

# Housing benefit law update



This annual 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 2007 *Legal Action* 9.

## POLICY AND LEGISLATION

### Restrictions on HB backdating

The government has consulted on plans to reduce the period of backdating for HB from 12 months to three months, by amendments to Housing Benefit Regulations (HB Regs) 2006 SI No 213 reg 83 and Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (HB(SPC) Regs) 2006 SI No 214 reg 64. If the change goes ahead, it is planned to come into force in October 2008.<sup>1</sup>

### Transformation of the tribunal system

The tribunal system is being reorganised under the Tribunals, Courts and Enforcement Act 2007. Social security appeal tribunals will become part of the Social Entitlement Chamber of the First Tier tribunal, which will commence on 3 November 2008. The Act also provides for an Upper Tribunal to deal with appeals and, in some circumstances, judicial review. A Tribunals Procedure Committee was set up in May 2008 to amend rules of procedure. Lord Justice Carnwath has been elected senior president of the new tribunals system. The transfer to the new system is expected to take place by April 2009.<sup>2</sup>

### Discretionary housing payments best practice guide

In March 2008, the Department for Work and Pensions (DWP) issued new guidance updating the 2001 guidance on discretionary housing payments (DHPs), addressed to local authorities exercising their discretion to provide financial assistance with housing costs under the Discretionary Financial Assistance Regulations (DFA Regs) 2001 SI No 1167.<sup>3</sup>

### New regulations

#### Local housing allowance

This new method of calculating HB for most private sector tenancies was introduced nationally on 7 April 2008 as a result of regulations made under the Welfare Reform Act 2007: the main ones being Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 SI No 2868, amending the HB Regs 2006; Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 SI No 2869, making equivalent amendments in relation to persons of state pension credit (SPC) age; and Rent Officers (Housing Benefit Functions) Amendment Order 2007 SI No 2871, amending the Rent Officers (Housing Benefit Functions) Order 1997 SI No 1984.

To calculate the local housing allowance (LHA), the rent officer determines the maximum rent element in the calculation of maximum HB by working out a median rent for different size categories of dwelling in each 'broad rental market area' (BRMA). The maximum HB payable is the LHA applicable to the relevant size accommodation for the claimant in the area of his/her chosen dwelling, whether or not the actual rent is more or less than that amount, with one proviso, namely that if the LHA is more than £15 greater than the rent, the LHA will be capped at the amount equivalent to the rent plus £15. The amount the rent officer has assessed each month as the LHA for each size category of dwelling in each BRMA is stated on the Rent Service website.<sup>4</sup>

The LHA applicable to any claimant remains the same until an annual reassessment (new reg 12D(2) of the HB Regs 2006) unless there is a change of circumstances (as set out in new reg 13C(2)(d) of the HB Regs 2006). LHA will

generally be paid to the tenant and not to the landlord. The rules that make payment to the landlord mandatory in certain circumstances remain in place (HB Regs 2006 reg 95(1)).

However, the fairly wide discretion there was to make HB payments to landlords is now replaced by a much narrower power to do so where:

- the authority considers that the claimant is likely to have difficulty in relation to the management of his/her financial affairs; or
- the relevant authority considers that it is improbable that the claimant will pay his/her rent; or
- there is a current award in respect of which direct payments are being made (new reg 96(3A) of the HB Regs 2006).

The DWP's guidance on LHA makes suggestions about the kind of evidence that could be submitted to support an application for direct payments to the landlord, for example, a letter from a doctor or a welfare advice agency.<sup>5</sup> There are rights to review and appeal for both landlord and claimant in relation to decisions on requests for payment to landlords (see, for example, *CH/2986/2005*, 13 November 2006 under the pilot scheme).

LHA will apply to new claims made on or after 7 April 2008, or where there is an existing claim and the claimant moves house. Some claimants will receive more HB under the LHA. With such claimants in mind, the DWP has issued guidance to local authorities stating its view that a claimant may withdraw his/her existing claim and make a new claim, but also advising of its opinion that there should be at least one week between the withdrawal and the reinstatement of benefit under the new claim.<sup>6</sup>

### HB sanctions for anti-social behaviour

This pilot scheme, by which HB entitlement is reduced as a sanction for failure to co-operate with measures aimed at rehabilitation of those guilty of anti-social behaviour, was introduced under the Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007 SI No 2202 and Housing Benefit (Loss of Benefit) (Pilot Scheme) (Supplementary) Regulations 2007 SI No 2474, which came into force on 1 November 2007 (see July 2007 *Legal Action* 9).

The pilots will last for two years and will be conducted in the local authority areas of Blackburn and Darwen BC, Blackpool BC, Dover DC, Manchester City Council, New Forest DC, Newham LBC, South Gloucestershire Council and Wirral MBC. The DWP has issued guidance for the pilot authorities.<sup>7</sup>

### **Integration Loans for Refugees and Others Regulations 2007** **SI No 1598**

These regulations came into force on 11 June 2007 and provide a new loan scheme aimed to help refugees and others. The loans replace the former right, on being granted refugee or humanitarian status, to a backdated payment of benefit. This right was repealed after 14 June 2007, as a result of Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s12. See guidance at DWP general information bulletin HB/CTB G11/2007, July 2007.<sup>8</sup>

### **Discretionary Financial Assistance (Amendment) Regulations 2008** **SI No 637**

These regulations came into force on 7 April 2008. They preclude DHPs being paid to meet a need for financial assistance which arises because of reductions in HB or council tax benefit (CTB) to recover overpayments. They also provide that a DHP may only be paid in respect of a period where the person is or was entitled to HB, CTB or both.

### **Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008** **SI No 959**

These regulations come into force on 6 October 2008. They remove the need for a person qualifying for an extended payment of HB to submit a fresh claim for HB when s/he starts work or changes his/her work pattern. See also DWP general information bulletin HB/CTB G8/2008, April 2008.<sup>9</sup>

## **CASE-LAW<sup>10</sup>**

All references below are to the HB Regs 2006 unless stated otherwise.

### **Circumstances in which a person is treated as occupying a dwelling as his/her home while temporarily absent (reg 7(13)(14))**

#### **Prisoner on licence recalled to prison**

##### **■ CH/2638/2006**

5 July 2007

The claimant was sentenced to 15 months' imprisonment but was released on licence after serving seven months. On 16 June 2005, he was recalled to prison. The claimant wrote to the authority stating that he would not be released within a 13-week period. It terminated his HB award and decided that there was no entitlement from 20 June 2005. The claimant requested a parole hearing but, because of a backlog, it was not heard until October 2005. The Parole Board decided that

the claimant's recall had been justified but his confinement was no longer necessary, and ordered his immediate release. On 4 November 2005, the claimant made a new claim for HB and asked that it be backdated to 20 June 2005. The backdating request was refused and the claimant's appeal to a tribunal dismissed.

On the claimant's further appeal, the commissioner held that the tribunal had been wrong to treat the claimant's own prediction of his release date as determinative:

*CH/1237/2004*, 14 September 2004 applied. The tribunal should have made findings on the likely outcome of the parole hearing as it seemed on 16 June 2005. Evidence on this issue could have come from:

- the Prison Service;
- the Home Office (now replaced by the Ministry of Justice); or
- someone working in the probation and parole systems.

The claimant had an underlying entitlement to benefit because on 16 June 2005 it could have been predicted that the parole hearing should have taken place well within the 13-week period and that the claimant's release would be ordered. The commissioner was also satisfied that the claimant had continuous good cause to justify backdating for the period from June 2005 until November 2005 because of the uncertainty about the date of the parole hearing and the confusion over his likely release date.

### **Tenancy not on a commercial basis (reg 9(1)(a))**

#### **■ CH/2491/2007**

3 March 2008

This was the lead case for 24 appeals in relation to claimants living in the same accommodation. The landlord was a religious charity which provided support for people who had suffered substance-based or emotional abuse. The claimants occupied the accommodation under licences which incorporated detailed rules under which they were provided with counselling and support. The rules were devised to implement the operation of the contract the charity had under the Supporting People scheme. The rules included limiting the amount of money residents could carry, the avoidance of negative talk, and the obligation on residents to leave the county and return to their home town on leaving the accommodation. The local authority refused HB on the ground that the agreements were not on a commercial basis. A tribunal upheld the decision.

On appeal to the commissioner, it was held that the tribunal had been entitled to find as it did on the facts of the case. The chairperson had not proceeded on the basis

that agreements which were primarily for rehabilitation could not be on a commercial basis; but had enquired whether or not in this case the rehabilitation services were on a commercial basis, and concluded that they were not. The Supporting People contract did not have the effect that any form of support provided to the claimant must be inevitably compatible with an award of HB. In any event, the rules went further than what was required by the Supporting People contract.

### **Persons from abroad and the right to reside requirement (reg 10)**

In *Abdirahman and Ullusow v Secretary of State for Work and Pensions* [2007] EWCA Civ 657, 5 July 2007 (also reported as *R(IS)8/07*), the Court of Appeal concluded that the Tribunal of Commissioners in *CH/264/2006* (noted in July 2007 *Legal Action* 11) had been right to hold that the claimants, who were recent migrants and who had never been economically active in the UK, did not have a right to reside in the UK and that the right to reside requirement was not contrary to EU law.

Although the claimants were lawfully present, this was not equivalent to them having a right to reside in the UK. Nor could the claimants acquire a right of residence directly under EU law as this drew a distinction between rights of presence and rights of residence. The UK was therefore entitled to treat those with rights of residence differently from those without such rights, and the guarantee of equal treatment was limited to those who have a right of residence. The effect of *Abdirahman* is that claimants cannot rely on discrimination arguments based on nationality to establish a right to reside: applied in *CH/1840/2006*, 4 February 2008<sup>11</sup> and *CIS/2036/2006*, 8 January 2008.

**Comment:** Readers should note that a person is not a person from abroad in relation to HB entitlement if s/he receives income support (IS) or is on an income-based jobseeker's allowance (JSA) (HB Regs 2006 reg 10(3B)(k)).

### **Payments in respect of which HB is payable (reg 12)**

#### **Payments to a joint beneficial owner**

##### **■ CH/1578/2006<sup>12</sup>**

2 January 2008

The claimant's son was the owner of a property in respect of which he executed a trust declaring himself and the claimant as joint beneficial owners. It was also agreed that the claimant would assume responsibility for half of her son's mortgage payments in respect of the property, for which she claimed IS. They agreed that only the claimant would

occupy the property, for which she would pay her son 'rent'. The council refused the claimant HB in respect of those payments on grounds that she was an 'owner' and the payments were not therefore capable of giving rise to HB entitlement under reg 12(2)(c). The tribunal upheld the council's decision.

On the claimant's further appeal, the deputy commissioner held that she was not an owner as defined in reg 2, as unless she required her son to transfer the property into their joint names as legal owners, she was a beneficial owner only and not entitled to dispose of the fee simple. However, adopting an analysis based on Trusts of Land and Appointment of Trustees Act 1996, the payments in respect of which she claimed HB were payments by way of compensation to another beneficial joint owner whose right of occupation had been restricted. None of the types of payments listed in reg 12, in respect of which HB was payable, covered the type of payments in this case. The HB scheme as a whole was intended to cover payments made to secure occupation and not payments made to compensate another person for not exercising the right to occupy. It followed that the claimant was not entitled to HB.

### Houseboats

#### ■ CH/4250/2006

20 March 2008

The claimant lived on a canal narrow boat. It was registered as a leisure craft and not as a houseboat, although it was not disputed that it was fitted out as a dwelling suitable for permanent residence. The British Waterways Board refused to extend the claimant's licence to continue at one of its moorings but the claimant was unable to relocate the boat and stayed. The board continued to invoice him for mooring charges. The claimant's claim for HB was refused on the basis that there was no planning consent for residential use at the mooring. The local authority doubted that a narrow boat was a houseboat within the HB Regs 2006 reg 12(1)(f). The tribunal upheld the local authority's decision.

The claimant appealed to the commissioner. The secretary of state supported the appeal so long as there was evidence that the boat was actually being occupied as a dwelling (as it was in this case). The commissioner held that 'houseboat' was an ordinary English word without a technical meaning and that it was a matter of fact in any particular case whether or not a boat was a houseboat. It would be difficult to imagine a case in which a reasonable tribunal would conclude that a boat fitted out as a dwelling suitable for permanent residence was not a houseboat. Reg 12 included charges payable by a

trespasser and the lack of planning permission and residential licence were irrelevant.

The tribunal had erred in law. The commissioner set aside its decision and substituted his own that the claimant was entitled to HB.

### Calculation of income other than earnings (reg 40)

#### Loan taken out to pay rent while HB claim being processed

##### ■ CH/2675/2007

13 March 2008

The claimant was denied HB on the ground of having income that disqualified him from entitlement. The authority took into account interest-free loans made to the claimant by his accountant, the money being paid directly to the claimant's landlord to meet his rent while he waited for a final decision on his HB entitlement.

The claimant's appeal to a tribunal was dismissed but the deputy commissioner allowed his further appeal. Having reviewed the case-law on what counts as 'income', he held that each case had to be determined on its own facts and, on a rehearing of this case, the following factors should be considered:

- The claimant should not be penalised for borrowing money to cover the rent when, through no fault of his own, his claim took a year or more to process.
- If it was agreed that the accountant should lend the claimant money for his rent for a month or two, while his claim for HB was being processed, then, all else being equal, this was not income in the ordinary sense of the word, particularly if the accountant would expect repayment when HB arrears were paid.
- If, however, the accountant was lending money regularly in ignorance of the HB claim, or would have gone on lending regardless of its outcome, it may well be right to treat the loans as income.

**Comment:** The DWP has produced guidance on whether or not overpaid tax credits should count as income, which states that if a person who has ceased employment confirms when s/he claims IS/JSA/SPC that s/he has notified HM Revenue and Customs of the change in circumstances, working tax credit incorrectly paid should not be treated as income. 13 HB decision-makers should apply the same approach to income as the DWP: *R v Housing Benefit Review Board Penwith DC ex p Menear* (1992) 24 HLR 115.

### Notional capital (reg 49) and article 8 of the European Convention on Human Rights

#### ■ R (Hook) v Social Security Commissioner and Secretary of State for Work and Pensions (interested party)

[2007] EWHC 1705 (Admin),  
R(IS)7/07,  
3 July 2007

This is the first case in which a breach of the claimant's rights under article 8 of the European Convention on Human Rights was argued following the House of Lords' decision in *Huang v Secretary of State for the Home Department* [2007] UKHL 11, 21 March 2007; [2007] 2 AC 167. The case came to the High Court by way of judicial review of the commissioner's decision to refuse permission to appeal to the claimant. The sole issue before the High Court was whether or not the commissioner, having assumed that article 8 was engaged (as did the High Court), had been wrong to hold that the notional capital rule, while leading to a breach of the claimant's rights under article 8(1), was justifiable under article 8(2).

The claimant was severely disabled and in need of substantial care. A friend moved in to be his partner and carer. HB and IS were disallowed for the claimant on the basis that the partner had had substantial capital from the sale of the matrimonial home, part of which she had disposed of by paying off her daughter's student debts and by paying for a family holiday. The partner was treated as having notional capital which fell to be treated as the claimant's capital.

The commissioner had rejected the argument that the notional capital rule was in breach of article 8 as it put the claimant in the position of either losing benefit (and consequently being evicted) or ending his partnership. The commissioner held also that, even if he had found there to be a breach, there was no remedy he could order as he had no power to make a declaration of incompatibility, nor could he interpret the regulations to make them compatible.

With regard to the latter point, deputy High Court judge Nicholas Blake QC held that the commissioner was wrong. Application of the notional capital rule was discretionary not mandatory. It need not be applied 'where the context otherwise requires'. He could have read down the provision so as to interpret it compatibly. Also, as the provision was in secondary and not primary legislation, it could have been declared void.

Although not deciding the point expressly, the deputy High Court judge considered it highly arguable that the provision was not article 8(1) compliant both for the reasons argued before the commissioner and because its application would result in loss of the home when, because of his disability, the claimant was dependent on state benefits to pay the rent. However, he decided not to grant relief partly because the argument to the commissioner had not addressed specifically

the impact of the decision on the claimant, in particular as opposed to such situations in general, and partly because the commissioner's error, if there was one, was not sufficiently grave, having regard to the fact that this was a review of a specialist expert tribunal in the field of detailed social security regulation concerning entitlement to public funds, so that a very substantial point of law was required (para 6).

**Comment:** The case addressed several points of principle, for example, the applicability of article 8 in social welfare cases, the proportionality principle and the relief that can be granted by commissioners. On proportionality, the deputy High Court judge noted that the passage from *de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69, p80 (Privy Council) when quoted as it often is, for example in *R (Daly) v Secretary of State for the Home Department* [2001] UKHL 26, 23 May 2001; [2001] 2 AC 532, misses out criterion (iv): the severity and consequences of the interference.

### **Overpayments caused by official error (reg 100)**

**Whether the claimant can reasonably be expected to realise there is an overpayment**

#### **■ CH/2943/2007**

22 February 2008

In September 2005, the claimant made a claim for HB through the local neighbourhood office, where she produced all the relevant documentation and declared correctly her weekly earnings to be £210 a week. On 21 October 2005, the authority notified her that she was entitled to HB but the award was based mistakenly on the incorrect figure for her earnings of £46.95 a week. On 6 March 2006, the authority sent the claimant a 'postal check form'. She returned the form and again declared the correct information for her weekly earnings. A few weeks later she received an annual uprating letter, dated 20 March 2006, which again contained the incorrect information regarding her earnings. The authority did not correct its decision until September 2006 when it decided that there had been a recoverable overpayment. The claimant appealed.

It was not in dispute that the overpayment was due to an official error. The authority maintained that the claimant must have realised she was being overpaid because the decision notices told her that her HB was being calculated on the basis of weekly earnings of £46.95, and she knew that her weekly earnings were, in fact, £210. The tribunal upheld the authority's decision.

On the claimant's further appeal, the

deputy commissioner held that the tribunal had erred in failing to follow the approach in *CH/2554/2002*, 11 September 2002 to the question of whether or not the claimant could have reasonably been expected to realise that there was an overpayment. This involved:

- identifying the information the claimant had about the HB scheme; and
- determining what the claimant could have reasonably been expected to realise from that information.

The deputy commissioner also ruled that a claimant could not normally be expected to seek advice about the local authority's decision letter merely because s/he did not understand all the figures unless s/he had some reason to believe the figures were wrong. The case was remitted to a tribunal for a rehearing.

### **Failure by local authority housing department to pass on information to its HB department**

#### **■ CH/3586/2007**

27 March 2008

The claimant was a council tenant who received SPC and HB. In November 2005, she travelled to Ghana. She intended to stay for eight weeks, but in the event had to stay until 22 October 2006. In November 2006, the authority determined that there had been a recoverable overpayment of HB of £3,714.37 for the period from 14 November 2005 to 5 November 2006 because she was absent from her home for more than 13 weeks.

The claimant appealed on the basis that she or her ex-husband had informed the housing office responsible for her tenancy on four occasions that she was in Ghana. The tribunal dismissed her appeal but the deputy commissioner allowed her further appeal. The tribunal had failed to consider whether or not the alleged omission by the housing office to pass on information to the HB service amounted to an official error. It had also failed to make any findings about what the officers in the housing office had told the claimant or her ex-husband would be done with the information they had given. He ruled that:

- the term 'relevant authority' in HB(SPC) Regs reg 81(3)(a) (the equivalent of HB Regs 2006 reg 100(3)(a)) was not confined to one department in the authority;
- in order to show that an official error had been made under reg 81 (reg 100), the claimant needed to show that she had a reasonably based expectation that the information given to the housing office would be passed on to the HB service;
- it still had to be established that the overpayment was caused by an official error, rather than by the claimant's failure to report

a change of circumstances, in breach of HB(SPC) Regs reg 69, applying the approach to causation in *R (Sier) v Housing Benefit Review Board of Cambridge City Council* [2001] EWCA Civ 1523, 8 October 2001, per Simon Brown LJ at paras 30–31 as explained in *CH/3083/2005*, 1 November 2006 para 38 (noted in July 2007 *Legal Action* 12).

See also in relation to failure to pass information between local authority departments: *CH/2567/2007*, 27 March 2008. The council's HB claim form directed claimants to notify changes in circumstances to the council, but did not say specifically that they should notify the HB department: 'You will lose benefit if you fail to notify the council ...'. The claimant's daughter notified the housing department that she had moved in with the claimant. The information was not passed on to the HB department, resulting in an overpayment. It was held that the overpayment was caused by the official error, namely the repeated failure of the housing department either to pass on the information to the HB department or to advise the claimant to do so.

### **Overpayment recoverable from more than one person (reg 101)**

#### **■ CH/2298/2007**

8 January 2008

The claimant lived in a housing association flat in Bradford and claimed HB which was paid directly to his landlord. A computer matching search conducted by the local authority showed him to be living in a different local authority area and claiming HB there. The authority decided that there had been an overpayment of HB and issued a decision to the claimant that it was recoverable from him. The claimant appealed to a tribunal, which held that the overpayment was recoverable only against the landlord, as it had been paid to the landlord and the prescribed circumstance in reg 101(1)(b) which excepted such landlords from recovery was not applicable.

On the local authority's appeal, Commissioner Howell held that the tribunal erred in thinking that the landlord's liability meant that the claimant was relieved from recovery against him. The claimant had an independent liability under Social Security Administration Act (SSAA) 1992 s75(3)(b) and HB Regs 2006 reg 101(2)(b)(i). The legislation making overpayments recoverable from claimants and landlords was not as well understood by authorities and tribunals as it should be. The proper exercise of the functions of determining and recovering an amount of overpaid HB from a person legally liable to repay it under SSAA s75 and the relevant regulations involved three stages:

- decision identifying the claimant's true entitlement for the period in issue, in place of that originally awarded.
- decision that the overpayment was legally recoverable from one or more named persons to whom the decision was addressed and issued.
- decision about enforcement of the legal liability so established.

The first and second stages involved the statutory decision-making and appeal process. More than one person could be liable concurrently to repay the same overpayment, and in such cases the decision at the second stage was to be made in respect of all of them (following the procedure set out in the Tribunal of Commissioners' decision *R(H)6/06*, 12 May 2006, paras 59–60).

## Practice and procedure

### **Suspension and termination of HB award for failure to provide information (Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 SI No 1002 regs 13 and 14)**

In *R(H)4/08*, 5 September 2007, the commissioner held that a decision to terminate benefit under Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 reg 14 was a supersession and therefore appealable to a tribunal.

In *CH/2995/2006*, 21 September 2007, the commissioner emphasised that the powers to suspend and terminate benefit depend on proper procedures being followed. The notification letter must set a firm deadline for providing the information requested. If challenged on appeal, an authority may need to produce proper evidence of the dates on which actions and decisions were taken.

The refusal of a home visit was considered in *CH/2555/2007*, 5 February 2008, a CTB case. The requirement to provide evidence and information in relation to claims for CTB is contained in Council Tax Benefit Regulations (CTB Regs) 2006 SI No 215 reg 72, which is in very similar terms to HB Regs 2006 reg 86. The local authority had asked the claimant to allow it to conduct a home visit, which she refused. This gave rise to a decision to terminate her benefit, upheld by a tribunal. On the claimant's further appeal, the commissioner held that, while an authority was entitled to rely on the power in CTB Regs reg 72 to conduct a home visit, if the requirement for a visit was challenged, the tribunal should do more than consider whether or not it was reasonable for the authority to conduct a home visit. It must consider the evidence to see whether or not the requested home visit was a reasonable

information requirement in that particular case, and whether or not the refusal to provide information left the authority in a position where grounds were established to supersede an award (para 48). Furthermore, as in all cases of decisions to take away a benefit, the burden of proof was on the authority to establish that the decision was justified.

### **Adjournment pending criminal trial** **■ Mote v Secretary of State for Work and Pensions and Chichester DC** *[2007] EWCA Civ 1324*, 14 December 2007

The council determined that the claimant had been overpaid approximately £67,000 in HB and IS. The claimant appealed and requested that the tribunal adjourn his appeal to after his trial for related offences of dishonesty. The adjournment was refused, and the claimant appealed to the commissioner against the refusal. That appeal was unsuccessful and the claimant appealed to the Court of Appeal. By the time the case reached the Court of Appeal, the claimant had been convicted and sentenced to nine months' imprisonment, although his appeal against conviction had not been determined. His trial had been delayed by his election as a Member of the European Parliament, conferring immunity from prosecution.

Richards LJ summarised the case-law on staying civil proceedings pending related criminal proceedings broadly to the effect that there was no rule in favour of adjournment, the court had a discretion to exercise, and could adjourn if there was a real risk of prejudice in the criminal trial. The claimant's argument that the effect of the Human Rights Act 1998 meant that his right to a fair trial in the criminal proceedings could only be safeguarded by an adjournment was rejected. The tribunal's decision contained no material error. Both trials could be conducted so that those rights were respected. The fact that he would have had to give evidence to the tribunal was no prejudice, as early disclosure of the defence in criminal proceedings was now required. If necessary the trial judge could limit the evidence at the criminal trial.

### **Discretionary housing payments**

#### **■ R (Gargett) v Lambeth LBC**

*[2008] EWHC 663 (Admin)*,  
 8 April 2008

This was an application for judicial review of the local authority's decision not to make a DHP to cover the rent arrears of the claimant, who received maximum HB. The amount of a DHP, if calculated as a weekly sum, is not to exceed the amount of HB payable under HB Regs 2006 reg 12 (DFA Regs reg 4).

The local authority refused the claimant's

request on the basis that she already received maximum HB. In addition, she had not been entitled to HB for most of the period during which the arrears arose.

It was argued that the local authority had the power to make a lump sum payment as that was not 'calculated as a weekly sum'. The argument was rejected on the basis that reg 4 provided a means of calculation of the DHP, not a circumstance of entitlement, which was dealt with by regs 2 and 3. Moreover, a DHP could only be paid 'in addition to' benefit payments which were being made (Child Support, Pensions and Social Security Act 2000 s69(1)). However, the judge added: 'DHPs are available to assist tenants and others to remain in their accommodation by enabling them to afford the periodic rent (also some backdating based on a weekly analysis) and to make up shortfalls in certain cases, for example in the case of non-dependant deductions' (para 15).

- 1 See *Consultation: the Social Security (Miscellaneous Amendments) (No ...) Regulations 2008*, Social Security Advisory Committee, April 2008, available at: [www.ssac.org.uk/pdf/consultation\\_0408.pdf](http://www.ssac.org.uk/pdf/consultation_0408.pdf).
- 2 *Countdown to two-tier tribunal system launched*, Ministry of Justice, May 2008, available at: [www.justice.gov.uk/news/newsrelease190508b.htm](http://www.justice.gov.uk/news/newsrelease190508b.htm).
- 3 Available at: [www.dwp.gov.uk/housingbenefit/manuals/DHPGoodPracticeGuide-v1.pdf](http://www.dwp.gov.uk/housingbenefit/manuals/DHPGoodPracticeGuide-v1.pdf).
- 4 Available at: <https://lha-direct.therenterservice.gov.uk/Secure/Default.aspx>.
- 5 See *Housing benefit local housing allowance guidance manual*, October 2007, available at: [www.dwp.gov.uk/housingbenefit/lha/lha-guidance-manual-amd1.pdf](http://www.dwp.gov.uk/housingbenefit/lha/lha-guidance-manual-amd1.pdf). This is not a definitive statement of the law but a very helpful guide.
- 6 See DWP general information bulletin HB/CTB G10/2008, May 2008. DWP general information bulletins state the DWP's interpretation of the law and are available at: [www.dwp.gov.uk/housingbenefit/news/newsletter/bulletins/](http://www.dwp.gov.uk/housingbenefit/news/newsletter/bulletins/).
- 7 *Housing benefit guidance on housing benefit anti-social behaviour sanction for local authorities participating in the pilot scheme*, available at: [www.dwp.gov.uk/housingbenefit/manuals/sanctions/hb-guidance.pdf](http://www.dwp.gov.uk/housingbenefit/manuals/sanctions/hb-guidance.pdf).
- 8 See note 6.
- 9 See note 6.
- 10 The full text of most Social Security Commissioners' decisions is available at: [www.osscc.gov.uk](http://www.osscc.gov.uk) and at: [www.bailii.org/uk/cases/UKSSCSC](http://www.bailii.org/uk/cases/UKSSCSC).
- 11 Decision not circulated but is available from the authors on request, e-mail: [lag@lag.org.uk](mailto:lag@lag.org.uk).
- 12 As note 11.
- 13 Memo DMG 07/08, March 2008, available at: [www.dwp.gov.uk/publications/dwp/dmg](http://www.dwp.gov.uk/publications/dwp/dmg).

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