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What exactly is "support"?

Basic info

Support (as opposed to care and supervision) is the service most frequently relied on to bring a dwelling under the exempt accommodation rules - so much so that care, support and supervision is very often abbreviated simply to “support”. Two remarks by Upper Tribunal Judge Turnbull capture in very general terms what “support” means for exempt accommodation purposes:

- “a satisfactory test for determining whether support of more than a minimal amount is provided is to ask whether the support provided was likely to make a real difference to the Claimant’s ability to live in the Property” - from CH/200/2009.
- “In my judgment the word “support” connotes the giving of advice and assistance to the claimant in coping with the practicalities of everyday life” - from R(H) 2/07.

Examples of support

Support can include:

- Debt counselling and help with budgeting on a low income
  - One of the more difficult aspects of this form of support is the extent to which helping with Housing Benefit claims can satisfy the requirement. This is dealt with in greater depth below
- Coaching to improve life skills in areas such as personal hygiene, dealing with correspondence, looking after a home, planning meals and shopping for ingredients
- What is sometimes referred to as “issue-specific” support such as:
  - Drug or alcohol counselling
  - Stopping offending
- Emotional support - being there to listen if someone is depressed or lonely or coping with bad news about a health problem, for example
- Housing management tasks carried out to an intensive degree, such as repairs and dealing with disputes between neighbours
  - Intensive housing management is discussed in greater depth below
- Attending to deal with a personal emergency
  - For example when a tenant uses an alarm to call a member of staff

How long should support be provided for?

Support might be temporary:

- For example single people with unsettled backgrounds (eg leaving custody, former rough sleepers) might require support as they reacquaint themselves with the skills required to live independently - establishing utility accounts, budgeting etc. But it is expected that after some weeks or months the need for support will reduce and eventually fall away
- People who have undergone treatment for drug or alcohol addiction might require continuing support in the form of counselling for some time after their treatment ends

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For other people support will be long term or permanent:

- For example a person with a severe learning disability might never achieve the ability to live independently without any support (or care or supervision for that matter) at all

How is support paid for?

There is no requirement for the support to be funded or commissioned in any formal way, although of course if the landlord is commissioned to provide support it will be much easier to show that support is provided. With the possible exception of intensive housing management (see below) however, the cost of providing support is not eligible to be met by Housing Benefit. Local authorities might therefore question whether the landlord has the capability to deliver support to a more than minimal extent in the absence of a sustainable source of funding. Answers to such questions might include one or more of the following:

- A charge payable by tenants
- Charitable donations
- Proceeds from activities designed to earn income (often through the vehicle of a wholly-owned subsidiary Community Interest Company)
    - For example a shop, or leasing accommodation to the local authority for use as temporary accommodation for homeless families
- Issue-specific grant funding
- The most controversial suggestion is that the core property rent might provide the landlord with a surplus which can then be used in any way the landlord chooses that is consistent with its not-for-profit status:
    - Acquiring and developing new property
    - Covering routine (non-intensive) management costs
    - Paying for activities such as support that would be ineligible for HB if expressed as a service charge: because the core rent provides sufficient funds to cover these activities there is no need to levy a service charge at all.
    - There is further discussion of the relationship between core rent and service charges in the main topic Rent and Service Charges

What the Commissioners, Courts and Upper Tribunal have said about support

Support must be more than minimal

- R(H) 7/07:
    - The tenant suffered from mental illness and her local authority's adult social care department had commissioned a care package for her; the landlord was not the care provider. Her appeal relied on support provided by the landlord, separate from the commissioned care. Commissioner Turnbull said that it did not matter that the majority of care, support and supervision is provided by someone other than the landlord as long as the landlord's own contribution is more than minimal:
    - "23. in order to satisfy the definition the care, support or supervision which the landlord provides must in my judgment be more than minimal. It is a general principle of statutory construction that, unless the contrary intention appears, a statutory provision by implication imports the principle conveyed by the Latin maxim de minimis non curat lex (the law does not concern itself with trifling matters; or, as by Brooke LJ put it in Sharratt v

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London Central Bus Co Ltd. [2003] 4 All ER 590 at [226], “the law does not care about very little things”): see Bennion, Statutory Interpretation, 4th ed., Section 343. There is no reason why that principle should not apply here. It cannot in my judgment have been intended that that a landlord can bring itself within the definition by providing a token or minimal amount of care, support or supervision."
    - The claimant lost her appeal because, on the facts of her case, the support was not more than minimal: the evidence showed she had very little contact with the Tenant Liaison Officer responsible for supporting tenants. The landlord had 24 houses spread around the city where the claimant lived which in theory allowed the liaison officer about about 10 minutes per week with each tenant even if he spent no time travelling and had no other duties. But the principle was nevertheless established: if the landlord can demonstrate a more than minimal support role in addition to the role of the principal care provider. it is still possible for the dwelling to be exempt accommodation

Support available on request

- CH/779/2007[1] interim decision
    - “16. The question to what extent it is permissible to take into account support which is available to tenants generally, but not taken advantage of by a particular tenant, may be one of some difficulty which requires further consideration … In the case of “care” and “supervision”, it seems to me clear that they must actually be provided by the landlord. It is not enough that they are available should the tenant wish to call for them. In the case of “support”, however, it may be that the making available of certain types of service itself amounts to the provision of “support”.
    - “17. Even if that be so, however, the support provided must be more than minimal.”
- R(H) 4/09 (final decision on CH/779/2007 and three other cases):
    - “21. In my judgment the making available of certain types of support is capable of amounting to the provision of support within the ordinary meaning of the words “provides …support” in the definition. For example, if the landlord makes available a properly staffed telephone service whereby tenants can seek advice which, if given, amounts to “support”, I think that the making available of the service would amount to the provision of support during any particular period, whether or not the tenant in fact makes use of it during that period. (That is of course subject to the proviso that there must be a real prospect that the tenant will find the service of use from time to time).”

Overlap between principal commissioned care service and landlord’s complementary support

- CH/779/2007 (interim decision):
    - Following on from paragraphs 16 and 17 of the same decision (see extract above), if a support service available from the landlord on request is to be more than minimal it should not overlap with a similar service provided by staff from the commissioned care provider who are likely to be closer to hand:
    - “Material to this consideration of what the particular tenant is in practice ever likely to need by way of support is the extent of support available to

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him (or her) from elsewhere, and in particular (in this case) by way of the support apparently provided by Owl Housing [the commissioned provider] (presumably under a contract with the Council or supporting people administering authority). If the degree of support provided by Owl Housing was such as in reality to leave little or no need for additional support from GLH [the landlord], that was a highly material factor to be taken into account."

- CH/4432/2006:
  - Arranging repairs and maintenance: Even if there are staff from the commissioned care service on site most of the time, and even if those staff would arrange repairs if no-one else did, it makes more sense for the landlord to take responsibility for repairs ... and repairs can, if required with sufficient intensity, amount to support:
  - "127. It would of course have been possible for the care staff, or more probably the office based staff working for the commissioned [care provider] CDS (such as Mrs Lenz), to have arranged for all these works to be carried out. However, I accept that [the landlord] Empower's assistance is nevertheless of some value in that its employees are able to bring to bear their expertise and experience in assessing (or helping in conjunction with others, such as OTs) to assess precisely what needs to be done, and in instructing contractors and following through the carrying out of the work. Empower will have contacts with contractors which CDS may well not have."

Preparation before the tenancy begins

- R(H) 4/09:
  - Accommodation is often procured, built or adapted with a particular tenant or group of tenants in mind. The landlord will usually be heavily involved in that preparation. But provision of support for exempt accommodation purposes is concerned with what happens during the tenancy after the tenant has moved in:
  - "26. A further important limitation is that in my judgment the words "provides ...support" imply a degree of continuity in the available support. They therefore do not in my judgment include any activities of the landlord which were involved in setting up the scheme. They therefore do not in my judgment include, in particular, advice and consultation in relation to the acquisition of the building and the tenant's move to it, or the making of adaptations to the building which are carried out before or within a short time after the commencement of the tenancy, or the provision (at or about the time of the tenant moving in) of "accessible" materials"
  - But extensive preparations before the tenant moves in are not completely irrelevant because they provide evidence of likely continuing support provision going forward (provided of course that such continuing support will be provided by the landlord): this is especially helpful when the local authority is making a Housing Benefit decision early in the tenancy so that there is not yet any established pattern of continuing support:
  - "29. Where, however, (as in the Sheffield and Hounslow cases) the question is being considered as at a time shortly after the commencement of the tenancy, there will be no (or virtually) no relevant past history to look at and the question in effect becomes (in relation to support which is not actually provided on a daily or weekly basis) what support it was at the relevant

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time contemplated that the landlord would provide."

Support provided after the HB decision as evidence of support needs down to the date of the decision

- CH/150/2007
  - A closely related point to that made in para 29 of R(H) 4/09 is that support provided after the Council made its HB decision can stand as evidence that the claimant was always likely to receive such support - and an appeal or application for revision may be upheld on the strength of such evidence.
  - "67. ... the position in the present appeals is that the period with which I am directly concerned is that from 12 December 2005 (the date of commencement of the tenancies) to 6 March 2006 (the date of the Council's decisions under appeal). That is a short period which began at the time when no 83 was first occupied for the purpose of the supported living scheme. There is therefore no relevant past history to look at. The question is therefore in my judgment whether it was contemplated at the commencement of the tenancies that CHA would provide more than minimal support, either because CHA was contractually obliged to provide it, or because it intended to provide it. In determining what support CHA intended to provide, it is relevant to look at support subsequently provided or made available"
- CH/1344/2011
  - The same point is made in this case as well:
  - "71. ... The period directly in issue before me is therefore the period between those two dates. That is a period of only some 7 months which began at around the same time as the new regime under the 2007 Agreement. The question strictly before me is therefore whether support was "provided" during that time. As noted above, the evidence as to the support in practice provided extends over a substantially longer and later period. In determining what support [the landlord] Renaissance "provided" at the material time, it is in my judgment relevant, on the facts of the present case, to take into account (as the First-tier Tribunal did) evidence relating to later periods. The later evidence helps to show what was in contemplation at the material time, and of what significance the claimed support was likely to be."

Moving on at end of tenancy

- R(H) 4/09
  - Supported accommodation schemes often provide staged support, beginning at a time when a person needs a lot of support (for example following a period of rough sleeping or uncontrolled substance abuse) but over time reaching a stage at which the person has become sufficiently resettled to live independently. This kind of structured support programme, building towards moving on, normally involves continuing support throughout the period when the person lives in the scheme
- But if the only support offered by the landlord occurs at the time when the person is about to move on, that is less likely to be seen as continuing support
  - "261. There is no doubt that such assistance in finding other accommodation is potentially of great benefit to any particular tenant. There is also no doubt that it goes beyond what a landlord would ordinarily do in managing its property. However, suppose that this were the only

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respect in which GLH claimed to provide support. My strong inclination would then be that GLH would not be providing "support", within the meaning of the definition of "exempt accommodation". I think that the reason why not is similar to that which I discussed in paragraph 230 above. The words "provides ... support" are looking at the support provided as at the time when the question whether accommodation is "exempt" is being considered. Although I have said that the words "provides ... support" are capable of including cases where the landlord makes available support which the tenant may need to call upon from time to time during the tenancy, I do not think that they include making available support which will only be called upon if and when it is contemplated that the tenant will leave the accommodation."

Help with Housing Benefit

The Upper Tribunal (and the Commissioners in the past) have tended not to be persuaded that providing assistance with Housing Benefit claims amounts to more than minimal support.

- CH/200/2009
  - Helping claimants to pursue an appeal against a decision that they do not occupy exempt accommodation cannot satisfy the requirement for support to be provided. There is obvious circularity in the assertion that the claimant is receiving support to challenge a decision that s/he does not receive support: if the appeal succeeds the need for that support would fall away, which would take the claimant back to square one. And, as Judge Turnbull says, any landlord could satisfy the support requirement simply by encouraging tenants to pursue hopeless appeals and assisting them with those appeals:
  - "49. ... I do not think that a tenant's accommodation can be brought within the definition by virtue of the fact that the landlord intends (in the event of an adverse decision being made by the council) to support the tenant by taking the case to appeal (i.e. by pursuing what would otherwise be a bad case). It cannot in my judgment be right that what would otherwise be a bad case can be made into a good one by virtue simply of the landlord's willingness to support the tenant by taking the case to appeal. If this approach needs to be put on some more reasoned basis, it can I think be put on the basis either (i) that this support is of a nature which will only be necessary if and when there is an adverse decision, and therefore is not support available down to the date of the decision or (ii) that it is support which would cease to be needed if there were a favourable decision."
- R(H) 4/09
  - Even if helping with HB appeals could be regarded as support, it is not a normal situation. Continuing support needs to be provided under normal circumstances - support that would still be provided in the absence of any Housing Benefit appeal. Housing Benefit decisions are based on circumstances down to the date of the decision and so the decision cannot be based on events that will only occur as a result of that very same decision:
  - "253. I do not think that GLH can pray in aid the undoubtedly very extensive assistance which it has given to the tenants in connection with these appeals. I accept that it goes way beyond what a landlord could

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ordinarily be expected to provide. However, it is wholly exceptional and of a different order from the type of assistance with housing benefit which was routinely available to tenants of GLH at the time of the decisions under appeal.

- CH/150/2007
  - Filling in Housing Benefit claim forms on behalf of tenants when they first move in (especially when, as in this case, it is expected that they will remain in the property in the long term) is a one-off exercise relating to the setting up of the tenancy. In order to satisfy the support requirement for exempt accommodation, continuing support needs to be provided during the course of the tenancy:
  - “86. .. I find that just before the commencement of the tenancies Mrs Duxbury spent a day with Mr Long, the then house manager for no. 83, assembling the information necessary for the claims. Mrs Duxbury completed the forms relating to Mr B and Mr J, and part of the form for Mr T. Mrs Duxbury did not finish filling in Mr T’s form because they ran out of time, and so Mr Long took the forms away and copied the details from the other two forms on to Mr T’s form. They were signed by Mr Long as appointee. This did not involve the giving of continuing support as it was in my judgment part of the setting up of the scheme. The same in my judgment applies to the change of address forms in relation to income support"
- CH/4432/2006:
  - It may be possible to show that help with Housing Benefit claims (leaving aside assistance with appeals against refusal of exempt accommodation status) does amount to continuing support if the landlord is called upon to provide that help. It needs to be borne in mind that most landlords will intervene in Housing Benefit claims to some degree in order to protect their rent income, but if the landlord does this to an extent that goes beyond the amount of help that a general needs landlord would provide it might amount to support. In this particular case, despite the willingness of the landlord to provide benefit help, it had not proved necessary for the landlord to do so. But the decision does leave it open to a landlord to show that intensive intervention in benefit claims during the course of the tenancy amounts to support (for example, sorting out sanctions and disrupted payments; ensuring that information requests from the local authority are answered).
  - “116. ... I consider that a landlord letting to non-disabled tenants would assist to a reasonable degree with housing benefit claims in relation to matters peculiarly within its knowledge (such as the issue arising in the present case, and issues relating to the breakdown of rent, etc.).
  - “119. ... I find that Empower is willing to assist with housing benefit claims, whether at the time of the initial claim or subsequently, to an extent which perhaps goes beyond ordinary housing management in that it is prepared to fill in claim forms and deal with matters other than property related matters within its own special knowledge. However, such assistance has hardly been necessary, and in any event is available from CDS the commissioned [care provider].”

Support not linked to the accommodation

- CSH/250/2014

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- Stirling University is a registered charity and therefore satisfies the landlord condition for exempt accommodation. It provides support in the form of (i) pastoral/tutorial support to all students generally and (ii) additional support for disabled students (especially financial advice). It is not necessary for a student to be living in university accommodation to be eligible to receive this support. The UT decides that "support" for exempt accommodation purposes means "support in the practicalities of everyday living", which rules out the educational support referred to at (i) above. The UT further decides that the support referred to at (ii) above can be support for exempt accommodation purposes even though it is not directly linked to the university's role as landlord. The Judge adds that the claimant would have won her appeal in any case if she had relied on accommodation-related support alone. But if necessary she could have relied on the support she received as a disabled student, outside the scope of her landlord/tenant relationship with the university
- "23. ... "Support", although a general word not further defined in the regulations, does I think require to be given a meaning limited by the context. As indicated above, it is support in the practicalities of every-day living and not more particular forms of support, for example educational support. However, to limit it to support given by a landlord in his capacity as landlord in my opinion goes too far ..."
- "24. Accordingly, in my opinion, the more general forms of assistance than "accommodation specific support" may also be considered, and should have been considered, in relation to this particular claimant, in this case."

Individual decision

- CH/1289/2007
  - It might be convenient to say that a housing scheme containing multiple individual units is or is not "exempt accommodation" as a whole, but it does not necessarily follow that the same conclusion must be reached in respect of each individual Housing Benefit claimant. As a matter of law the key question is whether the landlord provides the claimant with more than minimal support and it is possible the some but not all of the tenants in a particular scheme occupy exempt accommodation. For example in a scheme for people aged 60+ there may be some tenants who use or are at least reassured by the presence of an emergency alarm system, while there might be others who do not see that as a service they are likely to need for the foreseeable future. But it might be possible to make a reasonable assumption that all of the occupiers of certain types of accommodation do receive support - particularly if admission to the accommodation is only available to people with certain support needs.
  - "27. ... If a building contains two or more dwellings, the definition of "exempt accommodation" must be applied in relation to each dwelling, and not in relation to the building as a whole. Secondly, the definition of "exempt accommodation" turns on whether the landlord provides the claimant with care, support or supervision. A claimant's accommodation will not be exempt if no (or only minimal) care, support or supervision is provided to him by the landlord, however much care, support or supervision may be provided to other tenants of the landlord.
  - "28. That does not of course mean that it will always, or perhaps even usually, be necessary, in a case where a landlord has a number of tenants

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> in a building (or even several buildings) to obtain and present evidence directed to the provision of care, support or supervision to each occupant individually. The landlord may be able to present evidence showing that the level of support provided is broadly similar in relation to all of them. Or there may be evidence of an assessment process whereby only applicants with at least a particular level of need are accepted as tenants."

Intensive housing management

In three decisions issued on the same day in 2009, Upper Tribunal Judge Turnbull recognised that activities which at first sight appear to be routine housing management can amount to support if they are performed intensively, especially if those activities stretch to matters that would not be regarded as the landlord's responsibility in general needs accommodation and especially if it can be shown that the activity supports the Housing Benefit claimant. The tenants in all three cases were people with learning disabilities. The particular activities on which the case turned were mainly repairs and maintenance:

- Fixing or replacing things that had been damaged by the claimants. Such damage ranged from heavier than normal wear and tear to deliberate damage resulting from challenging behaviour (one of the tenants had a tendency to kick radiators until they leaked and to break windows).
    - In general needs accommodation it would be the tenant's responsibility to repair such damage, or at least to pay for it and it could lead to the tenant being evicted for failing to take proper care of the property
    - But in these cases the landlords arranged the repairs at no cost to the claimants (although of course they were charging an amount of rent that took account of the need to carry out such repairs)
- Performing minor repair and maintenance tasks that would normally be done by the tenant in general needs social housing (such as changing light bulbs, unblocking toilets, changing toilet seats and decorating)
- Attending to matters that would not necessarily require any remedial action at all in general needs housing
    - One example discussed in the decisions was the re-laying of slightly uneven flagstones which constituted a trip hazard for a tenant who tended to shuffle when walking but which would probably not have been regarded as being in disrepair in the case of a general needs tenancy
- Where a repair was the landlord's responsibility, dealing with it in a way that was sensitive to the tenant's needs:
    - Dealing with a repair more urgently than it would be dealt with in general needs accommodation when a delay might cause the tenant anxiety
- Arranging (although not necessarily paying for) adaptation and conversion work during the course of the tenancy in order to make the accommodation better suited to the tenants' needs
    - For example getting rid of a bath and replacing it with a shower; changing the location of a bathroom

These activities were found to amount to support because:

- They helped the tenants to cope with the practicalities of life and especially to live in the property, and
- They involved the landlords doing more than a general needs landlord would do: intensive housing management goes beyond ordinary housing management

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However in a more recent fourth decision the same UT Judge rejected an appeal in which the claimant relied on similar activities to satisfy the requirement that support was provided. In this case the county council's adult social care department provided the landlord with approximately £15,000 funding each year so that it could pay a part time employee to carry out tasks including many of those listed above. Judge Turnbull is satisfied that about half of the activities specified in the funding agreement were capable of being support, but on the available evidence they did not amount to more than minimal support in the claimant's case. Judge Turnbull reaches this conclusion with some reluctance and comments that the outcome of this appeal turned on the evidence that happened to be available at a particular time: perhaps, if the HB decisions had fallen at a time when there had been a particularly busy recent period of intensive housing management, the decision would have gone the other way. The Judge also remarks that in cases where intensive housing management alone is relied on (as distinct from more conventional and obvious forms of support) exempt accommodation status will always be borderline - in the 2009 cases the appellant had "just about scraped over the line".

The four decisions are:

UT File number	Neutral citation	Parties
CH/4432/2006	[2009] UKUT 108 (AAC)	Chorley BC v EM
CH/150/2007	[2009] UKUT 107 (AAC) / [2010] AACR 2	Chorley BC v IT
CH/200/2009	[2009] UKUT 109 (AA)C)	Bristol CC v AW
CH/1344/2011	[2012] UKUT 52 (AAC)	DW v Oxford City Council

Here are some key extracts from the decisions:

- From CH/150/2007 at paragraph 71:
  - 71) In the light of my above findings, and the additional evidence set out in para. 70 above, it is desirable to consider in a little more detail to what extent the arranging by (or on behalf of) the landlord of contractors to carry out repair and maintenance works, and/or the payment by the landlord of the cost of the works, can constitute the provision of support, within the meaning of the definition of exempt accommodation, for a tenant with disability. In my view the position is as follows.
  - (1) In general, activity by the landlord will not amount to support if it is comprised in ordinary housing management. In order to amount to support the landlord must be doing something which goes beyond ordinary housing management (see para. 25 of my decision in the Golden Lane case). For that purpose the most appropriate comparison would in my judgment in general be with the what is involved in managing general needs social housing (i.e. housing provided by a registered social landlord for people who in general have no significant learning or other disability).
  - (2) Carrying out repairs and maintenance will therefore in general not amount to "support" if all that the landlord is doing is fulfilling its repairing

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obligations.

- (3) If the tenancy agreement imposes unusually onerous repairing and maintenance obligations on the landlord (e.g. requiring the tenant's own room to be decorated by the landlord, or requiring the tenant's own equipment to be repaired), fulfilment of those obligations is capable of amounting to support. I do not see why the mere fact that the landlord is complying with an unusually onerous obligation which it elected, having regard to the tenants' disabilities, to undertake, means that compliance cannot be support. However, it has not been suggested that the terms of [landlord] CHA's tenancy agreement in the present case, although it imposes extensive repairing obligations on the landlord, are in unusually onerous terms. Many of those obligations would be implied by the Landlord and Tenant Act 1985 in any event.
- (4) 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.
- (5) If the landlord voluntarily goes beyond its obligations (e.g. routinely repairs damage caused by the tenant; or redecorates the tenant's own room, or routinely carries out works in a manner designed specifically to take into account the tenant's disabilities), that is in my judgment capable of amounting to the provision of support.
- (6) In my judgment the carrying out of repairs or maintenance is not prevented from being support merely because the landlord is compensated for it (whether by an ad hoc charge for the particular item of work, or by the rent having been set at a level which takes into account the probable greater burden on the landlord). As Mr Ennals rightly submitted, the fact that a person is paid for providing support does not mean that that person is not providing it. For example, commissioned [care provider] Dawaking is in the present case paid for providing the housing related support which it does, but that does not mean that it is not providing support. Even if the landlord is compensated for the additional cost of carrying out the works, there is still potentially significant benefit to the tenant in the landlord carrying them out in that all that the tenant (if he is able) or (if not) the support provider has to do is to contact the landlord. He does not have to set about finding a particular contractor to do the work, or to follow matters up if it is carried out unsatisfactorily. Indeed, Miss Perez has not sought to argue that none of the repairs in the present case can amount to "support" because the rent was set at a level which took into account the probable cost of carrying them out. The fact that the landlord is compensated is, however, relevant to the extent that it means that the landlord cannot of course argue that it is providing support not only by arranging contractors, but also by paying for those contractors.
- (7) The words "care, support or supervision" do not immediately bring to mind, as something obviously within them, the carrying out of repairs. That is in my judgment simply because the carrying out of repairs is normally no more than fulfilment by the landlord of its repairing obligations, and so does not go beyond ordinary housing management. If, however, the landlord is arranging for the carrying out repairs which clearly go beyond ordinary housing management, I do not see why that cannot amount to support. The word "support", in the context of the definition of exempt

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accommodation, in my judgment 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. I do not think that it is confined to counselling, advising, encouraging etc. the claimant. If that were so, it would mean, for example, that guidance and encouragement to a claimant who is capable, with that guidance and encouragement, of himself arranging for work to be carried out, would be support, but arranging to have the work carried out for a more seriously disabled claimant who could not himself take any part in those arrangements could not be support.

- (8) In my judgment the support can consist not only of making the practical arrangements for the work to be done (arranging contractors etc.), but also, if the landlord pays for it, in having the work carried out.
- (9) The fact that the local authority has engaged a care provider to provide 24 hour care and housing related support for the claimant does not in my judgment necessarily mean that there is no element of support in the landlord arranging for the work to be carried out. First, the effect of the arrangements between the council, the landlord and the care provider may be that the landlord, and not the care provider, is to take responsibility for arranging for the undertaking of certain works, going beyond ordinary property management. Secondly, even in a case where where the main support provider would be obliged, under its contract with the local authority, to arrange for the work to be done (assuming that the necessary funds were available) there is in my judgment still potentially a significant element of benefit to the tenant in the landlord doing so in that the landlord may have expertise, and connections with contractors, which the care provider does not have. In the present case PPS, as a very large organisation specialising in repair and maintenance, clearly has expertise and contacts which Dawaking is unlikely to have. It is in my judgment of some benefit to the tenant that works are arranged and supervised by PPS, rather than by the Dawaking staff.
- (10) In determining whether the willingness of the landlord to carry out repair and maintenance works constitute 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.

- From CH/4432/2006:
  - 186) I have found that the activities of [landlord] Empower have gone somewhat beyond ordinary housing management to the extent of
  - (i) being willing to assist in relation to housing benefit claims and reviews (see particularly para. 119 above);
  - (ii) proactively considering solutions to any problems arising in relation to the physical condition or use of the properties, and arranging contractors in relation to works for which Empower is not contractually responsible (see particularly paras. 125 to 129, and 181 above);
  - (iii) conducting safety and security inspections (see particularly paras. 155 and 159-160 above).
  - 187) I refer to my detailed findings above in relation to those matters. At the end of the day I have to decide whether at the directly material times Empower was providing the Claimants with support, within the meaning of the definition of “exempt accommodation”. In deciding whether the support provided was more than minimal in extent, I must of course have

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regard, in particular, to the support available from elsewhere, and in particular from LCC [adult services authority] , which has statutory duties in that regard.

- 188) Had the support been limited to the willingness to assist with housing benefit claims, and to the carrying out of the safety and security inspections, I would not have found it to be more than minimal. However, I do, on balance, think that the service provided by Empower of considering proactively what physical improvements or alterations to the properties could usefully be made, and of undertaking responsibility for arranging work (mainly adaptations desirable in the light of the Claimants' disability, and small maintenance items) falling outside its repair and maintenance obligations, amounted to the provision of support to a more than minimal extent. Although commissioned [care provider] CDS would in practice have had to arrange for this work to be done if Empower did not,Empower is likely to have had expertise and connections with contractors which CDS did not. Mrs Lenz of CDS regards Empower's assistance as of value (see the last paragraph of her statement).

- And from CH/1344/2011:
  - 78) I am very conscious, of course, that I reached the opposite conclusion in Chorley BC v IT (HB) [2009] UKUT 107 (AAC) and CH/4432/2006, in both of which I also substituted my own decision for that of the First-tier Tribunal. It could be argued that the landlords in these types of case are all offering much the same type of service. The tenants all have very substantial support from elsewhere in connection with day to day living, and there is a limit to what support, going beyond ordinary housing management, even a very supportive landlord can in practice provide. Reliance is always placed on broadly the same categories. It can be argued that differences in the outcome do not reflect any genuine difference in how supportive the landlord is prepared to be, but rather differences in (i) the efficiency with which the landlord has marshalled evidence in relation to matters such as the extent to which it has carried out repair and maintenance, and adaptations, which it was not (or would not but for the tenant's disability have been) bound to carry out and (ii) what the particular tenants have happened to need in those respects in the period for which evidence is available. It can be argued that the outcome should really be the same in all such cases.
  - 79) I think that there is much force in those points. Apart from anything else, it would obviously be unsatisfactory if a tenant's accommodation were capable of moving in and out of the "exempt accommodation" definition in accordance with the extent to which the available support was actually required over different periods of time. But if the results are unsatisfactory, that seems to me to be a consequence of the need to decide whether "support" is "provided" to more than a minimal extent. It cannot in my judgment be enough that the landlord is prepared to provide the support – i.e that it is available to the tenant - unless there is a real prospect that the tenant will need it on something more than a very occasional basis. I find it difficult to answer that question without having close regard to what the landlord has actually done. It is unfortunately inherent in such a test that some landlords may just about scrape over the line (as in the two cases which I referred to above), while others will not do so.

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1. The interim decision in CH/779/2007 was issued on 17 August 2007. The Commissioner then directed the parties to submit further evidence and joined the case with three others involving the same landlord. The final decision on the four joined cases was issued on 28 July 2008 - it runs to 268 paragraphs and reproduces a large amount of the evidence considered by the Commissioner. Finally an abridged version of the final decision (omitting a lot of the factual evidence and focussing on the legal discussion) was issued in September 2009 as R(H) 4/09. The extract reproduced above is from the 2007 interim decision.