

## Have you got an authority for that?

This is not a list of the most important housing law cases. It's not even a list of the most interesting ones. It is simply a summary of some key cases to have in mind on duty adviser days. Even then, it's not an exhaustive list. See LAG's 'Defending Possession Proceedings' and/or the 'Housing Law Casebook' for something closer to that. Of course, local practices, attitudes and knowledge levels differ between county courts, but in our experience, these are issues that come up again and again.

And for present purposes, a dog-eared copy of both [Pinnock judgment](#) and [Powell judgment](#) is assumed to already be in your briefcase...

- (1) **Mountain v Hastings (1993) 25 HLR 427.** One of the duty solicitor's best friends - particularly for the fun and games of the 'private rent' sub-list - this case makes the point that, although the text of ground 8 need not be set out *verbatim* in the section 8 notice, the *substance* of the ground must still be set out. There the notice did not specify that the 2 month arrears threshold needed to be passed at both the point of notice and first hearing, and also it had did not specify that 'rent means rent lawfully due from the tenant'. Identification of such errors becomes crucial when (as with Ground 8) there is no power of dispensation: find an error of this type and the claim fails.
- (2) **North British v Matthews [2005] 1 W.L.R. 3133 [judgment](#).** It's a Ground 8 case, and the ground appears established. Your client asserts the property is in disrepair. The DJ fails to see a connection, considering that the terms of Ground 8 mandate a possession order whatever the condition of the plasterwork. What do you do? Refer to para [11] of this judgment. (Note: the central point in *Matthews* was that the court
- cannot adjourn a Ground 8 case simply because of HB difficulties. Certain aspects of this decision will almost certainly require revisiting in the light of *Pinnock*, particularly where the landlord is a public authority. But the 'disrepair counterclaim' point remains a good one.)
- (3) **Lower Street Properties v Jones (1996) 28 H.L.R. 877.** An assured shorthold tenant comes along. Her section 21 notice is valid, but the claim for possession was commenced prior to its expiry. This case confirms that proceedings commenced prior to expiry of a s21 notice ought to be dismissed.
- (4) **Croydon v Moody [1999] 31 HLR 738.** Is medical evidence is really going to impact on the outcome of this case as you say it will, given that the allegations of anti-social behaviour appear clear and unchallenged? *Moody* reminds the DJ of the breadth of the court's discretion – both as to whether a possession order is reasonable, and whether to suspend/postpone it on terms – and makes the point that evidence that the tenant's psychiatric condition could be treated would be likely to be a factor of some relevance to the outcome. And Dr Raj Persaud was one of the expert witnesses too, in case you have a DJ who's a fan of Richard and Judy.
- (5) **Bates v Croydon. [2001] EWCA Civ 134 [judgment](#).** Picture the scene. An anti social behaviour possession claim. Lots of allegations against the tenant, who claims in response that the landlord's witnesses are not to be believed. But the LSC haven't yet processed the application for funding, citing 'insufficient information' having been provided to them. What should the DJ do? List the case for a trial 14 days hence, rejecting the tenant's request for an adjournment? Or adjourn it, allowing the LSC issues to be resolved, and the tenant to have a chance of getting expert assistance (particularly given that this case was going to turn on witness credibility and cross

examination would be key). The Court of Appeal approved the latter course.

(6) ***Plymouth CC v Hoskin* [2002] EWCA Civ 684 judgment.** “But your client unsuccessfully applied to suspend the warrant under section 85(2) HA 1985 last week, and the DJ then stated that there were to be no further suspensions”. Where to start tackling such a problem? Try para [32] of *Hoskin*, which makes the point that the applicant is entitled to make a fresh application for an order staying or suspending the execution of the order for possession; (2) that on such an application the DJ has a wide discretion; and (3) that on such an application the discretion of the DJ is not in any way affected or fettered by the reasons given by any previous judge for refusing to suspend the order for possession/warrant. (This assumes, of course, that you can show that this application is being made on a materially different basis to the earlier one.)

(7) ***Manchester CC v Lee* [2003] EWCA Civ 1256 judgment.** The first return date on a s153A injunction. The landlord seeks an order which restrains your client from causing nuisance, harassing, threatening etc ‘all persons in the locality’ of his home. The allegations against your client are that he has been harassing his next door neighbour. *Lee* confirms that injunctions against anti social behaviour against an identifiable complainant should not normally restrain conduct against all persons in the locality.

(8) ***Wookey v Wookey* [1991] 3 W.L.R. 135.** Some judges are not particularly clear on the impact of mental health on injunctions and committal proceedings. *Wookey* makes the point that if the recipient of the injunction lacks the capacity to understand the nature of the acts leading to the application, or the nature of the order sought and/or the consequences of breach, then the order ought not be made at all.

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## Informal Advice

Please bear in mind that barristers at GCN are always available to give informal advice on any housing matters. In the first instance please contact the clerks (Sarah Wright, Annmarie Nightingale or Nicola Carroll) on 0161 236 1840.

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### Last edition:

If you missed the last edition of our bulletin from December 2011 “**Comparing Apples and Oranges - How to get an Article 8 case past the first hearing**” by GCN’s [Phil McLeish](#), a copy can be downloaded [here](#).