SH v London Borough of Southwark
[2023] UKUT 198 (AAC)

IN THE UPPER TRIBUNAL **Appeal No. UA-2021-001818-HB**
ADMINISTRATIVE APPEALS CHAMBER

On appeal from First-tier Tribunal (Social Entitlement Chamber)

Between:

SH

Appellant

- v –

London Borough of Southwark

Respondent

Before: Upper Tribunal Judge Hemingway

Decision date: 7 August 2023
Decided following a hearing of 15 March 2023

Hearing venue: Field House, London

Representation:

For the Appellant: Mr D Rutledge (Counsel)
For the Respondent: Mr M Iyekekpolor (Local Authority Appeals Officer)

DECISION

The decision of the Upper Tribunal is to dismiss the appeal.

REASONS FOR DECISION

Introduction

1. This is the claimant's appeal to the Upper Tribunal, brought with my permission given on 24 November 2021, from a decision of the First-tier Tribunal (F-tT) which it made on 9 November 2020 and which it explained in a statement of reasons for decision (statement of reasons) of 25 January 2021. The F-tT, in dismissing the claimant's appeal to it, decided that she was not entitled to housing benefit (HB) from 24 March 2019. That was because, by that date, regulation 7(4) of the Housing Benefit Regulations 2006 had ceased to apply to her.

2. I held an oral hearing of the appeal, which took place at Field House in London, on 15 March 2023. The claimant was represented, at that hearing, by Mr D Rutledge of Counsel, instructed by the Mary Ward Legal Centre. The respondent local authority (the LA) was

represented by Mr M Iyekekpolor, an Appeals Officer. I am grateful to both of them for their careful and helpful submissions.

3. I had a great deal of documentation before me at the hearing. This included the Upper Tribunal bundle, an authorities bundle, various photographs of the accommodation in respect of which the claimant asserted entitlement to HB, a witness statement of the claimant of 24 October 2020, and a schedule of essential reading. I also had the LA's response to the appeal and the claimant's reply to that response.

4. I have considered all of the written material insofar as it has relevance to the issues of law which I am called upon to decide in determining this appeal.

Some relevant legislation

5. Section 130 of the Social Security Contributions and Benefits Act 1992 relevantly provides:

> **130. – Housing benefit**
>
> (1) A person is entitled to housing benefit if –
>
> (a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home;
>
> (b) there is an appropriate maximum housing benefit in his case;
>
> (c) either –
>
> (i) he has no income, or his income does not exceed the applicable amount; or
>
> (ii) his income exceeds that amount, but only by so much that there is an amount remaining if the deduction for which subsection (3)(b) below provides is made.

6. Regulation 7 of the Housing Benefit Regulations 2006 relevantly provides:

> **7. – Circumstances in which a person is or is not to be treated as occupying a dwelling as his home.**
>
> (1) Subject to the following provisions of this regulation, a person shall be treated as occupying as his home the dwelling normally occupied as his home –
>
> (a) by himself or, if he is a member of a family, by himself and his family;…
>
> (4) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home, and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he normally occupied as his home or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments...
>
> (13) Subject to paragraphs (13B) and (17) where a person is temporarily absent within Great Britain from his main dwelling, he shall be treated as occupying that dwelling as his home whilst he is so absent, subject to an overall limit of a period of thirteen weeks beginning with the first day of absence from the main dwelling, provided that
>
> (a) the person intends to return to occupy the main dwelling as his home;

> (b) …
> (c) the period of the absence within Great Britain is unlikely to extend beyond the overall limit…

6. The main focus of this appeal has been upon regulation 7(4) of the above Regulations.

The Factual Background in Brief

7. On a date in 2008 (I am not sure of the precise date, but nothing turns on it) the LA granted the claimant a secure tenancy of a ground floor flat in a two-storey building. I shall refer to that accommodation as "property 1". The claimant sought HB from the same LA. HB was granted. There is no dispute about the fact that she was receiving HB in October 2012. At that point, and in order that the LA could carry out repairs to property 1 as it was obliged to do as her landlord, she moved out and began to occupy a property I shall call "property 2". The LA permitted her to occupy property 2 and did not require her to pay rent or any other form of accommodation charge in respect of her occupation of it. She continued to be liable for the rent on property 1 but, of course, it was being discharged by way of the payments of HB.

8. It is accepted by the parties that when the claimant vacated property 1 and began to occupy property 2, regulation 7(4) of the Housing Benefit Regulations 2006 applied. That is to say, it is accepted that she had been required to move to property 2, as temporary accommodation, by reason of essential repairs being carried out to property 1.

9. The LA carried out some repairs to property 1 but there was ongoing dispute between it and the claimant (assisted by the Mary Ward Legal Centre) as to the adequacy or otherwise of those repairs. Matters were complicated due to the claimant having health problems of some significance. Whilst there is a mix of physical health problems and mental health problems, it is the latter which, as it seems all parties accept is, by some distance, the greater concern. The F-tT was to go on to find (see below) that the claimant suffers from agoraphobia, anxiety and depression. The F-tT had before it a report of 17 February 2020 prepared by Dr F Brady, a clinical psychologist, and which addressed in some detail the claimant's mental health difficulties. As Mr Rutledge points out, although the F-tT used the term "anxiety" Dr Brady referred to "social anxiety".

10. Returning to the narrative, by 22 February 2013 sufficient internal works of repair had been carried out to persuade the LA that it had complied with its repairing obligations. However, that was not accepted by or on behalf of the claimant. On 6 February 2015, the LA indicated its view, in writing, that there were no outstanding issues in relation to required internal works to property 1. But again, such was not accepted. On 19 March 2019 the LA decided the claimant was no longer entitled to HB, in respect of property 1. The LA's reasoning is set out in a letter of 7 May 2019 which it sent to the claimant. The LA made clear, in that letter, its view that all essential repairs had been completed such that regulation 7(4) no longer applied and that regulation 7(13) had no application because the claimant no longer intended to return to property 1 and she had, in any event, been absent from it for too long for that sub-paragraph to assist her.

11. The claimant appealed to the F-tT within time. After she had done so, a report was obtained on her behalf prepared by one Mr I Lovatt, who is a Chartered Surveyor. He inspected property 1 on 23 September 2020 for the purposes of the preparation of his report. The report identified some further repair works which it was said required attention. Although that report did not refer to any need to repair an external fence, it has been argued on behalf of the claimant, and this was a strong feature of the submissions to the F-tT, that the need to

repair the fence amounted to an essential repair and that, unless it was satisfactorily carried out, the claimant could not be expected to return to property 1.

The Appeal to the F-tT and its Decision

12. The F-tT considered the appeal at an oral hearing which took place on 9 November 2020. The claimant was represented by Mr Rutledge. The claimant gave oral evidence to the F-tT as did her solicitor Ms S Cheshire. The LA was represented by Mr C Reid, a Presenting Officer.

13. The F-tT made a number of quite detailed findings regarding the dispute between the claimant and the LA, the repair works which were carried out by the LA, and the health problems of the claimant. I have considered it appropriate to set out those findings of fact in this decision. The F-tT found as follows:

> "**C. Findings of fact**
>
> C1. The repairs which were to be carried out while [the claimant] was in temporary accommodation
>
> 13. I concluded the works of repair which required [the claimant] to temporarily move out of [property 1] in October 2012 were set out in the undated document headed "[property 1] - Scope of Works" (page 204). I reached this conclusion for the following reasons:
>
> a) The Local Government Ombudsman report dated 26 April 2012 included a recommendation that the internal works of repair listed at paragraph 40 of the LGO report be carried out.
>
> b) The document headed "[property 1] - Scope of Works" replicates paragraph 40, except that it also includes several additional items of work. In light of these additional items of work, I concluded it was a more recent version of the list at paragraph 40 of the LGO report.
>
> 14. On 20 April, Mr Keith Kiernan, the Legal Disrepair Manager at [the LA], wrote to [the claimant]. In this letter Mr Kiernan made clear that it was the internal works and not the external works which required [the claimant] to move out temporarily.
>
> 15. Although [the claimant] was required to move out because of the internal works to [property 1], the 20 April 2012 letter explained that external works to [property 1] and 30B would also be carried out while [the claimant] was in temporary accommodation.
>
> 16. I concluded the external works were set out in a "*Snagging report*" dated 17 August 2011 (pages 197 to 198). I reached this conclusion for the following reasons:
>
> a) The Local Government Ombudsman report dated 26 April 2012 included a recommendation that [the LA] also carry out the external works of repair set out at Appendix A of the LGO report.
>
> b) I was not provided with Appendix A and both representatives told me they did not have this document. However, in light of paragraphs 36 and 40 of the LGO report, it is clear Appendix A consisted of a list of external works produced by [the LA] at some point between July 2011 and 19 October 2011.

c) the fact the 17 August 2011 document is described as a "*Snagging report*" is consistent with the background information within the LGO report which refers to earlier refurbishment works by one of [the LA's] contractors.

d) In her oral evidence, [the claimant] confirmed pages 197 to 198 set out the external works of repair which were to be carried out while she moved temporarily into (property 2].

C2. The completion of these repair works

17. I concluded the internal works of repair in the "[*property 1*] *Scope of Works*" document had been completed by 22 February 2013.

18. I reached this conclusion because on 22 February 2013 [the claimant] and Ms Mulholland conducted a joint inspection of [property 1]. The purpose of this inspection was to check on the works which had been carried out to [property 1] while [the claimant] had been in temporary accommodation. The results of this inspection were set out in an undated "*Snagging report*" (pages 207 to 212). The contents of this snagging report indicate that all the internal works set out in the "[*property 1*] - *Scope of Works*" document had been carried out.

19. Although the internal works of repair had been completed by 22 February 2013, during the inspection on 22 February 2013 [the claimant] raised various concerns about the way the internal works had been completed. As result, the snagging report at pages 207 to 211 set out a list of [the claimant's] concerns and the action [the LA] and their contractor agreed to take to address these concerns. I reached the following conclusions about these concerns and about the action that was to be taken to address them:

> a) In light of the description of [the claimant's] concerns in the second snagging report (i.e. the report which records the outcome of the 22 February 2013 inspection), I concluded that all of the issues raised by [the claimant] on 22 February were minor problems.
>
> b) In light of the description of the proposed action in the second snagging report, I concluded it was unnecessary for [the claimant] to remain in temporary accommodation while these issues were addressed.
>
> c) I concluded that adequate steps had been taken to address all of these issues by 6 February 2015. I reached this conclusion for the following reasons:
>
> i. On 10 December 2013 Mr Kiernan emailed the Housing Benefit department about [property 1] and said: "…the property is immaculate now." (page 43)
>
> ii. On 6 October 2014 [the claimant's] sister emailed Mr Kiernan. Her email raised a number of concerns about [property 1]. However, her email did not suggest that any of the items in the second snagging report were unresolved.
>
> iii. On 6 February 2015 Mr Kiernan wrote to [the claimant] once again confirming that there were no outstanding issues in relation to the internal works.

> iv. [The claimant] accepts she visited [property 1] twice in around early May 2015. At paragraph 7 of her first witness statement, [the claimant] says she "*cannot remember what condition the interior of the property was in during these visits*" (page 95). However, [the claimant] and her sister have been methodical in identifying and raising with [the LA] their concerns about [property 1]. In light of this, I conclude it is significant that the documents before me do not suggest [the claimant] or her sister raised with [the LA] any concerns about a failure to take the action set out in the second snagging report following these visits.
>
> v. In so far as it is possible to tell from the photographic evidence before me, it appears the actions in the second snagging report were carried out. For example, photograph 5 to Ms Cheshire's witness statement shows an isolation switch with a label referring to a Vent Axia HR25 fan. The installation of Vent Axia HR25 fans in place of the fans initially installed by the contractors was agreed at points 1.01 and 2.01 of the second snagging report.
>
> vi. [The claimant] and her representatives have not in this appeal identified any actions within the second snagging report which were not carried out. This is in circumstances where [the claimant] and her solicitor visited [property 1] on 12 December 2019 and methodically documented [the claimant's] concerns about the internal condition of [property 1] at that point.

20. I concluded the external works of repair to [property 1] set out in the snagging report at pages 197 to 198 had been completed by 6 February 2015. I reached this conclusion for the following reasons:

a) The second snagging report indicates that all but one of the external works of repair to [property 1] had been completed by 22 February 2013 (pages 207 to 212).

b) The item which was outstanding on 22 February 2013 was the installation of a low level render plinth "*to the rear elevation of the main building and rear right hand flank to rear addition*" (point 7.01, page 211). It is clear from the report of Mr Ian Lovatt, the chartered surveyor instructed by [the claimant's] solicitors and who inspected the premises on 23 September 2020, that this plinth was subsequently installed (see section 6.02(iii) and photographs 21 to 24).

c) As to the date this render plinth was installed, the letter from Mr Kiernan dated 10 December 2013 supports the conclusion that all the outstanding issues to the exterior of [property 1] had been dealt with by the end of 2013. This is reiterated by Mr Kiernan's 6 February 2015 letter.

d) The second snagging report identified a number of minor snagging issues relating to the way the works to the exterior of [property 1] had been carried out (pages 211 to 212). In so far as it is possible to tell from the photographic evidence before me, these issues were subsequently addressed. For example, photograph 21 to Mr Lovatt's report shows that a cage was subsequently fitted over the boiler flue (which addressed point 7.02 on page 211) and photographs 21 and 22

indicate that the making good to the lintels was subsequently carried out (points 7.03 and 7.04 on page 211).

3) The only external work of repair which Mr Lovatt's report identified as being necessary was reconnecting a section of plastic guttering (Lovatt report, appendix A, item 7.01). I concluded this problem arose after the 22 February 2013 inspection as the second snagging report does not refer to it.

C3. Subsequent disrepair

21. In relation to the internal condition of [property 1] on 19 March 2019, I reached the following conclusions:

a) The disrepair Mr Lovatt identified in his report arose after the completion of the works in the "[*property 1*] *Scope of Works*" document. This follows from the conclusions I have set out in section C2. In addition, I note Mr Lovatt's statement within his report that he was unable to form a definitive opinion about the duration of the disrepair he identified (page 9 of the report).

b) Given Mr Lovatt's description of the defects and the works required to remedy them, I concluded the disrepair identified by Mr Lovatt was relatively minor.

c) I concluded the works identified by Mr Lovatt could be carried out with a tenant in occupation. First, because the works required were relatively minor. Second, because at paragraph 6.03 of his report Mr Lovatt said: "*In my opinion the majority of the works noted necessary at this property can be carried out with the tenant in occupation*". Third, because Mr Lovatt did not explain why he said "…*the majority of*…"; in particular, he did not identify any works which could not be carried out with a tenant in occupation.

d) I concluded [the LA] is not in breach of its repairing obligations in failing to fix the wooden boundary fencing in the back garden. This is because Mr Lovatt did not identify the problems with the fence as an item of disrepair in this report.

C4. [The claimant's] health problems

22. I reached the following conclusions about [the claimant's] health problems:

a. [The claimant] has in the past experienced a number of different physical health problems. In light of the report from her GP (page 23), I concluded the physical health problems she was suffering from on 19 March 2019 were neck and knee pain and a persistent somatoform pain disorder.

b) In light of the reports from [the claimant's] GP and from the psychologist, Dr Brady, I concluded [the claimant] has suffered from agoraphobia, anxiety and depression since at least 2008.

c) I concluded it was reasonable to carry out the works of repair identified by Mr Lovatt with [the claimant] in occupation notwithstanding [the claimant's] health problems. I reached this conclusion for the following reasons:

i. In light of the conclusions set out in section C3.

> ii. While I noted Dr Brady's evidence about [the claimant's] home environment being of particular importance to [the claimant], Dr Brady did not say [the claimant] was less able to tolerate repairs being carried out to her home while in occupation as a result of her mental disorders.
>
> iii. There was insufficient evidence to suggest [the claimant] had been unable to tolerate the repairs which were carried out to [property 1] after she moved in and before she was decanted to [property 2].
>
> C5. [The claimant's] continued occupation of [property 2]
>
> 23. There is no dispute that on 19 March 2019 [the claimant] continued to live at [property 2] and had not lived at [property 1] since October 2012".

14. Having made its findings, the F-tT went on to apply the relevant law (as it understood it) to those facts and to explain why it was dismissing the appeal. It said this:

> "**D. Analysis**
>
> 24. I accepted Mr Rutledge's submission that the legal burden was on [the LA] to establish there were, on 19 March 2019, grounds to supersede the earlier decision to award Housing Benefit.
>
> 25. [The LA's] position was that the relevant ground of supersession was that there had been a change of circumstances relevant to [the claimant's] entitlement to Housing Benefit. In particular, [the LA's] position was the repairs which had required [the claimant] to move into temporary accommodation in October 2012 had been completed and that this change impacted on [the claimant's] entitlement to Housing Benefit because it meant she no longer fell within the terms of regulation 7(4).
>
> 26. I concluded [the LA] had discharged the legal burden on them to show that regulation 7(4) had ceased to apply for the following reasons:
> (a) [The claimant] had been required to move into temporary accommodation because of the need to carry out the internal repairs set out in the document headed [*property 1 – Scope of Works*] (page 204). [The LA's] second snagging report establishes these works had been completed by 22 February 2013.
>
> (b) [The claimant] disputes this and says there were still problems with the internal condition of the premises on 22 February 2013. However, I concluded this did not assist [the claimant] for two reasons:
>
> > i. In CH/393/2020 Commissioner Williams reached the following conclusion about regulation 5(7) of the Housing Benefit (General) Regulations 1987 – a regulation that was identical to regulation 7(4) of the current Housing Benefit regulations:
> >
> > *16. I agree with the view expressed in the commentary to regulation 5(4) of CPAG's Housing Benefit Council Tax Benefit Legislation (2000-2001 edition p157) on the meaning of "essential". It is a lesser standard than "indispensable or*

> *unavoidable" and has a meaning equivalent to that given by the Commissioner in R(SB) 10/81 (a supplementary benefit case about housing repairs). "Essential" is "importing a standard of substantial need, judged by the modest general standard of living to the provision of which supplementary benefit [was and Income Support and Housing Benefit now are] directed." What is "essential" is a question of fact judged against that standard. In a case like this, where the repairs are related to the serious ill-health of the claimant, those health problems are also relevant to what is essential. But I see no reason why the appellant should be entitled to continue claiming benefit once the essential repairs are done and the dwelling is again fully habitable and the family could move back because minor aspects of the repairs had not been completed. In my view, while I reject Sandwell's description of the evidence as "conclusive", the tribunal reached a conclusion on all the evidence, and in particular having heard from the appellant and noted his problems, and the decision on that issue contains no error of law that calls the decision into question.*

Applying this approach to my findings of fact about the position on 22 February 2013, I concluded [the claimant] had ceased to fall within regulation 7(4) by this point. First, because any outstanding issues were minor. Second, because any outstanding works were not essential works. Third, because resolving these issues did not require [the claimant] to continue to live in temporary accommodation.

ii. Even if regulation 7(4) continued to apply on 22 February 2013, it ceased to apply by 6 February 2015. This is because all of the concerns raised by [the claimant] during the inspection on 22 February 2013 had been adequately addressed by this date.

c) As to the external works set out in the first snagging report, these did not require [the claimant] to move into temporary accommodation. Consequently, I concluded the need to carry out those works did not engage regulation 7(4). In any event, these works had been completed by 6 February 2015.

27. Having decided [the LA] were entitled to supersede the earlier decision to award Housing Benefit, I considered [the LA's] decision that [the claimant] was not entitled to Housing Benefit from Monday 25 March 2019 onwards. I concluded [the claimant] was not entitled to Housing Benefit from this date. I reached this conclusion for the following reasons:

(a) Regulation 7(13) did not assist [the claimant] because it is only capable of applying for thirteen weeks beginning from the first day of the absence from the main dwelling. [The claimant's] first day of absence from [property 1] was in October 2012.

(b) Mr Rutledge submitted that if I decided Regulation (4) ceased to apply at some point after October 2012, then I should determine that it reapplied by 19 March 2019. In light of the defects in Mr Lovatt's report. I rejected this submission. My reasons for doing so were as follows:

> (i) Although Mr Lovatt's report was based on an inspection on 23 September 2020, I proceeded on the basis the defects Mr Lovatt identified were present on 19 March 2019.
>
> (ii) However, I decide the works identified by Mr Lovatt as being necessary to remedy the disrepair were not essential repair works. I reached this conclusion in light of the conclusions set out in sections C3 and C4. I also noted that the repairs were not related to serious health problems (in contrast to the works referred to in CH/393/2002 which it appears were funded by a disabled facilities grant); instead most of the work simply involved making good some fairly superficial damage caused by a historic water penetration problem.
>
> (iii) In any event, the works did not require [the claimant] to move into temporary accommodation in order for them to be carried out.

(c) Mr Rutledge also appeared to submit that regulation 7(4) continued to apply or re-applied in light of the problems with the wooden boundary fence in the back garden. I rejected this submission. My reasons for doing so were as follows:

> (i) I concluded this was a defect which arose at some point after 6 February 2015. I reached this conclusion because it is not referred to in any of the documentary evidence created period [sic] to 6 February 2015.
>
> (ii) I concluded the works which would have been needed to repair the fence would not have required [the claimant] to move into temporary accommodation. Instead, the photographic evidence indicated that all that was needed was for some new fence panels to be slotted into the pre-existing concrete fence posts".

15. So, the F-tT dismissed the appeal.

The Grounds of Appeal to the Upper Tribunal

16. The initial grounds of appeal were set out in a document of 24 February 2021 drafted by Mr Rutledge. The three grounds at that stage relied upon were as follows:

> Ground 1 – It had been submitted to the F-tT that "the principal reason" why the claimant could not occupy property 1 was a lack of security due to damage to the garden fencing. It had been submitted by the Mary Ward Legal Centre that such was insufficient to provide essential security. The claimant had explained in a witness statement that due to her mental health difficulties she would feel vulnerable if she had to return there. Dr Brady had, in her report, noted the claimant's concern regarding the "poor fencing around the perimeter of the garden" and the impact this had on her with respect to her social anxiety and agoraphobia. Against that background the F-tT's reasoning as to this conclusion that she could re-occupy property 1 was unclear.

> Ground 2 – The F-tT had erred through failing to apply the correct test with respect to regulation (4) of the housing benefit regulations 2006. In particular, it had failed to appreciate the relevance of the claimant's health problems, as set out in Dr Brady's report, when assessing whether repairs were essential or whether the claimant could be expected to re-occupy property 1. That failure caused the F-tT to wrongly conclude "it was reasonable for her to re-occupy" property 1 "despite the problems with the boundary fence in the back garden".
>
> Ground 3 – The F-tT failed to have regard to a relevant factor, that factor being the failure of the LA's housing department to, contrary to its own policy, carry out a post-inspection once relevant repair works had been carried out. In light of that failure the LA was not in a position to demonstrate that the works identified as essential had been properly carried out.

17. In a skeleton argument of 8 November 2021, which had been prepared in connection with the oral hearing of the application for permission to appeal, Mr Rutledge raised contentions to the effect that the F-tT had erred through failing to have regard to relevant evidence before deciding that the claimant could be expected to occupy the dwelling which I have called property 1 and had further erred through misunderstanding the nature of some of the evidence before it. As to that latter contention, the point Mr Rutledge sought to make was that the F-tT had failed to appreciate, in considering the content of Mr Lovatt's report, that he had been unaware of the claimant's medical concerns. I am not sure whether those arguments are best characterised as additional grounds or aspects of the original grounds. But whatever view might be taken as to that, I shall address them.

My Reasoning on the Appeal

18. I have started by considering ground 2, as set out above, and by asking myself whether the F-tT did or did not correctly apply the test as set out in Regulation 7(4) of the Housing Benefit Regulations 2006. As to that, Mr Rutledge, in his reply to the LA's response to the appeal and in his oral submissions, argued that Regulation 7(4) must be construed in a way which is consistent "*with the underlying policy behind the HB scheme - to help those on a low income and in genuine need to meet the costs of their rent*". As to that, he referred to the words of Lord Bingham of Cornhill in *R(Mehanne) v City of Westminster Housing Benefit Review Board* [2001] 1 WLR 539, who had this to say about the HB scheme:

> "…It is directed to the humane objective of assisting those of modest means to provide themselves with a roof over their heads. This is, after all, one of the most basic of human needs, and it is not surprisingly accepted as a proper object of public expenditure".

19. Mr Rutledge also drew my attention to the words of Upper Tribunal Judge Rowland in *MP v Sutton London Borough Council (HB)* [2021] UKUT 193 (AAC) that:

> "…The underlying purpose of the [HB] Regulations...is to provide financial help to those who need it in order to pay rent or similar housing costs".

20. Mr Rutledge agreed with a suggestion I had made in the course of written observations when giving permission to appeal, to the effect that Regulation 7(4) required the following to be satisfied before it applies:

> "a. There must be a need for repairs to be undertaken.
> b. The repairs must be essential.
> c. The carrying out of the essential repairs must require the occupant to move out of the relevant premises.
> d. The need to move out is not triggered just by there being a need to undertake essential repairs. It is also necessary that the essential repairs cannot be undertaken with the occupant in residence.
> e. Once a stage is reached whereby there are no outstanding repairs which are both essential and incapable of being done whilst the occupant is in residence, the regulation necessarily ceases to apply".

21. But the interpretation of the regulation 7(4), and I think Mr Rutledge had in mind in particular the meaning of "*essential*" and the meaning of "*required*" fell to be interpreted, he argued, in line with the above underlying policy. That was perhaps a more general point made regarding interpretation but the specific point which had been stressed in ground 2 in its written form was the relevance to the regulation 7(4) criteria, which it was suggested the F-tT had failed to appreciate, of a tenant's health concerns.

22. I am sure Mr Rutledge is correct in effectively stating that the rationale for the HB Scheme is provision of financial assistance to claimants on a low income to help them meet the costs of their rent. But I do not think that offers very much assistance in the interpretation of Regulation 7(4). There is nothing in the underlying policy which prohibits the application of specific conditions of entitlement, or which prohibits exceptions which might exclude a tenant from entitlement. The wording of that regulation is, anyway, clear and straightforward. The F-tT simply applied the test as it appears in the legislation and did not err in doing so. But the particular point made in ground 2 in its written form was to the effect that the F-tT had failed to factor in the relevance of the claimant's health problems.

23. There is, I would accept, an issue to be considered as to whether Regulation 7(4) posits a purely objective test or whether the circumstances of an individual claimant, when considering what might constitute "essential repairs" and when considering whether a claimant has been "required" to move into temporary accommodation by reason of such repairs being carried out" are to be considered. Mr Rutledge's final position on the point, as I understand him, was to the effect that what is posited is an objective test but one that will take the relevant circumstances of the tenant into account. Essentially, I would agree. In deciding whether the test in Regulation 7(4) is met, it is not a question of asking what the reasonable individual might regard as an essential repair or what the reasonable individual might think was sufficient to require a tenant to move out for such repairs to be carried out. Rather, the evaluation takes account of the claimant's individual characteristics which would include impairment or vulnerability in consequence of ill health. That approach is entirely in line with that taken by Commissioner Williams in *CH/393/2002*, cited by the F-tT and relied upon by Mr Rutledge.

24. Ground 2 in its written form is specifically directed (see paragraph 17 of the document of 24 February 2021) towards the F-tT's conclusions regarding the boundary fence. Although the overall tenor of what the F-tT had to say seems to point to its having reached the view that the required repair to the fence did not amount to an essential repair, it is clear from the part of its reasoning which I have set out above, that it found against the claimant because, on the hypothetical assumption that she was occupying property 1, repairs to that fence would not require her to move out. Whilst I think, at certain points, Mr Rutledge has sought to wrongly ask the question whether it would be reasonable for the claimant to occupy property 1 whilst the fence is in disrepair, that is not quite the question that the regulation poses. Logically, it is very difficult to envisage a situation where a tenant, even one with the difficult mental health problems the claimant has, could not remain in situ whilst what appears to be a seemingly straightforward and simple external repair could be carried out. That was,

effectively, I think, the reasoning of the F-tT which led to its conclusion at paragraph 27(c)(ii) of its statement of reasons. It cannot be said that the F-tT did not, in reaching that view, have regard to the claimant's health difficulties. It had expressly referred to them at paragraph 22 of its statement of reasons, and that included a reference to the report of Dr Brady. So, it had clearly read that report and had it in mind. Further, it referred to the words of Commissioner Williams regarding the relevance of health problems to the application of Regulation 7(4). All of that being so, I cannot conclude that the F-tT applied the wrong test in deciding that the repairs to the external fence, whether essential or not, did not require the claimant to leave the property or would not have required her to do so had she been in situ when the need for that external repair to be carried out had arisen. Ground 2 (perhaps the main ground which has actively been pursued in this appeal) is not made out.

25. As to ground 1, I start by reiterating that the second limb of the Regulation 7(4) test is not whether the claimant could be expected to reside in property 1 with the repair to the external fence outstanding, but whether, if she were in residence there, the carrying out of that repair would require her to move to other premises. The ground, in its written form, lists passages from a witness statement provided by the claimant and passages from Dr Brady's report of 6 March 2020 which underpinned a submission to the F-tT that property 1 was not "*habitable*" at the time the decision under appeal was taken, "*due to the problems with the lack of security at the back of the property*". The way the ground is put does, I think, conflate the two essentially separate questions referred to above. But there was no conflation on the part of the F-tT. It is clear from what it had to say that it appreciated it was asking itself whether the above repair works would, as at the date of the LA's decision, have required the claimant to move out whilst they were addressed. The F-tT did not quote from either the witness statement nor Dr Brady's report but there is nothing to suggest it did not have proper regard to all of the material which was before it. Given the relatively undemanding nature of the relevant part of the test (the question of the ability to carry out the repairs with the claimant hypothetically in situ) it was not required, as a matter of law, to say any more than it did. Its reasoning was not inadequate, nor did it lack clarity. It was a simple matter for it to decide and explain on the material before it that an outside fence could be repaired with the claimant in situ. This ground of appeal is not made out.

26. As to ground 3, it may or may not be the case that the LA ought to have carried out a post-works inspection and prepared some sort of report regarding the efficacy of the works which had been carried out. But, so long as there was sufficient evidence in order to enable it to reach proper conclusions the F-tT was simply required to make findings on the basis of the material which was before it. Further, there was a significant amount of written material before it and it referred to various reports concerning the repairs in its statement of reasons. It was not somehow debarred from reaching conclusions as to the repair works and the efficacy of those works simply because a final post-works inspection had not been undertaken. The F-tT had sufficient evidence before it to underpin its conclusions. This ground of appeal is not made out.

27. As I have said, in the skeleton argument which was prepared in advance of the permission hearing it was contended that the F-tT had erred through failing to have regard to relevant evidence before deciding the claimant could "*occupy the dwelling*". That was, a point I have already made, to ask the wrong question as I think, very fairly, Mr Rutledge now acknowledges. The question was whether she would be required to decant whilst repairs were being carried out. And as I have already said in dealing with ground 1, I can find nothing to suggest that the F-tT did not take proper account of the many and various items of evidence before it. As to the specific point regarding Mr Lovett being unaware of the claimant's medical concerns, I do not see that as a point which impinges, in any sense, upon the F-tT's view that the external repairs to the fencing could be carried out with the claimant in situ. The F-tT itself was aware of the health difficulties. Essentially, it relied on the report of Mr Lovatt, as it was entitled to do, to inform it as to the nature and seriousness of any works

which were or were not required to be carried out as at the date of the LA's decision. Given that Mr Lovatt was qualified to assess such matters it is difficult to criticise the F-tT for doing that. These additional grounds, if intended as such, are not made out.

28. In the reply to the LA's response to the appeal, Mr Rutledge indicated he would pursue an argument under the Equality Act 2010. However, before me, he made clear that he was no longer seeking to do so. Accordingly, I do not need to say anything about that other than to observe that since no such argument had been pursued before the F-tT I would not have been able to conclude it had made any error in not dealing with any possible application that Act might conceivably have had. But, as I say, the matter was not, in the end, pursued before me.

Decision

29. In light of the above and despite the commendably determined efforts of Mr Rutledge and those instructing him, I conclude that the F-tT's decision was free from legal error. Accordingly, this appeal to the Upper Tribunal is dismissed.

MR Hemingway
Judge of the Upper Tribunal
Authorised for issue on 7 August 2023