

## **Lords Decision on Mitchell v Glasgow City Council**

Whiteheads has previously published bulletins on this case and it is an issue that has been covered quite widely in the media. The origins of this case lie in a number of actions that were taken against Police Forces by Claimants who felt that the Police had neglected their duty of care. Despite these claims being made, no liability has been found and Police Forces cannot be held liable for the injury caused to an individual by a third party.

In this case against Glasgow City Council, the family of Mr Mitchell brought a claim against the Local Authority on similar grounds to those above namely that the Local Authority, as Mr Mitchell's Housing Authority, had breached its duty of care towards him.

### **The case in brief**

Mr Mitchell and Mr Drummond had been neighbours for a long time and were both Secure tenants of the Local Housing Authority. For many years there had been significant disagreements between the neighbours and Mr Drummond was verbally abusive to Mr Mitchell and also caused damage to his property. Over a protracted period Mr Drummond had made threats against his neighbour and eventually the Housing Authority served a Possession Notice on him. When this notice was due to expire, the Housing Authority held a meeting with Mr Drummond to inform him that a fresh Possession Notice would be served. Mr Drummond became very aggressive during the meeting and following this meeting he left the Housing Authority Premises and attacked Mr Mitchell. Shortly after the attack Mr Mitchell died of his injuries.

### **The Claim**

The family of Mr Mitchell claimed damages from the Housing Authority on the basis that they had been negligent under Common Law as they failed to warn Mr Mitchell that a meeting was going to take place, or advise him of what happened in that meeting. In addition they contended that the Housing Authority acted in a way that was incompatible with Mr Mitchell's right to life under article 2 of the European Convention on Human Rights. The family

further contended that the defendant Authority had a duty to keep both Mr Mitchell and the Police informed of any of the steps that they proposed to take against Mr Drummond.

### **The Court Decisions**

The initial Claim was dismissed at first instance in 2005, by the Court of Session (Scotland's equivalent to the High Court). Following on from this dismissal, the Mr Mitchell's family decided to appeal to the appellate division of the same Court. It was not until 2008, however, that the appellate division decided to allow a Hearing on the case at common law (in Scotland this is referred to a "proof before answer" and is a Hearing which gives the parties the opportunity to present their evidence before the court decides on any questions of law and makes a final decision on the case). At the same time, this division decided that the Appeal on the basis of a breach of Mr Mitchell's human rights would fail and this was not allowed.

### **House of Lords**

Glasgow City Council appealed to the House of Lords against the decision of the appellate division to permit the Hearing of the Mitchell's Common Law case. At the same time, the Mitchell family launched a cross-appeal against the decision to allow the Human Rights Act contentions to be heard.

### **The Outcome**

All of the Law Lords were in agreement that the appeal by the Housing Authority should be allowed and thus they restored the original decision made by the Court of Session. This essentially means that the Claim against Glasgow City Council was dismissed and in addition the cross-appeal by the Mitchell family was also dismissed by the House of Lords.

Although all of the Judges had slightly different reasons for coming to their conclusions, the overriding view was public policy-based. The Judges concluded that it would not be fair, just or reasonable to impose a duty upon Landlords to warn people about steps they were taking when addressing anti-social behaviour as this would be very onerous on all Landlords. The Judges also concluded that the Housing Authority could not possibly have known that there was a risk of Mr Drummond carrying out a fatal attack on Mr Mitchell and therefore there had not been a breach of his human rights.

Clearly the above case relates to the actions of third parties, however it should always be noted that a Landlord would retain a duty of care if they knew that any danger that would be posed against an individual was under their own control or that of a third party for which they were responsible.

### **Conclusion**

Although a line appears to have been drawn under the question of Landlords' liability, it would continue to be good practice for Landlords when pursuing cases of anti-social behaviour to exercise due diligence to ensure that there is no risk to any party and this includes, victims, witnesses and perpetrators.

Should you have any queries about this case or the impact that it has on your organisation, please do not hesitate to contact me.

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