

Housing Benefit Urgent Bulletin

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Who should read	All Housing Benefit (HB) staff
Action	For information

Upper Tier decision: Carmichael

1. On 27 April, a three judge panel in the Upper Tribunal handed down its decision in the case 'Secretary of State for Work and Pensions v Carmichael and Sefton BC (HB)'. The full decision is available on [GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614441/Upper_Tribunal_decision_in_Carmichael.pdf)
2. This case was stayed behind the Supreme Court case of Carmichael, heard by the Supreme Court last year. Amending regulations to comply with the Supreme Court judgment came into force on 1 April 2017.
3. This case, which was heard as a test case, followed on from the Supreme Court case and concerned the jurisdiction of the tribunal in cases where a person's human rights are found to have been breached. The point of law in the Upper Tribunal did not concern the challenges to regulation B13 which were determined by the Supreme Court.
4. The issue before the tribunal was the remedy which can be granted by the tribunal in cases where a human rights breach has been found. The tribunal did not consider any issue in relation to local authority decision makers.

5. On 27 April, the tribunal found against the Department and ruled that it is able to grant a remedy. It decided that it has jurisdiction to recalculate the Carmichael's Housing Benefit back to April 2013, without making the Removal of the Spare Room Subsidy deduction.
6. The Department is seeking to appeal this decision to the Court of Appeal in relation to the specific jurisdiction point raised. However, pending the appeal, the Upper Tribunal has suspended the effect of this decision: this means that the decision has no effect in law. We therefore advise that **no action is taken** at present. We will issue further guidance in due course.

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