Understanding whether your accommodation is classified as 'exempt' supported housing or 'eligible' temporary accommodation

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Introduction

Exempt accommodation is being mentioned more and more within discussions on welfare reforms, but I've had many enquiries from supported and temporary accommodation providers who aren't sure whether their schemes qualify as 'exempt'. I've also picked up that some councils (and housing associations) don't realise that some welfare reforms - for example the bedroom tax and the Universal Credit cap - will affect homeless customers living in their temporary accommodation.

You need to understand how your accommodation is classified before you can assess how welfare reforms will affect your customers and the sustainability of your provision. This guide takes you through the definitions of 'exempt' accommodation and 'eligible' temporary accommodation so you know where to start.

If you want further help on these matters, you are welcome to contact me:

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1. Exempt accommodation

Understanding whether the accommodation you manage is or is not 'exempt' is vital to understanding the impacts of welfare reform on particular accommodation.

'Exempt accommodation' as a concept was introduced in 1996 alongside the introduction of the Local Reference Rent (LRR), since replaced by Local Housing Allowance (LHA), which would otherwise have impacted on organisations that fall within the rent allowance regulations. The latest DWP guidance on application of the definition is from 2008[1] and encompasses the various legal tests since its introduction. There are two qualifying definitions and we've dealt with the easiest first.

a) Any accommodation originally provided through receipt of a Resettlement Grant.

These grants were made by central government and the accommodation is automatically classified as 'exempt', no matter how long ago that was. This might well include council-owned homelessness accommodation. It's unlikely

[1] Housing Benefit and Council Tax Benefit Circular HB/CTB A22/2008
http://webarchive.nationalarchives.gov.uk/20111115165911/http://www.dwp.gov.uk/docs/a22-2008.pdf

that you'll immediately know about this; resettlement grants became Supported Housing Management Grants (through the Housing Corporation) and later transferred into Supporting People. However, this is the *only* factor that would qualify accommodation that is provided by a local housing authority, so it's worth checking your archives.

b) Accommodation provided by an upper-tier county council, housing association, registered charity or voluntary organisation where that body or a person acting on their behalf provides the claimant with care, support or supervision.

This is somewhat more complex and case law has dealt to some extent with areas of uncertainty. We've had many enquiries about this definition so we've taken this opportunity to clarify the issues.

Accommodation provider: This is the landlord – the organisation to whom the tenants are ultimately responsible for paying their rent. This therefore excludes managing agents, even if they collect rent from tenants on behalf of the freeholder or leaseholder of the property.

Local housing authorities: the actual definition states 'non-metropolitan county councils' but as it was made prior to the formation of unitary councils elsewhere, the definition above is that usually quoted. DWP have confirmed that any housing authority is excluded and although they say they are still in discussion with the Local Government Association (LGA), they seem unlikely to budge. Their reasons seem to be based on a misunderstanding of the rationale for the original definition (housing authority rents were excluded from rent allowances, being instead classified as rent rebates, so there was no need for them to be included in the definition). DCLG and DWP say that including local housing authorities now would increase the benefits bill, although it wouldn't, of course, as benefits are already being paid on higher cost supported accommodation provided by housing authorities.

Housing associations: these don't have to be registered providers and may in fact be perceived as private providers. However, their accommodation may be exempt if they fall within the definition of a Housing Association under s1(1) of the Housing Associations Act 1985:

'…a society, body of trustees or company –

(a) which is established for the purpose of, or amongst whose objects or powers are included those of, providing, constructing, improving or managing, or facilitating or encouraging the construction or improvement of, housing accommodation, and

(b) which does not trade for profit or whose constitution or rules prohibit the issue of capital with interest or dividend exceeding such rate as may be prescribed by the Treasury, whether with or without differentiation as between share and loan capital'

Voluntary organisations: are defined in Housing Benefit regulations as 'a body, other than a public or local authority, the activities of which are carried on otherwise than for profit'. Case law has picked up some examples of contrived arrangements where a profit-making landlord has set up a charitable arm solely to benefit from this regulation.

'That body…..provides the claimant with….': Case law has established that the landlord must provide more than minimal 'care, support or supervision'. A tenant liaison officer would not be sufficient to demonstrate that the landlord is a qualifying provider, even if there is demonstrably no rent or service charge for that provision.

'Acting on their behalf': As many registered providers and support providers have highlighted with DWP (so far to no effect), the commissioning of care, support or supervision is usually the responsibility of Supporting People or social care or health, not the landlord. At the start of the Supporting People programme in 2003, many landlords were also support providers but this has changed over time and it now isn't unusual for support to be provided by a completely different organisation within the landlord's property. Unless the landlord holds the support contract and sub contracts part or the whole of it to another provider, these properties are no longer exempt. In many cases, this test has not been applied since the contract was changed, so some landlords may not realise that their rents are no longer covered by the exemption rules.

Equally, where personalised or direct payments[2] have been introduced, the commissioner is now the tenant, not the authority and this could exclude county council (social care) schemes. Decisions on exemptions are applied to each individual claimant's unit of accommodation, not the whole scheme so you could end up with mixed schemes. Those units where the claimant has chosen to have a direct payment will fall outside the provision while those units where claimants whose care or support is still commissioned by social services will still be exempt.

Properties with a managing agent would qualify if the landlord either:

- Holds a contract for support for the relevant units but has asked a partner provider or (their) sub contractor to take responsibility for managing housing services, or

- Is funding at least a proportion of support or care through its own resources. However, charges made by the landlord or the agent in respect of these services are not eligible for benefit, and the provision funded by the landlord must be 'more than minimal' (see above).

'Accommodation': It should be noted that the property occupied by the claimant doesn't have to be specially provided for them, or be within a larger scheme. The definition is applied to individual cases (although in the case of

[2] Direct payments are where social care services gives the customer an amount of money to commission their own services

schemes that are intended for occupation only of people who need the care and support provided, HB decisions have tended to be made for all units within the scheme). So a family home shared by three individual claimants, where common areas attract additional housing costs, could be judged as exempt if the landlord is also providing the support.

Supported housing with lower housing costs: The definition makes no mention of the level of eligible housing costs but, in practice, only properties with eligible housing costs above LRR or LHA have had to have an exempt judgement applied to them. This leaves many properties, including sheltered housing for example, which haven't been 'officially' classified as exempt, even though they would be so classified under the definition.

Housing Benefit (HB) officers have been asked to provide information about the numbers and costs of exempt properties to DWP (although this request was followed by a clarification that essentially said 'you don't need to put lots of additional effort into this). Now is the time to highlight to HB any properties that would be exempt if any judgement had needed to be made, so that you can be clear about the extent to which tenants will be affected by the welfare reforms. Include sheltered schemes because some households will be affected, even if one of a couple is over the age of pension credit.

2. Temporary accommodation (homelessness)

'Temporary accommodation' (TA) is commonly understood to mean any accommodation provided by or on behalf of a local housing authority to discharge its duties under homelessness legislation. However, when we're looking at welfare reform, to be eligible for any allowances or special measures within regulations, the TA must fall within a tight definition found in the housing benefit circular that established the change in temporary accommodation subsidy from April 2011[3]. This defines (self-contained and hostel) temporary accommodation as:

- Accommodation which the authority or registered housing association holds on a lease and, in the case of an authority in England[4], is held outside the Housing Revenue Account on a lease granted for a term not exceeding 10 years

- Accommodation which the authority or registered housing association has a right to use under an agreement other than a lease with a third party.

So if the council, or a housing association providing the service on behalf of the council, owns the property into which it makes placements, whether or not it is accounted for in the Housing Revenue Account (HRA) or the General Fund, it is excluded from this definition. Equally, property that is held on a long lease of over ten years is also excluded (different in Wales and

[3] HB/CTB Circular S1/2011 http://www.dwp.gov.uk/docs/s1-2011.pdf
[4] In Wales and Scotland, the property can be leased for longer than ten years and could be held in either the HRA or the General Fund.

Scotland). Tenants and providers of these properties will be adversely affected by some of the welfare reforms, even if the regulations specifically state that 'temporary accommodation' is excluded from the provisions. The DWP has stated that the definition of temporary accommodation will not be altered, although the LGA is still in discussion with them.

3. Homeless households placed into supported housing

Homeless households are sometimes accommodated in supported accommodation that is not exclusively used to discharge the homelessness duty, even if it is exclusively occupied by those that were homeless prior to their placement. In this case, the accommodation may be 'exempt' rather than 'temporary' accommodation. It may also be supported accommodation that is not exempt (see above).

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