



BRIEFING PAPER

Number 3078, 9 June 2017

Housing Benefit: renting from relatives

By Wendy Wilson

1. Sharing accommodation with a close relative

Regulation 9(1)(b) of the *Housing Benefit Regulations 2006*¹ specifically provides that a person who resides² with, and pays rent to, a close relative³ should **not** be treated as liable for their housing costs and thus **will not** be entitled to Housing Benefit.

2. Renting from a close relative

People who rent accommodation from a close relative **but who do not reside with them** are **not** covered by Regulation 9(1)(b). The Department for Work and Pensions' (DWP) [HB Guidance Manual](#) advises:

You should note that a person who rents his accommodation from a close relative but does not reside with him, does not fall foul of this particular provision. Such an arrangement may seek to take advantage of the HB scheme, bearing in mind other aspects of the arrangement, and thus fall foul of regulation 9(1)(l). On the other hand, it may be a perfectly normal, and legitimate, tenancy.⁴

2.1 Tenancies established to take advantage of the HB scheme

Regulation 9(1)(l) prohibits entitlement to HB where it is believed that the tenancy was entered into in order to take advantage of the HB scheme. The [HB Guidance Manual](#) provides guidance to local authorities on the interpretation of regulation 9(1)(l):

Remember that such an abuse can be on the part of the claimant, the landlord, or both acting together. Only use this provision when no other provision in regulation 9(1) applies.

There must be something about the arrangements relating to the liability that indicates it seeks to abuse the HB scheme. It is the LAs responsibility to show such arrangements exist before deciding that abuse is involved. This means you must

¹ SI 2006/213 (these Regulations consolidated the *Housing Benefit (General) Regulations 1987* and subsequent amendments)

² **R**esides with means sharing kitchens or other communal rooms.

³ Close relative is defined as parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister or the spouse or unmarried partner of any of these people.

⁴ [HB Guidance Manual](#), para 3.238

2 Housing Benefit: renting from relatives

establish the facts before deciding to treat that person as not liable to make the payment.

You must take account of all the available evidence when making a decision that a liability has been created to abuse the HB scheme. Generally speaking, you will be looking for an improper or incorrect use of the rules which govern HB.

A liability for a very high rent would not itself amount to an abuse of the HB scheme for the purposes of this regulation, because the maximum rent rules would prevent the payment of large amounts of HB. However, a landlord who targets high rents at specific groups of claimants who are excluded from the maximum rent rules might be creating liabilities which abuse the HB scheme.

Regulation 9(1)(l) states the general principle which relates to a determination that a person is to be treated as not liable for his housing costs. This is that HB is not payable where the LA is satisfied that the liability was created to take advantage of the HB scheme. You should note that such an abuse can be on the part of the claimant, the landlord, or both acting together. This provision should be used only where none of the preceding paragraphs apply.

There must be something about the arrangements relating to the liability which indicates that it seeks to exploit the HB scheme, and it will be up to the LA to demonstrate such arrangements in order to substantiate a decision that exploitation is involved. A liability for a very high rent would not, of itself, amount to an abuse of the HB scheme for the purposes of this regulation, because the maximum rent rules would prevent the payment of large amounts of HB. However, a landlord who targets high rents at specific groups of claimants who are excluded from the maximum rent rules might be creating liabilities which take advantage of the HB scheme.

You should also look for arrangements which the claimant has entered into which create a liability which he cannot meet without housing benefit where he could have avoided such a situation and still been adequately accommodated. This would not normally be the case where, for example, even though they rely on HB to help meet the rent:

- a person previously had no accommodation
- a person has moved home to take up work because he could not travel to work from his previous address
- a person moves home because his family was overcrowded at his previous address
- a young person leaves the parental home to take up his own accommodation.

In the last case, you should not generally take account of accommodation in the parental home as evidence that the person could still have been adequately accommodated.

As in all determinations, you must take account of all the available evidence when making a determination that a liability has been created to take advantage of the HB scheme. Generally speaking, you will be looking for an improper or incorrect use of the rules which govern HB.

A tenancy agreement has not necessarily been created to abuse HB simply because the tenant requires HB at the start of their tenancy.

Also it is not necessary for there to have been agreement between landlord and tenant for there to be contrivance; a tenancy agreement may have been intended to abuse the HB scheme by either party. The Court of Appeal has

- held that the contrived tenancy provisions should only be applied when taking advantage of the HB scheme is a primary or dominant purpose in its creation (*R v Solihull MBC ex parte Simpson*)
- pointed out that abuse at which the Regulation is aimed must not be equated with bad faith on the part of the claimant. In other words, it is not necessary

for the claimant to have acted in bad faith for an LA to make a finding that there has been contrivance

When considering this question, the issue is not whether a liability exists, but whether an existing liability was created to abuse the HB scheme. You must decide whether a liability exists before considering whether or not a tenancy is contrived. Although the two questions often involve considering the same facts.

You should also look for arrangements the claimant has entered into

- which create a liability they cannot meet without HB, and
- when they could have avoided the situation and still been adequately accommodated

This would not normally be the case when, for example, even though they rely on HB to help meet the rent

- a person previously had no accommodation
- a person has moved home
 - to take up work because they could not travel to work from their previous address
 - - because their family was overcrowded at their previous address
- a young person leaves the parental home to live independently. You should not generally take account of accommodation in the parental home as evidence that the person could still have been adequately accommodated.⁵

2.2 Non-commercial arrangements

Alternatively, an authority might decide that where someone rents from a close relative that the tenancy agreement in question amounts to a non-commercial arrangement under Regulation 9(1)(a). The HB Guidance Manual provides the following guidance on this situation:

A commercial rental agreement, whether a tenancy or a licence, imposes legally enforceable conditions on the parties to the agreement. If one party breaks the agreement, the other party has the right to go to court to seek redress.

You may consider an agreement as non-commercial when it includes terms which are not legally enforceable or which the parties did not intend to be legally enforceable.

Such terms may be written into the agreement or may be verbal. For example when a claimant does household chores for their landlord. The chores could be considered as payment 'in kind', and the agreement regarded as a commercial one if when the tenant

- does household chores for their landlord they pay a lower rent
- does not do the chores they have to pay a higher rent

Charging a low rent does not on its own make an agreement non-commercial. Many charities, voluntary bodies, and some individuals, choose to let properties at below market rents or do not want to make a profit from letting, but their tenancies may still be commercial arrangements if that is what the parties to the agreement intended.

This provision could cover some cases when a claimant resides with a relative who is not a close relative. For example, someone who has been brought up by an aunt and is then charged 'rent' for their room, this could be regarded as a non-commercial arrangement.

⁵ [HB Guidance Manual](#), paras 3.311 – 3.319

4 Housing Benefit: renting from relatives

However, someone who left the parental home and went to live with their aunt on a board and lodging basis could be considered to have entered into a commercial arrangement.

You must decide whether the arrangement is on a commercial or non-commercial basis as a question of fact based on all the evidence. You must deal with each case on its facts. So be careful to establish the facts before considering whether the provision applies.⁶

2.3 Renting from a trust

Prospective claimants and their landlords who are close relatives sometimes ask whether they can avoid the implications of Regulation 9(1)(l) and 9(1)(a) by entering into a trust arrangement. Regulations 9(1)(e) and 9(1)(f) provide that people who rent their accommodation from a trust of which they are a trustee or a beneficiary, and people who rent from a trust of which their child is a benefactor, are **not** entitled to receive Housing Benefit:

Treat the claimant as not liable for housing costs if

- a claimant rents a property from a trust (strictly speaking from the trustee(s) of a trust), and
- the claimant, or their partner, ex-partner, or a close relative living with the claimant is either a
 - trustee, or
 - beneficiary Reg 9(1)(e), and
- they cannot show the arrangement was not intended to abuse the HB scheme

A trustee is required to act for the benefit of the trust and its beneficiaries. So a trustee who was also a tenant of the trust would have a foot in both camps as tenant and, in effect, landlord.

Example: Mr Brown lives with his elderly mother, Mrs Brown, who is an owner-occupier. A trust is set up naming Mrs Brown as beneficiary, and the home is transferred to it. The trust rents the home to Mr Brown who claims HB. Such an arrangement clearly takes advantage of the HB scheme, since without setting up the trust Mr Brown would have no entitlement to that benefit.

Treat the claimant as not liable for housing costs if

- a claimant rents a property from a trust (strictly speaking from the trustee(s) of a trust), and
- the claimant's child, or partner's child is a beneficiary of the trust regulation 9(1)(b). **Note:** the exemption in regulation 9(1)(b) does not apply.⁷

Regulation 9(3) exempts claimants who can show that the trust arrangement was not intended to exploit the HB scheme, but this exemption does not apply where the claimant's or their partner's child is a beneficiary of the trust that is their landlord.

2.4 Renting from a company

Similarly, where a claimant, his/her partner, his/her ex-partner, his/her partner's ex-partner, or a close relative who lives with him/her is a director or an employee of the company who is the landlord, then the claimant is to be treated as not liable for housing costs.⁸

⁶ Ibid., paras 3.259 – 3.265

⁷ Ibid., paras 3.278 – 3.280

⁸ Regulation 9(1)(e)

A company

- in this situation is one that is registered, that is, incorporated under the Companies Acts
- can be limited by shares or guarantee
- is regarded by the law as a person, so that it has a legal identity separate to that of its directors and shareholders. So, a company can own property, enter into contracts and incur debts

A registered company is bound by the Companies Acts and must display details of the registration on its headed paper. So if you are doubtful about the identity of a landlord, you can easily check with Companies House whether or not a company is incorporated.

Treat the claimant as not liable for housing costs, if the claimant, or their partner, ex-partner, partner's ex-partner, or a close relative living with the claimant

- is a director or an employee of the company who is the landlord and
- cannot show the arrangement between the company as landlord and the employee as tenant was not a means of abusing the HB scheme

Regulation 9(3) exempts a claimant who can show the arrangement between the company as landlord and the employee as tenant was not intended to be a means of abusing the HB scheme.

Example 1

Miss Red rents a flat that has been advertised on the open market through a letting agent. After living there for some time, she gets a part-time job in a local shop. The company that runs the shop also owns the flat. It is clear the liability for the flat was not created to abuse HB and the fact that the claimant's landlord is also her employer is accidental.⁹

3. Appealing against a decision

Claimants that are refused HB on the grounds that the letting arrangement is not commercial or has been entered into in order to take advantage of the HB scheme can:

- Ask for an explanation of the decision.
- Ask for a statement of reasons.
- Ask the local authority to reconsider the decision.
- Appeal to a First-Tier Tribunal.

Appeals should be made within one month of receiving the decision letter from the local authority, this period can be extended in some circumstances.

⁹ [HB Guidance Manual](#), paras 3.271 – 3.274

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).