

Before Deputy Upper Tribunal Judge Rowley

Decision: Appeal dismissed

REASONS FOR DECISION

1. This is an appeal brought with the leave of the Commissioner (now Upper Tribunal Judge) against the decision of the Colchester Appeal Tribunal made on 30 November 2007. For the reasons set out below I dismiss the appeal.

The background

2. The claimant's appointee is Mrs. Philpot. The claimant has a mild developmental disorder and mild cerebral palsy, and he has impaired mobility. In the tribunal's words, "[the claimant] is a fragile and vulnerable man who was subsisting in dire circumstances until befriended by a Mrs. Philpot."
3. It seems that in 2003/2004 Mrs. Philpot approached an organisation called Bridge Housing Trust ("BHT") to provide housing for the claimant. BHT was set up by a declaration of trust deed dated 1 September 2002. BHT does not appear to be a registered charity. It says that it is a housing association (not registered with the Housing Corporation) and a voluntary organisation, which provides the claimant with support and supervision through the persons appointed by it for this purpose (p59).
4. Mr. Andrew Haynes is a trustee. On the papers before me he has variously described himself as "tenant liaison trustee" (p56), "tenant liaison/managerial trustee" (p139), and "managerial trustee" (p140).
5. BHT entered into a number of tenancy agreements with the claimant in respect of a single bedroom property. On the file there are extracts from two tenancy agreements in respect of the property, commencing 1 January 2006 (p67) and 1 January 2007 (p64) respectively. The rent payable under the agreements is £110 per week, payable every four weeks by equal payments in arrears.
6. On 16 February 2005 the local authority, applying the version of regulation 11 of the Housing Benefit (General) Regulations 1987 (SI 1987/1971) which has been in force since 2 January 1996, decided that the housing benefit payable to the claimant was limited to £75 per week. Subsequently, a rent officer determined that the "local reference rent" should be increased to £80 per week with effect from 2 October 2006.
7. On 6 February 2007 the local authority, having received the rent officer's determination, again applying the version of regulation 11 of the 1987 Regulations which has been in force since 2 January 1996, decided that the housing benefit payable to the claimant was limited to £80 per week with effect from 2 October 2006.
8. The claimant appealed to the Appeal Tribunal against this decision.

The law

9. The claimant's case is that he falls within the provisions of regulation 10 of the Housing Benefit (General) Amendment Regulations 1995 (SI 1995/1644), which provides that the old form of regulation 11 shall continue to apply to (amongst others) 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” is defined in regulation 10(6) of the 1995 Regulations 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. If the claimant is right, then the local authority would not be able to restrict the amount of rent eligible for housing benefit, unless certain criteria are satisfied, which are not relevant to the issues in this appeal.
12. Regulation 10(6) has been recently considered by Commissioner Turnbull in a number of cases, from which (amongst others) the following propositions may be deduced:

- (1) The landlord must either actually provide the care itself or have contracted for it to be provided on its behalf. It may well be that, in the context of the definition of “exempt accommodation” it is not necessary that the care provider should be acting strictly as agent for the landlord, in the sense that the actions of the care provider can be regarded as the actions of the landlord, but it is at least necessary that the landlord should have engaged the care provider to provide the care for him (R(H) 2/07).
- (2) If the landlord is providing the care, support or supervision he need not be the main provider, nor need he be providing it pursuant to some contractual or statutory obligation; but the care, support or supervision provided by the landlord must be more than a token or minimal amount (CH/3811/2006, reported as R(H) 7/07).
- (3) The care, support or supervision must be provided either by, or on behalf of the landlord. The words “or acting on its behalf” mean acting on its behalf in providing the care, support or supervision (R(H) 6/08, an interim decision).
- (4) The word “support” involves the landlord doing something more than or different from the exercise of its ordinary property management functions. A landlord does not “provide ... support” to a tenant, in the context of the definition of “exempt accommodation” by doing what any prudent landlord would do in the management of its property. It is relevant, in determining whether support is provided to more than a minimal extent, to have regard to the extent to which the alleged support is allied to ordinary property management. (CH/779/2007)

The claimant's case on care, support or supervision provided by the landlord or a person acting on its behalf

13. The following written evidence was before the tribunal:

(1) Minutes of a general meeting of BHT held on 1 March 2004 recording that it was agreed that a “special needs clause” be added to the tenancy agreements of all special needs tenants in future. Mr. Haynes was appointed special needs tenant liaison decision maker, with powers to appoint any person or persons to deliver care, support or supervision to the special needs tenants on behalf of BHT, beginning with Mrs. Philpot (p70)

(2) A letter dated 21 September 2004 from Mrs. Philpot “to whom it may concern,” saying:

“I work as an outreach advocate to the Colchester base Advocacy Services. Since October last year we have housed two clients with physical and/or mental disabilities through the Bridge Housing Trust “Special Needs Tenancy Scheme.” One of these is [the claimant] ... I write to confirm that since the start of [the claimant’s] “Bridge Special Needs Tenancy” in May 2004 I have passed over care, support and supervision of [the claimant] to Andrew Haynes, special needs tenant liaison for the Bridge Housing Trust.

Andrew has supported [the claimant] settling into his new home and dealt with matters arising including doctor’s appointments and writing out his recent DLA application as well as supervising [the claimant’s] DIY projects at home and generally looking after his special needs from day to day.

Andrew’s help has made a significant contribution to [the claimant’s] welfare and allowed me more time to deal with very pressing hardship cases....”

(3) A version of what appears to be clause 50 of a tenancy agreement between the claimant and BHT, dated 10 December 2005 (pp 65, 66):

“The tenant is a special needs tenant ... In the case of special needs tenancies, the landlord will support and supervise the tenant’s special needs. For such purposes, the landlord has appointed tenant liaison staff to provide unobtrusive supervision and practical help with household matters and organisational skills. Whilst the tenant will be encouraged to engage support from liaison staff, the level of support and supervision provided will be a matter for the Trust’s tenant liaison decision maker, taking all matters affecting the tenancy into account. Supervision and support given to special needs tenants will be provided by the landlord, or persons acting on behalf of the landlord without charge to the tenant.”

(4) The appeal submission dated 1 March 2007 says Mrs. Philpot and Mr. Haynes were carers appointed by BHT, and looked after different aspects of the claimant’s life. Mrs. Philpot visited him weekly, took him shopping, and organised his budget and activities. Mr. Haynes did “his benefits, practical and household etc ...” Other types of support such as doctor’s appointments and acting as the claimant’s appointee for housing benefit claims had alternated between both carers for several years (p62).

(5) A document dated 12 April 2007, apparently signed by the claimant, which says:

"I met Mrs. Philpot 2 years ago – she is an old friend. She helps me fill in forms. I receive no care, support or supervision from Mr. Haynes. I could not cope on my own if Mrs. Philpot stopped helping me. Mrs. Philpot told me about this property being up for rent. I have not been told that I have special needs."

The tribunal

14. The tribunal heard the claimant's appeal on 30 November 2007. Mr. Haynes represented the claimant. The local authority was also represented. It seems that both Mrs. Philpot and Mr. Haynes gave evidence.
15. Mrs. Philpot told the tribunal that she did not "belong" to BHT, and her loyalty was with the claimant. She said that she was prepared to "provide support if needs be." She added that she did not see him daily, but stayed in contact. Mrs. Philpot said that he had no support from a mental health team or social services, and that without her he would struggle. She said that nobody provided care and support for the claimant apart from herself.
16. The tribunal's note goes on to record that Mrs. Philpot said "I am looking after [the claimant] on behalf of [the claimant] not BHT. I understand the difference between my role and as a partner of BHT. I would not then necessarily put [the claimant] first."
17. Mrs. Philpot and the claimant left the hearing before it had concluded, to save the claimant "undue stress."
18. Mr. Haynes told the tribunal that he supervised Mrs. Philpot's care and support.
19. The tribunal found that the claimant did not satisfy the provisions of regulation 10(6) of the 1995 Regulations, and dismissed the appeal. The Decision Notice is dated 30 November 2007. The file does not contain a "statement of reasons" for the decision. The Decision Notice is one and a half pages in length, and I assume was intended by the tribunal to stand as its Statement of Reasons. (Some support for this assumption is given by the following caption which appears in the Decision Notice by the same tribunal on the same day in a related appeal (CH/761/2008): "This decision notice is to stand as the tribunal's statement of reasons and the time for appealing this decision commences with the issuing of this decision notice.")
20. As to whether BHT was a "*non-metropolitan county council ..., a housing association, a registered charity or voluntary organisation*" the tribunal's decision was as follows:

"Although the tribunal has been satisfied that the true status of BHT is far from clear it is not satisfied that the current evidence is sufficient to say that it does not fall within the relevant definition of organizations that may provide exempt accommodation"
21. The tribunal went on to decide that the appeal failed:

"... because as a matter of fact the tribunal does not believe that BHT provide care, support or supervision to any significant extent beyond that of a commercial landlord prepared to let to tenants with difficulties. Mrs. Philpot when asked outright whether anybody else provided care, support or supervision for [the claimant] on a regular basis she (sic) said clearly that was not the case save when she was away she had on occasions asked Mr.

Haynes to keep an eye on [the claimant]. She explained that [the claimant] has difficulty trusting people and would refuse help from persons that he did not know and trust ... After Mrs. Philpot and [the claimant] left [the hearing]... Mr. Haynes told the tribunal that Mrs. Philpot was unaware of the true extent of the care, support and supervision that he provide (sic) on behalf of BHT

Given the evidence of Mrs. Philpot the tribunal did not find the claim to provide care, support and supervision in excess of that of a commercial landlord who has chosen to house people with difficulties.... The concept of care, support and supervision in the regulation goes beyond keeping a watchful eye on the well being of a property with the inevitable interaction with the tenant being purely an ancillary factor. It goes beyond giving a helping hand out of common humanity when the need arises. During the course of the day's evidence it became clear that BHT did not work in partnership with social services or the NHS and deal with people on the basis of formal care plans or formal assessments of need... In consequence regardless of the status of BHT the tribunal is satisfied that the although [the claimant] is clearly vulnerable the letting is not on the basis of the landlord providing care, support or supervision and the letting cannot fall within the regulatory definition."

The appeal to the Commissioner

22. The claimant appeals to the Commissioner, (now Upper Tribunal Judge) with the leave of the Commissioner. On granting leave, the Commissioner expressed the view that the tribunal may have erred in considering what care would have been provided by a commercial landlord, and by failing to consider whether the claimant's carer was acting on behalf of the landlord. The local authority does not support the appeal.

My Decision

23. In its introductory comments of the Decision Notice, the tribunal notes that Mrs. Philpot found the accommodation for the claimant "and has supported him ever since." In my judgment the tribunal's reasons, read in the light of the record of proceedings, make it clear that the tribunal made a clear distinction between the support provided by BHT and that provided by Mrs. Philpot. Mrs. Philpot's clear evidence to the tribunal was that she was looking after the claimant on his own behalf and not BHT, and that she understood the difference
24. The claimant complains that the tribunal incorrectly subtracted Mrs. Philpot's contribution of care from the equation, based upon an interpretation of her oral evidence which contradicted clear written evidence in the appeal submission.
25. The claimant contends that the tribunal failed to take into account evidence of Mrs. Philpot's status as BHT's appointed carer to the claimant in the form of the minutes of the meeting of 1 March 2004, set out above; and that whilst she was not retained by BHT on a salary, clause 50 of the tenancy agreement bound the landlord to supervise, relieve or replace Mrs. Philpot whenever necessary.
26. I note that the minutes of the meeting of 1 March 2004 give to Mr. Haynes the power to appoint a person or persons to deliver care, support or supervision to the special needs tenants on behalf of BHT. There is no evidence of actual appointment of Mrs. Philpot. Further, the document which appears to be clause

50 of the tenancy agreement does not refer to Mrs. Philpot in name, but rather to appointed tenancy liaison staff. Again no evidence of appointment was produced.

27. In the circumstances, I do not hesitate to find that the tribunal was entitled to take Mrs. Philpot's evidence to it at face value – she was looking after the claimant on his own behalf, and not on behalf of BHT.
28. I should add that on the file is a letter dated 27 December 2007 from Mrs. Philpot stating that she provides support for the claimant on a voluntary basis, under the supervision of Mr. Haynes, for BHT, and the landlord is responsible for the care which is delivered. This letter post-dates the decision and, obviously, was not before the tribunal. I must consider whether the tribunal erred in law, on the evidence before it. As a general rule, a party cannot demand a re-hearing simply because at the original hearing it failed to adduce the right evidence. I am of the view that – on the basis of the evidence before it - the tribunal did not err in law in deciding that Mrs. Philpot did not provide support on behalf of BHT.
29. The tribunal then went on to consider whether any care, support or supervision provided by BHT itself was sufficient to satisfy regulation 10(6). Did the tribunal apply the correct test? It seems to have considered whether the care, support and supervision provided was “in excess of that of a commercial landlord who has chosen to house people with difficulties.” In my judgment, this was a rather clumsy way of expressing what was said by the Commissioner in CH/779/2007. I am of the view that what the tribunal was effectively saying was that BHT was doing nothing more or different from what any prudent landlord would do in the management of its property, and thus any support provided was not more than a token or minimal amount.
30. Accordingly, I find that the tribunal applied the correct test when considering the support provided by BHT, and it did not err in law in reaching the decision it did on the basis of the evidence before it.

Conclusion

31. For the reasons set out above I dismiss the appeal.

(Signed on the original)

Dated 12 November 2008

Alison Rowley

Deputy Judge of the Upper Tribunal