

Possession proceedings / Disability Discrimination Act 1995

Lewisham LBC v Malcolm and Disability Rights Commission (intervenor) [2007] EWCA Civ 763 judgment

The Court of Appeal upheld four grounds of appeal arising from a decision of HHJ Hallon in the Bromley County Court to make a possession order. The court had considered possession proceedings brought against Mr Malcolm, an individual with no security of tenure who had a long-standing diagnosis of schizophrenia. His security of tenure had been lost by way of subletting. Mr Malcolm had raised arguments under the DDA 1995 regarding the reason for the sublet, in a factual nexus where the service of a valid notice to quit would afford the court no discretion. This contrasted with the case of *Manchester City Council v (1) Romano (2) Samari* [2004] EWCA Civ 834 in which the relevance of any unlawful action on the part of a landlord was held to be relevant to the discretion afforded by the question of reasonableness.

The Court of Appeal overturned the decisions at first instance that: (1) Mr Malcolm could not rely upon s.22(3)(c) of DDA 1995 as a defence to an immediate possession order in a context where the court had no discretion; (2) Mr Malcolm's mental impairment did not have a substantial adverse effect on his ability to carry out normal day-to-day activities for the purpose of the DDA 1995; (3) the reason for starting the possession procedures was not related to Mr Malcolm's disability for the purposes of s.24(1)(a) of the DDA 1995; (4) Lewisham LBC's lack of knowledge of Mr Malcolm's disability was relevant to whether there was any discrimination for the purposes of s.24 of the DDA 1995.

The Court of Appeal found that Mr Malcolm's mental impairment did have a substantial, that is, a more than minor or trivial effect upon his ability to carry out day-

to-day activities: s.1 of the DDA applied. Further, a causal link between the disability and the sub-letting existed and it was for that related reason that Lewisham had commenced the proceedings. The proceedings were not justified pursuant to s.24(2) and in bringing them, by service of the notice to quit and issue, the local authority had unlawfully discriminated against Mr Malcolm. The lack of security of tenure was no bar to the dismissal of the possession proceedings – a court should not lend its assistance to an unlawful act. With regard to s.24, the Court of Appeal further held that an alleged discriminator is not required to be aware of an occupier's disability in order for discrimination to be established, although such lack of knowledge may be relevant to a defence of justification.

Interim accommodation s.188 Housing Act 1996

R (Carstens) v Basildon DC [2007] 122 Adviser 41

Mr Carstens, a disabled man, applied for homelessness assistance under the HA 1996 Part 7. The local authority arranged temporary accommodation in Southend, pursuant to s.188 HA 1996. Mr Carstens couldn't obtain resources to facilitate travel to Southend until the following day. Upon arrival he was informed that the accommodation had been cancelled by the local authority who asserted that their duty under s.188 had been discharged. As a consequence no further accommodation was to be provided. Judicial review proceedings were brought and an interim injunction was obtained in the High Court requiring the local authority to accommodate Mr Carstens until he was notified of the s.184 HA 1996 decision, or until the judicial review proceedings had been concluded. The judge of the High Court had been satisfied that Mr Carstens had not rejected an offer of accommodation such that the s.188 duty had been discharged.

Offer of accommodation / discharge of duty

Ahmed v Leicester City Council [2007] EWCA Civ 843 judgment

The Appellant, a single parent of Somali origin was made a final offer of accommodation in the performance of the principal housing duty. The Appellant was interested in taking the property but on a second viewing she found that the windows of the house had been broken and rubbish thrown into the garden. Furthermore, another Somali woman informed her that there were problems of anti-social behaviour and racial harassment in the area. The Appellant herself was chased by three teenagers who made threats about burning the house down were she to move in. Thereafter the offer of the house was refused. The local authority stated that the duty under s.193(7) HA 1996 had been discharged. That decision was upheld upon review and a s.204 appeal was dismissed.

In the Court of Appeal the Appellant argued that even if the local authority had been entitled to find on an objective test that the accommodation was suitable, a subjective assessment was required when considering the second question – ‘was it reasonable for the applicant to have accepted it?’ (see Slater v Lewisham LBC [2006] EWCA Civ 394) [s.193(7F)(b) HA 1996]. The Appellant’s knowledge at the time was therefore relevant.

It was held that although the reviewing officer had accepted the Appellant’s account, the assessment of the reasonableness of the acceptance of the offer of accommodation did not fall to be considered solely by her state of mind. The case of Slater was not authority that a subjective only approach should be taken. The reviewing officer had taken into account and considered the behaviour on the estate that was of concern and had correctly applied an objective test in deciding whether it would have been reasonable for the Appellant to accept the offer.

Iqbal Gull and Khumza Gull [2007] EWCA Civ 900 judgment

Mr Gull was committed to prison for a period of 21 months for breach of a non-molestation order in family proceedings that had commenced in March 2002. The order included exclusion provisions from Mr Gull’s former home where his Mother, Mrs Gull still resided. Mr Gull had been examined by a number of professionals, latterly by a clinical psychologist who had concluded that Mr Gull was functioning at a borderline level of intelligence but that he should be treated as a vulnerable adult rather than someone considered to have a learning difficulty. The chronology revealed that there had been at least twenty previous breaches for which various sentences had been imposed. The latest breach was readily admitted and did not involve violence. Mr Gull, as he had on many previous occasions, attended and implored to be allowed back into the property, by knocking on the door or telephoning. There was a history of Mr Gull being bullied on the streets and unable to secure appropriate accommodation as a result of the original order. The Court of Appeal substituted a sentence of 12 months, the sentence of 21 months being found to be excessive. The Court of Appeal expressed a strong opinion that a plan must be formulated by Mr Gull’s representatives and Social Services, to whom the judgment would be supplied.

(Note: although arising from family proceedings, this case will be of interest to housing practitioners who often comment on the paucity of sentence guidance when faced with applications for committal. Terms of exclusion are increasingly sought under the housing legislation [s.153C(2) HA 1996]. This case provides insight into how a court may approach matters where exclusion terms have been brought to bear on particularly vulnerable individuals and where breaches of the same have been made out).