

Case law update

Setting aside an executed warrant for possession – oppression

Once a warrant for possession has been executed, the discretion afforded to a court under the various housing statutes no longer applies. Post-eviction, applications to set aside warrants may only proceed if the order for possession itself is set aside or the warrant has been obtained by fraud, abuse of process has occurred or there has been oppression in its execution.

The case of [Circle 33 Housing Trust v Desmond Ellis \[2005\] 23.09.05](#) involved the making of an absolute possession order against a tenant who had accrued nearly £1,600 of rent arrears. The tenant did not take part in the proceedings but in the weeks that followed the rent account was credited by the local Housing Department who then wrote to say that this had in fact been an overpayment. Further correspondence was sent but to which the tenant did not respond. Arrears continued to build and the warrant was then executed. During that process a representative of the landlord informed the tenant that if he could show in writing that there were no arrears then he could repossess the property despite the fact that the eviction would now proceed.

The tenant subsequently engaged with the Housing Department regarding the housing benefit position. The correspondence received from the Department was confusing and contradictory but in the event it was agreed that just a small amount of arrears had been outstanding at the date of the original hearing, housing benefit being payable at all material times.

The tenant applied for re-entry to the property but a Circuit Judge took the view that as the claimant landlord had not been aware of the tenant's entitlement to housing benefit on application for possession or execution of the warrant, there had been no fraud, abuse or oppression.

On appeal to a single judge in the Court of Appeal it was held that the inaction on the part of the landlord in chasing up anomalies in Housing Benefit and the advice given to the tenant on eviction constituted unfair use of the court's procedures and therefore oppression (Brown LJ, [Jephson Homes v Moisejevs \[2001\] 2 All ER 901](#)).

The matter again came before the Court of Appeal which held that the Claimant landlord had behaved appropriately and there was no onus on them to have done more than had been done. Enquiries had been made, the landlord being informed that the Defendant was not eligible. The tenant himself had been part of the problem in not providing sufficient information when requested of him by the Housing Department administering payments of Housing Benefit. The warrant had not been obtained by oppression and would not be set aside.

Antisocial behaviour orders – proportionality; R v Boness, R v Bebbington and others CA Criminal Division 14.10.05.

The Court of Appeal has given an important decision regarding the scope and extent of the terms of ASBOs in view of the statutory requirement of necessity for the making of an order.

ASBOs had been made against a number of individuals in the criminal courts in addition to sentences received on conviction. Boness involved an individual convicted of burglary and handling stolen goods. A five-year ASBO was imposed. Bebbington et al were convicted of affray and threatening behaviour in a football related context away from a football ground, contrary to sections 3 and 4 of the Public Order Act 1986.

Lord Justice Hooper stated that the test of necessity involved consideration that an order prohibiting a specific thing had to be necessary to protect others from further acts by the offender.

The case of [R \(Loneragan\) v Lewes Crown Court \(2005\) 1 WLR 2570](#) held that ASBOs were meant to be preventive and protective, not punitive. Terms of an order were accordingly required to be proportionate, ie commensurate with the risk to be guarded against – reference being made to potential interference with articles 8, 10 or 11 of the ECHR.

The Court of Appeal observed that orders necessarily required the tailoring of terms to an individual case and were not simply to be “designed on a word processor for use in every case”.

The order against Mr Boness was unnecessary and the terms were disproportionate and unclear. One term imposed a prohibition of possession in public of any article that could be used as a weapon, but there was little by way of antecedents indicating use of weapons by Mr Boness. The order was not commensurate with the risk.

In the cases of Mr Bebbington et al the orders had been in the terms of football banning orders. The orders were quashed as being unnecessary apart from Mr Bebbington's order which was reduced from 10 years to 4 years, the original term being manifestly excessive.

Further legal update

Housing Act 2004 –anti-social behaviour provisions now in force

New powers to deal with anti-social behaviour were brought into effect on 6th June 2005 by the Housing Act 2004 (Commencement No.3)(England) Order 2005/1451.

S.179 of the Housing Act 2004 enables introductory tenancies to be extended for a further 6 months beyond the initial 12 months. A landlord must serve notice of an extension at least eight weeks prior to the original expiry date.

A landlord may now also withhold their consent by virtue of s.191 to an exchange of tenancies where a tenant has been the subject of an ASBO/ASBI, a possession order brought on the ground of nuisance, a demotion order or if any such proceedings are pending.

Landlords may also suspend the right to buy pursuant to s.192 for a period where there has been anti-social behaviour by a tenant or a person residing or visiting the premises. It must be held to be reasonable to suspend the right and an extension of the same may also be obtained. By way of s.193 a landlord may suspend completion of a right to buy application that has progressed. This may occur where there is an active application for an ASBO/ASBI, a possession order on the grounds of nuisance or a demotion order.