

## Housing Benefit

### Urgent Bulletin

Department for Work and Pensions, Caxton House, Tothill Street, London, SW1H 9NA

<https://www.gov.uk/government/organisations/department-for-work-pensions>

**HB U5/2014**

**29 October 2014**

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<b>Who should read</b>	All Housing Benefit (HB) staff
<b>Action</b>	For information

### **Judicial Review: R (on the application of Cotton & Others) and the Secretary of State for Work and Pensions [2014] EWHC 3437 (Admin)**

1. The judgment in the cases of Cotton & Others was handed down on 22 October 2014. This judgment is in respect of three judicial review claims brought against the Secretary of State for Work and Pensions, which challenged the government's policy to reduce Housing Benefit (HB) for social sector tenants who are deemed to be under-occupying their property by reference to the size criteria set out in the HB Regulations 2006. These cases are concerned with the impact on divorced or separated parents who look after their children under shared care arrangements where the children alternate between living with each parent.
2. The claimants challenged the validity of the HB (Amendment) Regulations 2012 (SI 2012 No.3040) (which inserted regulation B13 into the HB Regulations 2006) on three grounds arguing that the regulations:

- breached Article 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR);
- breached Article 8 of the ECHR when read together with Article 14 (discrimination) and
- were irrational.

The hearing took place on 15 October 2014.

3. The Court dismissed the claims, found in favour of the Department and held that the policy has not unlawfully discriminated against claimants who look after their children under shared care arrangements. The Court held that:
  - whilst Article 8 is engaged, it is only in truly exceptional circumstances that Article 8 will impose a duty to provide support in the form of housing and welfare benefits, and the situations in this case fall far short of what would be required to constitute an interference with Article 8 rights
  - the Regulations and the Discretionary Housing Payment (DHP) scheme had to be considered as a whole
  - it is difficult to define a category of persons with secondary responsibility in shared care cases to whom the regulations should not apply
  - the principle of one person being responsible for a child in any one benefit period applies and it is not irrational to harmonise the payment of HB in the public sector with other benefits in this way
  - the changes to HB introduced by the 2012 regulations are not manifestly without reasonable foundation
  - it is likely that parents with secondary responsibility for their children do fall within “other status” under Article 14 of the ECHR
  - any discrimination arising was justified under the “manifestly without reasonable foundation test”.
4. Local authorities (LAs) should ensure that this decision is quoted when appealing against adverse First-tier Tribunal decisions that raise similar issues.
5. LAs retain the responsibility for deciding whether, in cases where a claimant faces a shortfall in their rent, a DHP is appropriate and for what period.

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