

London & Quadrant v Weaver - what does it mean in practice??

This Court of Appeal Judgment published on the 18th June 2009, will have a significant impact on both traditional as well as stock transfer Registered Social Landlords.

In essence, the Appeal Court held that London & Quadrant were a hybrid public authority (as opposed to a “pure” public authority such as the Police or a Borough or any City Council).

The Court made that finding having regard to certain key factors:

- The significant reliance on public funding.
- The close working relationship with local authorities in the allocation of its stock.
- The provision of subsidised housing was properly regarded as a governmental activity.
- The Trust was acting in the public interest.
- The Trust was regulated by a Government agency in such a way as to promote governmental policy objectives.
- The Trust conceded that it did have some functions of a public nature e.g. in relation to anti-social behaviour.

The specific facts found were:

- None of the board members of the Trust was a representative of a local authority or other public body.
- Around 10% of the Trust’s stock had been transferred from public ownership.
- Less than half its development budget would come from grants over the forthcoming 2 years.
- 64% of its lettings were to Local Authority nominees.

It was emphasised that the decision as to whether a particular RSL was a hybrid public authority would always be determined by the specific facts of

each case but looking at the checklist above and having reviewed the composition and funding of the vast majority of our clients, I would be doubtful of persuading a Court that any particular client was able to escape the 'hybrid public authority' label.

In impact of this in the Weaver case, where possession action was taken under Ground 8 of Schedule 2 to Housing Act 1988, Susan Weaver effectively lost on the issues but won on the public authority argument.

This means that, from now on, RSLs will almost certainly have to defend actions taken from a human rights point of view and a judicial review perspective. Not only does this impact on the seeking of mandatory possession orders against for example starter, demoted, family intervention tenants and those owing 8 weeks rent or more but this will also extend to other decisions made by the RSL in the course of allocating and managing its housing stock.

Notwithstanding the confidence I have in our clients' processes both as to their fairness and transparency and that on the facts themselves we will usually succeed, there is no doubt that both time and costs will have to be expended on preparing the facts and arguments to persuade the Court that there has been due regard to fairness and the human rights of the individuals concerned. Other ramifications have to be thought through e.g. although not covered by the Regulations of Investigatory Powers Act, will this use of CCTV evidence gathering now be capable of challenge under Human Rights legislation.

The decision therefore marks the beginning of a number of thought processes to work out and its impact on the practical day to day functions of allocating managing and terminating occupation of an RSLs housing stock.

We will schedule a series of workshops to discuss the practical impact of this decision with our clients and other providers. If you would like to join / host one of these, please e-mail: info@whiteheadsols.co.uk.

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