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# Chorley BC v IT [2009] UKUT 107 (AAC); [2010] AACR 2 (CH/150/2007) - Final Decision

## *Case law*

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| **Case law date** | 12/06/2009 |
| **Commission/Judge** | Judge Turnbull |

**Housing-related support – guidance on when undertaking maintenance and repairs can count as "support" – help with HB claims**

**The background and the outcome**

The two claimants were both tenants of Care Housing Association Limited ("CHA"). Each required a carer/support worker to be sleeping in the accommodation at night. The care provider was Dawaking Care Ltd ("Dawaking"), who had been commissioned by Lancashire County Council ("LCC"). The property had been purchased and adapted by CHA pursuant to an agreement with LCC. Under the agreement LCC had the right to nominate the tenants, and it had also shouldered some of the financial risk involved in the scheme. CHA subcontracted the carrying out of repairs and maintenance to Progress Property Services (PPS). A tribunal found that CHA did itself provide "support" to the claimants to more than a minimal extent but the local authority appealed that decision. By an interim decision the Upper Tribunal set aside the tribunal's decision directed a re-hearing before the Judge Turnbull. At that hearing, oral evidence was given on behalf of the claimants by CHA's finance director. The Upper Tribunal decision considers evidence of support provided being provided by CHA, and comments that there was some benefit in CHA instructing PPS to carry out the works as both the tenants and Dawaking were able to benefit from PPS's expertise and contacts with contractors. Judge Turnbull concludes that the assistance provided by CHA in a number of areas amounted to support that was more than minimal and allowed the claimants' appeals. The Upper Tribunal rejected an alternative argument advanced by the claimants, that because LCC "commissioned" CHA to provide the accommodation and Dawaking to provide the care, this mean it was provided on LCC's behalf.

**Practice Points**

*The extent to which carrying out repair and maintenance works can count as support*

Judge Turnbull gave the following general guidance on the approach to be taken when deciding the extent to which carrying out repair and maintenance works can constitute the provision of support, for a tenant with disability:

- Activity by the landlord will not amount to support if it is comprised in ordinary housing management (para 71(1).

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- Carrying out repairs and maintenance will not generally amount to "support" if all that the landlord is doing is fulfilling its repairing obligations (para 71(2)).
- If, owing to the nature of the tenant's disabilities, performance of the landlord's repairing obligations imposes a materially greater burden on the landlord than would otherwise be the case, performance of that greater burden may be capable of amounting to the provision of support (para 71(4)).
- If the landlord voluntarily goes beyond its obligations (e.g. routinely repairs damage caused by the tenant or routinely carries out works in a manner designed specifically to take into account the tenant's disabilities), that is capable of amounting to the provision of support (para 71(5)).
- When deciding whether a landlord is doing something which goes beyond its ordinary housing management activities, the appropriate comparison is with what is involved in managing general needs social housing (para 71(1)).
- The carrying out of repairs or maintenance is not prevented from counting as support merely because the landlord is compensated for it (e.g. by the rent having been set at a level which takes into account the probable greater burden on the landlord) (para 71(6)).
- In determining whether the willingness of the landlord to carry out repair and maintenance works constitutes support to a more than minimal extent, it is relevant to take into account, in particular, the likely nature, extent and frequency of those works, and the extent of support available to the claimant from elsewhere (para 71(10)).

*The meaning of the word "support"*

Judge Turnbull opined that the word "support", in the context of the definition of " exempt accommodation" connotes the giving of advice and assistance to a claimant in coping with the practicalities of his life, and in particular his occupation of the property. It is not confined to "counselling, advising, encouraging etc the claimant" (para 71(7)).

*Repair necessitated by damage caused by a tenant's behaviour*

The Upper Tribunal said that so far as CHA carried out repairs which were necessitated by the disabilities of the tenants (and in particular the claimant's propensity to cause damage), the landlord would be providing support. This could be contrasted with general needs housing where the landlord would not put up with continually having to repair damage wilfully caused by one of the tenants and would instead determine that tenant's tenancy (paras 75-76).

*Help with HB claims*

The Judge gave the following guidance on when help with HB claims can count as "support":

- (i) As a general rule assistance with HB claims would not count as support as it is normal practice (and therefore part of ordinary housing management) for a landlord to provide reasonable assistance in connection with HB matters peculiarly within its knowledge (here whether the accommodation is exempt accommodation) (para 90).
- (ii) Assembling the information necessary for the HB claims to be made before the commencement of the tenancies did not count as it was part of the setting up of the scheme (and therefore did not involve the giving of continuing

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support) (para 86).

- (iii) The assistance CHA had provided in relation to an exempt accommodation appeal did not count. First, because the support provided by CHA down to the date of the decision (i.e. some correspondence with the local authority) had not gone beyond ordinary housing management. Secondly, a tenant's accommodation could not be brought within the definition of "exempt accommodation" solely because a landlord was willing (in the event of an adverse HB decision being made) to support the tenant by taking the case to an appeal (paras 90-92).
- (iv) On the other hand, the assistance CHA had given when a claimant's HB award was suspended because income had not been declared, and in helping make a renewal application for Disability Living Allowance did constitute support, as this was in relation to matters relating to the tenant's income (rather than whether the accommodation was exempt) (para 87).

*The phrase "provided by" has its natural meaning*

The Commissioner held that the phrase "provided by" when interpreted in the context of a provision specifying how the amount of rent eligible for HB was to be determined was to be given its natural meaning. Against that background, accommodation was provided by the owner or other person who, but for the grant to the claimant of the tenancy or licence, would have the right to possession, and therefore the right to permit occupation of it, and to whom the obligation to pay rent or licence fee was owed. It did not therefore encompass persons who have played a part in the accommodation becoming available, but who have no proprietary interest in the accommodation and no entitlement to the rent ( CH/3900/2005 considered) (paras 56-65).