

CH/150/2007 and others - Interim Decision

Case law

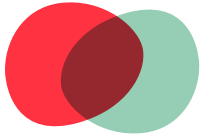
Case law date	01/12/2008
Commission/Judge	Judge Turnbull

Housing-related support provided – whether care staff less readily available than staff employed by the landlord

The three claimants had severe learning disabilities. Each was provided with 24-hour care, supervision and support by Dawaking Care, which was commissioned to do so by Lancashire County Council (“LCC”). The claimants each occupied a bedroom in a 5 bedroomed bungalow (“the Property”). One of the other bedrooms was occupied by another tenant, and the fifth bedroom by a person providing overnight care. The owner of the Property was Care Housing Association (“Care HA”), and the claimants each had tenancies of their bedroom, together with a right to use the living room and common parts. The issue before the tribunal was whether, notwithstanding the extensive care, support and provision provided by Dawaking Care, the landlord, Care HA, also provided the claimants with “support”. The tribunal allowed the appeals giving the following reasons for its conclusion that the claimants were provided with “support” by Care HA:

- “.....the appellants.....had not lived an independent life in the community without support. The tribunal accepted that the bulk of that support was provided by [LCC]. They were however not on site most of the time. In reality the staff of [Care HA] were likely to be present at the accommodation site and according to the evidence of the witnesses, they carried out care, support and supervision. Whilst some of that was in connection with the provision of accommodation, for example fire procedures and safety checks, some of it was care over and above, such as liaising with outside bodies, completion of benefit forms, both Housing Benefit and other benefits, such as Disability Living Allowance, and also progressing of appeals. They offered general counselling and support to tenants, often on a one-to-one basis, the input depending on the individual tenant’s needs. They also obtained outside contractors for work done which was the tenant’s responsibility. The tribunal accepted that in many instances this could not be done by these particular tenants themselves. In the view of the tribunal the very nature of the difficulties encountered by these appellants meant the role of [Care HA] staff being readily available leads to the conclusion that they did on a regular basis carry out care, support and supervision over and above the provision of accommodation.”

Chorley Council appealed to the Upper Tribunal. Judge Turnbull held that the tribunal had erred in law in stating that the care and support staff employed by LCC (in fact, Dawaking Care) were not so readily available to attend the property as were employees of Care HA. This was “fundamentally incorrect” as the evidence



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before the tribunal showed that Dawaking Care, commissioned by LCC, provided 24-hour care/support, and this meant that there was someone from Dawaking Care on site whenever any of the claimants were there. The Upper Tribunal set the tribunal's decision aside by way of an interim decision. Rather than remitting the appeals to be decided by a fresh tribunal, Judge Turnbull directed that he would hold an oral hearing and rehear the evidence. The final decision in these appeals can be found in *Chorley BC v IT* [2009] UKUT 107 (AAC), dated 12 June 2009.