MRAssociates
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.

Chorley BC v EM [2009] UKUT 108 (AAC) (CH/4432/2006 and others) - Final Decision

Case law

Case law date	12/06/2009
Commission/Judge	Judge Turnbull

Housing-related support – arranging for works and adaptations to be undertaken - conducting safety inspections - assistance with HB claims

The background and outcome

The housing provider was Empower Housing Association Limited ("Empower"), the care provider was a separate entity called the Chorley Domiciliary Service ("CDS"), which is an agency of Lancashire County Council ("LCC"). The case involved appeals by 8 claimants against the decision of the local authority to restrict the amount of HB payable on their claims. In each case an appeal tribunal allowed the appeal, finding that Empower itself provided "support" to more than a minimal extent. In each case, however, Judge Turnbull by interim decisions, set aside the tribunal's decision as wrong in law.

Rather than remitting the cases to fresh appeal tribunals for redetermination, the Judge directed that there should be a hearing before him with a view to him making the necessary findings of fact and re-making the tribunals' decisions. That hearing took place over two days in March 2009, at which oral evidence was given by the senior team manager for CDS and by a senior benefit, housing and tenant support officer employed by Empower. In a detailed decision (consisting of 189 paragraphs) Judge Turnbull allowed the claimants' appeals and found that each of the claimants' accommodation was "exempt accommodation", on the basis that Empower was providing direct support itself.

Practice Points

The test for support

Judge Turnbull said that the word "support", in this context 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. It is not confined to counselling, advising, encouraging etc. the claimant (para 129).

Arranging contractors for work

The Judge said Empower assistance in arranging for items of work to be carried out, for which it was not contractually responsible, particularly where some of the

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items had been adaptations to take into account the tenants' disabilities, amounted to the provision of “support”. While it would have been possible for the care provider (CDS) to have arranged for these works to be carried out, Empower's assistance was of value because (i) Empower had contacts with contractors which CDS did not have and (ii) Empower’s employees could use their expertise and experience to assess what needed to be done. In addition, Empower’s attempts to ensure that the works were carried out when the tenants were out of the property, in order to reduce their anxiety also counted as support as it involved additional effort over and above what would be involved in a case of tenants without disability (paras 125-128).

Undertaking safety inspections

The Judge considered whether the undertaking safety inspections by Empower went beyond its statutory and contractual obligations. The Judge considered the position under the Housing Act 2004 which imposes a duty on local authorities to take enforcement action in relation to certain health and safety hazards. The Judge concluded that:

- (i) The matters dealt with in the safety inspections, to a large extent covered matters which were either within Empower's contractual or statutory obligations (and so did not go beyond housing management), or duplicated health and safety matters which it was the LCC's duty to consider, either under health and safety and work legislation or by virtue of a duty of care owed to the residents (paras 146-149).
- (ii) There were some matters relating to the safety of the premises when occupied by people with the claimants' disabilities, which went beyond Empower’s contractual and statutory requirements. This could count as support in so far as it was concerned with the use of the premises and fixtures/fittings, as opposed to their condition. However, in the instant case the "support" would not have amounted to very much, as the safety inspections only took place once a year (para 155).

Performance Review Checks (PRCs)

Empower carried out performance review checks (PRCs) on each of its properties, about once a year. The purpose of these PRCs was to check the quality of the service being provided by CDS and the tenants' general satisfaction with their living conditions. The Upper Tribunal noted that Empower was largely dependent on the information it received from CDS staff during the PRC visit and in practice there was little that Empower could do if problems arose from matters such as the tenants not getting on with each other. The Upper Tribunal nevertheless found that the PRC visits, (and other less formal visits), could amount to support as they represented a useful opportunity for Empower to proactively consider solutions to any problems arising in relation to the physical condition or use of the properties. Empower had used the meetings to discuss, together with the care staff, what alterations or improvements to the property could be made in order to resolve any difficulties which the tenants or care staff were having (para 181).

The period before the tribunal

The periods that could be considered by the tribunal in each of the cases was short, as the periods began either at the commencement or fairly soon after the

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commencement of the tenancies. This meant there was virtually no past history to look at. In those circumstances, the question that needed to be addressed by the tribunal was - what support did Empower contemplate it would provide? In determining this, the tribunal could look at the support subsequently provided or made available by Empower, as this could shed light on what Empower had intended to provide. However, if there was evidence that Empower had changed its practice (i.e. by seeking to increase the amount of support which it provided) after the date of the decision under appeal, then the tribunal could not take this into account (para 97).

Assistance with housing benefit claims

Judge Turnbull reiterated that assistance with HB is commonly given by social landlords, particularly where points arise which are peculiarly within the landlord's knowledge. With this in mind, he held that:

- The assistance with making the initial claim for HB by Empower was part of the setting up of the scheme, and did not therefore come within the statutory phrase “provides support," (para 116).
- Empower could not rely on the assistance given in relation to the appeals on the issue of "exempt accommodation", because this was support could not have been in contemplation prior to the adverse HB decisions being made (para 117). The Judge also referred to what he had said on this point in para. 92 of Chorley BC v IT [2009] UKUT 107 (AAC); [2010] AACR 2 (CH/150/2007):
    - “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).”
    - The assistance given to a claimant whose claim for HB was for a time prevented from succeeding because they were the beneficiary of a trust fund could count as “support”. But the Judge went on to observe that he did not think that this assistance could have amounted to very much as”: It is hardly difficult to find out what the capital limit is”. However, the Judge did accept that assistance by Empower with HB claim forms could have value because Empower were more up to date with housing benefit requirements, and if CDS completed the forms it took time away from supporting individuals (para 114).