

Case Law Update

1. Possession – anti-social behaviour – ability to control others

Knowsley Housing Trust v. McMullen [2006] EWCA Civ 539

This case concerned a claim for possession on the grounds of anti-social behaviour where the principal perpetrator was not the tenant but her child.

The tenant was disabled and maintained that it was her disability that made it difficult for her to control the behaviour of her children. In rejecting the attempt to rely on the Disability Discrimination Act 1995 as part of her defence the Court of Appeal held that whilst the fact that the tenant could not control the nuisance-maker was a relevant factor there was no general principle that an order for possession, whether immediate or suspended, should not be made where the tenant could not control the activities of the person in her household responsible for the nuisance. The court also held that there was no intrinsic reason why the existence of an ASBO against the person responsible for the nuisance should prevent the making of an order for possession, whether outright or suspended, based on ground 14 of the 1988 Act.

It should be noted that the Court of Appeal did not indicate that a “suspended possession order” was not appropriate and in fact amended the order below so that if the landlord wished to apply for a warrant of possession it had first to apply to the court on notice to the tenant for permission to do so.

2. Accommodation for homeless – application of PEA 1977 – Article 8

Desnousse v. Newham LBC & ors [2006] EWCA Civ 547

Tenant’s advisors will be disappointed with the outcome of this appeal which concerned the status of those accommodated by housing authorities under their homelessness duties.

In summary the effect of this decision is that the general rule in Mohamed v Manek and the Royal Borough of Kensington & Chelsea (1995) 27 H.L.R. 439 that accommodation secured and made available on licence to a homeless person by a local authority pending its decision as to whether it owed her any duty was not “occupied as a dwelling under a licence” for the purpose of the Protection from Eviction Act 1977 s.3(2B) applied on the evidence and the court was bound by it. The court also held (Lloyd LJ dissenting) that Art 8 may apply depending on the individual circumstances but that where it did apply – such as after a full duty was accepted under s193 - the question was then one of proportionality, namely whether the possibility of eviction without the procedural safeguards contained in the 1977 Act could be justified.

Legal training seminars

27th June 2006

**Homelessness and allocations:
including a practical approach to
reviews and appeals**

Presented by

Alex Durance, Adam Fullwood, James Stark

This seminar is at an intermediate level aimed at practitioners involved in drafting s.202 reviews. It will provide an overview and legal update of the key areas of Homelessness law covering priority need, intentionality, discharge of duty and challenges and reviewing recent legal developments and recent case law. The seminar will then go on to provide a practical guide to drafting reviews and appeals.

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