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How is accommodation "provided by" a social or voluntary sector landlord?

Basic info

Accommodation is "provided by" the person or body who is the benefit claimant's immediate landlord named in the tenancy or licence agreement.

Examples

Accommodation provider is a charity

The freehold owner of a house is a private individual. She has leased the house for five years to a charity. The charity uses the house to accommodate single homeless people ("service users"). The service users are liable to make payments for their rooms to the charity under a licence agreement. The accommodation is "provided by" the charity and so this can be exempt accommodation.

Accommodation provider is not a non-metropolitan county council

The freehold owner of a house is a private individual. The house is situated in an English county council area. The county adult social care department has arranged with the owner that he will provide accommodation and support to vulnerable people (an arrangement often referred to as "adult placement" or "shared lives"). The vulnerable person enters into a private agreement with the owner for accommodation and meals; the adult social care team pays a fee to the owner for the time he spends providing support. Although the placement has been facilitated by the county council, the benefit claimant's landlord is the private individual who owns the house so this will not be exempt accommodation.

Accommodation provider is a non-metropolitan county council

Sometimes the adult social care department involves a charity as an intermediary in "shared lives" adult placements: the owner of the house leases or licenses rooms to the charity and the charity in turn licenses the rooms to the service users. This means that the accommodation is directly provided to the service user by the charity and not by the individual who owns the house and so this can be exempt accommodation. There is however a risk that the local authority might regard this as an artificial arrangement with the following possible consequences:

- The involvement of the charity is ignored as a sham and the authority awards Housing Benefit on the basis that the claimant's real landlord is the owner who lives in the home and provides both meals and support
- The local authority might even decide that the licence between the benefit claimant and the charity has been created to take advantage of the Housing Benefit scheme with the result that no Housing Benefit is paid at all

Case law on "provided by"

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This extract is from paragraph 20 of CH/3900/2005:

- "..."provided by"...does not in my judgment include instructing, arranging or facilitating privately rented accommodation through a third party, as happened in the instant appeal. In this appeal it is not disputed that the local authority arranged for a third party to obtain accommodation for the claimant, a person with special needs, from a private landlord. I hold that that accommodation was not "provided" by the local authority and, accordingly, was not exempt accommodation"

And from CH/2726/2008:

- "15 . In my judgment ... 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
- "23. I do not find it necessary to decide whether, for the purposes of the definition of "exempt accommodation", the accommodation can ever be "provided by" someone other than the owner (or other person with the right to immediate possession). It may be that there are circumstances in which that would be so, but they would be exceptional. For the reasons which I have given, there were in my judgment no such circumstances in the present case."