

## housing update

November 2008

### Registered social landlords 'are public bodies' and can be subject to judicial review

The High Court has ruled that a registered social landlord which manages and allocates housing stock is a public authority within the meaning of the Human Rights Act and so can be subject to judicial review.

The issue arose after London & Quadrant Housing Trust sought a mandatory order for possession against one of its assured tenants who had accrued substantial rent arrears. The application was made under the Housing Act 1988 Sch 2 Ground 8 on the basis that the tenant was eight weeks in arrears. The Trust is a registered social landlord and is regulated by the Housing Corporation under the Housing Act 1996.

The assured tenant had rented accommodation from the Trust after being nominated by a local authority. The terms of her tenancy agreement required the Trust to comply with the regulations issued by the Housing Corporation.

Those regulations stated that before using Ground 8, associations should pursue all reasonable alternative ways to recover the arrears. The tenant submitted that the Trust was a public authority within the meaning of the Human Rights Act 1998 and so could be subject to judicial review. She therefore applied for a judicial review of its decision to seek a mandatory possession order. Her case was that the Trust had failed to pursue all reasonable alternatives before using Ground 8.



The court considered that the management and allocation of housing carried out by the Trust was a function of a public nature and so the Trust was therefore to be regarded as a public authority within the meaning of the Human Rights Act.

Registered social landlords such as the London & Quadrant Housing Trust were different to ordinary commercial businesses. They operated in the social housing sector which was permeated with state control and influence with the aim of helping the Government achieve its targets for providing affordable housing.

Social landlords could be heavily subsidised by the state and could play a role in the implementation of Government policy. They worked side by side with local authorities and in some

cases could be said to have taken their place. The Trust, therefore, as a public body could be subject to judicial review. However, the court then rejected the tenant's application for such a review because her claim that the Trust had fallen short of her 'legitimate expectation' that it would pursue all reasonable alternatives to recover the rent arrears was too tenuous and general to be enforceable in public law.

There was insufficient evidence to suggest she ever had such an expectation or even that she knew and understood the terms of the tenancy agreement that might lead her to have such an expectation.

In any case, even if there had been such an expectation, it had not in fact been breached because the pursuit of reasonable alternatives did not mean that the Trust had to bring possession proceedings on discretionary grounds first before using Ground 8.

Given the tenant's substantial and repeated defaults, the Trust was entitled to decide that discretionary grounds would not be sufficient for recovering the debt.

The tenant's application may have failed on the facts but the case has provided useful guidance on the status of registered social landlords.

### Drug offences 'not serious enough' to warrant a possession order

The Court of Appeal has upheld a judge's decision not to grant a possession order in relation to a tenant convicted of drugs offences who admitted that she might continue using cannabis.

The case involved social landlord North Devon Homes and one of its tenants in sheltered housing. The tenant had pleaded guilty to the possession of a class A drug with intent to supply, and to the possession of cannabis. She was also convicted of money laundering. During cross-examination, the tenant admitted that she might continue to use cannabis. North Devon then applied for



a possession order on the grounds that the continuing use of the drug would be in breach of the tenancy agreement.

However, the judge held that possessing

cannabis and possessing a Class A drug were at the lower end of the scale of offences and so it would not be reasonable to grant an order on that basis. North Devon appealed and submitted that the judge overlooked the most important matter - that the tenant had admitted that she might continue to use cannabis.

The Court of Appeal has now upheld the judge's ruling, saying there was no error in his decision. He was entitled to decide that the tenant's breaches of the tenancy agreement were not so serious as to make it reasonable to grant a possession order.

# Consultation seeks views on tolerated trespassers and successor landlords

The Government is conducting a consultation on the issue of tolerated trespassers and successor landlords.

It follows amendments to the Housing and Regeneration Act 2008 which go a long way to address many of the difficulties involved. The amendments in Paragraph 2, Sch 11 will prevent new tolerated trespassers being created and Paragraph 16 provides measures for dealing with those that already exist.

Once the Act comes into force, a tenancy would not come to an end simply as a result of a possession order being made. The tenancy would remain in place

until the possession order is executed. That is, when a warrant for possession is issued. There are corresponding amendments affecting assured, introductory and demoted tenants.

Paragraph 16 deals with the status of secure, assured, introductory and demoted tenants who have a possession order granted against them before Sch 11 comes into force and remain in occupation as tolerated trespassers.

In this situation, a new tenancy is created on the commencement date as long as

the following conditions are met: the property is the tenant's principal home, the landlord is entitled to let the property at the commencement date and the tenant and landlord have not entered into another tenancy agreement.

Schedule 11 does not address situations where ownership of the property is transferred to a new landlord, for example, where a local authority may transfer its housing stock to a social landlord. However, the Secretary of State does have the power to apply the provisions to successor landlords.

## Traveller wins appeal in House of Lords to have possession case 'reviewed'

A traveller who argued that being evicted from a caravan site where he had lived for 19 years would contravene his human rights has won his appeal in the House of Lords to have the case reviewed.

The case involved a traveller, Mr Doherty, who was granted a licence in 1987 to live on a caravan site in Birmingham. He has been there ever since. In 2004, Birmingham City Council served notice to quit and began possession proceedings.

The authority said it needed vacant possession of the site so it could carry out essential improvements. Once complete, the site would be used to provide temporary accommodation for travellers.

Mr Doherty submitted that his eviction would contravene his rights under Article 8 of the Human Rights Act 1998. He maintained that the authority would only be entitled to a possession order if it was proportionate in all the circumstances and his case did not pass that test.

His appeal went all the way to the House of Lords which has now set aside the possession order and sent the case back to the High Court. Meanwhile, Mr Doherty and his family remain on the site.



This raises complicated legal issues but the Lords have identified that Mr Doherty has the right to challenge the authority's application for a possession order on the grounds of judicial review.

The court will now be asked to review Birmingham's decision to serve notice to quit and seek a possession order. The judge will need to determine whether the decision to terminate Mr Doherty's licence was reasonable.

The Lords were unanimous that such judicial review-style challenges should be brought as part of the possession proceedings in the county courts. They also held that disputes about the facts in each case should be determined by the first instance judge hearing the case.

The Government has published a consultation paper inviting views on the way to deal with the tolerated trespassers of successor landlords. There are several issues to be addressed such as whether there are benefits to landlords in tolerated trespassers retaining their status and whether Sch 11 should apply to successor landlords.

There is also the question of whether time spent as a tolerated trespasser should count as part of the qualification period for the right to buy from a successor landlord.

The full consultation paper, Tolerated Trespassers: Successor Landlord Cases, is available on the Department for Communities and Local Government website. The deadline for responses is 19<sup>th</sup> December.

## Where next



For further housing advice contact  
Kay Barrowman  
on 0208 290 7385  
or email:  
[kbarrowman@judge-priestley.co.uk](mailto:kbarrowman@judge-priestley.co.uk)

**Judge & Priestley LLP**  
**Justin House**  
**6 West Street**  
**Bromley**  
**Kent BR1 1JN**

**DX. 117600 BROMLEY 7**  
**T. 020 8290 0333**  
**F. 020 8464 3332**  
**E. [info@judge-priestley.co.uk](mailto:info@judge-priestley.co.uk)**  
**[www.judge-priestley.co.uk](http://www.judge-priestley.co.uk)**

**j&p**  
judge&priestley  
SOLICITORS • EST. 1889