear to take account of the claimant’s age, as he points out. He was 82 when he received the 10 November 2017 award letter and enclosures. Age is not necessarily of itself a reason why a claimant cannot reasonably be expected to notice an error (and to realise – let’s remember – that the error produces an overpayment). But age is, nonetheless, a factor that needs to be considered. Any appetite for ploughing attentively through four pages of text and figures – especially pages having the characteristics I mention above – could be expected to be reduced by that age. The tribunal should at least have said what it made of the claimant’s point that “If not skilled → I can’t work out paper-work. Coming up 84. now.” (record of proceedings, page 134).

“Bundles of figures”

34. The claimant is recorded as answering “Yes” to “When get official letter normally read”? (record of proceedings, page 131). But he caveated that by saying, in effect, that he classed what he had received not as a letter but as “bundles of figures”. The tribunal also erred in law by failing to take that caveat into account and in failing to say what it made of the caveat.

“Drowned in paperwork”

35. And, although the tribunal mentioned the claimant’s evidence that he was drowned in paperwork (paragraph 25), the tribunal did not say what it made of that evidence. It should have said whether it accepted that the claimant felt drowned in paperwork. If the tribunal had accepted that evidence, it would have needed to go on to make a finding as to the effect of his feeling drowned in paperwork.

Labelling the Teachers’ Pension as “Occupation Pension”

36. Labelling the Teachers’ Pension as “Occupational Pension” on each of the three pages accompanying the award notification letter at page 50 may not have helped clarity either. Even the tribunal felt it necessary or preferable to explain what it meant (my emphasis)—

“The occupational pension (Teacher’s pension) weekly figure ...”
(paragraph 21, page 138).

I do not however include this point among the factors rendering unclear the 10 November award letter and its enclosures because the claimant might reasonably be expected to understand that “occupational pension” meant his Teachers’ Pension. I do not find that he definitely could reasonably be expected to understand that. Rather, I make no finding one way or the other as to whether this was an additional factor rendering unclear the letter and enclosures. That does not affect the outcome of this appeal. The other factors rendering unclear the letter and its enclosures suffice, with the council’s agreement, for me to find – as I do below – that the claimant could not reasonably have been expected to realise from the 10 November letter and enclosures that the housing benefit payment mentioned in them was an overpayment.

Conflation of issues

37. I said in granting permission to appeal that the tribunal had also arguably erred in conflating whether the claimant could reasonably be expected to realise that the payment was an overpayment with whether the claimant caused or materially contributed to the council’s mistake. The tribunal accepted in the decision notice that the overpayment arose in consequence of an official error (which meant the claimant had not caused or materially contributed to the mistake, as defined in regulation 81(3)). The tribunal’s focus in the decision notice was therefore on whether the claimant “could reasonably have been expected to realise an overpayment had been made” (paragraph 7, page 135).

38. But by the time the tribunal came to draft the statement of reasons two months later, the tribunal appeared to conflate the two issues. In paragraph 31 of the statement of reasons, the tribunal found that the failure to read the letter or check the information was the cause of the overpayment. But if the claimant had indeed caused or materially contributed to the overpayment, the overpayment would not have arisen “in consequence of an official error” as defined in regulation 81(3). Yet the tribunal had already found in its decision notice that – as the council had accepted – the overpayment did so arise.

39. I also said, however, that I would not need a submission on this arguable error, if the council were to accept that the tribunal erred in law in the ways mentioned at paragraphs 15 to 35 above. The council does accept that the tribunal erred in law in those ways. So I need not – and do not – make a finding on this conflation point.

Disposal

Setting aside

40. It is for the reasons at paragraphs 15 to 35 above that I am setting aside the First-tier Tribunal's decision.

Upper Tribunal's substituted decision

41. The council agrees to my substituting my own decision that the overpayment is not recoverable from the claimant. I do so for the following reasons.

Legislation

42. The First-tier Tribunal made its findings by reference to regulation 100 of the Housing Benefit Regulations 2006²: "the starting position ... is set out in Regulation 100 of the Housing Benefit Regulations 2006" (statement of reasons, paragraph 14, page 138).

43. The council had said, in paragraph 4.1 of its submission to the First-tier Tribunal, that the "relevant legislation" was regulations 80, 81 and 82 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006³. But later in the same submission, at paragraph 6.1, the council said that "Regulation 80 of the Housing Benefit Regulations 2006" contained the definition of "overpayment". In fact, the definition of "overpayment" in those regulations is in regulation 99, not regulation 80. But the definition of "overpayment" in the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 is in regulation 80 of those regulations. The submission went on to set out a regulation 81, which contained recoverable overpayment provisions. In fact, the regulation 81 that the council was there talking about was in the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. And that was also the legislation included at page 121 of the papers which the council appears to have supplied to the First-tier Tribunal.

44. Regulation 100 of the Housing Benefit Regulations 2006 is identical to regulation 81 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. Each provides as follows—

² S.I. 2006/213, as amended.

³ S.I. 2006/214, as amended.

"Recoverable overpayments

(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.

(4) Where in consequence of an official error, a person has been awarded a rent rebate to which he was not entitled or which exceeded the benefit to which he was entitled, upon the award being revised or superseded any overpayment of benefit, which remains credited to him by the relevant authority in respect of a period after the date on which the revision or supersession took place, shall be recoverable."

45. The council cited to the First-tier Tribunal the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. And the claimant's circumstances appear to bring him within them (although I do not decide that point). So I will refer to those regulations. If that is wrong, and if that could make a difference to other benefits or to anything else, I invite the council to correct me. For example, the 20 March 2018 letter about "correcting" the Teachers' Pension "from annually to monthly" said "You could be considered for an UNDERLYING ENTITLEMENT award for the period you have been overpaid" (page 111). I will, if

the council corrects me, consider setting aside this decision and replacing it with one that is identical except for referring instead to the Housing Benefit Regulations 2006.

46. The council accepted before the First-tier Tribunal, and continues to accept, that the overpayment arose in consequence of an official error (as defined in regulation 81(3)). That meant that the council accepted, and continues to accept, that the claimant did not cause or materially contribute to the overpayment, according to the definition in regulation 81(3) of “overpayment which arose in consequence of an official error”.

47. In order to make a finding as to whether the overpayment is recoverable, therefore, the only remaining question is that in regulation 81(2). That is whether—

“the claimant or a person acting on his behalf or any other person to whom the payment was 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”.

48. It is common ground that there was no “person acting on [the claimant’s] behalf who could reasonably have been expected to realise that the payment was an overpayment”. There is also no suggestion that, at the time of receiving each TP-related housing benefit overpayment, the claimant could reasonably have been expected to realise that it was an overpayment.

49. So the only question for me is whether the claimant could, at the time of receipt of the 10 November 2017 award letter and enclosures at pages 50 to 53, reasonably have been expected to realise that the payment was an overpayment. I refer to that letter and its enclosures because the council accepts – and I find – that the letter and enclosures were together the “notice relating to” each housing benefit overpayment, as mentioned in regulation 81(2).

50. With the council’s agreement, I find that the claimant could not reasonably have been expected to realise – from the 10 November 2017 letter and enclosures at pages 50 to 53 – that the housing benefit payment mentioned in the letter and enclosures was an overpayment.

51. I so find for the reasons at paragraphs 52 to 60 below, with which the council agrees.

(1) Drowned in paperwork

52. I accept that the claimant did feel drowned in paperwork. The 10 November 2017 award letter and its three accompanying pages were not the only documents the council sent to the claimant on 10 November 2017. It also sent him the letter on page 54. That too was dated 10 November 2017. It said the council would not restrict the claimant’s eligible rent for the first 13 weeks of the award. And prior to that, the council had written to him on 30 October 2017, apparently seeking proof of tenancy, according to the claimant’s reply dated 8 November 2017 on page 49.

53. I find also that other things going on in the claimant’s life, when added to his feeling drowned in paperwork, meant he simply was not up to checking – and

working out the effect of – the 10 November award letter and enclosures at pages 50 to 53. I say that for the following reasons.

(2) Leaving daughter's house

54. The claimant said he and his wife had already had to leave their daughter's house—

"We did not leave our daughter's home voluntarily, we were asked to leave. Consequently we were not prepared for the enormous cost entailed in, initially and subsequently into moving to private accommodation" (letter 28 March 2018, page 115).

55. I accept that evidence. I find that being forced to leave and to deal with unexpected costs, especially at the age of 82 but in any event, was an additional stressor reducing the claimant's inclination to read and check the letter and reducing his ability to work out that it meant he was being overpaid.

(3) Wrist and finger problems

56. The claimant said he had ongoing problems with his "wrist and right hand small finger"—

"Due to an accident on the 17th December 2016, when I broke my wrist and right hand small finger, which is still ongoing – the finger has a new joint fitted, the wrist is to have a piece of bone from my hip placed into my hand/wrist, I am now waiting for a date, pre admission has been done, we have only just changed our address with the pension service." (letter 8 November 2017, page 49).

57. That letter was written on 8 November 2017, just a few days before the claimant received the 10 November 2017 award letter and enclosures. I accept the evidence in this 8 November letter about his ongoing problems with wrist and finger. This means that the claimant was, at the time he received the 10 November award letter and enclosures, waiting for a hospital letter giving a date for a further operation. I find that this was yet another thing on his mind – another piece of post awaited – that reduced his inclination to read and check the award letter and enclosures and reduced his ability to work out that the letter and enclosures meant he was being overpaid.

58. An additional point arose from the wrist and finger problems: that is, whether the ongoing wrist and finger problems reduced still further the claimant's inclination and ability to read and check the 10 November 2017 award letter and enclosures. I said, in granting permission, that I might ask the claimant about that if the council opposed the appeal. The council does not oppose the appeal and agrees to my proposed disposal on other points. So I need not – and do not – make a finding on this additional point.

(4) Additional administration

59. I accept too that the claimant and his wife had as at 8 November 2017, the date of his letter, “only just changed our address with the pension service”. That shows – and I find – that he was still dealing with changes of address until not long – a matter of days or perhaps a week or so – before he wrote that 8 November 2017 letter. That means he was still dealing with changes of address until a few days, or a week or so, before receiving the 10 November award letter. I find that that is yet another piece of administration that the claimant had to deal with that must have reduced his inclination to read and check the 10 November award letter and enclosures. It must also have reduced his ability to work out that what was in them meant he was being overpaid.

(5) Generally

60. I have accepted at paragraph 31 above that, had the tribunal asked what kind of lecturing he did, the claimant would have said that his “main duties were instructing apprentices in the art of bricklaying” (letter 16/9/19, page 141, paragraph 25). I also accept, since there is no suggestion that he is lying, that those were indeed the claimant’s main duties when he was lecturing at college. I accept, as did the First-tier Tribunal, that the claimant did not read the pages showing the wrong weekly income. I accept also, as did the tribunal, that this was the claimant’s first housing benefit application. I accept his evidence that he classed as “bundles of figures” the 10 November 2017 award letter and enclosures. And I accept the evidence he gave orally to the First-tier Tribunal (which was in effect what he had said in his 17 November 2018 letter) that he “Didn’t realise until Council brought to notice” that his Teachers’ Pension had been wrongly stated.

Conclusion

61. It is because of my findings at paragraphs 15 to 35 and 52 to 60 (excluding 58) above that I find that the claimant could not reasonably have been expected to realise, from the 10 November 2017 award letter and enclosures at pages 50 to 53, that the housing benefit payment mentioned in that letter was an overpayment.

62. That means that regulation 81(2) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 applies to the overpayment. That in turn means that, by virtue of regulation 81(1) of those regulations, the £867 TP-related overpayment is not recoverable from the claimant.

Two invoices for the same period

Introduction

63. The claimant supplied to the Upper Tribunal two reminder invoices from the council. Each reminder invoice seeks repayment of a different overpayment amount, for the same period. One reminder invoice is numbered 70332258 (page 160). It seeks payment of £639.98 for the period 30/10/17 to 12/2/18. The other is numbered 70331110 (page 161). It seeks payment of £867 for the period 30/10/17 to 12/2/18. Each reminder invoice simply says that it relates to a housing benefit

overpayment. And they each bear the same reference number: HB500411681. A comparison between the two does not explain why there are two for the same period. The claimant supplied with those invoices a copy of his letter to the council dated 18 October 2019 (page 157). He asked the council in that letter why there were two separate demands.

64. I asked the council to explain why there were two invoices.

65. The council tells me that it made a second overpayment decision, dated 4 April 2018. That decision covered the same period as the 20 March 2018 decision in the present appeal, but the overpayment – the IIDB-related overpayment – arose for a different reason and was an additional overpayment. The reason for that second decision was, says the council, the claimant's failure to disclose his industrial injuries disablement benefit. It is to that second decision that the other reminder invoice, numbered 70332258, relates (page 160). (In fact, although the reminder invoices did not say that they were for two different overpayments, the original of the invoice for the IIDB-related overpayment explained that it was for that overpayment – the invoice dated 4 April 2018, on page 1 of IIDB file. I expect that there was an equivalent original invoice for the TP-related overpayment. But whether there was does not make a difference to the outcome of this appeal.)

66. The council says the claimant appealed to the First-tier Tribunal against that second decision too, on the grounds that as "IIB is issued by the DWP this is something we could have decided". The council says "Two submissions were sent to the Appeals Tribunal Service to be heard but highlighting that it was two separate appeals against the invoices individually". The council asks the Upper Tribunal: "Please could you advise whether the second appeal against the second invoice is going to go to the Upper Tribunal or whether it remains recoverable?" (submission 31/3/20). The council has helpfully supplied a copy of the two submissions that the council made to the First-tier Tribunal⁴.

Discussion

67. An appeal against the First-tier Tribunal's decision about the IIDB-related overpayment does not appear to be before the Upper Tribunal, or at least, not yet. I say that for the reasons at paragraphs 69 to 81 below. I am not, however, making a formal ruling to that effect because the claimant has not asked me to treat his appeal as being against the IIDB-related overpayment decision too. In other words, the question is not before me. If the claimant were thinking of asking me to do that, I would want to know whether he had first tried the steps at paragraph 81 below (if he has no statement of reasons) or the steps at paragraph 83 below (if he does have a statement of reasons).

68. Returning to why I say the IIDB-related overpayment appeal does not appear to be before the Upper Tribunal, I say that for the following reasons.

⁴ It is not clear that those submissions were supplied to the claimant in time for him to address them at his First-tier Tribunal hearing – I cannot see them in the papers. I need not decide, however, whether any failure to supply them to him was a material error of law because I am deciding the appeal for other errors of law, on which I have already had the council's submissions.

69. The original housing benefit decision changing entitlement was dated 20 March 2018 (page 111). That was reconsidered in a decision dated 4 April 2018, but not changed (page 117). On a separate First-tier Tribunal file, numbered SC238/18/01370 (which I shall call “the IIDB file”), there is a decision changing entitlement because of the industrial injuries disablement benefit (page 47 of the IIDB file). That decision – like the reconsideration decision for the TP-related overpayment – was dated 4 April 2018.

70. The claimant appealed to the First-tier Tribunal on one appeal form, dated 18 May 2018, against two decisions. The completed appeal form is on page 119 of the file numbered SC238/18/01369. That is the file relating to the TP-related overpayment (to which the present appeal relates). I shall call it “the TP file”. A duplicate copy of the completed appeal form is on page 52 of the IIDB file. The claimant said on the form that he was appealing against a decision dated 4 April 2018 (in addition to appealing against the decision dated 20 March 2018). The claimant’s reference on that form to industrial injuries disablement benefit shows that the 4 April 2018 decision against which he was appealing was the one about the IIDB-related overpayment (and not the 4 April 2018 reconsideration decision relating to the Teachers’ Pension)—

“I wish to appeal your decision [sic] dated 20/03/2018 and 04/04/2018. I feel both of these decision [sic] were as a result of your errors. We gave you all of the information for our Teachers pension [sic] and you have input this information incorrectly. The injuries benefit is issued by DWP and is something you could have checked.” (my emphasis, page 119 TP file, and page 52 IIB file).

71. The council tells me that the council supplied two appeal submissions to the First-tier Tribunal. It is clear, from the copies of those that the council has supplied to me, that the appeal the council called “Appeal 1” was the one about the TP-related overpayment, and the appeal the council called “Appeal 2” was about the IIDB-related overpayment.

72. The First-tier Tribunal gave each of those appeals a separate file number: SC238/18/01369 for the appeal about the TP-related overpayment, and SC238/18/01370 for the appeal about the IIDB-related overpayment. I see on the IIDB file that the First-tier Tribunal made a separate decision on the appeal about the IIDB-related overpayment (page 55 of the IIDB file). There is on that IIDB file no statement of reasons and no application for permission to appeal. The last page on that file is the First-tier Tribunal’s decision notice in the appeal about the IIDB-related overpayment.

73. But, both those appeals were heard on the same day, 28 June 2019, and by the same First-tier Tribunal judge. The claimant then sought a statement of reasons, by letter dated 8 July 2019 (page 136 of the TP file). But he put only one of the two appeal numbers at the top of his request: the one ended 01369 (relating to the Teachers’ Pension). And the judge seems, from what I can see on both files, to have given a statement of reasons only for that appeal (pages 137 to 139 of the TP file).

74. It seems to me that the claimant may have wanted a statement of reasons for everything that was decided against him by the tribunal on 28 June 2019. If he did, then where things went awry may be that he put only the number ended 01369 as his reference for that request (page 136 of the TP bundle).

75. However, I can see why the claimant would have put only that number even if he wanted a statement of reasons for both appeal decisions (and why he might want to argue that that should have been apparent to the judge who supplied the statement of reasons). There seems to be only one copy of a record of proceedings. It is on the TP file, starting at page 130. It does not appear ever to have made it onto the IIDB file; the tribunal's decision notice on page 55 of that file immediately follows a page – page 54 – on which are set out regulations 67 and 81 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. That legislation page was the last page of the material put before the First-tier Tribunal. So one would expect the record of proceedings, if any, to come immediately after that. But the next page is the tribunal's decision notice.

76. Even though not also on the IIDB file, the record of proceedings seems, at page 132 of the TP file, to address the overpayment relating to the industrial injuries disablement benefit—

“Q. FTD - didn't get declared → IDB

A Accept that not declared”.

77. But the record of proceedings has at the top only the appeal number for the appeal relating to the Teachers' Pension: SC238/18/01369 (page 130). I am not presently deciding the point (which may become the subject of a separate appeal). But it seems to me that having just the one appeal number at the top of the record of proceedings, in addition to having had both appeals heard on the same day by the same First-tier Tribunal judge, could have led the claimant to think he could make a request for a statement of reasons under that single number, to deal with both the £867 TP-related overpayment and the £639.98 IIDB-related overpayment.

78. The judge, however, gave a statement of reasons only for the appeal numbered SC238/18/01369, relating to the Teachers' Pension.

79. Under the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008⁵, the usual procedure for appealing against a First-tier Tribunal decision is that the claimant must request a statement of reasons, then ask the First-tier Tribunal for permission to appeal to the Upper Tribunal. If the First-tier Tribunal refuses permission, the claimant then applies to the Upper Tribunal for permission to appeal (as happened in this appeal, relating to the Teachers' Pension).

80. There is a time limit for requesting a statement of reasons from the First-tier Tribunal: it is one month from the date on which that tribunal's decision notice was sent to the claimant (rule 34(4) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008). The decision notice at page 55 of the IIDB file

⁵ S.I. 2008/2685, as amended.

does not show a date of issue. But the judge's signature on it is dated 28 June 2019. The claimant's request for a statement of reasons dated 8 July 2019 was stamped as received on 12 July 2019 (page 136 TP file). That request was made therefore within the one-month time limit. I say that because the decision notice could not have been sent before it was signed on 28 June, so the time limit could not have been earlier than one month from then, which was 28 July 2019. But, as I have pointed out, the request specifically mentioned only the number SC238/18/01369.

81. If the claimant meant, by his 8 July 2019 request on page 136 of the TP file, that he also wanted a statement of reasons for the tribunal's decision under number SC238/18/01370 (about the IIDB-related overpayment), in order to seek permission to appeal against that decision, then he will need to tell the First-tier Tribunal that. If the First-tier Tribunal supplies the statement of reasons (whether because it treats the timeous request dated 8 July 2019 as relating to that appeal decision, or because it waives what it may see as a delay), then the claimant can if he considers appropriate, take the next step. The next step is to ask the First-tier Tribunal for permission to appeal against its decision about the IIDB-related overpayment. If the claimant does request a statement of reasons for that other decision but the First-tier Tribunal refuses that request, the First-tier Tribunal's refusal letter should come with notes as to what next steps the claimant can take.

82. I caution the claimant however. Just because I mention the other case – the one about the IIDB-related overpayment – that does not mean I am encouraging him to try to appeal against the First-tier Tribunal decision in that case. But nor am I discouraging him.

83. If I am wrong, and the claimant does in fact have a statement of reasons for the First-tier Tribunal's 28 June 2019 decision about the IIDB-related overpayment, then if he wishes to appeal against that decision, the normal route is as described at paragraph 81 above: ask the First-tier Tribunal for permission to appeal, and if that is refused, ask the Upper Tribunal for permission. I have not seen an application – either to the First-tier Tribunal or to the Upper Tribunal – for permission to appeal against the First-tier Tribunal's decision about the IIDB-related overpayment. If the claimant is thinking of seeking permission to appeal in relation to that overpayment, that is, the one for £639.98, I again remind him that just because I mention it, that does not mean I am encouraging him to appeal.

84. I do also remind the claimant that, just because there is an overpayment decision and invoice for the IIDB-related overpayment, that does not necessarily mean that the council will enforce payment. The claimant may wish to put his financial circumstances to the council and ask the council whether it plans to enforce payment of the £639.98 invoice. If the council says no, then the claimant may decide to let matters lie rather than challenging the 4 April 2018 IIDB-related overpayment decision. That is a matter for him.

Rachel Perez
Judge of the Upper Tribunal
8 September 2020

Annex to
Upper Tribunal decision

A redacted copy of the 10 November 2017 letter
is on the following four pages

STOUR VALLEY & POOLE PARTNERSHIP

PO Box 722, Poole, BH15 2YE

Telephone: 0345 034 4569 Email: svpp@poole.gov.uk

Please ask for: Benefits Services
Telephone: 0345 034 4569
Fax: 01202 633150
email: svpp@poole.gov.uk

Reference No: [REDACTED]
Date: 10 November 2017

56

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED],

HOUSING BENEFIT

I am writing to tell you about your claim for Housing Benefit and changes in entitlement.

- From 30 Oct 2017 - 28 Jan 2018 an amount of £141.64 per week.
- From 29 Jan 2018 - 01 Apr 2018 an amount of £103.68 per week.
- From 01 Apr 2018 - an amount of £103.68 per week.

Payment will be sent direct to your building society as you have requested.

Payment will be sent on 20 November 2017. The first payment will be £424.92 and will cover the period from 30 October 2017 to 20 November 2017.

You must inform the Benefits Service immediately, in writing, if there are any changes in circumstances, such as a change of address, income, capital or a change in the number of people living in your household. If you do not tell us about changes of circumstances (including those of a member of your household) you may lose money you are entitled to or you may get too much benefit. Please read on the following page(s) for details of how your benefit is worked out. If you think anything is wrong please tell me immediately.

If you think the decision is wrong, you can ask for the decision to be looked at again. If you wish to ask for the decision to be reconsidered you must write to the Benefits Section within one month of the date of this letter. Please explain why you disagree with the decision. If the decision cannot be changed we will tell you why. You can ask us for further information about the decision that has been made. You also have the right to appeal. If you wish to appeal, you must write to me within one month of the date of this letter with your grounds for appeal.

Yours sincerely

[REDACTED]
Benefits Manager



HOUSING BENEFIT ASSESSMENT FROM 30 Oct 2017 is £141.64 a week.

The following details were used in this assessment:

ABOUT YOUR RENT

Your rent is £700.00 every calendar month. As Housing Benefit is calculated as a weekly figure, your rent must be converted to a weekly figure also.

Your weekly rent is	£161.54
MAXIMUM WEEKLY RENT eligible for benefit	<u>£161.54</u>

ABOUT YOUR INCOME

Weekly Income:	Amount	Disregarded
State Retirement Pension (Higher)	£194.62	£0.00
Occupational Pension	£8.04	£0.00
State Retirement Pension (Higher)	£86.11	£0.00

Your capital is £3.77. This is less than the capital limit and therefore not used for this calculation.

You have notified me of the following details of your capital:

Nationwide ()	£0.68
Nationwide ()	-£408.00
Nationwide ()	£3.09

Your total income used in this calculation is £288.77

ABOUT YOUR APPLICABLE AMOUNT

Your Applicable Amount (this is the amount set by the Government depending on your circumstances) is worked out as follows :

Personal Allowance	£258.15
Your Applicable Amount is	£258.15

HOW YOUR BENEFIT IS CALCULATED

Your benefit is worked out as follows :

Maximum weekly rent eligible for benefit is	£161.54
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Maximum benefit can only be paid if your income is the same as or lower than your applicable amount.

Your income after disregards is more than your applicable amount by £30.62, this is called your excess income.

Rent Amount used	£161.54
Less 65% of excess income	£19.90
Weekly Housing Benefit Awarded	<u>£141.64</u>

HOUSING BENEFIT ASSESSMENT FROM 29 Jan 2018 is £103.68 a week.

The following details were used in this assessment:

ABOUT YOUR RENT

Your rent is £700.00 every calendar month. As Housing Benefit is calculated as a weekly figure, your rent must be converted to a weekly figure also.

Your weekly rent is £161.54

Your benefit is worked out using the 1 room LHA rate of £123.58 per week for the area in which you live. LHA rates are reviewed annually each April. You should continue to inform us in writing when there is any change to the rent you are being charged but the maximum eligible rent cannot exceed the April LHA rate that applies to you.

This calculation is based on 2 people in your household.

Please note that the maximum rent that we can use in the calculation is either the weekly LHA rate or your rent, whichever is the lower.

MAXIMUM WEEKLY RENT eligible for benefit £123.58

ABOUT YOUR INCOME

Weekly Income:	Amount	Disregarded
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Occupational Pension	£8.04	£0.00
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Your Applicable Amount is	£258.15

HOW YOUR BENEFIT IS CALCULATED

Your benefit is worked out as follows :
Maximum weekly rent eligible for benefit is £123.58

Maximum benefit can only be paid if your income is the same as or lower than your applicable amount.

Your income after disregards is more than your applicable amount by £30.62, this is called your excess income.

Local Housing Allowance	£123.58
Less 65% of excess income	£19.90
Weekly Housing Benefit Awarded	<u>£103.68</u>

HOUSING BENEFIT ASSESSMENT FROM 01 Apr 2018 is £103.68 a week.

The following details were used in this assessment:

ABOUT YOUR RENT

Your rent is £700.00 every calendar month. As Housing Benefit is calculated as a weekly figure, your rent must be converted to a weekly figure also.

Your weekly rent is £161.54

Your benefit is worked out using the 1 room LHA rate of £123.58 per week for the area in which you live. LHA rates are reviewed annually each April. You should continue to inform us in writing when there is any change to the rent you are being charged but the maximum eligible rent cannot exceed the April LHA rate that applies to you.

This calculation is based on 2 people in your household.

Please note that the maximum rent that we can use in the calculation is either the weekly LHA rate or your rent, whichever is the lower.

MAXIMUM WEEKLY RENT eligible for benefit £123.58

ABOUT YOUR INCOME

Weekly Income:	Amount	Disregarded
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Occupational Pension	£8.04	£0.00
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