British Broadcasting Corporation Licence Fee Unit, Broadcast Centre 2nd Floor, 201 Wood Lane London W12 7TP

Mr Nick Phillips
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11th March 2019

Dear Mr Phillips

Almshouses and ARC

Thank you for your letter of 12 December 2018 to Kerris Bright relating to the eligibility of almshouses for accommodation for residential care (ARC) concessionary licences for almshouses, which has been passed to me for a reply.

I am sorry for the delay in coming back to you, but we wanted to give due consideration to the question you have raised and we appreciate your input. You'll be pleased to know that we are persuaded that, on balance, yours is the better interpretation, and we will be altering TVL's future practice in this regard (and amending our guidance).

In your letter you queried the interpretation of the provisions within paragraph 5(1) in Schedule 4 to the Communications (Television Licensing) Regulations 2004 (the "Regulations"). It is helpful to quote the whole provision, as it explains how we came to our interpretation, and also why we now prefer yours—

5 (1) "This paragraph applies to any establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for disabled or retired persons and which is—

(a) provided by a local authority under section 21(1)(a) of the National Assistance Act 1948;

[(aa) provided to meet needs under sections 18 or 19 of the Care Act 2014 (duty and power to meet needs for care and support);]

(b) an independent school within the meaning of the Education Act 1996—

(i) which provides accommodation for 50 or fewer children under the age of 18 years and which is not for the time being approved by the Secretary of State under section 347 of the Education Act 1996; and

(ii) which provides or is intended to provide residential accommodation with both board and personal care for children at the school who are in need of personal care by reason of being disabled, including by reason of a past or present mental disorder;

[(c) an establishment--

(i) in England, that is carried on or managed by a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the provision of residential accommodation, together with nursing or personal care, in the establishment, and

(ii) in Wales, that is carried on or managed by a person who is registered under Part 2 of the Care Standards Act 2000 to carry on or manage the establishment as a care home within the meaning of section 3 of that Act, or who would be so registered but for regulation 3(1)(a) or (d) of the Care Homes (Wales) Regulations 2002;]

(d) a care hospital; or

(e) an almshouse established as such before 1st November 1949."

The opening words of paragraph 5(1) in our view help establish the context, which is that there needs to be a physical presence – "bricks and mortar" – in order that an "establishment" can succeed in its aim of providing accommodation. This thought is carried into paragraphs (a) to (e), most clearly where there is a reference to an independent school, a care hospital, and indeed an almshouse. We therefore look for evidence of physical premises being offered or otherwise made available.

We note that "an almshouse" is not legally defined elsewhere, so we have applied the ordinary English language meaning. The Oxford English dictionary defines the term as:

"a house funded by charity, offering accommodation for poor people".

The Cambridge English dictionary similarly provides the following meaning:

"a private house built in the past where old and poor people could live without having to pay rent".

Both definitions suggest that a physical building or premises must be present. The need for such a physical presence since 1st November 1949 is therefore taken as a starting point and is considered together with the current and historic factual context in support of an application for an ARC licence.

But each sub-paragraph must be interpreted carefully, and reflecting on your letter, we agree that it is arguable, in the case of an almshouse, that this does *not* require the current premises to have been in existence "as such" before 1 November 1949. Rather, the "establishment" here is the legal entity that provides the almshouse, not the bricks and mortar that (obviously) must be present to provide "accommodation".

We have recently been reviewing how we handle, consider and determine ARC applications in the round and your input into this process is most welcome. We will, accordingly, be looking to make our interpretation of this provision of the legislation clearer, along the lines you have suggested. We aim to produce guidance that will explicitly clarify that the reference to the relevant period beginning on 1st November 1949 is to the date that the institution of the almshouse was in existence rather than to the historic date of occupation of any specific building.

If you are aware of any of your members who consider that they are eligible for the concession, but do not currently benefit from an ARC licence, please do encourage them to come to us. We would welcome their application and be happy to help to guide them through the process.

Yours sincerely

Pipa Doubtfire

Head of Revenue Management