

# Decisions of Upper Tribunal judges on Housing Benefit and Council Tax Benefit

## HB/CTB Decisions published on Upper Tribunal (AAC) website in 2009

(Last updated 23 December 2009)

### Exempt accommodation – judicial review decision

<b>CH/2751/2007 <i>et al</i></b> R (S) v Secretary of State for Work and Pensions  <a href="#">[2008] EWHC 3097 (Admin)</a> Permission to apply for judicial review of Commissioner Turnbull's refusal of permission to appeal  <a href="#">[2009] EWHC 2221 (Admin)</a> Application dismissed	19/12/08          03/09/09	HB	Reg 11 HB (General) Regs 1987  Reg 10(6)(ii) HB (General) Amendment Regs 1995	Exempt accommodation – provision of care, support and supervision 'on behalf of' landlord – essentially a challenge to <a href="#">R(H) 2/07</a>
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## Exempt accommodation – decisions of UT judges and Commissioners

Case	Date of decision	Benefit	Legislation in issue	Keywords
Salford CC v PF <a href="#">[2009] UKUT 150 AAC</a> CH/577/2009	04/08/09	HB	Reg 9(1)(l) HB Regs 2006	Circumstances in which lettings to tenants to whom support is provided may be contrived tenancies
<i>Bristol CC v AW</i> <a href="#">[2009] UKUT 109 (AAC)</a> CH/200/2009	15/06/09	HB	Reg 11 HB (General) Regs 1987  Reg 10(6)(ii) HB (General) Amendment Regs 1995	Exempt accommodation– whether tribunal erred in reaching a different result from that in <a href="#">R(H) 4/09</a> (relating to same landlord)
<i>Chorley BC v EM</i> <a href="#">[2009] UKUT 108 (AAC)</a> CH/4432/2006	12/06/09	HB	Reg 11 HB (General) Regs 1987  Reg 10(6)(ii) HB (General) Amendment Regs 1995	Exempt accommodation – whether support provided by landlord
<i>Chorley BC v IT</i> <a href="#">[2009] UKUT 107 (AAC)</a> CH/150/2007	12/06/09	HB	Reg 11 HB (General) Regs 1987  Reg 10(6)(ii) HB (General) Amendment Regs 1995	Exempt accommodation – whether accommodation can be ‘provided by’ a body other than the landlord – whether undertaking repairs and maintenance can be the provision of support.

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<a href="#">CH/3900/2005</a> (Tandridge)	09/07/07 (added 02/06/09)	HB	Reg 11 HB (General) Regs 1987  Reg 10(6)(ii) HB (General) Amendment Regs 1995	Exempt accommodation – proper construction of accommodation ‘provided by’ an authority or other organisation.

### Other cases

Case	Date of decision	Benefit	Legislation in issue	Keywords
DL v Liverpool City Council <a href="#">[2009] UKUT 176 (AAC)</a> CH/448/2009	10/09/09	HB	S75 SSAA 1992 Reg 100 HB Regs 2006	Official error by DWP in not notifying LA of suspension of payment of IS on report of death of claimant. Overpayments after death not recoverable from claimant's estate under S75 SSAA1992
BM v Vale Royal Borough Council <a href="#">2009 UKUT 162 AAC</a> CH/2036/2008	19/08/09	HB	Reg 12 HB Regs 2006	Consideration of suitable alternative accommodation when deciding if increase in rent is unreasonably high – whether level of rent rise to be compared by reference to the actual amount of rent or the percentage increase only

Case	Date of decision	Benefit	Legislation in issue	Keywords
AA v Leicester CC KV CH/1602/2008	04/05/09 (added 23/09/09)	HB CTB	Regs 11, 13 and 14 HB & CTB (D&A) Regs 2001	Termination – consideration of <a href="#">CH/2995/2006</a> and SI 2001/1605. Possible error in CPAG's <i>Housing Benefit and Council Tax Benefit Legislation</i> .
Leicester City Council v LG <a href="#">[2009] UKUT 155 (AAC)</a> CH/392/2009	07/08/09	CTB	Reg 53 CTB (SPC) Regs 2006	Start of entitlement to council tax benefit following an award of state pension credit
LB Hillingdon v MJ <a href="#">[2009] UKUT 151 (AAC)</a> CH/3079/2007	07/07/07	HB CTB	Reg 10(3B)(k) HB Regs 2006  Reg 7(4A)(k) CTB Regs 2006	Claimant in receipt of income-based JSA – a local authority cannot make an independent decision as to whether claimant is 'person from abroad' – <a href="#">R(H) 9/04</a> followed
<i>Birmingham CC v IB</i> <a href="#">[2009] UKUT 116 (AAC)</a> CH/4018/2008	30/06/09	HB	S130 SSCBA 1992  Reg 7 HB Regs 2006	Dwelling occupied as the home – disabled student renting additional room at university adjoining his own for use by his full time carer – whether additional room is part of the dwelling occupied as his home
<i>Basildon DC v AM</i> <a href="#">[2009] UKUT 113 (AAC)</a> CH 415 2009	22/06/09	HB	Reg 9(1)(a) HB (General) Regs 2006	Liability commerciality and contrivance- credibility findings and reasons. Statement of reasons: Credibility findings.

Case	Date of decision	Benefit	Legislation in issue	Keywords
<i>LB of Waltham Forest v TM</i> <a href="#">[2009] UKUT 96 (AAC)</a> CH/3670/2008	01/06/09	HB CTB	Reg 49 HB Regs 2006 Reg 39 CTB Regs 2006	Notional capital does not vest in a trustee on bankruptcy and survives the claimant's bankruptcy
<i>AA v Leicester CC KV</i> CH/1602/2008	04/05/09 (added 23/09/09)	HB CTB	Regs 11, 13 and 14 HB & CTB (D&A) Regs 2001	Termination – consideration of <a href="#">CH/2995/2006</a> and SI 2001/1605. Possible error in CPAG's <i>Housing Benefit and Council Tax Benefit Legislation</i> .
<i>Middlesbrough Borough Council v DS</i> <a href="#">[2009] UKUT 80 (AAC)</a> CH/3826/2008	30/04/09	HB CTB	Reg 100(2) HB Regs 2006 Reg 83(2) CTB Regs 2006	Recovery of overpayment /excess CTB – delay by local authority in paying occupational pension - whether official error must be in context of administering HB/CTB
<i>Leicester CC v OA</i> <a href="#">[2009] UKUT 74 (AAC)</a> CH/2366/2008	28/04/09	HB CTB	S1 (1A) and (1B) SSAA 1992, inserted with effect from 01.12.97 by the Social Security Administration (Fraud) Act 1997 (since amended wef from April 2009)	Follows <a href="#">CH/4085/2007</a> 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 and that under subs (1B)(b) 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.

Case	Date of decision	Benefit	Legislation in issue	Keywords
<i>HR v Wakefield MDC</i> <a href="#">[2009] UKUT 72 (AAC)</a> . CH/3524/2008	28/04/09	HB CTB	Reg 8 (14) HB & CTB (D&A) Regs 2001	Effective date of supersession to increase HB/CTB to include SDP – under reg 8(14) must be backdated to date of entitlement to DLA
<i>JD v Leeds CC</i> <a href="#">2009] UKUT 70 (AAC</a> CH/3495/2008	21/04/09	HB CTB	Reg 103 HB Regs 2006 Reg 88 CTB Regs 2006	Proper calculation of recoverable overpayments of HB and excess CTB  Liability to repay overpayment under recoverability decision made after date of bankruptcy order even though overpayment period is before date of order.
<i>Stroud DC v JG</i> <a href="#">[2009] UKUT 67 (AAC)</a> CH/2337/2008	17/04/09	HB CTB	Reg 7 HB Regs 2006	Duty to refer rent to rent officer where reduction in number of occupiers – whether a full-time student continued to reside with his mother after he became a full-time student – <i>R v Swale Borough Council HBRB</i> (1999) CA applied.
<i>MH v Wirral MBC</i> <a href="#">[2009] UKUT 60 (AAC)</a> CH/3698/2008	31/03/09	HB	Reg 9(1)(h) of the HB (SPC) Regs 2006	Liability and contrivance – previous ownership – relevance of continuity of residence to current provision – no conflict between CH/716/2002 and CH/3136/2003

Case	Date of decision	Benefit	Legislation in issue	Keywords
<i>Chichester District Council v LB</i> <a href="#">[2009] UKUT 34 (AAC)</a> CH/426/2008	11/02/09	CTB	Recognition of Trusts Act 1987	Capital – money placed in foreign joint bank account by someone other than a claimant – whether money subject to a resulting trust – proper law to be applied – burden of proof about whether money placed in a foreign joint bank account by another person was within the beneficial ownership of the claimant
<i>Wigan Metropolitan Borough Council v VF</i> <a href="#">[2009] UKUT 28 (AAC)</a> CH/1615/2008	10/02/09	HB	Regs 10(1)(a) & 10(1)(e) HB Regs 1987	Eligible payments – whether a sum payable by the tenant in respect of a bedroom to be occupied by an overnight carer is eligible for housing benefit
<i>Walsall Metropolitan Borough Council v PL</i> <a href="#">[2009] UKUT 27 (AAC)</a> CH/3801/2008	09/02/09	HB CTB		Evidence by submission writers and presenting officers – computer print-out -. proof of decision by inference
<i>CR v Wycombe District Council</i> <a href="#">[2009] UKUT 19 (AAC)</a> CH/1487/2008	29/01/09	HB	Reg 12 (2) (c) HB Regs 2006	Meaning of ‘owner’ – considers authorities tending to show does not include person with beneficial interest not on legal title

Case	Date of decision	Benefit	Legislation in issue	Keywords
<i>CH v Wakefield DC</i> <a href="#">[2009] UKUT 20 (AAC)</a> CH/3571/2008	27/01/09	HB	Reg 9(1)(h) HB Regs 2006	Relevance of efforts to avoid selling property and taking tenancy  Interaction of decision notice and statement of reasons
<i>East Hertfordshire District Council v KT</i> <a href="#">[2009] UKUT 12 (AAC)</a> CH/2726/2008	19/01/09	HB	Para. 4(10) Sch 3 HB & CTB (Consequential Provisions) Regs 2006	Whether accommodation 'provided by' a charity where the charity arranges for the claimant to live in accommodation belonging to a carer.
<i>KU v Bradford Metropolitan District Council</i> <a href="#">[2009] UKUT 15 (AAC)</a> CH/2736/2008	19/01/09	HB		Fair hearing – First-tier Tribunal judge hearing successive appeals by same claimant
<i>EW v Neath Port Talbot County Borough Council</i> <a href="#">[2009] UKUT 14 (AAC)</a> CH/2880/2007	15/01/09	HB CTB	Reg 104 HB Regs 2006 Reg 89 CTB Regs 2006.	Need for tribunal to address the basis on which recoverable overpayments have been calculated and any possible offsets,



Case	Date of decision	Benefit	Legislation in issue	Keywords
<i>SD v London Borough of Brent</i> <a href="#">[2009] UKUT 7 (AAC)</a> CH/4/2008	15/01/09	HB	Reg 9 HB Regs 2006	Whether regulation 9 (1)(e) applies to a discretionary beneficiary of a trust in the absence of the exercise of a power of appointment.

### HB/CTB decisions selected for reporting in 2009

Reported as	File number	Council	Benefit	Legislation in issue	Keywords
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<a href="#"><u>R(H) 1/09</u></a>	CH/3584/2007	Hackney	CTB	Reg 14 HB & CTB (D & A) Regs 2001	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
<a href="#"><u>R(H) 2/09</u></a>	CH/51/2008	Islington	CTB	Reg 30(5) CTB Regs	Income – reduction in incapacity benefit because of receipt of occupational pension by virtue of s30DD of the SSCBA 1992 is not ‘any deduction by way of recovery’
<a href="#"><u>R(H) 3/09</u></a>	<i>AH v Mendip DC and SSWP</i> [2008] UKUT 18 (AAC) CH/3160/2007	Mendip	HB	Reg 100(2) HB Regs 2006	2006 Amendments to liability for overpayments are retrospective.
<a href="#"><u>R(H) 4/09</u></a>	CH/779/2007 CH/1246/2007 CH/2805/2007	Hounslow Oxford Sheffield	HB	Para 4(10) Schedule 3 to HB and CTB (Consequential Provisions) Regs 2006.	Whether accommodation is ‘exempt accommodation’ where support is provided to tenant by a third party

<b>R(H) 5/09</b>	<i>LB Hackney v GA</i> <a href="#">[2008] UKUT 26 (AAC)</a> CH/1895/2008	Hackney	HB	Reg 7 HB Regs 2006	Housing benefit – dwelling occupied as the home – whether two tenancies on different properties can constitute a single dwelling
<b>R(H) 6/09</b>	<i>AR v Bradford MDC</i> <a href="#">[2008] UKUT 30 (AAC)</a> CH/758/2008	Bradford	CTB	Reg 28 CTB Regs 2006	Income – proper treatment of regular drawings by a partner when the partnership is not making any profits
<b>R(H) 7/09</b>	<a href="#">CH/2321/2007</a> <i>Yesiloz (formerly Aykac) v LB Camden &amp; SSWP</i> <a href="#">[2009] EWCA Civ 415</a>  Court of Appeal decision only reported	Camden	HB	S115 Immigration & Asylum Act 1999 Reg 10 HB Regs 2006	Right to reside – national of state that has ratified ECSMA – whether ‘Right to Reside’ test confined to EU citizens
<a href="#">R(H) 8/09</a>	<i>Stroud DC v JG</i> [2009] UKUT 67 (AAC) CH/2337/2008	Stroud	HB CTB	Reg 7 HB Regs 2006	Housing and council tax benefit – occupation of the home – full-time student

<a href="#"><u>R(H) 9/09</u></a>	<i>JD v Leeds City Council</i> [2009] UKUT 70 (AAC) CH/3495/2008	Leeds	HB CTB	Reg 103 HB Regs 2006 Reg 88 CTB Regs 2006	Recovery of overpayments – bankruptcy order made before recoverability decision – whether liability for overpayment bankruptcy debt
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### HB/CTB cases appealed to superior courts in 2007

Case	Date of decision	Benefit	Legislation in issue	Keywords
<a href="#"><u>Novitskaya v LB Brent &amp; Secretary of State for Work and Pensions</u></a> [2009] EWCA Civ 1260 CH/3530/2007	01/12/09	HB	Regs 2 and 72 HB Regs 1987	Whether a claim for housing benefit can be made without using explicit wording to indicate that a claim for that benefit is being made
<a href="#"><u>Yesiloz (formerly Aykac) v LB Camden &amp; SSWP</u></a> [2009] EWCA Civ 415 <a href="#"><u>CH/2321/2007</u></a>	20/06/09	HB	S115 Immigration & Asylum Act 1999 Reg 10 HB Regs 2006	Right to reside – national of state that has ratified ECSMA – whether ‘Right to Reside’ test confined to EU citizens

**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](#).