

Written evidence submitted by Praevaleo Ltd [EXA 048]

Summary

This contribution to the LUHC Department's Inquiry into Exempt Accommodation proposes that the construct of "Exempt Accommodation" should be abolished as being unfit for purpose. This is for the following reasons:

- The Exempt Accommodation rules, which were originally introduced in 1996 to stop private bed and breakfast landlords from exploiting Housing Benefit, are being exploited by some ill-motivated registered providers and supported housing providers whose motivation is financial, not social, such that the Exempt Accommodation rules are being used for the obverse of what they were intended for (to prevent abuse of the Housing Benefit system).
- The Exempt Accommodation rules create a 3-tier system of revenue entitlements for tenants of supported housing that means the extent their entitlements are entirely dependent on the legal identity of their landlord, which is both perverse and discriminatory.
- The lack of an accreditation and oversight system for supported housing/Exempt Accommodation means that poor quality and badly motivated organisations can claim large amounts of public money and operate with impunity whilst providing poor quality services and non-existent support. This is an abuse of vulnerable peoples' welfare entitlements.
- Local authorities should accredit supported housing providers in the same way they did during the Supporting People initiative. They should not regulate or oversee them. However, an independent oversight system, based on the 3 Value Generation principles, should be introduced to measure the quality of supported housing using both qualitative and quantitative measures.
- Supported housing/Exempt Accommodation should be funded by "supported housing rent" in the form of an uncapped housing component of Universal Credit. This is what happens now except that the revenue concerned is not termed "supported housing rent", it is termed "enhanced Housing Benefit". Supported housing rent should only be payable to accredited supported housing providers, irrespective of their legal identity.

Introduction

My name is Michael Patterson. I am a supported housing consultant with 40 years' experience of supported housing, 30 of which have been as a consultant. I am the author of the [supported housing blog](https://supportedhousing.blog/supported-housing-blog) (<https://supportedhousing.blog/supported-housing-blog>). I am also the father of a 22-year-old son who will require supported housing for the duration of

his adult life, so my motivations for being involved in supported housing and for responding to this Inquiry, are both personal and professional.

It was me and another person who first began to promote the idea of Exempt Accommodation and enhanced Housing Benefit from 2005. This was as a response to the retrenchment of the Supporting People initiative, and it enabled Supporting People funded supported housing providers to offset some of their revenue loss from Supporting People retrenchment by claiming eligible costs through enhanced Housing Benefit and the Exempt Accommodation rules. Since that time an enhanced Housing Benefit revenue stream of probably more than £1bn per year has been created.

Enhanced Housing Benefit funds [Intensive Housing Management tasks and functions](https://supportedhousing.blog/2021/04/18/intensive-housing-management-enhanced-housing-benefit) (https://supportedhousing.blog/2021/04/18/intensive-housing-management-enhanced-housing-benefit). The term Intensive Housing Management existed prior to Supporting People and was funded through a revenue subsidy paid by the Housing Corporation, a forerunner of the Regulator of Social Housing (RSH), known as SHMG (Supported Housing Management Grant). SHMG the was absorbed into Supporting People in 2003 and Intensive Housing Management ceased to exist until I "reinvented" that term in 2005 as a descriptor for enhanced Housing Benefit eligible tasks and functions.

The Exempt Accommodation rules were put in place in 1996 by the government of the day to prevent the wholesale abuse of the Housing Benefit system by dubious private bed-and-breakfast providers who charged excessively for very poor services. The Exempt Accommodation rules restricted private landlords to what were then known as Local Reference Rents, now known as Local Housing Allowance (LHA). However, certain social/non-profit landlords were deemed to be exempt from these restrictions, hence the terms "exempt landlord" and "Exempt Accommodation".

We now find ourselves in the ironic situation where some unscrupulous people are contriving structures such as registered providers and (allegedly) non-profit supported housing providers to use the Exempt Accommodation rules to defeat the very purpose for which they were devised.

1. What is the quality of Exempt Accommodation provision?

It is variable. The lack of any effective system of oversight for supported housing, notwithstanding the [National Statement of Expectations for Supported Housing](https://www.gov.uk/government/publications/supported-housing-national-statement-of-expectations/supported-housing-national-statement-of-expectations) (https://www.gov.uk/government/publications/supported-housing-national-statement-of-expectations/supported-housing-national-statement-of-expectations) makes it impossible to answer this question with any meaningful detail. It varies from truly excellent to utterly disgraceful.

2. Is the current model of Exempt Accommodation financially viable, and does it represent value for money?

Sometimes.

I question the viability of Exempt Accommodation as an idea. It is not being used for the purpose for which it was intended, and some dubious supported housing providers are using it, ironically, to achieve the obverse of what Exempt Accommodation was set up to do, as per my remarks in "Introduction" above.

Voluntary organisations (CICs etc), charities and "housing associations" (registered providers) within the meaning of the s.1 of the Housing Associations Act 1985 are all Exempt Accommodation landlords, provided that:

- They own or lease the properties in which support is provided
- The people who live in those properties need "care support and supervision"
- The services provided to meet the residents' care support and supervision needs are provided by the landlord, or an agent on its behalf.

Where a registered provider claims enhanced Housing Benefit under the Exempt Accommodation rules, the local authority that pays for it can fully reclaim it from the DWP.

Where a charity or voluntary organisation such as a CIC claims it, the local authority can only reclaim 60% of the difference between the LHA rate and the amount charged.

Private companies providing supported housing are ineligible for enhanced Housing Benefit because of the Exempt Accommodation rules.

Consequently, we have a three-tier system of Housing Benefit entitlements for residents in supported housing:

- If your landlord is a registered provider/housing association, generally you will receive proper levels of enhanced Housing Benefit, because the local authority can reclaim it all from the DWP
- If your landlord is a voluntary organisation or charity, your level of enhanced Housing Benefit entitlement is increasingly being restricted to a level somewhere between LHA and full enhanced Housing Benefit because the local authority cannot fully recover it
- If your landlord is a private supported housing provider, you're restricted to LHA levels of rent only

This creates a preposterous and discriminatory situation in which a person's entitlement to enhanced Housing Benefit is entirely dependent on the legal identity of their landlord, irrespective of the quality of the supported housing services they provide.

In addition to some dubious registered providers being able to claim enhanced Housing Benefit without a problem, I'm also aware of openly for-profit registered providers claiming enhanced Housing Benefit in circumstances where, as I understand it, they are not "housing associations within the meaning of s.1 of the Housing act 1985 and Regulation 2 of the Housing Benefit Regulations 2006.

There is also a known association between some registered providers, some of which are subject to regulatory judgements by the RSH, and high charges, very poor standards of accommodation and minimal or non-existent support. This very definitely does not represent value for money.

However, exceptions to rules often have a higher profile than compliance with those rules. The great majority of supported housing providers claiming enhanced Housing Benefit, provide good accommodation, good support and make reasonable and well-founded enhanced Housing Benefit claims that equate to the reasonable cost of providing eligible services to people genuinely assessed as needing them.

3. Are there significant geographical and regional differences in the provision and problems of Exempt Accommodation?

Yes. Five "hotspots" were identified by your department when it was MHCLG. Pilots were run in Birmingham, Bristol, Blackburn, Blackpool and Hull.

Birmingham, however, is an outlier in terms of the numbers of Exempt Accommodation claims in payment (see Thea Raisbeck's report "[Exempt From Responsibility?](https://www.commonwealhousing.org.uk/static/uploads/2019/11/Exempt-from-Responsibility-Full-Report-November-2019.pdf)" (<https://www.commonwealhousing.org.uk/static/uploads/2019/11/Exempt-from-Responsibility-Full-Report-November-2019.pdf>). At the time of publication of this report (2018), Birmingham had around 12000 Exempt Accommodation claims. It now has over 20000.

4. What is the proportion of Exempt Accommodation that is provided by registered providers compared to non-registered providers and is an appropriate balance being struck?

It is not possible to say what proportion of Exempt Accommodation is provided by RPs and non-RPs respectively. As far as I'm aware these data are not held by anyone. Respectfully, I cannot see the relevance of the second part of the question (is an appropriate balance being struck?). The legal

identity of an Exempt Accommodation landlord bears no relation to the quality of service being provided.

The intrinsic faults in the Exempt Accommodation system encourage supported housing providers to work with registered providers to maximise the likelihood of enhanced Housing Benefit claims being accepted by local authorities, because where the landlord is a registered provider, the local authority can fully recover from the DWP what it pays by way of enhanced Housing Benefit.

Where ALL parties act in good faith and have the supported housing residents needs as their priority, this works well.

Where non-registered provider supported housing providers are the landlord, local authorities are increasingly trying to restrict the amount they pay and, rightly, trying to restrict the numbers of new supported housing providers in their areas. This adds further impetus to supported housing providers, both good and bad, to work with registered providers, both good and bad.

The problem is a structural one that discriminates in favour of registered provider landlords because they enable local authorities to fully recover the enhanced Housing Benefit they pay.

This has no discernible impact on the quality of provision. Many of the larger, socially oriented registered providers are exiting the supported housing market because they are risk averse. Less scrupulous, money motivated registered providers are setting up their supported housing operations because they can exploit the lack of oversight at local level and take advantage of local authority preoccupation with paying enhanced Housing Benefit where there is where the landlord is a registered provider, irrespective of the registered provider's motivations, and the quality of supported housing provided.

5. What is the proportion of Exempt Accommodation provided by commissioned compared to non-commissioned providers, and is an appropriate balance being struck?

What does "commissioned" mean in this context?

Historically, "commissioned" implied "funded by the local authority or NHS other than or in addition to enhanced Housing Benefit". We can refer to these services as "capital C commissioned services".

Statutory sector funding, other than enhanced Housing Benefit, has reduced markedly in recent years, especially but not entirely due to the effective disappearance of Supporting People and its partial replacement by enhanced Housing Benefit.

[The National Statement of Expectations for Supported Housing](https://www.gov.uk/government/publications/supported-housing-national-statement-of-expectations/supported-housing-national-statement-of-expectations)

(<https://www.gov.uk/government/publications/supported-housing-national-statement-of-expectations/supported-housing-national-statement-of-expectations>) published in October 2020 provides guidance to local authorities and their strategic partners on how they should organise to manage their supported housing markets. Some local authorities now require supported housing providers wishing to work in their areas to apply for Exempt Accommodation status before enhanced Housing Benefit can be considered.

The vast majority of such supported housing providers will not have access to statutory sector funding other than, potentially enhanced Housing Benefit, provided their "Exempt Accommodation application" is successful. We can refer to these services as being "small c" commissioned services on the basis that the local authority approved their Exempt Accommodation status but doesn't fund them other than through enhanced Housing Benefit.

Non-commissioned services are those that don't fall into either "capital C" or "small c" commissioned services. Many of them set up in local authority areas without consultation with the local authorities in question and simply applied for enhanced Housing Benefit from the Revenues and Benefits department. The growth in non-commissioned services was one of the drivers behind the National Statement of Expectations for Supported Housing, which urges commissioners and Revenues and Benefits teams to work together on enhanced Housing Benefit claims.

It is very hard to establish the respective proportions of both "capital C" and "small c" commissioned services on the one hand, compared to non-commissioned services on the other. These data are not held by anyone as far as I know. What can be said is that the growth of non-commissioned services over the past decade has been exponential.

My very firm view is that there should not be any non-commissioned supported housing providers. I believe that ALL supported housing providers should be subject to local authority accreditation just as they were during the time of Supporting People. If a supported housing provider fails accreditation, it should not be entitled to enhanced Housing Benefit or other funding. I will say more about accreditation below (question 7).

6. How does whether a provider is registered or non-registered or commissioned or non-commissioned impact the quality of provision?

I don't believe that being a registered provider is a guarantee of service quality, although it should be. This is partly because some registered providers have taken that identity as a means of making money with minimal focus on social mission. In addition, the RSH in England seems out of its

depth with supported housing and seems to have limited powers to intervene on these matters. Whilst it has handed down regulatory judgements on several registered providers, most of those registered providers continue to operate and make money, often for poor services, with apparent impunity.

In respect to commissioned and non-commissioned services (as defined in my response to the question immediately preceding this one), quality of provision is variable in both types of services and there is no current system of oversight that would assist us to make the judgement demanded by this question (more on "oversight" below in question 8).

Anecdotally, I would say that a larger proportion of the opportunistic, non-commissioned supported housing providers provide an inferior quality service. However, I wouldn't tar all non-commissioned providers with the same brush and would reiterate that quality is variable.

Part of the problem in addressing this question is the lack of any objective measure of quality in supported housing (more about this in 7 below).

7. How should Exempt Accommodation be provided and what should the service cost?

I have made the point in my introduction that I believe the concept of Exempt Accommodation should be abolished. I propose an alternative structure in question 8 below.

The Exempt Accommodation rules are being used by some supported housing providers/registered providers for the very obverse of what they were intended for, which was to halt abuses of the Housing Benefit system by ill motivated private businesses. What we now see is the same type of ill motivated businesses adopting the identities of registered providers and supported housing providers to use the Exempt Accommodation rules to enrich themselves off the back of vulnerable peoples' enhanced Housing Benefit claims. This is an abuse of vulnerable people.

In addition, the Exempt Accommodation rules create a situation where someone's entitlement to enhanced Housing Benefit is entirely dependent on the legal identity of their landlord, which is both absurd and discriminatory.

In question 5 above I raised the issue of local accreditation. Under the Supporting People initiative **all** supported housing providers/registered providers wishing to claim Supporting People funding had to be accredited by the local authority. Accreditation is effectively a form of due diligence that considers the registered provider/supported housing provider's governance, financial viability, operational competencies, commitment to equality diversity and inclusion etc.

Accreditation is not regulation or oversight, which I discuss below. Accredited supported housing providers should be entitled to enhanced Housing Benefit or its equivalent future revenue funding stream, and non-accredited supported housing providers should not. Supported housing providers that are only in it for the money won't pass any accreditation process worthy of the name, which would sort out the supported housing sheep from the goats very quickly. If they did manage to pass accreditation, they would be caught out by the oversight system I propose in answer to question 8.

In response to the second part of this question "what should the service cost?" I would ask "how long is a piece of string?". I would say that the service cost should equate to the reasonable cost of providing eligible services. Within the current system some supported housing providers do charge and are paid amounts equivalent to the reasonable cost of providing eligible services, some are paid excessive amounts for doing very little and others are paid very little for doing a great deal. This is because the Exempt Accommodation rules are unfit for purpose and reward registered providers, irrespective of the quality of the services they or their supported housing provider agents provide, because the local authority can fully recover the enhanced Housing Benefit it pays to registered provider landlords.

8. How should the regulatory oversight of supported housing be organised?

Regulation and oversight are separate things. Regulation looks at the probity, viability and competencies of registered providers and supported housing providers (or should do) and oversight looks at the quality of what these agencies do in providing supported housing services on a day-to-day basis.

I often hear people, political leaders in Birmingham for example, refer to "the Regulator" when discussing Exempt Accommodation. But there are several regulators in the supported housing ecosystem, none of which sing from the same hymn sheet and none of which are supported housing specialists.

When referring to "the Regulator" (in England) people generally mean the RSH. The Scottish and Welsh regulatory equivalents, for what are known as registered providers in England, are the Scottish Housing Regulator and the Welsh Assembly Government.

A significant number of Exempt Accommodation supported housing providers are charities regulated by the Charity Commission in England and Wales and the OSCR in Scotland.

A significant number of Exempt Accommodation supported housing providers are CICs, regulated by the CIC regulator.

Other types of voluntary agency are regulated by the FSA.

My view is that existing regulators should continue to regulate in much the same way as they currently do. Their roles are far wider than just supported housing and within which their roles are at best tangential. To make wholesale changes to the roles of regulators would amount to the tail wagging the dog and for no good reason.

I made the point above that local authorities should accredit, not regulate, supported housing providers in much the same way as they did under the Supporting People initiative. Local authorities should still have the Supporting People accreditation framework. There is no need to reinvent the wheel on this, just to refresh and reuse what already exists. Without accreditation supported housing providers should have no entitlement to revenue funding (currently in the form of enhanced Housing Benefit).

So, by way of summary so far, I believe we should be discussing a common framework for accreditation as distinct from regulation.

Regarding oversight, by which I mean the ongoing assessment of the quality of supported housing providers' services, there has been no meaningful oversight since the demise of the Supporting People Quality Assessment Framework, which local authorities used to implement in respect of Supporting People funded services. The lack of oversight is absolutely a factor in the growth of opportunistic, money motivated registered providers and supported housing providers that provide poor quality accommodation and poor or non-existent services.

I believe that a new oversight system for supported housing should be developed by an independent third party such as a university or think tank independently of, but in consultation with local authorities and (accredited) supported housing providers.

This oversight system should be based on the 3 "Value Generation" principles I have devised:

- Outcomes for people who live in supported housing (measured qualitatively)
- Cost benefit to the public purse (measured quantitatively)
- Wider social and community benefit (measured qualitatively and quantitatively)

The system of oversight, based on Value Generation principles, should be implemented by an independent agency (possibly the agency that devises it) independently of local authorities and supported housing providers, but the outcomes should be provided to those local authorities and supported housing providers.

This would allow for an objective, well-founded system (based on Value Generation) to be implemented independently of the agencies that commission/fund and provide supported housing services. It would also break the link between "cost control", which is the commissioner's preference for lowest unit cost, that has been so catastrophically expensive for supported housing and other publicly funded services.

Cost control results in underinvestment in supported housing (and other) services, reducing quality and outcomes for people and consequently leading to otherwise avoidable (and considerably more expensive) emergency interventions from the NHS, social care, criminal justice and homelessness services.

Cost control is about the siloed management of money, not about the meeting of additional need in supported housing.

Regarding funding, I reiterate that Exempt Accommodation as a construct should simply be abolished as unfit for purpose for the reasons I have identified in my responses.

In 2012, the then Minister for Welfare Reform, Lord Freud, said that people in Exempt Accommodation/supported housing should have the housing component of their Universal Credit administered as enhanced Housing Benefit under the Exempt Accommodation rules.

The effect of this is that the housing component of Universal Credit for supported housing/Exempt Accommodation is uncapped. This "transitional" system exists to this day.

Furthermore, the UK Government, in response to consultation responses to its 2017/18 "[Funding for Supported Housing](https://www.gov.uk/government/consultations/funding-for-supported-housing-two-consultations)" consultation (<https://www.gov.uk/government/consultations/funding-for-supported-housing-two-consultations>), stated that the funding of supported housing would "remain within the welfare system".

These things being so, would it not be sensible to simply put the Exempt Accommodation rules to bed and formalise the "transitional" arrangements we currently have wherein the housing component of Universal Credit for supported housing residents is uncapped?

This "uncapped" Universal Credit housing component should be redesignated as "[supported housing rent](https://supportedhousing.blog/2020/06/03/funding-supported-housing/)" (<https://supportedhousing.blog/2020/06/03/funding-supported-housing/>) and be payable only to accredited supported housing providers of any legal identity.

This would deal with what has been termed the "regulation/oversight" issues (it should be termed "accreditation"), the widespread abuse of the Exempt

Accommodation rules by poor quality supported housing providers and the unequal and discriminatory funding arrangements that mean peoples' enhanced Housing Benefit entitlements depend on the legal identity of their landlord irrespective of the latter's probity or quality of service.

This proposed system should be based on the same Value Generation principles that should underpin oversight. Assuming the application of Value Generation principles as opposed to cost control it would enable the construction of a [list of supported housing tasks and functions that are eligible to be funded](https://supportedhousing.blog/2021/04/18/intensive-housing-management-enhanced-housing-benefit/) (https://supportedhousing.blog/2021/04/18/intensive-housing-management-enhanced-housing-benefit/) and a methodology for calculating the bricks and mortar costs of supported housing at local and regional level.

9. What should be the regulations governing Exempt Accommodation and how should they be enforced?

Exempt Accommodation should be abolished as a construct for the reasons I have set out in my submission.

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