

Housing Team Legal Bulletin

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Possession proceedings; anti-social behaviour; reasonableness

Sheffield City Council v Shaw [2007] EWCA Civ 42

The council applied for a possession order against Mr Shaw on the basis of his alleged anti social behaviour. The complaints centred around his behaviour towards a young woman who lived very near to him – she was 12 at the time the problems first began and 19 at the date of trial. It was alleged that Mr Shaw had harassed her by stalking her in various threatening and otherwise objectionable ways. It was alleged that he had threatened to kill her. Mr Shaw had been convicted of harassing his victim in the criminal courts and then of breaching the restraining orders made by the court – he had on two occasions been sent to prison for those breaches. He had also breached an interim anti social behaviour order and was in custody as a result at the date of trial.

HHJ Moore found that it was reasonable to make a possession order but decided to suspend it. Mr Shaw's evidence to the judge was that with recent psychiatric help he appreciated the effect that his behaviour must have had on his young victim and her family. He apologised for what he had done in the past. He was also supported by his probation officer who said that that he had begun to have some understanding that his behaviour towards his victim where he had not before.

The council appealed and the Court of Appeal dismissed the appeal. The judge made no error of law. He was entitled to take into account Mr Shaw's apology, together with the other aspects of the evidence which tended to demonstrate his willingness to address and change his behaviour. The Court confirmed that there was no principle that historic conduct may be so bad as to produce in one or more victims an apprehension for the future which no amount of apology and good intention can dispel and that the past conduct should outweigh future optimism. That was rather a possible judgment for a court to make in an individual case depending on its facts and the judge's evaluation of the evidence. The Court also stressed the importance of considering the issue

of proportionality (with reference to Article 8 ECHR) when considering possession claims.

Possession proceedings; postponing orders; nuisance

Sheffield City Council v Fletcher [2007] Ch.D (Lewison J)

Ms Fletcher was the secure tenant of the council; following allegations on anti social behaviour (mainly consisting of verbal abuse directed at neighbours) proceedings were issued for possession and for an ASBO. She failed to attend trial and both an outright order for possession and an ASBO preventing her from entering a large area of Sheffield were made. She applied to set aside the order or, alternatively, to postpone the possession order on terms (pursuant to section 85(2) Housing Act 1985) and to vary the ASBO so as to allow her to return to her home. HHJ Moore refused both applications.

Ms Fletcher appealed to the High Court against the refusal to postpone the possession order and vary the ASBO. She argued that the trial judge had failed to take account of (inter alia) the effect an outright order would have on her and her 3 dependant children, the length of time she had lived in the area and the lack of any previous proceedings or complaints against her. In the alternative she asked the High Court to postpone the order on the basis that there had been a change in circumstances since the date of the county court's decision.

Lewison J dismissed the appeal and refused the further application to suspend. Ms Fletcher had never shown any remorse. The judge had been entitled to take the view that there was no hope of her behaviour changing in future as a result, and though there were various matters the judge had failed to specifically mention in his judgment they were not of such significance as to mean that he could be said to have erred in his approach. Though she had substantially complied with the terms of an interim ASBO since the county court hearing the fact remained that Ms Fletcher had still failed to accept her own wrongdoing.

(Ben McCormack of GCN appeared for Ms Fletcher)