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# Not So Exempt Now

*The My Space Upper Tribunal Decision*

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*FYE v Middlesbrough City Council; GPZ v Sunderland City Council*

[2026] UKUT 157 (AAC) — 20 April 2026

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## Key Facts at a Glance

**Citation:** [2026] UKUT 157 (AAC). Appeal Nos. UA-2024-001199-HB (FYE / Middlesbrough) and UA-2024-001252-HB (GPZ / Sunderland).

**Judge:** Upper Tribunal Judge Jacobs, decision handed down 20 April 2026 following an oral hearing on 16 October 2025.

**Below:** First-tier Tribunal (Judge Barber and Tribunal Member Mrs A Taylor), 29 April 2024 — 174 paragraphs over 40 pages.

**Counsel:** Jonathan Manning and Kevin Brown for the claimants; Ranjit Bhose KC and Sarah Salmon for the local authorities (Cornerstone Barristers).

**Scope:** Two lead cases from a block of 34 appeals across the two authorities. The remaining 32 appeals will follow in a separate decision.

**Held:** The First-tier Tribunal made no error of law. The claimants' liabilities to My Space Housing Solutions were created to take advantage of the HB scheme. Nil HB payable.

**Legal test:** Regulation 9(1)(l) HB Regs 2006 — liability "created to take advantage of the housing benefit scheme". Requires findings of fact plus an evaluative judgment.

**Key finding:** F-tT's conclusion that My Space's operation was "a fundamentally flawed scheme which is based on a charity having to have very close links to a property developer for its financial security" was, given the facts found, the only judgment the tribunal could properly make.

**Critical nuance:** At [16] Judge Jacobs: "take advantage" means "improper advantage" — "in the sense that a writer in the romance genre might refer to the dastardly villain taking advantage of the heroine."

## 1. Introduction

On 20 April 2026, Upper Tribunal Judge Jacobs handed down his decision in the linked appeals of *FYE v Middlesbrough City Council* and *GPZ v Sunderland City Council* — the first two of a block of 34 appeals concerning My Space Housing Solutions. The Upper Tribunal upheld the First-tier Tribunal's conclusion that the claimants' liabilities to make rental payments to My Space were created to take advantage of the Housing Benefit scheme under regulation 9(1)(l) of the Housing Benefit Regulations 2006. No HB was payable to any of the affected claimants. No payment flowed onwards to My Space.

For the exempt accommodation sector, this is the most significant modern authority on the contrivance test — and it is only the opening act. Thirty-two further appeals involving the same provider remain to be decided in a separate judgment. What Judge Jacobs has said about the two lead cases will shape how those 32 are resolved, and how every local authority contemplating a contrivance refusal approaches the question in future.

This briefing note takes the full text of the Upper Tribunal decision — not merely the press summaries — as its subject. It draws out the legal reasoning, identifies the points likely to have the greatest operational impact, and sets out the implications for local authorities and for providers. A key message needs to be surfaced at the outset: **the decision is not an attack on the lease-based supported housing model**. Judge Jacobs expressly accepted that there is "in principle nothing objectionable" about the model. What he has condemned is a particular use of it.

## 2. The Case in Context

### 2.1 The block of 34 appeals

An important feature of the case, often missed in the press coverage, is the scale of the underlying dispute. As Judge Jacobs records at paragraph 1 of his decision:

*"The Upper Tribunal has a block of 34 appeals involving two local authorities. All the cases concern the provision of supported accommodation for claimants. This decision deals with the two lead cases, one from each authority. I will give a separate decision dealing with the other 32 cases."* [2026] UKUT 157 (AAC) at [1]

Middlesbrough and Sunderland between them received scores of HB applications from My Space tenants. When both councils refused the claims on the basis of contrivance, the combined saving to the public purse across the two authorities was approximately £1 million. The case that has now reached the Upper Tribunal is the vehicle through which that refusal has been tested — and vindicated.

### 2.2 The two lead claimants

The claimants are known only as FYE and GPZ. Judge Jacobs ordered anonymity. They are, in his words, *"all disabled and vulnerable to some extent. Moreover, they were not involved directly or personally in creating their tenancies; this was handled by others on their behalf"* [5]. This point is important. The claimants are not themselves the architects of the contrivance. They are the tenants on whose behalf My Space, in substance, brought the appeals — a pattern familiar from much contrivance litigation.

### 2.3 The contrivance and support issues

The appeals raised two issues. The first was whether the claimants' liabilities were created to take advantage of the HB scheme under regulation 9(1)(l) — the contrivance issue. The second was whether the claimants were living in "exempt accommodation" in the sense of receiving support in addition to their accommodation — the support issue. The support issue only arises if contrivance is not established. Because Judge Jacobs found no error of law on the contrivance issue, he did not address the support issue. The point matters: **the contrived corporate and financial architecture alone was enough to dispose of the case, even setting support questions to one side entirely.**

## 3. The Funding Model and What Is "In Principle" Acceptable

Before describing what went wrong, Judge Jacobs is careful to describe what, in principle, is perfectly acceptable. This passage deserves particular attention from legitimate lease-based supported housing providers, because it establishes the baseline against which the My Space model is then contrasted:

*"The funding model used in these cases is a common one. There is a company that acquired a property and adapted it to be suitable for providing supported accommodation. The company lets the premises, in this case to a charity. The charity provides accommodation and support for housing benefit claimants. If the local authorities had not refused the claims for housing benefit, they would have paid benefit for the claimants, including if appropriate an element for their support. This would have covered the costs of the charity, including its rent to the head landlord."* [2026] UKUT 157 (AAC) at [10]

*"There is in principle nothing objectionable about that model. I note that in April 2025, the Regulator of Social Housing published Focus report: Lease-based provision of Supported Social Housing. The Report was concerned only with issues that might undermine the viability and efficiency of the model. Otherwise, it recognised the value of the model in providing the necessary accommodation."* [2026] UKUT 157 (AAC) at [11]

Two points are worth drawing out. First, the Upper Tribunal has given judicial endorsement to the general lease-based funding model in supported housing. Providers operating compliant, transparent, genuinely commercial lease-based arrangements should take that as genuine reassurance. Second, the April 2025 RSH Focus report is now cited in the judgment as relevant context — a useful signal that the RSH's published guidance on the lease-based model is part of the evidential framework against which future cases will be tested.

## 4. What Went Wrong in My Space

Having established that the lease-based model is acceptable in principle, Judge Jacobs turns to why this particular application of it was not. His summary of the background at [14] — drawn from the F-tT's findings — is the fact pattern against which every future contrivance case will be measured:

*"...the owner of the properties at the relevant time was Enabling Homes Ltd... The properties were bought by one company and immediately sold to another at a huge profit. They were then let to the charity, My Space Solutions Ltd, with no break clauses and full repairing responsibilities. Mr Paul O'Rourke was involved in the companies involved and in the charity. He was also involved in a company that provided financial support for the charity; this allowed it to continue to operate when the local authorities refused the claims for housing benefit. The charity has never engaged in what might be described as usual fund raising activities. In short, the tribunal found that Mr O'Rourke was controlling the actions of the companies and the charity, appearing in different roles at different times. He and his operations have been the subject of an article in Inside Housing and a Panorama programme called 'The Housing Benefit Millionaire'. They have also been the subject of adverse decisions by the Regulator of Social Housing and an inquiry by the Charity Commission."* [2026] UKUT 157 (AAC) at [14]

The cumulative pattern matters. No individual feature is necessarily fatal in isolation. But the combination — property flipping at huge profit, connected-party leasing on onerous terms, a directing mind common to charity and commercial entities, connected-party financing sustaining the charity, absence of normal charitable fundraising, regulatory scars at RSH and Charity Commission level, and media exposure — establishes a pattern that the Upper Tribunal has now authoritatively held can, as a matter of law, amount to contrivance.

### 4.1 The nine-point F-tT reasoning

The First-tier Tribunal's summary of its reasoning, reproduced at [15] of Judge Jacobs' decision, lists nine points that collectively amounted to an abuse of the HB scheme. It is worth setting these out in full, because they read as a practical checklist of the features that establish contrivance:

1. **The close and controlling relationship** between Mr O'Rourke, My Space, and his profit-making operations in various other companies such as Enabling Homes Ltd.
2. **Unconscionable lease arrangements** between My Space and the eventual freehold owners of the developments, which the tribunal found were probably influenced by Mr O'Rourke to inflate the value of the various assets.

3. **The fact that Enabling Homes**, a profit-making company owned and controlled by Mr O'Rourke, was set up with a preferential loan from My Space — a charity. The accounts for year ending October 2016 showed that Mr O'Rourke borrowed £128,000 from My Space to invest in Enabling Homes.
4. **Enabling Homes paying My Space a significant yearly donation** ("support income") to prevent it trading insolvently — payments on which My Space was dependent, necessary to bring the accommodation within the scope of "exempt accommodation" because HB does not cover support costs. The tribunal found this structure, in itself, amounted to an abuse of the scheme.
5. **Significant profits to Mr O'Rourke and his companies** appearing — on the evidence available — to have been made ostensibly at public expense through the operating model.
6. **The charity operating "a lot more like a private company than a charity"** — including an inexplicable claim to provide specialised supported housing when it did not, and unlawful payments to trustees.
7. **Failure to appreciate the rent standard**. As a registered provider of social housing, My Space should have complied with the rent standard. Instead it simply divided the head-lease rent by the number of letting units to arrive at a "base rent" — suggesting the rents paid to the head landlord were more important than setting rents at social housing levels.
8. **Claiming to provide supported accommodation to FYE** in circumstances where support was not needed nor properly provided.
9. **Targeting of tenants** so as to enable HB for exempt accommodation to be claimed, if FYE's case was indicative of the general level of support required by My Space tenants.

Items 8 and 9 relate to the support issue. The critical observation — which we return to below — is that the tribunal expressly found one element of this reasoning to be sufficient by itself, independently of any conclusion on support.

## 5. The Legal Framework: Regulation 9(1)(l) in 2026

### 5.1 The statutory architecture

Section 130 of the Social Security Contributions and Benefits Act 1992 creates the entitlement to Housing Benefit. Section 137 authorises regulations treating a person who is liable to make payments as if they were not liable. Regulation 9(1)(l) of the Housing Benefit Regulations 2006 applies where the liability was created to take advantage of the HB scheme. When it applies, the claimant does not satisfy section 130(1)(a) and is not entitled to HB.

### 5.2 "Take advantage" — the dastardly villain formulation

At paragraph 16 of the decision, Judge Jacobs gives what is likely to become the most-quoted formulation of the contrivance test in future cases:

*"There is more than enough caselaw on this expression. It is sufficient to say that 'take advantage' is used in the sense that a writer in the romance genre might refer to the dastardly villain taking advantage of the heroine. It conveys an improper advantage being taken. The focus is on the creation of the tenant's liability, which means the time when the tenancy was made. It is, though, permissible to use later evidence provided that it can help to show that the creation of the liability was a contrivance."* [2026] UKUT 157 (AAC) at [16]

The formulation combines three points. First, "take advantage" means "improper advantage" — an elegant modern re-statement of what the Court of Appeal said in *Baragrove* and *Simpson*. Second, the focus is on the creation of the liability, not its subsequent operation. Third, however, later evidence is admissible where it sheds light on what the creation involved. That is important — a contrived arrangement does not cleanse itself by the passage of time.

### 5.3 Fact-finding and evaluative judgment

A recurring theme of the decision is the dual nature of the regulation 9(1)(l) exercise. At paragraph 25 Judge Jacobs explains that the tribunal must first make its findings of fact on events that have taken place. Having done so, the tribunal has to decide whether the claimant's liability was created to take advantage of the scheme — and that requires an exercise of judgment. As he puts it: *"It might be described as an inference drawn from the actions and circumstances of the case. Or it might be described as assessing whether the facts satisfied the legal test. Either way involves an evaluation that requires the tribunal to consider all relevant facts and circumstances."*

The practical consequences flow from this. First, decision-makers are not called to give evidence on their reasoning — they make submissions, but the evaluative judgment is the tribunal's own. Second, the standard of proof on the balance of probabilities applies only to the fact-finding stage, not to the evaluative judgment. Third, on appeal to the Upper Tribunal, the assessment is whether the evaluative judgment was one the tribunal could reasonably reach on the facts found — not whether a different judgment might also have been open to it.

## 6. The Decisive Finding: One Factor Alone

Perhaps the most important — and least reported — feature of the decision is Judge Jacobs' treatment of what the First-tier Tribunal said at its paragraph 114. The F-tT had listed nine collective reasons at its paragraph 5. But at paragraph 114 it said something different:

*"This fact alone strikes us as being sufficient to demonstrate that the liability has been created to take advantage of the housing benefit scheme. It is a fundamentally flawed scheme which is based on a charity having to have very close links to a property developer for its financial security."* F-tT Statement of Reasons at [114]

The "fact" referred to was the structural dependence of My Space on connected-party support income from Mr O'Rourke's company Enabling Homes — payments that were necessary because HB did not cover support costs, and without which the charity could not have been financially viable. In the tribunal's words at [113], the business model "had to grow, and that growth would have to be exponential" because every new property generated a new support-cost gap that Enabling Homes had to plug to keep the whole scheme afloat.

At paragraph 59 of his decision, Judge Jacobs accepted that finding at its word:

*"Taking the approach identified in HK, I accept the tribunal's statement in paragraph 114 at its word. It is clear in its language and meaning. It is not inconsistent with the statement at paragraph 5 that the tribunal also relied on the collective effect of that and other reasons. The tribunal's findings on support were not significant to its overall assessment."* [2026] UKUT 157 (AAC) at [59]

This is the hinge point of the decision. The structural dependence on connected-party financing alone established contrivance. The support issues were not necessary to the conclusion. That matters for two reasons. First, it means the decision is authority for the proposition that contrived corporate and financial architecture can, without more, establish contrivance — even if the support being delivered is adequate.

Second, it strengthens the authority of the decision: Judge Jacobs did not need to rely on support findings to dispose of it, so challenges to the support evidence could not have altered the outcome.

## 7. Three Points of Broader Significance

### 7.1 Profit is not an essential feature

At paragraph 42 Judge Jacobs makes an observation that is likely to have broad consequences:

*"It may be that a profit will often, or even regularly, be a feature of a contrivance, but I do not see why this must be an essential feature. Provided there is a contrivance, it does not matter whether it turns out to be a profitable one or even whether it was intended to be profitable. What matters is that public funds are spent unnecessarily or inappropriately."* [2026] UKUT 157 (AAC) at [42]

This opens the door wider than some earlier authorities. A contrivance that happens not to produce net profits — because costs rise to match income, or because the scheme is administered inefficiently — is no less a contrivance. The test is whether the liability was created to take advantage of the scheme, not whether anyone actually made money out of it. Operators whose corporate structures are contrived but whose margins are thin cannot take shelter in the absence of provable profit.

### 7.2 The rent standard question

At paragraph 44 Judge Jacobs accepts that the F-tT was entitled to rely on the Regulator of Social Housing's concerns about My Space's non-compliance with the rent standard. My Space, as a registered provider, was subject to the standard. It had nevertheless set rents by simple division of the head-lease rent by number of units — an approach that tells its own story about the direction of financial pressure within the scheme. This confirms that RSH findings and guidance are legitimately relevant evidence in contrivance cases, even though they are not themselves determinative.

### 7.3 The relevance of panel expertise

At paragraph 48 Judge Jacobs provides a useful re-statement of the role of tribunal expertise. A First-tier Tribunal hearing an HB appeal is not "expert" in the sense of a medical appeal tribunal entitled to rely on its own diagnostic capability. It must rely on the evidence. But it is entitled to use the experience of its panel members to assess the evidence before it. In My Space, the financially-qualified tribunal member had practical experience in valuation, and the judge was experienced in HB matters. Their joint experience was properly used to evaluate the valuation evidence. In a contrivance case, where complex corporate and financial arrangements are in play, this is a significant practical observation — it validates the use of specialist tribunal members to navigate the evidence.

## 8. Implications for Local Authorities

### 8.1 Regulation 9(1)(l) is now authoritatively viable

For authorities that have historically hesitated to deploy regulation 9(1)(l), this decision is the clearest possible answer to the question "will we win?". Yes — provided the evidence is there. The question has shifted to: "do we have the evidence, and will we commit the resources to defend it through two levels of appeal?" Middlesbrough and Sunderland are now the benchmark. Their joint approach, their careful evidential preparation, and their willingness to litigate at both tiers have produced a modern authority that will support HB refusals across the sector for years.

## 8.2 Build the cumulative evidence

The decision repays careful reading by HB teams for its articulation of the kind of evidence that carries weight:

- **Corporate records** — Companies House, shareholder registers, Charity Commission filings, director histories.
- **Property ownership records** — Land Registry, transaction histories, development pipelines, linked company activity.
- **Financial records** — charity accounts, inter-company transfers, loan arrangements, "support income" flows.
- **Regulatory history** — RSH judgments and enforcement notices, CQC findings, Charity Commission inquiries.
- **Operational evidence** — staffing levels, support records, referral routes, commissioning status.
- **Comparator evidence** — local rent benchmarks, specialised supported housing rent standards.

The F-tT's nine-point summary is in practice a template. Authorities preparing contrivance cases should read §15 of the decision and ask: for each of those nine themes, what evidence do we have that speaks to our operator?

## 8.3 The 32 cases to come

The separate decision Judge Jacobs will give on the remaining 32 appeals will be significant. The general principles have been established in FYE and GPZ. The remaining cases are likely to turn on individual facts — particularly support questions in the Middlesbrough group. Authorities with similar caseloads should track that decision as it emerges. Together, the pair of judgments will become the operational reference points for every contested contrivance case for the foreseeable future.

## 8.4 Joint working between authorities

A feature of the case not explicitly flagged in the judgment, but obvious from the appeal numbers and representation arrangements, is the effectiveness of joint action between Middlesbrough and Sunderland. Two authorities with overlapping exposure to the same operator pooled evidence, shared legal cost through common instruction of leading and junior counsel, and presented a unified factual picture. For authorities facing operators active across multiple areas, this model is replicable — and, on this evidence, effective.

# 9. Implications for Providers

## 9.1 The decision is not an attack on lease-based supported housing

The single most important message for legitimate providers is Judge Jacobs' express acceptance at [10]–[11] that the lease-based funding model is, in principle, unobjectionable. Compliant providers operating transparent, commercial, genuinely charitable arrangements have received judicial reassurance. The RSH's April 2025 Focus report on lease-based provision of supported social housing is now cited with approval in the Upper Tribunal. Providers whose operations align with the Focus report's expectations are in a strong position.

## 9.2 The self-assessment — where the judgment puts the pressure

Providers whose operations contain any of the features that appeared in the F-tT's nine-point summary should conduct honest self-assessment. The questions to work through are:

**Corporate structure:**

- Is there a developer or commercial investor whose financial interests depend on the continuation of the arrangement?
- Is there a directing mind common to the property-owning entity, the charity or landlord, and connected service companies?
- Are properties being acquired in circumstances where one connected entity buys and resells to another at a materially higher price, generating gain to the seller?
- Are leases on terms that are unusually onerous for the tenant landlord — full repairing, no break clauses, long durations, or rents indexed at levels that do not track local comparators?

**Financial structure:**

- Is the provider dependent on connected-party financial support to remain solvent?
- Are loans, consultancy fees, introduction fees or other transfers flowing between the provider and connected parties?
- Can the charity (if applicable) demonstrate independent fundraising and a genuine charitable purpose that would survive withdrawal of HB income?
- Does the charity comply with applicable rent standard requirements where it is a registered provider?

**Governance and regulatory history:**

- Has the provider attracted adverse findings from the RSH, CQC, Charity Commission or Ofsted?
- Does the charity operate in substance as a charity — with independent trustees, proper conflict-of-interest management, and compliance with charity law?
- Are payments to trustees, officers or connected parties authorised and appropriate?

**Operational substance:**

- Does the staffing establishment plausibly correspond to the support claimed?
- Can the provider demonstrate, through contemporaneous support records, that genuine support is being delivered to residents who need it?
- Are referral routes consistent with genuine unmet need, or do they suggest targeting of claimants to enable HB claims?

**9.3 Where risk is identified**

Providers who identify significant alignment with the My Space pattern should not wait to become the subject of a contrivance investigation. The responses available are legal — restructuring connected-party arrangements, resolving regulatory concerns, obtaining specialist counsel — and operational — strengthening support records, bringing rents into alignment with demonstrable costs, engaging constructively with local authorities, and participating in the local supported housing strategies process. Providers who demonstrate willingness to address issues openly, and who can show trajectories of improvement supported by evidence, are in a different position from those who remain opaque.

## 10. Recommended Actions

### For local authorities

10. **Review your SEA caseload** against the F-tT's nine-point summary at §15 of the decision. Identify operators whose profile aligns in multiple respects.
11. **Coordinate across teams** — HB, commissioning, strategic housing, planning, legal services. Appoint a lead officer for contrivance investigation.
12. **Consider joint action** with neighbouring authorities where operators are active across borders.
13. **Use the local supported housing strategies process** under the 2023 Act to build systematic evidence on provision in the area — that evidence will, in time, support contrivance arguments.
14. **Commit appropriate legal resource.** Contrivance cases involve two levels of appeal. Treat this as necessary investment, not optional expense. Specialist counsel makes a measurable difference.
15. **Track the pending 32-case decision** for additional guidance on individual-claimant issues, particularly on the support question.

### For providers

16. **Complete the self-assessment** in section 9.2. Document the answers honestly.
17. **Address vulnerable features proactively** while restructuring options remain available.
18. **Read the RSH's April 2025 Focus report** on lease-based provision of supported social housing. Ensure your arrangements align with its expectations.
19. **Strengthen support recording.** Contemporaneous evidence of genuine support delivery remains the strongest defence — and is relevant to the support issue even if, as in *My Space*, it is not determinative.
20. **Engage with the local supported housing strategies process** in your operating areas. Providers who are transparent, cooperative and well-documented are positioned differently from those who remain opaque.
21. **Take specialist legal advice** where the self-assessment identifies material exposure.

## 11. The Bottom Line

*FYE v Middlesbrough City Council* and *GPZ v Sunderland City Council* does not change the law. It applies the settled test — created to take advantage of the scheme, primary or dominant purpose, improper advantage — and applies it to a factual matrix that the F-tT found, and the Upper Tribunal has now upheld, to amount to contrivance. What the decision changes is the confidence with which that law can be deployed and the detail with which it can be explained.

For legitimate lease-based supported housing providers, the decision's affirmation at [10]–[11] that the model is "in principle" unobjectionable is a genuine reassurance. The Upper Tribunal is not closing down supported housing finance. It is calling out a particular perversion of it.

For the contrived end of the sector, the window is closing. Thirty-two further decisions are still to come in this case alone. More local authorities will now be willing to deploy regulation 9(1)(l) where the

evidence supports it. The licensing regime under sections 4 and 5 of the Supported Housing (Regulatory Oversight) Act 2023 is being drafted. The local supported housing strategies duty is generating systematic evidence on provision for the first time. Each of these developments makes the ground harder for the "fundamentally flawed" model Judge Jacobs has just condemned.

Not so exempt now, indeed.

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