

1. These are appeals by Chorley Council ("the Council"), brought with the permission of the chairman, against decisions of an appeal tribunal sitting at Preston on 12 September 2006. For the reasons set out below those decisions were in my judgment wrong in law and by way of interim decision I set them aside. References in this decision to page numbers are to the file in CH/4432/2006.

2. There were appeals by three claimants before the Tribunal. In each case the appeal was against a decision by the Council that the Claimant's entitlement to housing benefit was to be determined on the footing that the Claimant's accommodation was not "exempt accommodation" within the definition contained in what is now para. 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006. The relevant part of that definition requires that the claimant's accommodation is

"provided by a housing association where that body or a person acting on its behalf also provides the claimant with care, support or supervision
."

3. The Claimants all have severe learning disabilities. Each is provided with 24 hour care, supervision and support by Lancashire County Council ("LCC"), which has statutory powers and duties in that regard. They each occupy a bedroom in what is a 4 bed roomed bungalow ("no 20"). The other bedroom is occupied by a person commissioned by LCC to provide overnight care.

4. The owner of no. 20 is Empower Housing Association Ltd ("Empower"), and the Claimants each have tenancies of their bedroom, together with a right to use the living rooms and common parts. The issue before the Tribunal was whether, notwithstanding the extensive care, support and provision provided by LCC, Empower also provides the Claimants with "support". It was not contended on the Claimants' behalves that Empower provides "care" or "supervision."

5. The Tribunal's decision was to allow the appeals and to decide that the Claimants were provided with "support" by Empower.

6. I held an oral hearing of these appeals at which Miss Perez, of counsel, appeared on behalf of the Council, and Mr Simon Ennals, a solicitor practising in Sheffield in the field of welfare and community care law, appeared on behalf of the Claimants. Mr Ennals had also represented the Claimants before the Tribunal.

7. In the critical paragraph 12 of the Statement of Reasons the Tribunal stated as follows:

"the appellantshad not lived an independent life in the community without support. The tribunal accepted that the bulk of that support was provided by [LCC]. They were however not on site most of the time. In

reality the staff of Empower were likely to be present at the accommodation site and according to the evidence of Michelle Hill, a principal housing officer with Empower, they carried out care, support and supervision some of it was care over and above, such as liaising with outside bodies, completion of benefit forms, both Housing Benefit and other benefits, such as Disability Living Allowance, and also progressing of appeals. They offered general counselling and support to tenants, often on a one-to-one basis, the input depending on the individual tenant's needs. They also obtained outside contractors for work done which was the tenant's responsibility. The tribunal accepted that in many instances this could not be done by these particular tenants themselves. In the view of the tribunal the very nature of the difficulties encountered by these appellants meant the role of Empower staff being readily available leads to the conclusion that they did on a regular basis carry out care, support and supervision over and above the provision of accommodation."

8. In my judgment the Tribunal erred in law in stating, apparently as one of the cornerstones of its decision, that the care and support staff employed by LCC were not so readily available to attend the property as were employees of Empower. That was fundamentally incorrect: as appears from the evidence before the Tribunal at p.128, LCC employ 24 hour carers/support providers, and there is therefore someone commissioned by them on site all the time.

9. As I indicated at the hearing, I am quite clear that this is not a case in which it would be appropriate for me to attempt to re-make the decision on the basis of the evidence which was before the Tribunal. First, I am not persuaded that that it would be satisfactory to attempt to do so on the basis of the oral evidence as recorded in the Record of Proceedings, and without seeing and hearing the witnesses myself. Secondly, it did not become clear to me (or, more importantly, to Mr Ennals) until Miss Perez's oral submissions at the hearing that, notwithstanding the indication which I had given in para. 4 of my Directions of 16 July 2008, the Council would invite me to substitute a decision.

10. However, I do accept the invitation of both parties at the hearing to direct that, rather than remitting the Claimants' appeals to be decided by a fresh tribunal, I should decide those appeals myself, after rehearing the evidence.

Charles Turnbull
1 December 2008