

## Challenging your 'bedroom tax' decision

There have been some important legal developments in relation to 'bedroom tax' challenges across the UK. We have therefore **UPDATED** our *toolkit guide* so that tenants and their advisors can take advantage of these developments where possible.

If you have not previously challenged a bedroom tax decision made earlier this year you may be out of time for an '**appeal**', however, you can always ask for a decision to be '**superseded**' where there has been a mistake on the facts and/or law.<sup>1</sup> So **you can still challenge under-occupancy deductions** made against your housing benefit.

If you wish to challenge a new or recent 'bedroom tax' decision you normally have one month to do so by asking for an appeal. The month is calculated from the date the council wrote to you saying your housing benefit was going to be reduced because they believe you are 'under-occupying' and have a 'spare room(s)'. You can only appeal late if you have a good reason, for example, you had been ill.<sup>2</sup> A successful late appeal allows an award to be backdated, whereas supersession can't backdate. If you can't do a late appeal, you should still be able to challenge an older decision by '**supersession**'.

This *toolkit guide* from Govan Law Centre explains how you can challenge the cut in your housing benefit. If you want to challenge your council's decision **you need to send the DISPUTE FORM below to your local revenue and benefits council office**. We have included the addresses of local council offices in Glasgow below; if you are out with Glasgow ask your local council where to send it to - you can find your local authority's full contact details in **Scotland, England, Wales and Northern Ireland** here:

<http://local.direct.gov.uk/LDGRedirect/Start.do?mode=1>

**If you want to challenge a bedroom tax decision you may be able to get free advice from a local advice agency in Scotland here:**

<http://www.moneyadvicescotland.org.uk/find-adviser>

**Local community law centres across the UK, and other sources of free advice in the UK can be found here:**

<http://www.lawcentres.org.uk/other-sources-of-advice>

Please note this document is an illustrative guide only and is not legal advice. A local advice agency may be able to represent you for free too, if not you may be able to get free help from a local solicitor under the 'Advice and Assistance Scheme' in Scotland; for England & Wales see: <https://www.gov.uk/legal-aid>

<sup>1</sup> Regulation 6(2)(b) <http://www.dwp.gov.uk/docs/a1-6011.pdf>

<sup>2</sup> You can only appeal a decision within 13 months of notification of the decision.

If you do choose to challenge your bedroom tax decision **YOU NEED TO READ THE GUIDANCE NOTES BEFORE FILLING IN THE DISPUTE FORM.** Each of these notes matches up with the same number on the form.

1. **'Reference no'** – this is the housing benefit reference that your council has given you on their letter to you, which should be at the top of their letter.
2. **'NINO'** – please put in your National Insurance Number. This helps the council match your dispute to your claim.
3. **'Name'** – your full name.
4. **'Address'** – the full postal address of your home where you have been claiming housing benefit.
5. **'Telephone No'** – your contact number if you have one.
6. **'Date of decision'** – this is the date of the letter from the council telling you about your housing benefit deductions. If this date is older than one month from when you are filling in the form below you would need to explain why it is late – for example, you were unwell, death in the family, a family crisis, or some other good reason. Alternatively, if you don't have good cause for a late appeal you can still seek a 'supersession' of the decision (which means you can't backdate if successful).
7. **'I think the decision is wrong because'** – we have included some standard technical reasons which should help you but **it is really important for you to select from the menu below which specific appeal argument applies to you and write this into Box 7** on the form in your own words. Some of these arguments have had success in Scotland and England, others remain uncertain, but there are ongoing judicial review cases in England on some of these arguments and in particular a case before the English Court of Appeal.<sup>3</sup> If these arguments are successful and you have not appealed you could be affected by what is known as the '*anti-test case*' rules which means you cannot benefit from the success of any court case for past loss unless you appealed yourself.

<sup>3</sup> <http://www.disabilityrightsuk.org/news/2013/september/bedroom-tax-case-goes-court-appeal>

### **MENU OF POSSIBLE APPEAL GROUNDS**

- *Do you have a disabled person living in the household then you might be able to say:*
  - “A disabled adult lives in my house and requires their own bedroom because of the needs of their disability. To ignore the needs of a disabled member of my household and treating them as not being entitled to their own room to sleep in is discriminatory and unlawful in relation to the Human Rights Act 1998” /AND
  - “The disabled member of my household requires a bedroom for therapeutic/care purposes/to store medical equipment in relation to their disability” /AND
  - “My home has been specially adapted to meet the needs of a disabled person”.
- *Does someone in the household have mental or physical health problems?, if so you might be able to say:*
  - “A member of my household has mental or physical health problems which would make moving from their home harmful, and requiring such a move is discriminatory and unlawful in relation to the Human Rights Act 1998”
- *Do you have children who had previously been in a household that experienced domestic violence?, if so you might be able to say:*
  - “My children need a safe space because they previously lived in a household which experienced domestic violence and requiring such a move is unlawful in relation to the Human Rights Act 1998”.
- *Do you have a small galley-style kitchen?, if so you might be able to say:*
  - “I have a small galley-style kitchen and you have wrongly classified my dining-room as a spare bedroom”.
- *If you have a bedroom which is a small box-type room, you may be able to say:*
  - “I have a small box-type room which is not a bedroom, and you have wrongly classified this as a spare bedroom. The room is less than 70 square feet in size and is unable to accommodate an adult, or a child having regard to the statutory overcrowding provisions for housing in the social rented sector, and having regard to Regulation B13”.

- *If you are separated from a former partner and share child care on a part-time basis, you might be able to say:*
  - “I am separated from my former partner and require the room you have wrongly classified as a spare room to meet my child care and parental duties. To ignore my duties as a parent, and ignore the needs of my children to stay with me, is discriminatory and unlawful in relation to the Human Rights Act 1998, and contrary to the Children Act. Separately, a child can have more than one ‘home’ for the propose of Regulation B13, or have different homes at different times as matter of fact and law”.
  
- If none of the above apply, then you may wish to argue the following if you have not used the room in question as a bedroom and can prove this:
  - “ You have wrongly classified as a spare bedroom the room I use as a \*family play room/\*storage room/\*games room”.

8. **‘Signature’** – you must sign and date the form.

9. **‘Return to council office’** – you need to send this to your local council housing benefit office – addresses for Glasgow are below, and see page 1 above if you live out with Glasgow. Always best to have proof of sending – so you can deliver by hand and ask for a receipt or send recorded delivery. You can use ordinary post if you have no other option – but in all cases always keep a copy of the form you send in. You can go to your local library or a shop that photocopies or print out two forms and fill in both, keeping one for use later. Local Revenue and Benefit Area offices in Glasgow to send your Dispute Form to –

<b>Anniesland</b>	841 Crow Road Anniesland G13 1YT	<b>Easterhouse</b>	North East Area Social Work Office 1250 Westerhouse Road, Easterhouse G34 7PD
<b>Govan</b>	780 Govan Road Govan G51 2YL	<b>Parkhead</b>	125 Westmuir Street Parkhead G31 5EX
<b>Springburn</b>	30 Charles Street Springburn G21 2PN	<b>Shawbridge</b>	24/34 Shawbridge Arcade Pollokshaws G43 1RT
		<b>Maryhill</b>	1 Gairbraid Avenue Maryhill G20 8YA



### **What happens next?**

Your council should send you a '*statement of reasons*' – you have asked for this in the text underneath box 6 of the form, keep these safe. The dispute form also asks for a review/appeal/late appeal and supersession at the same time.

If you have no good reason for a late appeal you can score out the text that says '**\*(2) for this decision to be looked at again under review /appeal (and if late this is because)**' under box 6 of the dispute form, and simply seek a supersession. If you think you have a good reason for a late appeal then insert these where marked with a \*\*, underneath box 6.

If the council refuse your appeal or supersession and insist that you are liable to bedroom tax deductions they will have to send your case to an Independent Tribunal. You can obtain copies of successful Scottish and English First Tier Tribunal judgments relevant to the bedroom tax here:

<http://nearlylegal.co.uk/blog/bedroom-tax-fft-decisions/>

**Govan Law Centre does not have the resources to represent every case but we are happy to take on a number of cases to act as 'lead cases' for legal arguments which were are continuing to develop.**

There is no guarantee of success, **but if you live in Glasgow** and want us to see if we can help please contact our 'Prevention of Homelessness Team' on **0141 440 2503** and ask for Alistair Sharp or Gary Burns. Our Principal Solicitor Mike Dailly and/or our Welfare Rights Officer, Patrick Hannon, will act in the cases we can take on. If we cannot represent due to our limited resources we will try and refer you on to another free local money advice agency.

**If you require more advice about the Tribunal appeals advice and guidance is available online here:** <http://www.justice.gov.uk/tribunals/sscs/appeals>

**Updated social security law is available here:**

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

**YOU ARE NOW READY TO COMPLETE THE FORM BELOW**

Govan Law Centre is an independent community controlled organisation which exists to tackle unmet legal needs within the Greater Govan area and other areas of social disadvantage as determined by the Govan Law Centre Trust. It is a Scottish Charity SC030193. Its legal work is undertaken by the independent legal practice of Dailly & Co. Solicitors. Written by GLC's Principal Solicitor, Mike Dailly.

**Housing and Council Tax Benefit Dispute Form**

(1) Reference No:	(2) NINO:
(3) Name:	
(4) Address:	(5) Telephone No:
<b>The name of the benefit I am disputing is housing benefit (under-occupancy deductions).</b>	
(6) <b><u>The date of the decision I wish to dispute is:</u></b> (date of decision or brief details that will allow the decision to be identified)	
<p><b>I would like to request - (1) a statement of reasons *(2) for this decision to be looked at again under review and appeal (and if late this is because): **[insert]</b></p> <p><b>; (3) And failing the above, I seek a supersession of your decision based upon your error(s) of law and/or material fact, which are set out below.</b></p>	
<p>(7) <i>I think your decision is wrong because:</i> You have failed to base your decision upon the actual facts and circumstances of my case, or an inspection of my home. Please provide me with a copy of your policy which sets out how you define 'bedroom' for the purposes of the HB Regulations 2006 as amended by SI No.3040, and any other documentation which explains how you have reached your decision in my particular case. I believe you have applied a blanket policy , and unlawful approach, in determining that I have a spare room. <b>AND more particularly because:</b> [***insert below]</p>	

\* delete if you do not have good cause for a late appeal  
 \*\*where appropriate insert reasons why late appeal.

\*\*\* see Menu above; if necessary continue on separate sheet

**Please now sign and date the form below** (Remember **you** must sign the form, it cannot be signed by your representative)

<b><u>Signature:</u></b>		<b><u>Date:</u></b>	
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