

The following case note will be of interest to housing and immigration lawyers and other practitioners who undertake ex-parte injunction applications on behalf of claimants.

Lawyer, R (on the application of) v Restormel Borough Council [2007] EWHC 2299 (Admin) (12 October 2007)

> [judgement](#)

The Defendant local authority was successful in its application for the discharge of an ex parte injunction requiring it to provide interim accommodation pending its review of the decision that the Claimant was intentionally homeless. The injunction had been obtained by telephone (out of hours) from the Duty Judge. Munby J found for the Defendant because there was no justification for the injunction; and furthermore, there had been significant non-disclosure to the Duty Judge by the Claimant.

Guiding principles for making ex parte applications

1. Genuine emergency – notice

(i) An ex parte application will normally be appropriate only if the case is genuinely one of emergency or other great urgency (**paras 62 and 63**).

(ii) Even in cases of such urgency, it should normally be possible to give informal notice; unless notice would defeat the “ends of justice”, e.g. in the case of applications for *Anton Pillar* or *Mareva* injunctions or where there are compelling reasons for believing that a child’s welfare will be compromised if parents or carers are alerted in advance to what is going on (**para 63**).

(iii) The High Court will take a dim view of ex parte applications which have become urgent only because of unnecessary, inappropriate and unexplained delay (**para 79**).

2. Full and frank disclosure – highlighting of particular (parts of) documents

(i) There is an obligation to make the fullest and most candid disclosure of all relevant circumstances known to the practitioner to the Court (**paras 64 and 69**):

- Where the Court has documents before it, proper disclosure means specifically identifying all relevant documents, taking the Judge to the particular passages in the documents which are material and taking appropriate steps to ensure that the Judge appreciates the significance of what he is being asked to read.
- In respect of the above actions, there is a greater burden on Counsel in the case of a telephone application where the Judge has no papers and knows nothing about the case. Simply reading out an attendance note, without adverting to the factual and legal significance therein, will

not be considered sufficient disclosure (**para 75**). This is particularly the case where Counsel goes on to make a powerful, erroneous statement to the opposite effect.

- Counsel must be careful to avoid misrepresenting the case and, therefore, misleading the Judge. This may follow on from a limited opportunity to consider the papers and/or frequent dogmatic assertions in the papers which lead Counsel to make erroneous submissions on that basis (**para 76**).
- The Applicant is not exonerated from these obligations through the giving of informal notice; what matters is that the Respondent is not before the Court.
 - (ii) The Applicant must make proper inquiries before making the application. The duty of disclosure applies not only to material facts known to the applicant but also to any additional facts which he would have known had he made such inquiries. (**Para 65**)
 - (iii) There is the potential for an application based on a strong prima facie case to nonetheless fail if the duty of disclosure is not complied with, although this will depend on the facts of the case and reasons for non-compliance (**para 66**).

Procedural points highlighted

- a. The Pre-action Protocol requires service on the local authority’s legal department (**para 81**). (In respect of decisions by a local authority, the Protocol refers to “The address on the decision letter/notification; and their legal department”.)
- b. The Applicant should be prepared to advance proper reasons for departure from the Pre-action Protocol, e.g. in respect of advance notice, etc. (**para 81**).
- c. The Applicant’s Solicitors should provide appropriate contact details, particularly where out of hours applications are being made (**para 82**).
- d. The return date and provisions as to permission to apply to vary/discharge the injunction should be addressed with care by the Applicant and the Court (**para 67**).
- e. Counsel’s notes of the hearing of the ex parte application may be considered at a later hearing (**para 74**).

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12th November 2007