

**R(H) 8/07**

**Mr C Turnbull**  
**Commissioner**  
**7 June 2007**

**CH/4373/2006**

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**Housing benefit – liability to make payments in respect of a dwelling – payments by an owner – whether freeholder of a dwelling subject to a long lease at a low rent is the “owner” of the dwelling**

The claimant was the registered proprietor of the freehold estate in a terraced house, registered with absolute title. The property was divided into three dwellings and 99-year leases were granted by the claimant of each of the dwellings, those leases being also registered estates. The lease of the ground floor flat was granted to the claimant’s former partner at a rent of £50 per annum, rising to £100. The claimant occupied the flat pursuant to an agreement under which he was liable to pay his former partner a substantial weekly rent and sought to claim housing benefit in respect of that liability. Housing benefit was refused and the claimant appealed. The tribunal upheld the council’s decision on the ground that the claimant was the “owner” of the dwelling and was therefore precluded from entitlement to housing benefit in respect of the rent he was liable to pay for his occupation of it. The claimant appealed to the Commissioner, arguing that although he was the owner of the freehold he did not have the right to dispose of the fee simple of any of the leased properties and therefore could not be described as the owner of the flat he occupied.

*Held*, dismissing the appeal, that:

The payments of rent by the claimant were “payments by an owner” within the meaning of regulation 10(2)(c) of the Housing Benefit (General) Regulations 1987. “Owner” is defined by the Regulations as the person who is entitled to dispose of the fee simple and the claimant was entitled to do so, albeit subject to the lease. (*Burton v New Forest District Council* [2004] EWCA Civ 1510 (reported as R(H) 7/05) followed).

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**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. This is an appeal by the claimant, brought with the permission of a legally qualified panel member, against a decision of the Fox Court appeal tribunal made on 20 October 2006. For the reasons set out below I dismiss the appeal.
2. The tribunal’s decision was to dismiss the claimant’s appeal against a decision of the London Borough of Camden (the council), made on 16 March 2006, disallowing the claimant’s claim for housing benefit. The ground on which the tribunal upheld the council’s decision was that the claimant was the “owner” of the dwelling which he occupied and therefore was precluded from entitlement to housing benefit in respect of the rent which he was liable to pay for his occupation of it.
3. The facts can be shortly stated. The claimant is the registered proprietor of the freehold estate in a terraced house (the property). It is registered with absolute title. The property has four storeys, and has been divided into three dwellings: a lower ground floor flat, a ground floor flat, and a maisonette on the first and second floors. The claimant granted 99-year leases of each of the three dwellings, and those leases are also registered estates. The lease of the ground floor flat was granted to a Miss B (who was formerly the claimant’s partner) in 1979, and remains vested in her. The rent payable under that lease is £50 per annum, rising to £100. The claimant occupies the ground floor flat pursuant to an agreement under which he is liable to

pay a substantial weekly rent to Miss B. He claimed housing benefit in respect of his liability for that rent.

4. The position in relation to the ground floor flat is therefore that the claimant is the registered proprietor of the freehold, subject to a lease for 99 years from 1979 at a very low rent, of which Miss B is the registered proprietor. The claimant occupies the flat pursuant to an agreement with Miss B under which he is liable to pay a substantial rent to Miss B.

5. By regulation 10 of the Housing Benefit (General) Regulations 1987 (SI 1987/1971) (which were the regulations in force at the material time):

“(1) Subject to the following provisions of this regulation, the payments in respect of which housing benefit is payable in the form of a rent rebate or allowance are the following periodical payments which a person is liable to make in respect of the dwelling which he occupies as his home –

(a) payments of, or by way of, rent;

... .

(2) A rent rebate or, as the case may be, a rent allowance shall not be payable in respect of the following periodical payments –

(a) payments under a long tenancy...

(b) ...

(c) payments by an owner

... .”

6. By regulation 2(1) of the 1987 Regulations:

“In these Regulations, unless the context otherwise requires –

...

‘owner’ means –

(a) in relation to a dwelling in England and Wales, the person who, otherwise than as mortgagee in possession, is for the time being entitled to dispose of the fee simple, whether or not with the consent of other joint owners;”

7. The contention on behalf of the claimant in this appeal is put as follows:

“[The claimant] is the owner of the **freehold** of [the terraced house] but this does not in our submission mean that he is therefore the owner of all three leases in the property. [The claimant] does not in our submission have the right to dispose of the fee simple of any of the three leased properties within [the terraced house] and cannot properly be described as an owner of the property he occupies with [Miss B].”

8. On the face of it the claimant falls squarely within the definition of “owner” in regulation 2(1): he is the registered proprietor of the freehold of the property, which is registered with absolute title. By sections 23 and 24 of the Land Registration Act 2002 he therefore has power to transfer the freehold – ie, in the more arcane terms of the regulation 2(1) definition, to dispose of the fee simple.

9. As regards the first sentence of the submission which I set out in paragraph 7 above, there is no requirement in the definition of “owner” that the claimant should be the proprietor of any long leasehold interest of the dwelling which may have been granted. As regards the second sentence, the claimant is entitled to dispose of the fee simple of the property, which includes the flat occupied by the claimant. He can only do so subject to the 99-year leases of it, but he can nevertheless do so.

10. It is true that, for most practical purposes, Miss B, rather than the claimant, would be regarded as the “owner” of the flat. She has a lease of it at rent which is little more than nominal, and the lease still has some 71 years to run. However, as I have said, “owner” is defined by reference to the ability to dispose of the fee simple in the dwelling, and not by reference to the ability to dispose of any long leasehold interest in it which may have been granted. The definitions in regulation 2(1) of the 1987 Regulations apply “unless the context otherwise requires”. However, it is not in my judgment possible to conclude that the context of regulation 10(2)(c) requires that, where a long leasehold interest has been granted at a low rent, the person with the ability to dispose of that leasehold interest, rather than the person who is entitled to dispose of the freehold, is the owner. Long leasehold interests are of course very common, and indeed regulation 10(2)(a) refers to payments under a long tenancy, which is defined by regulation 2(1) as a tenancy for a term of years certain of more than 21 years. The draftsman of the 1987 Regulations therefore clearly had the possible existence of long leases in mind, and yet the definition of “owner” was framed solely by reference to the ability to transfer the fee simple.

11. Regulation 10(2)(c) refers simply to “payments by an owner”. The typical situation intended to be covered was no doubt that in which one of two or more persons in whom the freehold is vested makes payments to the other owners in consideration of being entitled to have exclusive occupation of the property. In that situation the occupier can be said to occupy by virtue of his ownership of the freehold. However, it is in my judgment clear that regulation 10(2)(c) is not limited to payments made by a person whose occupation can be said to be attributable to the fact that the freehold is vested in him. In *Burton v New Forest District Council* [2004] EWCA Civ 1510, (reported as R(H) 7/05) the claimant and his mother were the registered proprietors of the freehold and had declared that they held it as trustees of a charitable trust. In that capacity they granted a tenancy of the property to the claimant. The claimant was then replaced as trustee, but the freehold had not been transferred to the new trustees by the time of the claimant’s claim for housing benefit or by the time of the council’s decision refusing that claim. The Court of Appeal held that the payments for which the claimant was liable under the tenancy were “payments by an owner”, notwithstanding that he had no **beneficial** interest in the freehold, because he was at the material time one of the registered proprietors and therefore entitled to dispose of the fee simple. For present purposes the important point is simply that the claimant did not occupy by virtue of his interest in the freehold, but by virtue of the tenancy.

12. In my judgment the tribunal’s decision was therefore plainly right, and I must dismiss this appeal. It is therefore unnecessary for me to consider the other grounds of disentitlement relied upon by the council before the tribunal.

13. The council requested an oral hearing of this appeal, but I refuse that request because I consider that I have been able properly to determine it without an oral hearing.

