

POSSESSION AND HOUSING BENEFIT

Paper Presented To the Housing Law Practitioners' Association

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<p>Housing Benefit – A Survival Guide for Housing Lawyers</p>
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1. CUTS TO LEGAL AID

1.1 Welfare Benefits removed from scope

In order to put this talk in its proper context, it must be borne in mind that the Coalition Government proposes to remove Welfare Benefits from the scope of civil legal aid: 'Government Proposals for the Reform of Legal Aid in England and Wales', (Cm 7967) (paras. 4.216 – 4.224). The proposal is based on two principles (or as I prefer to call them crass assumptions) about Welfare Benefits:

- that disputes concerning Welfare Benefits issues are objectively of low importance because they are "**essentially about financial entitlement**" (para. 4.217) as they do not involve threats to life, safety, liberty or homelessness; and
- that Welfare Benefit disputes can be resolved **without recourse to legal or specialist assistance**. Claimants could get by with some basic help from volunteers and generalist advisers or staff employed by the relevant government department.

1.2 Legal aid removed for statutory appeals to the higher courts

Just in case you missed it, the proposal is to remove Welfare Benefit from the scope completely, this includes onward appeals in relation to the provision of welfare benefits to the Court of Appeal and the Supreme Court, and references to the European Court of Justice as representation in the higher courts for welfare benefits will no longer be in scope.¹

The one area where funding will be retained for Welfare Benefits is judicial review:

"As with other areas of law, funding for judicial review will continue to be available for benefits cases. Such cases are likely to occur where there are delays in making decisions on applications for benefits, or delays in making payments, or where there has been suspension of benefits by authorities pending investigation," (4.224).

1.3 When is the Ministry of Justice going to announce its decision?

In a recent parliamentary debate,² Jonathan Djanogly, Parliamentary Under Secretary of State (HM Courts & Tribunals Service and Legal Aid, confirmed that a total of 4,800 responses were received to the consultation (which closed on 14 February) and that the Ministry of Justice were "listening hard" and that "we expect to make an announcement on the "way forward" in the next few weeks.

1 IA: Scope – Annex 2: Summary of Current and Proposed Positions, page 37).

2 Legal Aid debate 11 May 2011 House of Commons, Citation: HC Deb, 11 May 2011, c473WH.

The following extract from the Under Secretary's response to the debate does not suggest any radical change of view on the part of the Ministry of Justice:

"We also propose to remove from scope the categories of employment, education, immigration, some debt and housing issues and welfare benefits, except for cases involving risk to anyone's safety or liberty, risk of homelessness or discrimination. In many such cases, the issues are not necessarily of a legal nature, but resolving them requires information, practical advice or other forms of expertise."

1.4 The likely impact of the legal aid proposals

If the proposals in the Green Paper become law, then the likely impact on housing practitioners defending possession proceedings where Housing Benefit is an issue has been described in the following way by the Housing Team at Garden Court Chambers' Response to the Green Paper:

"The Green Paper seriously underestimates the importance of welfare benefits advice in avoiding and resolving possession proceedings: outstanding housing benefit issues are often the root cause of rent arrears possession claims; the majority of tenants we represent are not in a position to resolve these housing benefit issues without specialist advice;

The proposals will mean proceedings being adjourned and delayed (thereby increasing use of court time and costs) due to the absence of proper advice that resolves the underlying issue:

The limited debt advice that will continue to be available and the availability of legal advice and assistance to defend a possession claim itself will be too little, too late. It will not provide the timely and fully-fledged expert welfare benefits and debt advice that many clients need to avoid the loss of their home."

Many of the Responses to the Green Paper took a similar view. This is because anyone practising in this area will know from actual experience that where benefit problems are identified in any case that is not completely routine, the person concerned will need proper welfare benefits advice. Often a person needs help to sort out the whole of their welfare benefits situation, to pursue appeals, challenge overpayment decisions, and to communicate in a meaningful and effective way between the DWP and housing benefit authority.

2. MATERIALS

Contrary to what is said in the Green Paper, anyone who wishes to get to grips with HB issues will need to arm themselves with the following materials.

Books

- 'Welfare Benefits and Tax Credits Handbook'; S. Osborne et al, published annually by CPAG)
- 'Guide to Housing Benefit and Council Tax': J. Zebedee, M. Ward and S. Lister; published annually by Shelter/Chartered Institute of Housing
- 'CPAG's Housing Benefit and Council Tax Benefit Legislation': L. Findlay et al published annually by CPAG
- 'Defending Possession Proceedings': Luba QC et al (7th edn), Chapter 37, published by LAG
- 'Housing Law Handbook': Cottle et al (2009) Chapter 7, published by Law Society

Periodicals

- 'Welfare Rights Bulletin' – CPAG (published bi-monthly)
- 'Legal Action Group Magazine' (LAG) the Housing Benefit annual update
- 'Adviser Magazine' – Shelter NACAB (published bi-monthly).

Websites

- *Department of Work and Pensions website:* <http://www.dwp.gov.uk/adviser> - contains official guidance on a range of topics:
 - Housing Benefit Guidance Manual
 - HB Circulars
 - HB Bulletins
 - DWP HB/CTB Overpayments Guide
 - Local Housing Allowance Guidance Manual
 - Discretionary Housing Payments
- *Tribunals Service website:* www.osspsc.gov.uk - contains Upper Tribunal - the Administrative Appeals Chamber's database of decisions – this includes decisions made by Social Security Commissioners before 3 November 2008.
- *British and Irish Legal Information Institute website:* <http://www.bailii.org> - see under United Kingdom - Tribunals
- *Rightsnet website:* (subscription): <http://www.rightsnet.org.uk>

3. BASIC OUTLINE OF THE HOUSING BENEFIT SCHEME

3.1 The Legislation

The rules governing substantial entitlement to Housing Benefit ('HB') are to be found in:

The Social Security Contributions and Benefits Act 1992 (SSCBA 1992")
The Housing Benefit Regulations 2006 (SI 2006/213) ("HB Regs 2006")
The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (SI 2006/214)

3.2 The basic conditions of entitlement

A person will be entitled to Housing Benefit ("HB") if he or she: -

- is making payments in respect of their home and
 - **is liable to make those payments** (*or is treated as liable*),³ and
 - normally **occupies** the accommodation **as his/her home**,⁴ and
 - **satisfies the means-test**⁵ **or is in receipt of a passporting benefit**⁶ and
 - **is not a person from abroad**;⁷ and
 - passes the "**habitual residence**" test (which includes the right to reside test);⁸
- and
- is **not** an **excluded** person⁹ and
 - the arrangement is eligible for HB.¹⁰

3.3 The rules governing claims for HB

3.3.1 Awards of HB

It is a condition of entitlement that the claimant **makes a claim** for HB.¹¹

3 SSCBA 1992, s137, and the Housing Benefit Regulations 2006 (SI 2006/213), regs. 8 and 9.

4 SSCBA 1992, s.130 and HB Regs 2006, reg. 7.

5 SSCBA 1992, s134-136.

6 I.e. Income Support, income-based JSA or ESA and Pension Credit.

7 HB Regs 2006, reg. 10.

8 HB Regs 2006, reg. 10.

9 E.g. full-time students (with some exemptions) see HB Regs 2006, Part 5 and children in care: HB Regs 2006, reg. 2(1) - definition of young person and 'young individual'.

10 SSCBA 1992, s.137(2)(i), HB Regs 2006, reg. 9.

11 Social Security Administration Act 1992, s.1. But see *Novitskaya v London Borough of Brent & Anor* [2009] EWCA Civ 1260 where a claim for HB was made without using explicit words by reference to another document.

Once the HB authority¹² has received a claim it must make a decision on the claim within 14 days or as soon as reasonably practicable after that.¹³

The authority can ask for any information in connection with a claim which it reasonably needs to decide the claim (or to assess entitlement on an existing claim).¹⁴

A decision awarding HB is final and remains conclusive unless it is altered by means of a revision or supersession, or if it is overturned on appeal by a tribunal.¹⁵

3.3.2 Existing award - continuing duty

The HB award is subject to the claimant continuing to satisfy the conditions of entitlement. This means the claimant is under a duty to report any relevant change/s of circumstances.

The authority can request information and evidence to assess whether the conditions of entitlement are satisfied. This must be provided within one month of being asked to do so, but the authority has the power to extend the time limit if it is reasonable to do so e.g. where the claimant is experiencing difficulty obtaining the information or the delay is due to a third party.¹⁶

The authority has the power to suspend payment of HB where:

- (i) it appears to the authority that an issue has arisen regarding entitlement,¹⁷ or
- (ii) where there is a failure to furnish the information or evidence requested.¹⁸

3.3.3 When a change of circumstance takes effect

Where the change is to the claimant's advantage and notification is received within one month of the change, then payment will be increased from the week the change took place.¹⁹

If notification is received more than a month after the change, payment can only be increased from the date of notification.²⁰

12 The 'relevant authority' HB Regs 2006, reg. 2.

13 CSPSSA 2000, Sch 7 para. 11 and HB Regs 2006, reg. 86. The authority must decide all claims, defective or otherwise: see Urgent Bulletin HB/CTB U9/2004 on the effect of R(H) 3/05.

14 HB Regs 2006, reg. 86 – Evidence and Information.

15 CSPSSA 2000, Sch 7, para. 11 on the finality of decisions.

16 HB Regs 2006, reg. 86(1).

17 HB/CTB(DA) Regs 2001, reg. 11.

18 HB/CTB(DA) Regs 2001, reg. 13.

19 I.e. from the first day of the benefit week following the week the change took place: HB Regs 2006, reg. 79.

If the change is to the claimant's disadvantage, then the authority has the power to revise the award from the date of the change (e.g. based on a mistake of fact) thereby creating an overpayment.

3.4 Decisions and appeals

The rules governing decision-making and appeals are to be found in:

Schedule 7 of the Child Support, Pensions and Social Security Act 2000 ("CSP&SSA 2000")

Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (SI 2001/1002) ("HB/CTB(DA) Regs 2001")

The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (2008/2685)

3.4.1 Challenging a decision 'in time'

An appeal against a decision must be brought "within one month" of the date the decision was made.²¹

If a challenge is made in time then the decision can be changed with effect from the date of the original decision²² or, in the case of an existing award, from the date the change of circumstances took effect.²³

3.4.2 Challenging a decision 'out of time'

If the challenge is made out of time, then the general rule is that the decision cannot be revised in the claimant's favour if this would result in an increase in benefit.²⁴ Instead, the application will be treated as an application to supersede the initial award of benefit based on a change of circumstances, which takes effect from the date the application is made.²⁵

20 Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (SI 2001/1002). (HB/CTB(DA) Regs 2001), reg. 9.

21 HB/CTB(DA) Regs 2001, reg. 18.

22 CSP&SSA 2000, Sch 7, para. 3, CTB/HB(DA) Regs 2001, regs. 4 – 6.

23 CSP&SSA 2000, Sch 7, para. 4(5), CTB/HB(DA) Regs 2001, reg. 2(a).

24 HB/CTB(DA) Regs 2001, reg. 4(2).

25 CTB/HB(DA) Regs 2001, regs. 7 and 8.

Where the decision is more than one month old, the regulations only allow full arrears of HB to be paid in prescribed circumstances; these include: -

3.4.3 Late appeals

There is a power to extend the one month time limit for appealing for up to 12 months (giving an absolute maximum of 13 months).²⁶ If the HB authority refuses to accept the appeal out of time, the application must be referred to the Tribunal Service to determine.²⁷ If this is refused by a First-tier Tribunal, the only remedy available is by way of Judicial Review to the Upper Tribunal.²⁸

Practice point: an official decision which is not properly communicated to the party concerned is for the time being ineffective, such that the time limit does not start to run.²⁹

3.4.4 Backdating a new claim

It may be possible to backdate a new claim for HB (**up to a maximum of 6 months for claimants of working age and up to 3 months for claimants over pensionable age**) if there is 'good cause' for the delay. The application to backdate can be made without prejudice to any late appeal against the decision to terminate the previous award of benefit by the authority.³⁰

3.4.5 A 'closed period' supersession'

Where an award of HB is in place and the authority subsequently discovers that there has been a period within the award where the claimant was not entitled to HB (e.g. they obtained work, JSA ceased but the HB was not informed at the time), **it can supersede the HB award for the period of no entitlement but leave the current award in place.**³¹ The award can continue, subject to any reduction in the amount of benefit paid due to the gap in entitlement. This means that the claimant should not be required to make a fresh claim (or apply to backdate it).

26 HB/CTB(DA) Regs 2001, reg. 19. See also rules 23 and 5 of Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2665).

27 R (CD) v First-tier Tribunal (CIC) [2010] UKUT 181 (AAC) [2011] AACR 1 held that the First-tier tribunal's powers to extend time are unqualified, as under the Procedure Rules it is no longer limited by reference to "special reasons" (at [27]).

28 See Tribunals, Courts and Enforcement Act 2007, s.15-19 and the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) Part 4 for details.

29 Appendix to R(P) 1/04, para. 4. But see CIS/384/2010; [2010] UKUT 428 (AAC), CH/1758/2009; [2010] UKUT 461 (AAC) and Hamilton v Department for Social Development [2010] NICA 46.

30 See CH/1764/2008 [2008] UKUT 13 (AAC) para. 27 and CH/978/2009 [2010] UKUT 12 (AAC) para. 16.

31 HB/CTB circularA6/2009: 'Superseding awards of HB to take account of a change of circumstances which has already come to an end' available on dwp.gov.uk.

3.4.6 Extending the deadline to revise or supersede

There is a power to extend the deadline (and therefore the date from which arrears of HB can be paid), but the test for delay is a stringent one.³²

3.4.7 Revision for official error:

There is no time limit for making an application to revise an earlier decision if it “arose out of official error”.³³ However, the threshold for showing an official error is a high one.³⁴ A refusal to carry out such a revision can only be challenged by way of judicial review.³⁵

3.4.8 Automatic backdating

There are special rules to automatically backdate an increase in HB based on receipt of a ‘qualifying benefit’, such as DLA.³⁶

32 HB/CTB(DA) Regs 2001, reg. 5 or 9. See also rules 23 and 5 of Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2665).

33 HB/CTB(DA) Regs 2001, reg. 4(2)(a).

34 R(H) 2/04 para. 13.

35 Beltekian v City of Westminster and SofS for Work and Pensions [2004] EWCA Civ 1784 (reported as R(H) 8/05).

36 See CH/3524/2008; [2009] UKUT 72 (AAC) where Council was wrong not to backdate HB to date DLA was first awarded.

4. HB AND POSSESSION PROCEEDINGS

One of the main causes of rent arrears in social housing is delays in the payment of housing benefit ('HB') and disputes over entitlement to HB with the authority administering it.³⁷ The relevance of HB issues to possession proceedings (when brought on discretionary grounds³⁸) is apparent from the: -

- case law
- CPR
- Rent pre-action protocol.

4.1 Case law

In possession proceedings for rent arrears based on discretionary grounds, the courts have held that any substantial HB issue needs to be resolved before the court can properly exercise its discretion on whether to make any order for possession.³⁹ Moreover, where a tenant is suffering from a disability, the court may need to adjourn the case to ascertain what benefits can be obtained by the tenant and it should take into account the "very important factor" of an arrangement for direct payments to the landlord.⁴⁰ Accordingly, HB is highly relevant to the court's decision whether to grant possession to the landlord or adjourn the proceedings so that the HB issue can be resolved⁴¹.

In *Haringey LBC v Powell*, (1995) 28 HLR 798 (CA), the leading case on HB issues and possession claims for rent arrears, the Court of Appeal described how the HB situation in that case had, on any view, become "*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."

This type of HB scenario is all too common in possession proceedings and a local authority HB department will often take an entrenched stance on which view is 'correct'. The County Court is not a forum where HB issues can be adjudicated on and sorted out. It does not have capacity to do so, nor does it have the authority⁴² to adjudicate on HB entitlement.

37 The 'relevant authority' Housing Benefit Regulations 2006 (SI 2006/213) reg 2.

38 Housing Act 1985 Ground 1, Housing Act 1988 Grounds 10 and 11, Rent Act 1977, Schedule 15.

39 *Haringey v Powell* (1995) 28 HLR 798, CA,

40 *Second WRVS Housing Society v Blair* (1986) 19 HLR 104, CA.

41 'The Impact of Housing Benefit on Social Landlords' Possession Actions in the County Courts' by Blandy et al (2007) 14 J.S.S.L. Issue 1 page 29.

42 *Haringey LBC v Cotter* (1997) 29 HLR 682 CA.

4.2 County court procedures

The Civil Practice Rules (CPR) Part 55 requires both parties to address any underlying benefit issues from the outset of the proceedings so that these can be resolved before a final decision on whether to grant any possession order can be made.

The Practice Direction on possession claims (PD55A) requires: -

- the claimant (i.e. the landlord) to provide information in the Particulars of Claim on whether the defendant is in receipt of social security benefits (PD 55A para. 2.3 (5)(a));
- the defendant (i.e. the tenant) to give details of any outstanding social security and HB payments, as well as any applications for review or appeals not yet concluded (PD 55A. para. 5.3 (2)(a)-(b)).

4.3 The Pre-action protocol

The importance of addressing HB issues has been further underlined by the introduction of the '*Pre-action Protocol for Possession Claims based on rent arrears*' in October 2006. The Protocol refers to debt and benefits advice at several stages in the process both pre and post issue of notice, as well as requiring referral to specialist debt and benefit advice:

- Before issuing a notice of seeking possession - the landlord should contact the tenant to discuss, amongst other things, their "entitlement to benefits" (paras. 5) and offer to assist in any claim the tenant may have for HB (para 6). The landlord should advise the tenant to seek assistance from CAB, debt advice agencies or other appropriate agencies as soon as possible (para. 8).
- Before issuing possession proceedings - the landlord should arrange an interview with the tenant which should include a discussion of the HB position (para. 9). If the matter does go to court then the landlord should disclose his knowledge of the HB situation 10 days before the hearing (para. 12(b)).

4.3.1 Type of HB advice needed

When providing advice to a person at risk of losing their home, it is essential that any legal advisor thoroughly checks the housing benefit position:

- Is HB in payment, is there a shortfall and if so why?
- Are there any gaps in the tenant's history of HB entitlement, and if so why?
- Does a new HB claim need to be made and/or does any appeal need to be lodged against a past decision?
- Has there been any overpayment of HB in the past, and if so why? Are any deductions for recovery being made?

5. WHAT CAN THE COUNTY COURT DO?

5.1 Defence based on reasonableness due to non-payment of HB

Where the possession claim is said to hinge on the outcome of the claim for HB, the question arises: as to what role does the County Court have? The answer is to be gleaned from case law (5.1.2) and the scope for bringing judicial review proceedings against the HB authority (5.2).

5.1.2 Principles from case law

- Where possession proceedings for rent arrears are based on discretionary grounds, any substantial HB issue needs to be resolved before the court can properly exercise its discretion on whether to make any order for possession, which means the proceedings should be adjourned pending a decision by the HB authority (or a tribunal on appeal): *Haringey LBC v Powell* (1995) 28 HLR 798, CA.⁴³
- The county court does not have the power to adjourn simply because the rent arrears are attributable to maladministration by the HB department where a registered social landlord brings a ground 8 claim under the Housing Act 1988: *North British Housing Association Ltd v Matthews and ors and London and Quadrant Housing Trust v Morgan* [2004] EWCA Civ 1736, [2005] 1 WLR 3133.
- A tenant cannot bring a private law action in the county court against the HB authority for a failure to determine his or her entitlement to HB: *Haringey LBC v Cotter* (1997) 29 HLR 682 CA.
- Entitlement to Housing Benefit cannot be raised as a defence in an action for possession: *Waltham Forest v Roberts* [2004] EWCA Civ 940 [2005] HLR 21.
- Where a HB 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.⁴⁴
- If proceedings for possession are brought by a public authority where the right to possession is unqualified, the County Court can entertain a “seriously arguable” defence that the proceedings have resulted from an unlawful act in the “conventional” public law sense (a.k.a. “Gateway (b) defences”): *Kay v Lambeth LBC, Leeds CC v Price* [2006] 2 AC 465 and *Doherty v Birmingham City Council* (2008) UKHL 57, [2009] 1 AC 367

43 While the ground for possession can be made out (i.e. non-payment of rent) there is a defence as to reasonableness of the possession ordering being made: see Funding Code-Decision Making Guidance Vol 3 Part C, para. 43(1)(c).

44 *Jones v Waveney DC* (1999) 33 HLR 3 (CA).

- More recently, County Courts have been given the jurisdiction to entertain defences in cases where the occupier challenges the *proportionality* of the eviction under Article 8 of the ECHR: *Pinnock v Manchester City Council* [2010] UKSC 45, 3 WLR 1441 and *Hounslow LBC v Powell*; *Leeds CC v Hall*; *Birmingham CC v Frisby* [2011] UKSC 11.

5.2 Challenging the HB authority by way of judicial review when the possession hearing is imminent

There are at least three situations where judicial review proceedings might be an appropriate remedy where the claimant is facing possession proceedings due to non-payment of HB:

- (1) on the ground that there has been a failure to make a 'payment on account' where the claim relates to a housing association tenant and all the necessary evidence and information has been provided;
- (2) on the ground that discretionary housing payments have been refused;
- (3) on the ground that the HB authority's decision not to award HB is unlawful on public law grounds and the immediate threat to the claimant's home renders any statutory appeal against that decision an ineffective remedy.

5.2.1 'Payments on account'

The Housing Benefit rules⁴⁵ make provision for a 'payment on account' to be made in the following circumstances:

- HB is being paid in the form of a rent allowance i.e. tenants with registered social landlords and those renting in the private sector;⁴⁶
- if the claimant has provided the evidence reasonably needed and requested;
- there are 8 weeks arrears.

Once these conditions are fulfilled, the HB authority *must* consider making a payment on account: *R v Haringey LBC ex p. Ayub* [1990] 25 HLR 566, (QBD).⁴⁷

5.2.2 Discretionary Housing Payments

Discretionary housing payments (DHPs) can be paid if the authority is satisfied that the applicant is in need of additional help with their housing costs.⁴⁸ The help can

45 HB Regs 2006, reg. 93 – Payment on account of a rent allowance.

46 Council tenants receive HB in the form of a rent rebate.

47 See also HB Guidance Manual paras. 6.158-160.

be given to cover rent arrears. There is no statutory right to DHPs. The authority has been given a wide discretion as to whether to make a DHP in a particular case; as to the amount that is paid and as to the period it is paid.⁴⁹ However, it may be possible to challenge a refusal on public law grounds e.g. fettering a discretion: (see *British Oxygen Co Ltd v Board of Trade* [1971] AC 610, 625D-E and '*Making better use of Discretionary Housing Payments*': Gareth Mitchell, Adviser 136 Nov/Dec 2009, page 9).

5.2.3 Challenge to the HB authority on public law grounds in the light of an imminent possession hearing

Judicial review of the HB authority is only likely to be a live option where:

- (a) the claimant does not have a statutory defence to the possession proceedings e.g. the licence to occupy temporary accommodation has been determined by a notice to quit;
- (b) the landlord/authority has refused a request for an adjournment;
- (c) the likelihood of the county court granting an adjournment to allow time for the HB issue to be resolved are poor or uncertain (e.g. due to the level of the arrears);
- (d) a defence under Article 8 of the ECHR is unlikely to be successful.

If a decision is made to apply for judicial review, each of the points above will need to be addressed, both in the pre-action protocol letter and in the claim itself.⁵⁰ So far as any statutory appeal is concerned, it is common for claimants to have to wait for between 6 and 12 months before their case is heard by a first-tier tribunal.⁵¹

The High Court may not be willing to order the county court to stay the possession proceedings but it can order the local authority not to proceed with the possession claim until it has reconsidered its HB decision in the light of the legal arguments advanced by or on behalf of the HB claimant. In cases where the merits are not clear, it may be prudent to obtain an opinion from counsel under '**investigative help**' – e.g. to draft a complex pre-action protocol letter (Part C Funding Code 16.3.2).

48 Child Support, Pension and Social Security Act 2000, s69 and the Discretionary Housing Assistance Regulations 2001 (SI 2001/1167).

49 Discretionary Housing Assistance Regulations 2001, reg. 2(2).

50 See also LSC Manual Vol 3 Part C Chapter 16 at 16.5 – have all genuine alternative remedies been exhausted?

51 According to official figures, the Tribunal Service has a performance target that 75% of cases will be listed for a hearing within 16 weeks of receipt of the appeal from the DWP, local authorities and HM Revenue & Customs. This was not met in 41% of cases in 2009/10, Annual Statistics for the Tribunal Service 2009-2010.

6. LEGISLATION UPDATE

6.1 Welfare Benefits changes likely to be relevant to possession proceedings

The Coalition Government is in the process of bringing in a series of changes which will reduce the amount of benefit available to cover the housing costs in the form of rent. These changes come under the following headings:

- (1) Changes to the Local Housing Allowance Scheme (which affects those in the private rented sector);
- (2) Changes associated with the introduction of Universal Credit (which will affect those in both the private and the social rented sector);
- (3) Other changes irrespective of tenure.

Some basic facts and figures

- May 2010 – 4.75 million households in UK on HB. (31 per cent in private rented sector 69 per cent in the social sector).
- The current cost of HB £20 billion 2009/10
- Projected cost of HB is £24 billion 2014/15
- Projected savings from the following cuts is £2.5 billion

Projected effect of cuts and new shortfalls

- Between 68,000-134,000 families may need to move (Shelter)
- Some 82,000 claimants in London could face eviction in 2011/12 and the number of homelessness acceptances could increase by 5,000 (London Councils)

6.2 Changes to Local Housing Allowance

The Local Housing Allowance (LHA) rules⁵² govern how rent restrictions affect the maximum amount of HB payable to tenants in the private rented sector. From the claimant's point of view, the most important rule is **the size criteria**. This is the number of rooms that the tenant qualifies for under the LHA scheme. The rules allow one bedroom for every:

- adult couple (including civil partners);

52 The HB Regs 2006, regs. 12-13 and the Rent Officers (HB Functions) Order 1997. The DWP has also issued guidance to local authorities: 'Housing Benefit Local Housing Allowance Guidance Manual' available online on the dwp website: www.dwp.gov.uk.

- adult aged 16 or over;
- any two children under the age of 10;
- any two children of the same sex aged 10 to 15;
- any other child;
- a non-resident carer if the claimant (or their partner) is a disabled person who needs overnight care. Note: the provision for non-resident overnight carers came into force in April 2011: see HB/CTB Circular A3/2011 for guidance.

6.2.1 Changes to LHA rules – since April 2011⁵³

- LHA is capped at the four bedroom rate
- The LHA weekly rates in any area are capped for each size category as follows: £250 per week for a 1 bedroom property; £290 per week for a 2 bedroom property; £340 per week for a 3 bedroom property; and £400 per week for a 4 bedroom property.
- LHA rates are set at the ‘30th percentile’ of rents in the local area rather than at the average (or ‘median’). This means that only about 3 in 10 properties for rent in the local area should be affordable to people on HB rather than every 5 in 10 properties as was previously the case.

Transitional Protection The above changes to the LHA rates affect new HB claimants from 1 April 2011. They only apply to existing HB claimants on the “anniversary” of their claim (i.e. 52 weeks after their LHA was set). Then the claimant will have protection for up to 9 months (unless a ‘trigger event’ occurs).⁵⁴

6.2.2. Future changes to LHA

From 2013/14 the basis of annual increases in the rate of LHA will be in line with the consumer price index (CPI) inflation instead of actual rent increases. Some groups argue that this change will mean that the proportion of homes where the rent will be covered by LHA will gradually fall over time.⁵⁵

The Child Poverty Action Group has issued judicial review on the restriction of maximum household size to four bedrooms and caps on the amount of HB which a household can receive. CPAG has highlighted that the Mayor of London has predicted that 9,000 London households will have to leave their home, which could mean that upwards of 20,000 children will have to move, 14,000 out of their local area. CPAG has argued that the changes are contrary to the fundamental

53 They will be introduced by the Rent Officers (Housing Benefit Functions) Amendment Order 2010 (SI.No.2836/2010) which amends the Rent Officers (Housing Benefit Functions) Order 1997 and the Housing Benefit (Amendment) Regulations 2010 (SI.No.2835/2010) which amend the Housing Benefit Regulations 2006.

54 HB Regs 2006, reg. 12M.

55 E.g. Notting Hill Housing Trust Group’s written evidence to the SSSC.

purpose of the HB scheme, which was originally intended to be a national scheme to prevent homelessness, and that the government has failed to have due regard to the general equality duties under the Race Relations Act 1976 and the Sex Discrimination Act 1975, because ethnic minorities and lone parents will be disproportionately hit by the two cuts being challenged. Permission has recently been granted (announced on CPAG website 12 May 2011) and the case should be heard by the Administrative Court by the end of July.

6.3 Changes associated with Universal Credit

6.3.1 What will happen to HB?

Under the Welfare Reform Bill, Universal Credit will replace Income Support, income-based JSA, income-related ESA, Tax Credits, Housing Benefit and Council Tax Benefit. Under the new scheme, Housing Benefit will be replaced by an amount added to the Universal Credit award to help meet the cost of rent. The intention is that the support provided through housing benefit, which is currently delivered by Local Authorities, will over several years be replaced by Universal Credit and delivered by the DWP.

6.3.2 The time table

The plan is to migrate recipients from the current benefits and Tax Credits systems onto Universal Credit starting in 2013 and finishing in the next Parliament. Pilots will run from May 2013 with a full roll out for new claimants beginning October 2013. From April 2014 to October 2017 – existing claimants will transfer to Universal Credit.

6.3.3. Household Benefit Cap

From 2013 the Government will introduce a cap of the *total* amount of benefit that working-age people can receive by reference to the average earnings of working households. Those over pensionable age and those receiving in-work benefits (e.g. Working Tax Credit) will be exempt, but, in addition, households where a member is receiving Disability Living Allowance⁵⁶ or Constant Attendance Allowance (an industrial injury benefit) and war widows will be exempt.

It has been estimated that the cap will be set at around £500 per week for a couple and single parent household. For a single adult household it will be £350 a week. According to the DWP's impact assessment, the cap is likely to cost 50,000 households an average of £93 per week.⁵⁷

56 Due to be replaced by Personal Independent Payments.

57 Household Benefit Cap: Equality impact assessment March 2011 para. 8 page 4.

6.3.4 Reduction for claimants under occupying property

The Government also intends to use the power in Clause 68 of the Welfare Reform Bill to introduce regulations which cut the amount of benefit people can receive if they are deemed to have a spare room in their council or housing association home; in other words the size criteria could be used to reduce the amount of HB payable to claimants assessed as under-occupying property. Note this only applies to working age tenants, those over 60 are exempt.

According to the DWP's impact assessment, nearly a third of all working age HB claimants in the social sector (670,000 households) will lose an average of £13 per week.⁵⁸

6.4 Other changes

6.4.1 LHA for single claimants

If a claimant is under 25 and single they will get the LHA for one bedroom in shared accommodation unless they qualify for a severe disability premium (see below), or are a care leaver aged under 22. From January 2012 this rule will be extended to single people under 35. This means that single people under 35 will no longer receive Housing Benefit based on one bedroom self-contained accommodation. The Social Security Advisory Committee (SSAC) has issued a public consultation on the proposal; the deadline for responses is 17 June 2011.

6.4.2 Increase in Non-Dependant Deduction

Deductions for non-dependants will be updated on the basis of the Consumer Price Index from April 2011, reversing the freeze in these rates since 2001-2002. This year's figures (2011/2012) have gone up from £7.40 to £9.30 (for the lowest rate), and from £47.75 to £60.60, (for the highest rate).

6.4.3 Discretionary Housing Payments

The Government's contribution to Discretionary Housing Payments will be increased by £10 million in 2011 – 2012 and £40 million in each year from 2012-2013 in anticipation of the greater demand on their budgets when the LHA arrangement applies to new claims from April 2011.

In March 2011 the DWP issued a new discretionary housing payment (DHP) best practice guide⁵⁹ that takes into account the reductions in local housing allowance (LHA) from April 2011. The Guide sets out the following groups that local authorities should consider assisting –

58 DWP Impact Assessment: Under-occupation of social housing (Feb 2011

59 Available on the DWP website: <http://www.dwp.gov.uk/docs/dhpguide.pdf>.

- families with children at a critical point in their education;
- young people leaving local authority care;
- foster carers and 'Staying Put Carers' with children in care and care leavers respectively;
- families with kinship care arrangements;
- children who go into the care of family and friends;
- families with a social service intervention;
- ex-homeless people being supported to settle in the community;
- people with health or medical problems who need access to local medical services or support that might not be available elsewhere;
- people with disabilities who need adaptations to their property;
- people with disabilities who receive informal care and support in their current neighbourhood from family and friends which would not be available in a new area;
- the elderly frail who have lived in the area for a long time and would find it difficult to establish support networks in a new area;
- people who need to live near their jobs because they work unsocial hours/split shifts/inadequate public transport.

However, the fact remains, DHP are normally paid for a limited period in order to give people the chance to find other ways of reducing their housing costs (.i.e. by moving). In the light of the LHA cuts, this means finding accommodation outside Central London where the rents are below the cap.

7. COMMON HB PROBLEMS AND POSSESSION

7.1. Non-payment of HB due to a delay in processing the claim

The following questions arise if a claim for HB has been made but no benefit is currently in payment

- For housing association (and private) tenants only, if all the relevant information has been supplied, should the authority be making a **payment on account?** (HB Regs 2006, reg. 93, see 4.2.1 above).
- Does information need to be obtained from a third party e.g. an employer confirming earnings, or a college confirming attendance? Has the authority considered extending the time limit if the claimant is experiencing difficulty obtaining the information or the delay is due to a third party? (HB Regs 2006, reg. 86(1)).
- Has the authority **failed to make a decision** on the HB claim? This is unlawful. (*Urgent Bulletin HB/CTB U9/2004*, 3 November 2004 on the effect of *R(H) 3/05* which states that a decision and notice of appeal rights must be given on every claim, even if it is defective due to a failure to provide information or evidence).

- Has the authority **failed to refer an appeal** against the decision to refuse the claim to **HM Courts & Tribunals Service**? (See Local Government Ombudsmen Special Report H01029 (Feb 2004) 'Advice and guidance on arrangements for forwarding housing benefit appeals' and *R(H) 1/07* on sending an appeal direct to the Tribunal Service if the LA refuses to do so).

7.2 Reduction in the amount of HB being paid

7.2.1 Non-dependant deductions

Use of adverse inference: Under the general rule, HB is reduced for each non-dependant living in the claimant's home on the assumption that they are contributing an amount towards the rent.⁶⁰ The deduction imposed will depend on the non-dependant's income.⁶¹ The authority can draw an adverse inference if no evidence of the non-dependant's income is provided.⁶² 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.⁶³

Exemptions: There are a number of exemptions to the general rule where no deduction should be made. These include where the claimant (or partner) receives the care component of DLA (at any rate);⁶⁴ the non-dependant is under 25 and receiving IS/income-based JSA⁶⁵ and where the non-dependant is staying with the claimant but their normal home is elsewhere.⁶⁶

7.2.2 Recovery of an overpayment by weekly deductions

- Is there scope for applying for a **reduction in the rate of recovery**? Note: The maximum rate of recovery is £10.20 per week or £13.20 where the claimant has admitted or been found guilty of fraud or agreed to pay a penalty (2011/12 rates).
- Was an **underlying entitlement calculation** carried out when the overpayment decision was made? If an overpayment occurs, the LA is required to request details of the claimant's income and capital to work out whether the claimant had

60 HB Regs 2006, regs. 3(1), 70, 74.

61 The deduction ranged from £9.40 to £60.60 per week for the year 2001/12/2012.

62 R(H) 3/05 para. 82.

63 HB/CTB Circular G8/2007 paras. 1-8 based on CH/48/2006. See also CH 3691/2007, para. 18.

64 HB Regs 2006, reg. 74(6)(b)(ii). Note: the lowest rate of care will cease to exist under the Personal Independence Payment which will replace DLA.

65 HB Regs 2006, reg. 74(8).

66 HB Regs, 2006, reg. 74(7)(a).

an underlying entitlement to benefit at the time of the overpayment, so that only a net figure (or nil) is recovered.⁶⁷

- Has the claimant appeal against the overpayment decision? Has recovery been stopped pending the outcome of the appeal?⁶⁸

7.3 Gaps when no HB was in payment

7.3.1` Gap/s due to a change in circumstances

Entitlement based on a 'passported' benefit could end when the DWP ceases to pay the benefit but entitlement to HB could be restored when the claimant later becomes entitled to the same passporting benefit again a few weeks later.

Can the 'closed period supersession' mechanism be used so that the HB award can continue during the gap in entitlement? Under the supersession rules the authority has the power to supersede a period of no entitlement but leave the current award in place.⁶⁹ 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 e.g. income from earnings will reduce the amount of HB payable. Note that the "closed period supersession mechanism" can only be applied retrospectively where the change of circumstances which created the gap in entitlement has already come to an end.

7.3.2 Failure to provide information when requested or to notify a change of circumstances within time

Did the claimant receive the request for information? If there was a reason for the delay, can the time limit for notification be extended? If benefit was terminated following suspension, did the authority comply with the proper procedure (see below)?

7.4 Payment of HB ceased?

7.4.1. HB terminated following a suspension

An authority cannot terminate HB unless it follows the correct procedure for suspension and termination of benefit;⁷⁰ this includes

67 CH/225/2009; [2009] UKUT 289 AAC where the calculation resulted in the overpayment figure being reduced from £58,797.14 to £3,572.26 . See also recent Circular HB/CTB G5/2001.

68 There is no legislative requirement to halt' overpayment recovery if an appeal is lodged, but it would be good practice to do so: see 'HB/CTB Recovery of Overpayments Guide' (June 2007) at paras. 4.124 and 4.390.

69 Circular HB/CTB A6/2009: 'Superseding awards of HB to take account of a change of circumstances which has already come to an end'.

70 CH/2995/2006 para. 28-30.

- communicating the request for information to the claimant;⁷¹
- giving a firm deadline for termination in the letter suspending benefit; and.⁷²
- that the document required is in existence at the time of the request.⁷³

Note: There can be no sanction for a claimant's failure to provide information *before* an initial decision has been made on his or her claim.⁷⁴

7.4.2 HB ends when passporting benefit ceased to be paid by the DWP

The following questions arise under this heading:

- Did the DWP's decision to end the 'passporting benefit'⁷⁵ provide substantial grounds for altering the existing award of HB?⁷⁶
- Did the authority make any enquiries to establish the claimant's actual income or earnings after the passporting benefit ceased?⁷⁷
- Was entitlement to the passporting benefit subsequently restored? If yes, could the authority carry out a 'gap in entitlement' or a 'closed period' supersession' so that entitlement can be restored? (see 3.4.5 above).
- If an overpayment has occurred, has an underlying entitlement calculation been carried out or offered to the claimant?

7.4.3 Temporary absence from the home:

If entitlement has ended due to absence from the home, can the claimant benefit from the 13 or the 52 weeks rules? How long was the claimant likely to be absent at the date s/he left home? If an existing award of HB has been terminated due to absence, does a late appeal need to be made against the decision ending

71 CH/1764/2008 para. 13-14.

72 CH/2995/2006 para. 21.

73 R(H) 1/09.

74 CH/978/2009 [2010] UKUT 12 (AAC), paras 28- 29.

75 E.g. Income Support, Income-based JSA or ESA and State Pension Credit (with the guarantee credit) which 'passports' claimants to full HB.

76 The old rule under HB Regs 2006, reg 77, which treated the cessation of Income Support or income-based Jobseeker's Allowance as automatic grounds for ending HB has been revoked from 06.10.08: reg. 4(4)(a) of SI 2008 No 959.

77 See CH/3736/2006 para. 27.

entitlement? Should a new claim be made which includes an application to backdate for good cause?⁷⁸

7.5 Has HB been refused because the claimant is ineligible?

Not habitually resident: If an appreciable period has elapsed (1 to 3 months) since the claim was refused, has the claimant made a further claim for HB?

- Note: The decision-maker (and a tribunal on appeal) cannot take into account a change of circumstances which occurs after the date of the decision under appeal. If the change would result in an increase in entitlement, the claimant needs to make a new claim.

No 'right to reside: If the claimant has subsequently started work or signed on as a jobseeker then a new claim should be made. The claimant will require specialist advice. Note

- Note: The regulations restricting the right of A8 nationals to work in the UK cease to apply from 1 May 2011: see *DMG Memo 13/11* for guidance

National insurance number requirement: Has the claimant or their partner been referred for a NINO appointment? If there was an existing entitlement to HB did the authority have grounds to end entitlement rather than suspend payment pending the outcome of the NINO application?⁷⁹

- Note that the HB Regulations have been amended to remove the requirement for a partner who does not have leave to enter or remain in the UK to be allocated a NINO⁸⁰.

Arrangement ineligible under the anti-abuse provisions⁸¹: Has the claimant appealed against the decision? The claimant will require specialist advice.

Students: Is the claimant an eligible student (e.g. a lone parent or long-term sick or disabled)? If yes, have the rules relating to the student's income (from both the grant and loan) been applied correctly?

No liability to pay rent - Has the authority refused benefit based on the views of the housing department instead of the more generous rules for payment of HB?⁸²

78 CH/1764/2008 [2008] UKUT 13 (AAC) para. 27.

79 CH/4085/2007 paras. 21 and 34.

80 Social Security (National Insurance Number Information: Exemption) Regulations 2009 (SI 471/2009),: see also Circular HB/CTB A4/2009.

81 HB Regs 2006, reg. 9(1)(a)-(l).

82 HB Regs 2006, regs. 8 and 12.

- Note: Payments covered by the HB scheme include: rent paid in respect of a tenancy or payments towards a licence/permission to occupy as well as “other payments for the use and occupation of premises”. Accordingly, the claimant’s residence in the property does not need to be lawful to come within the HB scheme: *CH/318/2005* para. 31.

In cases where the authority decides that the claimant is ineligible to receive HB the issue is unlikely to be resolved without the need for a hearing before a first-tier tribunal. This means the possession proceedings may need to be adjourned for a period of some 6 to 12 months pending the outcome of the appeal. It is submitted that a short-term adjournment - to the next open date’ - would not be appropriate in this type of case. Instead, consideration should be given to filing a defence (based on reasonableness) with a request that the matter be adjourned pending the outcome of the HB appeal.

Desmond Rutledge©
Garden Court Chambers
18 May 2011

ANNEX

HB CASE LAW UPDATE

Occupation – Temporary Absence

CH/2228/2010; [2011] UKUT 43 (AAC) - Two homes and temporary absence – Adapting the dwelling to meet disablement needs - HB regulations 2006, reg.7(8)(c)(i).

CH/1986/2009 [2010] UKUT 7 (AAC); [2010] AACR 26 - Temporary absence from home – Convicted prisoner serving 15 weeks – medical treatment – whether 13 or 52 week rule applicable.

CH/2197/2009; [2010] UKUT 129 (AAC); [2010] AACR 40 - A student, who is absent from the parental home for less than 13 weeks (or 52 weeks in certain circumstances) can still be treated as occupying that home.

CH/2638/2006 - Temporary absence – Prisoner on licence recalled to prison.

Overpayments

CH/2297/2009 [2010] UKUT 57 (AAC); [2010] AACR 27: Official error and the extent to which the claimant contributed to this.

CH/2735/2009: [2010] UKUT 190 (AAC) Official error – Council's failure to advise claimant that notification must be notified in writing - Failure to deal properly with oral notification.

CH/2297/2009; [2010] UKUT 57 (AAC); [2010] AACR 27 - Official error and separate causation – *Sier* explained.

CH/225/2009 [2009] UKUT 289 (AAC) – Requirement to calculate underlying entitlement (HB Regs 2006, reg. 104).

CH/1903/2009 - Whether claimant can be expected to reasonably realise – Assumption by tribunal that omission was 'readily apparent'.

Capital, debt and insolvency

Secretary of State for Work and Pensions v Cooper & Payne [2010] EWCA Civ 1431 – Overpayments and the Insolvency Act 1986 - Debt Relief Orders preclude recovery of overpayments by deductions from benefits (the DWP has been granted permission to appeal by the Supreme Court).

Joseph v LB of Newham [2009] EWHC 2983 (Admin) – Section 9 of the Limitation Act 1980 applies to recovery of an overpayment by deductions (but see Bulletin HB/CTB G16/2010 where the DWP argue that section 9 only applies to limit the ability to recover debts through the courts).

CH/510/2010 [2010] UKUT 453 (AAC) - Ownership - Where mother looking after funds of her adult daughter – Possible resulting trust.

CH/3670/2008; [2009] UKUT 96 (AAC); - Notional capital does not vest in a trustee on bankruptcy and survives the claimant's bankruptcy.

R(H) 9/09 - Recovery of overpayments – bankruptcy order made before recoverability decision – whether liability for overpayment bankruptcy debt.

CH/2233/2007; Capital - Whether sum paid into an account held on trust.

Practice and procedure

CH/3079/2007; [2010] AACR 4 [2009] UKUT 151 (AAC) - Residence and presence conditions – person from abroad – whether local authority bound by decision on claim for income support or income-based JSA.

CH/1987/2009; [2010] UKUT 11 (AAC) - Extent to which local authority bound by DWP income support decision - Reconciling and applying *R v South Ribble BC ex Hamilton* [2000] 33 HLR 104 and *R Penwith DC HBRB ex p Menear* [1991] 24 HLR 115.

Novitskaya v LB of Brent and another [2009] EWCA Civ 1260; [2010] AACR 6; Defective claims – Whether “a claim” requires a particular benefit to be named.

CH/3524/2008 [2009] UKUT 72 (AAC) - Effective date of supersession to increase HB/CTB to include SDP – under reg. 8(14) must be backdated to date of entitlement to DLA (a qualifying benefit).

R(H) 1/09 - Whether benefit entitlement ceased under regulation 14 of the HB and CTB (Decisions and Appeals) Regulations 2001 where the local authority framed its information requirement by reference to a document which did not exist.

CH/1764/2008; [2008] UKUT 13 (AAC) - Request for information must be communicated - suspension of benefit.

Information requirement and notification

CH/1758/2009; [2010] UKUT 461 (AAC) - Scope of right of appeal to Upper Tribunal – required contents of notification of a decision applying a non-dependent deduction.

CH/872/2009; [2010] UKUT 306 (AAC) - Wrongful removal of HB based on a supersession decision to remove the claimant's IS, which was not formally sent to the claimant

CH/978/2009; [2010] UKUT 12 (AAC) - Required information when claimant has just started work.

Human Rights

CH/2823/2009; [2011] UKUT 23 (AAC) - Size criteria for LHA – Extra room for carer not in occupation - Whether failure to accord preferential treatment to a severely disabled person is a breach of Article 14 of the ECHR – the ‘*Thlimmenos* principle’.

CH/1334/2010; [2011] UKUT 148 (AAC) - Size criteria – LHA – Couple – Extra room for medical reasons – No breach of 8 or 14 of the ECHR.

CH/2236/2007 - Shared residence 50/50 – Child benefit paid to mother – Father did not qualify for extra room within HB – No breach of 14 and P1A1 of the ECHR – Lack of statistical evidence to prove indirect discrimination.

Miscellaneous

CH/171/2011 [2011] UKUT 144 (AAC): - Claimant unable to act for herself - At the time did not have the authority of the Court of Protection.

CH/1530/2010 and ors; [2011] UKUT 22 (AAC) - Whether service charges for maintaining communal garden eligible: appeal allowed.

CH/1923/2009; [2010] UKUT 462 (AAC) - Effect of Tomlin order; - Unappealed error by a previous tribunal - Overriding interest in payment of HB arrears: appeal dismissed.

CH/2469/2009 [2010] UKUT 64 (AAC) - Backdating- meaning of 'good cause' - R(S) 2/63T explained – cites and follows CH/2198/2008 which emphasises a subjective approach to the test.

CH/2263/2009; [2010] UKUT 43 (AAC) - Delay – Article 6 – Liability to pay rent – Contrived tenancy - Landlord's failure to take possession proceedings.

CH/334/2009; [2010] UKUT 310 (AAC) - Tenancy by estoppel.

CH/2366/2008; [2009] UKUT 74 (AAC) – Follows CH/4085/2007 in holding that the NINO requirements apply at the point of revision or supersession of existing awards as well as at the point of initial decisions on claims - the requirement of making an application for a NINO accompanied by information or evidence to enable the allocation of a number can be satisfied by a past application that has been refused.

R(H) 3/05 – Failure to give required evidence or information – whether power to refuse to give decision on a claim - whether right of appeal against refusal to give decision on a claim.