UA-2024-001199-HB

Neutral Citation Number: [2026] UKUT 157 (AAC)

Appeal Nos: UA-2024-001199-HB and UA-2024-001252-HB

IN THE UPPER TRIBUNAL

(ADMINISTRATIVE APPEALS CHAMBER)

Between:

FYE	**Appellant**
V	
Middlesbrough City Council	**Respondent**
and	
GPZ	**Appellant**
v	
Sunderland City Council	**Respondent**

Before: Upper Tribunal Judge Jacobs

Decided on 20 April 2026 following an oral hearing on 16 October 2025.

Representation:

Claimants:	Jonathan Manning and Kevin Brown of counsel, instructed by LB Legal Representation
Local authorities:	Ranjit Bhose KC and Sarah Salmon of counsel, instructed by Rachael Burton and Deborah Younger

Summary: Housing benefit and council tax benefit – liability, commercial and contrivance (16.3)

Housing Benefit Regulations 2006 – regulation 9(1)(l) – First-tier Tribunal found that the liability of the claimants had been created to take advantage of the scheme – nature of test as involving findings of fact and an evaluative judgment – evidence from decision-makers not required – significance of nature of test on appeal on point of law to the Upper Tribunal – no error of law identified.

[Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.]

DECISION OF UPPER TRIBUNAL

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

References: SC269/20/00946 and SC236/21/00280
Panel: Judge Barber and Tribunal Member Mrs A Taylor
Decision date: 29 April 2024

The decisions of the First-tier Tribunal did not involve the making of an error on a point of law under section 12 of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

A. The issues

1. The Upper Tribunal has a block of 34 appeals involving two local authorities. All the cases concern the provision of supported accommodation for claimants. This decision deals with the two lead cases, one from each authority. I will give a separate decision dealing with the other 32 cases.

The contrivance issue

2. All the cases involve the issue whether the claimant's liability was created to take advantage of the housing benefit scheme. The evidence on this issue is common to all the cases. In every case, the local authority decided that the liability had been so created, with the effect that the claimant was not entitled to housing benefit. I am following regular usage by calling this *contrivance*, but it is no more than a label for the correct test, which is in the wording of the legislation. The First-tier Tribunal used a variety of words, but they were also convenient labels for the statutory language.

The support issue

3. Some of the cases also raise the issue whether the claimants were living in exempt accommodation. In the simplest terms, this means whether they were receiving support in addition to their accommodation. In those cases, there is individual evidence relating to each of the claimants.

4. The support issue only arises if the claimant's liability was not created to take advantage of the scheme. The First-tier Tribunal decided that the liability was so created. As I have found no error of law on that issue, I have decided not to deal with the support issue. First, my decision on it could not affect the outcome of these appeals. Second, it would be a disproportionate use of Upper Tribunal time to deal with all the cases in which support was in issue, given that it is immaterial. This explains why I have not dealt with appeal ground 4. This also explains why I have not dealt with some aspects of the other appeal grounds that relate to support. I deal with this in Section J below.

B. Anonymity

5. I have made orders protecting the identity of the claimants. They are all disabled and vulnerable to some extent. Moreover, they were not involved directly or personally in creating their tenancies; this was handled by others on their behalf.

C. The legislation

6. Section 130 of the Social Security Contributions and Benefits Act 1992 creates housing benefit:

> **130. Housing benefit**
>
> (1) A person is entitled to housing benefit if-
>
> (a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home; …

7. Section 137 provides for regulations:

> **137. Interpretation of Part VII and supplementary provisions**
>
> …
>
> (2) Regulations may make provisions for the purposes of this Part of this Act-
>
> …
>
> (i) for treating any person who is liable to make payments in respect of a dwelling as if he were not so liable; …

8. Regulation 9 of the Housing Benefit Regulations 2006 (SI No 213) is made under the authority of section 137(2)(i):

> **9. Circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling**
>
> (1) A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where-
>
> …
>
> (l) in a case to which the preceding sub-paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under Part 7 of the Act.

If this regulation applies, the claimant does not satisfy the condition in section 130(1)(a) and is not entitled to housing benefit.

9. As I have found no error of law in respect of the contrivance first issue, I do not need to set out the provisions dealing with the support issue.

D. Funding supported accommodation

10. The funding model used in these cases is a common one. There is a company that acquired a property and adapted it to be suitable for providing supported accommodation. The company lets the premises, in this case to a charity. The charity provides accommodation and support for housing benefit claimants. If the local authorities had not refused the claims for housing benefit, they would have paid benefit for the claimants, including if appropriate an element for their support. This would have covered the costs of the charity, including its rent to the head landlord.

11. There is in principle nothing objectionable about that model. I note that in April 2025, the Regulator of Social Housing published **Focus report: Lease-based provision of Supported Social Housing**. The Report was concerned only with issues

that might undermine the viability and efficiency of the model. Otherwise, it recognised the value of the model in providing the necessary accommodation.

12. The ultimate issue in this case was whether the way the model was used involved a contrivance.

E. The First-tier Tribunal's reasons

13. The tribunal gave detailed reasons for its decision in 174 paragraphs over 40 pages. No summary can do it justice. Later, I set out the tribunal's own summary of its reasoning. For the moment, I will give sufficient background information for those reasons to be understood. Later, I refer to or quote other parts of the reasons as necessary to make sense of my reasoning.

14. By way of background, the owner of the properties at the relevant time was Enabling Homes Ltd. I hope I am right about that, but ultimately the name of the owner does not matter. The properties were bought by one company and immediately sold to another at a huge profit. They were then let to the charity, My Space Solutions Ltd, with no break clauses and full repairing responsibilities. Mr Paul O'Rourke was involved in the companies involved and in the charity. He was also involved in a company that provided financial support for the charity; this allowed it to continue to operate when the local authorities refused the claims for housing benefit. The charity has never engaged in what might be described as usual fund raising activities. In short, the tribunal found that Mr O'Rourke was controlling the actions of the companies and the charity, appearing in different roles at different times. He and his operations have been the subject of an article in Inside Housing and a Panorama programme called 'The Housing Benefit Millionaire'. They have also been the subject of adverse decisions by the Regulator of Social Housing and an inquiry by the Charity Commission.

15. This is how the tribunal summarised its reasoning:

> 5. Broadly speaking we have decided that the liability comes within regulation 9(1)(l) for the following reasons, which collectively we find, amounts to an abuse of the housing benefit scheme:
>
> a. The close and we think controlling relationship between Mr Paul O'Rourke, who will figure extensively in this statement of reasons, My Space Housing Solutions Ltd, and his profit-making operations in various other companies, such as Enabling Homes Ltd.
>
> b. The unconscionable lease arrangements between My Space Housing Solutions and the eventual freehold owners of the developments which we find were probably influenced by Mr O'Rourke in order to inflate the value of the various assets.
>
> c. The fact that Enabling Homes Ltd, a profit-making company owned and controlled by Mr O'Rourke, was set up with a preferential loan from My Space Housing Solutions Ltd, a charity. The accounts ended October 2016 on page 722 show that Mr O'Rourke borrowed £128,000 from My Space to invest in Enabling Homes.
>
> d. The fact that Enabling Homes paid My Space a significant yearly donation to prevent it trading insolvently and upon which My Space was dependent. We find that this payment, termed "support income" was paid to cover the

cost of providing support to tenants. Otherwise, in the funding model adopted there is no provision for paying for support services as housing benefit is not available to cover this cost. These payments were, in our view, necessary to bring the accommodation within the scope of "exempt accommodation" and in our view amount to an abuse of the scheme.

e. The fact that setting up My Space and being involved in its operations in the ensuing years appears prima facia to have enabled Mr O'Rourke and the companies he operates to make significant profits ostensibly at public expense. We cautioned ourselves in this regard as we did not have full accounts information, but from the evidence in the papers it appears to us that significant profits were achieved on the back of the operating model.

f. The way in which the charity operated, despite growing to a significant size, without any apparent understanding of how it should operate within the confines of charity law and the rules associated with being a registered social landlord – for example, the inexplicable claim to provide specialised supported housing when it did not; the unlawful payments to trustees. In our view the Charity was operated a lot like a private company than a charity.

g. Added to the above is the fact that the Charity failed to appreciate, as a registered provider of social housing, that rent levels should comply with the rent standard and instead simply divided the head lease rent agreed by the number of letting units to arrive at "base rent". This suggests that the rent levels paid to the head landlord were more important than setting rents at social housing levels.

h. Claiming to provide supported accommodation to FYE in circumstances where support was not needed nor properly provided.

i. Further and insofar as the evidence of the support provided by the charity in FYE's appeal is indicative of the general level of support required by tenants of My Space, we find that tenants were probably targeted so as to enable housing benefit for exempt accommodation to be claimed.

F. Regulation 9(1)(l) – 'the liability was created to take advantage of the housing benefit scheme'

16. There is more than enough caselaw on this expression. It is sufficient to say that 'take advantage' is used in the sense that a writer in the romance genre might refer to the dastardly villain taking advantage of the heroine. It conveys an improper advantage being taken. The focus is on the creation of the tenant's liability, which means the time when the tenancy was made. It is, though, permissible to use later evidence provided that it can help to show that the creation of the liability was a contrivance.

G. The nature of appeals to the First-tier Tribunal and to the Upper Tribunal

17. This is ground 3.

18. I am starting with this ground, because it is essential to understand the nature of the appeals to the First-tier Tribunal, as this affects the decision-making process undertaken by that tribunal. It also affects the approach taken by the Upper Tribunal when identifying an error of law.

19. The ground argues that it was procedurally unfair for Judge Barber to refuse to direct that evidence be called by the local authorities to support their decisions on contrivance. I reject this ground.

What the judge said

20. I was given a note of what the judge said during a case management hearing. This is what it says word for word:

> It is a legal point on the facts, based on creation of liability between the tenant and the landlord. The LA will make submissions as to why the facts are regulation. Doesn't need Mr Barker or Longford to give WS [witness statements] telling them how they arrived at it. The decision letter and submissions on law tell [Judge] how they arrived. It is up to him [the judge] to decide whether that view on the facts.

This note was obviously taken in haste as the judge was speaking. I make no criticism on that account. Indeed, the imperfections add credence to it being a contemporaneous note.

21. I am sure that the judge would have expressed himself with more precision if he had put his comments into writing and honed them for dissection by counsel and scrutiny by the Upper Tribunal. This note of what he said is, though, sufficient to show both what he meant and that it does not involve an error of law. His remarks refer to two features of these appeals.

First feature - the appeal to the First-tier Tribunal involved a complete reconsideration

22. The first feature is a general one, applying to all appeals to the First-tier Tribunal in social security matters. In *Subesh v Secretary of State for the Home Department* [2004] EWCA Civ 56, Laws LJ described what he called the default nature of the appeal process, but he added that it was:

> 48. … defeasible in any particular case by statutory provision inconsistent with it. Thus an appeal to the Crown Court against a conviction in criminal proceedings in the magistrates' court is treated in effect as a new first instance hearing. Evidence is called all over again; it may or may not be the same evidence as was called before the magistrates. There may be other such instances. That process is at variance with the nature of appeals as we have described it. But neither of these approaches undermines the other; the Crown Court instance merely shows the working of a particular statutory regime as it has been interpreted. Cases where statute prescribes a specially restricted right of appeal will equally involve a departure from the default position.

23. The nature of the appeal process in social security cases is an example of 'a specially restricted right of appeal'. The appeal process in those cases is the closest civil example I know to the Crown Court instance described by Laws LJ. From 1948 at least, the First-tier Tribunal and its predecessors have undertaken a complete reconsideration of a claimant's entitlement to benefit. That is now qualified by paragraph 6(9) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 (equivalent to section 12(8) of the Social Security Act 1998). The authorities of the Social Security Commissioners and now the Upper Tribunal do not require the First-tier Tribunal to have appropriate regard to the decision-maker's knowledge and experience. This is unusual in appeals.

24. Taking that approach, decision-makers who act in the name of a local authority or the Secretary of State are not called to give evidence either in writing or in person. They may make submissions in support of their decisions, but they do not give evidence on their thought processes. The judge was right not to require them to give evidence.

Second feature - the First-tier Tribunal had to make findings of fact and exercise an evaluative judgment

25. The second feature is unique to provisions like regulation 9(1)(l). It does not depend just on matters of fact. The tribunal must first make its findings of fact on events that have taken place and states of affairs that have existed. Having done so, the tribunal has to decide whether the claimant's liability was *created to take advantage* of the scheme. That requires an exercise of judgment. It might be described as an inference drawn from the actions and circumstances of the case. Or it might be described as assessing whether the facts satisfied the legal test. Either way involves an evaluation that requires the tribunal to consider all relevant facts and circumstances. Evidence has no role to play at the evaluation stage. That is part of the point the judge was making. To put it another way, evidence from the decision-maker would not be relevant.

26. The nature of regulation 9(1)(l) is reflected in its language. Subparagraphs (a)-(k) merely identify a fact or state of affairs that must exist. To take one simple example, subparagraph (k) applies if the claimant 'is in residential accommodation'. In contrast, subparagraph (l) applies if the local authority 'is satisfied that the liability was created to take advantage of the housing benefit scheme'. The reference to the authority being *satisfied* reflects the element of judgment involved in applying the provision.

27. I will give an example of the point where fact-finding moved on to evaluation in the tribunal's decision:

> 132. Mr Collins also told us that because "support and supervision cannot be claimed for under housing benefit, My Space was reliant upon capitalisation fees and donations or loans from Enabling Homes or Mr O'Rourke to pay for the support and supervision." This was already apparent from a general perusal of the accounts and is a significant factor in our determination. The fact that My Space, a Charity, was dependent upon a property developer, Mr O'Rourke and his property development company, Enabling Homes Ltd and who was instrumental in negotiating the terms of the long lease and who also provides funding to cover a cost which cannot be claimed through housing benefit but without which, housing benefit would not be payable, *strikes us as contrived, unfair and improper*.

I have italicised the final words, because they are the evaluative judgment based on the findings of fact set out in the rest of the paragraph.

28. The judge's decision did not prevent evidence being given on matters of fact. All it did was to rule out evidence on how the decision-makers carried out the evaluative judgment required by regulation 9(1)(l).

When to challenge a case management ruling

29. Mr Manning argued that the claimants were entitled to rely, indeed should only rely, on this ground after the tribunal had made its decisions. Challenging it at the time

would have caused additional cost and delay. And it would, of course, have been immaterial if the claimants had won their appeals. Mr Bhose argued that the claimants should have applied for permission to appeal at the time. I accept Mr Manning's argument. The Upper Tribunal does not encourage appeals against case management decisions, which are usually better considered in the context of the proceedings as a whole.

The relevance of the specialist member of the tribunal

30. There was one thing that Judge Barber was wrong about. It makes no difference, but it is important. When he said at the end of the note that it was for the judge to decide whether there was contrivance, he did not anticipate that the hearing would be before a panel consisting of a judge (himself as it happened) and a financially-qualified member. Perhaps the decision on composition had not been made at that stage. But her presence contributed to the tribunal's understanding of the issues, the questioning of the witnesses, the assessment of the evidence, and the tribunal's findings and conclusion. The Upper Tribunal takes that into account when assessing any criticism of the tribunal's reasoning on financial matters.

The relevance to the Upper Tribunal in this case

31. Let me spell out what all this means for the way I have dealt with this case. Some findings of fact were not in dispute. Other findings were in dispute. The tribunal was required to give an adequate explanation of how it made those findings and it must disclose that its assessment of the evidence was rational. For those findings that benefited from the knowledge or experience of the panel members, I have made appropriate allowance in assessing whether the finding involved an error of law. I have found that the tribunal was entitled to make all the findings that it made that are relevant to contrivance.

32. Coming to the evaluative judgment, this required the tribunal to take account of the undisputed facts and its findings in order to decide if there had been contrivance. There is ample authority on the need to take account of the nature of the exercise involved in deciding on the combined effect of a range of factors some of which support one judgment, some support another, and the rest are equivocal. I have not needed to apply that approach in this case. Given the facts found by the tribunal, there was only one judgment that it could properly make. It made that judgment: there was a contrivance.

H. Ground 2

33. This ground is headlined as dealing with errors of law and begins with the burden and standard of proof. As that is a fundamental matter, it is convenient to deal with this ground next.

Burden and standard of proof

34. This is ground 2(i). It argues that the tribunal failed to direct itself correctly and to apply the burden and standard of proof. I reject this ground.

35. The standard of proof on the balance of probabilities only applies to matters of fact, not to evaluative judgments. See *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 at [56]. That said, tribunals are all familiar with the burden and standard of proof. The Court of Appeal used them as an example when it said in

EJA v Secretary of State for the Home Department [2017] EWCA Civ 10 at [27] that 'some principles are so firmly embedded in judicial thinking that they do not need to be recited.' On appeal, a tribunal is assumed to know them unless its decision or reasons show otherwise (*Piglowska v Piglowski* [1999] 1 WLR 1360 at 1372).

36. There is also this point. The outcome of a civil case will usually be determined by the findings of fact rather than by applying the burden and standard of proof. Tribunals are under a duty to make findings of fact. Save in exceptional cases, those findings will be determinative and render any reference to the burden or standard unnecessary. See *Morris v London Iron & Steel Co Ltd* [1988] QB 493 at 504 and 507.

Profits from public funds

37. This is ground 2(ii). It argues that the tribunal was wrong to rely on the report on Exempt Accommodation from the House of Commons' Levelling UP, Housing and Communities Committee.

38. I reject this argument and the various developments of it. The tribunal dealt with the report in paragraphs 89 to 93 of its written reasons. In paragraph 89, it said that the report did not reference My Space and was 'therefore of a more general relevance'. Later, it made this more explicit:

> 90. The report itself is some 65 pages long and its scope is of generally limited relevance to the decision which this Tribunal needs to make but it provides informative background to the fact that some of the issues which the Respondents rely on as indicative of contrivance, had been subjected to parliamentary scrutiny.

And in the final paragraph of its coverage of the report, the tribunal repeated the point:

> 93. The report does not in itself take the matter we have to decide one way or the other, but the above paragraph is relevant to our deliberations. The lease-based model can be a perfectly legitimate mechanism for providers of supported housing to increase their stock in circumstances where outright purchase might be impossible due to the capital cost of the property. That must be right. However, as the Committee alluded to, there may well be circumstances where profits associated with the lease-based model might in some way form a 'disguised profit income stream' for the head landlord.

39. So, three times in the course of five paragraphs, the tribunal said that the report did not affect its actual application of regulation 9(1)(l) to the facts and circumstances of the individual cases. It used the report merely as background briefing on issues. Mr Manning argued that 'The general scrutiny of Parliament is in no way probative in relation to an individual case' and accepted that 'the parts of the report quoted do not refer to the legal tests or controls at all.' That confirms the point I have just made.

40. I see no reason to doubt what the tribunal said. Mr Manning's arguments proceed on the basis that the tribunal was treating the Report, or at least the passages it quoted, as an authoritative statement of the law. The arguments then criticise the tribunal's reasoning and conclusions on that basis. I reject that approach and the arguments on which it is based.

41. As to the rest, I accept Mr Bhose's argument that the level of the rents charged was sufficient to show that there was a profit from public funds. Whether that profit

went to the charity or ultimately to the head landlord does not matter. What matters is that the claimants' liability was created to take advantage of the scheme.

42. It may be that a profit will often, or even regularly, be a feature of a contrivance, but I do not see why this must be an essential feature. Provided there is a contrivance, it does not matter whether it turns out to be a profitable one or even whether it was intended to be profitable. What matters is that public funds are spent unnecessarily or inappropriately. I do not, though, have to decide that point.

The rent standard

43. This is ground 2(iii).

44. In paragraph 5(g) of its written reasons, the tribunal said that the charity failed to appreciate that the rent standard applied. I accept Mr Bhose's argument that this was not put in issue before the tribunal. There was evidence that the Regulator of Social Housing was concerned about this and the claimants had not argued, or provided evidence, otherwise.

I. Ground 1

45. This ground is headlined as dealing with relevant and irrelevant considerations.

Valuation conclusions

46. This is ground 1(i).

47. A finding on valuation is a matter of fact. These appeals can only succeed if the tribunal made a mistake of law in making its findings. A mistake of fact is not sufficient.

48. The tribunal described itself as expert. I regularly see tribunals using this term. At one time, an expert tribunal meant one that was entitled to make findings based solely on the expertise of the panel. The medical appeal tribunal was the classic example. It consisted of a legal chairman and two consultants. The consultants would examine the claimant and the tribunal could rely on their findings to make its own diagnosis of the claimant's condition: see Diplock J in *R v Medical Appeal Tribunal (North Midland Region) ex parte Hubble* [1958] 2 QB 228 at 241. The First-tier Tribunal exercising the housing benefit jurisdiction is not expert in that sense. It must rely solely on the evidence. But it is entitled to use its experience to assess the evidence before it. In this case, the financially-qualified member will have had practical experience in dealing with valuation matters. And I know from seeing the judge's name over the years that he is an experienced judge in social security matters, including housing benefit. In assessing whether a finding involved an error of law, the experience on which it was based is accorded appropriate respect.

49. The tribunal relied on its combined knowledge and experience in both cases, as it was entitled to do. At paragraph 38, it did so when accepting that the figures provided by the local authority 'are well within in the ballpark of renting a flat' in the relevant post code. And at paragraph 46, it did so when finding that 'the desktop valuation broadly confirms our understanding of the … rental market as at the time of the valuation.'

50. This reliance is important for two reasons. First, the tribunal's reasoning focuses on the actual valuation and tests its likely accuracy on the basis of its own experience. This reduces the significance of the factors set out in this ground. Second, this in turn

is relevant in deciding whether any failure to take account of a particular consideration was material.

51. Having accepted evidence and explained the basis on which it did so, it was not necessary for the tribunal to go on and explain why it did not accept other evidence that did not accord with the tribunal's knowledge and experience. Having seen the other valuations in evidence and discussed them at the hearing before me, there were other reasons why the tribunal might have rejected them, but its reasons are adequate as they stand.

Contrivance

52. This is ground 1(ii). It consists of criticisms of a number of points in the tribunal's reasoning.

53. Later, I accept that tribunal's statement in paragraphs 113-114 that one factor alone was sufficient by itself to show contrivance. None of these points relate to that part of the tribunal's analysis. And, although it is not necessary to decide the point, I do not consider that they undermine my view that the tribunal's evaluative judgment on contrivance was unassailable given the totality of the factors it took into account.

J. Why I have not dealt with the support issue

54. In paragraph 5(h) and (i), the tribunal took into account factors relating to support rather than taking advantage of the housing benefit scheme. Assuming for the sake of argument that the tribunal should not have done so, did their inclusion undermine the cogency of the other reasons?

55. In *HK v Secretary of State for the Home Department* [2006] EWCA Civ 1037 Neuberger LJ explained how to identify whether an isolated error contaminated a decision as a whole so as to make it material:

> 46. … the issue cannot be resolved simply by asking how many of the Tribunal's reasons survive. The issue has to be determined partly by reference to the probative value of those reasons, both in absolute terms and by comparison with the rejected reasons, and objectively, but also subjectively, in the sense of seeing what weight the tribunal gave to the various reasons it gave. The issue also has to be determined bearing in mind the overall picture including reasons which a tribunal would have had, but which were not expressed. An example would be the impression made by a witness (a factor which is not, in my view, high in the hierarchy of cogency, especially in an asylum case which will normally involve an appellant from a very different cultural background from that of the Tribunal).

Harris v Registrar of Approved Driving Instructors [2010] EWCA Civ 808 at [32], [35] and [38] is an example of this process in action.

56. The tribunal's reasons have to be read as a whole. I have already set out paragraph 5 of the tribunal's written reasons. Before listing the individual reasons, the paragraph said that they *collectively* showed that regulation 9(1)(l) applied. But I note that the very first words of the paragraph are 'Broadly speaking'. I also note what the tribunal said in paragraph 114, which has to be read in conjunction with paragraph 113.

> 113. They way the organisation operated may well have continued unchallenged if it had remained relatively small, but the very nature of the business model operated meant, in our view, that it had to grow, and that growth would have to

> be exponential. What we mean by this is that Mr Space at no point in its history identified an income source for the provision of support to its tenants other than the money provided by Mr O'Rourke via his company. Housing benefit could not cover the provision of support as it is excluded as an eligible service charge and enhanced payments of housing benefit as a provider of exempt accommodation could only be obtained if it provided support. The gap in revenue was plugged by the payment of "support income" from Enabling Homes Ltd but Enabling Homes could only continue to provide support income if it continued to invest in properties. Enabling Homes could only continue to invest in properties if it identified properties which My Space might take onboard with a long lease and so the cost of providing care would continually rise, as would the requirement for more and more support income. If at any point Enabling Homes were to stop providing support income, then, as has happened, the Charity would not be financially viable.
>
> 114. This fact alone strikes us as being sufficient to demonstrate that the liability has been created to take advantage of the housing benefit scheme. It is a fundamentally flawed scheme which is based on a charity having to have very close links to a property developer for its financial security.

Paragraph 141 is also relevant. It is the final paragraph before the tribunal went on to deal with the support issue:

> 141. Although the issue of the provision of care requires separate consideration, we also took the following into account in arriving at our general view that these liabilities were created to take advantage of the housing benefit scheme. For the reasons we set out below, care was not provided at any reasonable level in the Middlesbrough appeals and we think this was probably because importance was not placed upon the provision of care so as to channel resources to cover the costs associated with paying the head landlords and ensuring housing management standards were maintained.

57. Paragraph 5 refers to the reasons 'collectively', but paragraph 114 says one fact was 'alone … sufficient' and paragraph 141 says that support considerations were also taken 'into account'. It would be easy to read these as self-contradictory or at least as inconsistent. I do not read them in that way. These paragraphs and their different wording are not unusual in tribunal's reasons. This reflects the complexity of decision-making when multiple factors are involved. There is a range of possibilities. The following are just a sample. There may be one factor that alone is decisive. Or there may be a number of factors any one of which would be decisive. Or a number of factors may collectively lead a tribunal to its conclusion, although none on its own would be sufficient. Or there may be one main factor, with others providing additional degrees of support. Or there may be factors that merely confirm a decision made on other grounds. Paragraph 139 is an example of this in operation. This is the concluding paragraph in a section dealing with targeting support needs tenants. The paragraph begins: 'We think this supports our conclusion on contrivance.' I see no reason to doubt what the tribunal said. In other words, its conclusion was reached independently of this point.

58. The task for the Upper Tribunal is to assess the reasoning as a whole, taking account both of what the tribunal itself said as well as an objective judgment of the significance of particular parts of the reasoning. The purpose of this assessment is to

decide whether some flaw in the reasoning is sufficient to make it a material error of law.

59. Taking the approach identified in *HK*, I accept the tribunal's statement in paragraph 114 at its word. It is clear in its language and meaning. It is not inconsistent with the statement at paragraph 5 that the tribunal also relied on the collective effect of that and other reasons. The tribunal's findings on support were not significant to its overall assessment. First, because of what the tribunal said in paragraph 114. Second, because support was not in issue in *GPZ* and the other Sunderland cases. The tribunal could not have relied on it in those cases. If it was an essential part of the reasoning, it would mean that the tribunal's reasoning in *FYE* and the other Middlesbrough cases could not have stood on its own, without relying on a conclusion on an issue that did not arise in those cases.

K. Conclusion

60. For the reasons I have given, the First-tier Tribunal did not make any material error of law in either case.

Authorised for issue
on 20 April 2026

Edward Jacobs
Upper Tribunal Judge