



Bristol City Council

Rents, Revenues and Benefits Service

**Advice Regarding Exempt Accommodation
and Service Charges**

Document History			
Date	Status	Author	Summary of Changes
21/07/15	Revised V1.1	Paul Hill, Joe Wheeler, James Dyke	n/a

1. What is Exempt Accommodation?

- 1.1. The term 'exempt accommodation' is used to describe accommodation that is exempt from the Local Housing Allowance rules.
- 1.2. [Paragraph 4\(1\)\(10\) of the Consequential Provisions Regulations 2006](#) tells you that 'exempt accommodation' is (abridged):

*'Accommodation **provided by** 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**'.*

- 1.3. The keywords within the legislation have been highlighted to reinforce that a landlord must be providing the accommodation and the support (or the support is provided on the landlord's behalf).
- 1.4. Care, support or supervision is not defined within legislation and case law must be referred to for guidance in this area. Where support is commissioned directly between the council and the support provider, it is still possible for the accommodation to be 'exempt' but much more difficult. The landlord can only gain the exemption by providing an exceptionally large amount of housing management, which can be considered as akin to support. This is where the landlord performs housing management functions that are different to that of an 'ordinary' landlord and have an impact on the tenant's life. A phrase often used to capture this is 'intensive housing management' (IHM). This is not a phrase that exists in legislation or is otherwise defined. Where a landlord claims to provide IHM, we will need to carefully examine what they are doing and how this constitutes 'support', as opposed to ordinary housing management. The landlord can charge for this service, the cost for support though will not be met by housing benefit.
- 1.5. The benefit service cannot define the minimum thresholds or set the criteria for what support is or what is meant by intensive housing management. It is for the provider to identify what they are doing and for the authority to then make a determination with reference to the housing benefit regulations and case law. Case law (CH200/2009) advises that this cannot be established until the scheme is operational. The council is effectively seeking to establish the following:
 - 1.5.1. What support is intended to be provided by the landlord at the outset of the scheme?
 - 1.5.2. What support is the landlord contractually obliged to provide to the tenants?
 - 1.5.3. What support is actually provided during a subsequent period?
 - 1.5.4. Whether this support goes beyond what would be regarded as statutory and contractual obligations to provide ordinary housing management?
 - 1.5.5. Whether the level of such support is more than minimal?

Points 1.5.1 and 1.5.2 can be established prior to the setting up of the scheme. Points 1.5.3 to 1.5.5 cannot be established until the scheme has been operational for some time.

- 1.6. Flowcharts 1 and 2 show where the definition of exempt accommodation can be met and flowchart 3 shows where it is not met.

Flowchart 1 – Exempt accommodation normally satisfied

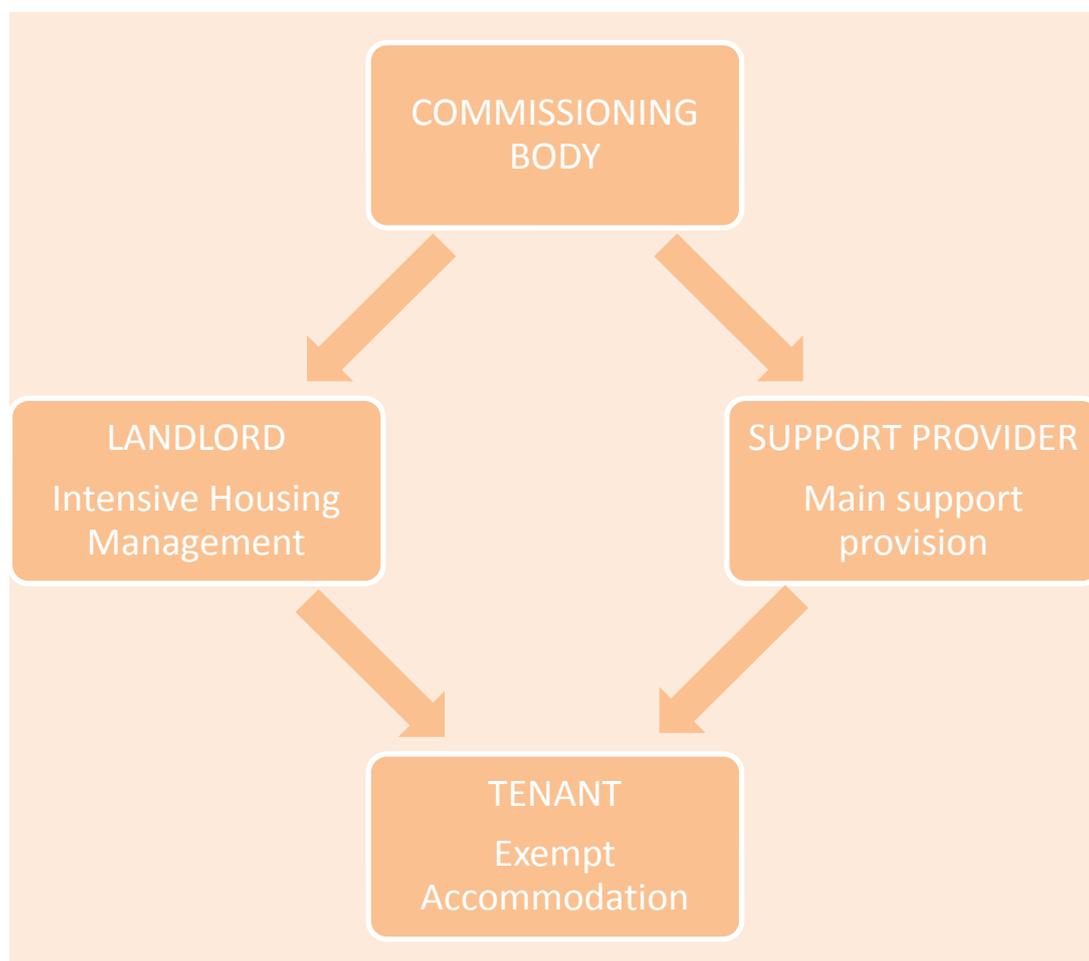


In Flowchart 1 the landlord is commissioned by a statutory agency to provide both the accommodation and the support. Subject to examination of the contracts in place this setup is generally treated as exempt accommodation from the outset of the scheme.

This is the case because the commissioning framework will set out what support it is intended the landlord will provide from the outset and that the landlord is contractually obliged to provide that support to its tenants. The commissioning contract is monitored to ensure the contractual obligations are met so there is a substantial degree of certainty the tenant is receiving support. If it is subsequently identified that the landlord was not meeting

its obligations then the authority would remove the exempt status, this could mean the landlord being asked to repay large sums of money.

Flowchart 2 – Exempt accommodation possibly satisfied



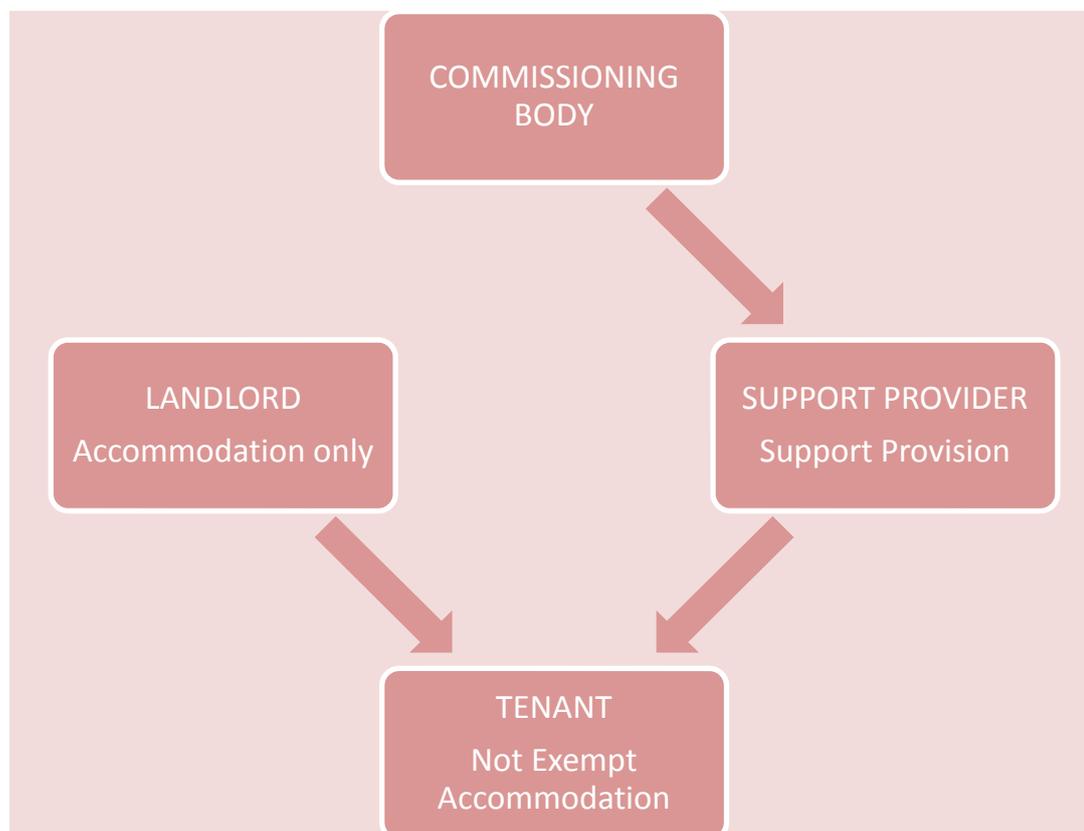
Flowchart 2 presents a more complex model and although in principle it can meet the definition of exempt accommodation this arrangement needs to be examined more closely. In Flowchart 1 the landlord is commissioned to provide the support and accommodation, the model in Flowchart 2 separates those activities.

Where intensive housing management is being relied upon the landlord will need to demonstrate what support was provided during a defined period, as is illustrated in paragraph 1.5 above. It will need to be shown that this support goes beyond activities defined as housing management and that the activities are more than minimal.

In Flowchart 1 it is possible, as the whole service is commissioned to define that as exempt accommodation from the outset; this is not possible in Flowchart 2. Even if contracts exist setting out intensive housing management these will need to be examined once tenants are in place. In this instance payments to the landlord will be made at an interim level until it is concluded that the definition of exempt accommodation is met.

This approach is supported by case law that makes it clear that just because commissioned support is in place at accommodation for a tenant that does not automatically define it as exempt. Intensive housing management is a much looser and generic term, hence the need to examine what tenants actually receive before deciding if it is exempt accommodation.

Flowchart 3 – Exempt accommodation not satisfied



Flowchart 3 represents the scenario when the landlord is providing accommodation only and is providing nothing more than an ordinary landlord would do. It is quite clear and this is reinforced by recent case law that just because the support is commissioned for a tenant that does not make the accommodation exempt. The landlord **must be** providing the tenant with the care, support or supervision.

2. Rent and Service Charges

2.1. Accommodation classed as exempt has the rent calculated in accordance with Regulation 12 to the HB and CTB (Consequential Provisions) Regulations 2006. This sets out that payments by way of rent and service charges are eligible for HB. The eligible rent is the total of these less:

- An amount for water, sewerage and allied environmental services
- Meals
- Personal fuel charges
- A modification for any unreasonably low service charges, whether or not they included the rent
- Provision of food

- Laundry, other than premises or equipment to enable person to do their own
- Leisure items such as sports facilities, television rental, and subscription fees
- Cleaning of rooms and windows except for communal areas
- Provision of transport
- Charges for the acquisition of furniture or household equipment where it will become the property of the tenant
- Charges for an emergency alarm system
- Charges in respect of medical expenses
- Charges for the provision of nursing or personal care
- Charges for general counselling or any other support service
- Charges not identified that are not connected with the provision of **'adequate accommodation'**

3. Eligible Service Charges

3.1. As a broad guideline the following charges are eligible for housing benefit.

- Communal fuel charges
- Repairs and maintenance
- Radio and television relay
- Entry phones
- Cleaning of communal areas
- Children's play areas
- Use of furniture
- Provision of communal laundry facilities

3.2. This list is not exhaustive as charges for the provision of adequate accommodation are eligible; this is explained in section 5.

4. Evidence and Information for Rent and Service Charges

4.1. In deciding the eligible rent the authority needs to consider if the charges within the rent are in fact eligible, are excessive, and have regard to the cost of comparable suitable alternative accommodation. To make this decision the following is required:

- The date that the rent will be effective from
- A breakdown of the core rent , eligible service charges, ineligible service charges and head lease for the property
- Charges made for voids explained
- The scheme's latest set of annual accounts

4.2. In providing the costs of the scheme it is generally necessary to provide evidence of the expenditure. If evidence cannot be provided then those costs may be determined as not eligible for housing benefit, an approach supported by case law.

- 4.3. Once the requested information has been provided, it will be examined; however there may be a need to ask further questions that may be raised as a result of the information provided, or to visit the property in question. If this is necessary, the authority will make a follow up information request by e-mail.

5. Adequate Accommodation

- 5.1. [The Department for Work and Pensions \(DWP\) Housing Benefit Guidance manual](#) at point A4.720 identifies adequate accommodation to mean the following:

'Charges for any service not connected with the provision of adequate accommodation are not eligible for HB. This includes services which make it possible for the tenant to occupy the accommodation but which have no bearing on the adequacy, this is the fabric, of the accommodation. The accommodation must be adequate as accommodation in general, not just with regard to the particular tenant.'

- 5.2. There is no definition of adequate accommodation in the housing benefit regulations; therefore it is the everyday understanding of the phrase that should be used. DWP guidance suggests that the accommodation must be made adequate for any tenant rather than the particular tenant by provision of the service.
- 5.3. This suggests that an eligible service charge would therefore generally be one that relates directly to the fabric of the dwelling covered by the tenancy and not directly to the needs of the tenant in enabling them to live in it.
- 5.4. This general rule is useful as a rule of thumb but one or two commissioners' decisions have not fully applied it and have considered the needs of the individual tenant in order to live in the accommodation when determining eligible service. One obvious example would be the provision of disabled adaptations designed to allow that individual to enjoy the accommodation properly and safely.
- 5.5. The Commissioner's decision in CIS 1460/1995 is authority for the proposition that the individual needs of the residents are relevant to the question of what is adequate accommodation. Arguably the special needs and problems of the residents of the home cannot be ignored in relation to paragraph 1(g).

6. Reference Material

- 6.1. [Housing Benefit circular A22/2008](#) provides a useful reference point explaining what exempt accommodation is in more detail.