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Bristol CC v AW [2009] UKUT 109 (AAC) (CH/200/2009)

Case law

Case law date	15/06/2009
Commission/Judge	Judge Turnbull

Direct provision of "support" – landlord paid to provide additional supporting activities to its tenants

Background and outcome

The claimant, who had learning difficulties, was assessed by Bristol NHS Primary Care Trust ("Bristol PCT") as requiring a two-bedroomed self-contained accommodation. The housing provider was Golden Lane Housing Ltd ("GLH"), who found a property and arranged for the necessary adaptations. The care provider was Brandon Trust. In 2007, the Bristol PCT entered into agreements with GLH and Brandon Trust, under which Bristol PCT paid GLH to undertake certain items of housing-related support for the weekly sum of £9.61. The tenancy agreement issued to the claimant provided for equivalent additional support to be provided by GLH to the claimant, and £9.61 (initially) and then £10 of the rent was apportioned to that. When the claimant applied for HB the local authority decided that it did not fall within the "exempt accommodation". In its reasoning the local authority relied heavily on the fact that only £10 per week was stated in the tenancy agreement as the amount of "supporting people charges". When a tribunal allowed the claimant's appeal the local authority appealed to the Upper Tribunal. Judge Turnbull held that the tribunal had been entitled to find that the support available and actually provided to the claimant, constituted support of a more than minimal and upheld the tribunal's decision.

Practice Points

The payment of £10 for housing related "support"

The Upper Tribunal rejected the local authority's submission that the sum of £10 per week was an amount which was so small that it indicated that the support agreed to be provided by GLH must be minimal. Judge Turnbull said that £10 per week was not an obviously nominal or token payment. Nor was it obvious that the support that could be purchased with £10 per week could not make a real difference. The Judge took into account that if that sum was paid to GLH in respect of each of its 900 or so tenants, GLH it would be receiving a total of some £450,000 per annum in respect of "support". Secondly, that a breakdown of the core rent show that only £15.78 per week was attributed to the cost of performing GLH's ordinary management functions. This meant that the £10 per week paid by Bristol PCT in respect of the additional functions was about two thirds of the cost of performing

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its ordinary management functions (para 31).

Judge Turnbull said the 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. This meant the issue was not whether the value of the "support" which GLH provided bore any particular proportion to, the additional amount of HB which would become payable if the claimant's accommodation were found to be "exempt accommodation" and the legislation *"did not require or permit any such comparison"* (para 32).

Assistance in connection with housing benefit

Judge Turnbull held that the assistance given by GLH after the date of the decisions under appeal, in the form of taking the case to a tribunal and then to a Commissioner, could not be taken into account. It was not support made available down to the date of the decision, as it only became necessary if there is an adverse decision on the claim. The Judge said it cannot be right that a tenant's accommodation can be brought within the statutory definition by virtue of the fact that the landlord is willing (in the event of an adverse HB decision being made) to support the tenant by taking the case to appeal (para 49).

Monitoring the care and support provided by Brandon Trust

According to the documentation GLH undertook a specific obligation to monitor the performance of Brandon Trust. The Judge said that it was open to GLH to agree to undertake this monitoring obligation. Referring to what he had said in CH/779/2007, reported as R(H) 4/09, para 232, another case involving GLH, that monitoring of the care provider by the landlord could not constitute "support", Judge Turnbull explained that this had been said in the context of cases where there was no evidence that the local authority had commissioned GLH to monitor the support provider (paras 37-38).

Different outcome in another GLH case

Judge Turnbull said that fact that in CH/779/2007, reported as R(H) 4/09, (when substituting his own decisions for those made by the tribunals, after rehearing the evidence) he had concluded that GLH did not in those three cases provide more than minimal support did not render the decision in this case unlawful. First, the question whether a particular item of alleged support goes beyond ordinary property management, and whether such "support" as is provided is more than minimal in extent, were ones on which different minds may legitimately differ. Secondly, the fact that two tribunals may reach different conclusions on the same evidence does not mean one of them went wrong in law. In any event, the evidence that had been before the Upper Tribunal in this case was significantly different from that which was before the Commissioner in relation to the three properties involved in CH/779/2007 (paras 52-60).