



## What exactly is "care"?

### Basic info

When we talk about "care" (as distinct from "support" or "supervision") we tend to have certain activities in mind such as:

- Helping a physically disabled person to get out of bed, wash, dress, use a toilet or eat meals
- Guiding and assisting a person with a learning disability as they go about tasks that would be relatively simple for a person without such a disability: buying food, preparing food etc
- Carrying out tasks on behalf of a disabled person because they do not have the physical or mental capacity to do those things at all, not even with supervision: dealing with correspondence, arranging appointments etc

It is not always clear where the boundaries between "care" on the one hand and "support" or "supervision" on the other hand fall. It could easily be argued that the second example above (assistance with cooking or shopping) overlaps with supervision and the third with support. As a rule this does not really matter: in order to satisfy the definition of "exempt accommodation" it is unlikely to be necessary to rely on provision by the landlord of "care" alone in the absence of any "support" or "supervision". As long as an activity counts as one of those three things, it is unnecessary to identify precisely which one. But if a case should ever arise in which "support" and "supervision" have been ruled out and "care" is the only remaining option, the following notes may be of some assistance.

### Need for care (or supervision) to be provided

There is very little Housing Benefit caselaw dealing directly with "care" (or "supervision"). But a short passage from the interim decision issued by Commissioner (now Upper Tribunal Judge) Charles Turnbull in CH/779/2007<sup>1</sup> discusses these terms briefly and distinguishes them from "support":

- "The question to what extent it is permissible to take into account support which is available to tenants generally, but not taken advantage of by a particular tenant, may be one of some difficulty which requires further consideration. In the case of "care" and "supervision", it seems to me clear that they must actually be provided by the landlord. It is not enough that they are available should the tenant wish to call for them. In the case of "support", however, it may be that the making available of certain types of service itself amounts to the provision of "support"."

From this we may conclude that in order to provide care or supervision the landlord's staff (or others acting on the landlord's behalf) must at least be present in the building and arguably in the direct physical presence of the claimant.

### Dictionary definition

The Oxford English Dictionary definition of "care" as a noun includes several uses of the word that are probably not relevant to exempt accommodation - for example having a care or worry on one's mind. In the context of exempt accommodation the



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following definition is probably the key one:

- “Charge; oversight with a view to protection, preservation, or guidance.”

The OED also defines “care” as a verb:

- “to care for: to take thought for, provide for, look after, take care of.”

### **Statutory definitions: other benefits**

“Care” has no definition for HB purposes, but the word is used in the qualifying conditions for Disability Living Allowance (DLA) and Carers Allowance (CA):

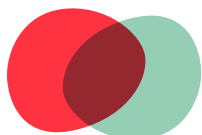
- For the care component of DLA it is a requirement that:
  - the claimant requires “attention from another person in connection with bodily functions”
  - See Section 72 of the Social Security Contributions and Benefits Act 1992
  - and the requirement must be for attention in the “physical presence” of the person
  - See Regulation 10A of the The Social Security (Disability Living Allowance) Regulations 1991
  - while these requirements do not constitute a legal definition of “care” per se it seems to be implied in the name of the DLA “care” component that attention in connection with bodily functions is “care”.
- For Carers Allowance the claimant must be “regularly and substantially engaged in caring for” a severely disabled person
  - See Section 70 of the Social Security Contributions and Benefits Act 1992

### **Case law on DLA and AA**

- R(A) 3/94:
  - “Bodily functions” means the normal action of any organ, or a number of organs acting together
  - “Attention” means something “close and intimate”
  - Obviously this covers direct physical help with tasks like washing and dressing, but it does not necessarily have to involve direct physical contact
  - This particular appeal involved a claimant who was blind. Being accompanied while walking outside counted as attention in connection with the bodily function of seeing - the claimant was able to accomplish the physical movement required for walking but needed guidance from someone in close attendance to be able to walk safely to the places he wanted to go
- R(DLA) 1/07
  - “Bodily functions” include use of the brain and so a person with a learning disability or acquired brain injury can satisfy the test. While tasks that require knowledge or understanding (eg going shopping or reading instructions) are not bodily functions in themselves they do require the exercise of a range of bodily functions - movement of limbs and use of the brain. If any of these constituent functions is impaired the claimant may require attention in connection with it and therefore needs care for the purposes of DLA

### **Statutory definitions: social care**

Section 9 of the Health and Social Care Act 2008 contains the following definitions:



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- “Health care” includes all forms of health care provided for individuals, whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.
- “Social care” includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.

In this context the word “care” is used an umbrella term embracing both “personal care” and “other practical assistance” - so this is perhaps wider than “attention with bodily functions” for the purpose of DLA

Section 2(28) of the Regulation of Care (Scotland) Act 2001 contains the following definition:

- ““personal care” means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash);”

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1. The interim decision in CH/779/2007 was issued on 17 August 2007. The Commissioner then directed the parties to submit further evidence and joined the case with three others involving the same landlord. The final decision on the four joined cases was issued on 28 July 2008 - it runs to 268 paragraphs and reproduces a large amount of the evidence considered by the Commissioner. Finally an abridged version of the final decision (omitting a lot of the factual evidence and focussing on the legal discussion) was issued in September 2009 as R(H) 4/09. The extract reproduced above is from the 2007 interim decision.