

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case Nos. CH/150, 151 and 152/2015

1. These are appeals by Birmingham City Council, brought with my permission, against decisions made by a First-tier Tribunal sitting in Birmingham on 26 September 2014. For the reasons set out below those decisions were in my judgment wrong in law. I allow the appeals, set aside the First-tier Tribunal's decisions and remit the matters for redetermination by a differently constituted First-tier Tribunal.

2. I held an oral hearing of these appeals on 27 April 2015, at which the Council was represented by Mr Jonathan Manning of counsel (who did not represent the Council before the First-tier Tribunal), and the three Respondents (to whom I will refer as "the Claimants", and to the First Respondent as "Mr M") were each represented by Mrs Kelly Kaur, the founder and a director and leading light of Throughcare Housing and Support Ltd ("Throughcare"). I have also received written submissions in the appeal by Mr Manning and Mrs Kaur. In this decision references to page numbers are to the numbering of the First-tier Tribunal papers in Mr M's appeal.

3. The background facts are set out clearly in paragraphs 1 to 19 of the First-tier Tribunal's Statement of Reasons, and I see no reason to repeat those facts in this decision.

4. As there noted, on 26 September 2014 there was a further hearing before the First-tier Tribunal, for the purpose of determining whether Throughcare provided the Claimants with "care, support or supervision" within the meaning of the definition of "exempt accommodation" in para. 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006.

5. By its Decision Notices dated 26 September 2014 the First-tier Tribunal allowed the Claimants' appeals, holding that the Claimants' accommodation was "exempt accommodation", with the result that the amount payable by the Council to the Claimants by way of housing benefit is likely (subject to these appeals to the Upper Tribunal) to be substantially greater than it would otherwise have been. The papers before me indicate that the difference is likely to be of the order of £85 per week per claimant. On the basis that Throughcare has, or had, some 100 occupants, the total annual sum effectively in issue is potentially very large.

6. Paras. 3 and 4 of the Decision Notices read as follows:

"3. I accept the oral evidence of Mrs Kaur and Ms Ogosi on behalf of [Throughcare], which is inherently persuasive. The position taken by the [Council] is understandable in view of the written evidence before it, but I am satisfied that, for a number of reasons, the written notes were not comprehensive in identifying the relevant services required by and provided to the [Claimant].

4. Pursuant to Rule 18 of the Tribunal Procedure (First-tier Tribunal)(Social Entitlement Chamber) Rules 2008 I direct that this decision is binding on the parties in relation to all the cases scheduled as related cases to this appeal. In the absence of any application under Rule 18(3) within one month of the issue of this notice or any

application for oral hearing by any party within the same period, all of the scheduled cases are to be listed before me on the first available date after one month for determination on the papers without an oral hearing, and my intention is to allow each of those appeals on the same basis that this appeal is allowed.”

7. The reference in para. 4 of the Decision Notices to the scheduled related cases is to the similar appeals in respect of housing benefit by some 67 or so other licensees of accommodation provided by Throughcare.

8. In para. 6 of its Statement of Reasons the First-tier Tribunal said:

“I have considered very extensive bundles of documents in relation to each of the three appeals. Happily, it will not be necessary to refer to every document in this statement, but I have read all the documentation with care. I shall refer specifically only to such of the documents as I considered particularly relevant in assisting me to reach my decision.”

9. It is material to set out the following further parts of the Statement of Reasons:

“20.On [26 September 2014] I heard evidence from Mrs Kaur and from her colleague Miss Ogosi. I found both impressive witnesses. Their evidence was in my judgment self-consistent and inherently probable. It was given persuasively. On the basis of that evidence, which it is not necessary to reproduce here, I have been able to make broad findings in relation to each of the appellants as follows.

21. Mr [M] was born on 8 October 1985. He occupied a room at 145 O..... Road, Birmingham under a licence agreement with Throughcare dated 9 July 2012 (page A101). On the same date he signed a tenancy support consent form with Throughcare and a tenancy support plan was prepared. Needs were identified in relation to housing issues, employment and training, money matters and “other issues”. Mr [M] was a man with a history of an irregular lifestyle, and significant difficulty in coping with the day-to-day demands of independent life. He reasonably required support and supervision, and to some degree care, in order to maintain an independent life. I am satisfied that without such assistance there was a real likelihood that [his] life would degenerate into chaos, and that there was a real risk of his becoming homeless. I am satisfied that Throughcare provided him with regular visits, normally weekly at least, as well as providing access to advice by telephone or in person at his request. He was advised about self-care and the care of his accommodation, as well as money matters extending beyond the regular payment of rent and bills. Support and supervision, and such care as was required, was provided by staff of Throughcare. On the basis of the evidence of Miss Kaur and Ms Ogosi I am satisfied that the degree of care, support and supervision provided at all material dates was substantially more than minimal, and was certainly enough to satisfy the requirements of paragraph 4(10) of Schedule 3.

.....

24. In reaching these conclusions I have paid careful regard to the arguments advanced by the [Council]. As I noted in my Decision Notice, I can understand the view taken by the [Council] in relation to the issue of care, support and supervision. The documents relied on by Throughcare are sketchy. In this regard I accept the evidence of Miss Kaur and Ms Ogosi that the documents did not provide a true reflection of the full level of care, support and supervision required by and provided to each of the [Claimants], because Throughcare were in general somewhat neglectful

in the matter of record keeping. I accept this explanation. It is, no doubt, regrettable that records were not adequately kept, but I am nevertheless sufficiently persuaded by the oral evidence I have heard and by other evidence appearing in the papers that the records did not give a true picture of the full extent of the services provided by Throughcare.

25.Although I give due weight to the allegations recorded by the [Council], I am on balance sufficiently persuaded by the oral evidence of Miss Kaur and Miss Ogosi that the general level of care, support and supervision provided to Throughcare's tenants was genuine and valuable, and provided with professionalism and appropriate skill and care.

26. It follows that I conclude that the [Council] has not established, on the totality of the evidence, written and oral, that the accommodation in question in these appeals fail to meet the definition of "exempt accommodation" referred to above. Indeed, I am positively satisfied on the evidence that it did meet that definition, and that the grounds for the [Council's] decisions in these three appeals were not made out. All three appeals succeed accordingly."

10. The main thrust of the Council's first ground of appeal is that the First-tier Tribunal went wrong in law in that in arriving at its findings of fact the Tribunal relied solely on the oral evidence of Mrs Kaur and Ms Ogosi, which it accepted in full, without sufficiently considering the documentary evidence, which the Council contends led to the conclusion that no or minimal support was provided and available. The second ground of appeal is that the Tribunal went wrong in law in focusing solely on the need for support rather than on the "quality" of the support which was provided.

11. It is apparent from the way in which the second ground of appeal is developed in Mr Manning's written submission that the contention that the Tribunal failed to look at the "quality" of the support is a contention that the Tribunal did not properly consider the extent of the support.

12. The submission is founded primarily (see para. 49 of Mr Manning's submission) on the following remark recorded by the First-tier Tribunal Judge in square brackets towards the beginning of the Record of Proceedings:

"Tribunal indicates that need for support and level of provision are relevant – quality of support is not."

13. The reference there to both the need for support and the level of provision in my judgment confirms that the Tribunal did take into account the extent of the support provided and available. That is also in my judgment clearly apparent from the Statement of Reasons. The point which the Judge appears to have been making during the hearing, which is not repeated in the Statement of Reasons, is that he did not want to hear evidence or submissions on how competent Throughcare's employees were in providing the support which they were said to have provided. His reason for saying that was no doubt the criticisms of Throughcare by some of the occupants or former occupants of accommodation. It is of course possible to imagine situations in which support which is purportedly given is given so incompetently or ineffectually that it is of no or minimal benefit, or possibly even harmful. But I see nothing to indicate that in determining whether Throughcare provided care, support or

supervision to more than a minimal extent the Tribunal went wrong in principle in failing to regard issues as to the extent and quality of support as material. In my judgment the second ground of appeal is therefore not made out.

14. It is apparent from the following comments which I made at the time of giving permission to appeal that I gave permission primarily on the basis of the first ground:

“The grounds of appeal are arguable. In particular, it is arguable that the First-tier Tribunal’s decision was wrong in law in that it did not in its Statement of Reasons (i) make sufficiently precise findings as to the nature and extent of the support provided by [Throughcare] to each of the three [Claimants] or (ii) sufficiently show that in making the findings which it did make it had taken into account and weighed the various items of evidence before it relevant to the support provided. In short, my impression is that it may well not enter into the degree of detail which could reasonably have been expected in appeals of this importance.”

15. The findings of fact in relation to each claimant are set out paragraphs 21, 22 and 23 respectively of the Statement of Reasons. They are set out in very concise form. The Tribunal dealt with the support issue, in relation to all three of the Claimants, in about a page and a half in total. If one takes paragraph 20 of the Statement of Reasons literally, and in isolation, then it appears that the Tribunal made its findings on the basis solely of the oral evidence of Mrs Kaur and Ms Ogosi.

16. When one looks at the Record of Proceedings to see what that oral evidence was, it appears surprisingly brief, having regard to the findings of fact said to be based on it. The typed version (which is typed with a considerable amount of spacing on each occasion where the name of a new speaker is inserted), runs to 7½ pages – probably no more than 3 or 4 pages of more conventionally spaced typing. It is apparent that the recorded evidence of Mrs Kaur and Ms Ogosi was in answer to questions put to them by the Council’s then representative (Miss Payne), and presumably also by the Judge, with evidence being taken in relation to each of the Claimants in turn.

17. I find it necessary to set out, by way of example, the part of the Record of Proceedings relating to Mr M:

“Mrs Kaur:-

My staff got [him] into college – he felt comfortable with us – we helped him deal with Housing Benefit and rent issues – fulfilling tenancy conditions –

Ms Ogosi:-

I do a review after initial assessment – I was personally involved with [him] – [his] main issue was benefit problems – not responding to letters or keeping appointments – we felt he had mental health issues – would e.g. often talk about irrelevant things – intelligent young man – always losing his keys - he had changed his name – came from Bournemouth – not in touch with his family – he was easy to talk to if you understood what he was saying – relationship of trust with his support worker Ryan – Ryan didn’t always keep full records – on some days he could look entirely normal – bedroom always a mess – we do weekly inspections – to see client in his environment – see any problems he had – some appointments had to be in the office

– he often accused other occupants of entering his room without permission – he got on ok with two of the occupants – he got a place in college – we called college – investigated courses – discussed what he wanted to do – he had difficulty communicating – he had a large vocab – mismatched words – often used the wrong word – no real education post GCSE – I think he had read a lot in the past – he didn't think he needed a doctor – he was on medication – on prescribed medication – I don't think he was taking it regularly – he always said he was but I doubted it – no specialist care – I don't think he understood he had a health problem – never spoke to anyone about it –

Mrs Kaur:-

He's still on benefits – moved to Erdington – could be ordinary accommodation – not supported – we say he did need support – more than an ordinary tenant

(Miss Payne:-)

We put him on housing register early – takes a long time – we hope to make progress with debts – used to be a bad smell – dirty clothes and not cleaning up –

Ms Ogosi:-

Notes aren't always full – we always encourage workers to keep proper notes – system is changing – wasn't as coordinated as it should be.”

18. Whether a Tribunal's reasoning is adequate must be judged in the light of the issues in the particular case, and the evidence before the Tribunal. I have found it necessary, in considering this case, to look in detail at some of the documentary evidence before the Tribunal in relation to Mr M. (I do not of course select his case because it is any more important or typical than the other two; rather because it is the first, and there are substantially more documents (some 4000 pages) included in the files maintained by the First-tier Tribunal in relation to him.

19. A broad overview of that documentation is as follows.

20. The Council's initial written submission ran to 53 pages. It was made on the basis of the documentation which it had down to that date obtained from Throughcare and elsewhere, which was attached to the submission and ran from pages 54 to 267. The Council also attached various Social Security Commissioner and Upper Tribunal decision (pages 268 to 377). Then from pages 378 to 496 were some additional documents, apparently provided by Throughcare. They included, significantly, a list of Throughcare's staff and their duties (pp409 to 413), job descriptions for housing support officers and income recovery officers (416 to 421), and a statement by a housing support officer as to her working week (427 to 431).

21. Then, pursuant to directions made by a Judge of the First-tier Tribunal, Throughcare provided a substantial written submission, in the form of a letter from Mrs Kaur dated 20 March 2014, running to 22 pages (497 to 522) together with attachments running to a further 359 pages, which took the documents up to page 881. Importantly, as part of that letter Mrs Kaur described (pages 505 to 508) the procedure when a referral of a new applicant for accommodation was received, and

the functions and duties of support workers, and a brief summary of the support provided in relation to Mr M (pp.509-510), with references to certain of the additional documents supplied.

22. There was then a short witness statement from Mrs Kaur (pp.890-1), but it related solely to the issue whether the accommodation was “provided by” Throughcare. In relation to that issue Throughcare then provided, as far as I can see, copies of the head leases of each of the 24 or so properties in which it let rooms, and of the licences granted to the licensees. Also provided were, I think, copies of all the documentation said to evidence support in relation to all other occupants, which took the documentation in Mr M’s case up to about page 4000. I have examined closely the documents up to page 641, which seem to me to be the most important in relation to the issue of the support needed by and actually provided to Mr M.

23. The Tribunal did in the Statement of Reasons make some references to the documentary evidence. Having referred in para. 5 to the fact that the oral evidence at the two hearings was as recorded in the Record of Proceedings, in para. 6 the Judge said that he had “read all documentation with care”, and that he would specifically refer only to such of them as he considered particularly relevant. The only specific references in the Statement of Reasons to documents relevant to support provided to Mr M are (i) to the tenancy support consent form and the tenancy support plan (para. 21), (ii) the statement in para. 24 that the “documents provided by Throughcare are sketchy”, (iii) to the social worker’s investigation report (para. 25) and (iv) to the complaints by occupants (para. 25). Then in para. 24, having said that he accepted that the records were not adequately kept, the Judge said that he was persuaded by the oral evidence “and by other evidence appearing in the papers” that the records did not give a true picture of the full extent of the services provided by Throughcare.

24. It is plain from the references to documents in the Statement of Reasons that one cannot take absolutely literally what appears to be the statement in para. 20 of the Statement of Reasons that the findings were made on the basis of the oral evidence alone. As I have noted, the Judge specifically referred in para. 24 to the “documents relied on by Throughcare” as being “sketchy”, and to the fact that he was persuaded by the oral evidence and “other evidence appearing in the papers”.

25. The contemporaneous documentation before the First-tier Tribunal directly relevant to the extent and nature of support needed by and provided to Mr M included at least the following:

- (1) The form of Licence Agreement providing for 2 hours’ support a week (p.101)
- (2) Mr M’s signed application to Throughcare for accommodation (596 to 599), and Throughcare’s risk assessment (pp. 600-603);
- (3) The tenancy support consent form (p.102-3), tenant support plans dated 27 July 2012 and 7 August 2012 (pp. 611-622) and action plan (p. 121)
- (4) The last page of the housing benefit application form (p.89);

- (5) The key worker 6 monthly report, with comments by Ms Ogosi (pp.627-80)
- (6) The warning chart (p.629);
- (7) The contact sheets (pp. 630 to 635);
- (8) the “letting log” (pages 228 onwards);
- (9) The discretionary housing payment application form in February 2013 and covering letter (pages 141 to 146)
- (10) Mr M’s answers to the social worker’s questionnaire (pp.149 to 161).

26. I was told by Mrs Kaur that the hearing on 26 September 2014 lasted about half a day, and that when she and Ms Ogosi gave evidence they were taken through the important documents and commented on them. That confirmed what Mrs Kaur had said in para. 19 of her written submission in these appeals to the Upper Tribunal. Further, that is what I would have expected. But that is not really evidenced in the Record of Proceedings. There must, I think, be a strong suspicion that the Record of Proceedings is not, in circumstances where the Statement of Reasons appears to have placed so much reliance on the oral evidence, an adequate record of the evidence actually given. If that is so then the First-tier Tribunal’s decision is unfortunately wrong in law on that ground alone. I do not see how I can regard as incorporated in the oral evidence the evidence given by Mrs Kaur in the long letter which I referred to in para. 21 above.

27. In my judgment the First-tier Tribunal went wrong in law in that the evidence before the Tribunal ought to have enabled it to make substantially more detailed and precise findings as to the nature and the extent of the support provided and available to Mr M than are to be found in para. 21 of the Statement of Reasons. Further, in my judgment the Tribunal went wrong in law in not explaining in more detail precisely how it arrived at those findings, and in particular what significance it attached to particular items of documentary evidence. I would refer in particular to the following matters.

28. As regards the question of what support Mr M required, the Tribunal referred to the tenancy support plan identifying needs in relation to “housing issues, employment and training, money matters and “other issues””. However, it did not refer to the fact that in his application to Throughcare for accommodation he said that he did not have any support needs (p.598) and he was assessed by Throughcare as able to cope well with all domestic tasks and independent living skills (p.600).

29. The Tribunal said that Mr M was “a man with a history of an irregular lifestyle, and significant difficulty in coping with the day-to-day demands of an independent life.” I am not sure where the Tribunal got that from. At the time of accepting him for accommodation Throughcare appears to have received, or at any rate recorded, very little information as to his past history. However, events after he moved to Throughcare’s accommodation did provide some evidence of difficulty in coping – I

refer to his documented failure to provide the Council's benefit department with evidence which it required, as a result of which his housing benefit award was suspended, and his failure to attend College regularly (p.626).

30. Then the Tribunal said that "he reasonably required support and supervision, and to some degree care, in order to maintain an independent life." The references to "supervision" and "care" are puzzling. So far as I am aware there is really no evidence that he required either "supervision" or "care", in the sense in which those words are normally used in a social security context. The same can be said in relation to the First-tier Tribunal's finding that "support and supervision, and such care as was required, was provided by staff of Throughcare." There does not appear to have been any evidence that anything amounting to either supervision or care was provided by Throughcare. I think that on that ground alone the Tribunal's conclusion at the end of para. 21 that "the degree of care, support and supervision provided at all material dates was substantially more than minimal" has to be regarded as wrong in law. It is not possible to be sure that in reaching that conclusion the Tribunal has not taken into account "care" and "supervision" which was not in fact provided.

31. The statement in para. 21 that Mr M was advised about "self-care" is puzzling, unless it is a reference to the recorded oral evidence of there being a smell and dirty clothes in his room. The statement that he was advised as to "money matters extending beyond the regular payment of rent and bills" is very imprecise. It is unclear what it refers to; it may be a reference to the help with housing benefit.

32. It seems to me that the Tribunal ought to have been able to make more detailed findings as to what the support actually provided consisted of, and over what period and with approximately what frequency it was provided, and to state more precisely on what evidence its findings were based, and why. On the face of it the lettings log and the contact sheets recorded the contact between Throughcare staff and Mr M. It appears from that and other documentary evidence that he may initially (i.e in July 2012) have been helped with finding and enrolling on a College course, and that he was shown how to bid for housing online. But I do not think that there is any contemporaneous documentary evidence that that support continued after the initial stage, and the question of finding more permanent accommodation does not appear to have been pursued with him again until January 2013. There is no contemporaneous documentary evidence that he was taught anything about how to budget, if indeed he needed to be taught. It is clear that when his housing benefit award was suspended, apparently owing to his failure to produce evidence that he was still in receipt of JSA, Throughcare staff chased him up on a number of occasions to prompt him to provide the necessary evidence to the Council. But that is not specifically referred to by the Tribunal at all. In the light of all this the First-tier Tribunal's finding that "he was advised about self-care and the care of his accommodation, as well as money matters extending beyond the regular payment of rent and bills" was in my judgment insufficiently precise and detailed, and moreover did not show that the Tribunal had focused on what the documentary evidence which I have referred to showed, or that it had considered to what extent the oral evidence conflicted with that, and whether the oral evidence was plausible in the light of that documentary evidence. As a particular example of this latter point, I would refer to the First-tier Tribunal's statement in para. 21 of the Statement of Reasons that Throughcare "provided him with visits, normally weekly at least." That arguably

implied that he was actually seen almost weekly. However, the contact sheets appear to indicate that he was often not in the house and therefore not seen. The general finding in para. 24 of the Statement of Reasons that the Tribunal was satisfied that the documents did not provide a true reflection of the full level of care, support and supervision required and provided to each of the Claimants, because Throughcare were somewhat neglectful in their record keeping, was not in my judgment sufficient. The reference to the oral evidence is not in the circumstances sufficient either as an explanation of what support the Tribunal found to have been provided, or as an explanation of why it accepted that the contemporaneous records did not fully reflect the support provided.

32. Without more detailed findings of fact it is not possible to determine whether, in concluding that the care, support and supervision provided was more than minimal, the Tribunal has taken an impermissible view of what is more than minimal.

33. I have not considered the documentary evidence relevant to support provided to the other two Claimants, Mrs S and Mr B, in anything like the same detail as I have that in relation to Mr M. But the reasoning in relation to them in paras. 22 and 23 respectively of the Statement of Reasons is very similar in form, and the oral evidence recorded in the Record of Proceedings is no more extensive, and appears to contain few if any references to specific items in the documentary evidence. In my judgment the First-tier Tribunal's decision is wrong in law in relation to those other two claimants also.

34. I should make clear, however, that I am not to be taken as agreeing with the following contention in para. 47 of Mr Manning's submission: "..... the Judge's approach to and conclusions on the evidence were perverse and contrary to the weight of the evidence. It was perverse of the Judge to accept the oral evidence of the [Throughcare] witnesses in the face of the substantial written evidence provided by [the Council]." I have not formed any view on whether it was "perverse" to do so, although on what I have seen I doubt whether it can have been perverse.

35. The new First-tier Tribunal will find the relevant legal principles well summarised on pages 1625-8 of the 2014/15 edition of CPAG's Housing Benefit and Council Tax Benefit Legislation. I think that the tribunal is likely to need to have regard to at least the following points in making its decision, although I do not seek in any way to bind the new tribunal:

(1) The documentary evidence now includes not only Mrs Kaur's written submission to the First-tier Tribunal (pp.497 to 522), but also her detailed written submission in this appeal to the Upper Tribunal, which contains additional explanations and assertions of fact. None of this evidence from Mrs Kaur is of course "contemporaneous" in the sense which the contact sheets, for example, are, but it is nevertheless of course significant evidence which must be taken into account.

(2) In CH/1289/2007, at paras. 27 to 32, I pointed out that whether a claimant's accommodation is exempt accommodation must be decided on the basis of whether care, support or supervision is provided by or on behalf of the landlord to *him*. Whether, in a case where the landlord has a substantial number of tenants, it is satisfactory to regard the outcome of appeals in relation to one or more tenants as in

practice determinative of the position in relation to all the others is likely to depend on the facts, and in particular as to whether the tenants (or licensees) all broadly have the same sorts of need.

(3) Relevant to (2) above is that I held in paras. 21 to 24 of R(H) 4/09 that the making available of certain types of support can amount to the provision of support to a particular tenant during a particular period, even if that tenant did not actually make use of it during that period, provided that the tenant had needs which meant that he might find the support of use from time to time. This may be material to Throughcare's contention that support workers were available to provide substantial support when needed. However, it will be material to examine the criteria which are applied by Throughcare when accepting occupants initially. I understand that most of the occupants are referred by Midland Heart, and it may therefore be material to consider, if any evidence of it is available, what criteria that organisation apply when deciding to refer homeless persons to Throughcare. Further, if there is no evidence of support actually being given to a particular claimant a sustained period, that may be evidence that he did not require it.

(4) I have held that, in general, activity by the landlord will not amount to support if it is comprised in ordinary housing management, and that the appropriate comparison is generally with what is involved in managing general needs social housing (which is, ultimately, a question of evidence): para. 71(1) of *Chorley Borough Council v IT(HB)* [2009] UKUT 107 (AAC); [2010] AACR 2. There is evidence in the papers that the following assistance, potentially amounting to support, was provided in relation to Mr M (some of which I have already referred to above):

(a) He was shown initially, i.e. in July 2012, how to "bid" online for more permanent accommodation elsewhere, but that does not appear to have been followed up by Throughcare with him until January 2013. In paras. 259 to 262 of R(H) 4/09 I said, against the background of the evidence in that case, that the willingness of the landlord to assist in the event of the tenant wishing to move elsewhere did not amount to support, because (para. 261) it was support which would only be called upon if the tenant wished to leave. That was, however, in a context where the accommodation was intended to provide the tenants with a permanent home. The situation is in my judgment potentially very different where, as here, the accommodation is generally intended only as temporary accommodation pending the finding of more satisfactory and permanent accommodation.

(b) Throughcare's evidence is that they helped him get a place on a suitable College course, although I think that there is very little contemporaneous evidence of exactly what was done, and what was done may have been done very shortly after Mr M became a licensee, and not thereafter (although that would arguably demonstrate a willingness and capability to assist further if and when needed).

(c) Mr M was helped with the initial housing benefit application, but that would not appear to have gone beyond what a general needs social landlord would normally do. There is evidence in the letting log and contact sheets that when Mr M's housing benefit award was suspended and/or terminated by the Council owing, apparently, to lack of evidence of his JSA award continuing, he was prompted

on several occasions by Throughcare to produce the evidence which the Council required. This of course was also in Throughcare's own interests, and I have considered on a number of occasions in the past whether assistance with housing benefit is prevented from being support on the ground that it is no more than a general needs social landlord would do in the management of its property. What a general needs social landlord would usually do is of course not a question of law, but one of evidence, and that evidence may vary from case to case. I would refer to paras. 252 to 256 of R(H) 4/09; paras. 85 to 88 of *Chorley Borough Council v IT(HB)* [2009] UKUT 107 (AAC); [2010] AACR 2. It may be arguable that the continued prompting in the present case showed that Throughcare were willing and able to go beyond what a general needs social landlord would normally do.

(d) Although it has been asserted on behalf of Throughcare that Mr M was helped with budgeting, there appears to be very little, if any, contemporaneous documentary evidence to support that, and nor, I think, has it been specified what that support consisted of.

(e) Throughcare also asserts that Mr M was given moral support, in relation to his low mood, but I do not think that there is much contemporaneous documentary evidence of that.

(5) Throughcare have asserted (p.503) that persons whom they accommodate are likely to cause more damage to the property and its furnishings etc, than the general run of tenant. I have considered in previous cases whether arranging and paying for the carrying out of repairs to a greater extent than would normally be necessary can constitute "support": see in particular para. 71 of the *Chorley Borough Council* case, referred to above.

(6) There are, I think, suggestions by Throughcare that the histories and characteristics of the persons whom they accommodate lead to a greater frequency of disputes between tenants, and therefore greater a need to mediate between and to try to resolve the problems, than would be the case in general needs social housing. If the sort of tenant accommodated did lead to increased work in that respect, that may well have been capable of amounting to support. The new Tribunal may find what I said in paras. 48 to 53 of *DW v Oxford City Council* (HB) [2012] UKUT 52 (AAC) helpful.

(7) Throughcare relies, as did the First-tier Tribunal in reaching its decision, on the weekly visits to properties by support workers. However, the contact sheets would appear to suggest that the new Tribunal will need to consider what the purpose of the visits was, and what was done at them: see the *DW v Oxford City Council* case, especially at paras. 23 (facts), 25(3), 57 to 61.

36. I have found this a somewhat anxious case, for a number of reasons. First, the very experienced chairman of the First-tier Tribunal seems to have had no doubt about the correct outcome, and it was presumably for that reason that he considered it sufficient to express his reasons briefly. It is obviously not very satisfactory to have to set his decision aside in those circumstances. However, that does not absolve me from considering whether his reasons really were adequate, against the background of the evidence. Secondly, there is clearly a considerable amount at stake, both in

terms of the amount of housing benefit and the consequences for Throughcare and its occupants and potential future occupants. Thirdly, as is particularly evident from her detailed, clear and powerfully argued written submissions, Mrs Kaur has represented Throughcare with very considerable determination and ability. As I said at the hearing, I can well understand her frustration at having, after considerable delay, succeeded before the First-tier Tribunal, only to have the decision set aside on grounds which are in no way the fault of either her or Throughcare. It is now unfortunately more than 2 years since the Council's adverse decisions were made, and the case clearly merits being dealt with as expeditiously as reasonably possible by the new tribunal. Fourthly, as I have noted before, the documents before the previous First-tier Tribunal, which have been passed to the Upper Tribunal, are very numerous and in very unwieldy form.

37. The documents in Mr M's case contain numerous duplications of the same document. I suspect that those in the other two cases also duplicate many of those in Mr M's case. It is no longer necessary to have in evidence any of the documents (e.g. head leases) which were relevant only to the question whether Throughcare was the landlord for these purposes (i.e. the first issue dealt with by the First-tier Tribunal). It would no longer appear to be necessary to have the licence agreements in evidence, save perhaps one specimen agreement. There has been doubt whether I and the parties have had bundles with the same numbering. I would suggest that it would greatly help the parties and the new First-tier Tribunal if the documents were to be rationalised and reorganised, so that only material documents, and only one copy of each, are before the new First-tier Tribunal. I would suggest a direction by the new First-tier Tribunal that the parties cooperate in providing consolidated bundles relating to the three cases.

38. Although it is of course a matter for case management directions by a First-tier Tribunal Judge, I would suggest that at least 2 days should be allowed for the re-hearing.

39. Finally, I should apologise to the parties for having taken a little longer producing this decision than I had anticipated at the hearing on 27 April.

Charles Turnbull
Judge of the Upper Tribunal
5 May 2015