

ASB / Housing Management

March 2009

Case Study - 'Weaver v London & Quadrant'

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Queries? Contact.....



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Over the duration of last year a number of significant cases have been heard in the Court of Appeal and the House of Lords that will have a significant impact on all housing providers. Here we will look at a couple of cases in more detail and look at the impact that (potentially) being a Public Authority will have on RSLs (or Registered Providers of Social Housing {Registered Providers} as the Housing & Regeneration Act refers to them).

Public Law Issues

One of the major issues looming on the horizon is the impact of the Human Rights legislation and Public Law remedies upon Housing Providers (other than local authorities). The case of *Weaver v London & Quadrant* which held that the Housing Association was a Public Authority and susceptible to judicial review is to come before the Court of Appeal towards the end of February 2009. If the Appeal Court holds that the case was correctly decided at first instance, the implications for Housing Association Landlords will be significant. In our legal practice, we are currently seeing a number of challenges against decisions to terminate Demoted & Starter Tenancies (see below), but the issues will of course go much wider than this aspect alone.

Starter Tenancies

The key issues with regards to Starter Tenancies are these:

A decision made by a Public Authority is subject to scrutiny by the Administrative Court by a process known as Judicial Review (JR). Readers will be aware of massive case law involving, for example, the review of homelessness decisions made by Local Authorities.

When scrutinising decisions, the Court will not simply overturn a decision because it would have come to a different conclusion. It has to be shown that the decision making process was in some way fundamentally flawed or the decision was one which, having proper regard the relevant facts and law, no reasonable Authority could have come to.

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Ending the Tenancy

If we look at these principles in the context of ending Starter or Demoted Tenancies for anti-social behaviour (ASB), some of these issues will become clear. Although all Social Landlords will be given the title Registered Provider of Social Housing, the impact of these changes will be significant on those Landlords who have previously never been subject to judicial scrutiny such as Housing Associations. Currently there is no legislative requirement for a Housing Association to review its decision to issue a Section 21 Notice to end either a Starter or Demoted Tenancy or indeed one of the new Family Intervention Tenancies (FITs). It is not therefore unlawful for a Housing Association to issue such a Notice and as soon as it has expired to proceed for Possession using the Accelerated procedure.

However, the test has now become not one of whether it is legal for the Association to do this, but whether the Landlord has used a **proper process** and if so whether the granting of a Possession would in fact be **reasonable**.

As part of this "proper process", and as a result of recent guidance from Communities and Local Government (CLG) tenants should be allowed to ask for the decision to serve a S21 to be reviewed. Once there is a requirement for a review to be offered, this clearly creates a need for an Association to have the following:

- A policy on the management of Starter, Demoted and Family Intervention Tenancies.
- An initial procedure which is fair and transparent.
- A robust review procedure which is impartial, independent and complies with the rules of natural justice.

At the heart of all this is the principle that the tenant must have the opportunity to know the allegation relied on to be able to present information to rebuke those allegations and to be able to present (or have presented), their case to the review panel.

The risks of getting it wrong

If a decision is made to apply to the Court for Possession under section 21. The Court is likely to overturn the decision if:

- The Association has no procedure at all.
- The Association fails to tell the tenant of the material information against him or her.
- Allow front line officers to review the decisions of their peers.
- Fails to give proper reasons for the decision.
- Fails to precisely follow the published procedure.

The Court will of course scrutinise the decision making process and methodologies to ensure that they comply with the Association's own stated policies and that they are fair in the broadest sense of the word.

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The panel

In respect of the make-up of a review panel, the *Gilboy* case, (which decided that an internal panel made up of personnel senior to the decision maker was sufficient), may yet be considered by the House of Lords because an Application for legal aid has been lodged on behalf of the tenant.

Judicial Review – the Process

The normal procedure for a judicial review would be an Application to be made by the tenant to the Administrative Court within 3 months of the decision complained about. Given the possible impact of the Weaver decision the Administrative Court may well be overwhelmed with Applications – unsurprising considering the number of decisions made by Housing Associations. It was therefore indicated that it would be appropriate for the tenant, rather than pursuing judicial review, to actually raise the issues that he or she would rely on as a defence in County Court proceedings for Possession .

What will the Tenant rely on?

Notwithstanding the fact that the legislation gives a right to a Mandatory Order Possession (provided a valid Section 21 Notice has been served), the first line of defence would be for the tenants challenge the process which led to the issue of that Notice and being upheld on any review. This will mean, of course, that the “accelerated” procedure becomes anything other than that and a witness statement will need to be filed dealing in detail with the following:

- The procedure adopted
- The opportunities given to the tenant to respond to the findings of any panel
- The reasons for the decisions made

The onus will effectively be on the landlord to prove its processes were properly used and thus satisfy the Court of the following:

- All relevant information was taken into account
- The decision made was one which a reasonable Tribunal could arrive at
- That all the elements of due process have been offered to the tenant.

Even if a Landlord is able to satisfy the Court in relation to these matters, tenants now have a second line of defence which has been opened up in the case of *McCann*. This is where it was held that the granting of a Possession Order against one joint tenant following the service of a Notice to Quit (NTQ) by the other tenant had to be proportionate if it were to comply with the Human Rights legislation.

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If this were translated into an ASB case, then this would necessarily involve having to weigh the nature and impact of the behaviour complained of against the impact of granting of an Order on a tenant or his/her family. This will involve of course an investigation as to the type of incidents alleged, their duration, frequency, severity etc and the impact of this on neighbours and others. In short, all the issues that would normally be considered by the Court when deciding whether to grant Possession under a discretionary ground for example for Secure tenants Ground 1 (breach of tenancy) Ground 2 (Nuisance & annoyance) and for Assured Tenants Ground 12 (breach of tenancy) or Ground 14 (nuisance and annoyance). It seems to be that the test of proportionality is no different from the test of reasonableness.

Therefore, it now looks as though the prospects of getting a Mandatory Order (even if all your procedures are followed) are reduced as the Court may decide that the granting of an Order is disproportionate or in other words unreasonable.

We will be reporting on a number of cases throughout the year and many other legal topics but, as things stand, perhaps few cases will have as much impact as those discussed above.

Should you have any queries, comments or simply want to get in touch, please give us a call.

Peter Whitehead

Important Publications & Dates for your Diary

- Mitchell v Glasgow City Council (Published February 2009)*
- New Powers against gangs in the Policing Bill
- Weaver v London & Quadrant HT (expected February / March)
- Family Intervention Tenancies (FITs) Guidance from Communities & Local Government*
- Schedule 11, Housing & Regeneration Act (in force from 6th April)

**Our recent Bulletin on this topic can be found on our website.
www.whiteheadsols.co.uk*

News from the FRONTLINE

Contour celebrate their success in dealing with Anti-Social Behaviour



Contour Housing Group is one of the biggest housing and regeneration companies in the North West. It has numerous group members, the biggest of which is Contour Homes which has 20,000 properties across 27 local authorities.

Over the years, the Group has developed extensive expertise in dealing with anti-social behaviour of all types on its estates and this year intends to celebrate its success in a day-long ASB conference. This event will bring together stakeholders from a number of partner agencies as well as Contour staff and residents.

The successes....

Rachel Gee from Contour Homes said: "We take a tough line on anti social behaviour and we have worked with our partners on some high profile cases where we have had to evict families who had caused genuine fear in our communities. Our partnership approach with Whiteheads and other partners mean we can provide advice and support which encourages people to take control of their own area."

"The recent introduction of an out-of-hours anti-social behaviour line has been very well received," said Rachel. "This reporting service provides 24 hour a day, seven days a week service to all residents which gives them peace of mind.

"Running alongside this is a new ASB database which was designed specifically for the needs of Contour Homes. This system enables the Group to see any hot spot areas at the touch of a button and therefore target resources in the most effective way. It also shows up the exact cost of ASB both in terms of money and staff resources."

Contour Homes staff work closely with other agencies as experience shows that a multi-agency approach is the most effective.

In Handforth for example, the Group has set up an initiative called **RESPECT Handforth** where no less than twenty agencies have formed a working group to tackle issues that residents living in all housing tenures have identified as a priority for them. Agencies who have asked to be involved include:

- The emergency services
- Local schools and businesses
- Churches
- Various residents associations

Following the success of this pilot, Contour are hoping to replicate the project in other communities.

Key to our success has been...

One major factor in the Contour Homes success story has been the commitment and dedication of our ASB panel which is made up of Contour Homes residents. The Panel works closely with staff to help shape policies and procedures and are seen as very much part of the team.

The Panel has been instrumental in helping the company develop the programme for the in-house ASB Conference where around 75 staff will gather to share good practice, highlight future priorities and take part in a variety of specialist workshops including one hosted by Whiteheads solicitors.

Rachel adds: "The majority of our residents want to live a quiet and peaceful life. We believe firmly that they have this right and we are determined to tackle the minority who persist in anti-social behaviour."

Rachel Gee is a Contour Homes Area Manager for Cheshire and Merseyside.

News from the FRONTLINE

New approach to dealing with perpetrators at Great Places



Historically, the emphasis in many organisations when tackling anti-social behaviour (ASB) has been to concentrate efforts on the victims and the perpetrator is sometimes left out of the equation.

However the ASB team at Great Places has recently introduced into their procedures a Perpetrator Action Plan to make sure that cases are dealt with fairly and transparently. The aim of the Action Plan is to identify at an early stage the support issues of the perpetrator as well as supporting the victims of his / her behaviour.

The action plan is being piloted at present and is designed to capture the information below. This then can be used to assess how a case should be managed and whether it needs to go through the courts, taking into account any issues the perpetrator has. This also serves to support the justification process.

Data captured include:

- Details of the perpetrator
- Types of ASB and its severity
- Details of alleged behaviour
- Perpetrator's view on the effect of their behaviour on others
- How the perpetrator feels the situation can be best resolved
- What support (if any) the perpetrator receives and what support they feel would help them improve their behaviour
- Details of any disability / mental health issues
- Agencies that the officer feels should be offering support to the perpetrator and what support would be required

The action plan is a working document designed to help Great Places get things right from the start and when completed is signed by the officer responsible for the case and is countersigned by the alleged perpetrator.

All actions are given an appropriate timeframes and review dates and each action has to be 'signed off' upon completion.

If you want to find out more about the Perpetrator Action Plan and how it can be used, please contact Gill Holt, ASB Services Manager on 0161 925 7942 or email gill.holt@greatplaces.org.uk.

New Course for 2009

Housing Law for Housing Professionals

This new, intensive 2-day Masterclass will take experienced housing professionals through the process of identifying and gathering evidence, learning best practice in preparing witness statements and court documents and ultimately learning court 'etiquette' and how to present your case to the 'Judge'.

For further details, please email training@whiteheadsols.co.uk

Lunchtime Seminar Programme 2009

This year, Whiteheads will be holding the following seminars. If you and your colleagues would like to attend, please email neil.whitehead@whiteheadsols.co.uk and you will receive a booking form. These sessions are offered FREE OF CHARGE but are on a first-come first-served basis.

Property Matters

Disrepair

25th March – Salford (Contour Group) (11:00 start)
 May – London (TBC)
 22nd April – Bristol (Places for People)
 11th June – Leeds (Leeds Federated)
 10th June – Gainsborough (Acis Group)
 21st September – Preston (Community Gateway)
 20th October – Bournemouth (Raglan Housing) (10am - 1pm)
 4th November – Gainsborough (Acis Group)
 8th December – Bolton (Regenda)

17th March – Manchester (Harvest Group)
 14th May – London (Places for People)
 4th June – Sheffield (Parkway Housing)
 9th June – Bristol (Places for People)
 25th June – Wakefield (Chevin Housing)
 10th September – Preston (Places for People)
 20th October – Bournemouth (Raglan Housing) (1pm- 4pm)
 25th November – Gainsborough (Acis Group)
 3rd December – Bolton (Contour Group)

ASB / Nuisance

Housing Management

30th March – Manchester (Harvest Group)
 26th March – Leeds (Connect Housing)
 20th May – London (Places for People)
 17th June – Leeds (Pennine Housing 2000)
 25th June – Bristol (Places for People)
 7th September – Preston (Community Gateway)
 9th September – Leeds (Leeds Fed)
 6th October – Bournemouth (Raglan Housing) (10am-1pm)
 12th November – Sheffield (Arches Housing)
 26th November – Wakefield (Chevin Housing)
 2nd December – Bolton (Regenda Group)

20th March – Salford (Contour Group) (12:00 start)
 May – London (TBC)
 25th June – Leeds (Connect Housing)
 23rd June – Sheffield (Arches Housing)
 17th September – Preston (Places for People)
 6th October – Bournemouth (Raglan Housing) (1pm-4pm)
 19th November – Sheffield (Parkway Housing)
 11th December – Bolton (Regenda Group)

All of the above sessions will commence at 10:30 and finish at 13:30 unless otherwise stated.

A buffet lunch will also be provided. Please advise us of any dietary requirements.

The programme will be distributed approximately a month before each session and delegates are invited to submit topics of general interest they would like to be covered .