

1. I refer to my interim decision in this matter dated 22 December 2008. I have had brief written submissions from the parties in relation to the matters mentioned in paragraph 27 of that decision. My decision in this appeal, the Tribunal's decision having been set aside by my interim decision, is to remit the matter to a differently constituted First-tier Tribunal for redetermination.

2. I do not accede to the Council's invitation that I should decide the appeal on the documents presently before me. One reason for that is that I have not had the advantage of seeing and hearing Mr Dugher and Miss Hand give the evidence which they gave to the Tribunal. The Record of Proceedings does not set out their oral evidence in a manner which gives me confidence that I would now be in at least as good a position as the Tribunal was if I were to substitute my own decision. In addition, I think that the Claimant's advisers should probably have a fresh opportunity, in the light of my decisions in CH/779/2007 etc., to plug any holes in the evidence which they now think that there might be.

3. On the footing that there is to be a further hearing I consider it preferable, on balance, that the matter should be remitted to a fresh First-tier tribunal in the normal way. The First-tier Judge rehearing the case will of course have available to him or her, as will the parties, the very long decision which I made on 28 July 2008 in CH/779/2007 and others, relating to the tenancies in Oxford, Sheffield and Hounslow, and will be able to consider whether there are reasons why the decision in this case should be different. It is of course very possible that there are such reasons. A different claimant, and a somewhat later time period, are involved, and there may in any event be evidence as to the scope of GLH's activities which was not before me in CH/779/2007 etc. The evidence in the two cases will clearly not be precisely the same. (In this connection I should point out that the last sentence of paragraph 12 of my interim decision of 22 December 2008 contained a slip in that it included a "not" which should not have been there. That sentence should have read: "However, it by no means necessarily follows that it was not open to the Tribunal, on the evidence before it in the present case, to find that support was at the material time provided by GLH to more than a minimal extent.").

4. I have been notified (in fact only to-day) of a decision of the Administrative Court in *R(S) v Social Security Commissioner* [2008] EWHC 3097 (Admin) granting permission to apply for judicial review in order to enable it to be argued that my decision in R(H) 2/07 (on the meaning of "on behalf of" in the definition of "exempt accommodation") was wrong. At present it appears to me that, if it were to be so decided, it might well be unnecessary for it to be decided in this case whether GLH itself provided support, because the Claimant might well be entitled (subject to any appeal in the judicial review case) to succeed on the ground that the support provided by Odyssey was provided on behalf of GLH.

5. A First-Tier Tribunal Judge will no doubt wish to consider, when giving directions, whether this appeal should be stayed pending the outcome of the judicial review application.

6. If this appeal is not to be stayed, the Judge will no doubt wish to give directions that the parties within a specified period provide copies of (i) any further documentation and (ii) statements of the evidence to be given by any witnesses whom they intend to call at the hearing (in so far as such evidence is not in the existing witness statements).

7. With a view to enabling the First-Tier Tribunal Judge to decide whether to stay further proceedings in the appeal, and if not to give appropriate directions for the rehearing, I **DIRECT** that the parties shall within 14 days from the date of issue of this decision notify the First-Tier Tribunal administration in writing (a) whether they wish further proceedings in the appeal to be stayed pending the above judicial review decision, with brief reasons for their choice; and in any event (b) what procedural directions they would wish to be made in relation to the rehearing, assuming that it proceeds.

**Charles Turnbull**  
**Judge of the Upper Tribunal**  
**12 February 2009**