Enquiry of the month

Clarifying when a property should be treated as a HMO for council tax purposes

We have received several enquiries from advisers requesting clarification as to when a property would be deemed a House in Multiple Occupation (HMO) for council tax purposes. To establish this, advisers will need to understand the definition of an HMO and how to apply this to the property in question.

Definition of an HMO

Firstly, it is important to remember that for council tax purposes, the definition of an HMO is different to the one contained in Part 7 of The Housing Act 2004. The definition is set out in The Council Tax (Liability of Owners) Regulations 1992 as follows:

"an HMO is a dwelling which:

(a) was originally constructed or subsequently adapted for occupation by persons who do not constitute a single household; [or]

(b) is inhabited by a person who, or by two or more persons each of whom either—

(i) is a tenant of, or has a licence to occupy, part only of the dwelling; or
(ii) *has a licence to occupy, but is not liable (whether alone or jointly with other persons) to pay rent or a licence fee in respect of, the dwelling as a whole."*

Only one of the two limbs need to be met for the property to be a HMO. If a client wishes to challenge a decision regarding a dwelling not being a HMO, then they only need to evidence either (a) or (b) applies. Should the client be able to evidence that the property meets one of these limbs, the landlord will be liable for the council tax.

When considering the first test, the question will be whether the dwelling is suitable for occupation by persons who do not constitute a single household e.g. are there adaptations such as separate lock fittings or extra cupboard space and do the residents have their own keys and facilities? If the property does not have any adaptations, it seems very unlikely that the property would meet this test.

In respect of the second test, you will have to consider whether the client is able to access all parts of the property. If the client has access to shared facilities but cannot access all the bedrooms in the property, this would suggest the property could be an HMO. You will also need to consider their liability to pay rent, is this for part or whole

of the property? As a starting point, you should request a copy of the client's tenancy agreement.

In the case of *R (on the application of Watts) v Preston City Council* [2009] EWHC 2179 (Admin), it was held that individuals, each having a tenancy agreement to occupy a named room within a certain rented property, did not constitute a single household and therefore liability for council tax fell upon the owner.

Shelter Legal has a short section on HMOs and council tax, which references the case of *R (on the application of Goremsandu) v Harrow LBC* [2010] EWHC 1873 (Admin). In that case, the court held that joint tenants who were not related but had exclusive possession of the whole dwelling under a single tenancy agreement, providing for a single rent payment per period, for which all of them were jointly and severally liable, were not living in an HMO and were therefore liable to pay council tax on that property.

For further reading please see chapter 5 of the Council Tax Handbook 12th Edition.

Next steps

If a client wants to challenge their liability for council tax, they will need to make an appeal.

The first step is to raise an appeal to the local authority. If they refuse, or do not answer within two months, then a further appeal can be made to the Valuation Tribunal. There is no time limit for making an appeal to the local authority. However, an appeal to the Valuation Tribunal must normally be made within two months of the date the local authority notified the client of their decision (or within four months of the date the initial representation was made if the local authority does not respond). The tribunal can extend this time limit in certain circumstances.

You can read more about this in chapter 11 of the CPAG Council Tax Handbook.