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CH/2633/2008 - Interim Decision

Case law

Case law date	22/12/2008
Commission/Judge	Judge Turnbull

Whether landlord (Golden Lane Housing Ltd) is providing housing-related support*

The claimant had mild learning disabilities and suffered from insulin-dependent diabetes and epilepsy. He had previously lived in accommodation with 24-hour support. The view was taken that he would be able to live independently in his own flat. A property owned by Golden Lane Housing Ltd ("GLH") was identified as being suitable for his needs. It was a two bedroomed property, the second bedroom being occupied by a person who provided overnight care and support. Care, support and supervision were provided by Odyssey Care Solutions ("Odyssey"), pursuant to a care plan drawn up by the Wandsworth Borough Council's social services department. The initial rent payable under the tenancy granted by GLH was £371.98 per week. However, the local authority decided it should be limited to £206 per week based on the local housing allowance rate for a 2 bedroomed property. The claimant appealed. While it was accepted that the bulk of the care, support and supervision were provided by Odyssey, it was argued on behalf of the claimant that GLH itself – i.e. through its own staff – also provided a significant amount of "support" to the claimant, and his accommodation was therefore " exempt accommodation". A tribunal allowed the appeal based on the following examples of what it considered to be "support" provided by GLH, namely that:

- (i) the tradesmen undertaking repairs were given special training by GLH;
- (ii). DVDs were provided to tenants by GLH which explain the tenancy agreement;
- (iii). GLH attended review meetings with other professionals to review the care and support package;
- (iv). GLH had a "service level agreement" with Odyssey;
- (v). GLH had "specialist staff"; and
- (vi) GLH provided a 24-hour telephone line.

The Upper Tribunal decided that the tribunal had not sufficiently explained why it had reached the conclusion that these six items meant that GLH provided "support" that was more than minimal. Judge Turnbull said that some of the tribunal's conclusions could not stand given his analysis in CH/779/2007 and others (reported as R(H) 4/09), which also involved GLH properties in Oxford, Sheffield and Hounslow:

- Re items (i) and (ii) – that tradesmen had special training and the provision of DVDs to the tenants explaining the tenancy - did not amount to the provision of "support" for the reasons given in CH/779/2007 and others, paras. 26 and 250.
- Re item (iii) – the monitoring of the care provider- did not amount to "support" for the reasons given in CH/779/2007 and others, paras. 232.

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- Re item (iv) - the tribunal had not explained why the existence of the Service Level Agreement amounted to the giving of "support" by GLH.
- Re item (v) -although all GLH operational staff had been cleared to work with vulnerable adults and had the opportunity to attend some fairly basic training courses, they did not have the qualifications and training which would equip them to assess the needs of people with learning disabilities living in supported accommodation: see CH/779/2007 and others, paras 42 and 233.
- Re item (vi) - the fact that the tribunal had not made any specific findings on what the claimant had used the telephone line to inquire about, nor had it given any explanation as to why the claimant could not discuss those issues with the carers employed by Odyssey - made it impossible to determine whether the matters which the claimant had used the telephone line to discuss went beyond ordinary housing management.

Having set the tribunal's decision aside, the Judge went on to consider whether he should (i) remit the appeal for redetermination by another tribunal; or (ii) determine it himself, either on the papers or by way of an oral hearing. The Judge asked for written submissions from the parties before deciding what to do. The Judge, however, pointed out that while he had found that GLH had not provided support to the claimants in the three joined appeals in CH/779/2007 and others, it did not necessarily follow that a tribunal would come to the same conclusion in the instant case.

NB: In CH/2633/2008 dated 12 February 2009, the Judge decided to remit the case to a new tribunal.