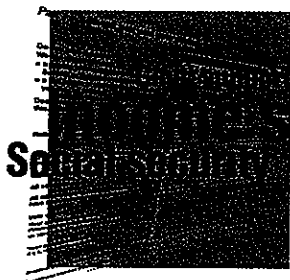


Housing benefit law update



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 which may be of interest to practitioners. The last article appeared in July 2006 *Legal Action* 31.

POLICY AND LEGISLATION

Welfare Reform Act 2007

Local housing allowance

The Welfare Reform Act (WRA) 2007 received royal assent on 3 May 2007. It facilitates the national roll out of the local housing allowance (LHA), which is currently being piloted in 18 local authority areas. The LHA replaces the current method of calculating HB entitlement with flat-rate payments based on the number and the mix of occupiers, and on the area in which the claimant lives. It is not now proposed to introduce the LHA in the social rented sector. In order to implement the LHA nationally, the Housing Benefit Regulations 2006 (HB Regs 2006) SI No 213 are to be amended by the Social Security (Local Housing Allowance and Information Sharing) Amendment Regulations 2007, and the Rent Officers (Housing Benefit Functions) Order (RO(HBF) Order) 1997 SI No 1984 will be amended by the Rent Officers (Housing Benefit Functions) Amendment Order 2007. The amending regulations are in draft form at the time of writing.¹

HB sanctions for anti-social behaviour

The WRA also introduces the piloting of HB sanctions for anti-social behaviour, which is planned to start in 2008. People evicted as a result of anti-social behaviour who fail, without good cause, to comply with a warning notice requiring them to engage with services aimed at improving their behaviour, will have their HB entitlement restricted for a period of up to five years from the date of the possession order: see 'Action to tackle nuisance neighbours', *Respect* press release, 5 June 2006.²

The Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007 set out the different rates by which HB will be reduced and specify who is 'a person in hardship' who

can avoid a 100 per cent reduction. The Housing Benefit (Loss of Benefit) (Pilot Scheme) (Supplementary) Regulations 2007 set out the meaning of 'good cause' for failing to comply with a warning notice and provide appeal rights to the Tribunals Service where a sanction for anti-social behaviour is imposed. Both sets of regulations are in draft form at the time of writing.³

Consolidation of HB regulations

The Department for Work and Pensions (DWP) has published cross-reference tables to show where the Housing Benefit (General) Regulations (HB(G) Regs 1987) 1987 SI No 1971 and all subsequent amending regulations (which were repealed on 6 March 2006) are now to be found. The three sets of consolidating regulations are:

- the HB Regs 2006;
- the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 SI No 214; and
- the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations (HB & CTB(CP) Regs) 2006 SI No 217.

The tables are published in DWP bulletins HB/CTB U3/2006 (see 'Quick ref to HB regs') and U5/2006 (see 'HB regs', 'HB schedules' and 'Misc regs').⁴

Statutory instruments

Personal injuries payments

Social Security (Miscellaneous Amendments) (No 4) Regulations 2006 SI No 2378

These regulations came into force on 1 October 2006. They include amendments to HB Regs 2006 to create a 52-week disregard for personal injuries payments, and to treat income derived from personal injuries awards that is held in court as disregarded income (see DWP circular HB/CTB A16/2006).⁵

Exemptions from habitual residence test

Social Security (Persons from Abroad) Amendment (No 2) Regulations 2006 SI No 2528

With effect from 9 October 2006, these regulations amend HB Regs 2006 to redefine the exemption from the habitual residence test for those granted exceptional leave to remain in the UK, and create a new exemption for people granted humanitarian protection (see DWP circular HB/CTB A16/2006).⁶

Claims and notification of change of circumstances by telephone or e-mail Housing Benefit and Council Tax Benefit (Amendment) (No 2) Regulations 2006 SI No 2967; Housing Benefit and Council Tax Benefit (Electronic Communications) Order 2006 SI No 2968

These regulations came into force on 20 December 2006. They allow local authorities to opt into a new framework whereby claimants can make their claims for HB, or give notification of changes of circumstances, by telephone or e-mail as an alternative to doing so in writing (see DWP circular HB/CTB A18/2006).⁷

HB payable on two homes Social Security (Miscellaneous Amendments) (No 5) Regulations 2006 SI No 3274

These regulations came into force on 8 January 2007. They amend HB Regs 2006 reg 7 to state that where a claimant cannot avoid rent liability in respect of two dwellings, the start date for the four-week period during which HB may be paid on both is the date of the move.

Entitlement to HB from first day of occupation

Housing Benefit (Daily Liability Entitlement) Amendment Regulations 2007 SI No 294

These regulations came into force on 1 April 2007. They amend HB Regs 2006 to provide for HB entitlement from the first day of occupation where the payments are due to a local authority acting under its homelessness functions or the accommodation is held on the authority's short-term leased scheme (see DWP circular HB/CTB A2/2007).⁸

Advance claims of HB

Social Security, Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2007 SI No 1331

With effect from 23 May 2007, local authorities may no longer accept advance claims for HB from persons from abroad. This means that those who fail the habitual

residence test at the time they claim can no longer be given an advance award starting from the future date on which they will satisfy the habitual residence test. The regulations reverse the effect of *Secretary of State for Work and Pensions v Bhakta* [2006] EWCA Civ 65, 15 February 2006; R (IS) 7/06; July 2006 *Legal Action* 33. See DWP circular HB/CTB A6/2007 and Memo DMG 19/07.⁹

Claimants must submit a new claim in the week that they believe they have become habitually resident as the decision-maker (and appeal tribunal) cannot take into account events which occur after the date the claim is refused (Child Support, Pensions and Social Security Act 2000 Sch 7 paras 2(b) and 6(9)). The fact that the claimant has an outstanding appeal does not prevent him/her making a fresh claim.

Circumstances in which HB not payable; shared ownership Housing Benefit (Amendment) Regulations 2007 SI No 1356

These regulations come into force on 1 October 2007. They amend HB Regs 2006 including provisions that:

- a person will not be entitled to HB if s/he or his/her partner ceased to be a tenant under a long tenancy of the dwelling within the previous five years, unless it would have been impossible to remain in occupation without relinquishing the long tenancy;
- HB can be paid in respect of a shared ownership lease, and the claim will not be referred to the rent officer; and
- where a claimant's partner is the owner of a dwelling, no HB is payable.

Guidance on defective claims

DWP general information bulletin HB/CTB G8/2007, 7 June 2007, draws attention to breaches of regulations in the manner in which some councils are handling defective claims by:

- refusing to accept or returning to the customer defective claims which need additional information;
- allowing claimants less than one month to remedy defects on claims or provide additional information or evidence to support their (defective or effective) claims; and
- awarding HB on defective claims, then immediately suspending payment until more information is received.

The bulletin issues guidance on the above and severely criticises the last practice as it distorts the picture of performance. An average processing time of less than 30 days counts as 'excellent performance'.¹⁰

CASE-LAW¹¹

The full text of most case-law still refers to the HB regulation in question by its number in HB(G) Regs 1987. The case summaries below refer to the equivalent regulation in the HB Regs 2006. All references below are to the HB Regs 2006 unless stated otherwise.

Occupying a dwelling as a home (reg 7)

■ **CH/1786/2005**

8 June 2006

The claimant had a flat in London and was awarded HB from 1996 to 2003. From 1996, he worked part-time in Kent and stayed with his sister for three nights a week. In July 2001, he was taken seriously ill and was admitted to hospital in Kent eight times. The claimant continued to stay at his flat in London for six nights a month on average while recovering from his illness. The council refused HB in 2003 on the ground that he was not occupying the flat as his home (reg 7). A tribunal allowed the claimant's appeal.

Dismissing the council's appeal, Commissioner Howell held that there was no free-standing 'centre of interest' test in reg 7 (as the commentary in *CPAG's housing benefit and council tax benefit legislation* suggested). What was required was an overall assessment of where a person was truly making his/her home.

Liability to make payments in respect of a dwelling (reg 8): where landlord owns no interest in the property

■ **CH/2959/2006**

21 December 2006

The claimant held a tenancy in respect of which his brother was his landlord. However, that brother did not own any interest in the property: it was owned by another brother. The claimant's claim for HB was refused and he appealed. The tribunal held that there was no liability to pay rent, as the claimant's landlord did not own any interest in the property.

On the claimant's further appeal, Deputy Commissioner Whybrow QC held that the tribunal's decision was in error as it was contrary to *Bruton v London and Quadrant Housing Trust* [2000] 1 AC 406, HL, 24 June 1999 and *Kay v Lambeth LBC*; *Price v Leeds City Council* [2006] 4 All ER 128; [2006] UKHL 10, 8 March 2006. *Bruton* confirmed the binding nature of tenancies granted by a landlord that held the properties on licence only. In *Kay*, Lord Scott applied the same principle to the example of a squatter granting a tenancy of the land to another. It would be a valid tenancy between them, although not

binding on the paper owner of the land. The claimant's appeal was remitted to the tribunal for rehearing.

Liability to make payments in respect of a dwelling (reg 8): where claimant lacks capacity to contract

■ **CH/2121/2006**

13 November 2006

The claimant was a severely disabled young woman. She lived with her sister in a bungalow, in respect of which their father was their landlord, and which had been built in the garden of the family home. The claimant's claim for HB was disallowed on the basis that there was no liability to pay rent (reg 8) and the tenancy had been 'contrived' to take advantage of the HB scheme (reg 9(1)(l)). A tribunal dismissed the claimant's appeal as it doubted her capacity to understand what she contracted for.

Commissioner Mesher allowed the claimant's further appeal. It was settled law that if a party to a tenancy lacked capacity and the other party knew this, the contract was not void but was merely voidable at the option of the tenant. There was no minimum level of understanding below which a tenancy was void. Since the claimant did not wish to avoid the tenancy, she was under a legal liability to make payments within reg 8.

Persons who have previously owned the dwelling treated as not liable to make payments (reg 9(1)(h))

■ **CH/3450/2006**

22 January 2007

The claimant and her husband had mortgage arrears on their home but the mortgagee was not pressing for payment. The couple arranged to sell their home to the claimant's nephew and rent it from him. The claimant's claim for HB was refused on grounds that reg 9(1)(h) applied as she had owned the dwelling less than five years previously and the authority was not satisfied that she could not have continued to occupy it without relinquishing ownership. A tribunal dismissed the claimant's appeal on the ground that she could have done more to avoid relinquishing ownership, such as contacting the mortgage company or a citizens advice bureau.

On the claimant's further appeal to the commissioner, she argued that the question of whether she could have continued to occupy without relinquishing ownership was a subjective one. The commissioner held that the test was only 'subjective' in that it was a question of what was practically possible for that individual claimant and his/her partner. There may also be cases where a claimant was under so much stress and worry that it was in the interests of his/her mental health

to dispose of the property. Otherwise a claimant's own perceptions were not relevant to the test.

Exempt accommodation and 'old reg 11'

Claims for HB that fall within the pre-2 January 1996 form of HB(G) Regs 1987 reg 11 (old reg 11) are not restricted to the amount set by the rent officer unless there is suitable alternative accommodation available and it is reasonable to expect the claimant to move. Under the consolidation of HB regulations that took effect from 6 March 2006 (see above), HB(G) Regs 1987 reg 11 became HB Regs 2006 reg 13. Provision for the continued application of 'old reg 11' to some claims, including where accommodation is 'exempt', is now made in HB & CTB(CP) Regs Sch 3 paras 4(1) and 5(2).

■ CH/423/2006

19 June 2006

The claimants were tenants of Rivendell Lake Housing Association Limited which provided supported accommodation for people with learning difficulties. The rent was £238.92 per week but the rent officer decided a local reference rent (LRR) of £45 per week. It was not a term of the tenancy that Rivendell provided care, support or supervision. Care was provided by Citizenship First (CF) and paid for by the council. There was, however, an agreement between Rivendell, CF and the council in which CF agreed to provide care, support and supervision for the tenants 'on behalf of' Rivendell. However, the council did not consider that this was exempt accommodation falling within old reg 11, not being a case where the landlord or a person acting on its behalf provided the claimants with care, support and supervision within the terms of that regulation.

The claimants' appeals to the tribunal and to the commissioner were dismissed. The relationship between Rivendell and CF was that they were joint venture partners. CF had been engaged and paid for by others and was not providing care, support and supervision on Rivendell's behalf within the terms of the regulation.

■ CH/3811/2006

7 March 2007

The claimant was a tenant of Reside Housing Association Limited which specialised in providing ordinary housing for persons with mental health problems. The council refused to treat her claim as falling within old reg 11 as it did not consider that Reside or anyone acting on its behalf provided the claimant with care, support or supervision, and, therefore, the accommodation was not 'exempt accommodation'. The tribunal dismissed the claimant's appeal.

On the claimant's further appeal, Commissioner Turnbull held that the definition of 'exempt accommodation' did not require that the landlord was the main provider of care, support or supervision, or that such services were provided by it under contract or statute. However, the care, support or supervision had to be more than minimal. Reside provided support via its tenant liaison officer who had 50 properties in England and Wales to visit. He could only visit each one once every six weeks. The support was minimal and the accommodation was not therefore 'exempt'.

No HB payable on a 'long tenancy' (reg 12(2)(a))

■ CH/883/2006

10 November 2006;

■ CH/3282/2006

2 May 2007

The commissioners decided that a 'long tenancy' (defined in reg 2 as a tenancy for a term exceeding 21 years) was not created if the lease was not made by deed. The lease would take effect as a periodic tenancy only and the claimant would not be deprived of HB under reg 12(2)(a) on the ground of having a 'long tenancy'.

Deprivation of capital (reg 49): knowledge of the capital rules

■ CH/264/2006

26 April 2006

The claimant received capital of just over £47,000 in May 2004 and by July 2004 she had disposed of £45,000 of it. She was refused HB on the ground that she had deprived herself of capital for the purpose of securing entitlement to HB (reg 49). On the claimant's appeal, the tribunal decided that she must have had knowledge, in general terms, of a capital limit as it was inconceivable that she would have spent as she did unless she was aware of the possibility of claiming benefits for her financial support.

Allowing the claimant's further appeal, the commissioner held that the tribunal should ask itself what could be inferred from the claimant's knowledge of the capital limit and the other circumstances of the case. It was always possible that a claimant who has knowledge of the capital rule did not act on it. From its findings that the claimant had spent rashly and excessively with some knowledge of the capital limit, it did not necessarily follow that she had done so with the relevant purpose in mind. The tribunal had to go further and consider whether, on its assessment of her character and thinking, securing entitlement to HB had been her 'significant operative purpose' (see CH/3169/2004, 3 March 2005, at para 21; R(H) 1/06; July 2005 *Legal Action* 24).

Deprivation of capital (reg 49) by claimant's future partner

■ CIS/1757, 1807/2006 and CH/1822/2006

29 November 2006

The claimant, who received HB, notified the council that Ms H was moving in to live with him as his partner. His HB was terminated on the ground that Ms H had deprived herself of capital for the purpose of securing HB entitlement. Before becoming the claimant's partner, she had sold her house and spent the proceeds, including on an extravagant holiday. The claimant's appeal was dismissed. He applied for leave to appeal to the commissioner.

The claimant argued that it would be oppressive, irrational and disproportionate for the notional capital rule to apply to him as:

- the disposals had been made at a time when the claimant and Ms H were not members of the same family and he had no control over her actions;

- the claimant would not be entitled to income-related benefits and would be unable to pay his rent for a significant period, and, therefore, was at risk of losing his home, an assured tenancy, unless he separated from Ms H; and

- there was a violation of article 8 of the European Convention on Human Rights ('the convention').

The commissioner refused leave. The regulation performed a legitimate function in a proportionate way. Any interference with the claimant's home was authorised under article 8(2) of the convention.

Comment: The claimant has been granted permission to judicially review the commissioner's refusal of leave. The case is due to be heard in July 2007 as *R (Hook) v Secretary of State for Work and Pensions*.

Non-dependant deductions (reg 74): guidance on imposing the highest level in the absence of evidence

■ CH/48/2006

24 April 2007

C appealed against the council's decision to implement the highest level of non-dependant deduction (regs 63/74) in the absence of evidence of the non-dependant's earnings. There was evidence before the tribunal that C's daughter was 19 and worked 20 hours a week in a clothes shop. The father estimated that she earned about £96 per week but conceded that she worked overtime. The commissioner held that, while the local authority was entitled to make adverse inferences in the absence of evidence, its decision had to be based on 'some sense of reality'. The daughter was working in a junior role in an occupation which was likely to be

paying the minimum wage. To treat her as having weekly earnings in excess of £322 (the highest rate of the non-dependant deduction) was to lose touch with reality. See DWP general information bulletin HB/CTB G8/2007 above.

Payment of LHA to landlord (reg 96, as amended by Sch 10 Part 2 para 13(2))

■ **CH/2986/2005**

13 November 2006

The claimant claimed HB in an area selected for the pilot of LHA. When the scheme started, the council stopped paying HB direct to the landlord and paid it to the claimant. The claimant, however, paid nothing to the landlord. The landlord appealed against the council's decision to pay HB to the claimant rather than directly to him. Reg 96(3A)(b)(ii) states that LHA may be paid to the landlord where the council considers that the claimant will have difficulty managing his/her affairs. The appeal tribunal allowed the landlord's appeal.

Commissioner Williams allowed the council's appeal. The decision to cease making payments to the landlord was a supersession made on the council's own initiative as a result of a change of circumstances, namely the amendment to the HB legislation. The tribunal's role in relation to the council's decision on whether the claimant was likely to have difficulty managing his affairs was not limited to a judicial review jurisdiction. It was a question that the appeal tribunal should consider for itself. The proper parties to the appeal were the council, the landlord and the claimant. As the claimant had not been given notice of the appeal, there should be a new hearing before the tribunal after proper notice to him.

Comment: In *CH/1821/2006*, 3 April 2007, it was held that an appeal against a local authority's decision on whether to pay HB directly to the claimant or the landlord was not limited to scrutiny of the decision on judicial review grounds. The tribunal was entitled to substitute its own judgment for that of the authority.

Overpayments and official error (reg 100(2))

■ **CH/3083/2005**

1 November 2006

The commissioner held that a failure by the DWP to notify the council that the claimant had signed off jobseeker's allowance and wished to claim one month's extended payment of HB was an official error which was, for the initial period of the overpayment, 'substantially more potent' as a cause of the overpayment than the claimant's failure to

notify the council herself (*R (Sier) v Cambridge CC HBRB* [2001] EWCA Civ 1523, 8 October 2001). It was reasonable for the claimant to assume that the DWP did notify the council. The overpayment during the one-month period was not recoverable.

Comment: In two further official error cases, the council's argument that the claimant ought to have realised, from a careful reading of the award letter, that s/he was being overpaid was rejected:

■ *CH/2935/2005*, 28 March 2006,

concerned a pensioner claiming HB for the first time;¹² and

■ in *CH/858/2006*, 11 September 2006, the claimant had arrived recently from the Netherlands and was unfamiliar with the impact of tax credits on HB.

Overpayments and defective decisions

The two cases below show how a significant omission in an overpayment decision letter can render the decision of no legal effect.

■ **CH/181/2006**

1 November 2006¹³

The council had reached its overpayment decision before it made a decision superseding entitlement. The tribunal found the adjudication process to be so flawed as to render the decision invalid: it is settled law that the council must show that a superseding or revision decision has been made before an overpayment decision can be reached. On appeal to the commissioner, the council argued that even if the adjudication process had been defective, the tribunal could have remedied it using *R(IB) 2/04*, 21 January 2004.

Dismissing the appeal, the commissioner held that *R(IB) 2/04* was concerned with an appeal against an entitlement decision. That issue was manifestly different from the question of how a tribunal should deal with an overpayment decision, where there was a need to identify a revision or supersession decision as a precondition for the finding that there was a recoverable overpayment.

■ **CH/1395/2006**

20 December 2006

The council's decision that the claimant had been overpaid HB contained no details of the amount overpaid. The tribunal purported to confirm that there had been a recoverable overpayment.

On the claimant's appeal to the commissioner, it was held that there had been a complete failure by the council to make a decision that there was a recoverable overpayment. The tribunal had had no jurisdiction to make any decision on recoverability.

Overpayments and underlying entitlement (reg 104)

■ **CH/360/2006**

19 January 2007¹⁴

Commissioner Powell set out guidance on the requirement for councils and tribunals, when calculating overpayments, to offset the claimant's actual (or underlying) entitlement. If the claimant has failed to provide information requested about his/her actual circumstances during the overpayment period, the council should make its calculation on the evidence available to it. The claimant may appeal against the decision and submit further evidence on appeal.

DWP circular HB/CTB A13/2006 also reminds councils that it is their duty to calculate underlying entitlement in all overpayment cases.

Liability to pay rent and Landlord and Tenant Act 1987 s48

■ **CH/257/2005**

17 July 2006

Deputy Commissioner Mark overturned the decision of a tribunal that the claimant had no liability to pay rent because the landlord had not complied with Landlord and Tenant Act 1987 s48. Section 48 requires that the landlord provides an address for service in the UK, failing which no rent is treated as due. However, once the section is complied with, rent for the whole period during which the address was withheld becomes due (*Dallhold Estates v Lindsey Trading* [1994] 1 EGLR 93 at para 97).

The deputy commissioner held that the claimant remained liable to pay the rent and was entitled to HB, despite the landlord's failure to comply with s48. It would be a curious construction of a provision designed to protect tenants if the landlord's default disentitled the claimant to HB.

National insurance number requirement for 'any other person in respect of whom [the claimant] is claiming benefit' (Social Security Administration Act 1992 s1(1A) and (1B))

■ **Secretary of State for Work and Pensions v Wilson**

[2006] EWCA Civ 882,

29 June 2006,

[2007] 1 All ER 281,

R(H) 7/06

The appeal concerned entitlement to HB when the claimant's wife neither had nor had applied for a national insurance number (NINO), and so did not comply with Social Security Administration Act (SSAA) 1992 s1B, as amended by the Social Security Administration (Fraud) Act 1997. SSAA s1B

requires that both the claimant and 'any other person in respect of whom he is claiming benefit' must comply with the provision.

Mrs Wilson was a Thai national who had entered the UK on a visitor's visa that prohibited work or recourse to public funds. Her appeal for leave to remain as a spouse was pending. Mrs Wilson's immigration solicitors advised her that an application for a NINO could prejudice that appeal.

Allowing the secretary of state's appeal, the Court of Appeal held that the claimant was not entitled to HB because his wife had not satisfied the NINO requirement. HB is claimed "in respect of" a person if the benefit claimed is referable in some way to that person, as where the benefit or some component of it is defined or quantified by reference to that person' (Richards LJ at para 28). The claim was, therefore, made in respect of Mrs Wilson because a partner is taken into account in the quantification of benefit, albeit, in this case, doing so made no difference to the amount of HB paid.

The secretary of state made clear that an application for a NINO would not conflict with a visa condition prohibiting work.¹⁵ The Court of Appeal held that Mrs Wilson would not have had recourse to public funds as a result of the claimant's HB claim if successful. Richards LJ stated, 'All this may involve the drawing of some fine lines, but in my view such lines can properly be drawn and they serve to avoid the unfairness that troubled the commissioner' (para 40). See DWP bulletin HB/CTB G7/2006 on the effect of *Wilson*.¹⁶

Comment: If there is a problem with a claimant's NINO, the council cannot simply refuse to make a decision on the claim (see *CH/2155/2003*, 9 September 2004; *R(H) 3/05*; December 2004 *Legal Action 30*). DWP guidance reminds councils that it is not necessary for the claimant to have been allocated a NINO before action is carried out on a claim: see DWP bulletin HB/CTB G7/2007. Where there has been a refusal to allocate a NINO, resulting in the refusal or termination of HB payments, the decision can be appealed: see *CIS/345/2003*, 15 April 2003.

Paying HB pending appeal

■ R (Hall) v Chichester DC

[2007] EWHC 168 (Admin),

19 January 2007

Miss Hall's HB was suspended following her failure to respond to a request for information under Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations (HB & CTB(DA) Regs) 2001 SI No 1002 reg 13(4). Her appeal to a tribunal was dismissed. She appealed to the commissioner. In the meantime, she was evicted due to rent arrears. She brought a claim for judicial

review against the council's decision not to pay HB pending her appeals.

Dismissing her claim for judicial review, Stanley Burnton J held that there was no power under the regulations to pay HB pending appeal. HB & CTB(DA) Regs reg 14 stated clearly that in the event of a suspension, the claimant ceased to be entitled to benefit. However, a claimant could request a revision of the decision not to pay under HB & CTB(DA) Regs reg 4, and, in effect, concede the appeal. Here, the council had maintained the correctness of the original decision.

Recovery of an overpayment from a discharged bankrupt

■ R (Balding) v Secretary of State for Work and Pensions

[2007] EWHC 759 (Admin),

3 April 2007

The High Court held that the secretary of state could not recover an overpayment of income support following the appellant's discharge from bankruptcy where the recoverability decision was made before the bankruptcy order.

Comment: Contrast *Balding* with *R (Steele) v (1) Birmingham City Council (2) Secretary of State for Work and Pensions* [2005] EWCA Civ 1824, 16 December 2005; July 2006 *Legal Action 35*, where the recoverability decision was made after the date of bankruptcy. See DWP bulletin HB/CTB G5/2007 for guidance to HB departments on recovering overpayments following discharge from bankruptcy.¹⁷

Local reference rent; the meaning of 'locality' (Rent Officers (Housing Benefit Functions) Order 1997 SI No 1984 (as amended))

■ The Rent Service v R (Heffernan)

[2007] EWCA Civ 544,

13 June 2007

This was the Rent Service's appeal against the Administrative Court's decision ([2006] EWHC 2478 (Admin), 10 October 2006) to quash a rent determination which treated the whole of the City of Sheffield as the 'locality' for the purposes of determining the LRR. The LRR calculation takes a median figure between low and high rents within a locality. Mr Heffernan was an assured tenant in premises in the centre of Sheffield, a relatively affluent area compared with other parts of Sheffield. The LRR produced a shortfall of roughly £200 per month between HB and rent. The Administrative Court held that the Rent Service had failed properly to apply RO(HBF) Order Sch 1 para 4(6), as amended, as the rent officer had not conducted a qualitative assessment of the health, education, recreation, personal banking and shopping provision available in

the 'locality' from the point of view of the tenant in the dwelling under consideration. Mr Heffernan submitted that two dwellings could only be considered to be in the same locality if the facilities in that locality were of the same type and standard. The Court of Appeal disagreed and held that:

■ 'Locality' meant a broad geographical area and included a mixture of property types and tenure;

■ The use of the word 'standard' in the test did not require a detailed comparison, service by service. The test was simply referring to services which meet the requirements of the law and the appropriate public authorities;

■ Restricting localities to areas in which services and facilities are of a similar quality would have the effect of segregating the more deprived from the more prosperous areas. This would be contrary to the purpose of the legislation and would put a premium on tenants going to more prosperous areas where higher HB would be paid (*R (Sadaat and others) v The Rent Service* [2001] EWCA 1559 considered);

■ Rent officers were expert decision-makers who could form their own view about the precise extent of a locality;

■ An area would only be too large to constitute a locality if it represented an unworkable or unmanageable scheme for assessing LRR. Greater Manchester was an example of an area which would be too large.

The Rent Service had been entitled to define the relevant locality as it did and therefore the rent determination would stand.

Comment: This may now be the final word on the meaning of 'locality' and bring to a close challenges to LRR determinations based solely on the size of the area chosen.

Practice and procedure

Local authority's role in referring appeal to the Appeals Service

■ CH/2812/2005

27 July 2006,

R(H) 1/07

The High Court issued an order which had the effect of quashing the decision of a HB review board and remitting the case to an appeal tribunal. The council failed to refer the case to the Appeals Service. A tribunal chairperson nevertheless listed the appeal for hearing. The claimant's appeal was allowed. The council appealed to the commissioner who dismissed the appeal and issued guidance on the council's role in referring appeals to the Appeals Service.

First, so long as the letter of appeal is effective within the terms of HB & CTB(DA) Regs reg 20(1), the tribunal has jurisdiction to deal with it. Second, the only role for the council is to receive the appeal documents

and to ensure that they contain the necessary information. It has no power to decide whether the information provided is sufficient; that is a matter for the legally qualified panel member to decide. The tribunal's ability to fulfil its statutory functions does not depend on how a local authority carries out its task which was an administrative one. Accordingly, there could be cases in which the tribunal could take notice of an appeal despite a local authority's refusal to refer it to the Appeals Service. This did not mean that claimants could simply bypass the council and lodge appeals with the tribunal, but the tribunal was entitled to handle matters differently if the circumstances required it.

Comment: A DWP service level agreement between councils and the Appeals Service contains a clause that councils will aim to complete an appeal submission and issue copies of it to the Appeals Service and to the appellant within four calendar weeks of receiving the appeal: see *Housing Benefit Direct*, Issue 66, June 2007¹⁸ and DWP general information bulletin HB/CTB G8/2007 at para 23.

Article 6 and HB review boards

■ *Tsfayo v UK*

App No 60860/00,

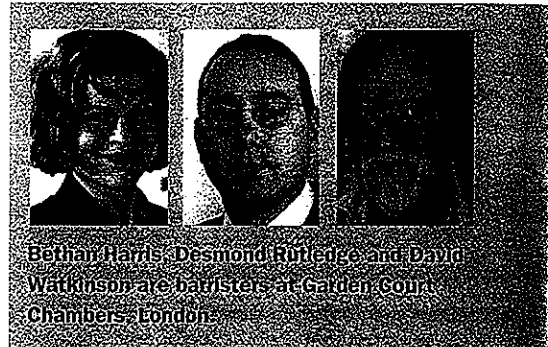
14 November 2006

The European Court of Human Rights found that there had been a breach of article 6 of

the convention in the determination by the HB review board, composed of five elected councillors, of whether the claimant had 'good cause' for her late claim for HB, as this was a question of fact which did not require specialist expertise. The availability of judicial review did not ensure compliance with article 6. See May 2007 *Legal Action* 43 for a full case summary.

- 1 See *A new deal for welfare: empowering people to work. Consultation report*, June 2006, DWP, available at: www.dwp.gov.uk/welfarereform/docs/welfare_reform_response.pdf and from TSO, £17.75. The draft regulations are available in the DWP's *Welfare Reform Bill draft regulations and supporting material*, October 2006, available at: www.dwp.gov.uk/welfarereform/welfare-reform-bill-draft-regs.pdf.
- 2 Available at: www.respect.gov.uk/members/news/article.aspx?id=8498.
- 3 See note 1 for availability of draft regulations.
- 4 DWP bulletins are available at: www.dwp.gov.uk/housingbenefit/news/newsletter/bulletins. DWP circulars are available at: www.dwp.gov.uk/hbctb. The guidance contained in both types of document is not necessarily a definitive statement of HB law.
- 5 See note 4.
- 6 See note 4.
- 7 See note 4.
- 8 See note 4.
- 9 See note 4 and Memo DMG 19/07 is available at: www.dwp.gov.uk/publications/dwp/dmg/memletrs/m-19-07.pdf.
- 10 See note 4.

- 11 The full text of Social Security Commissioners' decisions is available at: www.osscsc.gov.uk and www.baillii.org/uk/cases/UKSSCSC.
- 12 Commissioners' decisions are available at: www.hbinfo.org. Note that access to site's content is available to subscribers only.
- 13 See note 12.
- 14 See note 12.
- 15 This is confirmed by official guidance in the form of the Secure National Insurance Number Application Process, which states that a NINO can be allocated on a local authority 'benefit inspired' application. The guidance is available at: www.dwp.gov.uk/pub_scheme/2006/oct.
- 16 See note 4.
- 17 See note 4.
- 18 Available at: www.dwp.gov.uk/housingbenefit/news/newsletter/2007/issue66-jun07.pdf.



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