

**NORTHERN IRELAND VALUATION TRIBUNAL**

**THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE  
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007**

**CASE REFERENCE NUMBER: 26/22**

**AB23 - APPELLANT**

**AND**

**DEPARTMENT OF FINANCE - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr James Leonard, President**

**Members: Mr C Kenton FRICS and Mrs N Wright**

**Belfast, 15 May and 16 October, 2023**

**DECISION**

The unanimous decision of the tribunal is as follows:

(a) in regard to the hearing of the matter held on 15 May 2023, the tribunal made the Directions indicated after the conclusion of that hearing, for the reasons provided, and the matter stood adjourned, with the parties to revert to the tribunal, as Directed; and,

(b) in the light of further evidence and submissions, the appeal does not succeed, for the reasons stated, and the appeal is dismissed by the tribunal, without further Order.

## **REASONS**

### **Introduction**

1. This is a reference under Article 12B of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). In view of the nature of this appeal, as is customary, the tribunal has sought to redact the identity of the appellant (here reference is made to "the appellant" notwithstanding that the appellant and her spouse were appealing, and the singular is used). The appellant is referred to as "AB23". The tribunal had also redacted any identifying details of the hereditament under consideration. The appellant had initially in the Form of Appeal (Form 2) confirmed that she was content for this appeal to be determined without a hearing and on the basis of the documentary evidence and written representations placed before the tribunal. There was no objection to this course by the Department of Finance ("the Department") as respondent. The appellant appealed against the outcome of a review of a decision of the Department that the appellant was not entitled to claim Disabled Persons' Allowance ("DPA") in regard to a defined period, referred to further below. Accordingly, the tribunal's task is a discrete issue: whether the appellant is entitled to DPA in regard to that defined period, or not. A preliminary hearing determined that the tribunal had proper jurisdiction in the matter.

### **The Law**

2. The relevant statutory provisions are to be found in the 1977 Order. Article 31A (12B) of the 1977 Order was inserted by Article 17(8) of the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). Article 31A (12B) enables a person to appeal to the Northern Ireland Valuation Tribunal against the result of a review by the Department (the respondent to this appeal) of a decision that a person is not entitled to a rate rebate for premises with a special facility for a person with a disability. This is referred to as Disabled Person's Allowance ("DPA"). Of particular significance to this appeal

are the provisions of Article 31A, at paragraph 8 thereof, which provide as follows:-

31A (8) No rebate shall be granted—

(a) for any period before 1st April 1979; or

(b) except in such circumstances and to such extent as the Department may determine, for any period before the beginning of the year in which the application is made.

3. Materially, therefore, the relevant statutory provision employs words contained in Article 31A (8) (b), which, as stated, read: “.....*except in such circumstances and to such extent as the Department may determine*”. These provisions, very clearly, provide for an exception to an absolute prohibition on the granting of a rebate and afford to the Department: (a) under circumstances which are expressly stated to be determinable by the Department and (b) to an extent also determinable by the Department, an entitlement to grant a rebate extending back in time (with the backstop date being 1 April 1979) pertaining to any period before the beginning of the year in which the relevant application was made. Such a statutory discretion thus afforded to the Department is therefore present in these two stated aspects: (a) relevant **circumstances** and (b) relevant **extent**.

## Timeline

4. The following dates have been helpfully provided in the Department's Presentation of Evidence:

1 (17?) August 2022 - a DPA application was received in respect of an additional bathroom which had been adapted in 2008 (both dates are variously stated in the available documentation).

20 September 2022 - DPA was awarded from the beginning of the rating year, 1 April 2022.

3 October 2022 - the appellant requested the backdating of the award prior to the then current rating year, indicating that she was unaware of the process.

3 November 2022 - the Department wrote to the appellant confirming that backdating was not being awarded and the DPA award start date was to remain 1 April 2022. The entitlement to appeal to the Valuation Tribunal was advised by the Department. It is the Department's decision of that date against which the appeal lies to this tribunal.

### **The Department's Case and the Appellant's Case**

5. The case made on behalf of the Department, as set forth in the Presentation of Evidence, essentially relies upon the rather basic proposition that any ratepayer is provided by the Department with adequate information so as to enable a ratepayer to make an informed application for DPA during any current year, with any necessary information provided enabling that course to be taken. In this case the Department states that when considering any DPA backdating request decisions are made "using the guidance" (more of which below) and when reviewing the decision in this case the Department is content that the appellant received her yearly rates bill, with the relevant insert providing information on help available with rates. The request for backdating (to the year 2008), was made upon the basis that the appellant was, so she stated, unaware of the process; that resulted in a refusal. It is further stated that in the appellant's appeal the appellant had stated that she did not apply due to Covid restrictions (of note: this being 11 years after the adaptations were made). As the appellant had provided an additional reason, the Department states that it looked again at the decision, but no change to the commencement date was made, as the Department felt that it had provided information in relation to home visits, during Covid restrictions, properly and accurately to Northern Ireland citizens. The Department did not believe that the appellant had provided sufficient evidence to prove that it was unreasonable to expect the appellant to apply for DPA prior to the then current rating year (2022/23).
  
6. The appellant in this case made an application (in Form 2) which was received on 30 November 2022. The appellant in this appeal seeks to advance a number of arguments. In the appeal form the appellant has stated that she believes that there is more flexibility than has been stated by the Department.

She cites the applicable statutory provisions, indicating that she had provided to the Department evidence of when modifications were made to the premises (that is to say in January 2008) and the appellant seeks to advance the case that Covid had delayed the application, as the appellant did not wish to have anyone in her house. The appellant states that she first became aware of the entitlement to apply for this rating relief from an Occupational Therapist's visit when she was getting handrails fitted in the premises. However, the appellant do not say precisely when such awareness on her part arose (at least in the initial part of these proceedings) and if there was, or was not, any further delay once that awareness on her part emerged, before making the application. In providing further information to advance her case, the appellant states that she had previously had what she depicts as being a "bad experience" of rating valuation in 2005 and, further, that there were particular domestic circumstances affecting her and inhibiting the application being made at an earlier date. Again, no specific particulars of this have been provided by the appellant in this appeal to enable any weight to be attached to the consideration. The appellant also seeks to highlight a disparity between the content of the Department's "rejection letter" of 3 November 2022 and what is expressly stated in the statutory provisions, which provisions she has clearly examined.

7. This appeal is accordingly confined to a discrete "backdating" issue. The matters arising are thus, firstly, whether the tribunal might properly reverse the determination of the Department in respect of this backdating issue and find in favour of the appellant, based upon the appellant's assertion of ignorance of the entitlement position over a number of years and the other reasons advanced in support of the appeal and, secondly, whether there might be any other ground for upholding, or for not dismissing, this appeal. In essence, the appellant argues that the backdating issue, at its height, should afford relief back as far as 2008 and the appellant has not stated any other, or a lesser, timescale or duration upon which she asserts (or concedes) that backdating ought properly to apply.
8. Some matters are agreed in this case and thus are not in contention. The Department accepts that there is a qualifying disability. The person with the qualifying disability is a close relative of the appellant and at the relevant time there existed consequent qualifying adaptations to the property. That latter fact is borne out by the affording of a rebate for the qualifying year. The tribunal is accordingly not required to address any additional issues, save to confirm that the statutory criteria had been met, throughout the relevant period of time agreed in respect of which the award has indeed been made. Thus DPA was awarded to the appellant.
9. By letter dated 30 November 2022 the Department wrote to the appellant confirming that DPA would be awarded in respect of the subject premises from 1 April 2022. However, as mentioned, the Department in this letter refused the appellant's request for the DPA award to be backdated. What follows next, however, caused the tribunal concern. The stated reason for

such refusal was that, as the Department puts it: “*Article 31A Regulation 8 of the Rates (Northern Ireland) Order 1977, states that the earliest start date of the award is the beginning of the rating year in which the application was made and that Land & Property Services (LPS) may consider any period before this should circumstances indicate it was unreasonable to expect an application within the relevant rating year.*” The tribunal’s concern is that what, on the face of it, purports to be a citation taken directly from the statutory provision is not accurate. As mentioned above, the relevant statutory provision states in Article 31A (8) (b) “*.....except in such circumstances and to such extent as the Department may determine*”. The letter content seemingly purports to state something not present in the statute, but it nonetheless seeks to convey the impression that the statement accurately represents the statutory position.

### **The Issue for Determination**

10. This case has raised an issue which requires to be determined by the tribunal relating to backdating of the relevant award prior to the date and prior to the rating year upon which a formal claim for DPA has been made by the appellant. Without doubt, the Department holds a discretionary power under the statutory provisions to backdate any DPA award prior to the relevant year in which any claim for DPA is made. The second issue, as the Department does indeed hold such a discretionary power, is whether the discretion, in the circumstances of this particular case, has been properly - and indeed transparently and rationally - exercised.

### **The Tribunal’s Examination of the Matter and Determination**

- 11.1 The pertinent statutory provision, as mentioned (and at the risk of repetition but to emphasise the point), states at Article 31A (8) (b) “*....except in such circumstances and to such extent as the Department may determine*”. These terms provide an exception to any absolute prohibition upon the granting of such a rebate, thus affording to the Department, under (a) circumstances which are expressly determinable by the Department and (b) to an extent also determinable by the Department, an entitlement to grant a rebate extending back in time before the beginning of the year in which the application has been made. However, no statutory mechanism is therein expressly stated concerning the manner in which the Department can exercise this discretionary power.
- 11.2 In terms of management of the matter, the initial stage of the hearing took place on 15 May 2023 (“the May hearing”), without an oral hearing, as agreed, and on the basis of the documentation made available to the tribunal by that date. As a consequence of this May hearing, the tribunal issued a preliminary

determination and Directions to the parties (see paragraph 21 below), in anticipation that matters might be resolved. However, this did not transpire and the appeal was scheduled, thereafter, to come before the tribunal by way of an oral hearing, held on 16 October, 2023 (“the October hearing”). At the October hearing the tribunal received evidence and submissions from the appellant and the tribunal also heard evidence and submissions from the Departmental representative. It is important to note that some observations made below were recorded in a preliminary determination (“the preliminary determination”) made by the tribunal prior to the October hearing and therefore must be seen in the proper context of certain further observations made thereafter, as a consequence of the October hearing.

12. As mentioned in the preliminary determination, the tribunal was concerned to note the apparent gloss upon the statutory provision, which issue had indeed been identified by the appellant and which was expressed in the Department’s letter dated 30 November 2022, in paragraph two of that letter, in terms:

*“Article 31A Regulation 8 of the Rates (Northern Ireland) Order 1977 states the earliest start date of the award is the beginning of the rating year in which the application was made **and that** [tribunal’s emphasis] Land & Property Services (LPS) may consider any period before this should the circumstances indicate it was unreasonable to expect an application within the relevant rating year”.*

The use of the words highlighted, “*and that*”, purport to be followed by and to comprise a continuing statement of the words of the pertinent statutory provision: Article 31A, Regulation 8. However, these latter words (i.e. the words following “and that”) are not the statutory words. However, this statement in the letter might well be interpreted by the reader as representing a full and accurate Departmental statement of the relevant statutory words, with the test of reasonableness expressly incorporated.

13. The case for the Department thus relies upon the proposition that any ratepayer is provided with adequate information to enable the ratepayer to make an informed application for DPA during any current rating year.
14. The tribunal’s determination, accordingly, focuses upon whether the statutory discretion afforded to the Department, in the specific circumstances and facts of this particular case, has been properly exercised in accordance with accepted principles and standards of public administration. The focus must therefore be upon the process by which the Department is properly to

exercise such a statutory discretion in these two stated aspects: (a) relevant circumstances and (b) relevant extent.

15. In making this determination the tribunal notes, with regret, that at the May hearing and thereafter (indeed up to the date of the October hearing) the tribunal had not had sight of a rather important document, which shall be referred to further below, but which shall be termed, "the flowchart". This flowchart was evidently designed to assist in the Departmental decision-making process regarding the discrete backdating issue. At the time of the May hearing and making of the preliminary determination, the tribunal took the view that no further information or evidence had been provided by the Department, nor was there any argument comprised in the Department's case, concerning the broad or specific principles underpinning the exercise of such a discretion, either generally or else in regard to the particular circumstances of the instant case. For example, no hypothetical examples had been provided of contrasting circumstances where the discretion might have been positively or negatively exercised. The remark was made in the preliminary determination that any such might have been helpful to inform the tribunal's deliberation. The Department's case appeared to rest upon the simple argument: the Department issued an information leaflet to ratepayers and ignorance of, or inattention to the content of, that did not trigger any proper reason to exercise the discretion. The Department had however exhibited a copy of an extract from the information sheet in evidence. Here, the tribunal noted the part of this information sheet which, after detailing a number of other rating reliefs, under the title "*Disabled Persons Allowance (DPA)*" .... "*You may be able....*" (etc.) notifies matters to the reader.
  
16. For the appellant's part, it was sought to advance the argument that the appellant was fully ignorant of any entitlement to apply for DPA over a period of time prior to the rating year in which the application for DPA was made. (This was so until matters were subsequently clarified by the appellant in the course of the October hearing) The other arguments made were also noted by the tribunal.
  
17. Certain factors were considered by the tribunal as being relevant to the tribunal's determination.
  - 17.1 Firstly, a reasonable presumption must be made that a copy of this Departmental information leaflet was delivered to and received by the appellant in the normal course of postage in respect of the preceding years, but seems, for whatever reason, not to have caused the appellant to become alert to the point at an earlier time. That is, in essence, submitted (but



qualified by the concession about when the appellant was first alerted, by the Occupational Therapist, in 2010). The appellant also had further arguments articulated in the course of the October 2023 hearing, which shall be referred to below.

- 17.2 Secondly, the appellant had not advanced any argument as to how the Department might otherwise (apart from the standard information leaflet normally enclosed with the rates bill) reasonably have brought to the appellant's attention, by some other effective means, the existence of DPA relief for the prior years in question.
- 17.3 Thirdly, as mentioned, (importantly) prior to the October 2023 hearing, the tribunal had not had sight of any internal Departmental guidance nor any evidence of any real or hypothetical circumstances under which the Department in the past might have, or might in principle, positively have exercised the statutory discretion afforded, by backdating. The tribunal shall however make further observations regarding this below. In the preliminary determination it was remarked that an absolute failure, without further explanation, ever positively to exercise a discretion must alert to tribunal to a significant cause of concern.
- 17.4 Fourthly, as mentioned in the preliminary determination, the tribunal considered that it was entitled to apply, in the absence of anything else, the broad principles of review, concerning the exercise of a statutory discretion, to the Department's decision-making as a public authority. Such principles are well-settled and encompass relevant areas including: illegality, irrationality (unreasonableness), procedural impropriety and legitimate expectation. Unreasonableness is afforded a technical meaning in law on account of the principles derived from ***Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223***). The court in ***Wednesbury*** concluded that to have the right to intervene, the court would have to conclude that: (1) in making the decision, the [public authority] took into account factors that ought not to have been taken into account, or (2) it failed to take into account factors that ought to have been taken into account, or (3) the decision was so unreasonable that no reasonable authority would ever consider imposing it. A helpful commentary appears in the 2021 decision of the Valuation Tribunal in the case of ***GM & DM v Department of Finance [NIVT15/20]*** on this same point and it includes a useful reference to Lord Reid's Judgment in ***Padfield –v- Minister of Agriculture, Fisheries & Food [1968] A.C. 997 (at 1030)*** and to ***R –v- Tower Hamlets London Borough Council Ex P Chetnik Developments Ltd [1988] A.C. 858*** (at 873), per Lord Bridge where the following is cited:

*“Thus, before deciding whether a discretion has been exercised for good or bad reasons, the Court must first construe the enactment by which the discretion is conferred. .... But if the purpose for which the discretion is intended to serve is clear, the discretion can only be validly exercised for reasons relevant to achievement of that purpose.”*

18. However, the Department, as evidenced above (see the Department’s letter dated 30 November 2022), and as mentioned in the preliminary determination, had made an inaccurate statement of the law and had added a gloss to the statutory position. One permissible ground upon which to review the Department’s decision-making in the case might have related to the ground of illegality. The preliminary determination therefore posed the question: had the Department improperly and unlawfully fettered its discretion by importing a test of reasonableness into the statutory provision where no such test is stated? Did the decision-maker, at the time the letter of 30 November 2022 was issued, misunderstand the applicable law and the matter of statutory discretion?
  
19. In the preliminary determination, following the May hearing, it was observed that what was (at least then) seen as a potentially troubling feature in the case might inevitably have incorporated a reference to an earlier Valuation Tribunal case entitled ***AB21 v Department of Finance [NIVT 26/21]***. It is perhaps worthwhile, again, mentioning paragraph 25 of the tribunal’s decision in that case (which case referenced certain issues similar to those which have emerged in this case) were the tribunal had stated as follows:-

*“In conclusion, the question is again posed: is the tribunal to assume that the exercise of the statutory discretion has never been afforded or that there is no Departmental guidance? If it has been afforded or if there exists Departmental guidance, why has this information not been provided to the tribunal? The tribunal thinks that it must, accordingly, recommend to the Department that any Departmental decision-makers shall be afforded appropriate and adequate training in the relevant statutory provisions and that the Department develops guidance for decision-makers upon the principles underpinning the proper exercise of statutory discretion, both in theoretical terms and also in real and practical terms, and that the Department takes all proper steps to prevent any risk of repetition of what the tribunal has observed in this case.”*

At the time of the May hearing it had been believed, in the absence of anything at that time being available to the tribunal, that there was no

indication that the Department had paid heed to these suggestions made in November 2021. However, in the light of the evidence and submissions in the course of the October hearing, the tribunal had by that stage sight of the flowchart document and had the benefit of clarification evidence from the Departmental official concerning the content and the application of that document. It appears that the document had indeed been sent to the tribunal office but, on account of what seems to have been an administrative error, had not been provided to the tribunal. Accordingly, the tribunal were entirely unaware of the existence of this document prior to the October hearing. Again, the tribunal will make some further observations concerning this, below.

20. Consequent upon the May hearing, the tribunal made certain Directions including that the Department should forthwith give due and proper consideration to the exercise of the statutory discretion afforded by Article 31A, Regulation 8 and that any decision-making by the Department ought to reference the words of the statute above-cited and, further, that the Department should give due and proper consideration to an unfettered exercise of that discretion in reference to the statutory power in regard to the issue of backdating of any relief and to any period applicable to any backdating. It was further directed that the appellant should be fully informed in writing of the entire basis of the exercise of such discretion in sufficient detail that the appellant would know precisely how and why such discretion had been exercised and the outcome. The appellant was also directed to provide to the Department any further evidence and information requested or necessary in regard to the Department's decision-making. As a consequence of the preliminary determination, the appellant was entitled to refer the case back to the tribunal for further scrutiny and the matter stood adjourned sine die in the interim. The matter subsequently remained unresolved and thus was referred back to the tribunal for a final determination. Hence, the October oral hearing proceeded with a view to resolving any issues.
21. The absence of the flowchart being made available to the tribunal at any time prior to the October hearing, is certainly to be regretted. The Departmental representative, in evidence, took the tribunal through the content of the flowchart. The tribunal surmises (in the absence of any further information being forthcoming from the representative as to how the flowchart came into existence and when) that this flowchart might possibly have been created subsequent to the tribunal's observations made in ***AB21 v Department of Finance [NIVT 26/21]***, as above cited. Be that as it may, the flowchart now exists and, importantly, it existed at the time of the Departmental decision-making in this case, as confirmed by the representative. It provides a rational structured basis, in the tribunal's view, for Departmental decision-making in the specific area of the exercise of statutory discretion concerning the possible backdating issue. The tribunal accepts the evidence that it informed the crucial decision-making in respect of the subject matter of this appeal.

22. The tribunal sought, first, the observations of the appellant concerning the various stages identified in the flowchart and then any observations on the part of the Department. The first stage (“Stage One”) is non-controversial in that DPA has been awarded and the appellant has requested backdating. Stage Two focuses upon the stated issue: “had LPS prevented an earlier application?” The appellant contended that, effectively, LPS had indeed “prevented” an earlier application. Her submission rested upon the proposition that nothing she had seen from the Department would have alerted her to the fact that this was a time-limited application system, with backdating only being available upon the exercise of Departmental discretion. When the tribunal suggested that her case, in terms, might be that she had been, as it were, “lulled into a false sense of security”, she full agreed with that proposition. (The Department’s position on this point is as mentioned below). Stage Three poses the question: “was a delay in the valuation of the Property due to LPS actions?” The appellant’s position in respect of this was to emphasise that she had had, as, she put it, a “bad experience” at the time of LPS revaluation of the property. She provided some detail. However, the tribunal determined that this was not a point carrying any compelling weight whatsoever and the argument related to the appellant’s stated negative experience of Capital Valuation. Stage Four (“did LPS issue yearly bills as required?”) was again uncontroversial and that was positively accepted, without difficulty, by the appellant.
23. Stage Five states: “was the delay due to personal reasons of the applicant?”. Here, the appellant’s case centres around a number of arguments advanced to the Department. These included the following matters. Firstly, the appellant contends that she was entirely unaware of the entitlement to apply for backdating. Her first awareness of this, she states, arose as a result of observations made to her by an attending Occupational Therapist. When the tribunal questioned the appellant as to when these informative observations were made to her, the appellant conceded that they had been made as long ago as (in or about) 2010. The tribunal further questioned the appellant as to what had transpired since that time onwards and concerning why she had not made the backdating application at any time from then (2010) up to the date when the application was actually made (2022). Here, regrettably, the tribunal did not receive from the appellant a fully cogent and convincing explanation as to why, having been (if not before) at least by circa 2010 alerted to the potential for applying for backdating, she had nonetheless delayed in making such an application over such an extended period. In essence, the best interpretation that the tribunal can draw from the appellant’s evidence and argument, is that she appeared to take the view that there was no urgency whatsoever about making the application. She believed that she could, so to speak, “bank” the backdating revenue potentially available, that then to be drawn from the “bank” at some stage in the future, of her own choosing. The only basis portrayed by the appellant for having this understanding related to the proposition that the Departmental documentation did not make it fully clear that there would be any difficulty or issue whatsoever in taking that approach. It has to be said that the tribunal found this apparent understanding or

approach on the part of the appellant to be entirely unsupportable and was representative of an approach which, whatever way she tried to place responsibility upon the Department, could not be in any way endorsed by the tribunal. The appellant even conceded that she had, on one or more occasion, printed off the necessary application form for the backdating application, but had failed to dispatch any such. Her precise reasons for that failure remained rather vague in her evidence and consisted mainly of the assertion that she believed, with proper justification, so she thought, that she could, as it were “bank” the entitlement and latterly apply at a time of her own choosing. When asked why she then did actually apply when she did (in October 2022) the tribunal found it difficult to ascertain any precise motivating factor specifically grounding this positive action. The appellant, in argument, had also raised issues which included a near relative living in the premises having dementia and being unwilling to have the property inspected and also, more recently, the issue of Covid-19 emerging and the risks associated with persons coming onto the property for inspection. However, the tribunal noted that there was, regardless of more recent events, nonetheless a very considerable period of time running between the appellant’s first conceded awareness of backdating and the much later commencement of the Covid societal restrictions. Further, the Departmental evidence was that, at the time of Covid restrictions applying, there was clearly-stated information present on the Department’s website, detailing procedures designed to avoid a mechanism for approvals which might have involved risk to those resident in properties under consideration. These procedures would have been readily available to the appellant (who was certainly computer literate) and to any other interested parties had they looked at information contained within the Department’s website. The appellant’s position in respect of all of this was that she was entirely unaware of this information existing on the Departmental website and, further, that she harboured a genuine concern in regard to Covid and potential visits to the property, that being especially so regarding the welfare of the person resident in the property who had the qualifying disability.

24. Stage Six substantially connects with the previous stage in that it states: “has evidence been provided that the application was delayed due to personal reasons?” (Stage Seven does not apply in the circumstances of the case). Stage Eight then states: “does the evidence indicate acceptable reason for backdating?”. In respect of that latter stage the Department assessed any evidence advanced by the appellant as not being an acceptable reason for backdating. Clearly, the appellant takes issue with that determination, as a fundamental point in the case. Interestingly, as a subtext or footnote referred to as “Note 1” connecting with Stage Eight, the following is stated in the flowchart document:

“Note 1 – see examples below of acceptable and not acceptable reason to award backdating - these are examples only please speak to your line manager if in doubt. **Acceptable** - the person who had the authority to act on behalf of the applicant in legal or financial matters failed to apply; medical evidence has been provided that applicant was not capable of applying during a certain period. **Not acceptable** - was not aware of DPA; was not aware that DPA backdating was restricted.”

In regard to the foregoing subtext or footnote, on the facts of this case the example given under the title “Acceptable” is inapplicable for the reason that the failure to apply is not a dereliction or default on the part of some other person or authority, but rather of the appellant herself. Further, there are no medical reasons stated for the delay personally concerning the applicant/appellant. In respect of the “Not acceptable” example, the Department is clearly stating, without qualification, that either lack of awareness of DPA or that DPA backdating was restricted, is insufficient. The tribunal was slightly concerned that any lack of awareness would be subject to an unqualified refusal, seemingly without reference to specific factual circumstances. However, it is noted that these are examples only, as stated, and that the decision-maker is encouraged in this document to speak to a line manager if in doubt. Here, the tribunal would make the observation that this is perhaps an area upon which further Departmental scrutiny of policies and procedures might be usefully directed. However, the tribunal is tasked with dealing with the specific facts of the instant case. In the tribunal’s view, the example given of “Not acceptable” clearly falls within the facts of this case in that the stated lack of awareness on the part of the appellant (at least up to 2010) did not afford a valid reason for backdating. Where the argument becomes even more untenable for the appellant is that, as she now concedes, she was indeed aware from 2010 onwards, yet she did nothing to proceed with her backdating application over a number of years thereafter.

25. The task of the tribunal is accordingly to determine if this appeal is properly to be upheld. Taking everything into account and in the light of all of the evidence and submissions and the application of the pertinent law, in order to sustain this appeal, the appellant would have needed to advance a persuasive argument or arguments accounting for the conceded delay amounting to a number of years from her asserted first awareness emerging of the entitlement to apply for backdating, circa 2010, until the application was actually made by her in 2022. Unfortunately, from her perspective, the tribunal has heard nothing and has received no persuasive evidence and argument in order to permit this appeal to be upheld. Notwithstanding the appellant’s clearly articulated case and her evident feeling that there is merit in her appeal, on the facts of this case and by the application of the law, the appeal is not upheld by the tribunal. The appeal is dismissed on that basis, without further Order.

*James Leonard*

**James Leonard, President**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties: 1 November 2023**