

Buying to let to a relative- what the law actually says

Housing benefit was introduced by section 20 of the Social Security Act 1986, which has been consolidated by section 130 of the Social Security Contributions and Benefits Act 1992. The essence of housing benefit is captured by section 130(1)(a) which states that:

A person is entitled to housing benefit if-

(a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home'.

Section 137(2) provides:

Regulations may make provision for the purposes of this Part of this Act-

(i) for treating any person who is liable to make payments in respect of a dwelling as if he were not so liable'.

Regulation 9(1) (formally 7 (1) of the Housing Benefit Regulations 2006 is made under that authority:

9.—(1) A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where—

(a) the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis;

(b) his liability under the agreement is to a person **who also resides in** the dwelling and who is a close relative of his or of his partner;

(i) in a case to which the preceding sub-paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under Part 7 of the Act.

Housing Benefit Regulations do not prevent claimants from receiving assistance with paying rent if they have a commercial tenancy with a relative. 9 (1) b states instead that a claimant will not be treated as liable to pay rent, and will therefore not receive Housing Benefit/Local Housing Allowance if the tenancy agreement relates to a property that is shared with the landlord who is also a close relative.

If a Local Authority is aware that a claimant is closely related to their landlord they may wish to separately investigate three issues:

- Does the landlord 'reside with' the tenant?
- Is the arrangement commercial?
- Is it a 'contrived' tenancy – set to abuse or to take advantage of the Housing Benefit system?

Residing with

Housing Benefit cannot be paid to someone who resides with a landlord who is also a close relative.

What does 'reside with' actually mean in terms of the regulations?

Regulation 3(4) of the Housing Benefit Regulations 2006 states that a person resides with another 'only if they share any accommodation except a bathroom, a lavatory or a communal area within the meaning prescribed in paragraph 8 of Schedule 1

paragraph 8 of Schedule 1

– "communal areas" mean areas (other than rooms) of common access (including halls and passageways)'

If a landlord only shares communal access and a bathroom for example, and a tenant has exclusive occupation of their own bedroom and other living areas and a separate entrance to the property it may be difficult to prove that regulation 9 (1) b applies. However unless extensive evidence about layout and living arrangement supports the contention that the claimant and landlord do not reside together a standard house sharing arrangement will be assumed and Housing Benefit will be refused.

For recent commissioner decisions on this issue see

CH 3656 2004 <http://www.ossccsc.gov.uk/judgmentfiles/j1718/CH%203656%202004-00.doc>

CH 542 2006 <http://www.ossccsc.gov.uk/judgmentfiles/j2074/CH%200542%202006-00.doc>

Commerciality

In deciding whether or not the agreement is commercial, the local authority must look at the whole agreement, taking into account all the circumstances. For example, they can look at the agreement to pay rent. As long as there is a binding and legally enforceable agreement that rent has to be paid on a regular basis, a claimant does not need to demonstrate that it is a market rent (in other words, a rent typical of private rents locally).

The local authority should also not assume that just because a claimant is a relative of, or has a close relationship, with their landlord, that this automatically means that the agreement is non-commercial. For example, government documents drawn up to train Local Authority Housing Benefit departments (www.dwp.gov.uk/housingbenefit/training/2/2_3.asp) say that it can be considered as reasonable that a landlord may want to choose to rent to someone that they know, in order to be certain of having a good tenant.

The council should also consider that a claimant might have good cause to move into a property, which has been rented to them by a close relative. For example, it may be to enable a young person to leave their parental home, or to provide a more suitable home for a person with a disability.

The council should consider and fully investigate all these facts and then show that the agreement is not on a commercial basis.

Contrivance

Having investigated the first two issues and having found that neither 9(1) a or b apply, a Local Authority may, where there is some doubt over the validity of the rent liability decide to investigate whether a commercial tenancy has been set up to take advantage or to abuse the Housing Benefit system. If the Local Authority has fully investigated the claim and they subsequently decide that the tenancy is contrived, a claimant may then be asked to provide further evidence to convince them otherwise.

The Local Authority will look for:

Landlord's contrivance – where a landlord is considered to be taking advantage of the system by, for example, charging very high rents and only accepting tenants who are not likely to be subject to rent restrictions. If it can be shown that landlord charges

more rent to people claiming benefit than he does to tenants paying the rent out of their own pockets for example then a tenancy may be deemed contrived.

Unnecessary liabilities - whether the claimant has taken on an unnecessary liability. An unnecessary liability is one that the claimant could have avoided and still been adequately housed. It is not the reliance on HB that is the major concern. What is more significant is the decision of someone who already has somewhere to live taking on a liability that they know they cannot pay.

This would not apply in situations such as:

- where a person has moved because he is unable to travel to work from his previous address;
- where a person moves from an overcrowded or unsuitable family home; or
- where a young person leaves the parental home;

even though they may rely on HB to pay their rent.

It should be remembered that contrived tenancies are those that have been created by the tenant and/or landlord to abuse the HB Scheme. As such, contrivance cannot apply where the main reason for entering into the tenancy was to provide a home for the claimant and their family.

Examples of evidence used by claimants to show that a tenancy is not contrived:

- A commercial agreement, such as a Tenancy Agreement document, a Rent Book, or bank statements showing evidence of regular rent payments.
- Mortgage statements from the landlord showing that payments are needed to be met by a rent payment.
- The Landlord arranges for tenant to be given a tenancy, which is then dealt with on a daily basis by a Managing Agent.
- Evidence that there is no other suitable accommodation, if the tenant in question is disabled.