

Housing Benefit and Council Tax Benefit

Urgent Bulletin

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<http://www.dwp.gov.uk/local-authority-staff/housing-benefit/>

HB/CTB U2/2013

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Who should read	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
Action	For information

Court of Appeal judgement: Burnip, Trengove and Gorry

- 1 We advised you in HB/CTB circular A6/2012 on 1 August 2012 (<http://www.dwp.gov.uk/docs/a6-2012.pdf>) that the Department for Work and Pensions (DWP) has applied for permission to appeal this decision to the Supreme Court.
- 2 The Court of Appeal judgment on 15 May 2012 unanimously held that in the cases of Burnip, Trengove and Gorry the Local Housing Allowance (LHA) size criteria discriminated unlawfully against the three appellants on grounds of disability, by not including provision to meet their need for an additional room.
- 3 The Housing Benefit Regulations were amended independently of the court case (Burnip and Trengove) and the changes came into effect in April 2011. This change allowed an extra bedroom where the claimant, the claimant's partner or both, need and receive overnight care and require a bedroom for the carer's use.
- 4 For children with severe disabilities where they are unable to share a bedroom (Gorry), the department chose to appeal the decision to the Supreme Court on the grounds that the use of the size criteria was not discriminatory or in any case could be justified.

- 5 The Secretary of State has today clarified the position regarding disabled children and has decided not to pursue the appeal further.
- 6 This means that from the date of the Court of Appeal judgment on 15 May 2012, local authorities (LAs) should allow an extra bedroom for children who are unable to share because of their severe disabilities following the guidelines as set out in paragraphs 7 to 10 below.
- 7 When a claimant says that their children are unable to share a bedroom, it will be for LAs to satisfy themselves that this is the case, for example, a claim is likely to be supported by medical evidence and many children are likely to be in receipt of Disability Living Allowance (DLA) for their medical condition. In addition LAs must consider not only the nature and severity of the disability, but also the nature and frequency of care required during the night, and the extent and regularity of the disturbance to the sleep of the child who would normally be required to share the bedroom. In all cases this will come down to a matter of judgement on facts of each individual case.
- 8 It should be noted that the judgment does not provide for an extra bedroom in other circumstances, for example, where the claimant is one of a couple who is unable to share a bedroom or where an extra room is required for equipment connected with their disability.
- 9 LAs were previously advised that as a result of the Court of Appeal judgment they could suspend part of the award which allowed for the extra room. For any cases where the LA has suspended for this reason, the suspension can now be lifted and the claimant notified of the revised decision. Arrears must also be paid as appropriate.
- 10 The Court of Appeal judgment is now considered to be **case law** and as such LAs are legally bound to apply the judgment.
- 11 The judgment applies to both the LHA size criteria and the reduction of the spare room subsidy which applies from 1 April 2013.

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