

**DECISION OF THE UPPER TRIBUNAL  
(ADMINISTRATIVE APPEALS CHAMBER)**

As the decision of the First-tier Tribunal (made on 31 August 2017 at Plymouth under reference SC200/16/00247) involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 and the decision is RE-MADE.

The decision is: the local authority had no power to supersede the decision awarding housing benefit to the claimant on the ground that he would not provide details of his bank account. He remained entitled to his award from and including 14 December 2015. The First-tier Tribunal and the Upper Tribunal have no jurisdiction in respect of the method of payment.

**REASONS FOR DECISION**

**A. The local authority's decision**

1. On 20 January 2016, the local authority wrote to the claimant. The opening paragraphs read:

Following a review of your application and information received, I have ended your Housing Benefit claim from 14 December 2015.

The reason for this adjustment is Failure to provide information requested.

Those paragraphs are not particularly informative. The local authority's submission to the First-tier Tribunal made matters clearer by stating the decision under appeal as:

That [the claimant] had not satisfied the conditions of entitlement in that he had not provided details of a bank account in which to receive payments of Housing Benefit.

The submission went on to explain that this decision arose from a policy decision by the authority to pay benefit direct into a claimant's bank account through BACS rather than by cheque.

**B. The legislation**

2. In its submission to the First-tier Tribunal, the local authority cited two provisions from the Housing Benefit Regulations 2006 (SI No 213). Regulation 86 is in Part 10 of the Regulations:

**86 Evidence and information**

(1) Subject to paragraphs (1A) and (2) and to paragraph 5 of Schedule A1 (treatment of claims for housing benefit by refugees), a person who makes a claim, or a person to whom housing benefit has been awarded, shall furnish

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such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person's entitlement to, or continuing entitlement to, housing benefit and shall do so within one month of the relevant authority requiring him, or the Secretary of State requesting him, to do so or such longer period as the relevant authority may consider reasonable.

And regulation 91 is in Part 12 of the Regulations:

**91 Time and manner of payment**

(1) Subject to paragraphs (2) and (3) and regulations 92 to 98 (frequency of payment of a rent allowance, and payment on account of a rent allowance, payment provisions, offsetting) the relevant authority shall pay housing benefit to which a person is entitled under these Regulations at such time and in such manner as is appropriate, having regard to—

- (a) the times at which and the frequency with which a person's liability to make payment of rent arises; and
- (b) the reasonable needs and convenience of the person entitled thereto.

3. The local authority has also relied on provisions from the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (SI No 1002). For convenience, I will set out all those that the local authority has now relied on. Not all of them were cited in the submission to the First-tier Tribunal.

4. Regulation 11(1) gives power to 'suspend ... any payment of housing benefit ... in the circumstances prescribed in paragraph (2).' Paragraph (2) covers cases 'where it appears to the relevant authority that an issue arises whether ... the conditions of entitlement to housing benefit ... are fulfilled'.

5. Regulation 13(1) gives power to 'suspend ... any payment of housing benefit ... in relation to persons who fail to comply with the information requirements'. The 'information requirement' is defined by paragraph 14(5)(a) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 as being 'a requirement in pursuance of regulations ... to furnish information or evidence needed for a determined whether a decision of an award of that benefit should be revised ... or superseded'.

6. Regulation 14 provides that a person who fails to comply with an information requirement under regulation 11 or 13 'shall cease to be entitled to the benefit'.

**C. Jurisdiction**

7. It is important to be clear on the scope of the First-tier Tribunal's jurisdiction and therefore of the Upper Tribunal's.

8. The jurisdiction of both tribunals is statutory. That is a defining characteristic of tribunals. In the case of housing benefit, the jurisdiction is

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conferred by paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000. This confers jurisdiction on appeal against any decision ‘on a claim for, or on an award of, housing benefit’. It is, though, subject to paragraph 6(2), which excludes any appeal against a list of decisions and ‘any other decision as may be prescribed.’ The other decisions prescribed are to be found in the Schedule to the 2001 Regulations. The relevant provision is paragraph 1. This provides that no appeal lies against a decision by virtue or as a consequence of any provisions in Parts 10 or 12. There are certain specified exceptions, but regulations 86 and 91 are not among them.

9. It follows that there is no appeal against a local authority’s application of regulation 86 or 91, but there is an appeal against on a claim or an award. I agree with the commentary in the *Housing Benefit and Council Tax Reduction Legislation 2017/2018* at page 146 that this must mean a decision given on a claim or on supersession.

10. What all that means is this. If the local authority had limited itself to dealing with regulations 86 and 91, neither the First-tier Tribunal nor the Upper Tribunal would have had jurisdiction on appeal. However, the authority did not so limit itself. It went on to decide that as a result of those regulations the claimant was no longer entitled to housing benefit. As the claimant had previously been awarded housing benefit, the termination of his entitlement must have been made on a supersession, which is within the jurisdiction of the First-tier Tribunal and the Upper Tribunal.

#### **D. Payment and entitlement**

11. Housing benefit, like other social security benefits, distinguishes between matters relevant to entitlement and matters relevant to payment. That distinction is embedded in the structure of the 2006 Regulations. Part 10 deals with claims; Part 12 deals with payments. The distinction is also embedded in the language of the regulations. Regulation 86, which is in Part 10, applies only to information that the local authority reasonably requires in order to determine a claimant’s entitlement to housing benefit. Regulation 91, which is in Part 12, applies to the time at which and manner in which the local authority must pay housing benefit to which the person is entitled. On the wording of that regulation, entitlement precedes and is separate from payment.

12. This same distinction between entitlement and payment appears in the 2001 Regulations on which the local authority has relied. Regulation 11 allows a local authority to suspend *payment* if an issue arises about *entitlement*. And regulation 13 allows a local authority to suspend payment if a person fails to comply with the information requirements, which relate to information needed to determine whether an award should be revised or superseded. And an award can only be revised or superseded by reference to the conditions of entitlement to the benefit.

13. It is right that regulation 14 provides that a failure to comply with regulation 11 or 13 allows an authority to terminate an award, but those

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regulations only apply if issues about entitlement have arisen. I am not aware of any provision that allows an authority to terminate an award just because of a disagreement with the claimant about the method of payment. Certainly, none has been cited and any such provision would cut through the distinction between entitlement and payment.

**E. How the local authority and the First-tier Tribunal went wrong**

14. It follows that the local authority was wrong to rely on provisions relating to entitlement in order to terminate the claimant's award when what was in dispute was the method of payment. What had happened was that the claimant had not provided the information necessary for his award to be paid by the process that the local authority had decided to use.

15. The tribunal confirmed the local authority's decision, saying of regulation 86 that the local authority was 'perfectly entitled to decide to change the method of payment of HB and that in order to do so it requires claimants to provide the details of a bank account into which the benefit can be paid.' The tribunal was right that the local authority was entitled to change the method of payment and ask the claimant to provide the information necessary to implement that change. But it was wrong to decide that the local authority was entitled to do that under regulation 86 and then to terminate the award.

16. The tribunal also referred to the 2001 Regulations. That was wrong too. As I have explained, those Regulations provide for the suspension of payment and the termination of an award. There is a specific provision allowing for the suspension of payment when regulation 86 applies (regulation 13(1)(a) and (2)(c)), but that cannot apply if regulation 86 does not apply. None of the other provisions in the 2001 Regulations allows suspension or termination on account of failure to provide information that the local authority has asked for in order to make payment.

17. It follows that the local authority had no power to terminate the claimant's award of housing benefit on account of his failure to provide the information requested. I have re-made the tribunal's decision to that effect and have done so without the need for an oral hearing.

18. The local authority has relied on what I said in *R(H) 2/08* at [36]. What I said was that the identity of the payee was an element of an award that could only be changed on revision or supersession. That is different from the issue in this case, which concerns not the identity of the recipient but the method of payment.

**F. What does this mean for the claimant**

19. My analysis produces the unsatisfactory position that the claimant is entitled under an award of housing benefit, but (as the local authority has made explicitly clear in its response to this appeal) the authority will not pay it in any other way than by BACS.

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20. Regulation 91 of the 2006 Regulations imposes a duty on a local authority to pay an award ‘in such manner as is appropriate, having regard to [the claimant’s] reasonable needs and convenience’. The claimant relied on this provision to argue that he was entitled to payment by cross cheque. The tribunal rejected his argument on the ground that he had not shown any connection between his health and the need for payment by crossed cheque. The tribunal was wrong to address this argument. It relates only to payment and is excluded from the scope of the tribunal’s jurisdiction. The tribunal only has power to deal with issues of entitlement. Once it had decided, as it should have, that the claimant remained entitled, it had reached the limit of its jurisdiction.

21. This leaves the claimant in an impasse. He is entitled to housing benefit but will not provide the information that will allow the local authority to pay it. It is not for me to advise the claimant on how this impasse could be resolved. Whatever resolution there may be, whether legal or practical, it is outside the jurisdiction of the Upper Tribunal.

**G. The second respondent**

22. Finally, I must mention the second respondent. He is the claimant’s landlord. As he was a party to the proceedings in the First-tier Tribunal, he thereby became a ‘respondent’ before the Upper Tribunal by virtue of head (a)(i) in the definition of that term in rule 1(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI No 2698). He asked to be changed to a second appellant. I have not done that. The designation of a party as appellant or respondent is merely a procedural label and does not convey any indication of the person’s role in relation to the proceedings.

**Signed on original  
on 28 June 2018**

**Edward Jacobs  
Upper Tribunal Judge**