

## ***E: Briefing - Property Matters***

### **In this issue:**

- LVT cases
- Housing Benefit is rent
- Gas access - the penalties
- RTB & Repairs obligations
- Asbestos - getting it right

If we can help with any of the issues in this E-Briefing then please get in touch on the number or email addresses below.



**Stephen Daniels**  
Property Team Leader



**Paul Lloyd**  
Director



**Elaine Davies**  
Solicitor

- **LVT case** - we won an appeal against an LVT decision for a client which was managing a leasehold scheme
- **Housing benefit is rent** - Southwark LBC lost a case against a tenant who had exercised the RTB and used housing benefit to buy the property.
- **Gas access** - the penalties
- **RTB & Repairs** - the Court of Appeal decision on rights of tenants to expect landlords to repair
- **Asbestos management** - a reminder on best practice

### **New training course**

#### **Customer Expectations - Managing ASB & Repairs Complaints**

This course looks at two of the main causes for complaints to the Ombudsman and how to manage them effectively. Delegates will learn about.

- What the Ombudsman expects
- Record keeping & Audit trails
- What your organisation can and must do
- Managing realistic expectations
- Effective Case management
- Avoiding complaints
- Challenging complaints
- Using the HouseMark Complaints Toolkit
- How the Ombudsman can help you

#### **Where?**

Birmingham - 15th April 2010

London - 22nd April 2010

Manchester - 29th April 2010

## Leasehold Valuation Tribunal Success

### Our client

This client is one of the largest housing associations in the south and has 40,000 properties dispersed across the whole of the South East.

### Case summary

The Association runs a scheme with several long leaseholders and in 2008, seven of them decided to challenge the service charge demands for 2006/07 and 2007/08 and sought a decision from the Leasehold Valuation Tribunal (LVT) on liability for service charge payment and the reasonableness of the level of service charge. The most contentious issue was the provision for a sinking fund and contribution to be paid by each tenant.

### Our advice

We provided initial advice to the client and began the process of collating all the evidence required for the LVT Hearing. The Tribunal decided, despite all the evidence that was put before it that the leaseholders should not have to contribute to the sinking fund.

### Appeal

We applied to the LVT for leave to appeal which was refused, however we renewed the application before the Lands Tribunal and permission was given. The higher Tribunal dealt with the substantive issue and overturned the LVT decision declaring that the amount sought by the Landlord was both payable and in the circumstances reasonable.

### Outcome

Despite not succeeding initially in the LVT, our clients followed our advice to appeal to the higher Tribunal, which decided that the LVT was wrong. This decision to appeal paid off as they could then recover the unpaid service charges from leaseholders.

*Paul Lloyd*

*Director*

## Housing Benefit Credit is Rent

### *Background*

In this case, the claimant (Mr Hanoman) was a secure tenant who exercised the Right to Buy, however a catalogue of delays caused by the local authority prevented the completion of the transaction.

Despite Notices being served by the claimant on the local authority (Initial Notice of Delay and Operative Notice of Delay), these were ignored for several years.

### *The claim*

Mr Hanoman contended that as he had served an Operative Notice of Delay, the payments made for rent following service, should be deemed a contribution to the purchase price of the property.

Given the delay between the service of the Operative Notice (1999) and the response / counter Notice (2004), Mr Hanoman claimed that, as the rent had been paid, he had in effect paid off the purchase price for the property.

The local authority's argument was that although the rent had been paid, deductions applicable to the purchase price of the property did not include housing benefit paid as rent rebate.

In the first instance the County Court found in favour of the landlord, however this was appealed to the Court of Appeal who found in favour of the tenant. In turn, the local authority appealed to the House of Lords who dismissed their appeal unanimously.

This case now means that as long as payment is made, it is irrelevant whether the housing benefit payment is via rebate or rent allowance, and monies paid are deductible from the agreed Premium on the lease.

### **Case authority**

Hanoman v Southwark London Borough Council (No 2) [2009] UKHL 29.

*Stephen Daniels*  
*Solicitor*

***Free advice line - 08448 731360***

# Gas Safety and Your Organisation - fixed fee or fine????

## DON'T IGNORE THE RISKS!!!!

**Fact** - Every year 30 people die and hundreds are hospitalised as a result of carbon monoxide poisoning

**Fact** - failing to comply with the regulations\* has meant fines for landlords of between £1250 and **£49,000**

**Fact** - court costs in these cases range from £5000 to **£45,000**

**Fact** - landlords can be imprisoned

**Fact** - corporate manslaughter charges can follow if a tenant loses their life

*\* The Gas Safety Installation and Use Regulation 1998*

## Our Fixed Fees

- Policy and Procedure Review - £750
- Gas access letters from £20
- Access Injunction £500

### Three steps to follow.....

**Step 1** - You need to start with a good policy and procedure.

**Step 2** - You can dramatically reduce the risks of prosecution and consequent damage by having and following a comprehensive P&P.

**Step 3** - As a back-up, you also need a clear route to obtaining access through the Courts where access is refused.

### Our Success Rate

Over 75% of non-access cases are resolved as a result of letters that we issue and for those 'difficult' cases, we have a 100% success rate with over 250 court applications in the last 12 months.

**Call Joan Hobday on 01257 266008**

## Council Tenant Cannot Force Landlord To Do Repairs

The Court of Appeal has recently ruled on a case regarding a tenant who wished to exercise the right to buy but contended that the landlord should complete remedial works as a precondition of the purchase.

### ***Background***

The claimant (Emma Ryan) was a secure tenant of the local authority who exercised her right to buy her flat in January 2003 under Part 5 of the Housing Act 1985.

The correct procedure was observed by the local authority (correct notices served, valuations completed etc), however despite having agreed a purchase price, the claimant wanted works carried out on the property before completion.

The works did not take place and as she and her solicitors failed to respond to the Notices to Complete, her application was deemed to have been withdrawn.

### ***The Claim***

Ms Ryan issued proceedings claiming that her landlord had breached its repairing covenants and that she had not, in fact, withdrawn her Right to Buy application. In the alternative, she also claimed that she was entitled to damages for the loss of the RTB.

The claimant argued that the local authority could not complete the sale as the issue of the outstanding works had not been resolved. This claim was dismissed by the Recorder and the claimant appealed this to the Court of Appeal (CoA).

The CoA also dismissed the claimant's arguments as the issue regarding the works. This was because:

- The works issue regarded the physical condition of the property.
- Works were not considered to be a 'relevant matter' that 'related to the grant' of the conveyance.

The claimant's alternative argument was that she had lost her Right to Buy, as she was unable to secure a mortgage because of the works that needed doing. Evidence in court showed however that a mortgage could have been obtained, therefore this part of the claim was also rejected by the Court.

### ***Case Authority***

Ryan v LB Islington

***Stephen Daniels***  
***Solicitor***

## A REMINDER - The Duty to Manage Asbestos – HSE Guidance

According to Health and Safety Executive (HSE) statistics, asbestos is the single greatest cause of work-related deaths in the UK. Every year **1,000** people who have been involved in carrying out building maintenance and repair work die as a result of past exposure to asbestos fibres and it is estimated that half a million commercial buildings still contain asbestos.

### *Repairs*

Buildings all need repair and maintenance work from time to time and it is when asbestos fibres are disturbed, e.g. by drilling or cutting, that they are most likely to be inhaled as a deadly dust. The Control of Asbestos Regulations 2006 introduced a legal duty to manage asbestos. The duty applies to all non-domestic buildings and the common areas of residential rented buildings.

### *Obligations*

If you are responsible for maintenance and repairs of premises covered by the Regulations, you have a duty to manage asbestos if:

- You own the building;
- You are responsible through a contract or tenancy agreement; or
- There is no formal contract or agreement but you have control of the building.

Whilst a building constructed in or after 2000 is unlikely to contain asbestos, if it was built on a brownfield site or contains old equipment (for example ovens, brakes, soundproofing, insulating mats, fire blankets, oven gloves or ironing surfaces), it is important to follow the correct steps in order to comply with the law.

The 'duty holder' must take reasonable steps to find out if the premises contain asbestos and, if they do, its amount, where it is and what condition it is in. Unless there is strong evidence that the building does not contain any asbestos material, it must be assumed that it does.

### *Need more information or advice?*

The HSE has published new guidance, which takes duty holders through the process of understanding their obligations with regard to the management of asbestos. This includes a useful checklist of each step that must be taken and an example of an asbestos management plan. In addition, it can also help you decide whether or not you need to use an HSE licensed contractor to carry out planned maintenance work.

Further information and guidance can be found at <http://www.hse.gov.uk/asbestos/managing/index.htm>.

*Elaine Davies*  
*Solicitor*

## Contact us

Please remember, this E-Briefing is for information only so should you need any specific advice, please contact us on 01257 266008 / [info@whiteheadsols.co.uk](mailto:info@whiteheadsols.co.uk)

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**Paul Lloyd**, - Leasehold management, Housing Law & Community safety

**Lindsay Felstead** - Housing Law, Case Management & Community safety

**Glyn Jones** - Disrepair

**Steve Daniels** - Commercial & Residential Property

**Joan Hobday** - Gas access injunctions

**Neil Whitehead** - Training & Events

### Other Publications

Don't forget to check our website for further updates on the following:

- Disrepair
- Housing Management
- Housing Law updates