

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the Claimant, brought with the permission of the Chairman, against a decision of the Manchester Appeal Tribunal made on 11 September 2006. For the reasons set out below that decision was in my judgment erroneous in law and I set it aside. In exercise of the power in paragraph 8(5)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 I make the findings of fact set out below and make the decision which is appropriate in the light of those findings, namely a decision dismissing the Claimant's appeal against the decision of Manchester City Council ("the Council") made on 9 March 2006. This appeal has therefore in substance not succeeded.

Introduction

2. I held an oral hearing of this appeal at which the Claimant was represented by Simon Ennals, a solicitor practising in welfare and community law in Sheffield, the Council was represented by Rachel Perez of counsel, and the Secretary of State was represented by Huw James of the Office of the Solicitor to the Department for Work and Pensions.

3. The Claimant is a woman aged 42 who has longstanding mental health problems and who for many years lived in residential care. In November 2004 she moved into a 5 bedroomed house ("the Property") in Crumpsall, Manchester, which she shares with a number of other disabled persons. She was granted a tenancy of her bedroom by Oscarvale Ltd., trading as Adapt Properties, at a rent of £108.04 per week, of which £60 was expressed to be "core rent" and £48.04 was for "services". Housing benefit was awarded to the Claimant by Manchester City Council ("the Council") in the sum of £60 per week. Care, support and supervision was provided to the Claimant by Venesta Agencies Ltd or other companies in the Adapt Group of companies. Both Oscarvale Ltd and Venesta Agencies Ltd were companies in the Adapt Group.

4. On 21 September 2005 the Adapt Group was acquired by The Regard Partnership Ltd. ("Regard"), an established provider of care and support. On the same date the reversion on the tenancies of the Property was transferred out of the Group, to Reside Housing Association Limited ("Reside"), which therefore became the Claimant's landlord. Reside is a not-for-profit social landlord registered under the Industrial and Provident Societies Acts 1965 to 1978. It is not registered with the Housing Corporation. It specialises in providing accommodation, in houses, flats and bungalows in everyday streets, for people with learning disabilities, mental health problems or acquired brain injury.

5. As part of this transaction Reside also acquired some 14 other properties in Manchester. Care and support continued to be provided to the Claimant and other tenants by Venesta Agencies Ltd and/or other companies which, by virtue of the take-over, had become subsidiaries of Regard. For the sake of simplicity (and because nothing appears to turn on the identity of the particular Regard subsidiary) I will refer to the companies providing care and support simply as "Regard".

6. On 21 September 2005 Reside notified the Council that it had acquired the Property and that housing benefit payments should now be made to it.

7. On 14 October 2005 Reside granted a new tenancy to the Claimant of her bedroom (plus right to use the shared accommodation), commencing on 14 November 2005, at a rent of £203.94 per week.

8. On 10 November 2005 Reside wrote to the Council notifying it of the new tenancy agreement and stating:

“I would be grateful if you would kindly amend the housing benefit claim to the new level of rent, being £203.94 effective from 14 November 2005.

[Reside] would respectfully draw to your attention that the tenant’s claim to housing benefit should be processed under the provisions of Housing Benefit (Old) Regulation 11(3) and that Reside is a social landlord and care and support is provided to the tenant by Venesta Agencies Ltd.

9. The explanation for the reference in that letter to “old” regulation 11(3) is as follows. As from 2 January 1996 a new version of regulation 11 of the Housing Benefit (General) Regulations 1987 was enacted, under which the rent eligible for housing benefit is in effect limited to that determined by a rent officer in accordance with specified criteria. However, a saving provision was enacted (in reg. 10 of the Housing Benefit (General) Amendment Regulations 1995). This provided that the old form of regulation 11 should continue to apply in certain cases, one of which (as subsequently amended) was that of a person **“who is liable to make payments in respect of a dwelling occupied by him as his home, which is exempt accommodation.”**

10. “Exempt accommodation” was defined in reg. 10(6) of the 1995 Regulations (again as subsequently amended) as including accommodation which is

“provided by a non-metropolitan county council a housing association, a registered charity or voluntary organisation where that body or a person acting on its behalf also provides the claimant with care, support or supervision.”

11. Under the consolidation of the housing benefit legislation which took effect from 6 March 2006, reg. 11 of 1987 Regulations has become reg. 13 of the Housing Benefit Regulations 2006. Provision for the continued application of “old” reg. 11 in cases of “exempt accommodation” is now in effect contained in the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006. The definition of “exempt accommodation”, in the terms set out above, is now in para. 4(10) of Schedule 3 to those Regulations.

12. It appears (p.97) that the “core rent” had been set at only £60 per week in the tenancy originally granted to the Claimant by Oscarvale Ltd. because that had been the amount of the rent officer’s determination, pursuant to the current version of what is now reg. 13 of the Housing Benefit Regulations 2006.

13. In cases where the old form of regulation 11 applies the effect, broadly, is that the council cannot restrict, by reference to a rent officer’s determination, the amount of rent eligible for housing benefit unless there is suitable accommodation available to the claimant

and it is reasonable to expect the claimant to move to it. Mr. Ennals emphasised that even under the old form of regulation 11 the amount of housing benefit awarded would not necessarily be the amount of the contractual rent. I accept that that may be so. But the important difference is that, under the old form of regulation 11, the eligible rent cannot in general be restricted by reference to the determination of a rent officer.

14. It has throughout been common ground that Reside is a "housing association" for the purposes of the definition of "exempt accommodation". On 9 March 2006 the Council decided, however, that the amount of housing benefit payable to the Claimant could not be increased, because the Council did not accept that Reside or a person acting on its behalf provided the Claimant with care, support or supervision, and therefore did not accept that the Claimant's accommodation fell within the above definition of "exempt accommodation", and therefore did not accept that "old" reg. 11 applied.

15. The Tribunal, by the decision now under appeal to me, dismissed the Claimant's appeal against that decision.

16. There were similar appeals by some 50 other tenants of Reside. However, the Claimant's appeal was the only one before the Tribunal, it having been agreed by the Council and on behalf of the other tenants that determination of the other appeals would await the outcome of the Claimant's appeal.

The Tribunal's decision

17. In the grounds of appeal to the Tribunal it was contended on behalf of the Claimant both that Reside provided "support" to the Claimant directly and also that Regard (undoubtedly the main care provider) provided support "on behalf of" Reside. However, following my decision in CH/423/2006 (now reported as R(H) 2/07) the latter contention was abandoned, and the only issue before the Tribunal was therefore whether support was provided to the Claimant by Reside directly.

18. After summarising the basic facts leading to the grant by Reside to the Claimant of a new tenancy and the Council's decision under appeal, the Tribunal, in its Statement of Reason^A, summarised the submissions to it as follows:

"The argument on the appellant's behalf was that direct care is provided by Reside to [the Claimant]. Mr Steve Christie is a Tenant Liaison Officer who works for Reside and his direct support is an integral part of the care package provided to the tenant and, as such, some care support or supervision is provided by Reside so that the accommodation is exempt. On behalf of the local authority the argument was that "provides care, support and supervision" cannot be interpreted so as to mean any amount of care but that the definition should be restricted to those who have a statutory obligation to provide the care and, if not, who is the main carer and, if not that, then a substantial amount of care must be provided.

On the appellant's behalf it was suggested that there is no further clarification in the Regulations of the care, support or supervision that must be provided and, as such, the ordinary meaning must be given to them. The Regulations are silent as to whether or not the person providing the support must be the sole person doing

so and it was argued that, if it was accepted that Reside provided care, support or supervision, the appeal must go in their favour.

On behalf of the local authority it was suggested that such a wide definition would be unworkable in practice and would require a long inquiry in each case to see whether care, support or supervision is provided to any degree.”

19. The Tribunal then summarised what it considered to be the important parts of the oral evidence which was given to it. Such evidence was given by Mr. Dipak Patel, the Company Secretary of Reside, by Mr. Steve Christie (referred to in the above citation from the Statement of Reasons) and by Miss Julie Yorke, the Manchester Area manager for Regard. The Tribunal then referred to Mr. Christie’s job description, and said this in relation to his position:

“He was the only Tenant Liaison Officer for Reside. As noted above, they have over 200 tenants. He works Monday to Friday, 37½ hours a week, and has to visit accommodation in various parts of England and Wales. He has to issue new tenancies and meet new tenants. It appeared to the tribunal that he was acting as a landlord’s agent in checking out accommodation, speaking to tenants etc. He may be an advocate for tenants in listening to any complaints that they have about the care provider but it appeared to the tribunal that he had to deal with so many tenants that he could only provide a very small amount of care, support or supervision to tenants, if any.”

The Tribunal then attached significance to the fact that, as admitted by Mr. Patel in evidence, Reside had not considered whether it was insured in respect of any liability which it might incur in respect of its alleged work in supporting tenants.

20. The Tribunal then summarised its conclusions as follows:

“In the skeleton argument put in on behalf of Manchester City Council on the day of the hearing, the tribunal was invited to decide as a preliminary point what was the test for deciding who provides care, support or supervision. It was suggested that that depended on the statutory function and to whom the function has been contracted out. In reading Regulation 10(6), the tribunal did not feel it was able to read into the Regulation that the person providing the claimant with care, support or supervision must be doing so under a statutory obligation to do so. That appeared to be reading a very substantial addition into the Regulation.

Undoubtedly, it is [the Council] which has the statutory responsibility for providing the care, support and supervision and that is currently done by contracting it out to Regard.

The tribunal could also not accept the argument put forward on behalf of the appellant, that any amount of care, support or supervision meant that the accommodation is exempt. In the case of this appellant there is a substantial care package in place which has been negotiated between Manchester City Council and Regard. Any additional care that could be given by Mr. Christie, who has over 200 other tenants to look after, was, in the view of the tribunal, *de minimis* and so did not

trigger Regulation 10(6) and so make the accommodation exempt. It appeared to the tribunal that there had to be read into the Regulation the fact that this was the main provider of care, supervision or support. It was accepted that the main provider of care, support or supervision was Regard. On that basis it was not provided by Reside and it was the view of the tribunal that therefore the accommodation was not exempt and Housing Benefit was to be calculated in accordance with the current version of Regulation 11 of the Housing Benefit Regulations.”

The error of law in the Tribunal's decision

21. In my judgment the Tribunal was wrong in stating that the definition of “exempt accommodation” requires that the landlord be the “main” provider of care, support or supervision. In my judgment it is simply not right to read in any such requirement. The definition requires merely that the landlord provides the claimant with care, support or supervision. Had any such limitation been intended, it could and would have been made expressly.

22. It was submitted to me by Mr. James that it is implicit that care, support or supervision provided by the landlord will not suffice to render the accommodation “exempt accommodation” unless it is provided pursuant to either a contractual or a statutory obligation on the part of the landlord. I do find it possible to read in that limitation either, particularly when I bear in mind that one of the categories of accommodation provider specified in the definition is a registered charity. One of the objects of such a charity might be that of providing care or support, without there necessarily being a statutory or contractual obligation to do so. Again, if that limitation had been intended, the legislation would in my view expressly so have provided.

23. However, in order to satisfy the definition the care, support or supervision which the landlord provides must in my judgment be more than minimal. It is a general principle of statutory construction that, unless the contrary intention appears, a statutory provision by implication imports the principle conveyed by the Latin maxim *de minimis non curat lex* (the law does not concern itself with trifling matters; or, as by Brooke LJ put it in *Sharratt v London Central Bus Co Ltd* [2003] 4 All ER 590 at [226], “the law does not care about very little things”): see Bennion, *Statutory Interpretation*, 4th ed., Section 343. There is no reason why that principle should not apply here. It cannot in my judgment have been intended that that a landlord can bring itself within the definition by providing a token or minimal amount of care, support or supervision.

24. The Tribunal did say, in the last paragraph of its Statement of Reasons (set out above), that in its view any additional “care” (a word which it clearly used there as a shorthand for care, support or supervision) which Mr. Christie could provide on behalf of Reside was *de minimis*. However, it then went on, in the next sentence, to say that there had to be read in a requirement that the landlord be the main care provider. It would not in my judgment be satisfactory to uphold the Tribunal’s decision on the basis that, even though it was wrong in stating that the landlord must be the main provider, it was entitled to find that any support provided by Reside was *de minimis*. There are two reasons why that would be unsatisfactory.

25. First, it is far from clear that, in determining what meaning to give to the words *de minimis* in this context, the Tribunal was not influenced by its conclusion that the landlord had to be the main provider of the support. Secondly, in my view the Tribunal did not in its

Statement of Reasons sufficiently examine the evidence before it as to the support which had actually been provided to the Claimant by Reside, nor did it indicate that it had taken into account Mr. Ennals' argument (see below) that the *availability* to all the tenants of Mr. Christie's assistance, even if not called upon by any particular tenant, was an important element of the support provided to them by Reside.

26. I therefore conclude that the Tribunal's decision must be set aside as erroneous in law.

My substituted decision

27. However, it is in my judgment appropriate that, rather than remitting this matter to a new appeal tribunal, I should make my own findings of fact and substitute my own decision on the basis of them. There were detailed witness statements from two of the three witnesses (Mr. Patel and Mr. Christie) who gave evidence to the Tribunal. Further, the oral evidence given by the three witnesses is recorded in the Record of Proceedings. There was really no dispute as to any primary facts and there were no issues as to the credibility to be resolved. I am satisfied that I am in as good a position to decide whether the support provided by Reside was more than minimal as I would have been if I had actually heard the three witnesses give evidence myself.

28. The Claimant's claim for an increased amount of housing benefit took effect from 14 November 2005. The Council's decision refusing that claim was made on 9 March 2006. The issue is therefore whether the accommodation was "exempt accommodation" between those two dates. However, in determining whether that definition is satisfied in respect of any particular day, it is plainly not right to look simply at whether support is provided by the landlord on that day. One must have regard to the activities of the landlord over a sensible period of time. In the present case there was evidence as to the support available to the Claimant from Mr. Christie from the time when Reside acquired the reversion on her original tenancy in September 2005 down to the date of the hearing before the Tribunal in September 2006, and I do not see why I should not have regard to all that evidence.

29. In my judgment it is not possible to conclude that such support as Mr. Christie was able to provide to the Claimant was anything more than minimal. It was not in my judgment sufficiently substantial to amount to the provision of "support" for the purposes of the definition of "exempt accommodation." (It is, as I understand it, not really contended that Mr. Christie provided "care" or "supervision", as opposed to "support"). I reach that conclusion on the basis of the following facts.

(1) It was not a term of the Claimant's tenancy (whether the original one or the replacement one which took effect from 14 November 2005) that she be provided by the landlord with any support. Although, as I have said, the definition of "exempt accommodation" does not require that the support is provided pursuant to a contractual obligation to do so, the presence or absence of such an obligation is potentially of some relevance in assessing the significance of what the landlord claims actually to do.

(2) It is not suggested that Reside is under any statutory obligation to provide support to the Claimant. It is common ground that the statutory obligations are those of the Council. Again, as I have held above (in agreement with the Tribunal), it is not a requirement of the definition that the landlord be under any statutory obligation to provide support, but the fact that

someone else does have such an obligation is again potentially relevant in assessing the significance of what the landlord claims actually to do.

(3) Regard is engaged by the Council and/or the Supporting People Administering Authority to provide care, supervision and support to the Claimant. Beginning at p.236 of the papers is a copy of the Council's standard form interim contract for Supporting People services from April 2003. There was before the Tribunal a copy of Schedule I to that contract in the form applicable to Regard. It contains a list of 11 "SP eligible support tasks" contracted to Regard, which include matters such as "help in setting up and maintaining home or tenancy", "developing domestic/life skills", "help in managing finances and benefit claims", "emotional support, counselling and advice." Miss Yorke accepted in evidence (p.331) that this Schedule "does appear to be comprehensive of the work done." Regard apparently in turn entered into a contract or contracts with the Claimant to provide care and support (p.97). There is a summary in Mr. Patel's witness statement (pages 90 and 91) of the four care plans operated by Regard in relation to the Claimant. The contract for general support and counselling services was at the rate of £486 per week and that for domiciliary care services was at the rate of £314.63 per week, making a total weekly charge for care and support services of £800.63.

(4) There is an Agreement dated 21 September 2005 between Reside and Regard, regulating their respective rights and duties in relation to the Property and the tenants of it. It provides (Clause 5.1.5) that Reside is to be responsible for "providing advice and assistance to [Regard] and tenants in relation to welfare benefits." However, by Clause 5.3.1 Regard is to be responsible for "providing all necessary support services (in accordance with the best professional practice) for all tenants of the Property."

(5) Reside has some 50 tenanted properties, which are widely spread geographically in England and Wales, with approximately 214 tenants. Such support as Reside is able to provide to tenants is provided by Mr. Christie, the tenant liaison officer. He lives in Cardiff. A list of his main duties is set out on pages 117-8. He said in evidence, and I accept for present purposes, that about 90% of his time is spent on the first three of those items, which are as follows:

1. To provide a responsive support service to tenants in accordance with their needs.
2. To monitor the contracted Care Providers' performance and report all concerns.
3. To operate a planned program of visits to all tenants to help them maintain their tenancies."

In oral evidence Mr. Christie said that he tried to get round all the properties in a 6 week period, but that he might only see half the tenants in any one visit (because the others might not be there). The tenants have his mobile phone number in order to contact him if necessary.

(6) The only evidence in relation to contact between Mr. Christie and the Claimant was as follows.

(a) He gave oral evidence that "at the start" (i.e. presumably September 2005) there was "quite a lot of involvement – a problem with tenant. Initially the manager wanted to evict her".

(b) A tenant liaison report prepared by Mr. Christie for January 2006 notes, in relation to the Property, that “tenants appear to be happy”. It is not clear that the Claimant herself was seen or spoken to.

(c) A tenant liaison report prepared by Mr. Christie for April 2006 indicates that he had spoken to the Claimant and ascertained that she had not been out for 6 days. He spoke to the “senior” and was reassured that this was her own choice and not a failure of the support provided. He also questioned the support worker about a smell of urine in the front room and was told that this was a result of the Claimant’s incontinence problems. It was decided that he (Mr. Christie) would speak to the Claimant and “gently remind her that it was a communal room and that she needed to make more of an effort to use the toilet.” He did so.

(d) Mr. Christie gave evidence that on 11 July 2006 the Claimant had been arrested by the police as she had caused problems in the house. However, by the date of the Tribunal hearing he had not been able to speak to her about that.

(e) On the day before the Tribunal hearing Mr. Christie had received a phone call from the care provider because the Claimant had locked herself in her room, having had a dream about being raped, and the police had been involved. He did not know how access to her room had been obtained. He did not have a key to her room or to the Property.

(f) There is therefore no evidence that, at the date of the hearing in September 2006, Mr. Christie had spoken to the Claimant since the occasion referred to in the tenant liaison report of April 2006.

30. Even if one were to assume that the entirety of Mr. Christie’s time is spent on activities which can be regarded as the “support” of tenants, his evidence is that he is only able to visit each property about once every 6 weeks. Looked at another way, his 37.5 hours work per week, divided among the 214 tenants, equates to an average of about 10 minutes per tenant per week. As he must in reality spend a substantial amount of time travelling, and some time on activities which cannot be regarded as “support” of tenants, the average amount of time per tenant which he able to spend providing “support” must be substantially less than that. The reality of the position is evidenced by the minimal amount of contact which he has had with the Claimant. It also accords with the fact that Regard has contractual responsibility to the Claimant for providing care and support, for which it is remunerated, and that Reside has none, and that as between Reside and Regard the latter has the responsibility for providing support. Unless Regard is performing its contractual obligations incompetently, it is difficult to see why Reside should need to do more than carry out its own housing management functions.

31. Mr. Ennals submitted in argument that the fact that Mr. Christie is available to provide support if needed (as demonstrated by the fact that the tenants have his mobile phone number) itself amounts to the provision of support. To quote from his skeleton argument:

“This can be compared to the “on call” helplines provided in some high care settings, where the support provided is not merely measured by the number of times someone calls, but by the availability of the service when it is required. In the same way for these tenants with mental disabilities the mere existence of the support that can be

accessed when necessary is an essential part of the support itself. It provides the necessary re-assurance to enable the tenants to manage their own tenancies.”

32. However, that submission has to be viewed against the background that the Claimant does have available to her a high level of actual personal support from Regard. That being so, it seems to me that Mr. Christie’s availability can provide little, if anything, by way of additional re-assurance. Even if it does, however, the reference, in the definition of “exempt accommodation” to the provision by the landlord of “care, support or supervision” is primarily a reference to actual support, rather than to the mere availability of it. Thus, if one were to postulate a tenant with an anxiety problem for whom the mere availability of support from the landlord were sufficient to allay his anxiety, but who never, or only very rarely, needed to call upon the support, I very much doubt whether the landlord could be said to be providing anything more than minimal support.

33. I do not overlook certain general statements made by the witnesses called on behalf of the Claimant, on which Mr. Ennals relied. Mr. Patel gave evidence (p.327) that he considered that Reside do provide an important element of support to all its tenants. He said that there was “an important aspect of supporting the tenancy which cannot be done by the care provider” and that “I feel the care we supply is so important that without it most of our tenancies would fail – may be all of them.” Mr Christie said (p.36) that it is his job to ensure that the tenants have sufficient support, care, counselling and advice to maintain successful tenancies, and that occasionally the tenants will complain about the support provider and he helps to resolve the issues generally by discourse with the support/care providers. Miss Yorke said (p.331) that she considered that the role of Reside was important and that the tenants had a direct line to the landlord through Mr. Christie.

34. However, in determining whether the support which Mr. Christie provides really does amount to “support”, for the purposes of the definition of “exempt accommodation” – i.e. whether it is more than minimal – I must have regard to the more concrete evidence as to the amount of support which he is actually able to provide to tenants generally, and which he has provided to the Claimant. In my judgment, for the reasons which I have given, the support which he has provided to the Claimant has in reality been minimal in extent. I do not think that it amounts to the provision by the landlord of any significant element of support. As regards Mr. Patel’s statement that in his view most of the tenancies would “fail” if the support provided by Reside was not available, it is not difficult to accept that serious problems would occur if Reside did not carry out its housing management function. Clearly, the properties need to be maintained and administered etc, and that will necessarily involve some communication with tenants or carers on their behalf. But in my judgment the evidence does not establish the proposition that, despite the fact that substantial support is provided to the Claimant (and the other tenants) by Regard, who are contractually obliged to the Council to do so in order to enable the Council to fulfil its statutory responsibilities, the tenancies would be unworkable if Reside did not go beyond its strictly housing management function and intervene in order to provide the tenants with additional support.

(signed on the original)

Charles Turnbull
Commissioner
7 March 2007