

## *A summary of relevant Social Security Commissioner's decisions*

### 1 CH/1992/2002 (particularly paragraphs 22 to 27)

This decision looks at what constitutes suitable alternative accommodation for the rental comparison. The Commissioner did not find the tribunal's decision unreasonable that a dwelling did not have to be suitably adapted to meet the individual tenant's needs in order to be considered as suitable alternative accommodation for the rental comparison. The Commissioner took a pragmatic approach that, as the full cost of housing the individuals would be met from the public purse one way or another, a broad approach could be taken as to what was suitable alternative accommodation. The Commissioner did not find it unreasonable for 'suitable alternative accommodation' to include properties which, though not immediately suitable, could be made suitable in a reasonable space of time.

### 2 CH/3900/2005 (particularly paragraphs 16 to 20)

The decision looks at what is meant by 'provided by' when it comes to providing the accommodation within the definition of 'exempt accommodation'. The Commissioner, rejecting a broad interpretation of provided by, decided that the accommodation could not be considered to be 'provided by' the county council in this case just because it was instrumental in arranging the accommodation with a private landlord via a third party. He decided that it was not 'exempt accommodation' as the prescribed non-metropolitan county council was not the landlord.

### 3 CH/423/2006 (particularly paragraphs 51 and 52)

[http://www.osscc.gov.uk/judgmentfiles/j1988/R\(H\)\\_2-07\\_bvam.doc](http://www.osscc.gov.uk/judgmentfiles/j1988/R(H)_2-07_bvam.doc)

The decision looks at what is meant by 'on behalf of' when it comes to providing the care, support or supervision within the definition of 'exempt accommodation'. The Commissioner decided that the care, support or supervision could not be considered to be provided 'on behalf of the landlord just because they are a party to arranging the accommodation/care/support package for the tenant. 'On behalf of' required an interposition of the care/support provider for the landlord.

### 4 CH/3811/2006 (particularly paragraphs 29 and 32 to 34)

[http://www.osscc.gov.uk/judgmentfiles/j2150/R\(H\)\\_7-07\\_bvam.doc](http://www.osscc.gov.uk/judgmentfiles/j2150/R(H)_7-07_bvam.doc)

In this case where the landlord was a housing association, the Commissioner found that it was wrong to read in to the definition of exempt accommodation a requirement that the landlord be the main provider of care, support or supervision; nor was it possible to read into that definition a requirement that the care, support or supervision be provided pursuant to a statutory or contractual obligation on the part of the landlord. In order to satisfy the definition of exempt accommodation the care, support or supervision which the landlord provided must be more than minimal. On the facts of this case, the support provided by the landlord's tenant liaison officer to the claimant was minimal. In this case there was already a substantial care package in place negotiated between the local authority and the care provider.

5 **CH/58/2007**

In this appeal the circumstances of the tenancy had been re-arranged to create a landlord that is a 'voluntary organisation' in place of one which was a private sector landlord, with the expectation that the dwelling would become 'exempt accommodation'. The Commissioner did not find fault with the tribunal's decision that HB reg. 9(1)(l) did not apply in this case. He made the point that this regulation should not be applied where the landlord is taking advantage of the perceived shortcomings of the rent control mechanism in HB reg. 13. However, at paragraphs 36, 38, 41, 43 and 45 he accepted that these landlords could be motivated by profit making when making their commercially based decisions. The common factor of all the prescribed landlords being not for profit was not addressed by the Commissioner in his decision.

6 **CH/136/2007** (particularly paragraphs 53, 59 to 65 and 72)  
<http://www.osspsc.gov.uk/judgmentfiles/j2241/CH%20136%202007-00.doc>

The Commissioner did not find fault with the tribunal's decision but in this case that decision was that HB reg. 9(1)(l) did apply. The situation was one where the leaseholder/landlord charged high rents on that half of the property for which they were only liable for a peppercorn rent to the freehold owner under a lease. The situation involved a profit making head landlord leasing property to a 'voluntary organisation', which was the leaseholder/landlord, with which they had close links. The Commissioner confirmed that 'the Council could look behind the precise terms of the tenancy to the structure behind it to identify any abuse'. One relevant factor was the insertion of an otherwise unnecessary intermediate landlord into the process (see para. 64).

7 **CH/1246/2007** (particularly paragraphs 26 to 31)  
<http://www.osspsc.gov.uk/judgmentfiles/j2510/CH%201246%202007-01.doc>

The Commissioner did not accept the argument put forward that the care and/or support provider need only act in some capacity on behalf of the landlord for it to be 'exempt accommodation'. He confirmed that the care, support or supervision must specifically be provided by the landlord or on their behalf. He set aside the Tribunal's decision that the landlord did not provide care support or supervision but did not make a decision himself on this point leaving that to a joint Commissioner's hearing involving the same landlord with the appeals in CH 779.2007 and CH 2805.2007.

8 **CH/1289/2007** (particularly paragraphs 27 to 29)  
<http://www.osspsc.gov.uk/judgmentfiles/j2219/CH%201289%202007-00.doc>

The Commissioner made it clear that in a building containing more than one dwelling but with the same landlord, it could not be automatically assumed that all the dwellings are 'exempt accommodation' just because the landlord provides support to tenants of the building. This is particularly the case where the need for support of individuals varies. It is the dwelling and not the building which is 'exempt accommodation'. It is possible that the building contains some dwellings which are 'exempt accommodation' while others are not, depending on the support needs of individual tenants. Furthermore a claimant's accommodation will not be exempt if no (or only minimal) care, support or supervision is provided to him by the landlord, however much care, support or supervision may be provided to other tenants of the landlord.

**9 CH/3528 - 3560/2007**

<http://www.osscsc.gov.uk/judgmentfiles/j2367/CH%203528%202006-01.doc>

The Commissioner firstly decided that where a charge is described as a service charge but does not relate to providing a service it is appropriate to consider whether it should be added to the core rent. The charges were for voids and long term maintenance. He went on to look at what constitutes 'suitable alternative accommodation' for each tenant. He said that there was an evidential burden on the local authority to show that the alternative accommodation they had found was able to meet the accommodation needs of the individual, rather than just being similar to what they already have. This had not been shown in all of the cases presented particularly those where particular accommodation needs could be identified from the substantial amount of information before the Commissioner. The decision requires an authority to have a detailed knowledge of a person's accommodation requirements and ensure that the accommodation identified as a suitable alternative meets those detailed needs, such as room sizes, wheelchair access etc.

**10 R(IS) 2/07 CIS 2901/2004**

[http://www.osscsc.gov.uk/judgmentfiles/j1767/R\(IS\)\\_2-07\\_bvam.doc](http://www.osscsc.gov.uk/judgmentfiles/j1767/R(IS)_2-07_bvam.doc)

This Commissioner's decision explored in great detail how the cost of staffing should be separated between accommodation and support/care related costs. While this is an Income Support decision the only difference in the facts of the case is that the person was a leaseholder in sheltered housing rather than tenant, otherwise the considerations are the same as help with service charges within the other income related benefits refers to the HB service charge rules. Essentially it is not the cost of paying for certain staff that is eligible or not, but the cost of the service they provide depending on whether the duty is connected with the provision of adequate accommodation. The cost is worked out by reference to the number of hours spent providing the accommodation-related services. An authority should be satisfied what staff time is spent on what duty and how that has been costed to arrive at a figure that forms the eligible element of any charge.

**11 CH/779, 1246/7 and 2805/2007**

<http://www.osscsc.gov.uk/judgmentfiles/j2511/CH%200779%202007-01.doc>

Commissioner Turnbull looked at these three sets of appeals together as they all involved the same landlord. The issue was whether the level of support provided by the landlord was more than minimal in line with CH 423.2006 (see above). In paragraphs 19-21 the Commissioner states that providing support could differ from the provision of care and supervision in that, while it would need to be available to the tenant in their dwelling, the tenant need not actually take advantage of it for it to be accepted as support. However, in paragraph 24 the Commissioner agrees that there must be a degree of likelihood that the tenant will need the support for it to be accepted as such and any decision should take account of other available sources of support. In paragraph 232 the Commissioner gives his opinion that 'the word support connotes the giving of advice and assistance to the claimant in coping with the practicalities of everyday life'. However, that it did not extend 'to scrutinising the arrangements for the provision by some other body of care, support and supervision, with a view to remedying defects perceived by (the landlord), or to recommending improvements'.

