

The primacy of the policy in housing law (Humber Landlords Association v Hull City Council)

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Local Government analysis: According to Wayne Beglan and Dr Alex Williams, barristers at Cornerstone Barristers, the case of Humber Landlords Association v Hull City Council is of practical importance to all public authorities engaged in the drafting or revision of policies.

Humber Landlords Association v Hull City Council [\[2019\] EWHC 332 \(Admin\)](#), [\[2019\] All ER \(D\) 62 \(Mar\)](#)

What are the practical implications of the case?

The case of *Humber Landlords Association v Hull City Council* is of practical importance to all public authorities engaged in the drafting or revision of policies. The judgment serves as a stark reminder of the court's central role in interpreting the policy and, in turn, the primacy of the policy itself. It demonstrates that claimants who rely less on the words of the policy and more on individual council officers' summaries of it are unlikely to advance their cases very far.

What was the background?

The claimant, a local private landlords' association, sought judicial review of Hull City Council's decision to revise its private sector housing enforcement policy 2018–2022. The policy specifies the action to be taken in relation to the assessment and enforcement of housing standards in the private rental sector under [Part 1](#) of the Housing Act 2004 ([HA 2004](#)).

The challenge concerned those aspects of the policy relating to so-called category two property hazards. [HA 2004, s 7](#) gives councils broad discretion to combat such hazards by taking formal action against landlords. Potential action includes the serving of an improvement or hazard awareness notice or the making of a demolition order or slum clearance declaration.

The outgoing policy provided for the council to take informal rather than formal action against the landlord unless one or more given circumstances justifying formal action applied. The outgoing policy also provided for the council to enjoy a residual discretion to determine the appropriate response based on the facts of the particular case.

The revised policy took a tougher line, providing for formal action as the preferred response unless the category two hazard was insignificant or the landlord was a member of the council's accreditation scheme. The council adopted the revised policy following a report to Cabinet that summarised its central features. The reasons for the revision included the recent introduction of the [Deregulation Act 2015](#) and its provisions to combat retaliatory evictions against tenants who complain about the state of their homes.

Challenging the council's policy shift, the claimant argued that the revised policy required the council to take formal action unless one of the two exceptions mentioned above (insignificant hazard or landlord accreditation) applied. The claimant argued that the council had therefore misused its powers under [HA 2004, Pt 1](#), fettered its discretion to take informal action, failed to take sufficient account of relevant statutory guidance, given overwhelming and therefore unlawful weight to the merely hypothetical risk of retaliatory evictions without conducting a proper analysis of the matter, given unlawful weight to its own accreditation scheme and acted irrationally.

The claimant drew partial support for its reading of the revised policy from the summaries of it that were contained in both the report to Cabinet and the council's witness evidence at the hearing.

The council argued that the claimant had overlooked the nuances of the revised policy, in particular that it retained the council's residual discretion to take whatever action it deemed appropriate to the particular case. The revised policy

simply altered the council's starting point from informal to formal action. There were no concrete rules as to how the council should act.

What did the court decide?

Sitting as a High Court judge, HHJ Klein comprehensively dismissed the claim.

Policy interpretation was a matter for the court (para [31]). How individual council officers interpreted the revised policy was 'no guide to the proper interpretation of that policy' (para [34]). Properly construed, the revised policy provided for formal action as the normal response to category two hazards but informal action remained an option if the council so decided 'having regard to all the circumstances of the case' (para [33(ii)]).

There was therefore no fettering of discretion. The council had moreover used its powers for the proper purpose of improving housing stock in the area (paras [47]–[48]), was entitled to attach weight to landlords' membership of its accreditation scheme (para [49]), had taken proper account of relevant statutory guidance (paras [50]–[52]) and had not given irrational weight to any relevant factors (paras [55]–[58]).

Wayne Beglan is recognised as a leading junior in administrative law, local government, planning and housing. He acts for local authorities, registered social landlords and developers, so has considerable expertise in judicial review of housing decisions, planning decisions, and the exercise of local authority powers more generally.

Alex Williams is developing a broad practice that focuses mainly on public law and human rights, with an emphasis on social housing, planning and licensing. He is keen to apply his considerable research expertise in the field to his practice. Williams is regularly instructed to advise and draft pleadings in relation to public law and human rights matters including challenges to policy.

Wayne Beglan and Alex Williams successfully represented the defendant in *Humber Landlords Association v Hull City Council*.

Interviewed by Kate Beaumont.

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