

Case law update

1. Postponed Possession

Bristol CC v Hassan; Bristol CC v Glastonbury [2006] EWCA Civ 656 [judgment](#)

The Court of Appeal provides further guidance to that given in Harlow LBC v Hall [2006] EWCA Civ 156 (Bul. No 6, March 2006), as to the nature and recommended form of a postponed possession order. Where an order commonly referred to as a 'suspended possession order' provides that a tenant is to give possession on a specified date, this has the effect of terminating the tenancy from the date specified, irrespective of whether terms suspending the enforcement of the order are complied with. The Appellants in the present case therefore objected to orders which specified a date by which possession was to be given.

The Court felt the need for legislation relating to the postponement or suspension of possession orders to be amended, but in the meantime, held that the courts possess more flexible powers for setting the terms of a postponed possession order than is generally appreciated. In the Court's judgment, it was both lawful and appropriate to make an order along the following lines (bearing in mind this was an arrears case):

- "1. The defendant is to give up possession of [address] to the claimant.
2. The date on which the defendant is to give up possession of the property to the claimant is postponed to a date to be fixed by the court on an application by the claimant.
3. The defendant must pay the claimant £[_____] for rent arrears and £[_____] for costs. The total judgment debt is £[_____] to be paid by instalments as specified in paragraph 4 below.
4. The claimant shall not be entitled to make an application for a date to be fixed for the giving up of possession and the termination of the defendant's tenancy so long as the defendant pays the claimant the current rent together with instalments of £[_____] per week towards the judgment debt.
5. The first payment of the current rent and the instalment must be made on or before [date].
6. Any application to fix the date on which the defendant is to give up possession may be determined on the papers without a hearing (unless the district judge considers that such a hearing is appropriate) provided that

(a) the claimant has written to the defendant at least 14 days before making its application giving details of the current arrears and its intention to request that a date be fixed; and

(b) a copy of that letter (and the defendant's response, if any) together with the rent account showing any transactions since the date of this order are attached to the application.

7. This order shall cease to be enforceable [on [date]] [when the judgment debt is satisfied].

8. All further proceedings pursuant to the present application are adjourned."

The Court stated that such an order will make it clear that the tenancy will continue until the court fixes the date on which the defendant is to give up possession (para 40). In what circumstances will the court set a date for possession to be given up, on application of the Claimant? The Court suggested that Claimants will "obtain a fixed date as soon as the court is satisfied, from perusing the documents filed with the court, that the tenant has defaulted on the terms on which possession was postponed and that there is no good reason not to fix the date for possession (and termination of the tenancy) forthwith." (para 40).

A member of chambers recently negotiated a postponed possession order in different form, requiring that any application by the Claimant to fix the date on which the defendant is to give up possession was to be determined at an inter-parties hearing, due to the defendant's vulnerability, in a nuisance case. (see also the case of Knowsley Housing Trust v McMullen covered in our [May 2006 bulletin](#)).

2. Homelessness

In a veritable gamut of recent cases, the courts have considered the following issues:

R (Conville) v Richmond LBC [2006] EWCA Civ 718, 8 June CA. [judgment](#)

s.190 (2) Housing Act 1996 Act provides that a local housing authority shall secure that accommodation is available for the occupation of a person who is homeless, eligible for assistance and in priority need, and became homeless intentionally, for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation. Whilst the extent of the resources available to a local authority is a relevant consideration in determining the extent of its duties under s.17 of the Children Act 1989 (R(G) v Barnet LBC [2004] 2 AC 208), the Court held that this was not so when determining the extent of duties under s.190 of the Housing Act 1996. The period that is reasonable under

s190(2) 1996 Act is therefore assessed by reference to the particular needs and circumstances of the applicant, not the authority. However, an authority may still maintain a distinction between giving an applicant a reasonable opportunity of securing accommodation for himself, and giving an opportunity which will *succeed* in obtaining such accommodation; the duty is not to provide long term accommodation.

Aw-Aden v Birmingham CC [2005] EWCA Civ 1834, CA.

Under s.191(2) Housing Act 1996, an act or omission on the part of an applicant for homelessness assistance done in good faith, and unaware of any relevant fact, shall not be treated as deliberate, and will not therefore result in them being intentionally homeless by operation of s.191(1). The Appellant had left a job abroad to come to the UK to obtain employment, but could not. He asserted that he had acted in good faith and in ignorance of the true job situation in Birmingham. The Court held that a misunderstanding about job opportunities could only constitute "ignorance of a relevant fact" for the purposes of s.191(2) if it was a specific job prospect not a mere aspiration of getting work. [judgment](#)

William v Wandsworth LBC and Bellamy v Hounslow LBC [2006] 4 May, CA [2006] EWCA Civ 535. [judgment](#)

In these linked cases, the local authorities had decided that applicants for assistance had become homeless intentionally. The decisions were upheld on review, but overturned by the County Courts in each case on appeal. Overturning the County Courts' decisions, the Court of Appeal held in respect of Mr. Williams, the authority had not been insufficiently precise about what the 'deliberate act' was that caused him to become homeless; it was reasonably apparent from the authority's decision that this was the act of the applicant not paying his mortgage. The Court criticised Wandsworth, Appellant before the Court of Appeal, for pursuing the appeal without notifying the Court that it had carried out a further review of its original decision, which was itself currently under appeal to the County Court.

The Appellant in Bellamy had become homeless as a result of the sale of the property that was occupied by her and her mother. The Appellant denied that she held a beneficial interest in the property, notwithstanding that the property had been registered in their joint names, they were joint borrowers and so jointly liable to make monthly payments under the mortgage which had been taken out when the property was acquired. The Appellant asserted that the arrangement between her and her mother was not intended to create any interest in the property for the daughter. The judge on appeal to the County Court had held that there was no evidential basis on which the authority could have been satisfied that the Appellant held any beneficial interest in the property. The Court of Appeal held that that was plainly wrong; the authority could rely on, *inter alia*, statements made by the mother to the authority that the daughter was to have

'half the house' if anything happened to the mother. Notably, the Court was at pains to point out that the task before it was not to determine for itself what interests were held in the property, but merely whether the decision of the authority, that the Appellant held an interest in the property, and therefore could have prevented the sale of the house, was reasonably open to it on the evidence, which it was. The judgement provides a useful summary of the scope of the County Court's powers of review in an appeal brought under s.204 HA 1996.

3. Allocations and Homelessness

R (Lin) v Barnet LBC [2006] 11th May, EWHC 1041 (Admin) [judgment](#)

The choice based letting scheme adopted by Barnet LBC was found to be unlawful insofar as it awarded existing tenants seeking a transfer from one property to another 100 additional points, in a scheme where applicants with highest points would be allocated property. This had the effect of raising the points threshold to the detriment of those, such as the claimant, who were entitled to a reasonable preference, being a person who had been owed the full homelessness duty under Part VII of HA 1996 for a prolonged period but had not reached the minimum threshold for points likely to result in a successful bid.

Legal training seminar

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.

For more details please contact chambers or visit our website www.gcnchambers.co.uk.