

CH/760/2008

Case law

Case law date	12/11/2008
Commission/Judge	Deputy Judge Rowley

Whether accommodation provided “on behalf” of a landlord where the individual is looking after the tenant on a voluntary basis

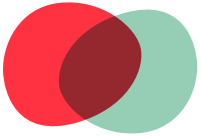
The claimant had a mild developmental disorder, mild cerebral palsy as well as impaired mobility. He was befriended by Mrs Philpot, who provided him with practical support. Mrs Philpot approached Bridge Housing Trust (“BHT”) to provide housing for the claimant. BHT then entered into a number of tenancy agreements with the claimant. However, in February 2005, the local authority restricted the amount of rent payable by way of HB, applying the old version of regulation 11. The claimant appealed. It was argued on his behalf that the case fell within the “exempt accommodation” provisions as: (i) BHT had employed a special needs tenant liaison officer; (ii) the officer had the power to appoint persons to deliver care, support or supervision to tenants on behalf of BHT; and (iii) that Mrs Philpot was BHT’s appointed carer to the claimant. The tribunal rejected the appeal after Mrs Philpot told the tribunal at the hearing that she did not “belong” to BHT, and her loyalty was with the claimant.

The Upper Tribunal upheld the tribunal’s decision saying that there was no evidence that BHT had appointed Mrs Philpot to act on its behalf and that the tribunal had been entitled to accept Mrs Philpot’s evidence at face value, namely, that she was looking after the claimant on his behalf, and not on behalf of BHT. The tribunal had also been entitled to conclude that the support provided by BHT was not “in excess of that of a commercial landlord who has chosen to house people with difficulties”. The Deputy Judge said that the tribunal was effectively saying that BHT was doing nothing more or different from what any prudent landlord would do in the management of its property, and thus any support provided was not more than a token or minimal amount.

Practice points sing or plural

Paragraph 12 of the decision contains a useful summary of the following case-law on “exempt accommodation” by Commissioner Turnbull (as he then was):

- 1) The landlord must either actually provide the care itself or have contracted for it to be provided on its behalf. It may well be that, in the context of the definition of “exempt accommodation” it is not necessary that the care provider should be acting strictly as agent for the landlord, in the sense that the actions of the care provider can be regarded as the actions of the landlord, but it is at least necessary that the landlord should have engaged the care provider to provide the care for him R(H) 2/07.



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2) If the landlord is providing the care, support or supervision he need not be the main provider, nor need he be providing it pursuant to some contractual or statutory obligation; but the care, support or supervision provided by the landlord must be more than a token or minimal amount (CH/3811/2006, reported as R(H) 7/07.

3) The care, support or supervision must be provided either by, or on behalf of the landlord. The words "or acting on its behalf" mean acting on its behalf in providing the care, support or supervision (R(H) 6/08, an interim decision).

4) The word "support" involves the landlord doing something more than or different from the exercise of its ordinary property management functions. A landlord does not "provide ... support" to a tenant, in the context of the definition of "exempt accommodation" by doing what any prudent landlord would do in the management of its property. It is relevant, in determining whether support is provided to more than a minimal extent, to have regard to the extent to which the alleged support is allied to ordinary property management (CH/779/2007)."