

Decisions of Upper Tribunal (Administrative Appeals Chamber) on Housing Benefit and Council Tax Benefit

HB/CTB Decisions published on Upper Tribunal (AAC) website in 2011

(Last updated 30 September 2011)

| Case | Date of decision | Legislation in issue | Keywords |
|--|------------------|--|---|
| <i>MB v RB Kensington and Chelsea (HB)</i> [2011] UKUT 321 (AAC) CH/199/2011 | 08/08/11 | Regs 48 & 51 HB Regs 2006 | Capital – property in Ireland – whether UK or Irish law applied – valuation |
| <i>Torbay BC v BW (HB)</i> [2011] UKUT 305(AAC) CH/3472/2005 | 27/07/11 | Reg 21 HB & CTB (D&A) Regs 2001 Reg 97 HB Regs 2006 | Whether First-tier Tribunal correct to hear appeal by deceased appellant where local authority had not appointed someone to proceed with the appeal |
| <i>Torbay BC v RA (HB)</i> [2011] UKUT 304 (AAC) CH/3452/2005 | 27/07/11 | Reg 10 & Schs 1, 1A & 1B HB (General) Regs 1987 | Lead case of 18 Torbay cases – transitional HB Scheme – reasonableness of charges for counselling and support |

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| <i>DH v Kirklees MBC and SSWP (HB)</i> [2011] UKUT 301 (AAC) CH/1073/2010 | 26/07/11 | Reg 9(1)(c) HB Regs 2006 ECHR Art 14 | Liability to former partner – whether reg 9(1)(c) applied only to immediate former partner – whether ultra vires – whether contrary to European Convention |
| <i>SE v NE Lincolnshire Council (HB)</i> [2011] UKUT 300 (AAC) CH/804/2011 | 25/07/11 | Regs 11, 13, 14 HB & CTB (D&A) Regs 2001 Sch 7, para 3 CSPSSA | Need for proper decision-making processes - suspension of HB & CTB awards – failure of tribunal to exercise inquisitorial jurisdiction |
| <i>KW v Lancaster City Council and Secretary of State for Work and Pensions (HB)</i> [2011] UKUT 266 (AAC) CH/1868/2010 | 04/07/11 | Regs 79(7) & 100 HB Regs 2006 | Recovery of overpayment – large payment of arrears of child support & consequential overpayment of HB and CTB for a decade – attribution of income for past period – causation and CA decision in <i>R (Sier) v Cambridge CC</i> – absence of right of appeal on recovery or waiver |
| <i>MR v Bournemouth BC (HB)</i> [2011] UKUT 284 (AAC) CH/1849/2010 | 17/06/11 | Reg 7(16)(c)(i) HB Regs 2006 | Temporary absence – convicted prisoner released before end of sentence and then recalled on remand for another offence – whether 52-week rule applies |

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| <u>GB v LB Southwark (HB) [2011] UKUT 242 (AAC) CH/2615/2010</u> | 17/06/11 | Reg 100 HB Regs 2006 Reg 83 CTB Regs 2006 | Recovery of overpayment – official error – whether claimant can reasonably be expected to know there is an overpayment |
| <u>RG v Secretary of State for Work and Pensions and North Wiltshire District Council (HB) [2011] UKUT 198 (AAC) CH/1312/2010</u> | 05/05/11 | Reg. 13D(3) HB Regs 2006 Art 14 and P1-1 ECHR | Rent restrictions – whether special provision required for disabled children unable to share a bedroom |
| <u>DE v Sunderland CC (HB) [2011] UKUT 177 (AAC) CH/2325/2010</u> | 28/04/11 | | Earnings – other income and payments – <i>de jure</i> directors, <i>de facto</i> directors and shadow directors – tribunal procedure and practice – evidence |
| <u>Aylesbury Vale District Council v ER (HB) [2011] UKUT 160 (AAC) CH/1961/2010</u> | 15/04/11 | Sch 3 Para HB and CTB (Consequential Provisions) Regulations 2006 as amended Alternative versions of Regs. 12 and 13 HB Regs 2006 | Exempt accommodation – <i>Ex Parte W</i> – what constitutes suitable alternative accommodation |

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| <i>AA v Chesterfield Borough Council and Secretary of State for Work and Pensions (HB)</i> 2011 UKUT 156 (AAC) CH/107/2010 | 07/04/11 | Reg 13D(2) HB Regs 2006 | Rent restrictions – local housing allowance – categories of occupier – member of household – exclusive use of rooms – over-accommodation |
| <i>KM v South Somerset District Council (HB)</i> [2011] UKUT 148 (AAC) CH/1334/2010 | 30/03/11 | Reg 13D(3) HB Regs 2006 Article 8 and Article 8 ECHR | Maximum rent – need for separate bedroom for wife's disability needs – whether definition of "couple" breach of Article 8 or Article 14 European Convention on Human Rights |
| <i>EM v Wychavon District Council (HB)</i> 2011 UKUT 144 (AAC) CH/171/2011 | 29/03/11 | Reg 9 HB Regs 2006 | Whether claimant unable to communicate can be a party to a tenancy agreement or liable for rent |
| <i>JB v Oxford City Council and Secretary of State for Work and Pensions (HB)</i> 2011 UKUT 136 (AAC) CH/322/2010 | 28/03/11 | Schedule 1 HB Regulations 2006 | Housing and council tax benefits – eligible rent – service charges – meaning of "sheltered accommodation" Permission to appeal granted by Court of Appeal Float on 24-or 25 Jan-12 |

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| <u>Walsall MBC v LT (HB) [2011] UKUT 172 (AAC)</u> CH/851/2010 | 21/03/11 | Reg 13D HB Regs 2006 | Housing benefit – landlord providing counselling and other support services – whether a “person affected by the decision” and therefore having a right of appeal (<u>JB v Birmingham CC (HB) [2011] UKUT 23 (AAC)</u> followed) Permission to appeal given to respondent by UT judge on 19/04/11 |
| <u>SS v Slough Borough Council (HB) [2011] UKUT 128 (AAC)</u> CH/3733/2007 | 18/03/11 | Reg10 HB Regs 2006 Reg 7 CTB Regs 2006 Article 39 Treaty on European Union) and Directive 2004/38/EC Regulations 2006 | Right to reside – “worker” – part-time work |
| <u>LB Camden v NW (HB) [2011] UKUT 262 (AAC)</u> CH/2236/2007 | 18/03/11 (added 04/07/11) | Regs 20 and 22 HB Regs 2006 | Applicable amount – responsibility for child – where care of children shared equally, parent in receipt of child benefit responsible for child under regs 20 and 22 of the Housing Benefit Regulations 2006 - whether indirect discrimination on grounds of sex in breach of Article 14 of the Convention. Whether regs 20 and 22 of the Housing Benefit Regulations 2006 indirectly discriminatory in breach of Article 14 of the Convention |

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| <i>Salisbury Independent Living v Wirral MBC (HB)</i> [2011] UKUT 44 (AAC) CH/3186/2009 | 28/01/2011 | Reg 3 HB & CTB (D&A) Regs 2001 | Whether landlord has right of appeal either (a) on implied authority of tenant or (b) as “person affected” by the decision (CH/3817/2004 followed) Permission to appeal to Court of Appeal given by UT judge on 16.05.11 Window of 03-Nov-11 to 05-Mar-12 |
| <i>Bury MBC v DC (HB)</i> [2011] UKUT 43 (AAC) CH/2228/2009 | 26/01/2011 | Reg 7 (8)(c)(i) HB Regs 2006 | Whether delay in moving to new home necessary in order to adapt the dwelling to meet the claimant’s disablement needs – redecoration and re-carpeting for claimant with obsessive-compulsive disorder – meaning of “adapt” (R(H) 4/07 followed) |
| <i>SB v Epping Forest DC (HB)</i> [2011] UKUT 41 (AAC) CH/2822/2009 | 25/01/2011 | Reg. 9(1)(a) HB Regs 2006 | Whether letting of annex by parents to disabled son was on a commercial basis. |

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| <u>IB v Birmingham CC (HB)</u> <u>[2011] UKUT 23 (AAC)</u> CH/2823/2009 | 13/01/11 | Reg 13D(2) and (3) HB Regs 2006 | Human rights law – no unlawful discrimination in not providing higher LHA limit for disabled claimant needing room for carers Permission to appeal to Court of Appeal given by UT judge on 03.05.11 Window of 14-Nov-11 to 14-Mar-12 |
| <u>Basildon DC v AC (HB)</u> <u>[2011] UKUT 16 (AAC)</u> CH/2307/2009 | 13/01/2011 | Rule 31(b) Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 | Fair hearing – an adjournment was required where the claimant at an oral hearing which the authority did not attend, gave evidence unexpectedly which was materially different from the evidence he had given previously, on matters for which the authority was likely to hold records. The authority was entitled to an opportunity to rebut his evidence. |
| <u>CP and others v</u> <u>Aylesbury Vale DC (HB)</u> <u>[2011] UKUT 22 (AAC)</u> CH/1530/2010 | 10/01/2011 | Reg 12(1)(e) HB Regs 2006 | Whether charges for maintaining communal garden are eligible service charges |
| <u>MB v Selby DC (HB)</u> <u>[2011] UKUT 5 (AAC)</u> CH/3721/2008 | 07/01/2011 | S130(3) SSCBA | Whether income to be taken into account twice where a claimant occupies two dwellings as his home |

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| <i>GP v Wirral MBC (CTB)</i> [2011] UKUT 7 (AAC) CH/1212/2009 | 06/01/2011 | Reg 83(5) CTB Regs 2006 | Excess council tax benefit – recovery for future period after date of revising decision and up to the end of the financial year |
| <i>N Tyneside MBC v SSWP (HB)</i> [2010] UKUT 462 (AAC) CH/1923/2009 | 23/12/2010 | Reg 76 HB (SPC) Regs 2006, | Payment of arrears to landlord and overriding interest – Tomlin order – unappealed error by a previous tribunal affecting instant appeal |
| <i>LS v LB Lambeth (HB)</i> [2010] UKUT 461 (AAC) CH/1758/2009 (3-Judge Panel) To be reported as [2011] AACR 27 | 22/12/2010 | Regs 18 and 19 HB & CTB (D&A) Regs 2001 | Scope of right of appeal to Upper Tribunal – required contents of notification of a decision applying a non-dependent deduction |
| <i>DL v Southampton CC (CTB)</i> [2010] UKUT 453 (AAC) CH/510/2010 | 16/12/2010 | Regs 33 and 34 CTB Regs 2006 | Capital – ownership/ possession – tribunal failed to consider possible resulting trust where mother looking after funds for her adult daughter |

HB/CTB decisions selected for reporting in 2011

| Reported as | Title and NCN | Keywords |
|-------------------------------|--|--|
| [2011] AACR 27 | <i>LS v LB Lambeth (HB)</i> [2010] UKUT 461 (AAC) (3-Judge Panel) | Scope of right of appeal to Upper Tribunal – required contents of notification of a decision applying a non- dependent deduction |
| [2011] AACR 6 | <i>Wirral MBC v AH (HB)</i> [2010] UKUT 208 (AAC) | Maximum rent and occupation of the home – meaning of “occupier” for local housing allowance purposes – shared care of child – whether foster child occupier of home (Note: Reg 21(3) was amended with effect from 01.11.10 by SI 2010/2449 to reverse the effect of this decision in relation to foster children.) |

The following decision is also relevant to HB:

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|--------------------------------|---|---|
| [2011] AACR 12 | <i>Secretary of State for Work and Pensions v UP (JSA)</i> [2010] UKUT 262 (AAC) | Housing costs – long tenancy – rent payable under Ijarah method of financing house purchase – whether qualifies for housing costs |
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Note: non-HB/CTB search categories that may include cases of relevance or interest include Capital; Earnings and other income; Income support and state pension credit; Recovery of overpayments; Marriage and living together; Residence and presence conditions; Revisions, supersessions and reviews. If you are interested in a specific issue that is not covered by the search categories try searching the Notes field on the [Search for Decisions](#) page by key word or phrase. See [Help with searching](#).