

R(H) 9/07

Mr D Williams
Commissioner
26 September 2007

CH/2042/2006

Housing benefit – advance claims – when regulation 72(11) applies to assist an advance claim to be considered under regulation 65(1) and (2) of the Housing Benefit (General) Regulations 1987

The claimant's tenancy started on Saturday 27 August 2005 but he did not move in until 31 August, which fell in the next benefit week. He had claimed housing benefit on 12 July 2005 and advised the council of his occupation on 2 September. He was notified on 14 September 2005 that housing benefit would start on Monday 5 September and appealed against the decision not to award benefit from 27 August. The council argued that it was required to apply the general rule in regulation 65(1) of the Housing Benefit (General) Regulations 1987, that a person who makes a claim and is otherwise entitled, is entitled to benefit from the benefit week following the date on which the claim is made or treated as made, and that, following *Secretary of State v Robinson and Sunderland* [2004] EWCA Civ 342, [2004] HLR 39 also (reported as R(H) 4/04), the claim should be treated as made on 31 August and not before. The tribunal agreed, stating that there was no discretion. On the claimant's further appeal, a Commissioner directed the Secretary of State to be joined as a respondent on the issue whether the claimant could be assisted by regulation 72(11). Before the Commissioner, the Secretary of State and the council disagreed, the council contending that under regulation 72(11) the claim could be treated as made in the week before the benefit week starting on Monday 5 September (leading to the same decision as the one made) and the Secretary of State contending that the claim could be treated as made in the week before the week in which the claimant met all the relevant conditions, and that, all the relevant conditions having been met on 31 August, the claim could be treated as made in the week starting on 22 August. It was common ground that regulation 65(2) (exception for new tenancies where liability first arises in the benefit week in which the claim is made or treated as made) did not apply to the actual date of claim.

Held, dismissing the appeal, that:

1. the tribunal was wrong to say as a general statement of law that there was no discretion, since there was a potential discretion to treat the claim as an advance claim, reading regulation 65 with regulation 72(11) (paragraph 29);
2. regulation 65(1) is subject to regulation 65(2) and, once regulation 72(11) had been applied to give an assumed date of claim, regulation 65(2) must be considered in relation to that assumed date. *Robinson* was to be distinguished as being predicated on the approach that regulation 72(11) did not apply in that case on the facts (paragraphs 31 to 42);
3. however regulation 72(11) did not assist the claimant on the facts, as regulation 65(2) was not satisfied on the assumption applied from regulation 72(11), and so, although the approach the council took was wrong in law, its decision was correct (paragraphs 43 to 44).

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the appeal. For the reasons below, the decision of the tribunal is wrong in law. It is set aside. Instead, I take the decision that the tribunal should have taken. This is:

Appeal dismissed. The appellant is not entitled to housing benefit for any period before 5 September 2005 and there are no grounds for awarding him that benefit from any earlier date.

I explain below that this decision is taken on the facts and includes considering discretionary powers that the tribunal failed to consider.

2. The claimant and appellant (M) is appealing with permission of Mr Commissioner Mesher against the decision of the Swansea appeal tribunal on 24 January 2006 under reference U/03/204/2005/02717.

3. I held an oral hearing of the appeal at the Cardiff Civil Justice Centre on 24 April 2007. M attended and put his case clearly and concisely. Mr Richard Esney, solicitor, and Mrs C Trubey, appeals officer, represented Swansea City Council (the council). Miss Sarah Wise of the Office of the Solicitor to the Department for Work and Pensions represented the Secretary of State.

REASONS FOR THE DECISION

The issue in dispute

4. This appeal is solely about the date on which M's award of housing benefit should have started. Neither his entitlement nor the level of award is in dispute. M and the council put different commencement dates to the tribunal. The tribunal agreed with the council. M appealed. In a submission on the appeal, the Secretary of State took a different view from both M and the council. Although the matter concerns only a few days of entitlement, it raises an issue of importance to M and to the general administration of housing benefit.

The facts

5. The relevant chronology is agreed by all concerned. The key dates are:

12 July 2005	M handed in his claim for housing benefit to the council
27 August 2005	M's tenancy of the property for which he claimed commenced
31 August 2005	M moved into occupation of the property
02 September 2005	M notified the council of the tenancy and occupation
05 September 2005	Operative date for start of payment of housing benefit
14 September 2005	Decision awarding housing benefit from 5 September 2005 issued.

The only other relevant date was that M had made the first payment of rent to the landlord before 27 August 2005. However, the liability to pay arose only when the tenancy agreement was concluded. That was on 27 August 2005, on which date both M and the landlord's agent signed the tenancy agreement.

6. M made his application before his tenancy started and before he moved in to the property. It is common ground that he was not entitled to housing benefit when he claimed. The council decided the claim after the tenancy started and after M had moved in. The council awarded benefit from 5 September 2005. It is also common ground that entitlement started, at the latest, on that date.

The contentions

7. M's contention is that he should have been paid housing benefit from a date earlier than 5 September 2005. He accepts that he did not move in until 31 August 2005, but he started paying rent from 27 August 2005. This is because his

only income was from benefits. Alternatively, he should have been warned about the consequences of not moving in immediately. He told the tribunal, and it was not disputed, that he had planned to move in on 30 August 2005 but the plans came unstuck.

8. The council's decision, issued on 14 September 2005, did not state why the award started on 5 September 2005 and not before. The decision stated that it was issued "as a result of a change of circumstances". The calculation sheet noted a "change of liability". It was accepted on all sides that both these statements were wrong. The decision on 14 September 2005 was the council's first decision on M's claim, and there were no relevant changes of circumstances.

9. In reply to a complaint by M, the council informed him on 21 September 2005:

"Please note that as you did not occupy your home in the week in which your tenancy started your housing benefit can only be awarded from the Monday following the date you occupied your home ie 5/9/05."

10. On 29 October 2005 M appealed against the decision not to award benefit from "27 September 2005" (a mistaken reference to 27 August 2005) "since I am dependent on DWP Incapacity Benefit as the sole source of income." He asked why he had not been told at an earlier stage that benefit could not be paid until the Monday after he occupied the property. In a further exchange of correspondence the council explained on 2 November 2005 that it was required to apply the rule in regulation 65 of the Housing Benefit (General) Regulations 1987 (SI 1987/1971) about the start of entitlement to benefit save in the circumstances listed in regulation 5(6) of those Regulations.

11. Both sides maintained their views and the appeal was referred to the tribunal. The formal submission of the council to the tribunal repeated its view. It also referred the tribunal to the decision of the Court of Appeal in *Secretary of State for Work and Pensions v Robinson and Sunderland* [2004] EWCA Civ 342, [2004] HLR 39 (also reported as R(H) 4/04). There is no mention in the correspondence or the submission of regulation 72(11) of the Housing Benefit (General) Regulations 1987.

The tribunal decision

12. The tribunal held a hearing at which M attended and the council was represented. It dismissed the appeal and gave full reasons. After setting out the chronology and related facts, the tribunal decided:

"17. On the admitted facts in this case, the appellant had moved into a flat on Wednesday 31/8/05 and therefore entitlement to benefit commenced the following Monday 5/9/05.

18. Whilst the appellant no doubt feels aggrieved at the delay in commencing payment of his benefit, having made his initial claim to housing benefit well in advance of the commencement date of his tenancy, the council and the tribunal is governed by the Regulations and does not have a discretion to commence the entitlement to housing benefit at an earlier date than that provided for in the Regulations, namely 5 September 2005."

13. M put forward a full set of grounds of appeal. I am concerned only with one: did the tribunal, in paragraph 18, state the law correctly?

14. Mr Commissioner Mesher directed that the Secretary of State be joined as a respondent to the appeal to deal with the issue whether M could be assisted by regulation 72(11) in this case.

Arguments of the parties

15. The arguments of the parties can be stated briefly. But they leave me to decide a difficult issue on which the Secretary of State and the council take different views.

16. Miss Wise and Mr Esney jointly submitted that the only two possible dates for the award of housing benefit in this case were 29 August 2005 and 5 September 2005. The award of housing benefit to M had to start on a Monday. Those were the only two Mondays relevant. I agreed at the hearing that this must follow from the provisions, set out in the appeal papers, that housing benefit awards can start only on a Monday. I indicated this to M, explaining why this was so. M raised no objection. I therefore do not need to set out the law more fully on that point. The question of law is whether the council or the tribunal should, on the facts, have considered starting the award on Monday 29 August 2005 rather than Monday 5 September 2005.

17. Save for that point, M stood by his position on the facts. He expressed concern that this appeal had had to go so far when all he had done was to put in his application in good time and do his best to keep the council informed of the situation about his tenancy.

18. Only one point is now in dispute between the parties. It is common ground that the main rule setting out the date on which entitlement to an award of housing benefit starts is in regulation 65(1) of the Housing Benefit (General) Regulations 1987. (That provision is now regulation 76(1) of the Housing Benefit (General) Regulations 2006 (SI 2006/213). Those regulations consolidated all the relevant regulations from 6 March 2006.) It provides that:

“Subject to paragraph (2) to (5), a person who makes a claim for housing benefit ... shall be entitled to that benefit from the benefit week following the date on which his claim is or is treated as made.”

19. In *Robinson* the Court of Appeal considered the alternatives in this rule. It interpreted the reference to “treated as made” to mean that a claim was treated as made – on the facts of that case – on the date on which all the eligibility conditions are first satisfied. The council applied that reading to the facts of this case. It found that the claim should be treated as made on 31 August 2007 and not before. It submitted that argument to the tribunal and the tribunal accepted it. The council affirmed that argument to me and submitted that it had taken the only decision it could take on the facts as established. Regulation 65, as interpreted by the Court of Appeal in *Robinson*, gave it no other option. Mr Esney referred in particular to [18] and [19] of the judgments in *Robinson*. Regulation 72 referred to the week preceding the first week of the “period of entitlement”. Applying that, as interpreted by the Court of Appeal, gave M no advantage on the facts. Mrs Tubney, the appeals officer, stated that the council had taken a view on regulation 72, even if the tribunal had not.

20. For the Secretary of State, Miss Wise also drew attention to *Robinson*. But she took the view that the council should have considered its discretion under regulation 72(11) as well as the rule under regulation 65. This was a discretion, and not a right. The tribunal should have considered this. Its decision was therefore

wrong in law on its reasoning. But that did not mean that the council was wrong in the decision it took on the facts. Her support was therefore what she termed “soft support” for M’s appeal.

The relevant law

21. The main rule, as noted above, is in regulation 65(1). Entitlement to housing benefit starts from the week following the week in which the claim is actually made. This is subject to two kinds of exception. The first is that it is subject to regulation 65(2) to (5), of which only regulation 65(2) is relevant here. The second is that it can be applied not only to the date on which the claim is made but also the date on which the claim is treated as made.

22. No consideration has been given to the application of regulation 65(2) in this case so far. It applies to claimants who become liable:

“for the first time to make payments in respect of the dwelling which he occupies as his home in the benefit week in which his claim is or is treated as made.”

In this case (as the Court of Appeal decided in *Robinson*) this does not apply on the facts. Liability to pay the rent arose on Saturday 27 August 2005. M moved in on Wednesday 31 August. Housing benefit weeks always start on Mondays, so these are self-evidently not in the same benefit week.

23. The other exception to regulation 65(1) is in the phrase “or is treated as made”. It is unambiguous that the actual date of claim is the date on which the claim is received. Ward LJ considers this at [16] and [17] of his judgment. He notes on the facts of *Robinson* that the date on which the claim is made is one way of applying regulation 65(2). The other was to treat it as made on the date on which the claimant became entitled to housing benefit. No other date was considered. On that basis he considered:

“17. There is no other guidance as to which of those two alternatives one has to choose. There is no help as to what the words ‘treated as made’ might mean. But I am persuaded by Miss Anderson that the words ‘treated as made’ are the applicable words on the week in which the claim is made, Monday 11th. She was not eligible and her claim would on that basis ordinarily be dismissed. But it would cause administrative havoc if every applicant for housing benefit were to be required to fill in a separate claim for the next week and the next week and so on. There is obvious good sense in treating a claim as extant and still available to abide the time when all the conditions for payment are satisfied.

18. I conclude, therefore, that one cannot read the date on which the claim is made as the prevailing date, but must take the date of 20th as the date on which the claim is to be treated as being made, because that was the first time on which all of the eligibility conditions are satisfied. That is the only way to give purpose and efficacy to regulation 65(1).”

24. Mr Esney considered this to be clear guidance on which he relied and asked me also to rely. I must confess to finding those paragraphs difficult to apply beyond the clear decision that regulation 65(2) did not apply. This is not least because it is not clear on what basis the argument for the Secretary of State was put, or what view

the council had taken in coming to a different conclusion from that of the Secretary of State.

25. The concern expressed by Ward LJ about recurring applications has, with respect, to be read in the context of Schedule 7 paragraph 2 to the Child Support, Pensions and Social Security Act 2000. This provides:

“Where at any time a claim for housing benefit ... is decided by a relevant authority –

- (a) the claim shall not be regarded as subsisting after that time; and
- (b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.”

In this case the council did not decide the case until 14 September 2005. The claim therefore subsisted from the date on which it was made until that date. Further, it was a claim to be decided on the circumstances not on the date it was made but on the date it was decided. That is now the standard approach for all social security decisions. The administrative havoc about which his Lordship appears to have been warned therefore only arises if councils decide claims promptly on receipt. That did not happen here. Nor need it happen if a council chooses to decide the claim as an advance claim (see below) or if it takes the time that regulations allow it to decide an inchoate claim.

26. Regulation 76(2) of the Regulations requires a local authority to make a decision on a claim “within 14 days of the provisions of regulations 72 and 73 being satisfied or as soon as reasonably practicable thereafter”. Regulation 72 is about the time and manner in which claims are to be made. It includes the power to make decisions on claims as advance claims. I deal with it below. Regulation 73 is about evidence and information. In other words, a council can take a reasonable time to decide a claim either in advance of the circumstances for which the claim is made or after enquiries to establish those circumstances. There is another time limit, in effect, of 13 weeks in regulation 72 to be noted alongside these rules.

Deciding advance claims

27. Was M assisted by regulation 72(11) of the 1987 Regulations (now regulation 83(10) of the 2006 Regulations)? That regulation provides:

“Where the claimant is not entitled to housing benefit in the benefit week immediately following the date of his claim but the relevant authority is of the opinion that unless there is a change of circumstances he will be entitled to housing benefit for a period beginning not later than the thirteenth benefit week following the date on which the claim is made, the relevant authority may treat the claim as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement and award benefit accordingly.”

28. The official guidance by the Department to local authorities on this provision is as follows:

“Advance claims

Housing Benefit

W2.490. Under HB regulations it is possible to treat a claim as an advanced claim. You may treat the claim as made in the benefit week immediately before the start date of entitlement

- if a claimant is not entitled to HB in the benefit week immediately following the date of claim, and
- you consider that unless a change of circumstances occurs, the claimant will be entitled to HB not more than 13 weeks from the date of claim, unless claimant is approaching pension age, see Pensioners.”

I quote that, although it was not cited to me at the hearing, because it is the position that Miss Wise took before me.

29. I agree with Miss Wise that the tribunal’s reasoning at paragraph 18 of its decision is not consistent with the Regulations. Regulation 65 must be read with regulation 72(11). There was a potential discretion to treat the claim as an advance claim. It was therefore wrong of the tribunal to say that the council and the tribunal had no discretion under the regulations as a general statement of law. If the tribunal had found on the facts that regulation 72 did not apply, then that would have met the point. The council put it to me that they had done this. Whether or not that was so, it does not excuse the tribunal from looking at the matter again. Unless the facts prevented it from considering the matter, the council had a discretion under regulation 72. The tribunal had the duty to consider those facts and, if relevant, the exercise of that discretion. There is nothing in the tribunal’s decision, record of proceedings, or reasons to indicate that it did so. It follows that I should set aside the tribunal decision.

30. All the parties agreed that if I accepted that the tribunal’s decision was wrong in law, then I should take the correct decision myself and not refer it to a new tribunal. They did not agree what that decision should be. M considered that I should decide that the award was correctly made from 29 August 2005. Mr Esney contended that the council had taken the right decision. Miss Wise stated that the Secretary of State had no strong view on the point save that it was expedient that I should take a full decision.

My decision

31. The starting point is regulation 65(2). But, as I have indicated above, it does not apply on the facts. I must therefore consider regulation 65(1) and then regulation 72(11). I have already examined regulation 65(1). If considered on its own, then the council reached the correct decision. So I must look more closely at regulation 72(11).

32. Regulation 72(11) is a complex sentence. It applies only:

- (a) *“Where the claimant is not entitled to housing benefit in the benefit week immediately following the date of his claim...”*

The date of the claim was 12 July 2005. The benefit week immediately following started on Monday 18 July 2005. M was not entitled to housing benefit on that date.

- (b) *“... but the relevant authority is of the opinion that unless there is a change of circumstances ...”*

The “relevant authority” includes the tribunal on an appeal. It may take into account any change of circumstances between the claim being made and the claim being decided, but not after that date. This follows from Schedule 7 paragraph 2 to the Child Support, Pensions and Social Security Act 2000. This rule reflects paragraph 2 in preventing a decision being taken on circumstances other than those applying before or at the date of decision. This claim was not decided until 14 September 2005. Accordingly there was no change of circumstances of which the council was not aware at the date of decision.

(c) “... *he will be entitled to housing benefit for a period beginning not later than the thirteenth benefit week following the date on which the claim was made...*”

M’s entitlement must have arisen not later than Monday 10 October 2005 for the rule to apply. It is common ground that entitlement to housing benefit did begin for a period before that week.

(d) “... *the relevant authority may treat the claim...*”

This is a discretion vested in the council, and in the tribunal on appeal. The discretion activates a deeming provision:

(e) “... *as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement ...*”

If the council or tribunal so decide, the claim can be treated as made in the week immediately before the week in which the period of entitlement to housing benefit starts. The council and the Secretary of State took different views about the application of this part of the regulation, and I must examine their submissions in full.

(f) “... *and award benefit accordingly.*”

The council may award benefit as if claimed in the week before the first benefit week.

The above analysis shows disagreement about the phrase listed as (e) above, and therefore what **could** be awarded under (f). That is separate from the question of whether an award **should** be made on the proper exercise of discretion.

33. The disagreement between the council and the Secretary of State on the application of regulation 72(11) to the facts of this case inevitably raises the question of the interaction of that regulation with regulation 65(1) as interpreted in *Robinson*.

34. Mr Esney contended that this meant that M’s claim could be treated as made in the week before the benefit week starting on Monday 5 September 2005. If it was so treated, then regulation 65(1) applied as if the claim was made on, say, 29 or 31 August 2005. But that would not alter the decision made by the council, as then 5 September 2005 would remain the earliest date on which the period of entitlement could start under regulation 65(1).

35. Miss Wise contended that this meant that M’s claim could be treated as made in the week before the week in which M met all the relevant conditions. All the relevant conditions were met on 31 August 2005. So the claim could be treated as being made in the previous week, that is, the week from 22 August 2005 to 28 August 2005.

36. The Court of Appeal was fully informed about the existence of regulation 72(11). Ward LJ sets it out in full at [8] of his judgment, while commenting that he should mention it “perhaps only in passing”. At [12] he notes that the local authority exercised a power “which apparently derives from regulation 72(11)” to pay the claimant in that case a week earlier than the original decision. At [3] he had commented that both the claimant and the local authority were happy with the decision eventually taken on the facts to pay housing benefit from 18 March 2002. But the Secretary of State for Work and Pensions was recorded as being “anxious about the way in which the various decisions have been taken” ([3]). Unfortunately neither the appellant nor the council appeared before the Court of Appeal. I therefore do not know on what basis they agreed the decision under regulation 72. It formed no part of the decision of the Commissioner. Nor is there any indication in the judgments that the Court of Appeal heard any argument from the Secretary of State about this regulation in her “concise arguments” ([13]).

37. The Commissioner decided the case by reference to regulation 65(2) on the facts. I need not examine that issue here as for the reasons above it is common ground that it is not relevant to M’s claim on its facts. This was however the focus of the argument in *Robinson*. The decision of the Court of Appeal is that the Commissioner was wrong in applying regulation 65(2) to the facts of that case. At [20] to [22] of the decision Ward LJ confirms the view of the Secretary of State about the interpretation of regulation 65(2). Dyson LJ comments at [23] that the appeal raises a very short point of construction of regulation 65(2). He then sets out the regulation, applies it to the facts, and concludes that the Commissioner was wrong. He does not mention regulation 72. Sir Christopher Staughton gave a concurring judgment. I read from the comments of their lordships that they considered regulation 72(11) irrelevant to that case on the facts. There is no guidance from the Court of Appeal about how to apply the regulation equivalent to that on regulation 65.

38. Regulation 72(11) is clearly relevant in this case on the facts. As I have indicated, there are three preconditions in the paragraph, labelled by me (a), (b) and (c), and on the facts all three are satisfied. The council therefore must exercise the discretion labelled (d). What is less clear is the effect, labelled (e), of doing so. To repeat the words in question, they are that the council or the tribunal may treat the claim:

“... as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement ...”

39. On the facts here the “period of entitlement” is taken by the council to mean the period starting on the relevant Monday. This follows from the definition of “benefit week” in regulation 2. The council considered that to be Monday 5 September. It took the view that its power (not duty) was to consider the claim as made in the week starting on the previous Monday. It applied that to regulation 65(1). Having done so, it reached the conclusion that its power under regulation 72(11) suggested the same answer as it had already reached under regulation 65(1) without referring to the power. It therefore confirmed the decision originally made and considered that it had no discretion to alter it.

40. While I see how the council formed that view, I conclude it was wrong. The fault in its logic is somewhat concealed by the decision on the facts of the Court of Appeal in *Robinson* and by what was taken to be common ground at the hearing of

this case. It was decided in that case and by all concerned in this case – and I have confirmed this on the facts above – that regulation 65(2) did not apply on the facts. So regulation 65(1) was applied. As regulation 65(1) was subject to regulation 72(11), that was also considered.

The decisions to be taken

41. The gap in the logic comes, I suspect, from the over dense drafting of regulation 65. Regulation 65(2) is, like regulation 65(1), not one rule but two parallel rules. It applies both to the actual date of claim and to the date treated as the date of claim. Once regulation 72(11) has been found to be relevant, then it must be applied not only to regulation 65(1) (which it was) but also to regulation 65(2) (which it was not). If regulation 72(11) gives us an assumed date of claim, we must go back to regulation 65(2) to see how that provision applies not only on the actual facts but also with the deeming that may be applied by reference to regulation 72(11). This is because regulation 65(2) in both its forms takes priority over regulations 65(1) in both its forms.

42. On a step-by-step approach, this means that the regulations require the following decisions in the following order:

- (1) Identify the actual date of claim.
- (2) If that claim is made in the same week as the week in which the claimant first becomes liable to make payments for the house the claimant is occupying as the new home, apply regulation 65(2).
- (3) If regulation 65(2) does not apply on the facts, apply regulation 65(1).
- (4) Consider if regulation 72(11) applies on the facts.
- (5) If regulation 72(11) does not apply, the answer is that at step (3).
- (6) If regulation 72(11) does apply, apply the date on which the claim is to be treated as made by regulation 72(11) to regulation 65(2).
- (7) If, on the assumption in step (6), regulation 65(2) is relevant to the claim, consider, as a matter of discretion, if the rule is to be applied.
- (8) If regulation 65(2) is not relevant on the assumption in step (6), apply the assumption to regulation 65(1). If the answer is different from that given at step (3) consider if that answer should, as a matter of discretion, be applied instead of the answer at step (3).

43. Following that approach in this case:

- (1) The date of claim was 12 July 2005.
- (2) Regulation 65(2) does not apply on the facts.
- (3) Regulation 65(1) sets the start of the period of award of housing benefit at 5 September 2005.
- (4) Regulation 72(11) applies on the facts.
- (5) Irrelevant.
- (6) M first became liable to pay the rent on 27 August 2005. He occupied his new home from 30 August 2005. So he occupied his new home in the benefit week in which he is treated as making the claim. He

became liable to make the first payment in the previous week. Regulation 65(2) is therefore not satisfied on the assumption applied from regulation 72(11).

- (7) Irrelevant.
- (8) M was “otherwise entitled” to housing benefit only after becoming liable to pay the rent for, and taking up occupation of, his new home. That arises from 30 August 2005. Under regulations 72, the council can treat M’s claim as made in the week starting 29 August 2005. Applying that to regulation 65(1) then, as the council concluded, the benefit must start on 5 September 2005.

44. Regulation 72(11) does not assist M on the facts. While I do not agree with the approach taken by the council, I agree with the decision that the council took. I must dismiss M’s appeal.

45. Does that deprive the discretion in regulation 72 of content? On the facts recorded in the record of proceedings of the tribunal, M told the council he planned to move in on about 25 August 2005. He signed the agreement on 27 August 2005. His parents collected the keys for him that day. But he did not take possession that day as one would normally expect to be the case. Nor did his parents take possession on his behalf. Had he taken up occupation upon signing the agreement, then the liability to pay and the occupation of the accommodation would both have taken place in the same week. Further, that would have been the week in which his claim could have been treated as made under regulation 72(11). If so then the council would have been empowered to treat his claim as made under regulation 65(2).

46. That does not seem unfair. Housing benefit is designed as a public subsidy to meet people’s housing costs for the dwellings they occupy as their homes. The Housing Benefit Regulations contain express provisions to deal with the problems that sometimes arise when people move and which force them to pay rent on two dwellings at once. They did not apply here. There is then a limited discretion that may help in individual cases when people move. That also did not apply here. I see no basis in law by which the rules can be extended beyond those specific provisions to cover other people who take time moving, whatever the reason or circumstances.

