

Salford CC v PF [2009] UKUT 150 (AAC) (CH/577/2009 & others)

Case law

Case law date 04/08/2009

Commission/Judge Judge Turnball

Whether a HB claim for exempt accommodation can be refused under reg 9(1)(l) of the HB Regs 2006 – tenancies created to take advantage of the HB scheme

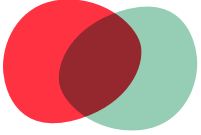
The Background and the outcome

Christopher Doherty and Patricia Doherty were directors of Greenhey Property Company Limited, (“Greenhey”) which owned a number of terraced houses which had been adapted for letting of the rooms. In May 2002, a non-profit making company, Project SJR, was formed in order to satisfy the requirements of the Supported People scheme. At the same time, Greenhey executed a lease on one of the properties to Project SJR at a peppercorn rent. After the Supporting People funding was discontinued, another company was formed, GCS Support Services Ltd, (“GCS”) with Mr Doherty and Mr Woodward as directors. In March 2008, Greenhey executed a lease of one of the properties to GCS, for a rent of £27,040 per annum. GCS granted a licence to seven claimants – four of whom were refugees facing the prospect of homelessness because they had been given 28 days’ notice to leave their NASS accommodation; two had alcohol abuse and/or mental health problems and one had been sleeping rough for the previous three weeks. The claims for HB were refused by the local authority on the basis that: (i) the companies had been set up to take advantage of the Supporting People scheme and subsequently the provisions for “exempt accommodation”, such that the seven tenancies were contrived under the anti-abuse provisions (HB Regulations 2006, reg 9(1)(l)). In the alternative, the local authority said the tenants did not require support. A tribunal thought otherwise, holding that GCS had been entitled to enter into the lease from Greenhey, and that whilst its actions would result in HB being payable at a higher rate than would otherwise be the case, this was done for legitimate commercial reasons and ruled that all the tenancies were exempt accommodation. Judge Turnbull upheld the Tribunal’s decision that the HB claims were exempt (save in one tenancy) and ruled that none of the tenancies were contrived.

Practice Points

The relevance of R v. Manchester CC ex p Baragrove

The Upper Tribunal held that R v. Manchester CC ex p Baragrove (1991) 23 HLR 337 was not applicable to a case involving “exempt accommodation”. In *Baragrove*, the landlord had set out to provide housing only to individuals with the very highest



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level of needs and restricted the letting of tenancies to anyone but that group. This meant the landlord avoided the rules restricting the level of rent payable under the HB scheme applicable at the time. The Court concluded that the landlord in Baragrove was effectively rigging the market in order to exploit the HB rules. However, since 1996, the HB scheme had introduced a more favourable regime in the form of “exempt accommodation”, where the rationale was that the rents may justifiably be higher for vulnerable clients living in supported housing than those generally obtainable. Against this background, the Upper Tribunal concluded that the mere fact of letting only to tenants who have a genuine need for support, and to whom the landlord will provide support with a view to obtaining a higher rent eligible for housing benefit, was not an abuse (paras 64-66).

An intention to make a profit

The Upper Tribunal acknowledged that there would be an abuse in a supported housing case if the rent was unfairly or improperly high, having regard to the cost of providing the accommodation. However, the contention that Greenhey and GCS were making a profit out of the scheme had not been raised by the local authority before the tribunal. In any event, when the tribunal concluded that the granting of the lease to GCS had been done for “legitimate commercial reasons”, it was accepting GCS’s assertion that the rent was no more than would have been charged by other not-for-profit bodies, such as housing associations (paras 68-69).

Allegation that the need for support was manufactured

If the local authority’s allegation that the need for support had been manufactured by the landlord had been substantiated, then this could have formed the basis for a finding that the whole set-up was designed to abuse the HB scheme. However, the Upper Tribunal said there was ample evidence on which the tribunal had been entitled to find that the claimants would benefit from the support offered to them. As for the local authority’s argument that there was no independent verification that the claimants had support needs, the Upper Tribunal said there is no absolute requirement that there be any such verification. This was an evidential point only. Moreover, in the case of those claimants who had been referred from other agencies, there was evidence on those forms that made it clear that the accommodation would only have been available if support needs were present (paras 72, 88).