

When can Housing Benefit be claimed?

Arrears can often quickly accrue when Housing Benefit is not paid due to a misunderstanding on the part of the Local Authority in receipt of the Housing Benefit claim.

Entitlement to Housing Benefit is dealt with in the following:

- Social Security Contribution and Benefits Act 1992; and
- Housing Benefit Regulations 2006

The practical effect of s.130 of the *Social Security Contributions and Benefit Act 1992* is that Housing Benefit is payable where a person is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home, if there is an appropriate maximum Housing Benefit in the case and the applicant's income is sufficiently low in order for him to be entitled to full or partial payment of Housing Benefit.

Regulation 7 & 8 of the *Housing Benefit Regulations 2006* defines what amounts to occupation of a dwelling and what amounts to liability to pay rent.

A misconception that commonly occurs is that Housing Benefit Authorities require proof of a tenancy before making payment. The Regulations are lengthy but state that the right to claim housing benefit derives from occupation of a dwelling not from holding a tenancy agreement in your name.

Landlords should therefore work with applicants in such situations as their interests very much combine and should consider preparing a suite of standard letters which can be easily amended to hand to Housing Benefit departments when this issue arises.

Examples of such situations are:

- An occupant who is waiting for a claim for succession to be adjudicated upon is entitled to claim Housing Benefit;
- The carer of a child who is entitled to succeed to a tenancy is entitled to claim Housing Benefit.



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For further discussion/ information, please contact Andrew Barron whose contact details are set out below



Richardson v. Midland Heart

The case of **Rebecca Richardson v. Midland Heart Limited** is, after a long pause, due to again hit the headlines. Ms Richardson has appealed against the High Court decision and the case is due to be heard by the Court of Appeal on 3 and 4 March 2010.

The case concerns whether a shared ownership lessee is entitled to any money from the sale of the property once that lessee has been evicted.

The facts in brief

- Ms Richardson bought a 99 year shared ownership lease in 1995 for 50% of the property. The Housing Association retained the other 50%.
- When Ms Richardson's partner was sent to prison, she was threatened by his Associates and decided that she would leave that property for a women's refuge.
- Ms Richardson fell behind with her rent and was not able to claim Housing Benefit as she did not satisfy the occupation criteria set out in the Housing Benefit Regulations as, at the time, the property was not her sole or main home.
- In August 2005 Ms Richardson decided to sell the property; however, as the property was empty and dilapidated, it did not attract many offers.
- The rent arrears accrued and on 5 January 2006 Midland Heart obtained a possession order from the County Court.
- Ms Richardson then issued proceedings in the High Court seeking a declaration as to the extent of her interest in the property

or for an account of 50% of the proceeds of any sale by Midland Heart. Her contention was that the property was subject to a trust, or in the alternative the lease was a long lease and had not been properly determined.

The High Court held:

- The freehold was not held on trust by Midland Heart for the benefit of itself and Ms Richardson. The relationship was that of landlord and tenant and not that of trustee and beneficiary.**
- The shared ownership lease had been an assured tenancy.**
- The tenancy had been properly determined by the possession order granted by the court in Midland Heart's favour on 6 January 2006.**

The consequence of the Judge's findings were that Ms Richardson had no interest left in the property and was therefore not entitled to any of the proceeds of sale once Midland Heart had sold the property.

In this case, Midland Heart decided to voluntarily pay Ms Richardson the capital investment made when she purchased the lease in 1995, although the law did not require it to do so.

Some Registered Social Landlords have followed Midland Heart's lead and have themselves made voluntary payments, despite not being under a legal obligation to do so.

It remains to be seen whether the Court of Appeal will overrule the Judge's ruling in this case.

Weaver and its effect on Ground 8 and Section 21 possession proceedings

It is now widely known that the Supreme Court refused London and Quadrant Housing Trust's application for permission to appeal. The Court of Appeal's decision that the termination of an assured tenancy by the Trust was an act of a public nature, undertaken in the performance of a public function, that the Trust was therefore a public authority for the purposes of the *Human Rights Act 1998* and its decisions amenable to judicial review, remains the law.

Implications

Not all of a registered provider's functions and decisions can be categorised as exercising a public function, but it is clear from *Weaver* that decisions relating to housing, allocations and management functions are.

The consequence of this is that judicial review, Human Rights Act defences and Gateway B claims are now possible. This is particularly relevant where possession is sought on mandatory grounds (i.e. ground 8 or pursuant to service of a valid s.21 notice).

Practical advice

Where such defences are filed in response to a possession claim, registered providers should seriously consider making an application to strike out/for summary judgment or, in the alternative, ask the court to determine whether the public law defence that has been filed is 'seriously arguable', as the defendant has to establish this before the matter can proceed to trial.

Any such application needs to be carefully drafted and include detailed grounds. Witness evidence may also help, although this should be limited.

The application to strike out should be made on the basis that the defence does not have any credibility rather than deal with the contentious issue of whether the registered provider is a public authority.

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