

# Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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## HB/CTB A5/2009

### ADJUDICATION AND OPERATIONS CIRCULAR

<b>WHO SHOULD READ</b>	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
<b>ACTION</b>	For information
<b>SUBJECT</b>	Sale and rent back arrangements

### Guidance Manual

The information in this circular does not affect the content of the HB/CTB Guidance Manual.

### Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at [www.dwp.gov.uk/housingbenefit/user-communications/circulars](http://www.dwp.gov.uk/housingbenefit/user-communications/circulars)
- have any queries about the
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(also sent as separate pdf file)

## Sale and rent back arrangements

- 1 Following the publication in October last year of the Office of Fair Trading's (OFT) research report on the sale and rent back industry, the Government included in its response the commitment that the DWP would draw together existing guidance for the benefit of consumer bodies and those thinking about entering into a sale and rent back arrangement.
- 2 The attached guidance and covering letter to advisers has been produced in response to that commitment and seeks to clarify the impact of entering into a sale and rent back agreement on a person's eligibility to Housing Benefit. It is in a format that can be copied and handed to those thinking about entering into a sale and rent back arrangement, whether or not they have any immediate intention of claiming benefit.
- 3 The guidance has been circulated to relevant organisations and some of those who had responded to the OFT consultation to get the guidance to where it is most needed. Because of the low numbers likely to be affected we are not proposing to publish this guidance in hardcopy, but circulated the guidance electronically asking that it be copied as widely as possible.
- 4 It is therefore copied to you for information but we would also be grateful for your assistance in distributing this electronic copy of the guidance as widely as possible particularly to those involved in money advice, or who have any other interest, in your area.

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## Guidance on sale and rent back arrangements

### If a person is thinking about selling their home and renting it from the new owner and expects Housing Benefit to help with the rent

- 1 We have been increasingly concerned to hear of cases where people who have sold their homes and rented it back have been refused Housing Benefit. In the Office of Fair Trading's recent market study of the sale and rent back industry it was recommended that DWP should provide greater clarity on the eligibility of sale and rent back tenants for Housing Benefit.
- 2 Where a person is genuinely unable to remain in their home without selling and renting it back, help is available with the rent charged through Housing Benefit. However we would strongly recommend that those thinking of entering into a sale and rent back arrangement should first ask their local authority for advice or speak to independent money advisers such as the Citizen's Advice Bureau.

### Help from Housing Benefit for those who used to own their homes

- 3 Housing Benefit aims to provide help with the rent a person has to pay on their home. However, in certain specified situations housing benefit will not be paid even though a person has to pay rent. One of those situations is where they once owned the home they live in, either as a freeholder or leaseholder, and now rent and where they sold that home within five years of claiming Housing Benefit ("the Former Owner Rule").
- 4 The Former Owner Rule will not apply where they can satisfy the local authority processing their Housing Benefit claim that they could not have stayed living in their home without selling it. They do not need to show that it was completely impossible to keep their home, but they do need to show a degree of difficulty that, while falling short of impossibility, still amounted to practical compulsion.

### Did a person have to sell their home?

- 5 This is quite a difficult test to satisfy. The onus is on them to explain their reasons for giving up ownership as well as providing evidence of the situation they were in that lead to the sale of their home, such as letters from the lender about action to be taken over arrears etc.
- 6 The local authority has to reach a decision based on the specific facts of each case and must apply the test to the particular circumstances. In general, a person's own beliefs and perceptions as to whether they could have avoided selling their home are not really relevant. Consequently, if they thought that in their particular circumstances they had no other option but to sell so as to remain living in their home, but in actual fact there were other feasible options available that they had not considered, then the Former Owner Rule would still apply.

- 7 In reaching a decision, the local authority may take into account the fact that
- benefits such as Income Support, Jobseekers Allowance, Employment and Support Allowance and State Pension Credit, can help with homeowners' housing costs, including mortgage interest payments
  - only the recovery of debts secured on the home rather than unsecured debts are likely to lead to repossession

### **What happens if they didn't have to sell their home?**

- 8 Where the local authority decides that they could have continued living in the property without giving up their ownership, the Housing Benefit claim will be turned down. Whilst each case will be decided on its particular facts, the following are examples of situations where Housing Benefit has been denied. In each case the crucial point was that there were alternative options to sale available – that is, they could have kept ownership of the property and continued living in it. The situations include selling the property and renting it back
- following the signing over of the home to relatives, both where a payment was made for the property and where one was not, but where it was thought that there was no compulsion on the person to do so
  - to claim Housing Benefit to avoid claiming the help available with housing costs through Income Support, Jobseekers Allowance, Employment and Support Allowance or State Pension Credit
  - to lower the person's outgoings so that they could be a student where the housing costs were paid up to date
  - to use the equity released to clear other unsecured debts such as credit card and gambling debts

### **How does the equity they had in their home affect Housing Benefit?**

- 9 Where the local authority is satisfied that a person had to sell their home the next factor to consider is that there are also rules concerning the amount of savings or capital that a person has that affect entitlement to Housing Benefit. By "capital" we mean savings and assets in whatever form, for example money held in a bank or building society account, Premium Bonds, National Savings Certificates, stocks and shares and property. There are lower capital limits above which housing benefit is reduced and upper limits above which benefit cannot be paid. The value of most forms of capital is counted for benefits purposes; although, some forms of capital are ignored.
- 10 Another relevant capital calculation rule provides that a person shall be treated as possessing capital of which they have deprived them self for the purpose of securing entitlement to housing benefit. In the context of sale and rent back situations, this rule means that the local authority has to consider whether they sold their home (i.e. deprived them self of their capital) to become entitled to Housing Benefit.

- 11 The local authority must consider each case on its individual facts. Unlike the Former Owner Rule, their beliefs and perceptions are the key here. The local authority must be satisfied that their actual, subjective purpose was to sell their home in order to become entitled to Housing Benefit.
- 12 Obtaining Housing Benefit must be a significant operative purpose behind their decision to sell their home. It is not enough that they knew that obtaining Housing Benefit is a natural consequence of selling their home; there must be a positive finding that they actually knew of the capital limit in light of all the facts.
- 13 The local authority has to decide why they chose to deprive them self of capital when they did and if they had a choice in the matter. The fact that they had a choice does not mean their purpose was to obtain Housing Benefit or additional Housing Benefit but it is a fact which the local authority should take into account when deciding their intention.
- 14 In the majority of cases the local authority will decide whether they sold their home to obtain Housing Benefit based on factors such as
  - their knowledge of the rules;
  - the nature and timing of the sale;
  - the timing and manner of their Housing Benefit claims;
  - whether it was reasonable in all the circumstances, and based on the evidence, for them to sell their home.
- 15 If the local authority decides that they sold their home to obtain Housing Benefit, then the value of the home will be taken to be part of their capital. Consequently they may well exceed the upper capital limit, meaning that they will not be entitled to any Housing Benefit.



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**February 2009**

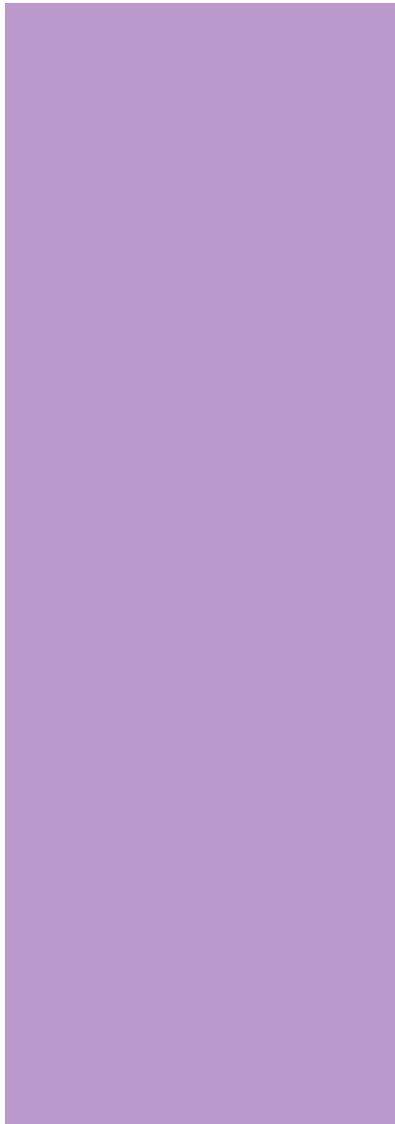
**Dear Sir or Madam**

We have become increasingly concerned about the number of cases where people who have sold their home and rented it back have been refused Housing Benefit (HB). In the Office of Fair Trading's recent market study of the sale and rent back industry they recommended that DWP should provide greater clarity on the eligibility of sale and rent back tenants for Housing Benefit.

In response, we have produced more detailed advice aimed at financial advisers and advice for those thinking about entering into a sale and rent back to advise them of the potential pitfalls they might face if they are thinking of relying on HB to help with their rent. As you can see we would strongly recommend that those thinking of entering into a sale and rent back arrangement should first ask their local authority for advice or speak to independent money advisers, such as the Citizen's Advice Bureau.

I would be grateful if you could make the attached advice available to advisers and public alike so that the public are better informed of the potential risks of entering into a sale and rent back arrangement. We are happy that the advice is forwarded to other organisations with an interest in this area.





March 2009

Advice for homeowners –  
sale and rent back



**DWP** Department for  
Work and Pensions

## Advice for homeowners – sale and rent back

### Claiming Housing Benefit if you sell your home and rent it from the new owner

This leaflet explains whether you may be able to get Housing Benefit if you sell your home and then rent it from the new owner. The leaflet is only a guide and does not cover every circumstance. We recommend you get independent advice from your local council or the Citizens Advice Bureau before making any decisions based on this leaflet.

### I won't be able to afford the rent if I sell my home – will I be entitled to Housing Benefit?

Possibly.

Housing Benefit can sometimes provide help with the rent in these circumstances. But certain conditions apply. We list them below.

### Claiming Housing Benefit within five years of selling your home

Usually, you will **not** be entitled to Housing Benefit if:

- you rent the home you once owned as a freeholder or leaseholder, and
- you claim Housing Benefit within five years of selling that home.

This is called the 'former owner rule'. But the rule does not apply if you satisfy the local council dealing with your Housing Benefit claim that you could not have stayed in your home without selling it.

And, of course, the rule does not apply after five years have passed since you sold your home.

## How to show the council that you had to sell your home

This can be difficult. You have to give the council good evidence showing why you had to sell your home. This may be:

- letters from your mortgage lender about action they would take to collect any debts
- proof of your income and outgoings at the time you decided to sell
- evidence of other factors involved in your decision to sell.

You don't need to show that keeping your home was completely impossible. But you do need to show that it was so difficult that you were forced to sell.

The local council will decide whether it is satisfied you had no option but to sell if you were to stay in your home, based on the facts of your case and the evidence you give. If you sell your home when you had other reasonable choices (see below), you won't be entitled to Housing Benefit.

When deciding whether you qualify for Housing Benefit, the local council may take into account things like:

- whether you could have claimed benefits to help with your home-ownership costs, such as Income Support, Jobseeker's Allowance, Employment and Support Allowance and State Pension Credit
- whether you had debts that were secured on your home and whether these debts were likely to lead to your mortgage lender taking back your home
- other assets you could have sold.

## If you don't have to sell your home

If you sell your home and the local council decides you could have stayed in it without selling, then it will refuse your Housing Benefit claim. For example, the council may refuse your claim if you sold your home to:

- repay unsecured loans, such as for credit cards or hire-purchase agreements
- reduce your monthly outgoings so that you could follow an interest, such as being a student or setting up a new business.

## If I decide to sell my home, will its value affect my claim for Housing Benefit?

It depends. The amount of your savings will affect your claim. By 'savings' we mean money and assets, for example money in a bank or building society account, Premium Bonds, National Savings Certificates, stocks and shares, and property. Depending on how much savings you have, Housing Benefit may be reduced or not paid at all. The value of most types of savings is counted when deciding Housing Benefit, but some types of savings are not counted.

## When the value of your home is counted as 'savings'

If your local council decides the value of your home should be counted as savings, this will affect your claim for Housing Benefit. When deciding this, the council must consider the facts of your case, including your knowledge of the rules and why you are selling your home. If it decides that the reason you sold your home was to claim Housing Benefit, then it will count the value of your home as savings. Depending on the amount, this may reduce your Housing Benefit, or may mean you are not entitled to any. In most cases, the local council will decide whether you sold your home to get Housing Benefit based on things like:

- your knowledge of the rules
- why and when you sold
- why and when you claimed Housing Benefit
- whether it was reasonable for you to sell your home, considering all the circumstances and evidence.

## Important information about this leaflet

**This leaflet is only a guide and does not cover every circumstance. We have done our best to make sure the leaflet is correct as of March 2009. Some of the information may be oversimplified or may become inaccurate over time, for example because of changes to the law. We recommend that you get independent advice before making financial decisions based on this leaflet.**

If you have any questions or need more information, contact your local council or the Citizens Advice Bureau.