Practitioners' Questions

Supported Accommodation and Mixed Age Couples

Suggested answers by Peter Barker – independent HB consultant

Questions answered in good faith for the purpose of stimulating debate and discussion – opinions offered here should not be relied on as legal advice

1 Supported Accommodation

1.1 Service charges

1.1.1 Spreading costs over multiple projects

Q: *Voids charged at 20% - The history of this particular one bed flat, clmnt has occupied for over 2 years since start of his tenancy with no voids, in fact no voids on this particular flat for over 8 years. When challenged the provider states the voids is charged across the scheme covering many LA's.*

Is this reasonable - What can I do? I accept that voids across the scheme (which is very widespread) is an issue – evidence seen. Why should this particular tenant in my authority be charged for this?

A: It is inevitable that services and facilities provided by any landlord will be used more by some tenants than others, and on the whole these things will tend to balance each other out: Tenant A does not use the garden much but still pays a share of the grounds maintenance charge; Tenant B on the other hand is more active and hardly uses the communal lounge, where Tenant A spends a lot of time. Both tenants pay the same contribution towards fuel to heat and light the day lounge. The same principle applies to voids: Property A has a 6% void rate, Property B has a 4% void rate, a flat rate void provision of 5% does not seem unreasonable. But when there is such a marked imbalance as in the case cited by this question author, it appears less reasonable and perhaps the provider ought to disaggregate their costs.

Of course, if the properties with higher void rates are accounted for separately, there will be an expectation that the void provision for those properties is increased. However, a couple of points to consider:

- Supported Living schemes often feature an SLA that requires the commissioned care provider to fund the landlord's lease charges during void periods. This is because any delay in filling a void is more likely to be on the commissioning side than the accommodation side.
- The higher the void charge, the more you might be inclined to question whether the landlord is managing voids efficiently, which feeds through into the question whether service charges are reasonable – to the extent that the void provision relates to services, Schedule 1 to the HB Regs allows a charge to be restricted if it is unreasonably high for the service provided. As for voids on core rent, restriction of core rent for HB purposes is more difficult and one of the reasons why the HB Regs don't always achieve a satisfactory outcome. I am addressing this in my conference speech.

You can sometimes check how realistic provision for voids and bad debt is by looking at the organisation's accounts: if you know how many tenants they have and how much rent those tenants are supposed to pay, you can compare the amount actually collected (from the turnover details in the accounts) to the amount that would have been collected at 100% collection rates. This will give a rough idea as to whether the voids/bad debt provision matches reality.

1.1.2 Admin charge

Q: *An admin charge of 12.5% which covers things like provision of laundry, decoration, communal cleaning etc, is this an eligible service charge? I am seeing contradictory information amongst my peers.*

A: The conventional use of the term "admin charge" in a rent breakdown is to account for the organisation's central office costs that are not reflected in direct expenditure on the property in question. The rent will usually be broken down to show service contracts, repairs, furniture/white goods etc plus the staffing costs directly attributable to that property. The admin charge funds things like HR, IT, senior management and the premises out of which those people work. It is usually expressed as a percentage of all the other items in the rent breakdown (occasionally, a small organisation might be able to provide accurate central office costings, but this is less common than the percentage surcharge method). 15% seems to be the industry standard. It is eligible to the same extent as the items to which it is added. Of the specific examples mentioned by the question author, decs and communal cleaning are certainly eligible, therefore so is the 12.5% surcharge on those items.

"Laundry" depends on exactly what is covered: if it is a personal service – doing the claimant's washing for him/her – it's not eligible, but if it is for provision of laundry equipment that is OK. Furthermore, if the laundry equipment is communal, the fuel and water used to wash clothes are eligible too.

1.1.3 Enhanced/Additional/Intensive management

Q: *Care, support or supervision now seem to be mixed up in what's called 'Enhanced management charges' … If we feel that these Enhanced Management Charges / Staff costs are a reasonable amount, then … we would pay. Is this correct? A colleague is striking out the Enhanced Management charges from the payable rent because HB never pays for the provision of personal care, general counselling and support. If you don't think that the services within the Enhanced Management charges are, in fact being provided to the tenant / or if you think they are just standard services that a reasonable and competent LL would provide or they are minimal, then I would say that the case becomes "managed" specified accommodation and no longer falls within the exempt accommodation category and so depending on the LL, HB would be paid on the LHA rate or via an RO decision if the LL was an RSL.*

A: There's a lot going on in this question! The first issue can be summed up as follows: if a provider is relying on EHM/IHM as "support" to bring the case within the "exempt accommodation" definition, does it follow that the activities so relied on are ineligible to met by HB, because Schedule 1.1(f) excludes *"charges in respect of general counselling or of any other support services"*? The question author believes it is more complicated than that, but his/her colleague says it's clear-cut – you cannot have it both ways, either it's support for all purposes or it isn't.

There is no definitive answer to this question. If you want my opinion, I believe that repairs can be support (for exempt accommodation purposes) and not support (for service charge purposes) at the same time. But things like proactive welfare checks, liaising with outside bodies, monitoring the commissioned care provider, dealing with anti-social behaviour etc are more in the way of personal support and therefore ineligible to be met by HB. I understand there is a current UT case on this very issue involving Allerdale Council: UT file references are CH/28, 31, 34 and 36/2019.

The question author also asks about the consequences of EHM/IHM falling short of the "more than minimal support" threshold so as not to satisfy the requirements for "exempt accommodation". I agree that if the provider is not a registered housing association (i.e. it is a charity or voluntary organisation), the consequence is that normal HB eligible rent limits apply: LHA or LRR as the case may be (depending whether meals are provided). If the landlord is a registered HA, I don't think it automatically follows that the tenancy should be referred to the Rent Officer, as the questioner suggests: the threshold for RO referral is whether the rent is unreasonably high and that is not necessarily determined by whether the "exempt accommodation" definition applies. It is quite feasible that you might conclude an HA tenant does not occupy exempt accommodation, but not refer to the Rent Officer and allow the full eligible rent without any restriction. This issue is addressed further in my speech (slides included in this pack) and also under 1.2 below.

1.2 Registered housing associations

1.2.1 Bound by RO determination after successful appeal?

Q: *I have several new claims which I am satisfied are Specified Accommodation (and therefore are not UC) but do not meet the 'more than minimal' criteria to satisfy me that they are Exempt Accommodation. 24 hour care is provided by the local County Council to the tenants who have severe learning disabilities, the Landlord is providing very limited intensive housing management only.*

The rent being charged is very high. We have exempt accommodation providers charging much less in our area. I have attempted negotiating a reduction to services and the core rent (which is particularly high) with little success. I am therefore proposing referring to the Rent Officer, and restricting the eligible rent to the ROD. My guess is this will prompt an appeal on the specified/supported accommodation decision. My understanding is that once referred, we are bound by the ROD, even if they then successfully appeal and are granted exempt accommodation status. My question is, if the claimants win their appeals, or at a later date the provider is able to evidence and satisfy me that significantly more support is provided than initially declared, and I therefore accept they are an exempt accommodation provider, is there anything I can do to get around the RO determination for subsidy purposes?

A: To clarify, the question author fears that a successful appeal would leave the Council having to pay HB on the full rent, while being stuck with the RO determination for subsidy purposes. This issue arises when the landlord is a registered housing association.

My view is that it is possible for a claimant to appeal, or for the Council to revise a decision, on the grounds that new evidence has shown that the wrong view was taken on the question whether the tenancy was excluded from RO referral under Schedule 2 to the Regulations. A registered HA tenancy is not excluded from referral if the Council considers the rent payable for the dwelling to be unreasonably high. I believe that the Council's judgement as to the reasonableness of the rent is a constituent determination embodied in the LRR awarding decision and as such is appealable (and can also provide a basis for revision). The revised decision, or decision substituted by the Tribunal, would be to the effect that HB is not restricted to the LRR because the rent is not unreasonably high and the RO referral should never have happened.

Such an outcome would be possible irrespective of whether the exempt accommodation support threshold is met. As I have already said at 1.1.3 above, the question whether the tenancy is excluded from RO referral is not directly dependent on whether the "exempt accommodation" definition is satisfied. The test is whether the rent is unreasonably high, so that would be the focus of any appeal/revision seeking to disapply the Rent Officer determination for the purpose of the HB award. The effect on subsidy of such a revision/appeal would be advantageous but entirely coincidental: the Council's subsidy position is not a relevant factor when deciding whether Schedule 2 applies.

1.2.2 For profit registered providers

Q: *I have a new "supported exempt" scheme, they are listed under the "registered providers of social housing" as a profit-making company limited by guarantee. Can I ask, as they don't have "not for profit" status, they can't satisfy the specified / exempt category?*

Also that they would not be a HA for subsidy purposes & would have to be referred to the rent officer?

A: Two questions here. First, can a for-profit registered provider in England satisfy the landlord condition for any category of specified accommodation? In my opinion, no they cannot. They are not a registered charity and they are not a county council; that leaves "housing association" and "voluntary organisation", both of which are defined in HB Reg 2 as bodies that do not trade for profit. As an aside, a for-profit company limited by guarantee is very unusual: a company limited by guarantee is normally associated with non-profit status because the members cannot sell their stake to anyone else and they cannot receive dividends out of the company's earnings (by contrast with the shareholders of a company limited by shares).

As the landlord is not providing specified accommodation, new HB claims by working age claimants are ruled out. Therefore the second part of this question only applies to pensioners and any existing working age HB claimants who have not yet claimed UC. The question is: does a for-profit HA tenancy have to be referred to the Rent Officer?

The short answer to this question is "not unless you consider the rent to be unreasonably high – just like a non-profit registered provider". Here's why:

- Para 3 of Schedule 2 says that a "registered housing association" tenancy is excluded from RO referral (unless the rent is unreasonably high)
- Reg 2 defines "registered HA" in England as a "a private registered provider of social housing" – which includes a for-profit provider
- In the case of a for-profit provider, Subpara 3(1A) of Schedule 2 says that only the provider's social housing portfolio is excluded from RO referral: that is the only thing to check

If the tenancy is excluded from RO referral, HB is determined and subsidised under the same rules as for any other registered provider: the eligible rent might be subject to the bedroom tax, the claimant might be subject to the benefit cap. Note in particular that the LHA does not apply to a for-profit registered provider's social housing portfolio: Reg 13C(5)(a)(iii).

1.2.3 Overlap with temporary homeless accommodation

Q: *We as an LA, housed our tenants in HA properties in order to discharge a homeless function and given these tenants temporary accommodation contracts. We have therefore been assessing them as homeless cases for subsidy purposes. Now the HA has argued that the properties should be classed as Specified Accommodation. The issue is that some of these tenants have been housed in properties the HA holds outside of the borough. We have since made a decision that the in-borough properties are deemed as Specified Accommodation as care support and supervision is being provided. As the other properties are out-of-borough we are not able to classify them as Specified Accommodation, which means that they would remain as Temporary Accommodation. We are considering suggesting that the Landlord should approach their local LA as to whether they will consider these properties as specified accommodation.*

A: The question author here seems to believe that temporary accommodation and specified accommodation are mutually exclusive – it must be one or the other but not both. This is incorrect: many of the temp acc settings used in the performance of homelessness functions fall within the definition of "specified accommodation", but that doesn't mean they aren't temporary accommodation as well.

To answer the question, we need to separate out three strands:

- Subsidy
- HB entitlement
- Responsibility for administering HB.

For **subsidy purposes**, HB paid by a Council for temporary accommodation provided by a registered HA to enable that same Council to perform its homelessness functions attracts subsidy derived from the 2011 LHA rates unless it also happens to satisfy the definition of exempt accommodation (i.e. the housing association provides support). If it is exempt accommodation, then HB is subsidised as follows:

- Tenancy referred to the Rent Officer (extremely unlikely):
  - Subsidy limited to CRR plus 60% of excess in some cases
- Tenancy not referred to RO (overwhelmingly likely):
  - No subsidy limit and no HB limit either – this is the "sweet spot".

As far as **HB entitlement** is concerned:

- Both temporary and specified accommodation (including exempt accommodation) attract HB, so in terms of accepting an HB claim in principle it doesn't really matter whether it is temporary, specified or both.
- Temporary accommodation which is also exempt accommodation is subject to no particular restriction and is exempt from the benefit cap – it also attracts full subsidy as noted above
- Temporary accommodation which is also specified accommodation, but not exempt accommodation, is subject to neither the bedroom tax nor the benefit cap, but subsidy is limited to 2011 LHA rates

- Temporary accommodation which does not belong to any category of specified accommodation may be subject to the benefit cap and subsidy is limited to the 2011 LHA rates
- However, in any case where the claimant is on UC, the HB benefit cap does not apply (but subsidy might be limited).

The question also hints at the tricky issue of who should be responsible for paying HB in respect of the out-of-borough properties. Assuming these properties are still provided under homelessness functions, it does not matter whether they are also specified (including exempt) accommodation. Exempt accommodation is excluded from the definition of temporary accommodation for subsidy purposes, but that doesn't really assist with the question of who pays the HB in the first place. Traditionally, the placing authority has assumed responsibility for out-of-borough referrals to Housing Associations (often referred to as "HALS"), including cases that satisfy the definition of specified accommodation. Technically this requires an arrangement between the two councils under s134(5) of the Social Security Administration Act 1992. Section 134(1B) says that HB in the form of a rent allowance (which HALS is) should be administered by the authority in whose area the dwelling is situated, unless the two authorities arrange otherwise. I cannot see any reason why the decision to make or not make such an arrangement should be influenced by specified accommodation status – I think it is generally desirable for the placing authority to administer HB for any out-of-borough temporary accommodation placement, irrespective of whether the setting falls within any specified accommodation category. But I repeat – the default responsibility for rent allowance lies with the receiving authority and a s134(5) arrangement is required to switch responsibility to the placing authority.

One final fun fact on out-of-borough placements: if the authorities do not come to a s134(5) arrangement and HB is paid by the receiving authority, the temporary accommodation homeless subsidy rates do not apply and HB attracts "vanilla" HA subsidy rates (i.e. 100%). But the case is still eligible for HB because it continues to meet the definition of temporary accommodation for UC purposes!

1.3 Sheltered accommodation

Q: *I am trying to seek some clarification on whether warden assisted properties should be HB or UC. Our cases either have no care being provided or, if care required, is being provided by an outside agency not on behalf of the landlord. The Gov UK website quotes:*

- *You can only make a claim for housing benefit if one of the following is true:*
- *You live in sheltered or supported housing with special facilities such as alarms or wardens*.

A: Another question raising two issues. The first concerns the landlord: local authority sheltered accommodation is very unlikely to be specified accommodation because it is not provided by a housing association, voluntary organisation, registered charity or English county council[1]. So 55+ sheltered accommodation is normally only going to

[1] There is an issue about unitary authorities and exempt accommodation that I won't go into here

be specified if the provider is a housing association. The wording of the options in the housing section of the UC online claim falsely identifies many council tenants as occupying specified accommodation.

If you get over that hurdle, there is then the support question: without more, does an on-site warden, together with an alarm system that can be used to contact him/her in an emergency, amount to more than minimal support? I don't think you can have a one-size-fits-all approach here. Wardens know their patch and will proactively keep an eye on their frailer tenants. Just the reassurance of knowing that the warden is there arguably can be a kind of support. But for some tenants the support offered by the warden will not be more than minimal. Every case on its merits.

1.4 Leased accommodation

Q: *Please can someone help me - we have a developer who has included items like Architect fees, planning fees, building fees, structural engineers fees, legal fees, surveys etc etc in the core rent. The property is not being built, it is just being re-developed from a 6 bed house to 6 x 1 bed Flats. We are saying that any equipment that is for personal needs like hoists etc are not eligible for HB & also not happy with the tenants being charged for an office that will be used by support workers rather than the RP's housing management person.*

There is no mortgage - just a cash sponsor who will receive a 6% yield.

So the proposed set up is that we have sponsor, developer & an RP who will be the landlord with the care support & supervision provided on their behalf.

A: There is growing concern among local authorities about the amounts being paid as lease rent to property owners in supported accommodation cases. This is the main subject of my speech – slides enclosed with this pack.

2 Mixed age couples (MACs)

2.1 Advance claim before 15 May 2019

Q: *We have had a HB application for a MAC. Pensioner applied for PC in April 19 (before the new mixed age rule) but her award does not start until 20th June (after the new mixed age rule). Meanwhile, they were both in receipt of UC until 26 May (after the new mixed age rule). PC includes the working age wages so they are aware they are a couple. Can I award HB for them as a couple? If so, from what date? Does it matter which one of them applies for HB?*

My belief is that if PC were not able to award from before 15/05/19 then they should have remained on UC?

A: I agree with the questioner's final comment. Article 3 of the WRA 2012 No 31 Order brings into force an amendment of the State Pension Credit Act from 15 May 2019. That amendment says:

"A claimant is not entitled to state pension credit if he is a member of a couple the other member of which has not attained the qualifying age"

Article 4 of the No 31 Order says that the amendment does not apply where the claimant was already entitled to HB, SPC or both immediately before 15 May 2019 as part of the same MAC. In this case, there was no entitlement to either HB or SPC as an MAC immediately before 15 May, therefore SPC should not have been awarded – DWP has got that wrong.

An HB claim cannot be accepted, because Article 7 of the WRA 2012 No 23 Order only allows a claim where:

- Entitlement begins before 15 May 2019, or
- The Article 4 savings provision referred to above applies

In this case, HB cannot commence before 15 May because the claimant (either of them – couples claim UC jointly) was entitled to UC up until that date. Regulation 5 of the UC (Transitional Provisions) Regs 2014 says that a person who is entitled to UC cannot be entitled to HB – so that rules out backdating HB to before 15 May.

In conclusion: no HB claim is possible; the SPC award is a mistake, but that is for DWP to sort out. If the couple have lost out when the dust settles (depends whether UC housing element exceeds SPC higher living costs), they may have a case for compensation from DWP.

2.2 Separated couple – system correct?

Q: *Claimant is working age and partner is SPC age. They notified the LA on 16/05/2019 that on 01/01/2015 they ceased to be a couple and were from that date Claimant and Non-Dependant.*

The HB claimant is the working age person in receipt of ESA(c), with the pension age person as her ND, not in receipt of PC.

Initially when assessing this we only removed the partner and used the late notified dates. The case assessed and nothing unexpected occurred. At this point we missed that he was now her ND. We have now realised he is the ND and inserted him as a ND but now when we assess NorthGate says mixed aged couple and HB must terminate.

A: I cannot answer for NorthGate. But what <u>should</u> happen here?

I think the MAC rules are a red herring in this case. The claimant's HB going forward should simply be reassessed to reflect that fact she is a single person. The date from which she is assessed in that way depends whether she is better off or worse off than

before: if better off, she is clearly way out of time to have arrears paid back to 2015 and the best she can hope for is a superseding decision from May 2019 onwards. If she qualifies for less HB as a result of this change, there will be a superseding decision from 2015 and any other decisions along the way will be revised to her disadvantage, resulting in an overpayment. Either way, she is a single person now and entitled to HB as such.

2.3 Younger partner on legacy DWP benefit

Q: *I have MAC effective 6.7.19 after the new rules began. Claimant man dob 29.8.54 (still not SPC age) claims Income Support as carer for partner. Partner woman dob 3.3.54 gets PIP & New State Pension from 6.7.19. Man keeps getting Income Support. As the younger member receives a legacy benefit they can still have HB BUT do I have to apply the personal status to both from 6.7.19? It seems I do as claim won't calculate without but I thought the TP was for ALL existing MAC's prior to 15.5.19*.

A: I cannot tell from this question whether this is a new HB claim from July 2019, or an existing HB claim where the couple has "aged into" mixed age status in July – I think that is the case and it is not a new claim.

If I am correct in that assumption, the question author is right that HB does not terminate under Article 6(2)(b) of the No 31 Order because the HB award is not yet subject to the HB (SPC) Regs as long as the claimant remains on Income Support.

I do not understand what the questioner means by "apply personal status" – I assume this is some kind of system jargon, and I am the wrong person to ask about systems. As far as HB entitlement is concerned, they remain entitled because, despite becoming an MAC after 15/5/2019, their HB is still dealt with under the working age regs.

See the slides accompanying my speech for further analysis of "ageing into" MAC status and Article 6(2)(b).

2.4 Disaggregated couple for UC purposes

Q: *We have a couple where Mrs (working age) is the HB claimant and Mr (pension age) is the partner. Mr is the guarantee credit claimant and prior to 14th May they had both PC and HB as a couple. Both awards still ongoing, so they are protected.*
Mr is temporarily absent from the home getting medical treatment, and intends to return, so we will treat him as part of the household for HB, and they remain protected. Mrs has now claimed UC as a single person so we are taking the view that HB must now end because she is a UC claimant, although Mr still gets PC for both of them - would anyone disagree with this?

What do we do if Mr now submits a claim for HB? Are they still protected because of the PC award ongoing since 14th May, and are we therefore obliged to award HB as a couple?

A: The rules on aggregation of couples differ between UC and legacy benefits. Couples remain aggregated in legacy benefits for up to 52 weeks' absence from one another; in UC the limit is six months. My guess here would be that the absentee Mr has been/is expected to be absent from home for more than six months but not as long as 52 weeks. In some circumstances, this could result in the older member of the couple not being entitled to anything at all (too old to claim UC; not allowed to claim HB or SPC as an MAC). Article 7 of the No 31 Order, as amended by SI 2019/935, deals with this by making legacy benefits follow UC's aggregation rules in such cases so that the older member of the couple can claim or remain on SPC and/or HB as a single person.

But Article 7 only applies where the person is otherwise excluded from HB and/or SPC under the MAC rules. In this case, as the question author says, there is transitional protection and so the SPC claimant should carry on getting SPC for himself and his partner. If the absentee Mr is the HB claimant, the same applies to HB.

However, Mrs has claimed UC as a single person: surely that must impact on Mr's SPC? Well, here is an interesting anomaly which I have come across before in the case of a working age couple where one partner went to prison and was disaggregated from UC but not HB. I can see nothing to say that the single person UC claim by Mrs causes Mr's SPC to terminate: UC(TP) Reg 5 says a person cannot be entitled to SPC if s/he is also entitled to UC. But Mr is not entitled to UC, so that doesn't stop him from remaining on SPC

Mrs is the HB claimant: her HB must terminate because she has claimed UC. Can Mr immediately make an HB claim for them as an MAC? I don't see why not, as long as he is still entitled to SPC as part of the same MAC. Transitional protection applies as there is continuous SPC entitlement from before 15 May.

Just one note of caution: in the SPC assessment, "social security benefits" count as income, subject to prescribed exceptions (of which UC is not one). There is no definition of "social security benefit" in the SPC Regs but surely it must include UC. That means that the UC paid to Mrs should be taken into account as income in the SPC assessment so they will not receive a windfall – in fact, depending on the amount of the housing element, her UC might extinguish his SPC!

2.5 Newly formed MAC, one partner had SDP as a single person

Q1: *We have a single pensioner claiming PCGC and HB containing a SDP. She moves address to form a MAC. PC have not yet updated their award, and it is likely that SDP will end as no longer qualifying. Am I right in thinking HB and PC must end as there is nothing to suggest that entitlement to SDP within the last month prevents a UC claim under the regs laid in May?*

Q2: *We have a HB claim for a single pensioner (on SRP/PP but not pension credits) and Attendance Allowance so he received the SDP in his Applicable Amount. A working age partner joins him who is in receipt of UC. The working age partner joining the household would have the affect of ending the SDP because she does not qualify for the SDP in her own right and he no longer lives alone (and neither is blind).*
We are assuming therefore that HB should be ended from the date she joined the household and they should make a joint claim for UC including housing costs because the SDP would not be ongoing.

A: Correct. HB awarded to either or both members of a newly formed MAC must terminate under Article 6(2)(a) of the Number 31 Order unless:

- as a couple they would be prevented from claiming UC by virtue of having an SDP
    - And even then, HB only continues if it is the older member of the couple who is the claimant (see discussion of Article 8 of the No 31 Order in my conference slides), or
- The younger partner is on legacy DWP means-tested benefit so that HB remains under the working age regs.

Neither of those exceptions appears to apply here. Moreover, in the second case referred to above, there is a further reason why HB must terminate: formation of a couple where the HB claimant is joined by a new partner who is already on UC means that HB terminates under Article 7 of the UC(TP) Regs 2014.

As for SPC itself: for completeness, they are caught by the amended SPC Act which says the older partner cannot be entitled to SPC as part of an MAC if s/he was not already entitled to SPC/HB as part of the same MAC before 15 May 2019: this catches newly formed couples.

2.6 MAC makes new UC claim

Q: *MAC couple with ongoing HB claim. Youngest member claims UC so we get a UCMIG and terminate HB. Customer is now coming back to us saying they've withdrawn their UC claim. (The older member of the couple is on SRP, PCGC and gets CA and AA, and the younger member gets PIP daily living, standard rate), and a monthly works pension).*

As far as I'm aware once a UC claim has been made and the 'journey' starts, if they withdraw that claim they can't go back to claiming HB - or can they? I should note, they are not in temporary or supported accommodation.

A: Where do I start with this one? First and foremost, this couple has been appallingly misadvised: there are no conceivable circumstances in which it was a good idea to claim UC. Sometimes, people with working non-dependants can gain quite a lot on UC, but this couple would have no HB non-dep deductions anyway due to being on PIP/AA. I cannot see any other reason to give up legacy benefits in their circumstances, and plenty reasons not to.

Second, we don't know whether there are non-deps but, if there aren't, it would appear that this couple is entitled to the single rate SDP as only one of them is getting CA. In that case, they should not have been allowed to claim UC and so yes, they absolutely should abort the process and go back to the way they were.

Third, if they don't have an SDP, and so technically they were allowed to claim UC (despite it being a truly terrible idea), can they withdraw the claim and turn back the clock? Yes I believe they can:

- Claiming UC does not terminate SPC. A person cannot be entitled to UC and SPC at the same time (UC(TP) Reg 5), but if the UC claim is withdrawn before entitlement is awarded, the claim never gets to that stage
- HB does terminate as soon as s4(1)(a) to (d) of the WRA 2012 is satisfied (which for a British claimant not in education will probably be during the first online claim session) …
- … but there is nothing to stop HB being immediately reclaimed (and backdated) if the older partner remains entitled to SPC as part of an MAC since before 15 May – which appears to be the case here. The claim would have to be made by the older partner (Article 7(4) of the No 23 Order)

2.7 Another newly formed MAC

Q: *Working age HB claimant on ESA(IR) and PIP, therefore, receiving SDP within HB. Pension age partner moved in on 18/05/19. Claimant has advised that her partner submitted a SPC claim in April (in advance of him moving in) and they are awaiting the outcome.*

Am I right in thinking:-

1. The SPC 'couple' claim will fail as:
- *They were not a couple until after 15/05/19*
- *She remained in receipt of ESA(IR) until 26/06/19*

2. He could receive SPC as a single person until they became a couple, at which point it will end.

3. As the claimant was in receipt of ESA(IR) and HB with the SDP she cannot claim UC and should, therefore, continue to claim working age HB, with the partner being treated as not yet having attained SPC age.

4. HB should continue but as working age, therefore, subject to the removal of the spare room subsidy.

A: I tend to agree with most of that, but with some tweaks.

- This is a newly formed MAC, but HB does not terminate from May under Article 6(2)(a) because the award remains subject to the working age HB Regs as long as the claimant is on ESA(ir).
- Bedroom tax will not apply because Reg A13 disapplies the bedroom tax where the claimant's partner is over SPC age:
    - In this case, the fact that the working age partner is the HB claimant prevents the bedroom tax from applying (Article 8 of the No 31 Order only deems the older partner to be working age when s/he is the HB claimant)
    - If the older partner were the claimant: see slides accompanying my speech, I still do not think the bedroom tax would apply
- If ESA(ir) ended in June, HB would terminate at that point under Article 6(2)(b) (MAC claim migrates from working age to SPC age regs). But there is no obvious reason why ESA(ir) should have ended in June – either it should have ended in May (due to pension income) or not at all.
- It is not entirely clear whether the couple satisfies the SDP conditions, or whether that was only the case while the claimant was single
    - If they do have the SDP as a couple, a quirk of drafting in Article 8 of the No 31 Order means that HB would terminate after ESA(ir) ended with Mrs as the HB claimant … but there is nothing to stop either of them from immediately reclaiming HB through the SDP "gateway" and having seamless entitlement. If ESA ended because of Mr's pension income, it would be more advantageous for the new claim to be made by Mrs – Article 8 would result in a working-age applicable amount with Mr as the HB claimant