

Housing Officers in Court

A bit of background...

Further to our 'New Practice Direction' bulletin in December 2006, several clients have raised queries over the rights of Housing Officers to represent their organisations in the Civil Courts and many clients have asked whether there are any 'hard and fast' rules on this.

Put simply – yes(ish!) given the fact that many social landlords are defined as companies. The Civil Procedure Rules (CPR) exist to enable the courts to “deal with cases justly” and Part 39.6 of the rules defines who can represent companies in the civil courts. These Rules apply in all County Court matters except family proceedings and cases allocated to the small claims track.

In addition, the judiciary is subject to Practice Directions that, since the introduction of the Constitutional Reform Act 2005, emanate from the Lord Chief Justice (or his/her nominated representative). These Directions advise Judges of the rules that they must follow in their courts.

So what do these documents say?

In essence, the CPR says that two criteria have to be met in order that an employee be able to represent a company at a trial, namely:

- ❖ The employee has authorisation from the company to do so
- ❖ The court gives its permission

In 2002, Judge Sullivan, sitting in the Appeal Court, said that “(companies) may be represented by an authorised employee whether or not that employee is a director, provided that the court is prepared to grant permission”.

Although the final part of this statement may appear to put paid to the intentions of a company to have an employee represent it in court, it should be noted that the courts are encouraged to permit this.

What information do I need?

If you intend that an employee of your organisation is to represent you in court, it is important, however, that the rules are followed with regard to providing the court with sufficient information. At any hearing, it is important to ensure that the following are provided to the court:

- ❖ The name and address of each advocate
- ❖ Their qualification or entitlement to act as advocate
- ❖ The details of the party who he/she is representing

And...

This is straightforward in cases where a barrister or solicitor is representing a party, however if an employee is to carry out this role, additional information is required, namely:

- ❖ The name of the Company (as per its certificate of registration)
- ❖ The registered number of the company
- ❖ The position that the employee holds
- ❖ The date and manner in which authorisation was granted (i.e. authority from Managing Director or a resolution from the Board of Directors)

Not only is it vital that all information be accurate but a company must ensure that an application for rights of audience is made to the court in advance and, if possible, to the Judge is to hear the case. If this is not feasible, permission from a Judge who could hear the case should be sought.

If permission is granted, the Judge will provide the company with a record of this decision, however the court is not obliged to inform other parties of this decision.

A cautionary note...

A key consideration for a company must be to ensure that the employee is sufficiently experienced and trained in advocacy. Although the courts are inclined to permit employees to represent their organisations, they are unlikely to entertain the notion of under-experienced personnel in their courts.

A rejection from the court could also have a knock-on effect insofar as the court being reticent to accept future representations from your organisation.

Also, bear in mind that the above only applies to direct employees of the landlord and the embargo on agency representation is still in place.

Next steps

The Firm promotes the sharing of best practice and encourages its clients to give us feedback on their own experiences in court. This allows us to provide support when it is needed and also to offer the most appropriate training to help social landlords help themselves.

We would like to know what your experience of the above has been so if you have any 'war stories', please let us know and we can share your experiences through the website.