

Advice regarding exempt accommodation and service charges

1. Purpose of explanatory note

- 1.1. To offer advice to inform the Low Level Hostel Review about what 'Exempt Accommodation' is and eligibility of service charges.
- 1.2. It is understood the Low Level Hostel Review is where 604 units, split as follows: 90 units of women only accommodation, 275 units of young people's accommodation, 240 units of generic accommodation will be purchased. Support will be provided: help people move on successfully, access training / education / employment, and achieve individual goals.
- 1.3. Prospective tenants will access the accommodation through the Housing Support Register (HSR). The assessment to go on to the HSR will identify if short term support to aid recovery from homelessness is needed. The average length of stay in the accommodation is expected to be 9 months.

2. What is exempt accommodation?

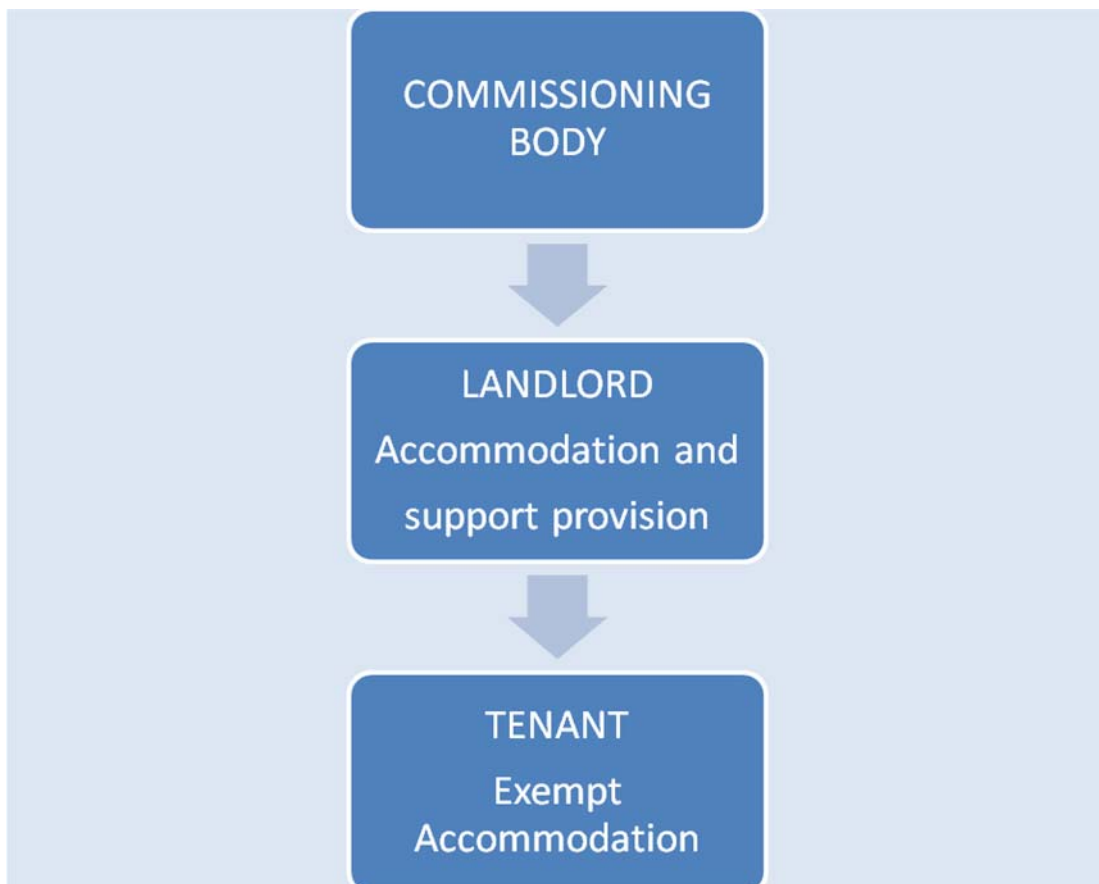
- 2.1. The term 'exempt accommodation' is used to describe accommodation that Regulation 13C of the Housing Benefit Regulations does not apply to. Regulation 13C tells you when Local Housing Allowance (LHA) is to be determined. Paragraph (5)(b) tells you that LHA does not apply where paragraph 4(1)(b) of Schedule 3 to the Consequential Provisions Regulations (CP) applies. 4(1)(b) tells you that where a person is liable to make payments in respect of a dwelling occupied by him as his home which is exempt accommodation, the rent shall be calculated as set out in paragraph 5 to the CP regulations.
- 2.2. 4(1)(10) tells you that 'exempt accommodation' is:

'Accommodation **provided by** a non-metropolitan county council in England within the meaning of section 1 of the Local Government Finance Act 1972, 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'.

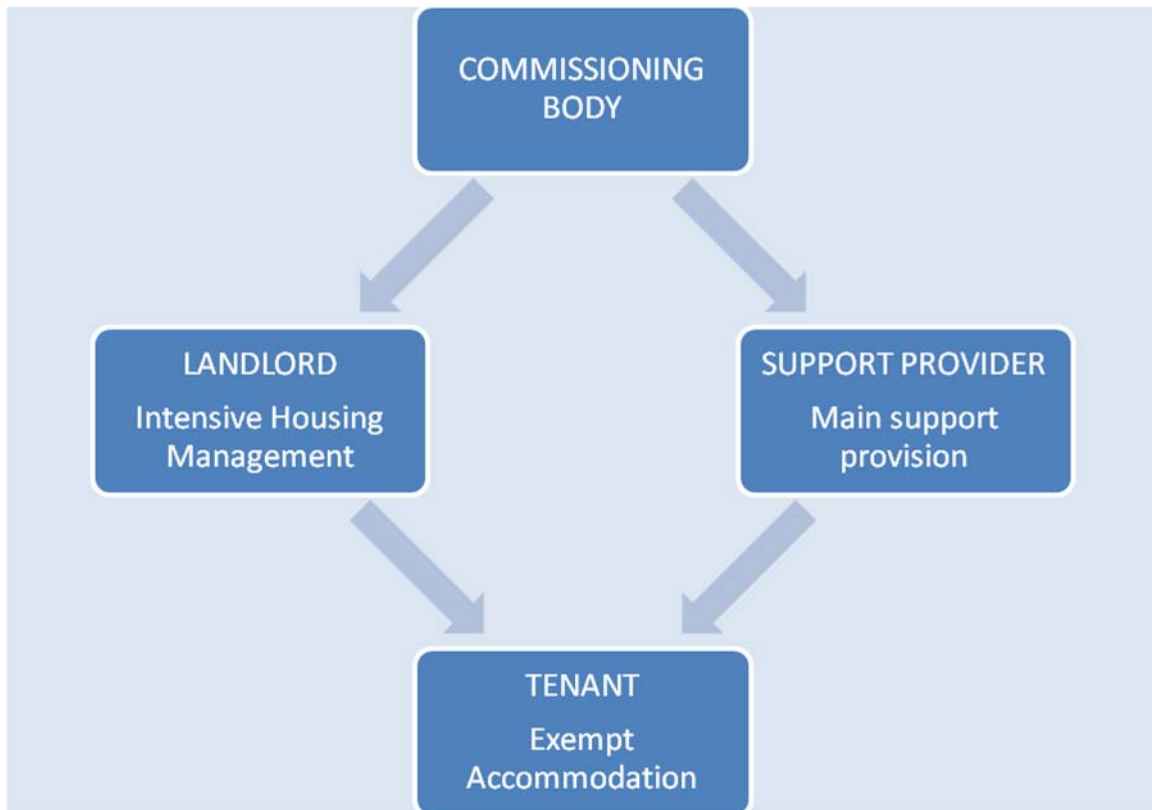
Housing Benefit circular A22/2008 provides a useful reference point explaining what exempt accommodation is in more detail.
- 2.3. The key words within the legislation have been highlighted to reinforce that a landlord must be providing the accommodation and the support. You cannot have a situation where a commissioning body identifies a landlord and a separate support provider where that landlord is not providing anything more than would be provided by a general needs landlord.

- 2.4. Care, support or supervision is not defined within legislation and case law must be referred to for guidance in this area. It is clear from case law (CH200/2009) that you can have a separate support provider commissioned and a landlord who also provides support at more than a minimal level. The key phrase is it at a more than 'minimal level', in other words the landlord performs 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'. This is not a phrase exists in legislation or is otherwise defined. A landlord may refer to this as a description, but they would need to carefully detail what they are doing and how this constitutes support to a tenant.
- 2.5. 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 would be for the provider to identify what they are doing. The commissioning framework may set out what it expects and means by these terms, the benefit service would then be able to state whether or not this meets the definition of exempt accommodation.
- 2.6. Where a support service is commissioned it is accepted that the definition of exempt accommodation is met as this process will have defined support and intensive housing management. Flowcharts 1, 2 and 3 represent where the definition of exempt accommodation would be in terms of who is providing what.

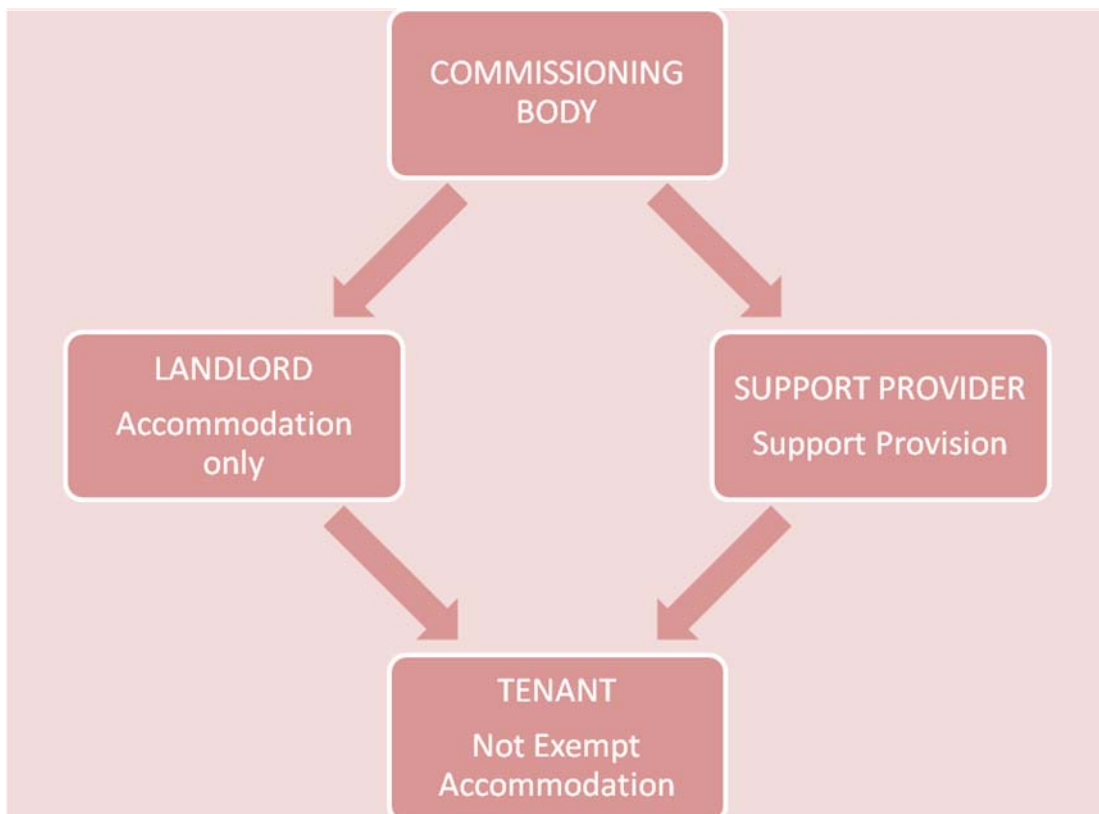
Flowchart 1 – Exempt Accommodation Satisfied



Flowchart 2 – Exempt Accommodation Satisfied



Flowchart 3 – Exempt Accommodation Not Satisfied



Quote from A22/2008

2.7. Paragraph 23 states: *'As with the provision of accommodation it should be the landlord that has ultimate responsibility for providing care, support or supervision or provides a level of support that the authority is satisfied is more than minimal. It is not sufficient for the landlord to simply facilitate, co-ordinate or just be involved in the provision of care, support or supervision either on behalf of others, ie social services, the NHS or within a joint responsibility (see Commissioner's decisions CH/423/2006, CH/3811/2006 and CH/779/2007).'*

3. Rent and service charges

3.1. 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.
- 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'**.

Adequate Accommodation

3.2. 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 not 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.'

3.3. This is an area that has caused debate; however it is clear from DWP guidance and CIS 1460/1995 that this definition is correct. The key point is that accommodation should be adequate in general in respect of the fabric, put another way it should be

generally suitable for the tenants of that accommodation and not just adequate for one or a few of them.

- 3.4. If a provider is unclear whether a charge is eligible advice can be sought from Bristol's benefit service by emailing benefits.policy@bristol.gov.uk. A clear explanation of the charge should be given; it can be investigated to see whether or not it is considered to be for the provision of adequate accommodation. It must be remembered that schedule 1, as described at 4.1 lists categories of charge not eligible, this provision is a catchall.

4. Reviewing rents

- 4.1. The benefit service is happy to review any changes to rent charges prior to providers submitting their bids to join the framework, in particular where the overall charge will increase by more than 10% or where there are significant changes to elements within the service charge.
- 4.2. In order to help you before the commissioning process starts if you could send any changes as described above in your rent to benefits.policy@bristol.gov.uk by 1st April 2013. The Policy Team will then where possible respond by 30th April 2013 making you aware of any changes that are not felt to be eligible.
- 4.3. When sending information to us it would be useful to:
- Identify what charges have changed.
 - Explain the reasons and methodology for the change.
 - Provide evidence as appropriate to demonstrate why a charge/s have changed.
- 4.4. Please be advised that the Policy Team will still scrutinise rent charges where eligible charges have been increased by more than 10% or where there are significant changes to elements within the service charge and these have not been agreed prior to the deadline for consultation stated above.
- 4.5. If you are not sure whether or not the benefit service will need to examine a charge we are also happy to take general enquiries and help where possible.

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Paul Hill
Senior Benefits Policy Officer
February 2013