IN THE UPPER TRIBUNAL **Case No.** CH/1766/2010
ADMINISTRATIVE APPEALS CHAMBER

1. This is an appeal by the Claimant, brought with my permission, against a decision of a First-tier Tribunal sitting at Manchester on 14 April 2010. For the reasons set out below that decision was in my judgment wrong in law. I allow the appeal, set aside the First-tier Tribunal's decision and remit the matter for redetermination by a differently constituted First-tier Tribunal.

2. The Claimant is a woman now aged 36 who suffers from what has been described as mild learning disability. She suffered some brain damage at birth, as a result of which she has a language disorder. She requires some repetition, and basic short instructions. She can cope well in familiar situations, but needs support with the complex and unfamiliar. The Claimant lived at home with her mother (her parents separated when she was 7) until 1994. She attended a school specialising in children with communication difficulties between 1979 and 1992. In 1994 she moved into an adult placement which ended in 1996, when she moved back home until July 2002 when she moved into the property referred to in para. 3 below. She lives there alone and can manage most of the functions of daily living unaided, but requires some support with matters such a prompting to cook a main meal, shopping etc. (see especially page 53). Further description of her daily activities is given in paras. 8 and 9 of the First-tier Tribunal's Statement of Reasons (which I have numbered for ease of reference).

3. On 7 August 2002 Golden Lane Housing Ltd ("GLH"), a registered charity, granted the Claimant a weekly shorthold tenancy, from 1 July 2002, of a one bedroom flat on the ground floor of a building in Manchester. GLH is the owner (presumably under a long lease) of the flat. Indeed, GLH had purchased the flat with a view to the Claimant living in it. GLH does not own the freehold of the building and (so far as I am aware) has no interest in the other flats, which are owned and occupied by private individuals.

4. At the time when the tenancy was granted the Claimant was in receipt of some housing related and other support from the Central and South Manchester branch of Mencap, the parent organisation of GLH. Under the "transitional housing benefit" scheme then on foot, the payments in respect of that support were capable of qualifying for housing benefit. The tenancy agreement therefore provided in Clause 1(4) that GLH should provide the services set out in the schedule, which were "as far as practicable to provide general counselling and support". The "core rent" payable by the Clamant to GLH was £143.92 per week, in addition to which a "service charge" of £213.79 per week was payable, making a total of £357.71. Of that service charge, £177.72 per week was in respect of what were described in the rent schedule on p.28 as "supporting people charges", and on the rent breakdown at p.2 as "general counselling and support charges". As I understand it those were the charges in respect of the services provided by Mencap, which were stated on p.2 as being for a total of 12 hours a week.

5. It may be instructive to note the description on pp. 2-3 of what the support charges were then considered as covering. The headings were "maintaining the security of the dwelling", "maintaining the safety of the dwelling", "helping tenant to

comply with their tenancy agreement" and "other: general counselling and support". That latter category was described as follows:

> "General counselling on emotional issues. The provision of support which entails enabling, reminding and non-professional counselling with the aim of achieving greater independence and maintaining sufficient independence to retain the tenancy. Informal day-to-day advice on personal hygiene and appearance, which enables the tenant to maintain a degree of independent living. Day-to-day, non-professional "reminding" to take medication undertaken by support staff."

6. The structure at that time was therefore that GLH agreed to arrange for those services to be provided to the Claimant by Mencap on its behalf, and the Claimant obtained housing benefit in respect of both the core rent and the services charges, which enabled her to make payment to GLH. A brief summary of the history of the mechanics of payment for housing related support is set out in paras. 12 to 16 of my decision in R(H) 4/09.

7. An award of housing benefit was therefore made to the Claimant by Manchester City Council ("the Council") in respect of the full rent of £357.71 per week, from 1 July 2002.

8. However, the transitional housing benefit scheme expired in April 2003. From that date charges made by a landlord in respect of counselling and support provided to the tenant by it or on its behalf were no longer eligible for housing benefit, even in "supported accommodation". From that date the payments in respect of the support provided by Mencap to the Claimant were made to Mencap directly by the Council, not as the authority administering housing benefit but as the authority administering the *Supporting People* programme. That support therefore ceased to be provided by Mencap on behalf of GLH, but rather under a direct contract with the Council's social services department.

9. Under Clause 1(4) of the tenancy agreement GLH was entitled to reduce or vary the services provided. GLH therefore ceased to agree to provide the services which were being provided by Mencap, and the rent was reduced so that it no longer included that element of the service charges. For the year ending 31 March 2004 the weekly rent was reduced to £175.39, consisting of £151.65 "core rent" and £23.74 "property service charges" (p.29).

10. As from 1996 a new version of regulation 11 of the Housing Benefit (General) Regulations 1987 had been enacted, under which the rent eligible for housing benefit was limited (save in certain exceptional cases) to that determined by a rent officer in accordance with specified criteria. However, a saving provision was enacted (in regulation 10 of the Housing Benefit (General) Amendment Regulations 1995). This provided that 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". "Exempt accommodation" was defined in regulation 10(6) of the 1995 Regulations (again as subsequently amended) as including accommodation

> **"provided by …….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, regulation 11 of the 1987 Regulations became regulation 13 of the Housing Benefit Regulations 2006. Provision for the continued application of "old" regulation 11 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 paragraph 4(10) of Schedule 3 to those Regulations.

12. It seems reasonably clear that until the ending of transitional housing benefit in April 2003 the support provided to the Claimant by Mencap was provided "on behalf of" GLH, within the meaning of the definition of "exempt accommodation", and the "old" regulation therefore applied, so that the core element of the rent was not required to be limited to that determined by a rent officer.

13. However, from April 2003 the support provided by Mencap ceased to be provided on behalf of GLH, so that "old" regulation 11 (permitting the amount of rent qualifying for housing benefit to be in excess of that determined by the rent officer) only continued to apply if GLH itself provided support to more than a minimal extent.

14. Nevertheless, the Council continued after April 2003 to pay the full amount of the contractual rent (which, as I have said, no longer included payment in respect of the support services provided by Mencap) by way of housing benefit, without apparently seeking a determination by the rent officer of a fair rent.

15. From February 2007 North West Community Services (GM) Limited ("NWCS") replaced Mencap as the main provider of support to the Claimant. That support is now provided on for a total of 12 hours per week, being 6 hours on each of 2 days. In addition, NWCS maintain a telephone service which is available for the Claimant to contact if necessary, outside those hours. The Claimant also continues to receive some support from her mother.

16. The Claimant's rent was of course increased from time to time, after 2003. From April 2007 the rent was £201.40 per week, and housing benefit of that amount was awarded.

17. As to developments in the understanding of the meaning of "exempt accommodation", I noted as follows in paras. 17 and 18 of my decision in R(H) 4/09:

> "17. In R(H) 2/07, decided in June 2006, I held that support was not provided by the support provider "on behalf of" the landlord (within the meaning of the definition of "exempt accommodation") where the landlord was under no contractual or statutory obligation to provide the support and the support provider had been commissioned by the local authority, not the landlord, to provide the support. That decision was of significance in that there appeared to be a view in general circulation that if the landlord and the support provider were working to achieve a common aim (namely the success of the

supported housing scheme), the support could be said to be provided "on behalf of" the landlord because it was in the interest of the landlord that the support be provided. Indeed, that argument was put forward, prior to the decision in R(H) 2/07, by GLH's solicitors in the Sheffield case.

18. In R(H) 6/07, decided in March 2007, I held that the definition of "exempt accommodation" did not require either that the landlord should be under a contractual or statutory duty to provide the support, or that it be the main support provider. I held that it is sufficient that the landlord provides support to more than a *de minimis* (or minimal) extent. ……..

18. There appears to have been a community care re-assessment in respect of the Claimant which started on 10 April 2008 (pp. 47 onwards).

19. It appears that on 18 July 2008 a rent officer advised that the local reference rent for the property was £96 per week. Presumably the Council must have asked the rent officer to advise.

20. On 2 March 2009 GLH notified the Council that the Claimant's rent would increase to £202.68 per week, as from 6 April 2009.

21. The Council's submission in reply in this appeal dated 1 February 2011 states:

"On 14 March 2009 we superseded our existing decision as part of the exercise to update all cases to take into account April's legislative changes. This led to the notification of benefit entitlement issued to the Appellant on 14 March 2009. This award notification confirmed to the Appellant that her weekly rent payable was £201.40".

22. A copy of that letter dated 14 March 2009 is attached to that submission. In substance it appears to evidence a decision <u>not</u> to supersede the then subsisting award – i.e. to continue from 6 April 2009 to pay by way of housing benefit the full amount of what the decision maker believed to be the contractual rent. The decision maker appears to have overlooked the notification from GLH that the rent would increase from 6 April 2009.

23. According to para. 9 of the Council's submission to the First-tier Tribunal, on 8 April 2009 the Council suspended payment of housing benefit while it "considered our decision in the light of" my decision in R(H) 4/09, a decision which I had given in July 2008.

24. On 15 June 2009 (p.40) the Council notified the Claimant that "we have worked out your Housing Benefit again because of a change in your rent". The letter went on to say that, although the weekly rent payable was £201.40 per week (i.e. the Council were still in fact using the old, unreduced, figure), "the Rent Officer advised us that a deduction of £105.40 should be made from the rent. This is because your rent is higher than the average for Manchester". In effect, therefore, the Council now applied the new reg. 13 as from 6 April 2009. As the Council said in para. 11 of its initial submission to the First-tier Tribunal: "On 15 June 2009 we decided that [the Claimant's] HB entitlement should be calculated under deregulated new rules

scheme regulation 13 from 6 April 2009 onwards. Under the new rules her rent was restricted to the Rent Officer's decision dated 18 July 2008. The lowest of his decisions being the Local Reference Rent of £96 per week."

25. The Claimant appealed against the decision of 15 June 2009, contending that no change of circumstance had taken place since the decision of 14 March 2009, and in any event that the Claimant's accommodation was "exempt accommodation."

26. On 10 July 2009 a further community care assessment in respect of the Claimant was carried out by the Council's social services Department. The impetus seems to have been "major concerns over housing benefit decision not to pay all of [the Claimant's] entitlement which has been paid over the last 7 years."

27. On 27 July 2009 the rent officer reconsidered the local reference rent, but considered that it remained at £96 per week.

28. The decision of 15 June 2009 was reconsidered on 5 August 2009 (p.63), but not revised. The reasons given for that refusal to revise may be of some significance. They are lengthy, and should be treated as incorporated in this decision. I note that it was stated that "in April 2009 Manchester Social Services Department carried out a Community Care Reassessment for [the Claimant] . We have considered this report when making our decision."

29. The Claimant's appeal against the decision of 15 June 2009 therefore proceeded. The Tribunal heard evidence from Mr Dugher and Ms Kirkup of GLH, and from the Claimant's mother. At the hearing the Claimant was represented by Mr Rodgers of MR Associates (whose website describes them as "advisors to supported housing") and the Council by Ms Kate Tonge, a casework manager in its Revenues and Benefits Unit.

30. The First-tier Tribunal dismissed the appeal. Having stated the Tribunal's conclusion that the Claimant's accommodation was not "exempt accommodation", the Decision Notice continues: "I am satisfied that although some additional support can be said to be provided by GLH, that support was of minimal significance in the overall scheme of support essentially provided by [NWCS]." The original grounds of appeal to the Upper Tribunal were formulated by Mr Rodgers. I having given permission to appeal, and the Council having then made a submission, the submission in reply on behalf of the Claimant was drafted by Mr Paul Stagg of counsel. It resurrected the point that there was no valid ground for revision or supersession, to which I invited a written submission in reply from the Council.

31. The first ground of appeal in Mr Stagg's submission is that the First-tier Tribunal erred in law in not considering whether there was a valid ground permitting revision or supersession of the decision which had been made on 14 March 2009, assessing housing benefit at £201.40 per week as from 6 April 2009. It is submitted that there had been no relevant change of circumstances between 6 April 2009 and 15 June 2009.

32. Neither the First-tier Tribunal's Decision Notice nor its Statement of Reasons deal with the supersession/revision issue at all. It had been raised in the initial written

submission to the Tribunal on behalf of the Claimant (pp. 100 onwards), at paras. 3 and 9. Para. 9 had stated:

> "In the absence of a clear explanation from [the Council] of why they consider there are grounds for the supersession it is hard to comment on this aspect of the case. The burden of proof is on [the Council], who have instigated the supersession, to make out the grounds. Suffice it to say that there have been no changes in [the Claimant's] circumstances, or in the situation of the tenancy itself, that could give rise to an alteration in the status of the tenancy. The only ground for a supersession was a small rent increase, which would not justify a change in other aspects of the award (see para. 3 above)."

33. In addition, the Claimant's mother had forcefully made the point, in correspondence, (see, for example, her letter dated 18 September 2009 (p.70)) that there had been no change in circumstances since the letter of 14 March 2009.

34. The Record of Proceedings (p.356) records Ms Tonge as submitting, near the beginning of the First-tier Tribunal hearing, as follows:

> "Date of decision 15/6/2009 effective from 6/4/2009. We have superseded the previous decision. The decision was superseded on the basis of error of law Reg 7(2)(b) of the HB Regs. (Decisions and Appeals) 2001."

35. The Record of Proceedings does not record any reply by Mr Rodgers to that submission.

36. On behalf of the Council it is submitted, in the Council's submission dated 1 February 2011 in this appeal, as follows:

> (i) the decision of 14 March 2009 had failed to take into account the rent increase to £202.68 per week (as from 6 April 2009) which had been notified to the Council by GLH on 2 March 2009;
>
> (ii) [the Council] was therefore under a duty to revise [the decision of 14 March 2009] to deal with the Appellant's change of circumstances that had been notified.
>
> (iii) upon addressing the evidence of the rent increase, which was a relevant change of circumstances, the [Council] was at liberty to review the whole award again, and given that there had been so much activity and case law in respect of this type of accommodation, it was reasonable for the authority to address any questions in relation to exempt accommodation, which it did.
>
> (iv) The revised decision made by [the Council] on [15] June 2009 clearly identified the fact that [the Council] had looked at the claim again because there had been a change in the Appellant's rent that had not been taken into account in the decision of 14 March. The reconsideration letter of the [Council] of 5 August 2009 confirmed the same.

(v) This argument was placed before the Tribunal hearing and the claimant's representative (Mr Rodgers) was asked if he wished to make any comment in respect of this issue, to which he replied no, therefore in effect accepting that the First-tier Tribunal should proceed on the footing that there was a ground for revision or supersession. The appeal from the appellant's representative lodged on 19 July 2010 to the Upper Tribunal on the form UT1 did not raise this as an issue.

37. In my judgment the First-tier Tribunal did err in law in not expressly considering the revision/supersession issue – i.e. the issue whether there was any ground on which the Council, having continued since the ending of transitional housing benefit in 2003 to award housing benefit based on the full contractual rent, was entitled in 2009 to apply the "old" reg. 11.

38. Even though Mr Rodgers may have made no submission in response to that made by Ms Tonge on this point at the hearing, it was in my judgment incumbent on the Tribunal to consider whether there was a valid ground for revision or supersession. It does not seem to me that the Tribunal was entitled to treat Mr Rodger's statement that he did not wish to make any comment as a concession that there was a ground for supersession and that the Tribunal need not consider the point.

39. Although the point was not taken in the original grounds of appeal to the Upper Tribunal, formulated by Mr Rodgers, I do not think that that prevents it now being taken.

40. In any event, as I am also setting aside the First-tier Tribunal's decision on the ground that it erred in law in relation to the "support" issue, then even if the First-tier Tribunal was absolved, by reason of a concession, from the need to consider the revision/supersession issue, the Claimant would not be bound by that concession before the new First-tier Tribunal to which I am remitting this matter, and the new First-tier Tribunal will therefore have to consider the revision/supersession issue. It is appropriate that, for the assistance of the new tribunal, I give some further consideration to this issue, although nothing which I say about it will bind the new tribunal, as I have not had the benefit of any full argument on it. (My comments on this made issue are made on the assumption (for the same of simplicity) that from 2003 onwards the amount of support provided by GLH itself was not more than minimal).

41. The decision of 15 June 2009 appears to have been in substance a purported revision of that dated 14 March 2009: it purported to alter it with full retrospective effect. As a matter of analysis, that means that the decision under appeal to the First-tier Tribunal was in fact the decision of 14 March 2009, as revised by that of 15 June 2009: see R(IB) 2/04 at paras. 38, 53 and 188.

42. The decision maker who made the decision of 14 March 2009 appears to have been unaware of the fact that the Council had been notified that the rent would be increased as from 6 April 2009. It therefore appears that there was a ground for revision of the decision of 14 March 2009, namely that in reg. 4(2)(a) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 ("official error").

43. The question is then what decision should have been made on 14 March 2009. By that time the Council had been notified of a change of circumstances, namely that the rent was due to increase slightly from 6 April 2009. However, on the basis of the law as explained in R(IB) 2/04 that increase in rent would not justify reducing the amount which had previously been awarded by way of housing benefit. As it was put in para. 186 of that decision, applying the decision of the Court of Appeal in *Wood v Secretary of State for Work and Pensions* [2003] EWCA Civ 53 (reported as R(DLA) 1/03):

> "A decision can only be superseded under section 10 if there is a ground for supersession and that ground forms the basis of the supersession decision in the sense that the original decision can only be altered in a way which follows from that ground."

44. It would not follow from the fact that the contractual rent had increased slightly that the amount of housing benefit ought to be reduced on the basis that the accommodation was not exempt accommodation.

45. It seems to me that, in order to justify a decision on 14 March 2009 to reduce the amount of housing benefit on that basis, the Council would have to show that previous decisions (or at any rate the last awarding decision before that of 14 March 2009) had been made either (i) without reconsidering whether, as a result of the ending of the transitional housing benefit scheme, the Claimant's accommodation had ceased to be "exempt accommodation" (which I think would rank as an error of law justifying supersession under reg. 7(2)(b) of the 1991 Regulations) or (ii) under a misunderstanding as to the meaning and effect of the definition of "exempt accommodation" (which would equally rank as an error of law justifying supersession) or (iii) under a mistaken understanding as to the amount of support which GLH themselves were providing (which would qualify as a mistake of fact also justifying supersession under reg. 7(2)(b)).

46. Indeed, at present it seems to me that (on the assumption, for the moment, that GLH was not providing more than minimal support) the decision maker who made the last awarding decision before that of 14 March 2009 must necessarily have been either in error of law or under a material mistake of fact, unless he (a) considered whether GLH or someone on its behalf was providing support, and applied the correct test in determining that and (b) was not mistaken as to the primary facts relating to what GLH does, but (c) as a matter judgment concluded that GLH was providing more than minimal support.

47. It appears to me quite probable that the Council proceeded on the footing, after 2003, that the support which Mencap (and then NWCS) were providing was provided "on behalf of" GLH. That was a view which appeared to be in general circulation until my decision in R(H) 2/07, in June 2006: see para. 17 above. It involved an error of law, and so will have justified supersession, on14 March 2009, of the latest awarding decision before that of 14 March 2009.

48. However, it is for the Council to establish, as a matter of evidence, that there was, as at 14 March 2009, a basis for superseding the awarding decision which was then on foot. I have tried to indicate that it seems to me that (on the assumption that

GLH was not providing more than minimal support) the Council ought probably to be able to establish such a basis. The Council will need to consider what further evidence it puts forward before the new First-tier Tribunal.

49. The second ground of appeal, in Mr Stagg's submission on behalf of the Claimant, is that the First-tier Tribunal misdirected itself as to the meaning of "provides ….support" in the definition of "exempt accommodation". I am not satisfied that the First-tier Tribunal did go wrong in any of the four respects mentioned in paras. 16 to 19 of that submission. As regards the first point on which I gave permission to appeal, I was concerned that, reading the Statement of Reasons as a whole, it was not sufficiently clear that the Tribunal had directed its attention to whether the support which GLH had provided was more than minimal. However, as Ms Tonge rightly pointed out on behalf of the Council (p.398), the Decision Notice expressly states that although some support was provided, "that support was of minimal significance in the overall scheme of support essentially provided by NWCS." The Statement of Reasons states that it is to be read with the Decision Notice, and taking the two together it seems to me that the Tribunal essentially applied the correct test. Nevertheless, the new First-tier Tribunal will of course direct itself, so far as the meaning of "exempt accommodation" is concerned, by reference to the Upper Tribunal decisions, and not to the decision of the First-tier Tribunal which sat on 14 April 2010.

50. The third ground of appeal in Mr Stagg's submission is in effect that the First-tier Tribunal made insufficiently precise or detailed findings of fact as to the various items of support which were claimed to be provided by GLH. Those items of support are purportedly summarised, under 9 heads, in para. 20 of Mr Stagg's submission.

51. What matters is of course whether the Tribunal dealt adequately with the submissions made to and evidence before it. After very careful consideration I have concluded that the Tribunal probably did not describe, in sufficient detail, what support it found that GLH did provide. The Tribunal's findings in relation to what GLH did were essentially contained in the part of the Statement of Reasons which runs from about one third of the way down the second page ("The appellant's mother and appointee …..") to the second paragraph on the next page. So the findings directly relating to GLH's activities occupied about a page of the Statement of Reasons.

52. I bear in mind that the evidence before the Tribunal was in some respects vague and general as to what support was provided, and that the onus lay on the Claimant (or GLH) to show that support was provided, not on the Council to show that none (or only minimal support) was provided The Tribunal could not be expected to make findings in greater detail than the evidence before it allowed. However, it seems to me that the Statement of Reasons was probably deficient in the following respects, in particular.

(1) The Tribunal accepted that GLH staff provided "emotional support", but did not really attempt to make sufficient findings as to the frequency of contact, particularly by telephone. In para. 15 of the Statement of Reasons the Tribunal, with reference to the telephone log at p.353, said that "the case log, however, post-dated the decision under appeal. I am not suggesting that that is not the normal pattern but in practice the worker concerned visits the appellant on an annual basis. She will also call to see the appellant if asked to do so. She said that there had been an occasion in

recent weeks where she had simply called to have a chat with the appellant." The log at p. 353 relates only to 2009, but appears to show quite a lot of contact. In saying that "I am not suggesting that that is not the normal pattern" the Tribunal appears to be accepting that it was representative of what happened before 2009. The Tribunal did not attempt to assess the frequency with which calls were made, or to find what they are likely to have been about. The calls may of course have related mainly to repairs, and so arguably not to have gone beyond housing management.

(2) The Tribunal in my judgment probably did not sufficiently consider how often GLH had acted, in relation to repairs or other works, in a manner going beyond housing management. At pages 175 to 184 there was a "list of tenant support", which referred to a number of repair items. That document was described in the Index of Appendices at p.169 as "full log of all activity and support provided by GLH." The Tribunal had referred to the issue of "additional maintenance services" in para. 11 of the Statement of Reasons. Then in paras. 17 and 18 the Tribunal said:

> "When asked to provide details of other specific support which was being provided and accessed by the appellant, GLH submitted that the support "may be just general advice" and also "housing management functions". In that respect I was referred to an extract from a log which appeared at page 178 of the submission. That page, however, dealt substantially with repairs to the tenanted property and also assisting with a claim for housing benefit, which seemed to me to be within the general remit of support which is allied to ordinary property management.
>
> It was difficult to get any of the parties who spoke on behalf of GLH to identify specific examples of support which was regularly accessed by the appellant. The appellant's mother said that familiarity and routine were essential and that continuity provided the appellant with a feeling of security. All of that I accept."

It seems to me that the list of works referred to in the log probably enabled the Tribunal to consider, rather more closely, to what extent GLH, in carrying out repairs and maintenance, and improvement works, had gone beyond ordinary property management and so provided support (see para. 71 of *Chorley BC v IT* [2009] UKUT 107 (AAC)). The Tribunal needed to make such findings as it could as to the frequency with which this occurred. Findings as to whether the reporting of repairs training which was provided to the Claimant amounted to support were also desirable. I think that, in view of the detail in the log, a similar point could be made in relation to other types of support which contact recorded in the log was said to evidence. I note in this connection that Ms Tonge says in paras. 6 and 7 of her submission (p.400) that "during the hearing we spent the majority of the time going through the evidence of support given by GLH at p. 175 onwards [i.e. the log], the parties present at the hearing went through each entry item contained therein, and this is referred to at pages 358 to 360 [Record of Proceedings]. For this reason we consider the Tribunal to have given sufficient consideration to the evidence of support given by GLH at p. 175 onwards." When I look at the Record of Proceedings, however, I do not identify a process of going systematically through, with one of more of the witnesses, the entries in the log. If that did happen, as I accept it may well

have done, it seems to me that the Record of Proceedings inadequately recorded what the witnesses said.

(3) I think that the Tribunal should probably have considered in more detail whether the quarterly tenants' forums amounted to the provision of some support.

53. I bear in mind, of course, that the question is not whether the Statement of Reasons was perfect, or could have been better, but whether the findings and reasoning were sufficient to enable its decision to be understood. Having read the Statement of Reasons many times, in the light of the evidence, all of which I have also read, some of it a number of times, I am left at the end of the day with the impression that the First-tier Tribunal has not sufficiently completed the process of making findings as to the various types of "support" provided by GLH and then taking a view whether in aggregate, and in all the circumstances, they amounted to more than minimal support. I am far from saying that the First-tier Tribunal's conclusion was wrong, or was one which on the evidence was not open to them. I have not had the advantage of hearing the witnesses' detailed evidence.

54. In his written submission Mr Stagg asked for an oral hearing of this appeal. However, in view of the decision which I have reached, I have not considered an oral hearing of this appeal to be necessary or useful. Mr Stagg submitted that part of the reason for requesting a hearing was that the Upper Tribunal would be asked at the hearing to re-make the First-tier Tribunal's decision. In order to do that, it would have been necessary to rehear the oral evidence. It seemed to me that it would not be sensible to direct a hearing, with witnesses, before it had been determined whether the First-tier Tribunal's decision was to be set aside as wrong in law. Having now, without a hearing, set aside the First-tier Tribunal's decision, it seems to me preferable that the rehearing should take place before a fresh First-tier Tribunal rather than before me.

55. The new First-tier Tribunal will therefore need to decide:

> (1)(a) which decision(s) were properly under appeal and (b) whether there was a ground for revision and/or supersession which required the relevant decision maker, if the Claimant's property was not (on the Tribunal's findings) exempt accommodation, to reduce the subsisting award of housing benefit to the amount of the local reference rent. I have commented on these issues in paras. 40 to 48 above. Those comments are made for the assistance of the new tribunal and the parties, but do not bind the new tribunal, for the reason which I gave in para. 40 above.
>
> (2) whether the property was at the material time "exempt accommodation". The fact that I have also set aside the First-tier Tribunal's as wrong in law in relation to that issue, on grounds relating to the adequacy of its findings and reasons, is no indication, one way or the other, as to the correct outcome of the rehearing.

Charles Turnbull
Judge of the Upper Tribunal
30 March 2011