

Using public law arguments to resolve HB issues and possession proceedings



Desmond Rutledge considers the circumstances in which public law arguments may be employed to challenge unlawful housing benefit (HB) decisions when possession proceedings are pending.

The relevance of benefit issues in possession proceedings

Rent arrears in public sector housing are often associated with disputes over the payment of HB. Indeed, it is one of the factors which landlords should take into account when considering whether to issue proceedings in the first place. HB issues are therefore highly relevant to whether it is reasonable to grant possession when the proceedings are based on discretionary grounds (Housing Act (HA) 1985 Sch 2 ground 1; HA 1988 Sch 2 grounds 8, 10 and 11; Rent Act 1977 Sch 15). For while the ground for possession (non-payment of rent) may be made out, an outstanding HB issue can be raised as part of a defence as to the reasonableness of any possession order or when there is an application to suspend a warrant of eviction (see Table 1).

There is a requirement to provide the court with information about outstanding HB issues, which is built into the procedural rules governing possession claims (see Civil Procedure Rules (CPR) Part 55 and Practice Direction (PD) 55A *Possession claims*)¹ and also features strongly in the *Pre-action protocol for possession claims based on rent arrears* (updated 1 April 2013):²

■ *The procedural rules* require the landlord seeking possession to confirm whether the defendant is in receipt of benefits and whether any direct payments are being made by the Department for Work and Pensions (DWP) (PD 55A para 2.3(5)(a)). The tenant defending the possession proceedings should provide the court with details of any outstanding HB payments, any claims for HB where a decision has not yet been made as well as any HB cases where an appeal or a review has not yet been concluded (PD 55A para 5.3).

■ *The pre-action protocol* advises the landlord that if the tenant gets into arrears, then the landlord should contact the tenant to discuss, among other things, the tenant's 'entitlement to benefits' (para 1) including, where appropriate, arranging for direct payments to

be made by the DWP (para 5). The protocol advises that possession proceedings for rent arrears should not be started against a tenant who has a reasonable expectation of eligibility for HB and can demonstrate that s/he has provided the local authority with all the evidence required to process the tenant's HB application (para 7). If the landlord serves a statutory notice, then before issuing any proceedings the landlord should make reasonable attempts to contact the tenant to discuss the HB position (para 9).

The impact of the LASPO Act

Despite the key role that HB issues can play in possession proceedings, public funding is no longer available to advise on HB issues for those defending possession proceedings, as welfare benefits is one of the categories of law taken out of scope by the cuts introduced by Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 Sch 1 Part 2 para 15. Where the HB issue is an integral part of the defence to the claim for possession based on reasonableness, then this will be covered by public funding, but any work undertaken to resolve a HB issue will be out of scope. In other words, the LASPO Act has created the bizarre situation where work can be undertaken to explain to the court why HB has led to the

possession proceedings, but no work can be done to resolve the HB issue itself (see Table 2).

The need to resolve complex HB issues when possession proceedings are pending

A county court judge faced with a HB issue within a claim for possession will try to come to a view about whether the HB delay or error has been caused by the tenant failing to provide the necessary information or by a failure on the part of the local authority administering HB to keep to time limits (see Blandy et al, 'The impact of housing benefit on social landlords' possession actions in the county courts', (2007) 14 JSSL Issue 1 page 29). The court will normally adjourn the matter with a direction that one or both of the parties take some further action on the HB issue before the case comes back for another hearing. While this approach may work in cases where the HB issue is relatively straightforward, there will be cases where a short adjournment will not be sufficient to resolve the HB issue.

The leading case on how county courts should deal with a substantive HB issue when considering what order to make in possession proceedings is *Haringey LBC v Powell* (1996) 28 HLR 798 (CA), 1 October 1995. P was a secure tenant in rent arrears. Haringey had obtained a warrant of execution on the ground that the arrears had risen by about £1,000 since the original order (suspended on terms) had been made. P disputed the level of arrears. P argued that she was entitled to a further £1,000 by way of HB during a period of 19 weeks between October 1993 and April 1994, when she had been employed but her earnings were sufficiently low to entitle her to HB. In fact, P's rent account had been credited with HB during this time but the benefit had subsequently been recovered as an overpayment. Haringey maintained that the HB claim for the relevant period had been unsuccessful because it had been made out of time and the necessary evidence had not been produced, and that when the evidence had

Table 1: Case-law on the relevance of benefit issues to possession proceedings for rent arrears

■ Substantial HB issues should be resolved before the court exercises its discretion on whether to make any order: *Haringey LBC v Powell* (1996) 28 HLR 798 (CA), 1 October 1995.

■ A tenant should not be put at risk due to arrears created by the benefits system making payments in arrears: *Brent LBC v Marks* (1999) 31 HLR 343 (CA), 21 May 1998.

■ Where the tenant is suffering from a disability, the court may need to adjourn to ascertain more fully the benefits which could be obtained both in relation to rent arrears and generally in relation to the tenant's medical condition: *Second WRVS Housing Society Ltd v Blair* (1987) 19 HLR 104 (CA), 6 March 1986.

■ The courts should take into account the 'very important factor' of an arrangement for direct payments to the landlord: *Second WRVS Housing Society Ltd v Blair* (see above).

Table 2: Extract from *Frequently asked questions: civil legal aid reforms* (v1.4, Legal Aid Agency, 29 May 2013)¹⁰**107. Is all work relating to housing benefit out of scope even where it is used as a defence to possession proceedings?**

Work to obtain or re-instate housing benefit is out of scope, see paragraph 15 of Part 2, Schedule 1 of LASPO. If issues regarding housing benefit have led to possession proceedings then legal aid will be available to advise the client on their possession matter. This could include obtaining witness statements in support of a client's defence to a possession case. It could also include seeking an adjournment of possession proceedings to enable the client to resolve their housing benefit issues. However, as stated, legal aid will not be available to resolve the housing benefit issue itself. If providers carry out work in relation to housing benefit alongside a possession matter it will be their responsibility to apportion the work and ensure that no legal aid claim is made for the out of scope work.

108. Can I undertake a judicial review in relation to housing benefit?

Civil legal services provided in relation to judicial review of an enactment, decision, act or omission remain within scope of legal aid, subject to the exclusions in Part 2, Schedule 1 of LASPO. Any application for legal aid to bring a judicial review would be subject to the usual criteria, including prospects of success, notification to the proposed opponent and availability to the client of other procedures or appeals, as well as the interests of justice test in relation to an application for emergency representation.

finally been produced it did not demonstrate that P was entitled to HB. In his judgment Evans LJ said:

The situation therefore was one which, on any view, was hopelessly confused. On the one hand it was said the application was too late. On the other hand it was said that the document showed that no benefit was due and yet on a third basis ... some sums may have been due or were due but they had been credited against an overpayment which had taken place during the earlier part of the period ... What was clear and is clear is that not all of those explanations can have been correct, nor were they consistent with each other (page 803).

At the initial hearing of a claim for possession, the court's power is limited; it can either decide the claim or adjourn the matter with directions (CPR 55.8(1)). The county court is not the proper forum for resolving complex disputes over the defendant tenant's entitlement to HB (see Table 3). If a complex or contentious HB issue forms part of the defence to the claim for possession, then the defendant can file a defence which addresses the HB issue and show what bearing this may have on the issue of reasonableness. However, the question arises as to how a substantive HB issue can be resolved when the filing of a defence is not an option, ie, where the landlord has applied for an outright order or is seeking a warrant of eviction. In *Powell*-like cases, public law arguments may need to be employed in respect of the HB issue as the only effective way of preventing an outright order or the eviction going ahead.

Unlawful HB decision due to a local authority's failure to comply with the relevant statutory procedure

A frequent cause of HB disputes is where the local authority refuses to make a decision on a new claim or purports to alter an existing award but does not use the relevant statutory procedure. Typical scenarios involving a local authority's failure to understand or comply with the decision-making procedures laid down in the legislation are as follows:

■ **Cancelling a claim:** If a local authority states that it is 'cancelling' a HB claim, this is usually a sign that the local authority has misunderstood its statutory powers under the scheme for administering HB. If a local authority wishes to bring an award to an end, there is no legal provision which permits the award simply to be cancelled. Rather, the decision that made the HB award must be revised or superseded, and that cannot be done without first establishing the grounds for

altering the existing award (*Islington LBC v JM (HB)* [2014] UKUT 23 (AAC), 17 February 2014, para 24).

■ Refusing to make a decision on a claim:

The local authority must make a decision on each claim it receives under Housing Benefit Regulations (HB Regs) 2006 SI No 213 reg 89; it cannot stop action or 'close the file' (*R (H)* 3/05, 9 September 2004 (CH/2155/2003),³ paras 88 and 90; and *Urgent bulletin HB/CTB U9/2004* (DWP, 3 November 2004)).⁴ Note that where the local authority issues a decision to refuse entitlement based on insufficient information, the claimant is at liberty in any appeal to produce further evidence to show that s/he does satisfy the conditions of entitlement.

■ A passporting benefit stops being paid by the DWP:

Where the DWP has notified the local authority by computer that a passporting benefit has ceased to be paid and the local authority concludes that the claimant's entitlement to HB must have ended as well, without first making any enquiries to establish the claimant's actual income or earnings (*CH/3736/2006*, 20 April 2007, paras 18–22). Note: being 'passported' to full HB is where someone is in receipt of one of the main means-tested benefits (income support, income-based jobseeker's allowance (JSA), income-related employment and support allowance (ESA) or the guarantee credit of state pension credit), such that they will automatically satisfy the income and capital limits for HB and qualify for full HB (ie, 100 per cent of the eligible rent): HB Regs Sch 5 para 4 and Sch 6 para 5.

■ Failure to respond to a request for information:

The local authority has the power to end a HB award where it has reason to believe that there has been a change of circumstances and the claimant has failed to respond to a request to provide information (Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations (HBCTB (D&A) Regs) 2001 SI No 1002 regs 13–14).

Table 3: County courts' limited jurisdiction to deal with HB issues

■ The county court does not have the power to adjourn simply because the rent arrears are attributable to maladministration by the local authority where a registered social landlord brings a ground 8 claim under the HA 1988: *North British Housing Association Ltd v Matthews and others; London and Quadrant Housing Trust v Morgan* [2004] EWCA Civ 1736, 21 December 2004; [2005] 1 WLR 3133.

■ A tenant cannot bring a private law action in the county court against the local authority for a failure to determine his/her entitlement to HB: *Haringey LBC v Cotter* (1997) 29 HLR 682 (CA), 21 November 1996.

■ Entitlement to HB cannot be raised as a defence in an action for possession: *Waltham Forest LBC v Roberts* [2004] EWCA Civ 940, 15 July 2004; [2005] HLR 2.

■ Where a local authority has made a decision to award HB but there is a delay in HB being paid, then this can be pleaded as an offset within the possession proceedings: *Waveney DC v Jones* (2001) 33 HLR 3 (CA), 1 December 1999.

However, a decision to terminate entitlement will only be valid if the procedural safeguards have been followed correctly (*AA v Hounslow LBC* [2008] UKUT 13 (AAC), 6 November 2008, paras 21–25; *AA v Leicester City Council* [2009] UKUT 86 (AAC), 14 May 2009, para 52; and *R (H) 1/09*, 13 June 2008 (CH/3584/2007), para 41). This includes communicating the request for information to the claimant, giving at least one month in which to provide the information, as well as mentioning the possibility that the one month time-limit could be extended (*Islington LBC v JM (HB)*, para 24). Note that the information requirement in HB Regs reg 86 is not applicable where an award of HB is already in payment (*NC v Tonbridge and Malling BC* [2010] UKUT 12 (AAC), 19 January 2010 (CH/978/2009), paras 28–29; and *AH v Hackney LBC (HB)* [2014] UKUT 47 (AAC), 30 January 2014, para 8(19)).

■ **Imposing non-dependant deduction at the highest rate:** Under the general rule, HB is reduced for each non-dependant living in the claimant's home on the assumption that the non-dependant is contributing an amount towards the rent (unless the non-dependant is exempt or his/her normal home is elsewhere (HB Regs regs 3(1), 70 and 74)). The deduction imposed will depend on the non-dependant's income (the deduction ranges from £14.15 pw for gross income less than £128 pw, to £91.15 pw for income over £406 pw at 2014/15 rates). The local authority can draw an adverse inference if no evidence of the non-dependant's income is

provided. However, there should not be any automatic presumption that the maximum deduction will be imposed unless the claimant can prove the contrary, especially where the non-dependant's income is likely to be low (*CH/48/2006*, 24 April 2007, para 6 and *CH/3691/2007*, 15 July 2008, para 18).

■ **Knock-on effect of a JSA/ESA sanction:**

The local authority stops paying HB when it is informed by computer that a claimant in receipt of income-based JSA or income-related ESA has been subject to a benefit sanction by the Jobcentre. Such a decision is contrary to HB Regs reg 2, which provides that someone is considered to be on income-based JSA or income-related ESA despite being disqualified from payment due to a sanction (HB Regs reg 2(3) and (3A)).

■ **No formal decision:** Where the local authority stops paying HB by way of an administrative act but there is no evidence that it has made a formal identifiable decision which would bring entitlement to an end under the proper statutory procedures for doing so, then, as a matter of law, the HB award has not ceased. In those circumstances the claimant can contact the local authority and insist that the original award be restored (*CH/3736/2006*, 20 April 2007, paras 10–15; and *SS v North East Lincolnshire Council (HB)* [2011] UKUT 300 (AAC), 25 July 2011 (CH/804/2011), paras 5–6 and 27–29).

■ **Failure to undertake a closed**

supersession: According to official guidance (HB/CTB circular A6/2009 (DWP, March 2009)), where an award of HB is in place and the local authority subsequently discovers that there has been a period within the award where the claimant was not entitled to HB (for example, where the claimant obtained temporary work), it can supersede for the period of no entitlement but leave the current award in place.⁵ This means that the claimant should not be required to make a fresh claim (or apply to backdate it), as the award can continue, subject to any reduction in the amount of benefit paid because of the gap in entitlement.

■ **Refusal to carry out an 'any time**

revision': For HB issues that have arisen more than 13 months ago, and where a late appeal to a tribunal is no longer an option (Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 SI No 2685 r23(4), (5) and Sch 1), some claimants can apply for an 'any time' revision on the basis that the HB decision was based on 'official error' (HBCTB(D&A) Regs regs 1, 2(a) and 4(2)(a)). This would be on the basis that where the criteria are satisfied, the local authority must remake the decision based on official error and replace it with a lawful decision confirming entitlement. This in turn will restore

the award of HB and the ongoing award would then remove any gaps in entitlement due to the earlier unlawful decision. A refusal to carry out such a revision can only be challenged by way of judicial review (*Beltekian v Westminster City Council and Secretary of State for Work and Pensions* [2004] EWCA Civ 1784, 8 December 2004, para 10 (reported as *R (H) 8/05*)).

■ **Failure to undertake an underlying**

entitlement calculation: Whenever the local authority issues an overpayment decision it is required to request details of the claimant's income and capital to work out whether the claimant had an underlying entitlement to HB based on his/her actual income at the time of the overpayment so that only a net figure is recovered (HB Regs reg 104(1)). If the local authority's letter to the claimant does not contain such a request, and the local authority makes no attempt to obtain the information that would enable it to calculate any underlying entitlement, then it will have failed to comply with regulation 104 (*HN v Brent LBC* [2009] UKUT 289 (AAC), 11 December 2009 (CH/225/2009), para 5).

The common theme in the examples above (and those listed in Table 5) is that the local authority has made an unlawful decision or failed to act in accordance with the law, and that on a correct legal analysis, the claimant's entitlement to HB should be restored, thereby generating a credit to the claimant's rent account. If the HB issue cannot be resolved through correspondence, and the pre-action protocol letter does not produce a response from the local authority, then judicial review proceedings may need to be issued as a 'last resort'. The claimant would be seeking interim relief from the High Court in the form of an order prohibiting the social landlord from proceeding with the possession claim pending the resolution of the HB issue, and an order requiring the HB authority to make a decision on the claimant's entitlement to HB in the light of the legal arguments advanced by the claimant, and/or an order that any statutory appeal to a First-tier Tribunal be expedited.

The impact of welfare reform

When the coalition government came to power in 2010, it introduced a radical welfare reform scheme designed to control the cost of the social security budget. A series of measures have been introduced, which have reduced the amount of HB paid to tenants in both the private and the social sector, including: caps on Local Housing Allowance rates; increasing the age threshold for the shared accommodation rate from 25 to 35; above inflation increases in non-dependant deductions; and introducing the size criteria for social rented property (also known as the

Table 4: Scenario where judicial review may be used as a remedy of last resort to resolve a HB issue in possession proceedings

An income-related ESA claimant is a tenant in the social sector. Payment of ESA stops due to a sanction. This results in the local authority suspending payment of HB which in turn leads to rent arrears and possession proceedings being issued. Despite the claimant providing a 'nil income declaration', payment of HB is not restored. The housing department refuses to adjourn the possession hearing. An urgent claim for judicial review is issued with a request for interim relief in the form of an order that the defendant's HB section determine the claimant's entitlement to HB from the date the ESA sanction was imposed and that the defendant's housing department does not proceed with possession proceedings pending the decision on HB.

under-occupation deduction, the spare room subsidy or the bedroom tax) (all introduced between April 2011 and April 2013). The National Housing Federation published data in February 2014 indicating that one in seven social housing tenants affected by the bedroom tax had received notices seeking possession and were at risk of eviction ('Two thirds of households hit by bedroom tax are in debt as anniversary approaches', National Housing Federation press release, 12 February 2014).⁶ The government's response has been to increase funding for the discretionary housing payments (DHP) scheme (from £20m in 2010/11 to £165m in 2014/15) and to issue revised guidance to local authorities that they should be using DHPs to provide support to claimants affected by welfare reform: *Discretionary housing payments guidance manual – including local authority good practice guide* (DWP, updated April 2014).⁷

While DHPs are discretionary, not mandatory, the courts have made it clear that local authorities are obliged to exercise their discretion in accordance with public law principles and human rights legislation. First, a DHP may be 'necessary' in the case of a disabled tenant who has a need for an additional bedroom due to his/her disability in order to plug the discriminatory gap that might otherwise arise due to the application of the bedroom criteria (*Rutherford and another v Secretary of State for Work and Pensions* [2014] EWHC 1631 (Admin), 30 May 2014, paras 51–53). Second, as a matter of public law the local authority is obliged to have regard to the revised DHP guidance, which identifies certain priority groups as meriting special consideration, such as those living in specially adapted accommodation (para 6.15).

Using public law arguments in practice

A tenant who wishes to defend a claim for possession by reference to an outstanding HB issue has the option of filing a defence with the court. This means public law arguments are more likely to be relevant in cases where:

- the court does not have any discretion on whether to make a possession order, for example, where the defendant is in temporary accommodation and the licence has been determined by a notice to quit;
- the court has the power to consider a defence based on reasonableness but the landlord is seeking an outright order or a warrant of eviction and has asserted that there are no HB issues outstanding.

Another factor that needs to be taken into account is that the removal of legal aid for welfare benefits, debt and general housing under the LASPO Act means that fewer households are receiving assistance to help

them manage their debts and housing payments, and legal aid providers can only respond at the point of crisis. Consequently, the number of possession actions where unresolved HB issues are a cause of the rent arrears is likely to continue to rise. The growing impact of welfare reform and cuts to legal aid on defending possession cases is described in the following extracts taken from surveys of representatives of Housing Possession Court Duty Schemes (HPCDS) in England (from Professor Susan Bright and Dr Lisa Whitehouse, *Information, advice and representation in housing possession cases*, April 2014):⁸

[I]t is now very difficult to make referrals from HPCDS to agencies with the specialist expertise to resolve debt and benefit issues in particular, meaning that it is less likely that a long-term solution can be found to the presenting housing problem. Also, as contracted housing advice providers can no longer tackle housing benefit problems the capacity of the sector to provide an effective response to our clients' multi-faceted legal problems has been significantly reduced. The legal aid scheme is now focussed on emergency and complex housing issues. We have almost entirely lost the ability to do 'preventative' work by resolving the legal issues

Table 5: List of HB issues susceptible to judicial review

HB issue	Public law ground	Reference material
Failure to make a decision on a claim	Failure to comply with the law	<ul style="list-style-type: none"> ■ <i>R (H) 3/05</i>, 9 September 2004 (CH/2155/2003), paras 88 and 90 ■ <i>Urgent bulletin HB/CTB U9/2004</i> (DWP, 3 November 2004)¹¹
Delays in making a decision on entitlement on a new claim or where there has been suspension of benefit pending investigation; delay in referring an appeal to a First-tier Tribunal	Failure to comply with the law/breach of article 6 of the European Convention on Human Rights	<ul style="list-style-type: none"> ■ <i>MB v Wychavon DC</i> [2013] UKUT 67 (AAC), 30 January 2013, paras 9–11
Failure to establish grounds for ending a HB award (for example, no grounds to supersede existing award, based solely on a 'passporting benefit' ceasing)	Misinterpreting the law governing the decision	<ul style="list-style-type: none"> ■ Child Support, Pensions and Social Security Act 2000 Sch 7 paras 4 and 11 ■ <i>CH/3736/2006</i>, 20 April 2007, paras 18–22
Failure to make a payment on account (in rent allowance cases only)	Failure to carry out a statutory duty	<ul style="list-style-type: none"> ■ HB Regs reg 93 ■ <i>R v Haringey LBC ex p Ayub</i> (1993) 25 HLR 566 (QBD), 13 April 1992
Decision purporting to terminate benefit following a suspension of payment invalid due to non-compliance with the proper procedure	Failure to carry out a statutory requirement	<ul style="list-style-type: none"> ■ HBCTB(D&A) Regs reg 13(4) ■ <i>AA v Hounslow LBC</i> [2008] UKUT 13 (AAC), 6 November 2008, paras 21–25
Refusal to carry out a revision based on official error	Misinterpreting the law governing the decision	<ul style="list-style-type: none"> ■ HBCTB(D&A) Regs regs 1, 2(a) and 4(2)(a) ■ <i>Beltekian v Westminster City Council and Secretary of State for Work and Pensions</i> [2004] EWCA Civ 1784, 8 December 2004, para 10 (reported as <i>R (H) 8/05</i>)
Refusal to treat a person as liable to make payments in respect of a dwelling	Unlawful exercise of a discretion	<ul style="list-style-type: none"> ■ HB Regs reg 88(1)(c)(ii) ■ <i>IN v Hillingdon LBC (HB)</i> [2014] UKUT 78 (AAC), 14 February 2014 (CH/1277/2013), paras 30(e) and 32

that lead to housing crises. This undermines the ability of HPCDSs to act both as a safety net and as a gateway to specialist advice services (HPCDSQ Update 3) (page 66).

Many housing advice providers can, through legal aid or other funding, help to raise a defence to a possession claim, but they do not have the resources to resolve the underlying problems. Some judges are therefore becoming frustrated by repeat adjournments, by an increase in litigants in person, and by the inability of defendants to access help before they attend court (HPCDSQ Update 3) (page 67).

Public law challenges in relation to welfare benefits remain within scope under LASPO Act Sch 1 Part 1 para 19(2)(a). Challenges by way of judicial review will come under the public law category; however, the challenge may overlap with the housing category if it 'relates to the underlying substance of the case', ie, where the challenge to the HB decision forms part of the defence to the possession proceedings: see 'Judicial review and public law' at paragraph 13 (2C–411) in the *Legal aid manual – volume 2: civil contracts*, July 2013.⁹

As with any public law challenge, before proceedings are issued it is necessary to identify the HB decision or the action on the part of the local authority that is unlawful, and there needs to have been compliance with the judicial review pre-action protocol. This is based on the presumption that if there is a suitable and effective alternative remedy available, then this should be used unless there are exceptional circumstances (*R v Inland Revenue Commissioners ex p Preston* [1984] UKHL 5, 25 April 1984; [1985] AC 835 at page 862D–F). What might count as exceptional circumstances will depend on the facts of the case (see Table 4). However, an urgent application for judicial review of the local authority's decision on a HB issue may nevertheless be appropriate if the consequences of having to wait for the statutory appeal to be heard are so serious that it would not amount to an 'effective' alternative remedy (see Lord Chancellor's guidance under LASPO Act s4 in *Legal aid manual – volume 3: civil regulations*, July 2013, para 7.37(ii) (3B-038), page 290).

In order to comply with the pre-action protocol and the need to exhaust suitable alternative remedies, the correspondence and any letter before action should:

■ explain in detail how and why it is alleged the local authority has gone wrong in its determination of the claimant's entitlement to HB – for example, that the local authority has misunderstood its statutory powers and/or failed to comply with the decision-making procedures laid down in the regulations;

■ narrow down what is in dispute factually – for example, set out the facts in correspondence and invite the local authority to agree them;

■ set out what attempts the claimant has made to resolve his/her benefit problems;

■ suggest a solution which avoids the need for litigation – for example, that the local authority use its power to revise the earlier award based on official error or undertake a supersession for a closed period and thereby restore the award of HB and agree to adjourn the possession claim pending the outcome;

■ explain why the complaint procedure is not an appropriate remedy – for example, the claim raises a point of law and/or the procedure will take too long;

■ explain why judicial review is considered to be an appropriate remedy despite the availability of a right of appeal (where applicable) – for example, the landlord has refused to agree an adjournment of the possession hearing.

It also needs to be borne in mind that where an urgent application for interim relief is being made, the claimant will need to show that a 'strong prima facie case' can be made out (*Francis v Kensington and Chelsea RLBC* [2003] EWCA Civ 443, 19 March 2003, para 16; [2003] 1 WLR 2248), which is a higher test than that for the grant of permission where the claimant need only establish that the papers disclose an 'arguable' case (*Sharma v Deputy Director of Public Prosecutions and others (Trinidad and Tobago)* [2006] UKPC 57, 30 November 2006, para 14(4); [2007] 1 WLR 780).

Despite the high threshold for bringing judicial review, an urgent application for interim relief may be the only effective remedy in a *Powell*-like case where there is an imminent threat of a possession order being issued against the claimant's home if the HB issue is not resolved by the time of the next hearing.

- 1 Available at: www.justice.gov.uk/courts/procedure-rules/civil/rules/part55/pd_part55a.
- 2 Available at: www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rent.
- 3 File reference numbers are included only to assist with accessing decisions. The file number may for instance be used when accessing Administrative Appeals Chamber (Upper Tribunal) decisions. Readers should note that the file number is neither the official citation nor a part of it.
- 4 Available at: www.dwp.gov.uk/docs/u9-bulletin-nov-2004.pdf.
- 5 Available at: <http://webarchive.nationalarchives.gov.uk/20130107093842/http://www.dwp.gov.uk/docs/a6-2009.pdf>.
- 6 Available at: www.housing.org.uk/media/press-releases/two-thirds-of-households-hit-by-bedroom-tax-are-in-debt-as-anniversary-appr/.
- 7 Available at: www.gov.uk/government/publications/discretionary-housing-payments-guidance-manual.
- 8 Available at: https://test-intranet.law.ox.ac.uk/ckfinder/userfiles/files/Housing_Possession_Report_April2014.pdf.
- 9 See 2013 Standard Civil Contract, *Category definitions* 2013, April 2013, paras 6, 13 and 28, available at: www.justice.gov.uk/downloads/legal-aid/civil-contracts/category-definitions-2013.pdf.
- 10 Available at: www.justice.gov.uk/downloads/legal-aid/legal-aid-reform/legal-aid-reform-faq.pdf.
- 11 See note 4.



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Recent Developments in Housing Law

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