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Neutral Citation Number: [2026] UKUT 372 (AAC)
Appeal No. UA-2025-001738-HB

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

PB

Appellant

- v -

STOKE-ON-TRENT CITY COUNCIL

Respondent

Before: Upper Tribunal Judge Markus KC (sitting in retirement)

Date of decision: 29th September 2026

Decided on consideration of the papers

Representation:

Appellant: PB's partner

Respondent: Nicola Hall, Stoke on Trent City Council

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Judge: Judge RJS Smith

Tribunal Case No: SC049/25/00235

Tribunal Venue: Stoke-on-Trent

Decision Date: 4 August 2025

Summary of decision

In deciding whether a tenancy was “not on a commercial basis” within regulation 9(1)(a) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, the First-tier Tribunal erred in law in that:

a) It added a gloss to the statutory words by asking whether the tenancy “was or was not commercial” and whether it was “a true commercial tenancy or not” rather than asking whether it was “not on a commercial basis”;

- b) It seized on the landlord's failure to take action in regard to rent arrears as being determinative, and failed to carry out the required fact-finding, analysis and weighing of relevant factors;
- c) It compared the landlord's approach to that of a hypothetical commercial landlord.

Key words

16.3 Housing and council tax benefits; liability, commerciality and contrivance [regulations 8 and 9]

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. The decision dated 4 August 2025 under case number SC049/25/00235 was made in error of law.

Under section 12(2)(a), (b)(i) and (3) of the Tribunals Courts and Enforcement Act 2007, I set the decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with the following directions:

1. The appeal is remitted to the First-tier Tribunal for consideration at an oral hearing.
2. The new Tribunal should not involve the judge previously involved in considering this appeal.
3. The Tribunal hearing the remitted appeal is not bound in any way by the decision of the previous Tribunal. Depending on the findings of fact it makes, the new Tribunal may reach the same or a different outcome from the previous Tribunal.
4. Copies of this decision and the written submissions provided by each party to the Upper Tribunal shall be added to the appeal bundles and placed before the First-tier Tribunal hearing the remitted appeal.

These Directions may be supplemented by later directions by a Tribunal Caseworker, Tribunal Registrar or Judge in the Social Entitlement Chamber

REASONS FOR DECISION

Introduction

1. The appellant ("PB") in this case is the niece of the housing benefit claimant and is his attorney under a lasting power of attorney. The claimant has dementia and is unable to act. PB brings this appeal as a person affected by the decision in question, pursuant to regulation 3(1)(b)(iii) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 ("the D&A regulations")

read with paragraphs 6(3) and 23(2) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 (“the 2000 Act”).

2. PB was the appellant in the First-tier Tribunal (“FtT”) proceedings. It had been assumed that she had brought the appeal as the claimant’s appointee. I have not seen evidence that she was appointed by the respondent or treated as having been appointed by them in accordance with regulation 63(3) or (5) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“the HB (SPC) Regs”). In any event, the provisions for appointment under those regulations do not apply where there is an attorney.
3. The FtT mistakenly treating her as an appointee is of no consequence as I am satisfied that she was in fact entitled to bring the appeal as an attorney as set out at paragraph 1 above.
4. The respondent has stated that there is a second attorney and has suggested that they are added as a party under rule of the Tribunal Procedure (First-tier Tribunal) Rules 2008. I do not consider that it is necessary to do so. PB has acted in these proceedings to date without apparent problem, there is nothing before me to suggest that the attorneys have not been appointed to act jointly and severally, and in any event PB has stated that the other attorney is fully aware of what is going on and has been copied into the correspondence.
5. The issue in the appeal concerns the decision of the First-tier Tribunal (“FtT”) upholding the decision of the respondent that the claimant was to be treated as not liable to make payments on his dwelling because the tenancy was not on a commercial basis. Both the FtT and the respondent addressed this matter on the basis that the applicable provision was regulation 9(1)(a) of the Housing Benefit Regulations 2006. In fact, due to the age of the claimant, the relevant regulation was regulation 9(1)(a) of the HB (SPC) Regs. Happily the error is immaterial as the two regulations are identical.
6. I have decided this appeal on consideration of the papers, without an oral hearing. PB’s representative has stated that an oral hearing is not required. The respondent has not expressed a view. I am satisfied that I can decide the appeal fairly without a hearing. I have all the documents on which the parties rely and their detailed written submissions. I do not need to hear evidence. I would not be assisted by having a hearing and it would be disproportionate to direct one.

Factual background

7. There are a number of disputed factual matters in this case. In this summary factual background I have included those matters that I believe to be undisputed but the summary should not be taken as findings of fact that bind the next FtT which will reconsider this case. It will have to make all relevant factual findings for itself.
8. PB owned a building which was converted to include a one bedroom bungalow for the claimant to live in. The bungalow was let by PB to the claimant on an assured shorthold tenancy, with a written tenancy agreement dated 1 December 2022.

9. Since around February 2023 (as far as I can tell) the claimant had been underpaying rent. PB allowed him to remain in occupation and did not seek to evict him.
10. The housing benefit claim that is the subject of this appeal was made on 5 December 2024. On 19 December 2024 the respondent refused the claim on the ground that the tenancy was not commercial and that it had been contrived to take advantage of the housing benefit scheme, relying on regulation 9(1)(a) and (l) respectively. The reasoning, as summarised in the respondent's response to the appeal to the FtT, was: "the inaccuracy of the reported Core Rent, the lack of evidence of Rent Payments being made to the Landlord, and the absence of enforcement following a substantial period of time that Benefit has not been paid, and the accrual of arrears since the tenancy commenced".
11. The appellant appealed to the FtT. PB attended with a representative, and presenting officers for the respondent also attended. The FtT heard oral evidence and had a substantial bundle of documents.
12. The FtT refused the appeal. Its decision as set out near the start of its written reasons was that "the tenancy ... is not truly a commercial tenancy."
13. In the written reasons, the FtT noted that, when asked why eviction proceedings had not commenced due to rent arrears, PB said she did not want to put her uncle out on to the street. The FtT said of this: "the reality is that this is very clear evidence that the tenancy is not a commercial tenancy". The FtT also found that PB had another tenant in another part of the building who had never been in arrears and PB had said that, if he was in arrears, she would take steps to evict him. The FtT said: "this was further evidence that the tenancy ... was not a commercial tenancy".
14. The FtT then said:
 - "6. The real issue in this case...is whether or not the tenancy...is a true commercial tenancy or not.
 7. Having considered Regulation 9(a) of the Housing Benefit Regulations 2006, and all the evidence written and oral evidence before it, the Tribunal is positively satisfied, on the balance of probabilities, that this is not a commercial tenancy within the meaning of the Housing Benefit Regulations.
 8. This is because the evidence, and the facts found by the Tribunal, clearly shows that there is not risk of eviction despite [the claimant] having accrued significant arrears over a period of almost 2 years. In [PB's] own words. She doesn't want to be in the position of putting her elderly uncle with dementia out on the street. But if she was a commercial landlord operating a commercial tenancy, she would have had to of business necessity".
15. In the light of its conclusion on regulation 9(1)(a), the FtT correctly did not consider regulation 9(1)(l).

Grounds of appeal to the Upper Tribunal

16. The FtT refused PB's application for permission to appeal to the Upper Tribunal. Upper Tribunal Judge Wright gave permission to appeal on 18 December 2025, on the following grounds:

“6. First, the FTT has arguably added an unnecessary gloss to the statutory test it had to apply, namely whether (or not) the tenancy was truly a commercial tenancy, or was a true commercial tenancy. Neither arguably reflects the statutory test of the tenancy or the agreement between the parties not being on a commercial basis. There was arguably insufficient fact-finding and analysis of the terms of the agreement and tenancy between [the claimant and PB], and whether they were not on a commercial basis.

7. Second, the FTT arguably wrongly focused on one factor only as a ‘trump card’, the risk of eviction, and had no apparent regard to any other relevant factors. This was, at least arguably, an approach which was wrong in law: see *R(H) 1/03* and *Warwick DC v SSWP and CH (HB)* [2020] UKUT 240 (AAC).

8. Third, though this may be no more than an example of a factor that arguably ought to have been taken into account under the second ground of appeal, the FTT arguably failed to have adequate regard to the fact that [the claimant] had been paying some rent on [the bungalow] (see for example page 180) and [the claimant] had seemingly, based on the FTT’s finding in paragraph 5(l) of its reasons, been paying the full rent prior to February 2023 (and see further on this point 7.16 on page 184 of the FTT bundle). Given this, it is arguably unclear why the FTT concluded that [the claimant] having paid the full rent since he came under a liability to do so (unfortunately the FTT does not identify this date, but it may have been 1 December 2022 (page 179)), was not relevant to whether the agreement under which he occupied the dwelling was not on a commercial basis. By way of example, what was the reason why [the claimant] stopped paying the full rent from 1 February 2023 (if that was the case) and why was that not relevant to a proper assessment of all relevant matters under regulation 9(1)(a) of the HB (SPC) Regs?”

17. Judge Wright expressly did not refuse permission to appeal on the other grounds advanced by PB. I do not set those out here because I have not needed to consider them, as I have decided to allow the appeal on the above grounds. Moreover, the other grounds essentially relate to the disputed facts which will need to be addressed afresh by the next tribunal.

The parties’ submissions

18. PB’s representative submits that the tenancy was at all times a commercial arrangement. He submits that the FtT has given disproportionate weight to the fact that the claimant was not evicted and did not make findings of fact on and weigh all relevant matters. The representative also sets out in some detail the evidence relied upon by PB and how it supports a conclusion that the tenancy was on a commercial basis.
19. The respondent submits that whether a tenancy or agreement is not on a commercial basis depends on the terms on which the person occupies the property and which are or are not enforceable at law. Where it appears that a tenancy is constructed in such a way as to create or increase an entitlement to benefit, then it may be contrived to take advantage of the benefit scheme, see *MP v Sutton LBC* [2011] UKUT 193 (AAC).

20. The respondent does not agree that the FtT confined its assessment to the eviction point. The FtT had the appeal bundle which set out all the relevant evidence and which the judge would have reviewed, and the judge asked detailed questions of both parties. The respondent submits that the evidence showed that the tenancy was not on a commercial basis. The respondent repeats a number of the factual matters that it has relied upon throughout its decision making and the appeal, which it contends show that the tenancy was not on a commercial basis.
21. As regards the third ground identified by Judge Wright, the respondent acknowledges that some payments were made by the claimant but that some of the payments were made to other recipients. PB had said that this was in order to discharge her debts to others and that it was easier for the claimant to pay them directly. The respondent says that no clear or consistent justification was provided, there was no explanation for why those payments subsequently ceased, and that there are concerns about possible abuse of the claimant's funds.

Legal Framework

22. A condition of entitlement to housing benefit is that the person "is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home" – section 130(1)(a) of the Social Security Contributions and Benefits Act 1992.
23. Regulation 9 of the HB (SPC) Regs provides for the circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling. These include:
 - "1 (a) the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis;
 - ...
 - (l) in a case to which the preceding paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under Part 7 of the Act.
 - (2) In determining whether a tenancy or other agreement pursuant to which a person occupies a dwelling is not on a commercial basis regard shall be had inter alia to whether the terms upon which the person occupies the dwelling include terms which are not enforceable at law."

Discussion

24. As has been noted in the considerable body of case law discussing the meaning and application of regulation 9(1)(a), it is the agreement between the parties that must be assessed to be non-commercial. And regulation 9(2) requires regard to be had to whether the terms of occupation include terms which are not enforceable at law.
25. In *Warwick District Council v SSWP and CH* [2020] UKUT 240 (AAC) the claimant's children rented the property to her and her husband pursuant to a written tenancy agreement. The claimant and her husband paid rent in full until they retired after which they fell into arrears and claimed housing benefit. The position of Warwick DC was that the tenancy had changed from commercial to

non-commercial when the claimant ceased to be able to pay the rent on a regular basis. They said that a commercial landlord would not have allowed those circumstances to have arisen and would have brought eviction proceedings. They said that the correct approach is to ask what a commercial landlord would do.

26. It pays to cite at some length from the discussion of these matters by Upper Tribunal Judge Poynter:

“Trump-card facts and the notional commercial landlord

22. The test that Warwick - and, on appeal, the Tribunal - had to apply was whether the “tenancy or other agreement” pursuant to which the claimant occupied her home was “not on a commercial basis”. The quoted words in the previous sentence are those which have been used by the legislator. The surest way for decision makers to make a legal mistake is to rely on a paraphrase of, or to place a gloss on, that statutory wording because it is easier to apply the law as paraphrased, or glossed, in a particular case.

23. Whether or not a tenancy is on a commercial basis is a question of judgment. It is not what lawyers call a “primary fact”. That is, it is not something that can be observed about the world. Rather it is a compound, or secondary, fact: an inference of fact drawn by the exercise of the decision maker’s judgment from the “constituent facts”, namely all the primary facts - and sometimes other secondary facts - that are relevant. Judge Poynter added a footnote here – “For example, whether or not the tenancy or other agreement contains terms that are not enforceable at law (see regulation 9(2)) is also a conclusion rather than a primary fact.

24. That is not a problem if all the constituent facts support the same conclusion. But in any case in which - as here - there is a serious dispute about whether a tenancy or other agreement is “not on a commercial basis”, that will not be so: some of the constituent facts will tend to support the conclusion that the tenancy is commercial and some will tend to support the opposite conclusion.

25. Moreover, the facts of each case will be different and conclusions about commerciality are intensely fact-specific: comparatively small differences of fact can alter the side on which the scales come down. It is therefore not possible to lay down hard and fast rules about the circumstances in which a tenancy will or will not be “on a commercial basis”.

26. Faced with the problem of drawing a single inference from competing facts, without the assistance of detailed rules about when one fact should be accorded more weight than another, it is easy for decision makers to rely on what I will describe as a “trump-card fact”. That is achieved by seizing on a single fact and holding that its very existence means the tenancy cannot be - or, alternatively, must be - commercial.

27. Unfortunately for claimants, the type of fact that seems to work best as a trump card nearly always tends towards the conclusion that the tenancy is uncommercial.

28. In particular, and moving closer to the facts of this appeal, trump-card facts often involve the decision maker calling in aid the “notional commercial

landlord". "No commercial landlord", it is said, "would have let property on terms that would not have been made available to the public as a whole; or would not have taken a deposit; or would have set the rent at that level; or would have omitted subsequently to increase it; or would have allowed arrears of a given level to accrue without taking action; or would have omitted to charge contractual interest etc.; and so this tenancy cannot be commercial".

29. There are a number of problems with that approach.

Weighing all the relevant factors—R(H) 1/03

30. First, relying on one fact as a trump card in this way means that the decision maker does not properly take into account the facts that support a different conclusion. Indeed, the very attraction of the trump-card approach is that it lets the decision maker off the hard work of doing that. As a result the decision maker will probably commit the legal error of failing to take into account relevant considerations.

31. The leading authority on how to approach the issue of commerciality is the decision of Mr Commissioner Jacobs in *R(H) 1/03*. That decision was the first decision of the Commissioner on what is now regulation 9 (formerly regulation 7 of the Housing Benefit (General) Regulations 1987). It has provided a sound basis for the assessment and explanation of commerciality decisions ever since.

32. As summarised in the head note, *R(H) 1/03* is authority for the following

"2. the proper approach for an appeal tribunal was to investigate and determine the facts material to the issue [i.e., of commerciality] and then determine as a question of "compound fact" whether as a matter of the proper use of language the arrangement was not on a commercial basis, applying the principles established by the authorities;

3. in applying those principles ..., the tribunal must not reason by analogy from the reported cases and must consider the individual facts of each case in the context of all the others...;

4. it followed that, if a tribunal had made sufficient findings of the constituent facts, there may be little more that it could usefully say to explain its findings of compound fact;"

33. It may also help if I set out in full what is said about the recommended approach summarised in paragraph 3 of the head note. Having made the point that tribunals should not argue by analogy with reported decisions, Mr Jacobs continued:

"Investigation of the facts

21. Whether or not an arrangement is on a commercial basis is, in the useful phrase of Jessel MR in *Erichsen v. Last* (1881) 8 Queen's Bench Division 414 at page 416, "a compound fact made up of a variety of things." The proper approach to that type of fact is to begin by finding the constituent facts. The tribunal must begin with an investigation into all aspects of the arrangement on which the claim is based. The authorities indicate in general terms the subject matter for the inquiry. They also give some more detailed suggestions that may be relevant in particular types of case. Having made its inquiry, the

tribunal must make and record findings of constituent fact on all relevant matters. Those findings provide the foundation for a finding on the compound fact: was the arrangement on a commercial basis?

Analysis

22. The tribunal must analyse the constituent facts of the case as a composite whole. The significance of each factor cannot be considered in isolation. Each must be considered in the context of all the others. An overall view must be taken. This has an impact on the explanation for a decision that it is possible to give to a claimant and on the approach that the Commissioners take on appeal on error of law.

Explanation and adequacy of reasons

23. A claimant is entitled to some explanation of why the tribunal came to the conclusion that it did. There is a limit to the extent that this is possible, because the mental process of making the finding is subconscious. Although the constituent facts and their significance can be isolated and discussed, the final conclusion is based on the complex interaction of factors and impressions that a decision-maker cannot explain. If the tribunal has made proper findings of the constituent facts, there may be little more that can usefully be said to explain the finding of compound fact. At best, it may be possible to identify some of the constituent facts that have particularly figured in the tribunal's deliberation and conclusion, and to explain how and why the tribunal analysed their significance. It may also be appropriate to refer to matters that were particularly emphasised in argument."

34. If the landlord has (say) allowed arrears of rent to accrue, then that may be a factor that supports a decision that the tenancy or other agreement as a whole is no longer on a commercial basis. But it will usually be only one of many factors and must still be weighed against the others in the context of the evidence as a whole. It may even turn out to be the determinative factor, but that is a conclusion that can only be reached at the end of the weighing process.

35. By contrast, reliance on a trump-card fact means that the weighing process never even begins. The existence of that fact allows the decision maker to jump directly to a conclusion: because "no commercial landlord would do" whatever it is the landlord in the case has done, the tenancy must be uncommercial.

The legislative context

36. The second problem is that the word "commercial" is capable of describing quite a wide range of arrangements. When it appears in a statutory provision, which of those arrangements are to be regarded as commercial for the purposes of that provision, and which are not, depends on the legislative context.

37. For the purposes of regulation 9, that context is the prevention of abuse. Regulation 9(1)(a) excludes claimants whose tenancies are not on a commercial basis from entitlement to HB because - even if a particular non-commercial tenancy is not *actually* abusive of the scheme - the legislator has

made a judgment that non commercial tenancies in general are potentially abusive.

38. However, the overall legislative purpose of the HB scheme is that those who need financial help to meet their genuine and reasonable housing needs should receive it.

39. The word “commercial” in the phrase “not on a commercial basis” in regulation 9(1)(a) must therefore be interpreted with both those legislative purposes in mind. It must not be interpreted so broadly that benefit is only refused in cases where there is actual abuse: to do so would make regulation 9(1)(l) otiose. But equally the word should, if possible, not be interpreted in a way that denies benefit in cases where there is no potential abuse of the scheme.

...

46. ... although the word “commercial” in regulation 9(1)(a) is not a term of art, the legislative context in which it is used influences its meaning in ways that do not apply when it is used as part of the phrase “commercial landlord” in sentences with the form, “A commercial landlord would not ...” or “No commercial landlord would ...”. The decisions, actions and omissions of a commercial landlord in the latter sense do not have to take account of a policy objective that people who genuinely need financial assistance with their rent should receive it. Those decisions, actions and omissions are therefore not an infallible guide to whether a tenancy or other agreement is, or is not, on a commercial basis for the purposes of the HB scheme.

Commercial landlords are a disparate group

47. The third, and most fundamental, problem with using the “notional commercial landlord” as an aid to decision-making is that people who are in the business of letting residential property are not a homogeneous group. They are not identically motivated and they do not all set up their businesses - or react to the problems that they encounter in those businesses - in the same way. As Mr Jacobs remarked in *CH/296/2004*, “[Rachman] is not the only model of a commercial landlord”

48. As I said paragraph 44, it is possible to make an argument that no commercial landlord would rent to a tenant who would have to rely on HB because a higher rent would be obtained renting to a tenant who would not. Despite that, thousands of landlords do in fact rent to claimants.

49. Similarly, I have seen examples—sometimes many examples—of commercial landlords who have let property on terms that were particular to an individual tenant; who have not taken a deposit; who have set rents at levels tenants could afford - or that were sufficient to cover the landlords outgoings on the property - and have not subsequently increased them; who have omitted to charge contractual interest; and who have allowed tenants huge latitude in relation to arrears of rent.

...

Conclusions on the “notional commercial landlord”

53. For all those reasons, I judge that the Tribunal was correct to hold that:

“The test is whether the tenancy is not on a commercial basis. It is not whether the landlord is in business as a commercial landlord”,

and I reject Warwick’s submission that:

“... for the tenancy to be a commercial tenancy it must operate along the lines that would be expected in any other commercial tenancy between non-related parties. The two factors are therefore interlinked: the actions of a commercial landlord are linked to the commerciality of the tenancy.”

Rather a tenancy is “not on a commercial basis” if, having taken into account all the relevant facts, and applied the principles set out in the authorities, it can be concluded that, as a proper use of language, it is not on a commercial basis.

...

55. ... assuming...that a decision not to take action to evict may be relevant to that issue, the correct way to approach it is not to ask “Would a commercial landlord have done this?” but rather “Why did this landlord do this in the particular circumstances of this case?” If, taking into account all the facts of the case, the reason was not a commercial one then that is a fact that must be taken into account in the process described in *R(H) 1/03*. It will not be the only such fact and it does not automatically trump the other facts, although in some cases it may turn out to be determinative once everything has been taken into account.”

27. I turn now to the grounds of appeal.

Ground 1

28. The question for the FtT was whether the tenancy was “not on a commercial basis”. The question that the FtT asked itself was whether the tenancy was “a true commercial tenancy or not” and its decision was that the tenancy was “not a truly commercial tenancy”. As UT Judge Poynter said in *Warwick DC v SSWP & CH* at [22], “The surest way for decision makers to make a legal mistake is to rely on a paraphrase of, or to place a gloss on, that statutory wording because it is easier to apply the law as paraphrased, or glossed, in a particular case.”
29. Regulation 9(1)(a) is not concerned with whether the tenancy was commercial, but with whether it was not on a commercial basis. There is a difference between the two in substance. Moreover, asking whether the tenancy “was...or was not” commercial fails to reflect that the paragraph does not require a positive finding that it was on a commercial basis but requires only a finding that it was not on a commercial basis. The FtT’s approach in this case meant that it put the onus in the wrong place (see *R v Poole BC ex p Ross* (1996) 28 HLR at 358). Finally I am not sure what the FtT meant by the words “truly” and “true”. They do not appear in the regulations and it appears that, by adding these words, the FtT’s approach “elevates the requirement to a level beyond that set” by regulation 9 (see also *Poole BC*).
30. Accordingly, the terms of the FtT’s reasoning demonstrates that it fell into error of law.
31. Under this ground, UTJ Wright also identified the question of the FtT’s fact finding and analysis of the terms of the agreement and tenancy, and whether they were on a commercial basis. In my view this falls more neatly under Ground 2.

Ground 2

32. It is clear from the FtT's reasons that it did treat the question of eviction as the "trump card" in this case. It said at paragraph 6(m) that the failure to take eviction proceedings "is very clear evidence that the tenancy is not a commercial tenancy". At paragraph 5(o) the FtT noted that PB said she would have taken steps to evict her other tenant had arrears accrued to the same extent as the claimant's arrears and said "Again, the Tribunal concluded that this was further evidence that the tenancy ...was not a commercial tenancy". The FtT went on to say at paragraph 8 that it had found that the tenancy was not a commercial tenancy "because the evidence, and facts found by, the Tribunal clearly shows that there is not risk of eviction despite [the claimant] having accrued significant arrears over a period of almost 2 years".
33. I recognise that in its findings of fact the FtT mentioned other factual matters, such as that PB has power of attorney over the claimant, that she had converted the premises into a bungalow for the claimant, that she was his niece, and that there were discrepancies in the Rent Book. However, the FtT did not state what (if any) significance it placed on any of these matters. No other factual matter was identified as being relevant to the FtT's conclusion under regulation 9(1)(a). There is no evidence that each relevant factor was considered and weighed against the others in the context of the evidence as a whole.
34. It is clear from the FtT's written reasons that the fact of PB having allowed arrears to accrue without taking eviction proceedings was the only factor considered by the FtT as being relevant to its decision. It was indeed treated as the "trump-card".
35. By seizing on one factor in this way, the FtT failed to carry out the required fact-finding, analysis and weighing process as demonstrated by the authorities. In addition to the matters which it mentioned but failed to address in any meaningful manner, as I set out above, there were other clearly relevant matters which the FtT entirely omitted from its considerations. In particular there was, as Judge Wright observed, no consideration or analysis of the terms of the tenancy or agreement between the parties, or the history of rental payments (see Ground 3). In the light of regulation 9(2), this was a material omission.
36. Finally under this ground, in paragraph 8 the FtT compared PB's approach to rent arrears to that of a hypothetical commercial landlord. In the light of the analysis and principles identified by Upper Tribunal Judge Poynter in *Warwick*, this was an error of law.

Ground 3

37. Judge Wright said that arguably the FtT should have taken into account the history of rental payments, and set out some of the aspects of this under the third ground in his grant of permission. The fact that the claimant had paid full rent for a significant period of time was capable of indicating the nature of the agreement between him and PB and would have been a relevant factor to weigh in the balance. Further findings of fact as to the history of the rental payments were required by the FtT including, as Judge Wright observed, the date from which and the reason why the claimant ceased to pay full rent.

Conclusion

38. For the above reasons, I find that the FtT's decision was in error of law and I set it aside and remit it to another FtT for reconsideration.
39. It is important to emphasise that this decision summarises the main relevant principles applicable to consideration of regulation 9(1)(a) and explains why the last FtT approached the appeal incorrectly, but it does not purport to set out definitively what are the relevant factors for the next FtT to consider nor how they should be weighed. That is entirely a matter for the next FtT to address in the light of the regulations and the applicable principles.
40. The next FtT should also remember that, if it decides that regulation 9(1)(a) does not apply, there being no other of subparagraphs (b) – (k) in issue, it should consider whether subparagraph (l) applies.
41. As I hope is clear from this decision, there are a number of factual matters which are uncertain and need to be explored. The respondent has identified discrepancies in regard to the rent book and rental payments which call for explanation. PB is strongly encouraged to attend the next FtT hearing so that the evidence can be explored and understood, and so that she can provide relevant explanations as to the manner of her dealing with the tenancy and the rent arrears. For similar reasons, the respondent is also encouraged to attend the next hearing.

Kate Markus KC
Judge of the Upper Tribunal
(sitting in retirement)

Authorised by the Judge for issue on 29th September 2026