

Housing Team Legal Bulletin

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Practice Direction

Following *Bristol CC v Hassan*; *Bristol CC v Glastonbury* [2006] EWCA Civ 656 [see [Housing Team Legal Bulletin Issue 9](#)], the **CPR Practice Direction 55** has been amended, although it only appears to relate to rent arrears cases. The amended Practice Direction (paras 10.1 – 10.9) sets out the procedure to be followed by landlords who are seeking to fix the date upon which the Defendant (who is subject to a postponed possession order) has to give up possession of the property. Paragraph 10.3 of the PD states that the landlord must give the Defendant at least 14 days and not more than 3 months notice of the application.

That notice must record the current arrears and state how the Defendant has failed to comply with the existing order. It should also request that the Defendant reply within 7 days agreeing or disputing the arrears and inform the Defendant of his right to apply to the court for either a further postponement of the date for possession or a stay or suspension of enforcement. On the application being filed the application will be referred to the District Judge who will normally determine the application without a hearing by fixing the date for possession as the next working day. However, if he considers that a hearing is necessary then he will fix a date for the application to be heard.

At paragraph 10.10 of the Practice Direction it is emphasised that the Court does not have jurisdiction to review a decision that it was reasonable to make an order for possession. A new form **N28A** has also been issued which is attached to this bulletin. Both the Practice Direction and the form N28A come into force on 6 July 2006.

Case law update

In *Crossley v City of Westminster* [2006] EWCA Civ 140, Sedley LJ (A useful decision from February 2006) gave the judgment of the Court in a case involving priority need. [Judgment](#)

The applicant had grown up in local authority care and had since the age of 17 lived rough in London interspersed with periods of imprisonment. Since the age of 13 he had been addicted to heroin. The applicant had sought assistance for his addiction to heroin and in the opinion of the charity "Turning Point" had largely broken his ties with the street drug scene. Westminster in considering the issue of vulnerability determined that the applicant was "not vulnerable because of mental illness" and that "drug misuse appears prominent and... depressive symptoms are secondary to his situation".

Part of the decision also asserted that that continuing homelessness would not impact upon the applicant's ability to continue to receive treatment and support and thus remain abstinent from illicit drugs. Sedley LJ opined that such a view was to place the applicant in a "lose-lose" situation, as he was unable to present evidence to demonstrate that *with* housing he was capable of responding to therapeutic support, as he was presently *without* housing. The Court

upheld the County Court Judge's decision to quash the original decision and stated that

"Plainly drug addiction by itself, for all its personal and social consequences, cannot amount to a special reason for vulnerability which is capable of being addressed by housing. If there is a special reason here, it began with the fact that Mr Crossley, as a recovering addict, was vulnerable to relapse if he had to remain on the street... What the decision-maker must consider with great care is whether there are other factors which do render the claimant vulnerable for a special reason. One such reason might be that he had suffered some particular form of harm, such as the alcoholic applicant in *R v Waveney DC, ex p Bowers* [1983] QB 238. Another might be that he had spent a significant amount of time in care without family support."

In *M (R on the application of) v Hammersmith & Fulham LBC* [2006] EWCA Civ 917, it was argued that the authority's decision to accommodate a 17 year old girl under s.188 was unlawful as the duties owed to the Claimant were duties pursuant to s.20 of the Children Act 1989 as she was now deprived of the services which would have been available to her at the age of 18, had the provisions of the Children (Leaving Care) (England) Regulations 2001 (the "Leaving Care Regulations") been applied to her, and had she, in particular, been treated as "a former relevant child" pursuant to CA 1989, section 23C. [Judgment](#)

The Court of Appeal undertook a comprehensive review of the interplay between the duties under Part VII of the Housing Act and Part III of the Children Act 1989. The Court determined that there were no facts in the instant case or as a matter of law to identify her as being a "child in need" for the purposes of the provisions. As such no duty arose. However the Court provided useful guidance on dealing with such applications as well as the potential difficulties that arise during the inquiry making process. LJ Lloyd indicated that :

"it is likely to be the case that a 16 or 17-year old who applies to the local housing department on the basis that he or she is homeless should be accommodated for the time being under section 188 (assuming that preliminary enquiries suggest that he or she really may be homeless). The local housing authority is then obliged to pursue an investigation as to whether the full duty is owed under section 193. In the case of a child of 16 or 17 it is likely to be appropriate also to involve the social services department in case care issues arise. Wall LJ has quoted from the guidance provided both on the accommodation of children in need and their families and on homelessness, which emphasise the need for a co-ordinated approach on the part of the agencies concerned...In my judgment, the outcome of the instant case should not be seen as, in any way, either limiting or relaxing the duties of local authorities both to investigate the circumstances of those under 18 who may be in need, and, where appropriate, to make provision under CA 1989 Part III for them. In particular, this judgment should not be read in any sense as relieving local authorities of their obligations under Part III of CA 1989 in general and, in particular, of their duty to identify and accommodate children in need under CA 1989, sections 17 and 20."