



**IN THE UPPER TRIBUNAL  
HB  
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2021-001073-**

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

**Between:**

**P.R.**

Appellant

**- v -**

**Secretary of State for Work and Pensions**

1<sup>st</sup> Respondent

**and**

**Allerdale Borough Council**

2<sup>nd</sup> Respondent

**Before: Upper Tribunal Judge Wikeley**

Decision date: 30 January 2023

Decided on consideration of the papers

**Representation:**

Appellant: Mr Paul Bradley, Perennial Gardeners' Royal Benevolent Society

1<sup>st</sup> Respondent: Ms T Tosta and Mrs M A Gratrex, Decision Making and Appeals, DWP

2<sup>nd</sup> Respondent: Ms Jane Gilmore, Allerdale Borough Council

## **DECISION**

**The decision of the Upper Tribunal is to dismiss the appeal.** The decision of the First-tier Tribunal made on 18 January 2021 under number SC164/20/00087 does not involve any error of law. This decision is made under section 11 of the Tribunals, Courts and Enforcement Act 2007.

## **REASONS FOR DECISION**

### **The issue on this appeal to the Upper Tribunal**

1. This appeal concerns one aspect of the complex interface between entitlement to claim housing benefit and universal credit.
2. The next two paragraphs outline the essential facts of the case now on appeal. The reader may be forgiven for thinking it has shades of Catch-22.
3. The Appellant lived in an area where assistance with housing costs was only available by making a claim to the Department for Work and Pensions (DWP) for universal credit. Thus, new claims to the local authority for housing benefit were no longer possible (subject to certain narrow exceptions that did not apply in the Appellant's case). However, the Appellant's existing entitlement to income-related Employment and Support Allowance (ESA) included the severe disability premium, which would not be available on an award of universal credit. Accordingly, as she would have been worse off claiming the new benefit, she understandably decided not to do so. However, the Appellant's entitlement to Personal Independence Payment (PIP) was then ended, with the consequence that she lost the severe disability premium on her ESA award. She lodged an appeal against the PIP decision with the First-tier Tribunal (FTT).
4. While the Appellant was waiting for her PIP tribunal, the law was amended by the introduction of the so-called Severe Disability Gateway in January 2019. The effect of this change was that a claimant in receipt of the severe disability premium in an award of one of the legacy means-tested benefits (such as income-related ESA) was now precluded from claiming universal credit, and so could therefore once again claim housing benefit. But by this stage the Appellant was not entitled to such a premium, as a result of the disallowance of her PIP claim. So, she could not claim housing benefit. In December 2019 a FTT reinstated her PIP award, with the DWP following suit by retrospectively reinstating her ESA severe disability premium with effect from a date in 2018. Meantime the Appellant had made claims for housing benefit in both July 2019 and December 2019. The Council treated the July 2019 housing benefit claim as having been made one month earlier and so paid benefit from June 2019. The question for the FTT was whether the Appellant's housing benefit was payable from the earlier date of the start of the Severe Disability Gateway in January 2019, given that she had a retrospective award of ESA including the severe disability premium for a period starting before that date.

5. The short answer is that on these facts housing benefit was not payable from the earlier Severe Disability Gateway date in January 2019, for the reasons that follow.

### **The parties to this appeal in the Upper Tribunal**

6. The Appellant is the claimant, who is a single person with disabilities and who was aged 55 at the date of the original decision. She has been very ably and assiduously represented by Mr Paul Bradley of the Perennial Gardeners' Royal Benevolent Society. The First Respondent is the Secretary of State for Work and Pensions. The Second Respondent is Allerdale Borough Council ("the Council").

### **The Severe Disability Gateway**

7. As outlined above, the Severe Disability Gateway was a means by which certain claimants were stopped from claiming universal credit and so instead were able to access a new claim for one of the means-tested legacy benefits. It applied only to claimants who were entitled (or had been entitled within the previous month) to an award of ESA, jobseeker's allowance (JSA), income support or housing benefit that included the severe disability premium. It was a measure designed to prevent the problem faced by this group of claimants who would otherwise be worse off if they were required to claim universal credit as part of the process of 'natural migration'. This is the DWP term used to describe a claimant's transfer to universal credit as a result of e.g. a change in their circumstances, as opposed to 'managed migration' (transfers to universal credit initiated by the DWP).
8. The Universal Credit (Transitional Provisions) (SDP Gateway) Amendment Regulations 2019 (SI 2019/10) introduced the Severe Disability Gateway. This was achieved by regulation 2(3), which inserted a new regulation 4A into the Universal Credit (Transitional Provisions) Regulations 2014 (SI 2014/1230: "the TP Regulations"):

**Restriction on claims for universal credit by persons entitled to a severe disability premium**

**4A.** No claim may be made for universal credit on or after 16th January 2019 by a single claimant who, or joint claimants either of whom—

- (a) is, or has been within the past month, entitled to an award of an existing benefit that includes a severe disability premium; and
- (b) in a case where the award ended during that month, has continued to satisfy the conditions for eligibility for a severe disability premium.

9. Regulation 2(2) further inserted a new definition in the regulation 2(1) of the TP Regulations:

"severe disability premium" means the premium in relation to an employment and support allowance under paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations 2008 or, as the case may be, the corresponding premium in relation to income support, old style JSA or housing benefit;

10. The purpose of these amendments was described by the Explanatory Memorandum to the statutory instrument (at paragraph 2.1) as being to make provision for:
  - a ‘Gateway Condition’ so that claimants who are receiving income-related Employment and Support Allowance (ESA(IR)), income-based Jobseeker’s Allowance (JSA(IB), Income Support (IS) or Housing Benefit (HB) with a Severe Disability Premium (SDP) included in their award will not claim UC if they need to make a new claim for support, but will remain on existing benefits until they are moved to Universal Credit as part of the Department’s managed migration process.
11. It should be noted that the Severe Disability Gateway only operated between 16 January 2019 and 26 January 2021. This is because regulation 4A was repealed with effect from 27 January 2021 by regulation 7 of the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019 (SI 2019/1152).

#### **The Council’s original decision in this case**

12. In its written response to the Appellant’s appeal to the First-tier Tribunal (“the FTT”), the Council framed its decision of 28 February 2020 in the following terms:

[The Appellant] submitted a claim for Housing Benefit on 14/01/2020, following a change of address on 16/12/2019. The claim included a request that Housing Benefit be paid from 16/01/2019, when the “Severe Disability Gateway” opened. [The Appellant] had requested that Housing Benefit be awarded, in respect of both her current and her previous address, following the reinstatement of her Personal Independence Payments and the Severe Disability element of Employment and Support Allowance award.

In determining the start date of [the Appellant’s] Housing Benefit award the Local Authority considered the earliest date of receipt of a claim for Housing Benefit, made since the severe disability gateway opened, and then looked at backdating the award for the maximum period of one calendar month. The first claim submitted, after the gateway opened, was made on 10/07/2019. This claim was backdated for one calendar month and an award was made from the Monday following 10/06/2019. That is, from 17/06/2019.

13. This summary account of the Council’s decision, as with paragraphs 3 and 4 above, gives some flavour of the factual complexity of the case. However, a fuller timetable of events is needed for a proper understanding of the issues.

#### **The chronology in the appeal to the First-tier Tribunal**

14. On 20 July 2018 the Appellant made a claim for housing benefit (which I will call HB Claim 1) while living in accommodation which I will call her previous address.
15. On 30 August 2018 the Council wrote to the Appellant explaining that due to changes in the law it could “no longer accept claims for Housing Benefit for working age claimants, other than those the council deem to be in supported/specified accommodation. As you do not live in supported/specified

accommodation, to make a claim to cover your rent you must make a claim for Universal Credit online.” The Appellant did not in fact make a claim for universal credit as she would have been financially worse off by doing so (as explained above, at the time she was in receipt of the severe disability premium as part of her ESA award, which would not have been included in any universal credit award). She remained eligible for an award of council tax reduction.

16. On 26 September 2018 the DWP terminated the Appellant’s award of Personal Independence Payment (PIP). One consequence of this PIP decision was that the Appellant was no longer entitled to the severe disability premium in her ESA award. The Appellant lodged an appeal with the FTT against the decision on her entitlement to PIP.
17. On 16 January 2019, and as noted above, the Severe Disability Premium Gateway was opened. As explained above, the effect of this was that from that date, but not before, a claimant in receipt of the severe disability premium (e.g. as part of an ESA award) could apply for housing benefit (rather than universal credit) to receive help with housing costs.
18. On 10 July 2019 the Appellant made a further claim for housing benefit (HB Claim 2), requesting that her claim be backdated to 16 January 2019. She explained that payment of her severe disability premium had been stopped but that she expected it to be reinstated at her PIP tribunal, which she had been advised “may not be until next January”, i.e. January 2020.
19. On 11 July 2019 the Council refused HB Claim 2, giving as its reason “As you are not in receipt of SDP until January 2020 you do not qualify for Housing Benefit”. Certainly, regulation 4A of the TP Regulations is framed very much in the present tense, requiring current entitlement or entitlement within the previous month to the severe disability premium. As at July 2019, the Appellant could not satisfy that criterion and so was denied access to the Severe Disability Gateway.
20. On 4 December 2019 a FTT allowed the Appellant’s PIP appeal. The FTT awarded her the standard rate of both PIP components for the period from 27 September 2018 to 7 November 2023.
21. On 5 December 2019 the Appellant’s representative wrote to the DWP office dealing with her ESA claim asking for that claim to be amended to include the severe disability premium.
22. On 16 December 2019 the Appellant moved within the same Council area to her current address.
23. On 19 December 2019 the Appellant was issued with a new housing benefit claim form.
24. On 14 January 2020, and as a consequence of her successful PIP appeal, the DWP wrote to the Appellant confirming that her entitlement to the severe disability premium as part of her ESA award had been reinstated, effective from 21 September 2018.
25. On 14 January 2020 the Council also received the Appellant’s further claim for housing benefit (HB Claim 3), again repeating her request that her claim be backdated to 16 January 2019, the date the Severe Disability Gateway opened.

26. On 5 February 2020 the Council made an award of housing benefit for her current address on HB Claim 3. This award was effective from 16 December 2019, the date she had moved to that address, and by which date both she was in receipt of the severe disability premium and the Severe Disability Gateway was open.
27. On 28 February 2020 the Council awarded the Appellant housing benefit in respect of her previous address for the period from 17 June 2019 to 16 December 2019. The Council explained its thinking as follows in subsequent correspondence: “At the same time [i.e. at the same time as making the award on HB Claim 3], we treated her application as an out of time request for a reconsideration of the decision made on 11 July 2019. It was not possible to backdate the award of HB to 16 January 2019 since regulation 83(12) only allows HB to be backdated for 1 month prior to the date of claim. HB was awarded from 17 June 2019, this being the earliest date from which the regulations would allow.” It was the decision of 28 February 2020 that was under appeal to the FTT.

### **The decision of the First-tier Tribunal**

28. The FTT held a remote telephone hearing of the Appellant’s appeal on 18 January 2021. The FTT dismissed the appeal, confirming the Council’s decision of 28 February 2020 and so upholding the Council’s decision to award housing benefit with effect from 17 June 2019 but no earlier date. The FTT later issued a full statement of reasons. Having referred to regulation 83(12A), the FTT concluded as follows:

13. This [regulation 83(12A)] allows the local housing authority to backdate a claim for HB by a maximum period of one month where the claimant had continuous good cause for not making it earlier. In the circumstances outlined above, Allerdale BC accepted that [the Appellant] did have such continuous good cause. Therefore, they backdated her claim for HB to a month before she made the claim on 10/07/2019. Because she was not in receipt of SDP at the time, this application was originally refused. However, it was revised following her successful appeal to the Tribunal regarding PIP, which had the effect of restoring the SDP element of her ESA retrospectively and was backdated by one calendar month.

14. The tribunal agreed with Allerdale BC that the earlier claim for HB made by [the Appellant] on 20/07/2018 could not be treated as an advance claim as the Severe Disability Gateway was not opened until 16/01/2019.

15. In summary, the tribunal agreed with Allerdale BC that because of the wording of Regulation 83, notwithstanding the circumstances [the Appellant] found herself in due to the roll out of UC and the subsequent opening of the Gateway, the maximum period they could extend (backdate) her award of HB was for a period of one calendar month before she made the claim on 10/07/2019. Therefore, the appeal was disallowed, and the decision of the Respondent upheld.

29. A District Tribunal Judge later granted the Appellant permission to appeal.

### **The proceedings before the Upper Tribunal**

30. All three parties have made detailed and helpful written submissions on the appeal. There has been no application for an oral hearing of the appeal. I am satisfied that it is fair and just to proceed to a decision on the papers, given that the issues have been well ventilated in the parties' written submissions.

## **Analysis**

### Introduction

31. The FTT was concerned with the Appellant's appeal against the Council's decision of 28 February 2020 revising its earlier decision on HB Claim 2. The FTT decided the Council was correct to have backdated her entitlement to 17 June 2019 on the basis of regulation 83(12) and (12A) of the Housing Benefit Regulations 2006 (SI 2006/213). The Appellant's case is that backdating to 16 January 2019 was required by virtue of regulation 83(5)(a) of the Housing Benefit Regulations 2006. The analysis that follows considers both of these routes. Finally, there is a separate point about whether there is a still undetermined claim for housing benefit from October 2018 which would permit backdating to the date the Severe Disability Gateway opened.

### Regulation 83(12) and (12A) of the Housing Benefit Regulations 2006

32. Regulation 83 deals with the "Time and manner in which claims are to be made" for housing benefit. In backdating the Appellant's HB Claim 2 (of 10 July 2019) by one month the Council was relying on regulation 83(12) and (12A):

(12) Where a claimant ("C")—

(a) makes a claim which includes (or which C subsequently requests should include) a period before the claim is made; and

(b) from a day in that period, up to the date when C made the claim (or subsequently requested that the claim should include a past period), C had continuous good cause for failing to make a claim (or request that the claim should include that period),

the claim is to be treated as made on the date determined in accordance with paragraph (12A).

(12A) That date is the latest of—

(a) the first day from which C had continuous good cause;

(b) the day one month before the date the claim was made;

(c) the day one month before the date when C requested that the claim should include a past period.

33. Backdating HB Claim 2 by one month meant that the Appellant's actual entitlement to housing benefit started from 17 June 2019, being the Monday following the date of claim (regulation 76(1) of the Housing Benefit Regulations 2006; and see definition of "benefit week" in regulation 2(1)).
34. The Secretary of State's representative states that HB Claim 3 (on 14 January 2020) should have been treated as a new claim, rather than the Council revising its decision on HB Claim 2 (on 10 July 2019). If that is right, then presumably entitlement to housing benefit should only have commenced from a date in December 2019, applying regulation 83(12) and (12A). However, the Secretary of State's representative makes this point more by way of assertion than

argument, and cites no authority for the proposed alternative course of decision-making action. The explanation provided by the Council (see paragraph 27 above) is preferable, namely “At the same time [i.e. at the same time as making the award on HB Claim 3], we treated her application as an out of time request for a reconsideration of the decision made on 11 July 2019.” Thus, a request for an “any grounds” revision should normally be made within one month of the notification of the decision in question (regulation 4(1)(a) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (SI 2001/1002), regulation 4(1)(a)). An out of time request can be made where it is reasonable to grant the application and special circumstances meant that it was not practicable to apply for a revision within the time limit. The Appellant’s case could justifiably be seen as meeting those criteria as well as having intrinsic merit (Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001, regulation 5).

35. Finally, on this aspect of the appeal, I note in passing that the one month time limit for backdating housing benefit claims is a relatively recent restriction. Until April 1, 2016, the maximum period allowed under regulation 83 was six months (see the change made by regulation 3 of the Housing Benefit (Abolition of the Family Premium and date of claim) (Amendment) Regulations 2015 (SI 2015/1857)). If that change had never been made in 2015, then in all likelihood the Council would have been able to treat the Appellant’s claim as having been made on 16 January 2019, so as to take full advantage of the Severe Disability Gateway. But it was not to be so.
36. Be all that as it may, and subject to the discussion of regulation 83(5)(a) that follows, the preceding analysis means that the FTT did not err in law in upholding the Council’s decision to backdate entitlement under HB Claim 2 by one month to 17 June 2019.

Regulation 83(5)(a) of the Housing Benefit Regulations 2006

37. However, Mr Bradley for the Appellant submits that there is another basis on which her claim can be treated as being made on 16 January 2019. This submission turns on regulation 83(5)(a) of the 2006 Regulations, which provides as follows (regulation 83(10) concerns advance claims and does not arise on the facts here):

(5) Subject to paragraph (10), the date on which a claim is made shall be —

(a) in a case where an award of income support, an income-based jobseeker’s allowance or an income-related employment and support allowance has been made to the claimant or his partner and the claim for housing benefit is made within one month of the date on which the claim for that income support, jobseeker’s allowance or employment and support allowance was received at the appropriate DWP office, the first day of entitlement to income support, an income-based jobseeker’s allowance or an income-related employment and support allowance arising from that claim;

38. Mr Bradley put the argument in his original letter of appeal to the Council on behalf of the Appellant thus: “she claimed HB within one month of being awarded income-related employment and support allowance (IRESA) and



regulation 83(5)(a) of the Housing Benefit Regulations 2006 provides for the date of claim for HB in such cases to be the first date of entitlement to IRESA.” He further developed the submission in this way:

Following the introduction of universal credit and prior to the introduction of the SDP Gateway on 16/01/19, the rules did not allow [the Appellant] to apply for HB. Following the introduction of the SDP Gateway she was prevented from applying for HB because at that time she was not entitled to a SDP. It was only following the decision of the Tribunal on 04/12/19 that she became eligible for IRESA via her qualification for the SDP and in turn became eligible to apply for HB.

In this case we submit that the effect of reg 83(5)(a) of the HB Regs 2006 should be to allow for the date of [the Appellant’s] HB claim to be the date the SDP Gateway came into force on 16/01/19 when following the decision of the Tribunal on 04/12/19 she became eligible to apply for HB as a claimant with a SDP included in her IRESA claim.

39. In his written submission to the FTT, Mr Bradley argued that his letter of 5 December 2019 to the DWP (see paragraph 21 above) was a claim for IRESA and moreover that the Appellant had registered her intention to make a claim for housing benefit within one month of that letter (see paragraph 23 above), so satisfying the terms of regulation 83(5)(a).

40. The Council, in its reconsideration letter, rejected this reading of regulation 83(5)(a):

Regulation 83(5)(a) does not apply in this instance as it stipulates that a claim for HB should be made within one month of the date on which the claim for Income Related Employment and Support Allowance (in [the Appellant’s] instance) was received at the DWP office. [The Appellant] did not make a new claim for ESA(IR), it was re-awarded from the date on which it had been previously terminated following the successful tribunal in respect of her PIP. It was a reconsideration of a previous decision and not therefore a new claim.”

41. The FTT dealt somewhat briskly with this aspect of Mr Bradley’s submissions, ruling that “the wording of Regulation 83(5)(a) is clear in terms of the claim for HB being made within one month of the claim for ESA being received at the appropriate DWP office. [The Appellant] was not making a new claim for ESA” (paragraph [11]). Clearly, the FTT was both accepting and echoing the Council’s argument as to the proper construction of regulation 83(5)(a).

42. The Appellant’s grounds of appeal to the Upper Tribunal were twofold. The first and primary ground was that the FTT had misdirected itself in holding that regulation 83(5)(a) required a new claim for ESA to be made. Mr Bradley argued that the insertion of the word “new” added a requirement not provided for in the regulation. In support of this submission, he noted that “the definition of a ‘claim to benefit’ as provided for in Regulation 2(1) of the Social Security (Claims and Payments) Regulations 1987 includes “an application for a revision under section 9 of the Social Security Act 1998 or a supersession under section 10 of that Act of a decision for the purpose of obtaining any increase of benefit, but does not include any other application for a revision or a supersession of a

decision”.” The second ground of appeal was that the FTT had failed to provide adequate reasons for its decision.

43. As for the first ground, and entirely unbeknownst to Mr Bradley – and for reasons that will become apparent, no criticism whatsoever should be directed towards him – he has inadvertently misquoted regulation 2(1)(c) of the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968). The true text of limb (c) of the definition of “claim for benefit” as it stood at the material time and as it now stands reads as follows:

“claim for benefit” includes–

...

(c) an application for a revision under section 9 of the Social Security Act 1998 or a supersession under section 10 of that Act of a decision for the purpose of obtaining any increase of benefit in respect of a child or adult dependant under the Social Security Act 1975 or an increase in disablement benefit under section 60 (special hardship), 61 (constant attendance), 62 (hospital treatment allowance) or 63 (exceptionally severe disablement) of the Social Security Act 1975, but does not include any other application for a revision or a supersession of a decision;

44. The text that is underlined in the extract above (and inadvertently missing from Mr Bradley’s version) was inserted by regulation 9 of the Social Security (Miscellaneous Provisions) Amendment Regulations 1992 (SI 1992/247) with effect from March 9, 1992. Its effect was to limit the scope of claims for increases to benefit within the definition of a “claim for benefit” to claims for adult and child dependency increases and certain increases relevant to industrial disablement benefit. It follows that the definition does not include an application for an increase by way of a premium in a means-tested benefit (such as the severe disability premium) to be added to an award,
45. The reason for Mr Bradley’s inadvertent misquoting is as follows. His grounds of appeal, making the point about regulation 2(1)(c), were drafted in March 2021. He presumably (and not unreasonably) relied upon the text of regulation 2(1)(c) as found at that time on the legislation.gov.uk website. However, as Mrs Gratrex (one of the DWP officials acting for the Secretary of State in the instant appeal) reports, the official website was misleading. She explains thus: “Unfortunately at some point in 2020 when converting from pdf to the online published version, the legislation.gov.uk site omitted the 1992 changes ... The site has now been corrected to restore the 1992 amendments.”
46. It is with some embarrassment – given that I am General Editor of the annotated *Social Security Legislation* series – that I have noted that something has also gone amiss with the text of regulation 2(1)(c) reproduced in Volume III of that series at p.384 of the 2022/23 edition. This is, however, a different type of error. That text includes the 1992 amendments, but appears to duplicate an amendment to the regulation made in 1999. It will be corrected in the next edition.
47. The short point underpinning all this is that the central premise of Mr Bradley’s argument on the definition of a “claim for benefit” in regulation 2(1)(c) of the 1987 Regulations does not assist him. On 5 December 2019 he was not making a claim on the Appellant’s behalf for one of the designated increases of benefit

encompassed within regulation 2(1)(c). Moreover, that definition “does not include any other application for a revision or a supersession of a decision” within its scope.

48. That being so, the request on 5 December 2019 to amend the Appellant’s ESA claim was not itself a claim for benefit for the purposes of regulation 83(5)(a), so shutting off this route to backdating entitlement to housing benefit.
49. As to the second ground of appeal, I accept that the FTT’s reasoning is somewhat truncated. However, if it was inadequate, it was not material to the outcome of the appeal.

Is there still an undecided claim for housing benefit?

50. The Appellant’s representative raises a new point in the course of the reply to the Respondents’ written responses. Reference is made to a form included in the FTT appeal bundle headed “Claim for Housing Benefit/Council Tax Reduction Scheme”, which was signed and dated by the Appellant on 22 October 2018. Mr Bradley further points to a decision letter from the Council (dated a week later on 29 October 2018) regarding the Appellant’s entitlement to Council Tax Reduction. He argues that this meant, at least by inference, that there was an outstanding and still undetermined claim for housing benefit. It is further submitted that a decision on the housing benefit claim should now be determined (obviously after the Severe Disability Gateway opened on 16 January 2019) which would allow for housing benefit to be paid from that date.
51. The Council’s response is that the form in question dated 22 October 2018 was not a claim for housing benefit but rather a notification of the Appellant’s new circumstances for the purposes of her existing Council Tax Reduction claim.
52. The Council’s arguments are compelling, not least as the Appellant had ticked the “Change in Circumstances” box rather than the “New Claim” box on the form. She had also asked for her claim to be effective from the date her Council Tax Reduction had been suspended. In addition, the Appellant gave no details on the form of either the rental liability or an account to which benefit might be paid, in both cases being information which would have been only relevant to a housing benefit claim. These omissions were entirely consistent with the form being only concerned with Council Tax Reduction.
53. Moreover, it is trite law that whether a document amounts to a claim is a question of substance not form. As Arden LJ (as she then was) ruled, “it is now well-established that the meaning of documents should be ascertained in the light of the relevant surrounding facts (*Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896) (see *Novitskaya v London Borough of Brent (SSWP intervening)* [2009] EWCA Civ 1260; [2010] AACR 6 at [19]). On any sensible and fair construction the form in question was a notification of a change of circumstances for the purposes of an existing claim to Council Tax Reduction and not a fresh claim for housing benefit,
54. Finally, and in any event, this is all academic. The Upper Tribunal has no jurisdiction in this matter. The status of the claim form in question was not in issue before the FTT and equally is not a live issue in the Upper Tribunal appeal.

**A final observation**

55. It is not difficult to feel considerable sympathy for the Appellant's predicament in this case. The only reason that she was unable to make a claim for housing benefit in January 2019 at the time the Severe Disability Gateway was introduced was because at that point she did not have an extant award of the severe disability premium in her ESA award. This was so notwithstanding the facts that (a) she had previously had the benefit of such an award; and (b) her entitlement to the premium was both reinstated and backdated following her successful PIP appeal to a tribunal in December 2019. However, on these facts regulation 83 of the Housing Benefit Regulations 2006 limits backdating of housing benefit to one month on any claim made after the advent of the Severe Disability Gateway. There appears to be no other transitional provision (e.g. in the TP Regulations) that can be deployed to accommodate such a case. It is unclear whether the Appellant's circumstances are such that a claim to the DWP for an *ex gratia* payment would be considered, but such matters in any event lie outside the Upper Tribunal's jurisdiction.

**Conclusion**

56. I therefore conclude that the decision of the First-tier Tribunal involves no error of law. I therefore dismiss the appeal (Tribunals, Courts and Enforcement Act 2007, section 11). My decision is also as set out above.

**Nicholas Wikeley**  
**Judge of the Upper Tribunal**

**Approved for issue on: 30 January 2023**