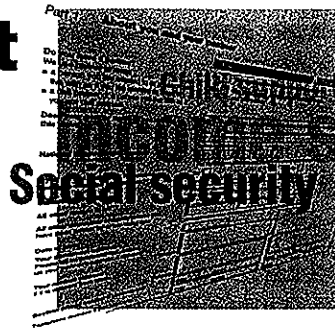


Housing benefit law update



This series by **Bethan Harris, Desmond Rutledge and David Watkinson** is designed to keep readers up to date with legislation, case-law and other recent developments in housing benefit (HB) law. The authors would like to hear of any decisions relevant to HB, in particular commissioners' decisions not published on the official website, which may be of interest to practitioners. The last article appeared in July 2005 *Legal Action* 23.

POLICY AND LEGISLATION

Housing benefit law reform *Roll out of the Local Housing Allowance*

The Local Housing Allowance (LHA), which replaces HB with a flat-rate payment, will commence national roll out, at the earliest, in April 2008. Eighteen local authorities are now piloting the scheme. The government is proposing several changes, including capping the amount of LHA that claimants can receive above the level of their rent rather than allowing them to keep all the difference, and setting the rate at the median rent rather than at the mid-point of the rental market. The government is undecided about whether LHA is appropriate for the social housing sector: see *Housing Benefit Direct*, Issue 51, March 2006 (LHA special issue) and June 2006.¹

Housing benefit sanctions for anti-social behaviour

Under the government's 'Respect' agenda, it proposes, in 2007, to pilot a scheme of cutting HB payable to those evicted for anti-social behaviour who refuse to undergo rehabilitation. The sanction will be a ten per cent loss of benefit for four weeks, 20 per cent loss for a further four weeks, and a total removal for up to five years if people still do not co-operate. Lower rates will apply to those in hardship. Normal payments resume at any stage if rehabilitation is accepted: see Department for Work and Pensions (DWP) press release, 5 June 2006.

Rent arrears pre-action protocol

In June 2005, the Civil Justice Council issued a draft pre-action protocol for rent arrears possession cases (see August 2005 *Legal Action* 16). At the time of writing, it is

anticipated that it will be introduced in October 2006. The aim of the protocol is to ensure that all reasonable steps are taken to avoid issuing proceedings. There are 11 steps that the landlord should follow before issuing proceedings. HB is relevant to steps 6, 8 and 10.

■ Step 6 requires that: 'The landlord should make every effort to establish effective ongoing liaison with the housing benefit departments and to make direct contact with them before taking enforcement action.'

■ Step 8 requires that after service of the statutory notice but before the issue of proceedings, there should be an interview which should include a discussion of the HB position.

■ Step 10 requires that the landlord should disclose its knowledge of the tenant's HB situation no later than ten days before the hearing.

Statutory instruments

New definition of 'couple' **Civil Partnership (Pensions, Social Security and Child Support)** **(Consequential, etc Provisions) Order 2005 SI No 2877**

This order came into force on 5 December 2005, on the same day as the Civil Partnership Act 2004. It inserts a new definition of 'couple' into the HB regulations to provide for four different categories of couple:

- Married couples who are members of the same household;
- Unmarried couples who are living together as husband and wife;
- Same-sex couples who have formed a civil partnership and are members of the same household; and
- Same-sex couples who are living together

as if they are civil partners. Transitional provisions apply for any claimant who is a member of a couple living together as if they are civil partners, in respect of whom there was an award of HB on 5 December 2005. The transitional provisions allow the claimant a reasonable time to notify the HB authority that s/he is a member of a couple living together as if they are civil partners, before there can be any question of an overpayment of HB resulting from the change in the law. Guidance on what counts as a reasonable period in the transitional provisions and on implementing the new definition of couple is to be found in DWP circular HB/CTB A16/2005 and bulletin HB/CTB U11/2005.²

Termination of housing benefit after suspension of payments

Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No 4) Regulations 2005 SI No 2894

These regulations came into force from 10 November 2005 and include an amendment to Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations (HB&CTB(DA) Regs) 2001 SI No 1002 reg 14(2). Where payment of benefit has been suspended due to failure to provide information, entitlement may now be terminated if after one month (rather than two months) the information has still not been provided: see DWP circulars HB/CTB A21/2005 and HB/CTB A2/2006.

Recovery of overpayments from landlords

Housing Benefit and Council Tax Benefit (General) Amendment Regulations 2005 SI No 2904

With effect from 10 April 2006, these regulations (HB&CTB(G)A Regs) amended Housing Benefit (General) Regulations (HB(G) Regs) 1987 SI No 1971 reg 101 (now replaced by Housing Benefit Regulations (HB Regs) 2006 SI No 213 reg 101), so that the chief consideration when deciding from whom to recover an overpayment will be who has misrepresented or failed to disclose information or, in the case of official error, who could reasonably have been expected to realise that there had been an overpayment. A person from whom an overpayment is sought has a right of appeal. The policy behind the amendment is to avoid local authorities recovering overpayments from landlords simply because it is the quickest and easiest method of getting the money back: see DWP circular HB/CTB A4/2006.

Consolidation of housing benefit regulations

On 6 March 2006, the HB(G) Regs 1987 and the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 SI No 325 were revoked.

Housing Benefit Regulations 2006 SI No 213

The HB Regs 2006 consolidate the existing provisions in relation to HB for claimants who have not attained the qualifying age for pension credit, and for those who have attained that age and are receiving, or whose partner is receiving, income support (IS) or income-based jobseeker's allowance (JSA).

Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 SI No 214

These regulations (HB (qualifying age for state pension credit) Regs) consolidate HB regulations in relation to the category of claimant described.

Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 SI No 217

These regulations list all statutory instruments that have been revoked and make consequential amendments to other regulations.

Habitual residence**Social Security (Persons from Abroad) Amendment Regulations 2006 SI No 1026**

These regulations came into force on 30 April 2006. They amend the HB Regs 2006 and the (HB (qualifying age for state pension credit) Regs) 2006 (see above) in the light of Council Directive 2004/38/EC (also known as the Rights of Residence Directive), which provides for new rights of residence for EC nationals for the first three months.

A person is ineligible for HB where s/he is a 'person from abroad', that is to say s/he is not habitually resident in the UK, Channel Islands, Isle of Man or Republic of Ireland. A person cannot be habitually resident unless s/he has a right to reside. Claimants whose rights to reside derive from the Rights of Residence Directive will be treated as not satisfying the right to reside aspect of the habitual residence test.

CASE-LAW

All references below are to the HB(G) Regs 1987 unless otherwise stated. The equivalent consolidated regulation under HB

Regs 2006 (see above) is stated where applicable.³

Requirement of a national insurance number in relation to 'any other person in respect of whom [the claimant] is claiming benefit' (Social Security Administration Act 1992 s1(1A) and (1B))**■ CH/3801/2004**

7 June 2005

The claimant was a local authority tenant. He had been receiving HB in his own name. He married a Thai national who had entered the UK on a visitor's visa and was subject to a condition that she did not work or have recourse to public funds. She had applied to remain in the UK as a spouse of a settled person, but had been refused and was awaiting a decision on her appeal. When the claimant made a new claim for HB, it was refused on the basis that his wife did not have a national insurance number. He appealed successfully to the appeal tribunal. The authority appealed to the commissioner.

Mr Commissioner Levenson dismissed the appeal. He held that a partner was not invariably a person in respect of whom the claimant was claiming benefit for the purposes of Social Security Administration Act (SSAA) 1992 s1(1A). The claimant's wife was affected by the decision to award benefit, but she was not a beneficiary of it as she was not allowed by law to have recourse to public funds. She was not a person in respect of whom the claimant was claiming benefit.

Note: The secretary of state has been granted permission to appeal to the Court of Appeal (*Secretary of State for Work and Pensions v Wilson*). The DWP has issued guidance to its decision-makers that all look-alike cases should be stayed pending the outcome of the Court of Appeal case: see DMG letter 17/05, December 2005.⁴

Circumstances in which a person is or is not to be treated as occupying a dwelling as his home (reg 5; HB Regs 2006 reg 7)**Trial period in a care home****■ Secretary of State for Work and Pensions v Selby DC and another [2006] EWCA Civ 271,**

13 February 2006

The claimant was the tenant of 26 Commercial Street, in respect of which he received HB. He was in frail health and moved into a residential care home in order to ascertain whether it was suitable for his needs. On 22 July 2003, the claimant entered the home with the intention of returning to 26 Commercial Street if the care home did not suit his needs. By 19 August 2003, he

decided that he was happy at the care home. On 25 August 2003, his daughter-in-law informed the council of this fact and the claimant gave notice to terminate his tenancy with effect from 3 September 2003. Sadly, the claimant died on 7 September 2003. The authority terminated his award of HB with effect from 19 August. It sought to recover a small overpayment made from 19 to 24 August.

On appeal to the appeal tribunal, it held that the claimant had been entitled to HB until his tenancy expired on 3 September. On appeal, Mr Commissioner Turnbull held that HB ought not to have been terminated until 25 August and, therefore, there was no overpayment. The secretary of state appealed to the Court of Appeal.

The Court of Appeal allowed the appeal. It observed that the secretary of state's view about the correct interpretation of reg 5(7B) and (7C) had changed in April 2004. It commented, 'So the delicious irony of this appeal is that the secretary of state does not seem to know what the regulations drafted by himself really and truly mean, and he comes before us saying, in effect, "You clever chaps in the Court of Appeal sort it out for me please".' The court held that reg 5(7C) was a deeming provision under which the claimant was treated as occupying his old home even though he manifested the intention of not returning to it. Reg 5(7C) applied if the conditions in reg 5(7B) were satisfied. To satisfy those conditions, the claimant had to enter residential accommodation with the intention of going home if it did not work out satisfactorily for him, and at no time during his stay in residential care was his dwelling let. The claimant satisfied those conditions. The claimant remained entitled to HB during his lifetime and, had he lived, would have remained so entitled to the expiration of the notice to quit.

Moving into a nursing home: meaning of intention to return home**■ CSHB/405/2005**

15 February 2006

The claimant, who had schizophrenia, received substantial support from his housing association (HA) landlord, which was paid for in a service charge. He moved into a nursing home because of terminal cancer, without terminating his tenancy and left all his possessions untouched. The HA's staff continued to visit him at the nursing home. Two months after entering the nursing home, the claimant died. The local authority decided to recover an overpayment of HB from the HA. The HA appealed. It relied on a staff memorandum stating that the claimant intended to return home to die. The local

authority relied on a letter from the nursing home stating that he was resident there on a permanent basis. The tribunal dismissed the appeal on the basis that the claimant had no intention to return to his previous home and, therefore, was not entitled to HB under reg 5(7B), (8) or (8B), which required an intention to return to the dwelling normally occupied as a home.

Mrs Commissioner Parker dismissed the landlord's appeal. She held that it was not perverse for the tribunal to prefer the information from the nursing home as representing the claimant's intention. She also held that the question of intention did not depend solely on the subjective wish of a claimant, however unrealistic his/her desire to return to the former home. It was a question of whether there was a realistic possibility of a return home.

Comment: The fact that a person has a permanent placement in a nursing or residential care home will not rule out his/her intention to return home. See, for example, *Hammersmith & Fulham LBC v Clarke* CA, 20 November 2000; (2001) 33 HLR 77, in which the Court of Appeal upheld the finding that the tenant intended to return to her council property, even though she had a permanent placement in a nursing home.

Tenancy not on a commercial basis (reg 7(1)(a)); tenancy created to take advantage of the HB scheme (reg 7(1)(l); HB Regs 2006 regs 9(1)(a) and 9(1)(l))

Asylum-seeker granted tenancy on the strength of future housing benefit claim

■ CH/3619/2005

27 January 2006

The claimant was an Orthodox Jew from the Yemen who came to the UK to seek asylum. He was assisted by a small charity that was established to help the Yemeni Jewish community. He did not seek accommodation from the National Asylum Support Service as that accommodation would not have enabled him to live within the small Yemeni Jewish community in London. The claimant had no means of paying rent unless and until his claim for asylum was decided in his favour, when it would be backdated to the date of the asylum claim. Before the claimant had been granted asylum, the charity took a lease of a house and sub-let it to him. The claimant was eventually granted asylum and claimed HB. The claim was refused. The claimant appealed successfully to an appeal tribunal. The local authority appealed to the commissioner.

Mr Commissioner Jacobs held that the tribunal was entitled to find on the evidence

that the charity knew the claimant's claim for asylum, and therefore his claim for HB, would be decided in his favour. The tenancy was on a commercial basis and there was no abuse of the HB scheme. The tenant's motive was to house himself and his family and the charity's was to provide the support that accorded with its purposes.

Landlord is a close relative (reg 7(1)(b); HB Regs 2006 reg 9(1)(b))

■ CH/3017/2005

17 March 2006

The claimant moved into a three-bedroom property to live with her mother and sister. When her mother died, the claimant submitted a claim for HB. The claim was refused on the grounds that her liability for rent was to a person who also resided in the dwelling and who was a close relative. The claimant contended that reg 7(1)(b) infringed her rights under the European Convention on Human Rights ('the convention'), in particular articles 8 and 14, because its effect was, by reason of her relationship with her sister, to treat her less favourably than any other person wishing to rent the property. The claimant's appeal to an appeal tribunal was dismissed. She appealed to the commissioner.

Mr Commissioner Turnbull was prepared to proceed on the assumption that, for the purposes of article 14, the facts of the case fell within the ambit of both article 8 and article 1 of Protocol 1 of the convention, and that the relationship with the sister fell within the terms 'birth or other status'. However, in both *R (Painter) v Camarthenshire County Council Housing Benefit Review Board* [2001] EWHC Admin 308, 4 May 2001 and *Tucker v Secretary of State for Social Security* [2001] EWHC Civ 1646, 8 November 2001, the court held that reg 7 was a legitimate and proportionate response to the aim of eradicating abuse. Furthermore, the alleged ground of discrimination, namely the claimant's close relationship with her sister, was within the category of less sensitive grounds of discrimination and would 'merely require some rational justification' (*R v Secretary of State for Work and Pensions ex p Carson* [2005] UKHL 37, 26 May 2005; [2005] 4 All ER 545 per Lord Hoffmann at para 16). As it involved a decision about the general public interest, this was very much a matter for the democratically elected branches of government (see Lord Hope's statement in *R v Director of Public Prosecutions ex p Kebilene* HL, 28 October 1999; [2000] 2 AC 326 at 381B-D).

Residential care (reg 7(1)(k); HB Regs 2006 reg 9(1)(k))
Claimant occupying a room in a registered care home but not receiving care

■ CH/1326/2004

26 April 2005

The claimant was an 85-year-old woman who moved into a room at Alexandra House, an establishment run by a benevolent fund containing different types of accommodation. She was classed as a 'hostel' resident, and received one meal a day and other services, but no personal care as defined in the Department of Health (DoH) circular *Supported housing and care homes*. The claimant was awarded HB. After the floor on which her room was situated was registered for residential care, the local authority withdrew the award of HB under reg 7(1)(k) on the ground that she was in residential accommodation. The claimant's appeal to the appeal tribunal was dismissed. She appealed to the commissioner.

Ms Commissioner Fellner allowed the appeal. The claimant was living in a registered care home but neither came within any of the definitions of vulnerable people in Care Standards Act 2000 s3(2) nor received care as set out in the DoH circular. She was not excluded from HB under reg 7(1)(k) because she was not in residential accommodation.

Persons from abroad (reg 7A; HB Regs 2006 reg 10)

Habitual residence

■ Secretary of State for Work and Pensions v Bhakta

[2006] EWCA Civ 65,

15 February 2006,

R (IS) 7/06

The Court of Appeal upheld a commissioner's decision that, where the only reason for refusing a claim for benefit is that the claimant has not resided in the UK for a sufficient period to be habitually resident by the date of the secretary of state's decision, the decision-maker (or tribunal) has the power to make an advance award (reg 72(11)) from the date that habitual residence is likely to be established, subject to a maximum of 13 weeks from the date of claim.

Note: In *CH/2484/2005* (see below), a Tribunal of Commissioners made the following observations on the effect of *Bhakta*. First, it will not assist the claimant where there has been no finding of settled intention. Second, the period of residence required to establish intention could not be reduced to a tariff. The commissioners disagreed with the suggestion, based on *CIS/4474/2003*, that a period of between one and three months

would always be sufficient to fulfil the appreciable period test.

Right to reside

■ CH/2484/2005; CIS/3573/2005 12 May 2006

A Tribunal of Commissioners considered the legality and nature of the right to reside test introduced into the main means-tested benefits in May 2004. The commissioners heard five cases together in which all of the claimants were economically inactive at the time they claimed benefit. The commissioners' main conclusions on the law can be found in *CIS/3573/2005*. The facts in that case were as follows. The claimant was born in Somalia. She went to Sweden as a refugee and was subsequently granted citizenship of that country. She came to the UK in March 2004 with her three children and claimed HB in June 2004. She had not worked during her time in the UK. The HB claim was refused. An appeal tribunal allowed the appeal on the basis that the claimant was lawfully resident under UK national law, so the test was discriminatory against EU nationals. The local authority appealed.

The Tribunal of Commissioners set aside the appeal tribunal's decision. It held that the claimants' lawful presence in the UK under domestic law was not equivalent to them having a right to reside. The commissioners also rejected a submission that the application of the test amounted to a breach of the European Convention on Social and Medical Assistance. As far as the commissioners were concerned, the test did not contain any ambiguity and was entirely in accordance with the Treaty of Rome and Council Directive 90/364/EEC. The UK government was entitled under EU law to restrict social assistance to EU nationals even if they were resident under a lawful right of entry, and no steps had been taken to remove them.

Note: It is understood that some, if not all, of the claimants intend to appeal.

Overpayments and official error (reg 99; HB Regs 2006 reg 100)

■ CH/3761/2005⁵ 24 April 2006

The claimant, whose first language was Cantonese, was awarded HB based on the fact that he received JSA. In March 2004, he found employment as a chef. He told the Jobcentre and his JSA was terminated. His personal adviser (who was Chinese) told the claimant that he need not inform the council as the Jobcentre would do so. The DWP failed to notify the council and an overpayment of HB occurred.

In May 2004, the claimant received letters

from the council which showed that HB was continuing to be paid based on his JSA claim. The claimant took these letters to the adviser at the Jobcentre. He was again told that he need take no further action and that a letter would be written to the council. The HB overpayment was discovered in August 2004 during a routine review, and the council decided to recover it from the claimant. An appeal tribunal dismissed the claimant's appeal.

Mr Commissioner Turnbull allowed the claimant's further appeal. He referred to the test in *R (Sier) v The Housing Benefit Review Board of Cambridge City Council* [2001] EWCA Civ 1523, 8 October 2001. In *Sier*, the claimant had been overpaid HB by Cambridge as the council was not aware that he had taken out a second tenancy in London and had claimed HB on that too. The claimant argued that the failure of the IS office to send a standard change of address form (NHB 8) to the relevant authority in London had caused HB to be paid on the two properties.

Mr Commissioner Turnbull held that what the claimant in *CH/3761/2005* had been told by the Jobcentre's adviser did not absolve him from his statutory duty to notify the council that he had started work. However, up until the claimant received the letters from the authority in May 2004, the substantial cause of the overpayment was the Jobcentre's mistake; it was the Jobcentre's advice that caused the claimant not to comply with his obligation to notify. *Sier* could be distinguished, as the mistake identified in that case – the department's failure to send a change of address form to the council – did not excuse the claimant from his duty to notify the council of the change of circumstances.

The cause of the overpayment after May 2004, when the claimant received the letters about his HB, was less clear. The matter was remitted to a new tribunal to consider whether the cause of the overpayment continued to be the DWP's mistake or whether the claimant, at that stage, could have reasonably been expected to realise that he was being overpaid.

See also *CH/602/2004*, a council tax benefit case in which the fact that industrial injuries benefit payments were clearly identified on bank statements submitted to the authority meant that the overpayment was due to the official error of not noting them. The claimant's failure to mention the benefit payments in his claim form did not mean that he had either caused or contributed materially to the error.

Overpayment: mistake in calculation of earnings

■ CH/1780/2005

9 September 2005

The claimant was working and claimed HB. He provided a letter from his employer reporting that he was working occasional overtime. The authority made an award on 13 August 2003 but failed to take the overtime into account. The claimant requested a revision, on the grounds that his income had been incorrectly calculated and the award was too low in September 2003, but the authority did not reply until November 2003, when it requested details of earnings for the last two months. As the claimant was disputing the calculation in relation to August, he did not pursue his revision any further. Four months later the authority took the view that he was being overpaid and sought to recover the overpayment. An appeal tribunal decided that the overpayment was recoverable because the claimant had contributed to the error by failing to reply to the authority's letter of November 2003.

Mr Commissioner Jacobs allowed the claimant's further appeal. He held that the authority's letter did not impose a duty on the claimant to provide further information under reg 73(1). It was merely an invitation to do so if he wished to pursue his application for a revision under HB&CTB(DA) Regs reg 4(5).

Applying the test in *Sier* (see above), the commissioner held that the overpayment was caused by the local authority without contribution by the claimant. The authority should have obtained more precise information about the claimant's income before making the award. The claimant did not contribute to that mistake. The claimant could not have reasonably been expected to realise that he was being overpaid as the notification letter was not precise enough about the calculation of his earnings to allow him to know that his award was too generous.

Overpayment: what claimant was told by officials

■ CH/1675/2005

23 September 2005

The claimant received HB on the basis of his entitlement to IS. In March 2004, he found work and ceased to be entitled to IS. As a result, he ceased to be entitled to HB. The authority wrote to the claimant informing him that he must start paying rent in full and enclosed a form for him to renew his claim on the basis of his current income. HB continued to be paid for another four weeks to 11 April 2004 as an extended award. The claimant contacted the council in May and offered to pay his rent and council tax in full. There was a record of a telephone conversation between

the claimant and the authority's council tax section on 7 May 2004, in which he was told that full benefit was still being credited to his council tax account. HB continued to be credited to the claimant's rent account in error until 17 May 2004. No further action was taken until October 2004, when the authority decided that the overpaid HB was recoverable from the claimant. An appeal tribunal dismissed the claimant's appeal.

Mr Commissioner Bano allowed the claimant's further appeal. He observed that reg 99 envisages that where an authority is made aware of an overpayment, it will take steps to bring this to an end. If the authority reassures a claimant that there has been no overpayment, s/he must be allowed to argue that it was reasonable to accept what s/he was told.

The case was remitted to a fresh tribunal with directions that findings of fact should be made on what the claimant had been told by the authority's representatives each time he contacted them by phone during the period of the overpayment. This was crucial to deciding whether the claimant ought reasonably to have realised that he was actually being overpaid.

From whom the recovery of an overpayment is made (reg 101; HB Regs 2006 reg 101)

■ **CH/4234/2004**

12 May 2006

The local authority decided that the claimant had been overpaid HB because he had failed to disclose that he had a student loan and that the subsequent overpayment was recoverable from him. The authority later decided that there had been a further overpayment arising out of a misrepresentation by the landlord about his status and that that overpayment was recoverable from the landlord. The claimant appealed to the appeal tribunal. He contended that the first overpayment should not be recoverable from him but from the landlord. His appeal was dismissed on the ground that, following the Court of Appeal's decision in *Secretary of State for Work and Pensions v Chiltem DC and another* [2003] EWCA Civ 508, 26 March 2003 (see June 2003 *Legal Action* 27), the appellate jurisdiction was restricted to setting aside the decision on the ground of error of law in the exercise of the local authority's discretion about from whom to recover.

On the claimant's further appeal, the Tribunal of Commissioners set aside the appeal tribunal's decision. It held:

■ The appeal tribunal erred by treating the authority as having a discretion to decide from whom an overpayment was recoverable.

The overpayment was recoverable from both landlord and tenant, unless the landlord persuaded the authority that reg 101(1) applied to it and reg 101(2) did not.

■ *Chiltem DC and another* was not relevant to the legislation as amended from 1 October 2001 and 10 April 2006.

■ Under the legislation in force from 1 October 2001 to 9 April 2006, an overpayment of HB was always recoverable from any person within the scope of reg 101(2) as well as, if different, the person to whom the overpayment was made, except where reg 101(1) applied (para 55).

■ Under the legislation in force from 10 April 2006 (HB Regs 2006 reg 101(2), as amended by the HB&CTB(G)A Regs (see above)), it was intended that recovery may be sought from the claimant and any partner of the claimant as well as the person to whom the overpayment was made, subject to exceptions (para 57).

■ In every case where a recoverable overpayment had been made, the authority should make a single decision referring to all those from whom the overpayment was recoverable, rather than separate decisions addressed to each of them. Moreover, where a local authority decided that an overpayment was not recoverable from the person to whom it was made, a proper decision to that effect should be made and included within the decision as to the person from whom the overpayment was recoverable. It should be communicated to the person to whom the overpayment was made and to those from whom it was recoverable (para 60).

■ If, contrary to that suggestion, a local authority issued a decision against only one of, say, two people from whom an overpayment was recoverable, an appellant would be entitled to a finding that s/he was not the only person from whom HB was recoverable (para 61).

■ The question of from whom to enforce the liability to repay the overpayment was a matter for the local authority, in respect of which the appellate tribunals had no power. There was nothing to prevent an authority from enforcing the liability partly against one person and partly against the other person. This might be done in a way that reflected the extent to which each party caused the overpayment, but that was not the only basis on which the decision could be taken (para 67).

Whether housing benefit overpayment recoverable after discharge from bankruptcy

■ **R (Steele) v (1) Birmingham City Council (2) Secretary of State for Work and Pensions**

[2005] EWCA Civ 1824,
16 December 2005

The claimant was made bankrupt on his own application in September 2001. He was discharged from bankruptcy two years later. He had been overpaid JSA both before and after the bankruptcy order. He brought a claim for judicial review challenging the local authority's power to recover the overpayments from his HB after his discharge from bankruptcy. At the first instance, it was held that an overpayment made before the date of the bankruptcy order was a bankruptcy debt and was not recoverable, but that an overpayment made after the bankruptcy order was recoverable. The secretary of state appealed.

The Court of Appeal allowed the appeal and reversed the decision of the High Court. The Court of Appeal held that the overpayment was a potential liability only as the claimant was under no obligation or liability to repay the overpaid benefit until a determination had been made under SSAA s71. Accordingly, at the time the claimant was made bankrupt, he was not under a liability to repay the benefit and it was not a bankruptcy debt within the meaning of the Insolvency Act 1986. The overpayment was, therefore, recoverable from the claimant despite the fact that he had been discharged from bankruptcy.

- 1 Available at: www.dwp.gov.uk/housingbenefit/news/newsletter/index_2006.asp.
- 2 The DWP circulars and bulletins referred to in this article are available at: www.dwp.gov.uk/hbctb. They provide a useful but not definitive guide to the interpretation of HB legislation.
- 3 The full text of Social Security Commissioners' decisions is available at: www.osscc.gov.uk unless otherwise stated.
- 4 Available at: www.dwp.gov.uk.
- 5 Michael Barris, Roehampton Citizens Advice Bureau supplied this case report. The decision was not circulated.



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