



Service Charges, Tenure Models & Welfare Benefit Funding



Workshop for

Delivering Extra Care

by

Graham Cooper
Associate Director
Greenwoods Solicitors LLP

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- Introduction
- Rent and Housing Costs - What are they?
- Service Charges – What are they?
- Housing Costs – Are they covered by benefits?
- Models and how this fits
- Benefit Change – what is in the pipeline





- Difficulty – Extra Care is not a standard
- Housing based service
- Mixed tenures and differing management and provision models – Different legal and funding frameworks
- Are housing and care and support services provided together
- How are they funded?
- Look at revenue funding for housing, care and support





Rent & Housing Costs

- Rent – Not defined at law
- A charge made upon which occupation of a property is contingent



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What may be covered by benefits?

- What payments may be met by Housing Benefit?
 - Rent paid in respect of tenancy
 - Rental element of shared ownership
 - Payment for licence or permission to occupy
 - Payments of eligible service charges
 - Contributions made by a resident of a charity almshouse
 - Payments under a rental purchase agreement





What may be covered by benefits?

- What payments may be met by IS, JSA or PC?
 - Payments towards interest on mortgages and other loans for house purchase inc mortgage element of shared ownership
 - Payments towards interest on loans used to pay for certain repairs and improvements or to meet a service charge for repairs and improvements
 - Other housing costs – ground rent, service charges



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Service Charges

- May be fixed or variable
- Variable - any variable sum of money paid by the tenant which is payable, directly or indirectly, for services, repairs, maintenance, improvements, insurance or management of the property (may be included in the rent) – LTA 1985 Sec 18(1)
- Fixed Service Charges
- Only reasonable service charges may be recovered – LTA 1985 Sec 19
- Only service charges provided for in the lease may be recovered in accordance with lease
- Duty to consult under section 20





Service Charges – What may be covered by benefits

- Which benefit applies?
 - Service charges may be paid by Housing Benefit, Local Housing Allowance, Income Support, Income-based Jobseeker's Allowance, Pension Credits
 - HB or LHA – Rented properties
 - IS, JSA or PC – Owned
 - HB – Not payable on long leases





Service Charges – Housing Benefit

- HB, LHA & service charges
 - Periodical payments for services, whether or not under the same agreement as that under which the dwelling is occupied, or whether or not such charge is specified as separate from or separately identified within other payments made by the occupier in respect of the dwelling
 - Services – Services performed or facilities (including use of furniture) provided for, or rights made available to, the occupier of the dwelling



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Service Charges – Housing Benefits

- HB, LHA & Service Charges
 - Charges must be paid as a condition of occupation
 - May only be paid on eligible rent
 - Eligible rent calculation –
 - deduct costs of services included in rent, such as water, sewerage & environmental services
 - Deduct ineligible service charges – Schedule 1 Part 1 Housing Benefit Regs 2006 inc laundry, sports facilities, transport





What are eligible Service Charges?

- Examples of eligible services
 - Provision of a heating system
 - Fuel for common area
 - Furniture/household equipment
 - Communal window cleaning
 - Communal cleaning
 - Most communal services relating to provision of adequate accommodation



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What are eligible service charges for IS?

- IS, JSA & PC service charges (Long lease or home ownership)
 - No definition of service charges
 - Case law indicates – the essence of the payment is that it has to be made in the context of the determination and arrangements of what would otherwise be left for the occupier to do for himself, on the basis of an arrangement which the terms of occupation of the property make binding on all those with the same interest in the property
 - No service charge, payment of which by a tenant is a condition for the occupation of the home, can count as service charge for IS, JSA or PC





What else may be covered by PC?

- IS, JSA & PC service charges (Long lease or home ownership)
 - Payment of interest on loan taken out to pay for repairs or improvements or service charge
 - Ground rent
 - Rentcharge payments
 - Service charges to cover minor repairs and maintenance
 - House insurance paid under the terms of lease, but not insurance required by bank as a condition of mortgage





What service may be funded by PC?

- IS, JSA & PC service charges (Long lease or home ownership)
 - Services for provision of adequate accommodation including general management costs, gardens, play areas, entry phones, communal telephone costs, portering & rubbish removals, TV & radio (not satellite or cable)
 - Laundry facilities
 - Furniture & household equipment
 - Cleaning of rooms and windows in communal windows





What are ineligible charges for PC?

- IS, JSA & PC service charges (Long lease or home ownership) – Ineligible charges
 - Food, including prepared meals (set deductions)
 - Sports facilities
 - TV rental & licence fee
 - Transport
 - Personal laundry service
 - Emergency alarm system
 - Medical expenses
 - Nursing and personal care
 - Counselling and other support
 - Any other charge not connected with the provision of adequate accommodation





Paying for support - Exempt Tenancies

- Exempt Accommodation – If a supported housing scheme constitutes exempt accommodation, tenants will be eligible for substantially higher levels of Housing Benefit.
- If not exempt accommodation, Benefit limited to LHA
- Prior to 2000, higher levels of support costs were met as service charge through HB



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Paying for support - Exempt Tenancies

- Housing Benefit Regs 1987 – Allowed service charges for “general counselling and support” provided the support related to “the provision of adequate accommodation”
- R v Housing Benefit Review Board for Swansea ex p Littler [1998] CA – Provision of adequate accommodation related only to bricks and mortar issues



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Paying for support - Exempt Tenancies

- 2003 support costs removed from HB and funded by “Supporting people”
- Prior to 2003 support costs were included in rent or eligible service charges
- 1996 – Local Reference rent introduced (Now LHA)
- Some supported housing, run by not-for-profit landlords remained subject to the old regime – “Exempt Accommodation” – Regs 11 & 12 Housing Benefit Regulation 1987 and Para 4 Sched 3 Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006



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Paying for Support - Exempt Tenancies

- Exempt Accommodation -
 - “provided by a non-metropolitan county council in England within the meaning of Sec 1 Local Government Act 1972, a housing association, a registered charity or voluntary organisation where that body or person acting on its behalf also provides the claimant with care, support or supervision.”



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Paying for Support - Exempt Tenancies

- The landlord condition:
 - Refers to housing association rather than a Registered Provider of Social Housing
 - Covers non-registered housing association
 - Is the landlord genuinely “not-for-profit”? – What if a voluntary organisation is owned by a commercial landlord? May be tainted – CH/136/2007
 - Is the tenancy on a commercial basis?
 - Is it a contrived tenancy?
 - Do any disabled tenants have the capacity to enter into a tenancy? – Tenancy is voidable rather than void – CH/2121/2006





Paying for Support - Exempt Tenancies

- 'On behalf of' – Turnbull Judgements –
 - R(H) 2/07 – Landlord must have directly engaged the support provider. Joint venture between landlord and support provider not sufficient
 - R(H) 6/08 - Support worker had to be acting on behalf of the landlord in the provision of support



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Paying for Support - Exempt Tenancies

- Who is the accommodation provided by?
 - CH/3900/2005 and Chorley BC v IT & others
 - Is LA, as commissioner of both housing and care/support packages, the accommodation provider? – No
 - Provider is the person entitled to possession at the end of tenancy or lease



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Paying for Support - Exempt Tenancies

- What if landlord directly provides some support?
 - R(H) 6/07 – Landlord does not have to be main provider
 - Care, support or supervision must be more than de minimis (enough to make a difference)



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Paying for Support - Exempt Tenancies

- What may be included as support?
 - Does not include setting up the housing scheme, altering accommodation or arranging the move
 - R(H) 4/09 – Support only need be available, but must be more than minimal and must be likely to be needed by the tenant
 - Chorley BC v IT & Others – Repairs & Maintenance may be covered for housing occupied by tenants who exhibit challenging behaviour which manifests itself in property damage.



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How Support is funded

- Housing Related Support
 - Through Housing Benefit – Exempt tenancies as rent or service charge
 - Supporting People
 - Attendance Allowance or Disability Living Allowance – Extra care is the same as living in your own home and does not affect entitlement



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How Support is funded

- Social Care
 - Through social services or NHS
 - Through direct contract
 - Utilising Attendance Allowance or Disability Living Allowance if residing in own home



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How Support is funded

- Different models
 - Local Authority provide services but charge to provider who collects
 - Local Authority provide the services and collect the charge
 - Hourly charges
 - Flat rate plus care costs



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How Support is funded

- Different models (cont.)
 - Charges related to banding of care & support needs
 - Core & top-up
 - Individualised approach
 - Insurance-based model – Create a funding pool that residents can dip into



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Tenure Models

- Integrated models – Properties to buy or rent are next door with nothing to distinguish them
- Segregated models – Physical separation of distinction between properties to buy or rent
- Hybrid model – Mixture of Integrated and Segregated with a range of methods of occupation, ie Homebuy, leases, tenancies, licences, etc.



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Tenure Models

- Lessees have a right to manage & right to enfranchise – Provider loses control
- May be avoided on mixed tenure as 2/3 of units would have to be owned by lessees, but can be done on a block by block basis
- Lessees have a right to extend or renew lease



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Benefit change – What is in the pipeline

- DLA & AA to be replaced by Personal Independence Payment
- Increasing non-dependent deduction
- Importing size restrictions on the calculation of eligible rent for the purposes of Housing Benefit
- Phased removal of Housing Benefit
- Implementation of Universal Credit
- Transfer of local Housing Benefit budget to DWP



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