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East Hertfordshire DC v KT [2009] UKUT 12 (AAC) (CH/2726/2008)

Case law

Case law date	19/01/2009
Commission/Judge	Judge Turnbull

Definition of “exempt accommodation” – meaning of "provided by" - where charity arranges for the claimant to live in accommodation belonging to the carer

Background and outcome

The claimant had a learning disability and had previously lived with Mr and Mrs P as part of their family. In 2007 the claimant moved into a maisonette (No.3) which was owned by Mr and Mrs P. The claimant continued to receive support from Mrs P under an adult placement scheme, whereby East Hertfordshire District Council ("EHDC"), contracted with "Guideposts Trust", who arranged for Mrs P to provide care to the claimant. Under the agreement the claimant agreed to pay a specified amount of rent to Mrs P. The HB payable to the claimant was restricted following a decision by the local authority that his accommodation was not "exempt accommodation". A tribunal allowed the claimant's appeal holding that Mrs P was acting on behalf of Guideposts. The Upper Tribunal disagreed and held that on the evidence before the tribunal the case did not come within the definition of "exempt accommodation".

Practice point

The Upper tribunal held that the term “provided by" in this context referred to the owner or the landlord who granted the tenancy, to whom the tenant is ultimately liable to pay their rent - i.e. the person who held either the freehold or the leasehold of the dwelling. It did not extend to arranging for the accommodation to be provided through a third party. Judge Turnbull at paragraph 15 said:

“It must be borne in mind that the definition of "exempt accommodation" is in the context of provisions relating to housing benefit, which is of course a benefit intended to assist with payment of sums in the nature of rent or licence fee payable by a claimant in respect of his living accommodation. In my judgment, given that context, the natural meaning of the definition is that the accommodation is "provided" by the owner or other person (e.g. a tenant) who, but for the grant to the claimant of the tenancy or licence, would have the right to possession, and therefore the right to permit occupation of it, and to whom the obligation to pay rent or licence fee is owed.”

In the instant case, No.3 was owned by Mr and Mrs P and it was they, and not Guideposts, who were entitled to permit the claimant to occupy the accommodation. The claimant had agreed to pay Mr and Mrs P the rent or licence

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fee in return for the right to occupy the room. Accordingly, No. 3 was not “provided by” Guideposts. The most which Guideposts could be said to have done, so far as the accommodation was concerned, was to have organised or arranged for it to be provided by Mr and Mrs P to the claimant. But that did not amount to providing it within the meaning of the definition. Judge Turnbull said that he agreed with what Mr Commissioner Pacey had said in CH/3900/2005, at paragraph 20, that the term "provided by" did not include: “instructing, arranging or facilitating privately rented accommodation through a third party”.