

R(H) 4/09 [CH/779/2007; CH/2805/2007; CH/1246/2007 & CH/1247/2007 (Reported as R(H) 6/08) - Final decision]

Case law

Case law date	28/07/2008
Commission/Judge	Commissioner Turnbull

Housing-related support – guidance on what can count as “support” - relevance of support made available to tenants in general

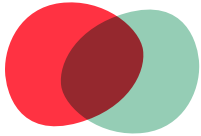
The background and outcome

The housing provider in all of the joined appeals was Golden Lane Housing Ltd (“GLH”). In each case the provision of care support or supervision was arranged and provided for by the relevant local authority. Commissioner Turnbull had previously set aside the decisions of the local appeal tribunal based on an error of law (see CH/779/2007 interim decision) but rather than remitting the cases to fresh appeal tribunals, the Commissioner directed that he should hear the cases with a view to making the necessary findings of fact and substituting his own decisions. At an oral hearing before the Commissioner, evidence was given by four GLH employees over two days. The decision contains an exhaustive analysis of the evidence (at paras 226-264) with the Commissioner eventually concluding that the appeals should be dismissed because the support provided by GLH or made available was not more than minimal.

Practice Points

In this decision the Commissioner took the opportunity to provide further guidance on the meaning of “provides the claimant with ... support”, with particular reference to whether the support being made available by the landlord could count as “support. The decision sets out the following principles to be borne in mind when assessing the evidence in this type of case:

- The making available of certain types of support – e.g. a telephone help line - is capable of amounting to the provision of support to a claimant during a particular period, even if that claimant has no need of it during that period. However, in determining whether a service or facility amounts to the provision of support, regard must be had to the degree of likelihood that the particular claimant will ever need to take advantage of it. “There must be a real prospect that the tenant will find the service of use from time to time.” Paras 21-24)
- The provision of “support” involves the landlord doing something more than or different from the exercise of its ordinary property management functions (para



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25).

- As the words "provides ...support" imply a degree of continuity in the available support, they would not normally include the landlord's activities in the setting up the scheme – e.g. the advice and consultation in relation to the acquisition of the building and the tenant's move to it (para 26).
- The word "support" connotes the giving of advice and assistance to the claimant in coping with the practicalities of everyday life (para 232).
- It would not normally extend to scrutinising the arrangements for the provision by some other body of care, support and supervision, with a view to remedying defects or to recommending improvements (para 232).
- The period in respect of which it has to be decided whether a claimant's accommodation is "exempt accommodation" is the period from the date of the claim for HB down to the date of the local authority's decision on the claim. Evidence of the support actually provided or made available after the date of the decision under appeal is only relevant if it provides evidence of what support was provided or made available down to that date – e.g. if the landlord's practices have changed, then it may not be admissible evidence (para 27).
- The Commissioner accepted a submission that assistance with claims for HB is commonly given by social landlords. The Commissioner held that where the points that arose were within the landlord's knowledge (in the present case as to whether the accommodation was "exempt accommodation"), the landlord would usually assist, at least to a reasonable extent (para 254).
- The Commissioner however, stressed that it was not possible to answer the question of whether the making available of support amounts to the provision of support in the abstract. It could only be answered with reference to the precise nature of the support which was made available, and the manner in which it had been made available. In short, findings need to be made on those matters before an answer the question could be attempted (para 22).

Note: The Reported version of the decision R(H) 4/09 omits the full description of the evidence examined by the Commissioner, but this can be found at paragraphs 31-225 of the unreported version of the case, CH/779/2007.