Neutral Citation Number: [2026] UKUT 126 (AAC)
Appeal No. UA-2023-001868-UHC

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

Mr Maher Hsnatou

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: **Upper Tribunal Judge M Sutherland Williams**
Hearing date: **2 March 2026**
Mode of hearing: **Decided on consideration of the papers**

On appeal from:
Tribunal: Social Entitlement Chamber
Digital Case No.: 1672937253168916
Tribunal Venue: Leeds
Decision Date: 6 May 2023

SUMMARY OF DECISION

UNIVERSAL CREDIT; Housing Costs; Occupation Rent

In order to be eligible for the housing costs element, a claimant must meet the three basic conditions in regulation 25(2)–(4) of the Universal Credit Regulations 2013: the payment condition**,** the liability condition**,** and the occupation condition**.** An agreement to pay money to a tenant-in-common in return for occupation of jointly owned property does not, without more, establish that an individual is "liable to pay rent" within the meaning of regulation 25. The housing costs element of Universal Credit is intended to meet payments securing a person's occupation of their home. It is not designed to meet discretionary or compensatory payments made to another co-owner who does not reside there. To qualify for UC housing costs, there must be a legal liability to pay rent, and it must be reasonable having regard to all the circumstances and the statutory purpose of the UC scheme. The mere fact that the payment pattern or amount bears superficial resemblance to rent does not confer a commercial character upon the arrangement.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal and remake the decision.

The appeal is allowed in part.

Introduction

1. This appeal concerns a claim that occupation rent should be met within the Universal Credit ("UC") housing costs scheme.

Factual background

2. The appellant challenges a UC housing costs decision dated 28 September 2021. He contends that any overpayment identified in respect of that decision by the respondent is misplaced and neither attributable to him nor caused by any fault on his part.

3. The appellant resides in a property in Harrogate which he and his former wife purchased in 2015 as tenants in common, each holding a 50% share. Following their earlier separation and subsequent divorce, his ex-wife vacated the property in 2010, and the appellant has since been its sole occupier.

4. The appellant's case is that he was candid from the outset regarding his ownership interests and the fact that his ex-wife required him to pay rent in respect of her half share. He states that, when making his initial claim in 2016, he informed the Department for Work and Pensions ('DWP') of these arrangements and was advised to formalise the position by entering into a tenancy agreement with his landlord (his ex-wife) to enable eligibility for the housing costs element of UC. He accordingly executed such an agreement and thereafter received housing costs as part of his UC award.

5. The DWP's position is that it had no knowledge of the appellant's joint ownership and that no evidence exists on its file to show that this was disclosed in 2016. The DWP maintains that, had it been aware of his ownership interest, the housing costs element would not have been awarded. On this basis, it asserts that a substantial overpayment accrued between 2016 and 2021, when the award was subsequently corrected.

The First-tier Tribunal's decision

6. The matter came before District Tribunal Judge Ward, sitting at first instance, on 16 May 2023. Having heard oral evidence from both the appellant and his former wife, the judge made a finding of fact that the appellant had not informed the DWP Jobcentre in August 2016 that he was a joint owner of the property.

7. In rejecting that aspect of the appellant's account, the judge reasoned not only that the DWP held no record of such a disclosure, but that had the information

been provided *"it is highly likely the housing element would have been refused from that point in time because it is obvious that a person cannot claim rent payments for a house that they have a right to live in."*

8. In dismissing the appeal, the judge further concluded that, *"As a consequence of not having a liability to make rent payments on a commercial basis… he is not entitled to the housing element of Universal Credit."*

9. It is against this background that the matter now comes before me.

The granting of permission to appeal

10. On 20 June 2025, I granted permission to appeal in this matter. The procedural history leading to the appeal's progression to the Upper Tribunal has been protracted. As that history is fully recorded in my earlier decisions and directions, it is unnecessary to rehearse it here. It is sufficient to note that permission to appeal was granted on all grounds.

11. Both parties have confirmed that they are content for the appeal to be determined on the papers. Having considered the appeal bundle and the written submissions, I am satisfied that the issues can properly be resolved without an oral hearing. Determining the matter in this way is fair and just. The parties' respective positions are clear. The central question before me is whether the First-tier Tribunal ('FTT') erred in law. In light of the overriding objective, I am not persuaded that convening a further hearing before the Upper Tribunal would confer any additional benefit.

The grounds of appeal and the parties' submissions

12. The appellant is represented by Crystal Law Solicitors. They submit that the evidence adduced by the appellant demonstrates, on the balance of probabilities, that a lawful rental liability existed, and that such liability was genuine, commercial, and non-contrived. They further contend that the FTT misinterpreted both the appellant's ownership status and its relevance to entitlement to the housing costs element of Universal Credit.

13. The grounds of appeal advanced may be summarised as follows:

    i. That the FTT erred in law by failing to take proper account of all the evidence before it, resulting in a conclusion that no reasonable tribunal could have reached;

    ii. That the FTT erred in law by providing inadequate reasons for its decision, in particular by not specifying the legislation and case law upon which it relied;

    iii. That the FTT erred in law by failing to address the appellant's case that the payments in issue constituted an "occupation rent," and by not engaging with the statutory framework and case law concerning occupation rent under the Trusts of Land and Appointment of Trustees Act 1996 ("TOLATA 1996");

iv. Finally, and in the alternative, that any overpayment arose as a consequence of official error. The appellant maintaining that he disclosed the relevant information at the material time, and therefore any resulting overpayment is not recoverable.

14. In support of these grounds, the appellant's representatives argue that the rental agreement was legitimate and that a tenancy existed, evidenced by (i) exclusive possession, (ii) a defined term, and (iii) an obligation to pay rent. They further contend that entitlement to the housing costs element depends upon satisfaction of the relevant Regulations and the existence of a genuine commercial agreement, devoid of contrivance. It is submitted on behalf of the appellant that there is nothing in principle to prevent a former spouse, holding a 50% beneficial interest as a tenant in common, from charging occupation rent for her share of the property.

The Secretary of State's response

15. The Secretary of State opposes the appeal and submits that the grounds advanced on behalf of the appellant are misconceived.

16. It is submitted that it was common ground before the FTT that, at the material time, the appellant jointly owned the leasehold property as a tenant in common. The Secretary of State argues that determining whether any purported liability was "commercial" was not the sole—or indeed the determinative—question before the FTT.

17. The Secretary of State submits that rent payments are exhaustively defined in paragraph 2 of Schedule 1 to the Universal Credit Regulations 2013. Such payments, it is argued, must possess the essential character of consideration given in exchange for the right to occupy the accommodation. Payments made to compensate another person for their restricted ability to exercise their own right to occupy—i.e., "occupation rent"—are said to be conceptually distinct from payments conferring a right to occupy, which the appellant already enjoyed as a tenant in common.

18. Accordingly, it is the Secretary of State's position that the appellant, as joint owner of the property, was not liable to make rent payments within the meaning of paragraph 2 of Schedule 1 to the UC Regulations. On that basis, the grounds of appeal—focusing primarily on the asserted liability—are said to be misdirected.

19. Finally, the Secretary of State contends that the FTT's reasons were adequate to explain its decision, or alternatively, that any inadequacy was immaterial. Given the findings of fact the FTT made, it is submitted that the FTT was bound to reach the conclusion that it did.

The reason why I am setting aside the decision of the First-tier Tribunal

20. I set aside the decision of the FTT and substitute my own decision. In my judgment, the decision at first instance was materially inadequate. The judge failed to explain the relevant law and did not make sufficient findings of fact.

21. The judge's statement that it was "obvious" that a person cannot claim rent payments for a house in which they have a right to live was, in the circumstances of the case and in light of the arguments advanced, insufficient. The judge was required to engage with the submissions made on the appellant's behalf and to explain why such a conclusion was reached. A bare assertion of obviousness does not discharge the duty to give adequate reasons.

22. I remind myself of the principles regarding adequacy of reasons: "*It is well established that even if a decision itself may be sound, it amounts to an error in law making it necessary for the decision to be set aside if sufficient findings and reasons are not spelt out to give the parties a reasonable understanding of the basis on which it has been reached. This is a necessary safeguard since otherwise it is not possible to know whether the tribunal may have misdirected itself or omitted to take account of some material consideration in the case.*" [Paragraph 2 of *CCS/2152/04*.]

23. Applying that principle, I am satisfied that the tribunal failed to provide an adequate explanation of how it evaluated the evidence or applied the relevant law. Tribunals must state their reasoning sufficiently clearly to allow the parties to understand the issues that have been raised and how they have been resolved. The absence of an adequate explanation on the central matter in dispute suggests that the tribunal did not engage properly with it.

24. I do not, at this stage, need to go further in analysing these errors, as my broader reasons are set out below in my substantive findings on the case.

25. The appeal therefore succeeds on the primary grounds that the FTT erred in law by failing to consider all relevant evidence, by failing to give adequate reasons, and by failing to identify the legal framework and authorities on which its conclusions were based.

26. By setting aside the decision, I treat it as if it had never been made. It is therefore necessary for me to re-determine the appeal.

My Decision

27. The documentary evidence is extensive, and the matter has been within the appellate system for a considerable period; it is therefore necessary to distinguish clearly between the separate issues that arise.

28. First, I address the submissions concerning the substantive appeal and entitlement—specifically, the contention that the payments in issue constituted "occupation rent" and the appellant's reliance on the statutory framework and

case law relating to occupation rent under TOLATA 1996. For the reasons set out below, the appeal fails in this regard.

29. Second, I address the contention there has been an official error and what I regard as a fundamental omission on the part of the Secretary of State which bears directly on both the existence of an overpayment and its recoverability. The appeal succeeds on this limb.

Findings of fact

30. Having reviewed the papers and the bundle, I make the following findings of fact as part of the chronology relevant to this appeal:

i. The appellant moved to the property in question in or around 2007–2008. He then resided there with his wife. At that time, the property was a local authority dwelling rented from Harrogate Council.

ii. On 27 April 2010, a decree of divorce was granted to the appellant and his then wife on the ground of irretrievable breakdown of the marriage.

iii. On 28 May 2010, a judge held that *"the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent."*

iv. On 23 February 2015, the appellant and his (by then) ex-wife purchased the property from the local authority as joint owners in equal shares, holding it as tenants in common.

v. On 25 August 2016, the appellant submitted a claim for UC housing costs. He stated that he paid rent of £300 per month and that his landlord was Mrs Hsnatou.

vi. On or around the same date, 25 August 2016, the appellant entered into an assured shorthold tenancy agreement with his ex-wife, naming him as tenant and her as landlord.

vii. The August 2016 tenancy agreement was backdated to November 2015 and stated to be for a term of 24 months.

viii. On 31 August 2016, an agent acting on behalf of the UC office verified the appellant's private rental liability.

ix. The appellant received payments in respect of housing costs as part of his UC award from 25 August 2016 to 24 September 2021.

x. On 29 November 2017, the appellant confirmed to the UC office that he owned half the flat with his ex-wife and that he paid rent to her.

xi. In 2018, a new tenancy agreement was issued, reflecting an increased rental charge of £420 per month.

xii. On 31 January 2018, the appellant informed the UC office that both he and his ex-wife were named on the lease and that she intended to live in the flat on retirement. He added that she *"lets me rent for half the cost of the going rent for flats in the area. If there is anything you wish to know, please let me know."*

xiii. On 3 August 2018, an internal UC note recorded that at the start of the claim *"he declared he rented privately from landlady – verified and accepted but same surname."*

xiv. On 16 August 2018, the UC office recorded: "*landlord may be social,*" with an instruction to review the case "*and maybe overturn the decision.*"

xv. The papers contain references dated between 20 December 2020 and 29 July 2021 suggesting an "official error," though the context is unclear and this may relate to service charges.

xvi. On 29 January 2019, the appellant informed the Citizens Advice Bureau—when seeking assistance with a Personal Independence Payment claim—that he owned his former local authority flat.

xvii. For reasons that are not apparent, on 5 August 2019 a letter regarding service charges was sent to his ex-wife's current address, addressed to both her and the appellant.

xviii. On 28 September 2021, the appellant was interviewed by a UC compliance officer, who established that he had been a joint owner of the property since 23 February 2015.

The substantive ground of appeal

31. The appellant submits that the payments in question constitute "occupation rent." In doing so, he relies upon the statutory framework and relevant case law concerning occupation rent under TOLATA 1996.

32. Before turning to this aspect of the appeal, it is necessary to outline the relevant UC legislative scheme and the statutory tests which must be satisfied before any claim to occupation rent can properly arise.

Legal framework

33. Section 11 of the Welfare Reform Act 2012 establishes that UC may include "an amount in respect of any liability of a claimant to make payments in respect of the accommodation they occupy as their home." The statutory scheme requires that the accommodation be residential, situated within Great Britain, and may consist of the whole or any part of a building. The detailed conditions governing

entitlement to the housing costs element are set out in regulations 25 and 26 of the Universal Credit Regulations 2013, together with Schedules 1 to 5, each made pursuant to the powers conferred by section 11. These provisions collectively prescribe the scope of qualifying payments, the nature of the claimant's liability, and the circumstances in which assistance may be granted.

34. Regulation 25 provides as follows [emphasis added]:

> 25.—(1) Paragraphs (2) to (4) specify for the purposes of section 11 of the Act (award of universal credit to include an amount in respect of **any liability** of a claimant to **make payments** in respect of the **accommodation they occupy** as their home)—
> (a) what is meant by payments in respect of accommodation (see paragraph (2));
> (b) the circumstances in which a claimant is to be treated as liable or not liable to make such payments (see paragraph (3));
> (c) the circumstances in which a claimant is to be treated as occupying or not occupying accommodation and in which land used for the purposes of any accommodation is to be treated as included in the accommodation (see paragraph (4)).
>
> (2) The payments in respect of accommodation must be—
> (a) **payments** within the meaning of paragraph 2 of Schedule 1 ("**rent payments**");
> (b). . . . . .
> (c) payments within the meaning of paragraph 7 of that Schedule ("service charge payments").
>
> (3) **The circumstances of the liability to make the payments must be such that**—
> (a) **the claimant** (or either joint claimant)—
> (i) has a **liability** to make the **payments** which is on a **commercial basis**, or
> (ii) is treated under Part 1 of Schedule 2 as having a liability to make the payments; and
> (b) none of the provisions in Part 2 of that Schedule applies to treat the claimant (or either joint claimant) as not being liable to make the payments.
>
> (4) The circumstances in which the **accommodation is occupied** must be such that—
> (a) the claimant is treated under Part 1 of Schedule 3 as occupying the accommodation as their home (including any land used for the purposes of the accommodation which is treated under that Part as included in the accommodation); and
> (b) none of the provisions in Part 2 of that Schedule applies to treat the claimant as not occupying that accommodation.
>
> (5) References in these Regulations—
> (a) to the housing costs element are to the amount to be included in a claimant's award under section 11 of the Act;
> (b) to a claimant who meets the payment condition, the liability condition or the occupation condition are, respectively, to any claimant in whose case the requirements of paragraph (2), (3) or (4) are met (and any reference to a claimant who meets all of the conditions specified in this regulation is to be read accordingly).

Rent payments

2. "Rent payments" are such of the following as are not excluded by paragraph 3—

(a)payments of rent;

(b)payments for a licence or other permission to occupy accommodation;

(c)mooring charges payable for a houseboat;

(d)in relation to accommodation which is a caravan or mobile home, payments in respect of the site on which the accommodation stands;

(e)contributions by residents towards maintaining almshouses (and essential services in them) provided by a housing association which is—

(i)a registered charity, or

(ii)an exempt charity within Schedule 3 to the Charities Act 2011.
Payments excluded from being rent payments.

Analysis

35. Regulation 25 is clear in both structure and effect. It directs the decision-maker to consider several distinct elements:

(1) The payments relied upon must fall within the statutory definition of payments in respect of accommodation.
(2) The claimant has a liability to make said payments on a commercial basis.
(3) The claimant must occupy the accommodation as his home.

36. It is accepted on behalf of the Secretary of State that the occupation condition is satisfied. No issue therefore arises in that regard and I find accordingly.

37. What remains are the payment condition and the liability condition. These are conceptually distinct but practically overlapping: for the appeal to succeed, the decision-maker must be satisfied not only that the claimant had a liability to make payments capable of constituting eligible rent, but also that any such liability was incurred on a genuinely commercial basis.

The tenancy agreement

38. The appellant contends that there is no compelling evidence to challenge the legality, authenticity and validity of the tenancy agreement or contract.

39. I disagree. When the stated terms of the purported tenancy agreement are placed alongside the appellant's existing rights as a tenant in common, their lack of substance becomes all too apparent.

40. The tenancy agreement was created following the appellant's visit to the DWP office; it did not exist prior to that time. The agreement is framed as a generic assured shorthold tenancy under the Housing Act 1988, incorporating standard-form provisions regarding recovery of possession by the "landlord". Such a model is manifestly ill-suited to this context. The appellant already enjoyed a right of occupation by virtue of his 50% beneficial ownership, and no payment of rent was required to secure that right. Ordinarily, a joint owner cannot be evicted from property in which he holds a proprietary share. The purported fixed term is likewise of dubious effect: there is no principled basis upon which the appellant's proprietary right could expire with the conclusion of a contractual term. Nor, in light of his pre-existing right to occupy, is it plausible that the agreement was intended to impose enforceable legal obligations upon him. A person cannot be both landlord and tenant of the same property, nor enforce obligations against himself (*Rye v Rye* [1962] AC 496; [1962] 2 WLR 361).

41. The submission that the ex-wife, as a 50% owner, was entitled to let her share to anyone—including the appellant—is, in my judgement, overly simplistic. It ignores the appellant's own proprietary interest, and, more significantly, the absence of commerciality: the tenancy agreement was plainly devised for the purpose of supporting a claim for UC housing costs.

42. The substantive terms of the agreement therefore have little realistic application. It is doubtful that the appellant could be required to "yield up the property with full vacant possession together with the inventory", or that conditions such as prohibitions on sub-letting, requirements to maintain the garden, or similar tenant-like obligations were ever contemplated as binding. Equally, it is implausible that the ex-wife undertook insurance or repairing obligations in any manner resembling a genuine landlord–tenant relationship.

43. The agreement further provides that breach by the "tenant" may entitle the landlord to seek possession. Such terms presuppose vacation by the occupier and are characteristic of ordinary rental arrangements. Their operation is strained—indeed, largely incoherent—when applied to an individual who is a joint owner with an unextinguished right of occupation.

44. The Secretary of State's submission is that the appellant had no commercial liability to pay rent in respect of property he himself owns and, as such, no liability to make rent payments within the meaning of paragraph 2 of Schedule 1 to the UC Regulations. I accept that submission.

45. In assessing liability, eligible payments, and commerciality, it is necessary to consider whether the terms relied upon are legally enforceable and whether they reflect, in substance, a genuine landlord–tenant relationship.

46. I find that the agreement lacks legally enforceable terms establishing a true rental liability and does not evidence a contract made on a commercial basis between the appellant and his former wife. The tenancy was contrived for the purpose of claiming what the appellant has described as occupation rent. In effect, the agreement was drafted to satisfy the respondent's requirements, not to create a binding commercial tenancy.

47. Notwithstanding the purported agreement, the appellant has continued to reside in the property, and there is no evidence of any attempt to evict him. On the contrary, the papers demonstrate that, three years later, his former wife has been providing extensive assistance to him: with this appeal, other matters, and even cleaning. Such behaviour is at odds with the strict enforcement of a commercial tenancy, including the clause permitting possession after 14 days of arrears.

48. For these reasons, I am not satisfied that the agreement constituted a valid tenancy or that it contained legitimate payment terms. Nor am I persuaded that it established a genuine, legally enforceable liability to pay rent. It therefore fails the Regulation 25 test.

49. A defining characteristic of rent under a tenancy or licence is that it is consideration for the grant of a right to occupy. Here, the appellant already possessed that right as a co-owner. Any sums paid were not to secure occupation but, at their highest, to compensate for restrictions upon the other co-owner's right to occupy.

50. For essentially the same reasons, I reject the contention that the tenancy constitutes a valid contract. This situation bears little resemblance to shared-ownership schemes, where binding contracts arise *ab initio* between a part-owner and a housing association, accompanied by a divided proprietary interest and a corresponding rental liability. Here, the purported tenancy was a convenience, produced only after the DWP/Jobcentre visit. I am not satisfied that the parties intended to create contractual relations consistent with an enforceable contract. The true legal relationship remained that of joint tenants in equal shares (as recorded at the Land Registry), not landlord and tenant.

51. I have taken into account the submissions concerning contrived agreements advanced on behalf of the appellant. The agreement was a mechanism—perhaps adopted in good faith—to satisfy perceived UC requirements. Even if the motives were benign, the principal purpose of the tenancy agreement was to obtain a benefit under the UC scheme, and both parties appear to acknowledge that the agreement was created on that basis.

52. This is not a case in which the appellant, in creating a tenancy, was merely availing himself of ordinary statutory opportunities. The primary purpose was to facilitate a UC housing-element claim, not to secure occupation or precipitate sale. The letting was a personal arrangement entered into because the parties believed it necessary for the appellant's UC claim. It was, in substance, non-commercial, notwithstanding the formal appearance of a tenancy and its written terms.

53. To decide otherwise would risk enabling separated couples or other co-owners to manufacture qualifying rental liabilities by drafting tenancy agreements over jointly owned property, thereby generating an income stream subsidised by the UC housing costs element—an outcome at odds with the scheme's intent. Absent additional facts, such arrangements would, in my judgement, amount to an abuse of the housing costs regime.

Any freestanding agreement between the parties

54. Notwithstanding the contrived nature of the purported tenancy agreement, a distinct and anterior question arises: whether the appellant should nevertheless be regarded as liable to make payments by virtue of some understanding—formal or informal—that he would rent from the other joint owner for his continued exclusive occupation, namely for his use of her beneficial share in the property.

55. It is therefore necessary to distinguish between the tenancy agreement itself—which, for the reasons given, I have found to be an artificial construct—and what may have been a separate, legitimate arrangement between the appellant and his former wife whereby she would not live in the property and he would, in return, provide a rent or compensation for his sole occupation, described by him as "occupation rent".

56. It is not possible, on the evidence, to identify with precision the point at which the payments of £300 per calendar month (later increased to £420 per month from 2018) were said to have become payable. I have been provided with some, but not all, of the rent books. The backdated tenancy agreement purports to create liability from November 2015, although any informal consensus between the parties may have pre-dated that document.

57. The statutory framework governing co-owners' rights of occupation are found in sections 12 and 13 of TOLATA 1996. As a matter of principle, each co-owner is ordinarily entitled to occupy the jointly owned property. Where, however, one co-owner has been actually or constructively excluded from exercising that right, the occupying co-owner may, depending on the factual matrix, be required to make compensatory payments—commonly described as "occupation rent"—to reflect the sole enjoyment of the property.

> 13 Exclusion and restriction of right to occupy.
>
> (1) Where two or more beneficiaries are (or apart from this subsection would be) entitled under section 12 to occupy land, the trustees of land may exclude or restrict the entitlement of any one or more (but not all) of them.
>
> (2)Trustees may not under subsection (1)—
>
> (a)unreasonably exclude any beneficiary's entitlement to occupy land, or
>
> (b)restrict any such entitlement to an unreasonable extent.
>
> (3)The trustees of land may from time to time impose reasonable conditions on any beneficiary in relation to his occupation of land by reason of his entitlement under section 12.
>
> (4)The matters to which trustees are to have regard in exercising the powers conferred by this section include—
>
> (a)the intentions of the person or persons (if any) who created the trust,
>
> (b)the purposes for which the land is held, and

> (c)the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12.
>
> (5)The conditions which may be imposed on a beneficiary under subsection (3) include, in particular, conditions requiring him—
>
> (a)to pay any outgoings or expenses in respect of the land, or
>
> (b)to assume any other obligation in relation to the land or to any activity which is or is proposed to be conducted there.
>
> (6)Where the entitlement of any beneficiary to occupy land under section 12 has been excluded or restricted, the conditions which may be imposed on any other beneficiary under subsection (3) include, in particular, conditions requiring him to—
>
> (a)make payments by way of compensation to the beneficiary whose entitlement has been excluded or restricted, or
>
> (b)forgo any payment or other benefit to which he would otherwise be entitled under the trust so as to benefit that beneficiary.
>
> (7)The powers conferred on trustees by this section may not be exercised—
>
> (a)so as prevent any person who is in occupation of land (whether or not by reason of an entitlement under section 12) from continuing to occupy the land, or
>
> (b)in a manner likely to result in any such person ceasing to occupy the land,
>
> unless he consents or the court has given approval.
> (8)The matters to which the court is to have regard in determining whether to give approval under subsection (7) include the matters mentioned in subsection (4)(a) to (c).

58. Section 13(6)(a) permits the court to direct "payments by way of compensation to the beneficiary whose entitlement has been excluded or restricted." The statutory terminology is, in my judgment, of consequence: Parliament elected to speak of compensation, not rent. It is for that reason that the case law has long characterised so-called occupation rent as an aspect of equitable accounting rather than as a liability analogous to a contractual tenancy (see *Stack v Dowden* [2007] UKHL 17).

59. Importantly, there is no principle of law that compels the imposition of occupation rent in every case. Such a position would be antithetical to both the statutory scheme and the jurisprudence, which makes clear that the default position is that occupation rent is not payable.

60. A court may order an inquiry into, and payment of, occupation rent where some conduct of the occupying co-owner, or some particular feature of the case, renders such an order equitable—for example, where a co-owner has been effectively ousted, or where an allowance is required to achieve fairness as

between the parties (*Davis v Jackson* [2017] EWHC 698 (Ch) at [18]; *Re Pavlou* [1993] 1 WLR 1046 at [16]–[17]; *Murphy v Gooch* [2007] EWCA Civ 603; *Jones (AE) v Jones (FW)* [1977] 1 WLR 438 at [12]–[14]). In the present matter, however, there is neither a court order nor a trust instrument giving rise to such a liability. What is described as "occupation rent" appears, on the evidence, to have been a private arrangement between the appellant and his former wife.

61. The appellant's representatives invite me to create such a liability on the footing that it would be "*just and appropriate in these circumstances, reflecting the statutory and equitable principles as endorsed by the courts*." I decline to do so. This appeal is not the proper vehicle through which such a liability may be created, nor do I have jurisdiction to convert a private arrangement into an enforceable legal obligation.

62. I have already found that on 28 May 2010 a judge decreed that "*the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent*." No order for occupation rent followed, and at that point the parties did not own the property in question. Their acquisition occurred five years later in 2015. It would therefore be speculative and unwarranted to treat findings from 2010 as if they determined the parties' respective positions in 2015 or 2016. While relationship breakdown may—on some facts—constitute constructive exclusion, I find little here following the purchase to support a conclusion of ouster or any factual foundation upon which the former wife could properly claim compensation by way of occupation rent. The appellant had enjoyed exclusive occupation for 5 years prior to the purchase.

63. The 2015 purchase appears to have been a voluntary arrangement enabling the parties, as joint tenants, to acquire the ex-local authority property the appellant was already living in. Although I have seen no conveyancing file, it is suggested that the ex-wife financed the acquisition and had an expectation of returning to the property upon retirement.

64. Any informal agreement to pay occupation rent does not itself create a legally enforceable liability, still less one akin to a tenancy obligation. At the time of purchase the ex-wife had apparently not lived in the property for five years; there was therefore no factual basis for asserting an exclusion or ouster.

65. The starting point is that a co-owner in occupation is not obliged to pay occupation rent merely because he resides in the property while the other co-owner does not (*Davis v Jackson* [2017] EWHC 698 (Ch) at [61]–[64]). Something further must be demonstrated—some circumstance making it just and equitable for the occupying party to compensate the other.

66. The evidence does not support a finding that the appellant acted unreasonably towards his former wife or excluded her in a manner giving rise to equitable compensation. To the contrary, the relationship appears to have remained cooperative. It is entirely commonplace for a co-owner to choose, for rational and benign reasons, not to exercise a concurrent right of occupation. That choice, without more, does not give rise to an entitlement to rent.

67. The housing costs element of Universal Credit is intended to meet payments securing a person's occupation of their home. It is not designed to meet discretionary or compensatory payments made to another co-owner who does not reside there. To qualify for UC housing costs, there must be a legal liability to pay rent, and it must be reasonable having regard to all the circumstances and the statutory purpose of the UC scheme. The mere fact that the payment pattern or amount bears superficial resemblance to rent does not confer a commercial character upon the arrangement. In this case, the surrounding circumstances indicate that no genuine commercial liability existed.

68. To illustrate the point: even if, counterfactually, the payments had been made to meet mortgage instalments (the property being mortgage-free), such payments would not amount to "rent" for UC purposes. Any obligation would arise from the mortgage and the parties' beneficial interests, not from the appellant's use and occupation of the property.

69. Accordingly, the payments made by the appellant to his former wife do not fall within any category of liability eligible for support under the housing costs element of UC. It follows that the claimant was not entitled to the sums claimed.

70. This aspect of the Secretary of State's decision is therefore upheld. An overpayment arose from August 2016.

Official error

71. The appellant's final ground of appeal contends that an official error occurred, in that he informed the respondent at the relevant time that he co-owned the property, yet housing costs continued to be paid. On this basis, he argues that any resulting overpayment should not be recoverable.

72. The overpayment decision is not before me. I have already set out my findings of fact in the instant matter, having reviewed the UC journal for the period 2016–2021. It demonstrates regular communication between the appellant and the UC office. Notable entries include:

- **29/11/2017:** "*M confirms that he owns half the flat with his ex-wife and he pays rent to her…*"
- **15/12/2017:** "*M has provided documents to confirm his tenant – to review housing costs as he rents the property from his wife to which they have a joint lease from the council…*"
- **31/01/2018:** "*I can tell you that there is no mortgage on the flat. My ex-wife bought it. She put both our names on the lease…*"
- **03/08/2018:** "*At the start of the claim (25/08/2016) the claimant declared that he rents privately from [ ] (landlady) and the tenancy provided has the same start date as the UC claim. That was verified and accepted; though no notes to say if the claimant and the landlady are relatives (same surname)…*"

73. I am satisfied that the appellant informed the UC office on 29 November 2017 that he jointly owned the property with his ex-wife. This, in my view, is incontrovertible.

74. I am also satisfied that the UC office took no steps to investigate this disclosure, either at the time or subsequently. The appellant repeated the disclosure on 31 January 2018, yet no action was taken.

75. I find that this constitutes an official error or omission by an officer of the DWP within the meaning of section 71 of the Social Security Administration Act 1992. The UC office had a duty to act on the information disclosed. While an internal note in August 2018 indicates that a DWP officer identified a potential issue ("*same surname*"; "*landlord may be social*"), no follow-up action was taken. The continued award of housing costs was therefore made on an incorrect factual basis which the Department contributed to.

76. The UC office was aware—no later than 29 November 2017—of the co-ownership arrangement yet continued to pay housing costs. The appellant did not conceal the position. It is incorrect to assert that the Department only became aware of the arrangement at the compliance interview on 28 September 2021. The contemporaneous records demonstrate that the Department was aware significantly earlier and failed to act.

77. I therefore conclude that, for the period 29 November 2017 to 28 September 2021, the overpayment did not arise from any misrepresentation or failure to disclose by the appellant. Rather, it resulted from the Department's failure to act on information properly disclosed to it.

78. This leaves the period between the date of claim 25 August 2016 and 28 November 2017.

79. The appellant has consistently maintained that he told the DWP officer in August 2016 that he was renting his ex-wife's share of the property and that he was advised to obtain a tenancy agreement.

80. I find it more likely than not that he was given such advice, and that he acted upon it. The temporal link between his visit to the UC office and the creation of the tenancy agreement strongly suggests this. If this aspect of his account is credible, it lends credibility to his assertion that he disclosed his joint-ownership status at the same time.

81. The DWP does not assert that the appellant failed to disclose joint ownership in August 2016. Rather, its position is that it has "no record" of such disclosure.

82. Much depends on the reliability of the DWPs records. Ordinarily, I would expect an officer to record and act upon a disclosure as fundamental as joint ownership of the claimant's accommodation. The absence of such a record might suggest that the disclosure was not made.

83. However, in this case the UC office did fail to act upon the same disclosure in 2017 and 2018. This undermines the premise that such information would invariably be recorded and acted upon.

84. I also note that the UC office verified the appellant's housing costs in 2016. While the nature of that verification is unclear, internal records later recognise that the appellant and purported landlord shared an uncommon surname—something that should, at the very least, have prompted further enquiry in 2016.

85. Although it is impossible to resolve the matter with absolute certainty, I am satisfied on the balance of probabilities that the appellant did not seek to conceal his arrangement in 2016 or thereafter. He made open disclosures in 2017, 2018, to the Citizens Advice Bureau in 2019 (for PIP purposes), and again in 2021. This pattern is inconsistent with deliberate non-disclosure.

86. I therefore conclude that it is more likely than not that the appellant disclosed his position in August 2016 and was advised to obtain a tenancy agreement. He did so, and his UC claim proceeded. The UC office chose not to investigate or act, despite having mechanisms—such as its verification service—that could have been used.

87. Accordingly, I find that the payment of UC housing costs from 25 August 2016 to 28 November 2017 was also an official error. On the balance of probabilities, the appellant made the relevant disclosure at the outset. The Department's failure to record or investigate it amounts to omission under section 71 of the Social Security Administration Act 1992.

88. This goes to the issue of recoverability, which I must leave to the respondent to consider as the overpayment decision is not before me.

Judge M Sutherland Williams
Judge of the Upper Tribunal

Authorised by the Judge for issue on 16 March 2026