

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

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Case	Date of decision	Legislation in issue	Keywords
<i>TD v SSWP and London Borough of Richmond-Upon-Thames (HB)</i> [2013] UKUT 642 (AAC) CH/1926/2012	20/12/2013	Reg 20(2)(a) Housing Benefit Regs 2006	Whether there is indirect discrimination where a child or young person spends equal amounts of time in different households but they are treated as normally living with the parent or person receiving child benefit - contrary to Article 1 Protocol 1 of the European Convention on Human Rights ("the Convention") when read with Article 14 of the Convention.

<p><i>DTM v Kettering Borough Council (CTB)</i> [2013]UKUT 625 (AAC) CH/2042/2011</p>	<p>06/12/2013</p>	<p>Parts 8 and 9 of the Council Tax Benefit Regulations 2006. Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007</p>	<p>Whether a family occupying two adjoining semi-detached houses could be treated as residing in both properties as a single dwelling and therefore be entitled to CTB for both. Whether an LA has the power to require a claimant to provide information in support of a benefit claim in less than the statutory minimum period of one month.</p>
<p><i>CT v Horsham District Council (HB)</i> [2013] UKUT 617 (AAC) CH/4148/2012</p>	<p>04/12/2013</p>	<p>Section 6(2) of the Local Government Finance Act 1992</p>	<p>Whether a claimant was liable for CT despite no longer living at a property by reason of having a material interest in the property and the hierarchy for liability for council tax.</p>
<p><i>LA v Bury Metropolitan Borough Council (HB)</i> [2013] UKUT 546 (AAC) CH/466/2011</p>	<p>05/11/2013</p>	<p>Reg 13D HB Regs 2006 Article 14 of the ECHR</p>	<p>Whether a claimant was entitled to additional HB for a four bed property (not three) given Article 14 of the European Convention on Human Rights. The LA had awarded HB assessed for three bedrooms under regulation 13D on the basis of the age and sex of the claimant's children. The Court of Appeal's decisions in <i>Burnip v Birmingham City Council</i>, <i>Gorry v Wiltshire CC</i>, <i>Trengrove v Walsall</i> [2012] EWCA Civ 629 were followed.</p>
<p><i>CP v City of Brighton and Hove (HB)</i> [2013] UKUT 542 (AAC) CH/537/2012</p>	<p>31/10/2013</p>	<p>Schedule 7 to the Child Support, Pensions and Social Security Act 2000</p>	<p>Why a claimant cannot be overpaid two or more separate amounts of benefit for the same period. Criticism of the approach by some LAs of issuing another overpayment decision for the difference between the amount now held to be due and the amount previously stated in the original decision.</p>

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<p><u>PP v Basildon District Council (HB)</u> <u>[2013] UKUT 505 (AAC)</u> CH/4086/2012</p>	<p>12/10/2013</p>	<p>Section 136 and 137 Social Security Contributions and Benefits Act 1992</p>	<p>What is the correct approach to determining whether a couple are living together as husband and wife given the variety of arrangements between partners living together in permanent relationships. The traditional guidelines outlined by Woolf J in <i>Crake v Supplementary Benefits Commission</i> [1982] 1 All ER 498 are reviewed, including the problems arising from the guidelines and their application to the evidence. The relevance of the emotional side of relationship was considered.</p>
<p><u>ZN, BB, JHS v London Borough of Redbridge (HB)</u> <u>[2013] UKUT 503 (AAC)</u> CH/273/2013 CH/274/2013 CH/275/2013</p>	<p>08/10/2013</p>	<p>Regs 2, 7 & 21(2) Tribunal Procedure (Upper Tribunal) Rules 2008 Reg 38(1) Tribunal Procedure (First-tier Tribunal Rules)</p>	<p>Whether it was within the Upper Tribunal's jurisdiction to deal with applications for leave to appeal from 3 different appellants against a decision that there had been a recoverable overpayment of benefit: the claimant (who had claimed as a single parent); her partner (who was the registered proprietor of the rented property in which they lived) and the managing agent of the property.</p>
<p><u>LES v Horsham District Council (HB)</u> <u>[2013] UKUT 494 (AAC)</u> CH/4148/2012</p>	<p>02/10/2013</p>	<p>Reg 7 HB Regs 2006 s.131(3)(a) Social Security Contributions and Benefits Act 1992</p>	<p>Whether a claimant temporarily absent, but not covered by any of the provisions relating to temporary absence, can be entitled to HB and CTB. Various issues considered including whether she had a liability for CT (and therefore whether there was an overpayment of CTB) and whether any HB benefit overpayment was recoverable.</p>

<p><u>SS v Birmingham City and Secretary of State (HB)</u> <u>[2013] UKUT 418 (AAC)</u> CH/1988/2012</p>	<p>30/08/2013</p>	<p>13(b) HB Regs 2006 Schedule 3 of HB and CTB (Consequential Provisions) Regs 2006</p>	<p>Whether the rent charged by a women's refuge (with no funding) was unreasonably high by comparison with the rent charged by other publically funded charities. The need for the LA to provide further evidence and submissions including how the UT should exercise its discretion given the findings of the UT and the guidance of the Court of Appeal and House of Lords in <i>R v Housing Benefits Review Board ex parte Mehanne</i>, [2000] 1 WLR 16 and [2001] 1 WLR 539.</p>
<p><u>Lloyd v LB of Lewisham (HB)</u> <u>[2012] UKUT 171 (AAC)</u> CH/2897/2011</p>	<p>29/07/2013</p>	<p>Para 14(1) of Schedule 5 of the Housing Benefit Regulations 2006</p>	<p>Whether a superannuation award should be treated as income or compensation. The application of paragraph 14(1)(e) of Schedule 5 and the proper approach to finding the correct meaning of a provision</p>
<p><u>MG v Carmarthenshire CC and Secretary of State for Work and Pensions (HB)</u> <u>[2013] UKUT 363 (AAC)</u> CH/1940/2012</p>	<p>26/07/2013</p>	<p>Reg 13D of the HB Regulations 2006, as amended by regulation 2(6) of the HB (Amendment) Regs 2010</p>	<p>Whether the word 'bedroom' in the amendment to the 2006 Regulations is to be read as extending to any room occupied by a carer providing night time care to a HB claimant, or the partner of such a person, irrespective of whether or not the room contains a bed or is used for sleeping in.</p>
<p><u>HC v Hull City Council (HB)</u> <u>[2013] UKUT 330 (AAC)</u> CH/3834/2012</p>	<p>09/07/2013</p>	<p>Reg 100(3) of the HB Regs 2006</p>	<p>Whether overpayments of HB/CTB were recoverable or not. Various grounds of appeal considered including whether alleged delays by the LA in reassessing benefit, following a reported change of circumstances, and a failure to suspend benefit can amount to an official error.</p>

<p><u>Westminster City Council v AT and Secretary of State for Work and Pensions (HB)</u> <u>[2013] UKUT 321 (AAC)</u> CH/2689/2010</p>	<p>05/07/2013</p>	<p>Reg 8(1)(c) of the HB Regs</p>	<p>Whether the claimant, a child aged 4 years old, was entitled to HB – her father was the tenant but in prison and not treated as still occupying the property under regulation 7 of the HB Regs while her mother was a “person from abroad” and so not entitled to HB under the Immigration and Asylum Act 1999.</p>
<p><u>Wirral Borough Council v 1) Furlong 2) Perry 3) Salisbury Independent Living and Secretary of State for Work and Pensions (HB)</u> <u>[2013] UKUT 291 (AAC)</u> CH/1528/2012</p>	<p>21/06/2013</p>	<p>Para 4(10) Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006</p>	<p>Whether the landlord met the definition of a voluntary organisation for the purposes of the regulations and whether the individual respondents (Mr Furlong and Ms Perry) occupied exempt accommodation.</p>
<p><u>Hastings Borough Council v PA & DA (HB)</u> <u>[2013] UKUT 232 (AAC)</u> CH/2551/2011</p>	<p>10/05/2013</p>	<p>Section 75(1) and (3) Social Security Administration Act 1992, Reg 82(1) and (2) HB (Persons who have attained the qualifying age for state pension credit) Regs 2006, Section 11 Tribunals, Courts and Enforcement Act 2007</p>	<p>Whether a LA can recover a direct HB overpayment from a landlord where recovery from the tenant is impossible. Appeal to the Upper Tribunal must be on the basis of an error of law by the First-tier Tribunal - it is inappropriate to re-argue factual issues. A detailed consideration of the construction of regulation 82 and whether the First-tier Tribunal was justified in holding the landlord as under no duty to ensure a tenant was still resident and had acted reasonably in not doing so over an extended period.</p>

<p><i>AM v Chelmsford Borough Council (HB)</i> [2013] UKUT 245 (AAC) CH/3343/2012</p>	<p>03/05/2013</p>	<p>Section 137(1)(a) Social Security Contributions and Benefits Act 1992</p>	<p>Whether a First-tier Tribunal hearing an appeal against a decision that a person was not entitled to housing benefit (or council tax benefit) for a past period was bound to decide the appeal against the appellant where another First-tier Tribunal had decided that the appellant was not entitled to income support for the same period.</p>
<p><i>GA v London Borough of Southwark (HB)</i> [2013] UKUT 170 (AAC) CH/3034/2012</p>	<p>30/04/2013</p>	<p>Rule 37 & 40 Tribunal Procedure (First-tier Tribunal) (SEC) Rules 2008 Section 11(5)(d)(iii) Tribunals Courts and Enforcement Act 2007</p>	<p>Whether a decision by the First-tier Tribunal should be set aside under rule 37 when the Council did not attend the hearing. Two issues considered: whether it was in the interests of justice to do so and whether one of the conditions in rule 37(2) was satisfied. All the facts had to be considered including the reasons why the Council was unrepresented, and the effects of setting aside the decision. If the appellant cannot satisfy the tribunal that it would have a real prospect of success, then it would not be right to exercise the discretion to set aside given the waste of time and money</p>
<p><i>DG v London. Borough. of Bromley (HB)</i> [2013] UKUT 373 (AAC) CH/2431/2012</p>	<p>23/04/2013</p>	<p>Reg 12(2)(a) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regs 2006 Reg 2 of the HB Regs</p>	<p>Whether the claimant was entitled to HB because he had a long tenancy of the property in which he lived.</p>

<p><i>AD v Nottingham City Council (HB)</i> [2013] UKUT 128 (AAC) CH/1857/2012</p>	<p>7/03/2013</p>	<p>Reg 9(1)(a) & (e) HB Regs 2006</p>	<p>Whether or not benefit was payable when the primary purpose in creating liability was to find a way to enable the claimant to remain in the flat rather than having to move, at possible risk to her health, to another home, where additional resources may be needed to support her.</p>
<p><i>Newcastle City Council v LW (HB)</i> [2013] UKUT 123 (AAC) CH/471/2012</p>	<p>05/03/2013</p>	<p>Reg 8 Tribunal Procedure (First-tier Tribunal) (SEC) Rules 2008</p>	<p>Public policy considerations arising when a claimant seeks to resile during HB appeal proceedings from a guilty plea in separate criminal proceedings.</p>
<p><i>CC v Braintree District Council (HB)</i> [2013] UKUT 104 (AAC) CH/912/2012</p>	<p>26/02/2013</p>	<p>Reg 30(1) of the HB Regs 2006</p>	<p>Whether or not it was reasonable to assess a self-employed person's income using their income for a previous period when there were fluctuations in their income.</p>
<p><i>DP v Mid Suffolk District Council (HB)</i> [2013] UKUT 95 (AAC) CH/1014/2012</p>	<p>22/02/2013</p>	<p>Sch 3 CSPSSA 2000 Reg 4 & D&A Regs</p>	<p>The claimant had already appealed to the Upper Tribunal (UT) against a decision that his benefit claim was defective. The UT decided the First-tier Tribunal had erred in law but before the First-tier Tribunal could reconsider the case the Council revised its decision. It had asked the claimant to provide further information but he failed to do so. The First-tier Tribunal decided the appeal had lapsed and the UT upheld this decision.</p>

<p><u>AG v North Dorset District Council (HB)</u> <u>[2013] UKUT 76 (AAC)</u> CH/2400/2011</p>	<p>14/02/2013</p>	<p>Reg 100 HB Regs 2006 Reg 83 CTB Regs 2006</p>	<p>Whether the decision that the appellant had received a recoverable overpayment was reasonable when the LA knew she had an outstanding claim for tax credits and had failed to clearly explain that any award was provisional pending the outcome of the claim for tax credits. Whether any official error was the only or the substantial cause of the overpayment.</p>
<p><u>OR v Secretary of State for Work and Pensions & Isle of Anglesey C.C (HB)</u> <u>[2013] UKUT 65 (AAC)</u> CH/1563/2012</p>	<p>06/02/2013</p>	<p>Reg 7(1) & (2), 7(6)(a) and 76(3) HB Regs 2006</p>	<p>Whether anyone staying overnight (for a charge) at a night shelter was occupying a dwelling as their home despite not being allowed to remain there during the day, or to leave their belongings, and having no right to stay in the night shelter.</p>
<p><u>MB v Wychavon District Council (HB)</u> <u>[2013] UKUT 67 (AAC)</u> CH/2120/2012</p>	<p>30/01/2013</p>	<p>Reg 47 HB Regs 2006 Reg 37 CTB Regs 2006</p>	<p>The appellant was wrongly informed by the LA that a lump sum of £25,000 would be disregarded provided it was used to buy a property. Points considered included: the duty to deal with appeals; whether overpayments caused by official errors are irrecoverable and how to value a property owned by a claimant.</p>
<p><u>DM v LB of Lewisham and Secretary of State for Work and Pensions (HB)</u> <u>[2013] UKUT 26 (AAC)</u> CH/1140/2011</p>	<p>16/01/2013</p>	<p>Reg 7(8)(c) HB Regs 2006</p>	<p>Whether the appellant was entitled to benefit for two properties (their existing and new home) were works of decoration were needed because of the appellant's disability - whether they amounted to adapting the dwelling under the regulations.</p>

<p><i>IS v Craven District Council (HB)</i> [2013] UKUT 19 (AAC) CH/675/2012</p>	<p>08/01/2013</p>	<p>Regs 9(1)(b) and 90 HB Regs 2006 and para 15(1)(b) of Sch 9</p>	<p>A detailed consideration of what was required within an LA's appeal response to the First-tier Tribunal and the Upper Tribunal and confirmation of the LA's role in hearings before both the First-tier Tribunal and the Upper Tribunal.</p>
<p><i>AO & BO v Shepway District Council (HB)</i> [2013] UKUT 9 (AAC) CH/2069/2012</p>	<p>07/01/2013</p>	<p>Regs 2(1),63(1), 95A(9)(c) & 95(A)(c) HB Regs 2006 Reg 3 D&A Regs Reg 13ZA HB (SPC)</p>	<p>Whether a vexatious litigant under section 42 of the Senior Courts Act 1981 can bring an appeal against the Council's decision before the Social Entitlement Chamber of the First-tier Tribunal (F-tT) and from the F-tT to the Upper Tribunal (or needs the prior permission of the High Court). Whether a vexatious litigant's partner can appeal as a joint claimant, a tenant or a person affected. Whether the Secretary of State is a respondent and whether the LA acts as his or her agent. In what circumstances the maximum rent may be paid following the death of a family member.</p>