

Renting Accommodation to Relatives: Can they Claim Housing Benefit? (*ref 17*)

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Introduction

Parents may be able to help sons or daughters set up their own home. This is the usual scenario, but these rules could apply to any relative who wants to enter into an arrangement like this. In simple terms it is difficult to rent a room in the parental home to a member of the family and for them to claim Housing Benefit to pay the rent. However, it is possible (but difficult) for parents to buy another, different self-contained property and rent this to a son or daughter or other relative. This *factsheet* outlines the possibilities and limitations.

Commercial Arrangements

Where a person is renting a property they are usually entitled to claim Housing Benefit if they have a commercial arrangement and the Local Authority is satisfied that the arrangement was not set up to take advantage of the Housing Benefit scheme. This would mean that the agreement would need to be enforceable in law in order to show that it was a commercial agreement. The Government has just altered the rules and you may find that some authorities want more information or evidence of the agreement from you before they are willing to accept that the tenancy is a commercial one particularly where you are letting to relatives. Please note it is for the claimant/landlord to prove the agreement is a commercial one and for the Local Authority to show that the tenancy is set up to abuse the system.

Where a Tenant is Living in the Same Property as a Close Relative

There are additional rules where a parent lets a room to a son or daughter i.e. you are occupying the same property and renting to a close relative. The question that the Local Authority has to consider is whether the landlord resides in the same dwelling as the claimant (close relative) *Reg 7(1)(b)*. If they think they do then Housing Benefit is **not payable**. Under Housing Benefit rules **resides with** means sharing kitchens or other communal rooms. This means that if you could show that you are renting a property which gives exclusive use of a kitchen and you do not share communal rooms, other than bathroom or lavatory or passageways you may be able to claim Housing Benefit. The wording of the rules (*Reg 7*) has been altered slightly recently and you may find that authorities are interpreting it in a tighter way. If this is the case you can appeal to a Housing Benefit Review Board.

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 (*Reg 2 HB Regs 1987*).

Where a Landlord Rents Another Property to their Close Relative

There is no legal rule which prevents close relatives entering into a legally binding agreement to pay rent and claim Housing Benefit **where they do not occupy the same dwelling**. The authority would again be looking at whether it is a commercial agreement and whether it was set up to take advantage of the Housing Benefit system.

Please note that Housing Benefit is **not** payable in the following circumstances:

- where a person rents their accommodation from a trust of which they are a trustee or a beneficiary (*Reg 7(e)*)
- where a person rents their accommodation from a company of which they are a director or employee (*Reg 7(e)*)
- where a person rents accommodation from a trust of which his/her child or partner's child is a beneficiary (*Reg 7(f)*)
- where the person who rents the accommodation was previously a non-dependent of someone who still resides in the property. If you can show that the tenancy was not set up to abuse the system you should still be able to get Housing Benefit (*Reg 7(g)*)

Levels of Rent

If the Housing Benefit is restricted under maximum Housing Benefit rules the claimant can ask for additional payments under exceptional hardship. These payments are from a cash limited budget and do allow the council to top up if the claimant can show they are in severe difficulty. People have no right to these and they can be withdrawn at any time.

When considering the matter of whether the tenancy was set up to abuse the Housing Benefit system the local authority should look at the individual facts surrounding the particular case. For example they may look at whether the rent is very high compared to other properties in the area or whether the property is too large for the occupant/s. The fact that landlord and tenant knew that the tenant could not pay the rent without claiming Housing Benefit when the tenancy was set up would not be sufficient reason to refuse Housing Benefit on the grounds of abuse of the system. This was decided in *R v. Solihull Metropolitan Borough Council ex p. Simpson*. Some Local Authorities tell people they cannot let to relatives in any circumstances and claim Housing Benefit. This may be challenged as it is only when they occupy the same dwelling that it is specifically excluded.

All private lettings where Housing Benefit is claimed, including those between close relatives at separate addresses, will be referred to the Rent Officer who will decide on an average rent for properties of the size required by the occupant(s) according to Rent Officer rules. This figure will set the maximum level of Housing Benefit payable on the dwelling.

Example 1

Mr T buys a two bedroomed flat for his daughter aged 26 who is disabled and lives alone. Mr T rents the dwelling at a rent of £80 per week to his daughter who is in receipt of Income Support. The Housing Benefit Department will refer the rent to the local Rent Officer. The Rent Officer decides the local reference rent is £60 per week and Housing Benefit will therefore only pay up to £60 per week not the actual rent.

Those under 25 are only entitled to an average single room rent through Housing Benefit from October 1996 but some under 25s are exempt:

- a. those who qualify for the **Severe Disability Premium** as part of their Housing Benefit assessment. These are those in receipt of DLA care component at the higher or middle rate OR Attendance Allowance and where no-one claims Invalid Care Allowance on their behalf and they count as living alone
- b. those with **non-dependants** living with them - for example parents or brothers or sisters over 18 or a support tenant

Therefore, a let to a 22 year old will not result in the single room rent if the person qualifies for Severe Disability Premium or has non-dependants.

Example 2

A woman aged 26 makes a new claim for Housing Benefit after 6 October 1997. She is entitled to the Severe Disability Premium in her Housing Benefit assessment. Her landlords are her parents who are renting a separate dwelling to her at a cost of £75 per week. The local authority will refer the rent to the Rent Officer who will decide on how large a dwelling she requires in terms of the number of rooms. This will usually be one bedroom and one living room unless there are other people living with her. The Rent Officer will decide on a market rent figure for this size of accommodation, £55 per week for example and advise on the average rent, called the local reference rent, for this size dwelling in that locality, £50 per week for example. She will not be restricted to a bedsit rate as she is over 25 and exempt also she is getting Severe Disability Premium. However, her Housing Benefit will be restricted to the local reference rent or the size related rent whichever is the lower. In the example figures here this would be £50 minus any charges that are not eligible for Housing Benefit for example for fuel and water rates.

Other Exempt Groups from October 1997 Changes

The main ones are:

- those who are council tenants
- tenants of registered social landlords (previously called Housing Associations) however, even here the rent can be referred to a Rent Officer but it is not automatically referred as it would be for a private letting
- a person whose original claim was assessed prior to 2 January 1996 and has been continuously in receipt of Housing Benefit at the same dwelling since that date
- a person living in accommodation provided by a non-metropolitan county council in England, a registered social landlord, registered charity or voluntary organisation where care support or supervision is provided by or on behalf of the landlord for the occupants of that accommodation

Housing Benefit rules are complex. This *factsheet* is primarily to explain the possibilities for parents who want to assist their children get decent accommodation. It does not attempt to deal with 'old rules' that applied to people on Housing Benefit prior to January 1996. The regulations are constantly changing and you are advised to get up-to-date advice on the particular circumstances.

Getting Further Advice

As with many aspects of the benefit system, these rules are labyrinthine and confusing. For help, you can always contact Housing Options (see contact details below).

Locally your Citizens Advice Bureau - www.citizensadvice.org.uk - would be a good port of call for help on these matters.

If you require further information or have other queries contact Housing Options.

Housing Options, Stanelaw House, Sutton Lane, Sutton, Witney, Oxfordshire, OX29 5RY, United Kingdom
Telephone: +44 (0)845 4561497 E-mail: enquiries@housingoptions.org.uk

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