

Housing Team Legal Bulletin

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Case Law Update

White v Riverside Housing Association [2005] EWCA 1358.

This case was dealt with in depth in last months bulletin. Leave to appeal to the House of Lords was initially refused by the Court of Appeal but this has now been granted by the House of Lords. Riverside are intending to appeal on all grounds and have instructed Andrew Arden QC and Jonathan Seidler QC. The hearing is not expected before the end of the year and it is anticipated that the Housing Corporation will intervene on behalf of all Housing Associations due to the huge implications for social housing providers.

Sharon Griffiths v St Helens Council [2006] EWCA Civ 160

Ms Griffiths appealed against the decision that the respondent local authority's duty to provide accommodation for her and her family under the Housing Act 1996 s193(2) had ceased under s193(5) because she had refused an offer of an assured shorthold tenancy of suitable accommodation from a private landlord. She submitted that the amendments made to s193 by the Homelessness Act 2002 had meant that an offer by a private landlord of an AST could never be sufficient to bring to an end the duty under s193(2).

The Court of Appeal held that the duty of a local housing authority under s193(2) did NOT require it to secure that permanent accommodation was available for an applicant – temporary accommodation would suffice. However, local authorities seeking to discharge their duty under s193(2) by the offer of an AST from a private landlord to which, if the offer is refused, section 193(5) may apply, should explain in the offer letter what they are doing. The explanation should include statements to the effect that (a) the authority acknowledges that the accommodation would be temporary if the private landlord lawfully exercises his right to recover possession after the end of the fixed term, and (b) if that happens and assuming that the applicant's circumstances have not materially changed, the authority accepts that it would again become obliged to perform its duty under the section to secure that accommodation is available for the applicant.

> [download judgment](#)

Harlow District Council v Norman John Hall [2006] EWCA Civ 156

This case has wide ranging effects on the way in which courts and practitioners should draft orders in possession cases.

Mr Hall had made himself bankrupt following a possession order which had been granted due to rent arrears. He tried - and failed - to argue that the suspended possession order should be discharged by reason of his bankruptcy. It was said that because his arrears of rent were a debt which formed part of his assets the insolvency legislation prevented his landlords from having any remedy against him in the possession proceedings. He lost because he was held to have been a tolerated trespasser, and therefore had no tenancy at all. Though there was no evidence that he had breached the original 'suspended'

possession order, his tenancy was still found by the Court to have come to an end.

This was because of the precise wording of the court order made against him which stated that Mr Hall "*do give the claimant possession of [the dwelling house] on or before 9th February 2005*", i.e. was such that the possession order took effect on the date as stated even if there was no breach of the terms as to payment of rent and arrears thereafter.

The CA identified that there is no postponement of the date for possession by **this** order. The wording of this order is that the possession is to take effect on a fixed future date, with enforcement of that order being suspended on the terms that the Defendant pays rent and arrears in the sums stated.

So what courts should be doing when satisfied that it would be reasonable to make a possession order, but also satisfied that postponement, stay or suspension is appropriate is to make an order postponing the date for possession on terms. The term 'suspended possession order' is really a misnomer, given that the court's power to suspend relates to the enforcement of the order rather than its existence at all.

Poorly drafted possession orders may now result in secure tenancies being lost even in cases where there has been no breach of the terms imposed by the court. Suggested wording for future orders are :

"The defendant do give the Claimant possession of [the dwelling house] but that the date of possession upon which the defendant is required to give possession is postponed until {insert date} and thereafter upon condition that the defendant complies with the payments specified in paragraph x below."

There is still here the possibility that that tenancy will be lost and the tenant become a tolerated trespasser as the date for possession previously postponed will take effect on breach. The tenancy then comes to an end by operation of section 82.

Consideration should also be given to the cases on behalf of any tenants against whom orders have been made which fall foul of the principles in **Hall**. Applications can be made under section 85(2)(b) to further postpone the date for possession subject to conditions, particularly in cases where the occupier has complied in full with the terms of the order made by the court.

> [download judgment](#)

Legal training seminars

Members of Garden Court North Chambers housing team will present three seminars this spring / summer:

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| 4 th May 2006 | Disrepair and defending possession proceedings |
| 18 th May 2006 | Overview and update on Anti Social Behaviour Orders and Anti Social Behaviour Injunctions |
| 27 th June 2006 | Homelessness and allocations: including a practical approach to reviews and appeals |

For more details please contact chambers or visit our [website](#).