

Decisions of Upper Tribunal (Administrative Appeals Chamber) on Housing Benefit and Council Tax Benefit

HB/CTB Decisions published* on Upper Tribunal (AAC) website in 2011

(*The list includes all cases decided in 2011, some of which may have been added to the website in 2012)

(Last updated 21 June 2012)

Case	Date of decision	Legislation in issue	Keywords
<u>SH v LB Tower Hamlets (HB)</u> <u>[2011] UKUT 500 (AAC)</u> CH/1752/2011	23/12/11	Reg 49 HB Regs 2006	Notional capital – deprivation – meaning of “purpose”
<u>JC-W v Wirral MBC (HB)</u> <u>[2011] UKUT 501 (AAC)</u> CH/1837/2011	22/12/11	Reg 47 & Sch 6 paras 25 & 26 HB Regs 2006	Capital – valuation of beneficial interest pending divorce in heavily mortgaged properties – correct approach to disregards

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Bristol CC v FV (HB) [2011] UKUT 494 (AAC) CH/2859/2011	21/12/11	Ss 130(1)(a) & 131B(1) & (3)(b) SSCBA 1992, reg 10 HB Regs 2006, reg 7 CTB Regs, reg 14 Immigration (EEA) Regs 2006	Right to reside – self-employment – Big Issue seller
FG v Rochdale MBC (CTB) [2011] UKUT 429 (AAC) CH/1122/2010	14/11/11	HB & CTB (D&A) Regs 2001 CTB Regs 2006 Sch 1, paras 12 & 13(1)(a)(i))	Long-running dispute between claimant and authority – authority’s response to CH/2995/2006 – scope of appeal – adequacy of documentation
KdeS v LB Camden (HB) [2011] UKUT 457 (AAC) CH/378/2011	08/11/11	Reg 7(13) HB Regs 2006	Occupation of the home – period of absence unlikely to exceed 13 weeks – meaning of “unlikely” – temporary absence from home begins on and includes day of departure
Bury MBC v LM (HB) [2011] UKUT 456 (AAC) CH/887/2011	07/11/11	Reg 100 HB Regs 2006	Recovery of overpayment – official error – claimant disclosed information to DWP, omitted from LACI Form, and LA failed to make further enquiries

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<u>Carlisle CC v SC (HB)</u> <u>[2011] UKUT 480 (AAC)</u> CH/1827/2010	02/11/11	Sch 3 Para 5 HB and CTB (Consequential Provisions) Regulations 2006 as amended Alternative version of Reg. 12 HB Regs 2006	Exempt accommodation – whether accommodation was supported rather than sheltered.
<u>Nottingham CC v CJ (HB)</u> <u>[2011] UKUT 392 (AAC)</u> CH/1302/2011	29/09/11	Reg 9(1)(h) HB Regs 2006	Former owner occupier – whether claimant “could not have continued to occupy that dwelling without relinquishing ownership” – tribunal had applied test correctly and made adequate findings of fact
<u>MB v RB Kensington and Chelsea (HB)</u> <u>[2011] UKUT 321 (AAC)</u> CH/199/2011	08/08/11	Regs 48 & 51 HB Regs 2006	Capital – property in Ireland – whether UK or Irish law applied – valuation
<u>Torbay BC v BW (HB)</u> <u>[2011] UKUT 305(AAC)</u> CH/3472/2005	27/07/11	Reg 21 HB & CTB (D&A) Regs 2001 Reg 97 HB Regs 2006	Whether First-tier Tribunal correct to hear appeal by deceased appellant where local authority had not appointed someone to proceed with the appeal

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Torbay BC v RA (HB) [2011] UKUT 304 (AAC) CH/3452/2005	27/07/11	Reg 10 & Schs 1, 1A & 1B HB (General) Regs 1987	Lead case of 18 Torbay cases – transitional HB Scheme – reasonableness of charges for counselling and support
DH v Kirklees MBC and SSWP (HB) [2011] UKUT 301 (AAC) CH/1073/2010	26/07/11	Reg 9(1)(c) HB Regs 2006 ECHR Art 14	Liability to former partner – whether reg 9(1)(c) applied only to immediate former partner – whether ultra vires – whether contrary to European Convention
SE v NE Lincolnshire Council (HB) [2011] UKUT 300 (AAC) CH/804/2011	25/07/11	Regs 11, 13, 14 HB & CTB (D&A) Regs 2001 Sch 7, para 3 CSPSSA	Need for proper decision-making processes – suspension of HB & CTB awards – failure of tribunal to exercise inquisitorial jurisdiction
Glasgow City Council v AL (HB) [2011] UKUT 354 (AAC) CSH/168/2010 To be reported as [2012] AACR 21	20/07/11	Reg 9 HB Regs 2006	Proper test to be applied by tribunals in Scotland in determining whether a claimant has legal capacity to enter a contract of lease – mental capacity must be judged with reference to the transaction in issue – the presumption of capacity can be overcome only by independent and informed evidence – appointment of appointee is not conclusive

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<i>KW v Lancaster City Council and Secretary of State for Work and Pensions (HB)</i> [2011] UKUT 266 (AAC) CH/1868/2010	04/07/11	Regs 79(7) & 100 HB Regs 2006	Recovery of overpayment – large payment of arrears of child support & consequential overpayment of HB and CTB for a decade – attribution of income for past period – causation and CA decision in R (Sier) v Cambridge CC – absence of right of appeal on recovery or waiver
<i>MR v Bournemouth BC (HB)</i> [2011] UKUT 284 (AAC) CH/1849/2010	17/06/11	Reg 7(16)(c)(i) HB Regs 2006	Temporary absence – convicted prisoner released before end of sentence and then recalled on remand for another offence – whether 52-week rule applies
<i>GB v LB Southwark (HB)</i> [2011] UKUT 242 (AAC) CH/2615/2010	17/06/11	Reg 100 HB Regs 2006 Reg 83 CTB Regs 2006	Recovery of overpayment – official error – whether claimant can reasonably be expected to know there is an overpayment
<i>RG v Secretary of State for Work and Pensions and North Wiltshire District Council (HB)</i> [2011] UKUT 198 (AAC) CH/1312/2010	05/05/11	Reg. 13D(3) HB Regs 2006 Art 14 and P1-1 ECHR	Rent restrictions – whether special provision required for disabled children unable to share a bedroom

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<u>DE v Sunderland CC (HB) [2011] UKUT 177 (AAC)</u> CH/2325/2010	28/04/11		Earnings – other income and payments – <i>de jure</i> directors, <i>de facto</i> directors and shadow directors – tribunal procedure and practice – evidence
<u>Aylesbury Vale District Council v ER (HB) [2011] UKUT 160 (AAC)</u> CH/1961/2010	15/04/11	Sch 3 para 5 HB and CTB (Consequential Provisions) Regulations 2006 as amended Alternative versions of Regs. 12 and 13 HB Regs 2006	Exempt accommodation – <i>Ex Parte W</i> – what constitutes suitable alternative accommodation
<u>AA v Chesterfield Borough Council and Secretary of State for Work and Pensions (HB) 2011 UKUT 156 (AAC)</u> CH/107/2010	07/04/11	Reg 13D(2) HB Regs 2006	Rent restrictions – local housing allowance – categories of occupier – member of household – exclusive use of rooms – over-accommodation
<u>KM v South Somerset District Council (HB) [2011] UKUT 148 (AAC)</u> CH/1334/2010	30/03/11	Reg 13D(3) HB Regs 2006 Article 8 and Article 8 ECHR	Maximum rent – need for separate bedroom for wife’s disability needs – whether definition of “couple” breach of Article 8 or Article 14 European Convention on Human Rights

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<u>EM v Wychavon District Council (HB) 2011 UKUT 144 (AAC)</u> CH/171/2011	29/03/11	Reg 9 HB Regs 2006	Whether claimant unable to communicate can be a party to a tenancy agreement or liable for rent (Revised by UTAAC Judge on 06/01/12 <u>[2012] UKUT 12 (AAC)</u>)
<u>JB v Oxford City Council and Secretary of State for Work and Pensions (HB) 2011 UKUT 136 (AAC)</u> CH/322/2010	28/03/11	Schedule 1 HB Regs 2006	Housing and council tax benefits – eligible rent – service charges – meaning of "sheltered accommodation" Permission to appeal granted by Court of Appeal UT decision upheld by Court of Appeal <i>Oxford City Council v Basey</i> <u>[2012] EWCA Civ 115</u>
<u>Walsall MBC v LT (HB) [2011] UKUT 172 (AAC)</u> CH/851/2010	21/03/11	Reg 13D HB Regs 2006	Housing benefit – landlord providing counselling and other support services – whether a “person affected by the decision” and therefore having a right of appeal (<u>JB v Birmingham CC (HB) [2011] UKUT 23 (AAC)</u> followed) Permission to appeal given to respondent by UT judge on 19/04/11

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<u>SS v Slough Borough Council (HB)</u> <u>[2011] UKUT 128 (AAC)</u> CH/3733/2007	18/03/11	Reg10 HB Regs 2006 Reg 7 CTB Regs 2006 Article 39 Treaty on European Union) and Directive 2004/38/EC Regulations 2006	Right to reside – “worker” – part-time work
<u>LB Camden v NW (HB)</u> <u>[2011] UKUT 262 (AAC)</u> CH/2236/2007	18/03/11 (added 04/07/11)	Regs 20 and 22 HB Regs 2006	Applicable amount – responsibility for child – where care of children shared equally, parent in receipt of child benefit responsible for child under regs 20 and 22 of the Housing Benefit Regulations 2006 – whether indirect discrimination on grounds of sex in breach of Article 14 of the Convention. Whether regs 20 and 22 of the Housing Benefit Regulations 2006 indirectly discriminatory in breach of Article 14 of the Convention

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Salisbury Independent Living v Wirral MBC (HB) [2011] UKUT 44 (AAC) CH/3186/2009	28/01/2011	Reg 3 HB & CTB (D&A) Regs 2001	Whether landlord has right of appeal either (a) on implied authority of tenant or (b) as “person affected” by the decision (CH/3817/2004 followed) Permission to appeal to Court of Appeal given by UT judge on 16.05.11 UT decision reversed by Court of Appeal <i>Wirral MBC v Salisbury Independent Living</i> [2012] EWCA Civ 84
Bury MBC v DC (HB) [2011] UKUT 43 (AAC) CH/2228/2009	26/01/2011	Reg 7 (8)(c)(i) HB Regs 2006	Whether delay in moving to new home necessary in order to adapt the dwelling to meet the claimant’s disablement needs – redecoration and re-carpeting for claimant with obsessive-compulsive disorder – meaning of “adapt” (R(H) 4/07 followed)
SB v Epping Forest DC (HB) [2011] UKUT 41 (AAC) CH/2822/2009	25/01/2011	Reg. 9(1)(a) HB Regs 2006	Whether letting of annex by parents to disabled son was on a commercial basis.

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<u><i>IB v Birmingham CC (HB)</i></u> <u>[2011] UKUT 23 (AAC)</u> CH/2823/2009	13/01/11	Reg 13D(2) and (3) HB Regs 2006	Human rights law – no unlawful discrimination in not providing higher LHA limit for disabled claimant needing room for carers Permission to appeal to Court of Appeal given by UT judge on 03.05.11 Window of 14-Nov-11 to 14-Mar-12
<u><i>Basildon DC v AC (HB)</i></u> <u>[2011] UKUT 16 (AAC)</u> CH/2307/2009	13/01/2011	Rule 31(b) Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008	Fair hearing – an adjournment was required where the claimant at an oral hearing which the authority did not attend, gave evidence unexpectedly which was materially different from the evidence he had given previously, on matters for which the authority was likely to hold records. The authority was entitled to an opportunity to rebut his evidence.
<u><i>CP and others v Aylesbury Vale DC (HB)</i></u> <u>[2011] UKUT 22 (AAC)</u> CH/1530/2010	10/01/2011	Reg 12(1)(e) HB Regs 2006	Whether charges for maintaining communal garden are eligible service charges
<u><i>MB v Selby DC (HB)</i></u> <u>[2011] UKUT 5 (AAC)</u> CH/3721/2008	07/01/2011	S130(3) SSCBA	Whether income to be taken into account twice where a claimant occupies two dwellings as his home

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<u>GP v Wirral MBC (CTB) [2011] UKUT 7 (AAC)</u> CH/1212/2009	06/01/2011	Reg 83(5) CTB Regs 2006	Excess council tax benefit – recovery for future period after date of revising decision and up to the end of the financial year
<u>N Tyneside MBC v SSWP (HB) [2010] UKUT 462 (AAC)</u> CH/1923/2009	23/12/2010	Reg 76 HB (SPC) Regs 2006,	Payment of arrears to landlord and overriding interest – Tomlin order – unappealed error by a previous tribunal affecting instant appeal
<u>LS v LB Lambeth (HB) [2010] UKUT 461 (AAC)</u> CH/1758/2009 (3-Judge Panel) To be reported as [2011] AACR 27	22/12/2010	Regs 18 and 19 HB & CTB (D&A) Regs 2001	Scope of right of appeal to Upper Tribunal – required contents of notification of a decision applying a non-dependent deduction
<u>DL v Southampton CC (CTB) [2010] UKUT 453 (AAC)</u> CH/510/2010	16/12/2010	Regs 33 and 34 CTB Regs 2006	Capital – ownership/ possession – tribunal failed to consider possible resulting trust where mother looking after funds for her adult daughter
<u>TS v Eastleigh Borough Council (HB) [2011] UKUT 345 (AAC)</u> CH/2369/2010	07/01/11	Reg 100(2) HB Regs 2006	Recovery of overpayments – knowledge of overpayment – receipt of payment – notice of a payment).

HB/CTB decisions selected for reporting in 2011

Reported as	Title and NCN	Keywords
[2011] AACR 6	<i>Wirral MBC v AH (HB)</i> [2010] UKUT 208 (AAC)	Maximum rent and occupation of the home – meaning of “occupier” for local housing allowance purposes – shared care of child – whether foster child occupier of home (Note: Reg 21(3) was amended with effect from 01.11.10 by SI 2010/2449 to reverse the effect of this decision in relation to foster children.)
[2011] AACR 27	<i>LS v LB Lambeth (HB)</i> [2010] UKUT 461 (AAC) (3-Judge Panel)	Scope of right of appeal to Upper Tribunal – required contents of notification of a decision applying a non- dependent deduction

The following decision is also relevant to HB:

[2011] AACR 12	<i>Secretary of State for Work and Pensions v UP (JSA)</i> [2010] UKUT 262 (AAC)	Housing costs – long tenancy – rent payable under Ijarah method of financing house purchase – whether qualifies for housing costs
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HB/CTB cases appealed to superior courts in 2011

Case	Date of decision	Keywords
<p><i>Minter v Kingston upon Hull CC</i> [2011] EWCA Civ 1155</p> <p>CH/2270/2009 Kingston upon Hull CC v DLM (HB) [2010] UKUT 234 (AAC)</p>	<p>13/10/10</p> <p>06/07/10</p>	<p>Earnings and other income – compensation payments – local authority workers’ equal treatment claims and payments in lieu of remuneration.</p> <p>Housing and council tax benefit – recovery of overpayments – official error and meaning of “relevant authority”.</p> <p>May be further appeal to the Supreme Court</p>
<p>Salisbury Independent Living v Wirral MBC (HB) [2011] UKUT 44 (AAC) CH/3186/2009</p> <p>Court of Appeal decision to be reported as [2012] AACR 37</p>	<p>28/01/2011</p>	<p>Whether landlord has right of appeal either (a) on implied authority of tenant or (b) as “person affected” by the decision (CH/3817/2004 followed)</p> <p>Permission to appeal to Court of Appeal given by UT judge on 16.05.11</p> <p>UT decision reversed by Court of Appeal <i>Wirral MBC v Salisbury Independent Living</i> [2012] EWCA Civ 84</p>
<p>JB v Oxford City Council and Secretary of State for Work and Pensions (HB)</p>	<p>28/03/11</p>	<p>Housing and council tax benefits – eligible rent – service charges – meaning of “sheltered accommodation”</p>

<p>2011 UKUT 136 (AAC) CH/322/2010</p> <p>Court of Appeal decision to be reported as [2012] AACR 38</p>		<p>Permission to appeal granted by Court of Appeal</p> <p>UT decision upheld by Court of Appeal: Oxford City Council v Basey [2012] EWCA Civ 115</p>
<p><i>Burnip,,Tregrove and Gorry v Secretary of State and others</i> [2012] EWCA Civ 629</p> <p>CH/2823/2009 <i>IB v Birmingham CC v SSWP v EHRC (HB)</i> 2011 UKUT 23 AAC</p> <p>CH/851/2010 <i>Walsall MBC v LT (HB)</i> [2011] UKUT 172 (AAC).</p> <p>CH/1312/2010 RG v Secretary of State for Work and Pensions and North Wiltshire District Council [2011] UKUT 198 (AAC)</p>	<p>CA 15./06/12</p>	<p>Human rights law – article 14 (non-discrimination) – failure of housing benefit rules to differentiate in favour of disabled claimant</p> <p>DWP have applied for permission to appeal to Supreme Court</p>

Note: non-HB/CTB search categories that may include cases of relevance or interest include Capital; Earnings and other income; Income support and state pension credit; Recovery of overpayments; Marriage and living together; Residence and presence conditions; Revisions, supersessions and reviews. If you are interested in a specific issue that is not covered by the search categories try searching the Notes field on the [Search for Decisions](#) page by key word or phrase. See [Help with searching](#).