Decision No: C1/25-26(TC)

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

CHILD TAX CREDITS

Application by the claimant for leave to appeal
and appeal to a Social Security Commissioner
on a question of law from a Tribunal's decision
dated 25 September 2024

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I granted leave to appeal on 9 December 2025 subsequent to an oral hearing on 12 November 2025. The hearing was attended in person by the claimant (with the assistance of an interpreter), his representative Mr McCloskey and (remotely) by Mr Eland on behalf of the Respondent, HMRC.

2. In accordance with the power conferred on me by regulation 11(3) of the Social Security Commissioners (Procedure) Regulations (NI) 1999 and with the consent of the parties, having granted leave to appeal, I treat and determine this application as an appeal. Neither party has requested a further oral hearing in respect of the substantive appeal and the salient points in the appeal were explored in some detail during the hearing on 12 November 2025.

3. The decision of the Appeal Tribunal dated 25 September 2024 is not in error of law. The claimant's appeal is therefore unsuccessful. While I appreciate this will be disappointing to the claimant, I have set out the reasons for my decision below.

Background

4. The facts of the case are agreed and are helpfully set out at paragraphs 5 to 14 of Mr McCloskey's skeleton argument. In summary, the claimant relocated to Northern Ireland from Jordan in 2016 under the Syrian Vulnerable Persons Resettlement Scheme.

5. He was awarded tax credits from 13 October 2016. He applied for Disability Living Allowance (DLA) for his son A and was awarded the highest rate of care and lowest rate mobility on 11 November 2016. On renewal, he was again awarded the highest rate of care and lowest rate mobility from 28 August 2021 to 27 August 2026.

6. Following advice that he should have been receiving a severely disabled element (SDE) in his child tax credit (CTC) award, the claimant contacted HMRC on 26 August 2022 to claim this element.

7. On 27 October 2022 HMRC decided payment of the severely disabled element should be backdated to 25 July 2022. On 16 December 2022 the claimant appealed the decision to limit the backdated payment of the award of the severely disabled element to this date.

Proceedings before the Appeal Tribunal

8. On 25 September 2024, subsequent to an oral hearing at which the claimant was not present but which his representative attended, a Tribunal disallowed the appeal. The claimant requested a statement of reasons on 11 October 2024, and this was issued on 31 October 2024.

9. An application for leave to appeal to the Legally Qualified Member (LQM) was received on 7 January 2025. This application was late and reasons were provided for lateness. On 25 February 2025 the LQM refused leave to appeal. This was issued on 26 February 2025.

Proceedings before the Social Security Commissioner

10. On 5 March 2025 an in-time application for leave to appeal was submitted to the Office of the Social Security Commissioners.

11. The claimant was represented in the application by Law Centre NI. On 6 March 2025 observations on the application for leave to appeal were requested from the Respondent, HMRC. In written observations dated 2 May 2025, Mr Eland, for HMRC, submitted that there was no error of law in the decision of the Appeal Tribunal and that HMRC did not support the application.

12. Written observations were shared with Mr McCloskey of the Law Centre on 6 May 2025. Further submissions were received from the Law Centre on behalf of the claimant on 3 June 2025.

13. On 5 September I directed an oral hearing of the application which was heard on 12 November 2025. Skeleton arguments were directed and supplied by both parties. I thank both representatives for their detailed oral and written submissions.

14. On 9 December 2025 I granted leave to appeal, accepted special reasons for the late submission of the application for leave to appeal to the LQM and issued further directions requesting clarification of two matters raised at the leave hearing. Firstly, whether there was any further evidence available in relation to the supersession request made by the claimant in February 2019, which had recently come to the attention of Mr McCloskey and, secondly, HMRC was to clarify the date it was in possession of the information contained on page 177 of the hearing bundle.

15. A response was received from the claimant's representative on 9 December 2025 and from the representative from HMRC on 10 March 2026.

Errors of law

16. A decision of an Appeal Tribunal may only be set aside by a Social Security Commissioner on the basis that it is in error of law. The Court of Appeal for England and Wales in *R(Iran) v Secretary of State for the Home Department* ([2005] EWCA Civ 982) outlines examples of

commonly encountered errors of law in terms that can apply equally to appellate legal tribunals. As set out at paragraph 30 of *R(I) 2/06* these are:

> "(i) making perverse or irrational findings on a matter or matters that were material to the outcome ('material matters');
>
> (ii) failing to give reasons or any adequate reasons for findings on material matters;
>
> (iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters;
>
> (iv) giving weight to immaterial matters;
>
> (v) making a material misdirection of law on any material matter;
>
> (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of proceedings; …
>
> Each of these grounds for detecting any error of law contains the word 'material' (or 'immaterial'). Errors of law of which it can be said that they would have made no difference to the outcome do not matter."

Background to the Child Tax Credits system

17. CTC is a means tested payment for those responsible for children and qualifying young persons, administered by HMRC. Adjudication on claims for tax credit is governed by the Tax Credits Act 2002 (the 2002 Act) and a number of sets of regulations including the Tax Credits (Claims and Notifications) Regulations 2002 (the C and N Regulations). A claim for tax credit is made under section 3(1) of the 2002 Act. Section 5 limits an award to a maximum of one tax year, and then a new claim must be made for each subsequent tax year.

18. HMRC makes an initial decision on the application under section 14 of the 2002 Act, as to whether or not to award tax credit and, if so, at what rate. In this way, as pointed out by Mr Eland at hearing, HMRC make a decision to award tax credits which is prospective, in other words, it is a "best guess" on entitlement, with the actual entitlement decision being made towards the end of the tax year. The entitlement decision is therefore retrospective in nature. Tax credits are awarded on an annual basis and will run to 5 April of the following year. They are based on a sequence of award and entitlement decisions.

Legislative Framework

19. In order to obtain CTC a claim must first be made. Section 3 of the Tax Credits Act 2002 deals with the making of claims for tax credits. Subsection (1) provides that entitlement to a tax credit for the whole or part of a tax year is dependent on the making of a claim for it, and subsection (3) specifies that it is the claimant (or claimants in the case of a couple) who must make the claim:

> **3 Claims**
> (*1) Entitlement to a tax credit for the whole or part of a tax year is dependent on the making of a claim for it.*
> *2) Where the Board—*
> *(a) decide under section 14 not to make an award of a tax credit on a claim, or*
> *(b) decide under section 16 to terminate an award of a tax credit made on a claim,*
> *(subject to any appeal) any entitlement, or subsequent entitlement, to the tax credit for any part of the same tax year is dependent on the making of a new claim.*

(3) A claim for a tax credit may be made—
(a) jointly by the members of a couple both of whom are aged at least sixteen and are in the United Kingdom, or
(b) by a person who is aged at least sixteen and is in the United Kingdom but is not entitled to make a claim under paragraph (a) (jointly with another).

20. The Sweet and Maxwell commentary at 1.294 of Volume IV 2025/26 (the volumes) notes this provision adopts and adapts the requirements from the Social Security Administration Act 1992 that there can be no entitlement to tax credit without a claim. This is reinforced in subsection 2. It also notes subsection 1 requires a claim to be made before any award can be made under section 14 (para 1.295). Put another way, if no valid claim is made then HMRC cannot make an award. The decision in *CSTC/724/2006* confirms an individual cannot acquire entitlement to a tax credit if he or she did not claim it.

21. Having looked at the significance of making the claim in section 3, section 6 deals with "Notifications of changes of circumstances" i.e. changes which occur during the period of an award.

"***Notifications of changes of circumstances***

6*(1) Regulations may provide that any change of circumstances of a prescribed description which may increase the maximum rate at which a person or persons may be entitled to a tax credit is to do so only* ***if notification of it has been given****. [my emphasis].*
2) Regulations under subsection (1) may—
(a) provide for notification of a change of circumstances given in prescribed circumstances to be treated as having been given on a prescribed date earlier or later than that on which it is given,
(b) provide that, in prescribed circumstances, a notification of a change of circumstances may be given for a period wholly or partly after the date on which it is given, and
(c) provide that, in prescribed circumstances, an amendment of an award of a tax credit in consequence of a notification of a change of circumstances may be made subject to the condition that the requirements for entitlement to the amended amount of the tax credit are satisfied at a prescribed time.
(3) Regulations may require that, where a person has or persons have claimed a tax credit, notification is to be given if there is a change of circumstances of a prescribed description which may decrease the rate at which he is or they are entitled to the tax credit or mean that he ceases or they cease to be entitled to the tax credit.
4) Regulations under this section may—
(a) require a notification to be given in a prescribed manner and within a prescribed time, (b) specify the person or persons by whom a notification may be, or is to be, given, and (c) provide that, in prescribed circumstances, one person may act for another in giving a notification

22. As referred to in Mr Eland's submission, subject to the notification requirement, a change which increases the maximum rate is one which results in the conditions for any of the elements specified in sections 9 or 13 becoming met. The present case concerns the severe disability element of CTC which appears at section 9(5)(c).

23. The regulations made pursuant to section 6 appear at Part 3 of the Tax Credits (Claims and Notifications) Regulations 2002. Regulation 20 provides as follows:

> *"**Increases of maximum rate of entitlement to a tax credit as a result of changes of circumstances to be dependent on notification***
>
> *20.—(1) Any change of circumstances of a description prescribed by paragraph (2) which may increase the maximum rate at which a person or persons may be entitled to tax credit is to do so only if notification of it has been given in accordance with this Part.*
>
> *(2) The description of changes of circumstances prescribed by this paragraph are changes of circumstances other than those in consequence of which the Board have given notice of a decision under section 16(1) of the Act in accordance with section 23 of the Act."*

24. The effect of this provision is that increases in the maximum rate of entitlement to a tax credit as a result of a relevant change of circumstances are *dependent upon notification*. As noted at para 2.395 (Volume IV) of the Sweet and Maxwell commentary the normal rule is that changes which have the effect of increasing entitlement are backdated for a maximum of one month from the date of notification (regulation 25). The wide scope of this provision (changes of circumstances) has been highlighted by Mr McCloskey and referred to in *LV v HMRC (TC)* [2010] UKUT 483 (AAC) where Upper Tribunal Judge Levenson commented that becoming disabled, receiving a diagnosis, claiming and being awarded DLA can each be regarded as a change of circumstances.

25. The final part of paragraph 20(2) provides an exception from the notification requirement where HMRC is already aware of a change having occurred and, prior to notification by the claimant, has reacted to that change by way of a decision given under section 16(1) which has amended the award. Mr Eland submits that is not the scenario in the present case and Mr McCloskey has not sought to argue this point.

26. Regulation 22 is headed *"**Manner in which notification is to be given"*** and provides:

> *22.—(1) This regulation prescribes the manner in which a notification is to be given.*
> *(2) A notification must be given to [a relevant authority at an appropriate office].*
> *(3) A notification may be given orally or in writing.*
> *(4) At any time after a notification has been given but before the Board have made a decision under section 15(1) or 16(1) of the Act in consequence of the notification, the person or persons by whom the notification was given may amend the notification by giving notice orally or in writing to [a relevant authority at an appropriate office].*

27. Regulation 2 of the C and N Regulations which deals with interpretation provides *"relevant authority"* includes *"the Department of Communities in Northern Ireland"* and *"appropriate office"* means any office specified in writing by *[HMRC]*. The Department of Communities in Northern Ireland is so specified. This is noted in the HMRC official manual included in the claimant's skeleton argument at paragraph 20. That manual is published online. For claimants living in Northern Ireland, notice of a change of circumstances given to HMRC *or* the Department of Communities will meet this requirement. This issue is not in dispute. It is also not in dispute that the claimant was someone who could provide notification by virtue of regulation 23 of the C and N Regulations.

28. Regulation 25 of the C and N Regulations deals with the date of notification.

> ***Date of notification—cases where change of circumstances which may increase the maximum rate***

25.—(1) Where a notification of a change of circumstances which may increase the maximum rate at which a person or persons may be entitled to tax credit is given in the circumstances prescribed by paragraph (2), that notification is to be treated as having been given on the date specified by paragraph (3).

(2) The circumstances prescribed by this paragraph are where notification is given to [a relevant authority at an appropriate office] of a change of circumstances which has occurred other than in the circumstances prescribed by [regulations] 26(2) [and 26A(2)].

(3) The date specified by this paragraph is— (a) the date falling [one month] before the notification date; or
(b) if later, the date of the change of circumstances.

29. This sets out what HMRC refer to as the standard rule. Where a change in circumstances leads to an increase in the claimant's entitlement to tax credits, a change can only be backdated for up to one month before the date of notification.

30. Regulation 26A makes provision for notification of changes relating to the disability and severe disability element of CTC.

Date of notification - disability element where child is disabled or severely disabled

26A.—(1) In the circumstances prescribed by paragraph (2), the notification of a change in circumstances is to be treated as having been given on the date prescribed by paragraph (3).
(2) The circumstances prescribed by this paragraph are where–
(a) a notification is given of a change of circumstances in respect of a claim to child tax credit which results in the Board making an award of the disability element or the severe disability element of child tax credit (or both of those elements) in favour of a person or persons, in respect of a child; and
(b) the notification date is within [one month] of the date that a claim for a disability living allowance [or personal independence payment] [or armed forces independence payment] in respect of the child is determined in favour of those persons (or one of them).
(3) The date prescribed by this paragraph is the latest of the following:
(a) the first date in respect of which the disability living allowance or personal independence payment or armed forces independence payment was payable;
(b) the date falling one month before the claim for the disability living allowance or personal independence payment or armed forces independence payment was made;
(c) the date the claim for child tax credit was made (or treated as made under [regulations 7 and 7A]).]

31. In the commentary on this section in the Volume IV at paragraph 2.409 it states a claimant therefore needs to make multiple disclosures when claiming for a disabled child to ensure timely and accurate payment of tax credit.

32. Notification date is defined in regulation 19(a) of the C and N Regulations.

19.- In this Part "the notification date", in relation to a notification, means— (a) the date on which the notification is given to [a relevant authority at an appropriate office];

33. The term notification itself is not defined in the legislation.

What is agreed and what is in issue in the appeal

34. There is agreement by the parties on a number of issues including:

(i) the facts of the case;

(ii) that the claimant was entitled to notify DfC, uniquely in the context of Northern Ireland, as a relevant authority at an appropriate office; and

(iii) that the claimant, given his son had been awarded the highest rate of care and lowest rate of mobility of DLA, was entitled to the SDE of CTC, *subject* to the notification requirement.

35. The core issue in this appeal is therefore whether the claimant *notified* HMRC (by notifying DfC) of this information in accordance with the requirements of the legislation. The date of notification is significant as it impacts on how far the award of the SDE of CTC can be backdated in this case.

The submissions of the parties

The claimant

36. The claimant's submissions are set out initially in the grounds of appeal document and subsequently, with a few amendments (mainly, for the purposes of this appeal, relating to the terms disclosure and notification) in the skeleton argument. At oral hearing Mr McCloskey confirmed there was agreement between the parties on the facts and on entitlement to the SDE of CTC (subject to the notification requirement) and that the key issue in the appeal was the notification question. He also identified two additional issues, firstly, he pointed out new information had come to light that the claimant had sought a supersession in February 2019 and this could potentially constitute notification. He indicated HMRC had indicated that they might accept that this would have been adequate notification.

37. Mr McCloskey submitted he had been informed relatively recently that there was a telephone call between the claimant and DLA branch regarding a supersession request in February 2019 and this would be his "fall-back position". He also indicated there was what he referred to as a "blank spot" in the information available to him in that that he had not been able to obtain clarification from HMRC of the administrative systems in place regarding contact between DLA branch and HMRC in terms of what happens if a claimant does make "disclosure".

38. Essentially Mr McCloskey adopted a dual approach in terms of his submissions. Firstly, he argued the claimant making the claim for DLA on behalf of his son was tantamount to notification for the purposes of tax credits and that it constituted a notification of change of circumstances (albeit HMRC argued this was notification of the *claim only not* the outcome, in this case the award). Mr McCloskey submitted to require the claimant to notify DLA branch of the outcome of the claim was irrational in these circumstances as it would mean notifying DLA branch of something of which it was already aware and which it had in fact decided. He argued the making of the claim for DLA *per se* is sufficient notification and that it is both unnecessary and irrational to require the claimant to further notify DLA branch of the *outcome* of the claim, not least because it made the decision. This is in essence the claimant's main argument.

39. Mr McCloskey referred to Section 6 of the Tax Credits Act 2002 which relates to notifications of changes of circumstances and the regulations which flow from this, in particular, regulation 20 of the C and N Regulations referred to above at paragraph 23

40. He outlines the key decision on which he seeks to rely is *LV v HMRC (TC)* [2010] UKUT 483 (AAC) in particular paragraph 9 which states;

> "9. *It is clear that becoming disabled, receiving a diagnosis, claiming DLA and being awarded DLA, can each be regarded as a change of circumstances and that the award of DLA in this case could increase the maximum rate…."*

41. Mr McCloskey also refers to paragraphs 2.394-5 of the Sweet and Maxwell Social Security Legislation, Volume IV 2025/26 commentary on regulation 20 above, which notes the scope of this provision is potentially very wide. He argues when the claimant made an application for DLA in respect of his son this also constituted a notification of a change of circumstances for the purpose of tax credits and that regulation 20 above is satisfied as, as a result of the claim for DLA, his entitlement *may* be increased. He submits notification is not defined and making a claim for DLA, which may impact on the entitlement to tax credits, constitutes notification.

42. The claimant's representative submits regulation 22 of the Tax Credits (Claims and Notifications) Regulations 2002 sets out the manner in which notification is to be given to a "relevant authority at an appropriate office". He argues this notification requirement is satisfied by providing notification to DfC without a separate notification to HMRC. He notes this is this is the case only in the context of the unique legislative landscape in Northern Ireland. Mr Eland confirmed at hearing HMRC do not dispute that in this jurisdiction notification for these purposes may be made to DfC (as well as HMRC), but he disputes notification was actually made in this case.

43. Mr McCloskey also submits *LV* is authority for the proposition that the application for DLA to DfC can be treated as an application to a relevant authority at an appropriate office and separate notification to HMRC is not required. He argues a claim for DLA constitutes a relevant change of circumstances which may lead to a change in entitlement for the purposes of tax credits.

44. The claimant's representative argues once DLA branch notifies the claimant of the outcome of the claim on behalf of the claimant's son (which was successful) it would be entirely irrational for the claimant to notify DLA branch of the entitlement to DLA. This is a situation unique to Northern Ireland where DfC sit in the position of HMRC for notification purposes. He submits in these circumstances, the claimant has made notification *by virtue of making the claim itself.*

45. Essentially Mr McCloskey argues the claimant's application for DLA on behalf of his son in this case is both (1) an actual application (for DLA) and (2) notification of the application for the purposes of CTC. If this is accepted, he submits the notification occurred at a much earlier date than that posited by HMRC, and the claimant is entitled to the backdated SDE of CTC from this earlier notification date. Or in other words, the claimant has complied with the notification requirements in respect of CTC simply by virtue of making the claim for DLA (in respect of his son) when the claim is successful i.e. when DfC have made the (in this case successful) determination.

46. Mr McCloskey's view is that notification of claim can be treated as notification of outcome where the same office determines both, on the date of determination. He places some reliance on regulation 26A(2) of the Cand N Regulations which provides;

Date of notification - disability element where child is disabled or severely disabled

26A.*—(1) In the circumstances prescribed by paragraph (2), the notification of a change in circumstances is to be treated as having been given on the date prescribed by paragraph (3).*
(2) The circumstances prescribed by this paragraph are where–
(a) a notification is given of a change of circumstances in respect of a claim to child tax credit which results in the Board making an award of the disability element ***[****of that tax credit in favour of a person or persons, in respect of a child where that child is disabled or severely disabled;****]*** *and*
(b) the notification date is within ***[****one month****]*** *of the date that a claim for a* ***[****disability benefit****]*** ***[****or personal independence payment****]*** ***[****or armed forces independence payment****]*** *in respect of the child is determined in favour of those persons (or one of them).*

47. Mr McCloskey submits it should be read into this provision that where a claim is determined by the same office it should be accepted, the claim (once successful) *is* the notification. Otherwise, the claimant would be penalised for failing to tell DfC that DfC had made the award.

48. In the alternative it is argued regulation 25 of the C and N Regulations applies. This provides;

Date of notification—cases where change of circumstances which may increase the maximum rate
25.*—(1) Where a notification of a change of circumstances which may increase the maximum rate at which a person or persons may be entitled to tax credit is given in the circumstances prescribed by paragraph (2), that notification is to be treated as having been given on the date specified by paragraph (3).*
(2) The circumstances prescribed by this paragraph are where notification is given to ***[****a relevant authority at an appropriate office****]*** *of a change of circumstances which has occurred other than in the circumstances prescribed by* ***[****regulations****]*** *26(2)* ***[****and 26A(2)****]****.*
(3) The date specified by this paragraph is—
(a)the date falling ***[****one month****]*** *before the notification date; or*
(b)if later, the date of the change of circumstances.

49. It is submitted this legislation also refers (like regulation 20 above) to a change of circumstances which *may* increase entitlement and in this case a change in the award (or rate) of DLA in respect of the claimant's son may increase entitlement to Tax Credits specifically by the addition of the SDE. It is argued in the event regulation 26A(2) does not apply (i.e. notification is the date of the claim for DLA) then this provision has the effect of *treating* the date of notification as the date of determination (of the DLA claim). In other words, the date of notification is the date on which DLA was awarded and that paragraph 3(b) applies.

50. Mr McCloskey outlined his fall back position was that information recently made available to him indicated the claimant had made a supersession request regarding the DLA award in February 2019 and on that basis it was argued in the event the initial claim and subsequent entitlement decision were insufficient to constitute notification, then the supersession request did constitute sufficient notification. As Mr McCloskey was not yet in a position to fully clarify this issue, I issued further directions after the leave hearing on 9 December 2025.

51. Mr McCloskey submitted the position envisaged by HMRC resulted in a peculiar scenario where a claimant was required to notify DLA branch of an award of DLA. He argued in the absence of specific evidence from HMRC (apart from reference to some data matching) it was difficult not to conclude there was not a system in place to deal with the legislative provisions in respect of notification. He pointed to section 58 of the Tax Credits Act 2002 which deals with administrative arrangements specifically 58(1)(c) which "*permit or require a claim or notification relating to a tax credit, child benefit or guardians allowance to be made or given to a relevant authority.".*

52. Mr McCloskey confirmed this was not material to the grounds of appeal in this case but was more of contextual relevance in terms of setting the scene. He also accepted it was not included in the skeleton argument. As such HMRC had limited opportunity to consider and respond.

53. In terms of error of law, which is the basis of the Social Security Commissioner's jurisdiction, Mr McCloskey argued the Appeal Tribunal fell into error in failing to address the notification point (relying on *3/05 DLA),* albeit the relevant legislation was not included in the bundle and the point does not appear to have been specifically argued before the Tribunal.

54. For the sake of completeness. I am not required to outline the submissions on lateness given special reasons have already been accepted, in the particular circumstances of this case, when leave to appeal was granted on 9 December 2025.

The Respondent

55. Mr Eland for HMRC initially pointed out the jurisdiction of the Appeal Tribunal is limited to the decision under appeal before it which in this case is for the year 2022/23. If action was required by the respondent prior to this date the matter would need to be referred back to HMRC.

56. It was agreed notification to DfC (*if sufficient*) was acceptable in this jurisdiction. The facts were also agreed. Mr Eland set out the respondent's position as follows. Firstly, section 3 of the Tax Credits Act (para 19 above) provides there can be no entitlement without a claim. Secondly, Tax Credit awards are annual in nature and only run to 5 April in the following year. Thirdly the HMRC decision to award Tax Credits is prospective, based on a "best guess". The entitlement decision made towards the end of the tax year is retrospective. Thus, there is a sequence of award and entitlement decisions which are prospective and retrospective respectively.

57. It was submitted in oral argument that section 6 of the Tax Credits Act 2002 (para 21 above) provides a change of circumstances may increase the maximum rate of TC but *only if notification* is made. This, Mr Eland argues, requires a claimant to take action where there is a change and notification must come from the claimant. The responsibility for notification therefore, rests squarely with the claimant. Mr Eland continues that the effect of regulation 6 is that entitlement flows from the date of notification of the change of circumstances. Consequently, if the date of notification of the change of circumstances is changed, this axiomatically changes the amount of tax credits due.

58. Mr Eland argues regulation 20 (paragraph 23 above) imposes a notification requirement on claimants and the basic requirement is that there will be no increase in TC without notification. Regulation 20(2) provides an exception but only applies where HMRC is already aware of and has made a decision under section 16(1) of the 2002 Act. This provides relief from the notification requirement outlined in regulation 20(1) of the C and N Regulations. He argues this exception does not apply in this case and this was not disputed by Mr McCloskey. He accepts regulation 2 of

these regulations which deals with interpretation of the definition of "relevant authority" explicitly includes DfC in Northern Ireland. This is confirmed in the publicly available tax credits manual.

59. Mr Eland confirms regulation 25 (see paragraph 28 above) sets out the standard rule where notification is treated as having been given one month before the notification date (or if later the date of the change of circumstances) if the conditions are met. The practical effect of this is that a claimant should provide notification of a change of circumstances within one month to avoid a negative impact in terms of his or her TC.

60. He submits regulation 26A constitutes a variation to the standard rule in the case of CTC but this needs to lead to HMRC making an award of the disability element of CTC.

61. Mr Eland argues the decision in *LV* should be distinguished on the basis it is only relevant to an award of DLA and it is in the context of DLA, (not CTC) that notification is considered. He submits the mere fact DfC is aware of the award of DLA is insufficient, what is required is action by the claimant.

62. Mr Eland contends *AG v HMRC* provides authority for two points:

(i) a claimant has to do something to make a notification and
(ii) a claimant cannot make assumptions re notifications between Departments

63. He concedes in the context of Northern Ireland notification to DfC will suffice.

64. Mr Eland also highlights the comments of Upper Tribunal Judge Ward in *AG* at paragraph 39 specifically that *"notification must indicate in general terms the purpose for which the notification is made*". In this case he argues Mr A's claim for DLA in respect of his son was not overtly for the purpose of increasing tax credits. Put another way, it is proposed it is not enough to share information the *purpose of sharing the information must be made clear* and in this case the claimant did not make clear the relevance of the information to his TC claim.

65. Mr Eland maintains *KI v HMRC (TC)* [2023] UKUT 212 (AAC). doubled down on notification by the claimant in that it was considered the claimant was required to actively do something, notification could not be passive and that this decision approved the obligation on the claimant to make the notification considered in *AG*. Mr Eland proposed "active notification" was required from the claimant and, in the absence of effective notification, there can be no official error. In addition, Mr Eland submits if the claimant has not actively notified HMRC (or in this jurisdiction DfC) they cannot be *treated* as having made the notification on an earlier date and HMRC has not made a decision within the meaning of regulation 20 of the C and N Regulations. As such he maintains the legislation permits backdating for a period of one month (regulation 25) as the exception in regulation 26A does not apply.

66. Mr Eland clarified the lines of communication between DfC and HMRC by stating an award of DLA may generate a "ping", but the system was not infallible. He argues the claimant's argument effectively relieves him of the obligation to make notification and has no basis in the legislation. Ultimately Mr Eland concludes the Appeal Tribunal was not in error of law if it failed to consider an unsuccessful argument not raised before it which does not work.

67. In response to Mr Eland's submissions Mr McCloskey accepts regulation 20 must be read in its entirety but submits 20(2) refers to specific changes in circumstances, the circumstances in this case are covered by 20(1) and that this is why changes of circumstances is such a wide provision. He disputes the logical conclusion of the claimant's argument effectively relieves claimants of the

burden of notification and submits the claimant has notified DfC in accordance with the legislation, in this case regulation 26A or in the alternative, regulation 25 of the C and N Regulations allows backdating to occur.

68. Mr McCloskey proposes the majority of case law is not directly relevant, that *AG* can be distinguished on the facts as essentially dealing with a credibility issue and whether the claimed disclosure occurred. He also suggests *AG* is incorrectly decided, its comments on notification are obiter and the requirement for the indication of the purpose for which the notification is made puts a gloss on the legislation. He proposes to accept HMRC's argument would result in absurdity.

69. In a further written submission dated 9 December 2025, Mr McCloskey refers to a supersession request by the claimant on 8 February 2019 and a subsequent mandatory reconsideration request on 17 April 2019. He contends this information is relevant to the claimant's "fall-back position" that there was a communication to DLA of the DLA award when the supersession request was made and again when the mandatory reconsideration request was made. He maintains three core points firstly, the claimant put the Tribunal on notice that his appeal related to legal entitlement to full backdating of the SDE from the date of the DLA award, secondly that the claimant satisfied the notification requirement when he applied for and was awarded DLA and thirdly it would be perverse to require the claimant to additionally notify DLA of the DLA award.

70. In his further written submission dated 10 March 2026 Mr Eland states it is not possible to say when the screen prints which appear in the bundle were produced but they were likely produced for the purposes of HMRC's response to the appeal which was prepared on 9 February 2023. He adds it would have been routine for the original officer dealing with the contact from the claimant in August 2022 to have checked the other benefit position on "Access to DWP data" (ADD) before taking action in the case. He considers it is likely that officer(s) saw the information on the screen prints (with the exception of the April 2023 entry which likely reflects an annual uprating increase) and that any HMRC officer dealing with the case could have accessed ADD at any time provided there was a business reason for doing so. He contends this does not relive a clamant from their obligation notify the award to the relevant authority. In terms of the claimant's contact with DfC on 17 April 2019 this related to a review of DLA but the record of the call did not indicate "notice was also being made for the purpose of obtaining the child disability element of tax credits". As such HMRC's position is that the notification requirement in the regulations was not met and the respondent continues to rely on the comments of Upper Tribunal Judge Ward in *AG v HMRC* [2013] UKUT 530 (AAC) that for notification to be sufficient it "must indicate, at least in general terms, and whether expressly or impliedly" that it is being made for the purposes of the notification requirement on tax credits.

Analysis

The common ground

71. I begin by noting there is significant common ground in this appeal, and I thank both representatives for assisting in narrowing the issues in this complex case. The facts are agreed, the claimant's entitlement to SDE of CTC is agreed (subject to the notification requirements) and it is not disputed notification, in this jurisdiction (uniquely in the United Kingdom) can be made to DfC as well as to HMRC. The core issue in this appeal is notification, specifically whether and when notification was made by the claimant in accordance with the requirements of the legislation. This is significant as it impacts the date from which the SDE of CTC can be backdated to.

The jurisdiction of the Commissioners

72. I also remind myself of the guidance of Kerr LCJ (as he then was, delivering the judgement of the Northern Ireland Court of Appeal) on what constitutes an error of law as is stated in paragraph 29 of decision *R3/04(DLA) (Quinn v Department for Social Development* [2004] NICA22*):*

> "…it is of course to be remembered that a view of the facts reached by a Tribunal can only be interfered with by the Court of Appeal in limited and well-defined circumstances. Carswell LCJ described those circumstances in *Chief Constable of the RUC v Sergeant A* [2000] NI 261 at 273f as follows: -
>
> *'A tribunal is entitled to draw its own inferences and reach its own conclusions, and however profoundly the appellate court may disagree with its view of the facts it will not upset its conclusions unless—*
>
> *(a) there is no or no sufficient evidence to found them, which may occur when the inference or conclusion is based not on any facts but on speculation by the tribunal (Fire Brigades Union v Fraser [1998] IRLR 697 at 699, per Lord Sutherland); or*
>
> *(b) the primary facts do not justify the inference or conclusion drawn but lead irresistibly to the opposite conclusion, so that the conclusion reached may be regarded as perverse: Edwards (Inspector of Taxes) v Bairstow [1956] AC 14, per Viscount Simonds at 29 and Lord Radcliffe at 36.'"*

73. These considerations can be equally applied to Appellate Tribunals.

The significance of LV

74. I will deal with the points raised by the claimant's representative seriatim.

75. Firstly, it is argued the making of a claim for DLA *in itself* constitutes notification in the context of an award of the SDE of CTC. Mr McCloskey argues this comprises notification of a change of circumstances. He relies on the wide definition given to change of circumstances by Upper Tribunal Judge Levenson in *LV v HMRC (TC)* [2010] UKUT 483 (AAC) specifically paragraph 9 "*becoming disabled, receiving a diagnosis, claiming DLA and being awarded DLA, can each be regarded as a change of circumstances…".* This is acknowledged in the Volumes to be a very wide definition.

76. The claimant's representative also submits *LV* is authority for the proposition that the application for DLA to DfC can be treated as an application to a relevant authority at an appropriate office and separate notification to HMRC is not required.

77. I observe firstly, even if the application for DLA is regarded as coming within this wide, definition of change of circumstances there must still be *notification* of the change of circumstances from the claimant and while *LV* may provide assistance on what may constitute a change of circumstances, it is less helpful in terms of what constitutes notification. This is because the decision considered an earlier version of regulation 26A which required a double notification from the claimant i.e. notification firstly that DLA had been claimed and secondly that DLA had been awarded. In *LV* the first notification requirement was considered to be met by making the

claim and the second notification requirement was not in dispute, given the claimant had notified HMRC that DLA had been awarded. As such this is clearly not on all fours with the instant case both in terms of the different statutory (double notification) requirements and as it has not been this claimant's position that he specifically notified either DfC (which he argues would be irrational) or HMRC of the *award* of DLA. Mr Eland argues "there is no logical application of *LV* which results in the second notification requirement (on the old law) and only notification requirement (on the current law) being met where the claimant has taken no action as regards the *awarding* of DLA at all."

78. *LV* is of course of persuasive authority in this jurisdiction. In my respectful judgment the claimant places more significance on *LV* than it can legitimately bear and for the reasons outlined above I consider *LV* is of limited assistance in the particular facts of this appeal.

Irrationality and Regulation 26A(2) of the C and N Regulations

79. The claimant's representative argues once DLA branch notifies the claimant of the outcome of the claim on behalf of the claimant's son (which was successful) it would be entirely irrational for the claimant to notify DLA branch of the entitlement to DLA. He submits in these circumstances, the claimant has made notification *by virtue of making the claim itself.* The claimant's position is that the application for DLA on behalf of his son in this case is both (1) an actual application (for DLA) and (2) notification of the application for the purposes of CTC. In other words, the claimant has complied with the notification requirements *simply by virtue of making the claim when the claim is successful* without doing anything further.

80. Mr McCloskey submits it should be read into regulation 26A that where a claim is determined by the same office it should be accepted the claim (once successful) *is* the notification. Otherwise, the claimant would be penalised for failing to tell DfC that DfC had made the award.

81. In interpreting the legislation words should be given their ordinary, natural meaning in the context of the legislation as a whole. I remind myself of the guidance provided by the Supreme Court in relation to statutory interpretation in *R(O) v Secretary of State for the Home Department* [2022] UKSC 3.

82. Specifically, "*The object of statutory interpretation is to identify the meaning borne by the words in the particular context"* Given what is being considered is the meaning of, regulation 26A, in the context of the C and N Regulations as a whole, I am not persuaded it is correct or appropriate for me to "read in" to the regulation Mr McCloskey's suggestion that where a claim is determined by the same office it should be accepted the claim (once successful) *is* the notification. This goes beyond construing the language of the regulation in its statutory context and ascribing a meaning to the provision which the statutory language does not support. The Commissioners function is to interpret the legislation, not to amplify it. While the claimant's argument regarding irrationality in terms of the requirement to inform DLA of a decision DLA have made is superficially attractive, it does not, in my view, justify adding or "reading in" the suggested wording to the legislation to avoid an admittedly unusual situation which is unique to Northern Ireland.

The alternative position - regulation 25

83. The claimant argues in the event regulation 26A(2) does not apply then regulation 25 (see paragraph 28 above) should apply. This has the effect of *treating* the date of notification as outlined in Mr McCloskey's oral submission, as the date of determination (of the DLA claim). In

other words, the date of notification is the date on which DLA was awarded and that paragraph 3(b) applies.

84. In my respectful judgment the submission also fails on the notification point as notification of the change of circumstances must still be given. As outlined at 2.404 of the Volumes the requirement for notification itself in such circumstances is contained in regulation 20. As referred to above, the effect of regulation 20 is that increases in the maximum rate of entitlement to a tax credit as a result of a relevant change of circumstances are dependent upon notification. The heading of this section itself reads "*Increases of maximum rate of entitlement to a tax credit as a result of changes of circumstances* ***to be dependent on notification"*** *(*my emphasis).

Notification

85. Notification although often referred to, is not defined in the legislation. A number of authorities have been drawn to my attention in this appeal to assist with the consideration of what is required by the legislation in terms of notification. The claimant, as referred to above, places significant reliance on the decision in *LV v HMRC (TC)* [2010] UKUT 483 (AAC). For the reasons set out at paragraph 77 above, my view is this decision is of limited assistance in the instant appeal, not least because it considers the first of the "double notification" requirements prescribed by the previous legislation but also because paragraph 9, which the claimant's representative specifically refers to, considers in some detail what constitutes *a change of circumstances* rather than an in depth consideration of notification per se. I agree with the respondent that this decision is of limited relevance in the circumstances of this appeal.

86. The respondent points to the decision in *AG v HMRC (TC)* [2013] UKUT 0503 (ACC) where Upper Tribunal Judge Ward considers notification in some detail and observes at paragraph. 38:

> "*Reference has already been made at [6] above to regulation 20 of the [Claims and Notifications] Regulations, which has the effect that a person can only rely on a change of circumstances for the purpose of an increase in tax credits if notification of the change has been given in accordance with the relevant part of the CN Regulations. Accordingly, anything the respondent may have been able to find out from the DWP was not sufficient to confer any legal right on the appellant unless he had made sufficient notification."*

87. Judge Ward continues at paragraph 39:

> "*The CAB [for the claimant] seeks to rely on this but it seems to me that a "notification" must indicate, at least in general terms and whether expressly or impliedly, the purpose for which it is being made. In the present case, there is no evidence that the appellant ever notified any part of the DWP that DLA was payable in respect of H for the purpose of seeking an increase in the amount of his tax credit as opposed to, for instance, for the purposes of claiming carer's allowance. The appellant confirmed in oral evidence that his dealings with the carer's allowance unit were solely for the purpose of claiming that benefit.*
>
> *40. Accordingly, in my judgment the appellant at no time before 20 March 2009 notified either the respondent or (sufficiently for the matter to fall within the scope of the 2002 Regulations) the DWP of H's award of DLA."*

88. *AG* was considered and approved by Upper Tribunal Judge Hemmingway in *KI v HMRC (TC)* [2023] UKUT 212 (AAC). *KI* was concerned with whether HMRC had made an official error in failing to include a disability element in the award. Ultimately, the outcome turned on what the

claimant had been required to do when DLA had been awarded, and this was to notify a relevant authority at an appropriate office that DLA had been awarded which she had not done. Paragraph 38 of *AG* was considered and followed (paragraph 27), the Judge also observed at paragraph 30 of his judgment, "*the emphasis in the tax credit legislation upon reporting of matters by a claimant…".*

89. The claimant seeks to rely on *LV* and distinguish *AG* on the basis it adds a gloss to the statutory requirement for notification and is dealing with issues of credibility. Mr McCloskey also suggests *KI* is of limited assistance as it is considering official error.

90. The respondent seeks to rely on *AG* and *KI* and submits in the skeleton argument at paragraph 30:

> "*The argument made in the present application effectively dispenses with the notification-by-the-claimant requirement in cases where the change relates to the awarding of DLA. The argument cannot be correct and is odds with both the law as written and authority set out above. Furthermore, the application's reliance on the decision in LV v HMRC (TC) [2010] UKUT 483 (AAC) is misplaced. That decision was concerned with an earlier version of regulation 26A which required the claimant to make two notifications"*

91. Mr Eland continues at paragraph 31:

> "*In HMRC's submission, the decision in LV does no more than what it says: on the law as it stood, the first notification requirement that DLA had been claimed was met by the making of the claim for DLA itself (such claim having been made to DWP, such being a relevant authority at an appropriate office for tax credit purposes). The second notification requirement was not in dispute in that case (as the claimant had notified HMRC that DLA had been awarded) and there is no logical application of LV which results in the second notification requirement (on the old law) and only notification requirement (on the current law) being met where the claimant has taken no action as regards the awarding of DLA at all."*

92. I am persuaded the submission of Mr Eland above is correct. In the absence of a statutory definition of notification, there is a clear line of authority from the Upper Tribunal in *AG* and *KI* considering the term. While this is of persuasive authority, I agree with approach to the interpretation of notification adopted in these decisions. I therefore reject Mr McCloskey's submission that the claimant's application for DLA on behalf of his son in this case is both (1) an actual application (for DLA) and (2) notification of the application for the purposes of CTC. I do not accept the making of a claim for DLA by the claimant on behalf of his son (or indeed the award of DLA in respect of his son) is sufficient to both make the claim and constitute notification for the purpose of the SDE of CTC, nor am I persuaded it can be treated as such. In my respectful view, this is to strain the legislative language and the concept of notification beyond their ordinary natural meaning and superimpose a meaning that cannot be sustained.

The fall back position

93. The claimant's fall-back position was that he had made a supersession request on 8 February 2019 and a subsequent mandatory reconsideration request on 17 April 2019 regarding the DLA award and on that basis, it was argued in the event the initial claim and subsequent entitlement decision were insufficient to constitute notification, then these requests constituted sufficient notification.

94. HMRC do not support this position submitting the possibility that a HMRC officer may have accessed this information does not relieve a claimant of their obligation to notify the (increased) award to a relevant authority (HMRC or DfC) and in the words of UTJ Ward a notification must indicate "at least in general terms and whether expressly or impliedly that it is being made for the purposes of the notification requirement on tax credits".

95. I am in agreement with UTJ Ward in that there must be some express or implied link between the purported notification and its purpose or relevance in the context of entitlement to Tax Credits. As such in my judgment, neither the supersession request for the DLA award or the mandatory reconsideration request in respect of DLA are sufficient to constitute notification for the purpose of CTC and for this reason this argument fails.

Mongan and the jurisdiction of the Appeal Tribunal

96. While Mr McCloskey is entirely correct in that *Mongan v DSD* [2005] NICA 16 confirmed the inquisitorial jurisdiction of Tribunals who are required to consider every issue raised by the appeal which is clearly apparent from the evidence (even if not directly raised by the parties). Equally, a Tribunal is not required to consider and investigate every conceivable issue. I do not consider the Appeal Tribunal was in error of law in this instance. The claimant's representative submits the claimant put the Tribunal on notice his appeal related to "full backdating of entitlement" to the SDE of CTC from the date of the DLA award. I observe, as referred to above, the annual nature of TC generally. I also note and agree with the comments of the respondent's representative that the Tribunal cannot be reasonably considered to be in error of law in any material sense if it fails to consider an argument which cannot succeed. As such I do not consider there was a material error of law by the Appeal Tribunal in this case. As there is no material error of law the appeal cannot succeed.

Disposal

97. The decision of the Appeal Tribunal dated 25 September 2024 is not in error of law. The appeal is therefore dismissed.



(Signature):

E FITZPATRICK
CHIEF COMMISSIONER

(Dated): 26 August 2026