



Neutral Citation Number: [2026] UKUT 166 (AAC)
Appeal No. UA-2024-000904-HB

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

CLO

Appellant

- v -

Bolsover District Council

1st Respondent

-and-

The Secretary of State for Work and Pensions

2nd Respondent

**Before: Upper Tribunal Judge Butler
Decided on consideration of the papers**

Representation:

Appellant: Mr Brook (solicitor)

1st Respondent: Mr E-A Abedian (counsel)

2nd Respondent: Ms C. Gratrex, Decision Making and Appeals, DWP

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: S308/23/00523

Tribunal Venue: Chesterfield

Decision Date: 28 September 2023

SUMMARY OF DECISION

Housing Benefit (16) and payments that are eligible for HB (16.6)

The First-tier Tribunal made a material error of law in its decision due to the conflict between its Decision Notice and Statement of Reasons in explaining the recoverability of a housing benefit overpayment of £27,480.96 from the appellant. The First-tier Tribunal's findings of fact that about what caused the overpayment to arise, were not, however, made in error of law.

The Upper Tribunal decided that given those factual findings, the only possible outcome was that the housing benefit overpayment was recoverable from the appellant. It therefore remade the First-tier Tribunal's decision in those terms.

*The Upper Tribunal decided that when considering whether a payment falls within regulation 12(1) of the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006, there is no material distinction between payments made between tenants in common and payments made between joint tenants. For the avoidance of doubt, the Upper Tribunal considers the analysis at paragraph 12 of **CH/1578/2006** should be applied where the equitable interest in a property is held as tenants in common and one tenant in common is making payments to another in respect of it.*

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 follow.

DECISION

The decision of the First-tier Tribunal involved the making of an error of law. Under section 12(2)(a), (b)(ii) and (4) of the Tribunals, Courts and Enforcement Act 2007, it is SET ASIDE and I remake the decision as follows:

The appeal is refused. The Respondent's decision dated 21 November 2022 is confirmed.

From 31 October 2014 onwards, CLO was not entitled to housing benefit. From that date, CLO was an owner of the property within the meaning and application of regulations 2 and 12(2)(c) of the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006.

CLO has been overpaid £27,480.96 of housing benefit for the period from 31 October 2014 to 11 November 2022 inclusive. The amount of this figure was not disputed between the parties.

This overpayment is recoverable from CLO under regulation 81(1) of the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006.

REASONS FOR DECISION

Anonymity Order

1. By an order dated 23 April 2026, I ordered under rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 that, without the permission of this Tribunal, no one shall publish or reveal the name, or any part of the address, of the appellant in these proceedings or publish or reveal any other information that would be likely to lead to the identification of the appellant.
2. The letters CLO have been chosen at random and do not relate to the appellant's name.

3. Any breach of the anonymity order is liable to be treated as a contempt of court and may be punishable by imprisonment, fine or other sanctions under section 25 of the Tribunals, Courts and Enforcement Act 2007. The maximum punishment that may be imposed is a sentence of two years' imprisonment or an unlimited fine.

Factual background

4. On 09 August 2007, CLO entered into a 99-year lease in respect of a property ("the property") through shared ownership with a housing association (HA). The description of this in the lease was a "shared ownership lease". CLO paid a premium of £57,500 for the property, which represented a portioned percentage of its initial market value. She paid the HA monthly rent in relation to the unpurchased portion of the initial market value of the property
5. Bolsover District Council ("Bolsover") awarded CLO housing benefit ("HB") in respect of these rental payments with effect from 17 October 2011. CLO's HB entitlement was initially administered under the Housing Benefit Regulations 2006 (the HB regulations 2006). When CLO reached state pension age in 2012, Bolsover began to administer her HB under the Housing Benefit (persons who have attained the qualifying age for State Pension Credit) Regulations 2006 ("the HB (SPC) regulations 2006").
6. After she was awarded HB, CLO notified Bolsover of various changes in her circumstances, specifically whenever her rental payments to the HA increased. On 07 July 2020, CLO's daughter contacted the Benefits section of Bolsover because CLO had received a review form. Her daughter explained CLO was in hospital and had been there for two months. Following this notification, CLO's daughter spoke to a benefits officer on 07 July 2020 and explained that as far as she was aware, CLO's income remained unchanged. This was confirmed in an email on 08 July 2020 which also confirmed there were no changes in CLO's circumstances. CLO's daughter notified Bolsover on 30 July 2020 that CLO had returned home from hospital.
7. On 10 November 2022, CLO wrote to Bolsover, stating her personal circumstances had changed and she no longer needed HB or Council Tax Support from 07 November 2022. On 11 November 2022, Bolsover wrote to CLO, explaining it had suspended her HB and asking why she no longer required benefits. In response, CLO wrote stating she no longer wished to receive HB from 11 November 2022 because she had taken a loan from her son-in-law to pay back the 50% of the property owned by the HA. CLO stated she was repaying the loan in rent at £289 per month, paid into two Child Trust Fund accounts. With this letter, CLO provided evidence of her payments, together with a letter from the solicitor that dealt with the purchase of the property.
8. Bolsover considered this information and evidence showed the property had been purchased in the joint names of CLO, her daughter and her son-in-law and ownership was held with 50% by CLO and 50% by her daughter and son-in-law. On 21 November 2022, Bolsover obtained a copy of the Land Registry entry for

the freehold land at CLO's property, which it decided showed the property had been transferred from the HA to CLO and her daughter and son-in-law.

9. On 21 November 2022, Bolsover decided to terminate CLO's HB from the date she became a joint owner of the freehold title of her property. Bolsover decided that when she initially claimed HB, CLO was not considered to be an owner of the property, because the Land Registry document only listed HA as a proprietor of the property. Bolsover decided that when CLO and her family members purchased the share of the property owned by the HA, they all became owners of it. Bolsover decided that as CLO was an owner of the property, she had the right to occupy it and could not be considered to pay rent in respect of it.
10. Bolsover's decision letter dated 21 November 2022 also stated it had decided CLO had been overpaid £27,480.96 of HB and this overpayment was recoverable from her.
11. CLO telephoned Bolsover on 22 November 2022. The note of the call taken by the staff member recorded CLO saying she had been a "bit silly" as she did not think her son-in-law should be an owner of the property when she paid him the money for the loan (page 173 of appeal bundle). CLO said she needed to get away from the HA, which had put up the rent all the time, so it was suggested her son-in-law take out the loan and CLO would pay the rent to him. CLO said she did not have the money to repay the overpayment and would have to get the money back from her son-in-law and would try to find a solicitor.

The First-tier Tribunal decision

12. On 14 January 2023, CLO wrote to Bolsover stating she wanted to appeal its decision. CLO's appeal was decided by the First-tier Tribunal ("FTT") on 28 September 2023. CLO was represented by Mr Brook, whose firm had dealt with the conveyancing for the purchase carried out in late 2014. The FTT refused CLO's appeal and decided she had been paid £27,480.96, which was recoverable from her. The FTT issued a Statement of Reasons for its decision on 29 March 2024. A District Tribunal Judge refused CLO permission to appeal on 24 May 2024.

Permission to appeal

13. On 06 December 2024, and at Mr Brook's request, I adjourned a hearing of CLO's application for permission to appeal. Mr Brooks asked for time to take further instructions. He also wanted time to consider two decisions I had asked my clerk to send to him, which were ***BN v (1) Liverpool City Council and (2) Secretary of State for Work and Pensions [2020] UKUT 28 (AAC) ("BN") and CH/1578/2006.***
14. On 08 May 2025, I held an oral hearing of CLO's application for permission to appeal. Mr Brook represented CLO, who did not take part. Following the hearing, I granted CLO permission to appeal on limited grounds. A summary of those grounds is.

15. Adequacy of factual findings / reasoning about the ownership of the property and how this had changed on 31 October 2024: on the one hand the FTT appeared to have accepted CLO's argument that the lease continued in relation to the property from 31 October 2014 onwards and she remained a tenant of it. On the other hand, the FTT stated it accepted Bolsover's case that a rental allowance or rent is not payable in relation to payments made by an owner and that CLO became a freehold owner of the property as a joint tenant in law and a tenant in common in equity. It was arguable the FTT might have reached the end point invited by Bolsover's representations, without making adequate factual findings and / or providing adequate reasons to support and explain how it reached that end point.
16. Explanation of why the payments CLO made to her daughter and son-in-law constituted rent: The FTT acknowledged CLO's evidence described repaying a loan to her son-in-law but stated it was arguable these payments were made in respect of CLO's occupation and use of the property, notwithstanding how they had been labelled. The FTT had not, however, explained how it reached this conclusion. The FTT might not have analysed CLO's liability as one co-owner of the property, to the other co-owners (her daughter and son-in-law). The analysis in paragraph 12 of **CH/1578/2006** was potentially relevant to what the FTT needed to decide. The FTT had not addressed this decision or its reasoning and may have misdirected itself in law or failed to explain adequately why it considered CLO was required to make payments to her daughter and son-in-law to secure the right to occupy the property.
17. Potential conflict between the FTT's decision notice dated 28 December 2023 and its Statement of Reasons. The FTT wrote in paragraph 6 of its decision notice that the overpayment of HB was a payment in consequence of an official error but did not identify what this was. The FTT also stated it was not one to which paragraph 2 of regulation 81 applied (but did not explain how). In contrast, the FTT stated in paragraph 18 of the Statement of Reasons that it did not consider CLO was overpaid HB because of an official error. The FTT's Statement of Reasons arguably conflicted with its Decision Notice in terms of whether the FTT decided the HB overpayment was caused by official error. The Statement of Reasons might therefore fail to explain the FTT's decision adequately.
18. I also indicated there was a wider point Mr Brook had raised at the hearing on 08 May 2025 about whether the principle established in **CH/1578/2006** might operate differently where beneficial ownership was held as tenants in common.
19. I directed that the Secretary of State for Work and Pensions ("SSWP") should be added as Second Respondent to the appeal. The SSWP had responsibility for the wording chosen in the relevant HB regulations. I directed that SSWP should be added for the purpose of making submissions about:
 - (a) Whether a tenant in common can be said to be the owner of a property for the purpose of regulation 2(1) and 12(2)(c) of the relevant HB regulations; and

- (b) The relevance and application of the principles established in **CH/1578/2006** to circumstances where the property is owned by tenants in common rather than joint tenants.

Legal framework

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

“(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 benefit in his case; and
- (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.

(2) In subsection (1) above “payments in respect of a dwelling” means such payments as may be prescribed, but the power to prescribe payments does not include power to prescribe-

- (a) payments to a billing authority or to a local authority in Scotland in respect of council tax;
- (b) mortgage payments, or, in relation to Scotland, payments under heritable securities.”

21. The relevant provisions within regulation 12 of the HB (SPC) Regulations 2006 provide:

“12(1) Subject to the following provisions of this regulation, the payments in respect of which housing benefit is payable in the form of a rent rebate or allowance are the following periodical payments which a person is liable to make in respect of the dwelling which he occupies as his home-

- (a) payments of, or by way of rent;
- (b) payments in respect of a licence or permission to occupy the dwelling;
- (c) payments in respect of, or in consequence of, use and occupation of the dwelling;...

(2) A rent rebate or, as the case may be, a rent allowance shall not be payable in respect of the following periodical payments-

(a) payments under a long tenancy except a shared ownership tenancy;...

(c) payments by an owner.”

22. In England and Wales, the phrases: “long tenancy”, “owner” and “shared ownership tenancy” are defined in regulation 2 as:

“long tenancy” means a tenancy granted for a term of years certain exceeding twenty one years, whether or not the tenancy is, or may become, terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture (or, in Scotland, irritancy) or otherwise and includes a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal unless it is a lease by sub-demise from one which is not a long tenancy;

“owner” means-

(a) In relation to a dwelling in England and Wales, the person who, otherwise than as a mortgagee in possession is for the time being entitled to dispose of the fee simple, whether or not with the consent of other joint owners;

“shared ownership tenancy” means-

(a) In relation to England and Wales, a lease granted on payment of a premium calculated by reference to a percentage of the value of the dwelling or the cost of providing it.”

23. The relevant provisions of regulations 69 and 81 of the HB (SPC) Regulations 2006 provide:

“69(1) Subject to paragraphs (3)9, (6) (7) and (9), if at any time between the making of a claim and a decision being made to it, or during the award of housing benefit there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by way of housing benefit are receivable, might reasonably be expected to know might affect the claimant’s right to, the amount of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice to the designated office-

(a) In writing; or

(b) By telephone-

(i) where the relevant authority has published a telephone number for that purpose or for the purposes of regulation 64 (time and manner in which claims are to be made) unless the authority determines that in any particular case or class of case notification may not be given by telephone; or

- (ii) in any case or class of case where the relevant authority determines that notice may be given by telephone; or
- (c) By any other means which the relevant authority agrees to accept in any particular case.

81.-(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4) this paragraph applies to an overpayment which arose in consequence of an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or any notice relating to that payment, reasonable have been expected to realise that it was an overpayment.

(3) In paragraph (2), 'overpayment which arose in consequence of official error' means and overpayment caused by a mistake made whether in the form of an act or omission by-

(a) the relevant authority;

(b) an officer or person acting for that authority;

(c) an officer of-

(i) the Department for Work and Pensions;

(ii) Revenue and customs

acting as such; or

(d) a person providing services to the Department for Work and Pensions or to the Commissioners for her Majesty's Revenue and Customs,

where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute o that mistake, act or omission."

24. The above provisions of regulations 2 and 12 in the HB (SPC) Regulations 2006 are materially the same as the equivalent provisions in the HB Regulations 2006.

The parties' arguments

25. The parties have all provided submissions in response to the appeal and my directions about it. Bolsover also provided additional documents that I had directed it to provide when granting permission to appeal. These are a copy of the Land Registry entry for the property referred to in its letter dated 21 November 2022, a complete copy of a letter it sent Mr Brook dated 15 March 2023 and a

complete and legible copy of a document Bolsover had provided at page 151 of the bundle but it was hard to tell if it was complete or incomplete.

The positions of Bolsover and the Secretary of State (“the Respondents”)

26. The Respondents do not support the appeal. They invite the Upper Tribunal to dismiss the appeal or, in alternatively remake the FTT’s decision refusing it.
27. The position of both Respondents is that before 31 October 2014, CLO was entitled to HB because her tenancy fell within the definition of a shared ownership tenancy in regulation 2 of the relevant HB regulations. They submit the exclusion in regulation 12(2)(a) of the HB (SPC) regulations 2006 for payments under a long tenancy did not apply to CLO, because the exclusion expressly carved out from consideration a shared ownership tenancy.
28. Both Respondents submit that until 31 October 2014, CLO was not the owner of the property within the meaning of regulation 2(1) because she was not entitled to dispose of the fee simple. That entitlement only applies to the legal owner of freehold properties. CLO was not the legal owner of the freehold of her property until the freehold estate was transferred to her and her daughter and son in law on 31 October 2014. The Respondents argue this reflects the Land Registry entries for the property before CLO was registered as the freehold owner on 05 February 2015 (the date the transfer of 31 October 2014 was registered). Both Respondents also rely on paragraph 36 of **BN**, which confirmed the reference to “*fee simple*” in regulation 2 links ownership directly to possession of a freehold interest.
29. The position of both Respondents is therefore that prior to 31 October 2014, regulation 12(2)(c) did not apply to prevent CLO being entitled to HB. They also submit the payments she made to the HA fell within regulation 12(1).
30. Both Respondents submit that from 31 October 2014 onwards, CLO became an owner of the property when she acquired the freehold interest in the property alongside her daughter and son-in-law. They rely on the fact the register of title names all three of them as freehold owners with title absolute.
31. The Respondents argue that in acquiring the freehold interest in the property in the way she did, CLO became an owner of it for the purpose of regulation 12(2)(c). They submit this means from 31 October 2014 onwards, CLO was entitled to dispose of the fee simple. While CLO, as a tenant in common, could not do this unilaterally, the definition of “owner” states: “entitled to dispose of the fee simple *whether or not with the agreement of other joint owners*” (emphasis added). The Respondents argue CLO fell within this definition, and it expressly anticipated circumstances where disposal of the fee simple requires the consent of joint owners. On behalf of the Secretary of State, Ms Gratrex argues that this wording means it does not matter whether the owners of the freehold are joint tenants or tenants or common.
32. Both Respondents therefore submit that from 31 October 2014 onwards, CLO fell within regulation 12(2)(c) of the HB (SPC) Regulations 2006 as any payments

she made in respect of the property would be “payments by an owner” and a rent rebate or rental allowance could not be paid in respect of them.

33. Both Respondents also submit the payments CLO made to her son-in-law from 31 October 2014 onwards were not capable of constituting rent or any other type of payment within regulation 12(1) of the HB (SPC) Regulations 2006. Each Respondent relies on the decision in **Jones v Jones [1977]** 1 WLR. They submit that this case and following ones, reflect the general principle at common law that one tenant in common is not entitled to rent from another tenant in common, even if the second tenant occupies the whole of the property.
34. On behalf of the Secretary of State, Ms Gratrex also refers to **Ali v Khatib & Ors [2022]** EWCA Civ 481. She argues that although situations may arise where one tenant in common would be liable to make payments to the other tenant in common, these payments are recognised as a form of equitable accounting (**Ali v Khatib**, paragraph 14) and compensate the non-occupying tenant in common for being excluded from occupation. Ms Gratrex submits these are distinct from rent payments under regulation 12(1), which all grant the payer a right to occupy the property, rather than compensate the payee for a restriction on their own right to occupy.
35. In **CH/1578/2006**, the appellant’s son became legal owner of the property and took out a mortgage in his sole name. On the same day, he made a declaration of trust in respect of himself and the appellant as beneficiaries. The parties in CH/1578/2006 did not dispute the effect of the declaration was to make the appellant and her son joint beneficial owners of the property and impose between the appellant and her son, a liability on her to pay half of each month’s repayment of the mortgage. Only the appellant lived in the property. The claim for HB arose because the appellant and her son entered into an agreement under which she agreed to pay him a “rent” for her occupation of his half of the property.
36. In **CH/1578/2006**, Mr Commissioner Poynter (as he then was) decided the appellant was not the legal owner of the property so the equivalent of regulation 12(2)(c) did not apply to her. He decided, however, that the payments she made to her son were not ones falling within the equivalent of regulation 12(1) of the HB Regulations 2006.
37. The Respondents address two matters in relation to **CH/1578/2006**. The first is that in paragraphs 10-11 of **CH/1578/2006**, drawing on the circumstances set out at paragraph 5 of his decision, Mr Commissioner Poynter decided the appellant was not the legal owner of the property.
38. Both Respondents submit that on this issue, the material facts of **CH/1578/2006** are distinguishable from CLO’s circumstances. They emphasise points of difference including that in **CH/1578/2006**, the appellant was a beneficial owner, not a joint owner of the freehold title.
39. On behalf of Bolsover, Mr Abedian argues that in terms of ownership, what distinguishes CLO from **CH/1578/2006** is that from 31 October 2014 onwards,

she was one of the three legal owners of the freehold estate with title absolute. CLO was therefore able to dispose of the fee simple in the property, even if she could not do so without the other owners' consent.

40. The second matter the Respondents address about **CH/1578/2006** is whether the principle established about one tenant paying rent to another is confined to joint tenancies. On this issue, Ms Gratrex questions whether the appellant and her son in that case were in fact joint tenants. She submits that in referring to the appellant agreeing to pay her son a rent for her occupation of "his half" of the property, paragraph 6 of **CH/1578/2006** sits more neatly with them being beneficial tenants in common with an equal 50% share, than a joint tenancy structure.
41. Both Respondents argue that regardless of the factual circumstances in **CH/1578/2006**, there is no material distinction to be drawn between situations where the ownership structure is joint tenancy and where it is a tenant in common. Each Respondent relies on common law in support of this, in particular, the points already made above that tenants in common are equally entitled to occupation and therefore one cannot claim rent from the other.
42. Ms Gratrex argues that the submissions made on behalf of the Secretary of State in the earlier appeal, quoted at paragraph 12 of **CH/1578/2006**, support the Secretary of State's present view that payments made by one joint owner to another do not fall within the categories of payment for which HB is payable, irrespective of whether the person is a joint beneficial owner or a joint legal owner (or both).
43. Turning to the issue of the overpayment of £27,480.96, on behalf of Bolsover, Mr Abedian argues this overpayment arose because CLO failed to report she was no longer paying rent to the HA as her shared ownership tenancy with them ended when she purchased the freehold of the property. He submits that CLO was required to report this change because of her duty to report relevant changes of circumstances under regulation 69 of the HB (SPC) Regulations 2006. Mr Abedian submits that if CLO had reported it, Bolsover would have terminated her HB entitlement immediately and the overpayment would not have arisen. Mr Abedian submits the overpayment did not arise in consequence of official error within the application of regulation 81(2) and (3) because it was caused by CLO failing to declare a relevant change of circumstances. He submits it is therefore recoverable from CLO under regulation 81(1) of the HB (SPC) Regulations 2006.

CLO's representations

44. CLO argues that when she purchased an interest in the property, she was given a long lease, which by any stretch of the imagination is akin to outright ownership. CLO argues she had sole occupation of the property as a tenant in common as to 50% (from 31 October 2014 onwards) and paid the HB she received by way of rent to her daughter and son-in-law. CLO argues that it is immaterial whether that payment was to compensate them for the fact they could not live there.
45. CLO argues that had the HA not transferred its ownership in the property to her daughter and son-in-law, payment of HB would have continued until she sold her

interest in the property or passed away. CLO argues it is extremely unjust for her to now have to repay all HB from the date her daughter and son-in-law acquired a 50% interest in the property.

46. CLO argues nothing material changed on 31 October 2014. She argues that in the first instance she controlled 50% of the property under a lease. CLO argues that in the second instance, she owned 50% of the freehold as a tenant in common. CLO argues that at no stage did she own or control the whole and whether she is called a lessee or a tenant in common is immaterial. CLO argues it is also immaterial that a tenant in common is equally entitled to occupation with the other tenant in common. Nor does it matter that one tenant in common cannot claim rent from the other. As CLO saw it, the payment was by way of rent of the 50% occupied by her but belonging to her daughter and son-in law. Whether this is an occupational rent, compensation for loss of their right to occupy or some other form of payment does not matter. CLO states she has had the benefit and should not be required to pay back such a large figure at her time of life.

Why there was no oral hearing of this appeal

47. CLO requested an oral hearing of the appeal to enable her to better explain her case. She wrote that she had received some legal assistance but could not afford to be represented at an oral hearing. CLO stated she would like to have her say if possible. This request was signed by Mr Brook on CLO's behalf.
48. When asked if they wanted an oral hearing of this appeal, a legal representative for Bolsover ticked the "Yes" box and wrote that given the issues and involvement of the Secretary of State providing clarification, they would want a hearing if further evidence or clarification were required. The Secretary of State confirmed it did not request a hearing.
49. I took the parties' preferences into account. I decided the interests of justice did not require an oral hearing. The Upper Tribunal's role is to determine whether there has been a material error of law. The parties' positions are clear on that issue. The parties have also set out their positions about how they consider the regulations should work in this area. CLO has set out her position on how she believes the legislation should work and confirmed she received legal assistance in putting forward that position.
50. The parties' arguments are clear from the written submissions and do not need clarifying at an oral hearing. Holding an oral hearing will therefore simply delay matters without being required to resolve them. I therefore determined the appeal on the papers. It was fair and proportionate to do so.

Legal analysis

51. It is convenient to first explain the legal position about CLO's entitlement to HB and then to assess whether, in that context, the FTT made one or more material errors of law. It also allows me to address CLO's submissions, which are that the FTT erred in finding that CLO's circumstances changed in a material way on 31 October 2014.

(a) When CLO entered into her lease with the HA for the property, how did the HB (SPC) Regulations 2006 apply to it?

52. In essence regulation 12(1) of the HB (SPC) Regulations 2006 sets out which periodical payments are ones eligible for HB. Regulation 12(2) excludes HB from being payable in specific circumstances where periodical payments are made.
53. CLO entered into a lease with the HA in respect of the property on 09 August 2007. A copy of the lease is at pages 207 to 231 of the FTT appeal bundle. The lease was for a term of 99 years from 01 April 2007. The premium was £57,500.
54. The length of the tenancy would, in principle, make it a long tenancy using the definition in regulation 2. Applying regulation 12(2)(a) of the HB (SPC) Regulations 2006, it would therefore be excluded from eligibility for HB unless it was a shared ownership tenancy.
55. Recital (4) of the lease provided:
- “The Landlord has agreed to grant the Leaseholder a lease upon payment by the Leaseholder of the Premium representing the Initial Percentage of the Initial Market Value of the Premises and upon payment of the Specific Rent representing the Initial Relevant Percentage of the Gross Rent of the Premises with provisions to enable the Leaseholder from time to time to pay for a further percentage of the Market Value of the Premises followed by a corresponding reduction of the percentage of the Gross Rent payable and to purchase the freehold”.*
56. This wording confirms the lease granted to CLO was one granted on a premium calculated by reference to a percentage of the value of the dwelling. It was therefore a shared ownership tenancy within the definition in regulation 2. The fact there was a long lease did not preclude CLO from claiming HB in respect of periodical payments made in respect of it.
57. The next question is whether CLO was the owner of the property as a result of the lease granted by the HA. Regulation 12(2)(c) of the HB (SPC) Regulations 2006 prevents HB being payable in respect of periodical payments by an owner. The definition relies on the person being: *“entitled to dispose of the fee simple, whether or not with the consent of other joint owners.”*
58. Here, the reasoning of Mr Commissioner Turnbull in **R(H)8/07**, applied in **BN**, is relevant. At paragraph 36 of **BN**, Upper Tribunal Judge West stated:
- “36. As Mr Commissioner Turnbull (as he then was) explained in **R(H) 8/07** in respect of the Housing Benefit Regulations 1987 (which are not materially different on this point from the 2006 regulations)*
- “9... there is no requirement in the definition of “owner” that the claimant should be the proprietor of any long leasehold interest in the dwelling which may have been granted...”*

10. It is true that, for most practical purposes, Miss B, rather than the claimant, would be regarded as the “owner” of the flat. She has a lease of it at a rent which is little more than nominal and the lease still has some 71 years to run. However, as I have said, “owner” is defined by reference to the ability to dispose of the fee simple in the dwelling and not by reference to the ability to dispose of any long leasehold interest in it which may have been granted. [remainder of quote left out]”

59. Although CLO was a leaseholder of the property under a long lease through her 99-year tenancy, this did not amount to her being an owner of it and regulation 12(2)(a) therefore did not apply to her.
60. The next question is whether, when she first claimed HB, CLO was an owner of the property within the meaning of regulation 12(2)(c). This depended on whether CLO was entitled to dispose of the fee simple in the property. As indicated in **CH/1578/2006**, the reference to “fee simple” narrows the definition of “owner” so that it applies only to the legal owners of freehold properties.
61. As explained in its recital (4), the lease meant CLO owned a portioned percentage of the market value of the property, but there were portioned percentages that she did not own (see paragraph 55 above). CLO paid the HA rent in respect of them. The fourth schedule to the lease between the HA and CLO confirmed CLO could purchase additional portioned percentages of the market value of the premises through a process described as “staircasing”. Where CLO completed the final staircasing and reduced the unpaid percentage of the initial market value to 0%, CLO could give notice to the HA. If so, CLO would have the right to acquire the freehold of the premises for no charge (paragraph 4(1) fourth schedule, page 222 of FTT appeal bundle).
62. Paragraph 4(2) of the fourth schedule explained that the freehold of the premises would be transferred by the Landlord (the HA) to the Leaseholder (CLO) as soon as practicable after CLO gave the HA the notice required by paragraph 4(1).
63. Therefore, while the wording of the lease gave scope for CLO to acquire the freehold interest in her property if she took specific steps, this wording also confirmed that CLO had not obtained that freehold interest simply by entering into the lease.
64. The property that was the subject of the lease was part of a larger estate held by the HA that encompassed several properties. Bolsover has supplied a copy of the Register of Title for CLO’s property that also covers the land in question. This confirms the HA was the sole proprietor of this land, including CLO’s property at 28 August 2012. The Register of Title for CLO’s property includes an entry dated 05 February 2015 referring to the rights granted by a transfer of the property dated 31 October 2014 between the HA and CLO and her daughter and son-in-law. The Register view document provided separately by Bolsover confirms the particulars of the lease dated 09 August 2007 and that it related to leasehold land.

65. The documents provided indicate that prior to 31 October 2014, CLO was not the owner of the property within the meaning and application of regulations 2 and 12(2)(c) of the HB (SPC) Regulations 2006.
66. In principle, CLO was therefore entitled to housing for the property prior to 31 October 2014, as long as the periodical payments she made fell within regulation 12(1). I am satisfied that they did and that they fell within regulation 12(1)(a). The lease expressly made CLO liable to pay the HA rent in order to occupy the property as her home.

(b) Did anything change on 31 October 2014 with the transfer of the property from the HA?

67. On 31 October 2014, the HA transferred the property to CLO, her daughter and son-in-law. The TP1 form showing the transfer of registered title confirms that the property with full title guarantee was transferred by the HA to CLO and her daughter and son-in-law (pages 156 to 163 of the FTT appeal bundle). The Register view document at pages 152 to 153 of the FTT appeal bundle confirms that on 05 February 2015, CLO, her daughter and son-in-law were individually named as the proprietors of the property with title absolute.
68. On 12 June 2015, CLO, her daughter and son-in-law, all signed a memorandum of agreement that the property was purchased in their joint names and was owned by them as tenants in common (page 177 of the FTT appeal bundle). The memorandum confirmed CLO held the first 50% of the equity in the property, with the remaining 50% being owned by her daughter and son-in-law.
69. Given the terms of the documents and the nature of the transfer that took place, from 31 October 2014 onwards CLO was a joint legal owner of the property. CLO met the definition of being “entitled to dispose of the fee simple *whether or not with the consent of other joint owners*” (emphasis added in italics). As a tenant in common, CLO would need the consent of the other owners to do this. However, the inclusion of the wording emphasised in italics above in the definition confirms CLO would fall within it even though she needed to obtain that consent. The definition expressly contemplates an owner might be someone who has to obtain consent of other joint owners to dispose of the fee simple.
70. CLO argues that nothing changed on 31 October 2014 because someone else (now) owns part of the property instead of the HA, and CLO does not own it outright. This fails to reflect, however, that:
- (a) the freehold of the property was transferred jointly to CLO and her daughter and son-in-law; and
 - (b) to fall within the definition of an “owner”, it is sufficient that CLO’s entitlement to dispose of the fee simple (i.e. the freehold) requires consent of her daughter and son-in-law (the other joint owners).
71. CLO argues, through Mr Brook, that the matters raised by the Respondents are a play on words. I do not agree. The matters raised by the Respondents confirm

that CLO's status under the HB (SPC) Regulations 2006 changed on 31 October 2014 because she became an owner of the property for the purpose of regulation 12(2)(c) of the HB (SPC) Regulations 2006. This meant HB was not payable in respect of any of the monthly payments CLO made to her daughter and son-in-law after that date.

(c) Did the payments CLO made after 31 October 2014 fall within regulation 12(1) of the HB (SPC) Regulations 2014?

72. As explained above, regulation 12(2)(c) applies to CLO from 31 October 2014 onwards and she was not entitled to it after that date. In terms of CLO's own entitlement to HB, it therefore does not matter whether the payments *also* ceased to fall within regulation 12(1) of the HB (SPC) Regulations 2006.
73. Mr Brook has, however, argued that the part of **CH/1578/2006** dealing with payments by one tenant to another can be distinguished from CLO's circumstances because the appellant in **CH/1578/2006** was a joint tenant and CLO is a tenant in common. Mr Brooks argued that the analysis in **CH/1578/2006** about the appellant's liability to pay rent to her son was confined to joint tenants and would not apply to CLO as a tenant in common.
74. It is therefore appropriate to consider this issue. I note, however, that it is only likely to arise where, as in **CH/1578/2006**, a claimant is not an owner within the meaning of regulation 2 and the application of 12(2)(c) but owns an equitable interest in the property in question.
75. Having considered the Respondents' submissions, I agree that for the purpose of regulation 12(1) of the HB (SPC) Regulations 2006, there is no material distinction to draw between the position of a joint tenancy and a tenancy in common. As the Respondents have submitted, the decisions of **Jones v Jones [1977]** 1 WLR 438 and **Ali v Khatib & Ors [2022]** EWCA Civ 481 describe the general position at common law for tenants in common and the payment of rent.
76. In **Jones v Jones**, Lord Denning MR held (emphasis added):

*"It is quite plain that these two people were in equity tenants in common... one was in occupation of the house. The other not. Now the common law said clearly that **one tenant in common is not entitled to rent from another tenant in common, even though that other occupies the whole... the mere fact that one tenant was in possession and the other out of possession did not give the one that is out any claim for rent...As between tenants in common, they are both equally entitled to occupation and one cannot claim rent from the other.**"*

77. In **Ali v Khatib**, the Court of Appeal referred to the principle set out in **Jones v Jones**, because it had been relied on a subsequent case called **Davis v Jackson**. At paragraph 72 of **Ali v Khatib**, Andrews LJ stated:

*"I simply wish to add my own endorsement of the observations made by Snowden J in the passage at [61] to [64] of his judgment in **Davis v***

Jackson. The starting point in every case is that a co-owner in occupation is not obliged to pay occupation rent merely because he is living in the property and the co-owner is not. Something more has to be shown which makes it just and equitable that he should pay that other owner for his use and occupation of the property – for example that he is exploiting the property for his own financial gain, or that he has precluded the co-owner from exercising a right of occupation that he (or she) wished to exercise. The focus should therefore be on the behaviour of the person in occupation.”

78. I therefore agree with the Respondents that given the common law position, there is no material distinction to be drawn under regulation 12(1) between situations where the beneficial ownership structure is as joint tenants and where it is as tenants in common. Any difference between those structures does not affect the rights of the tenant in question to occupy the property.
79. Given this, I consider the submissions put forward by the Secretary of State in **CH/1578/2006** are relevant where the beneficial ownership of the property is held as tenants in common. For the avoidance of doubt, I confirm they should be applied to that situation.
80. In **CH/1578/2006**, the appellant and her son characterised the payments she was making as “rent”. Mr Commissioner Poynter accepted the Secretary of State’s submissions that irrespective of how those payments were described by the appellant and her son, they were in fact payments under section 13(6) of the Trusts of Land and Appointment of Trustees Act 1996. Set in that context, the relevant parts of paragraphs 3 to 12 of the Secretary of State’s submissions that were cited at paragraph 12 of **CH/1578/2006** are:

“11. Regulation 10 of the Housing Benefit (General) Regulations 1987 (now regulation 12 of the housing Benefit Regulations 2006) provides that the payments in respect of which housing benefit is payable are the periodical payments which a person is liable to make in respect of the dwelling which he occupies as his home listed in regulation 10(1)(a) to (j). The following are relevant to this case.

- (a) Payments of, or by way of, rent;*
- (b) Payments in respect of a licence or permission to occupy the dwelling;*
- (c) Payments in respect of, or in consequence of, use and occupation of the dwelling.*

12. *The Secretary of State submits that none of these cover the payments made by the claimant in this case, for the following reasons:*

- (a) Section 13(6)(a) of the 1996 Act refers to payment by way of compensation to the beneficiary whose entitlement has been*

excluded or restricted. It is significant that the legislation refers to compensation, rather than rent.

- (b) *It is a defining feature of rent paid under a tenancy or a licence to occupy is that the rent is paid in consideration of the grant by the landlord of a right to occupy the property. In this case, the claimant already had a right to occupy. The money she paid her son was not paid in order to secure that right. Rather it was paid to compensate him for restrictions on his rights as beneficial owner, particularly his right to occupy or rent out the property to a third party.*
- (c) *The housing benefit scheme as a whole is intended to cover payments made to secure occupation, not payments made to compensate another person for not exercising a right to occupy;*
- (d) *If the payments which were made to the claimant's son were repayments of the remortgage loan, they would not be rent within the meaning of the housing benefit regulations. The claimant's liability to make such payments arose as a result of acquiring a beneficial interest in the property, not in consequence of her use and occupation of the dwelling."*

81. In the same way as Mr Commissioner Poynter, I accept those parts of the Secretary of State's submissions. Relevant decision-makers, including the First-tier Tribunal should consider them when deciding whether payments by one tenant in common to another tenant in common fall within regulation 12(1) of the HB (SPC) Regulations 2006 or, where applicable, the Housing Benefit Regulations 2006 (which use identical wording for equivalent provisions).

Did the FTT make one or more material errors of law in its decision dated 28 September 2023?

82. The first possible error of law is the adequacy of the FTT's findings and reasoning about why CLO was an owner of the property. Elements of the FTT's analysis in the Decision Notice and Statement of Reasons are slightly unclear. The FTT referred at paragraph 4 of the Decision Notice to the transfer of the freehold legal estate to CLO, her daughter and son-in-law and that she is also beneficial owner of the property as a tenant in common with a 50% share. The FTT stated at paragraph 5 of the Decision Notice that the Judge did not accept the submissions made that CLO was simply a legal owner of the freehold estate. The Statement of Reasons does not explain how this was relevant to the FTT's analysis. Separately, the FTT referred at paragraph 6 of the Statement of Reasons to CLO remaining a tenant under the shared ownership tenancy. It is unclear how the FTT evaluated this as part of its decision.
83. However, the FTT made a factual finding that at the date of the transfer on 31 October 2014, CLO became the owner of the freehold of the property and owned 50% of it. The FTT also found that CLO was, and remained, legal owner of the property as well as owning a proportion of the equitable estate. The FTT

described this as CLO being a joint tenant in law and a tenant in common in equity with her daughter and son-in-law.

84. These factual findings are not irrational or unreasonable. They are ones reasonably open to the FTT to make on the evidence before the FTT. Having made those findings and having correctly identified and applied the definition of “owner” in regulation 2 of the HB (SPC) regulations 2006, the only outcome open to the FTT was to conclude that regulation 12(2)(c) applied to CLO. Any error of law by the FTT in explaining other elements of its reasoning was therefore not material (i.e., not one capable of making a difference to the outcome).
85. Next, I considered whether the FTT explained adequately why CLO’s payments to her son-in-law could satisfy regulation 12(1), including whether it directed itself correctly in law in light of **CH/1578/2006**. I have decided that any error of law here is also not material. It is not material, because the FTT decided separately that CLO was not entitled to HB as a result being an owner of the property within the meaning and application of regulations 2 and 12(2)(c) of the HB (SPC) Regulations 2006. The FTT’s analysis and reasoning about whether the payments satisfied regulation 12(1) does not change the overall outcome it reached that CLO was not entitled to HB from 31 October 2014 onwards.
86. Finally, I considered whether the FTT made a material error of law because of the conflict between what it explained at paragraph 6 of its Decision Notice dated 28 September 2023 and its reasoning at paragraph 18 of the Statement of Reasons. I note that a staff member at Bolsover wrote to the FTT on 29 September 2023, drawing attention to what was written at paragraph 6 of the Decision Notice and asking for the Judge to clarify this point.
87. The Statement of Reasons does not address the conflict between what is stated at paragraph 6 of the Decision Notice and the reasoning in the Statement of Reasons, in particular, at paragraph 18. At that paragraph, the FTT stated in clear terms that Bolsover had not made an official error. The wording in paragraph 6 of the Decision Notice has not been corrected under rule 36 of the Tribunal Procedure (First-tier Tribunal) (SEC) Rules 2008. The FTT has therefore not explained the conflict between the documents.
88. Applying the balance of probabilities, I am satisfied the FTT made an error of law, namely that the Statement of Reasons does not adequately explain this part of the FTT’s decision. This is a material error of law.

Conclusion, including disposal

89. Having decided the FTT's decision involved a material error of law, it is appropriate to exercise my discretion to set aside the Tribunal's decision dated 28 September 2023 under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Having done so, section 12(2)(b) of that Act provides that I must either remit the case to the First-tier Tribunal with directions for their reconsideration or remake the decision.
90. The FTT made findings of fact at paragraphs 13, 15, 16 and 17 of the Statement of Reasons that:
- (a) CLO's circumstances changed from 31 October 2014 when the legal ownership of the property was transferred to her and her daughter and son-in-law;
 - (b) CLO could reasonably be expected to know this change might affect her entitlement to HB;
 - (c) Bolsover required any changes in circumstances to be notified in writing;
 - (d) CLO did not inform Bolsover in writing about this change in her circumstances until after she wrote to Bolsover on 10 November 2022 stating she no longer wanted to claim HB; and
 - (e) CLO did not report this change of circumstances to Bolsover by telephone in late 2014 or subsequently.
91. The FTT made these findings of fact having heard and evaluated the evidence provided to it. I do not consider any of the factual findings summarised at paragraph 90 above are irrational or unreasonable in the sense that no FTT directing itself correctly could properly have made them. These factual findings are unaffected by the FTT's material error of law elsewhere in its Decision.
92. Remitting this appeal to a new First-tier Tribunal to ask CLO about her actions in around 2014 would mean asking her to recall matters that are now nearly 12 years' old. CLO's appeal was based on her telephoning Bolsover on 14 November 2014 to notify it of her change in circumstances (letter of appeal, page 195 of appeal bundle). At paragraph 15 of its Statement of Reasons, the FTT explained that at the hearing on 28 September 2023, CLO indicated she could not recall if she had called the council to report that change. It is unlikely that CLO's recollection of this matter will have improved in the two years since.
93. Regulation 81(1) of the HB (SPC) Regulations 2006 confirms that any HB overpayment other than one to which regulation 81(2) applies is recoverable from the claimant (here, CLO). The FTT's factual findings mean regulation 81(2) cannot apply to CLO's HB overpayment. The only possible outcome based on the factual findings at paragraph 90 above is that the overpayment of £27,480.96 is recoverable from CLO.
94. In the circumstances, I have decided to remake the FTT's decision. Given the matters at paragraphs 90 to 93 above and applying the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I consider it is fair, just and proportionate to do so.

95. I therefore preserve the FTT's factual findings set out at paragraph 90 above and remake the FTT's decision in the terms set out on page 2 above.
96. CLO argues it is extremely unjust for her to now have to repay all HB from the date her daughter and son-in-law acquired a 50% interest in the property. Unfortunately, I cannot take that argument into account in considering whether the overpayment is recoverable. The only circumstances in which it is not recoverable are where regulation 81(2) of the HB (SPC) Regulations 2006 applies. That provision only applies where the overpayment was caused by official error and other circumstances are also met. That is not the position here.
97. It is open to CLO to contact Bolsover and put forward arguments about whether it should recover some or all of the overpayment from her, and if so, at which rate. Those are, however, not matters where a First-tier Tribunal, or the Upper Tribunal, can interfere.

**Judith Butler
Judge of the Upper Tribunal**

Authorised by the Judge for issue: 27 April 2026