

R(H) 7/07

Case law

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| Case law date | 07/03/2007 |
| Commission/Judge | Commissioner Turnbull |

Whether “support” provided directly by the landlord meets the requirement for “care, support or supervision” under the definition for “exempt accommodation”

The background

The claimants had learning difficulties and shared a four-bedroom house. The accommodation provider was Reside and the care provider was Regard. A claim for exempt HB was refused on the basis that the accommodation did not come within the statutory definition. On appeal, the claimants accepted that the care, support and supervision was not provided by Regard on behalf of Reside, given the ruling in CH/423/2006, reported as R(H) 2/07. However, it was argued that the statutory definition could be satisfied because Regard itself was providing some support to the tenants.

Practice Point

Support actually provided to tenants by the landlord

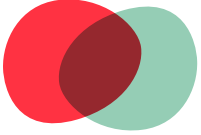
Mr Commissioner Turnbull ruled that the statutory definition of "exempt accommodation" could be satisfied if the landlord itself provided the claimant with care, support or supervision; although he said the support provided must be more than minimal (paras. 21-23). Accordingly, contact the tenant liaison officer at Reside had with the claimants could count as support in so far as it went beyond the landlord's strictly housing management function. However, on the facts the contact with the claimant was not more than minimal and the appeal was therefore dismissed.

Support made available to tenants by the landlord

It had also been argued that the officer's availability by phone should also be taken into account, on the basis that he therefore was effectively 'on call' if any tenant needed him. The Commissioner left open the question of whether the *availability* of support itself could satisfy the statutory definition, in this case but the principle was accepted in subsequent case law (see R(H) 4/09).

The significance of this decision for landlords providing supported housing

This decision is highly significant as it created an alternative route by which landlords of supported housing could bring themselves within the definition for "exempt accommodation". Following this decision, accommodation providers have become more aware of the need to provide evidence that they are providing some



MRAassociates[•]

Advisers to Supported
Housing

T - 01475 727 089
F - 07092 882 002
W - www.mrassociates.org

Kingston House,
3 Jamaica Street, Greenock,
Renfrewshire, PA15 1XX.

level of housing-related support (above that of mainstream housing providers), in order to meet the requirements of "exempt accommodation". As case law on the test for "support" developed, it has become clear that the test was highly fact-specific and therefore heavily evidence-based. This means it will often be necessary to investigate the landlord's activities and its documentation in considerable detail, with hearings that can last all day or even several days. The upshot is that deciding whether an individual claim should be treated as "exempt accommodation" has become a complex and time consuming process for both landlords and HB authorities.