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Housing Cases of Interest

Andy Lane has put together the housing cases of interest over the last few months…

Allocation

R (on the application of C) v ISLINGTON LONDON BOROUGH COUNCIL [2017] EWHC 1288 (Admin)

A local lettings policy within a local authority's housing allocation scheme unlawfully discriminated against victims of domestic violence and therefore women, contrary to ECHR art.14 in conjunction with ECHR art.8. However, the discrimination was justified on the ground of proportionality because it struck a fair balance between the severity of the consequences for a social housing applicant and the importance of the legitimate aim pursued by the policy.

EALING LONDON BOROUGH COUNCIL (Appellant) v R (on the application of H & ORS) (Respondents) & EQUALITY & HUMAN RIGHTS COMMISSION (Intervener) [2017] EWCA Civ 1127

The Court of Appeal allowed an appeal against a judge's findings that there had been unjustified indirect discrimination pursuant to section 19 of the Equality Act 2010, a contravention art. 14 and a breach of section 11 of the Children Act 2004 with regard to the authority's allocation scheme and in particular the setting aside of a proportion of lets for "working households" and "model tenants". The former preference gave rise to indirect discrimination and the judge approached the question of justification in a wrong manner. The Court also considered the public sector equality duty and doubt was cast as to whether art. 8 was engaged in these instances.

Matt Hutchings QC appeared on behalf of the Appellant authority.

See the Cornerstone Barristers' e-flash on this decision.

Homelessness

VIDA POSHTEH v KENSINGTON & CHELSEA ROYAL LONDON BOROUGH COUNCIL [2017] UKSC 36

The Supreme Court declined to depart from its earlier decision in Ali v Birmingham City Council [2010] UKSC 8 that the duties imposed on local housing authorities under the Housing Act 1996 Pt VII did not give rise to "civil rights [or] obligations" and that accordingly ECHR art.6 did not apply. The decision of the European Court of Human Rights to the opposite effect in Ali v United Kingdom (40378/10) (2016) 63 E.H.R.R. 20 did not persuade it to change its view.

R (on the application of ROMEO SAMBOTIN) v BRENT LONDON BOROUGH COUNCIL [2017] EWHC 1190 (Admin)

Although a local authority was entitled to revisit a decision which it had communicated to an applicant for housing assistance where either it had not completed its enquiries under the Housing Act 1996 s.184 or it had not made a final decision as to the nature of the duty it owed to an applicant, in the circumstances, such enquiries had been completed by the local authority and a decision had been communicated to the applicant regarding the nature of the duty which it owed to him.

JAMILA AFONSO DA TRINDADE v HACKNEY LONDON BOROUGH COUNCIL [2017] EWCA Civ 942

It was argued that ignorance of a future event could fall within the good faith definition of section 191(2) of the Housing Act 1996, and that authority to the contrary was per incuriam. This was rejected by the Court of Appeal who confirmed that *Enfield LBC v Najim* [2015] EWCA Civ 319 had been correctly decided.

R (on the application of E) v ISLINGTON LONDON BOROUGH COUNCIL [2017] EWHC 1440 (Admin)

Judicial review was sought in respect of the local authority's acts and omissions with regard to the Claimant's educational provision. The Court held that where a local housing authority was considering placing a school-age homeless child out of borough it was under a duty to assess the likely impact of the transfer on the educational welfare of the child. A declaration was made that the authority had acted unlawfully by denying the Claimant the right to education for defined periods. There was also a remedy in damages.

Kelvin Rutledge QC appeared on behalf of the Defendant authority.

HEMLEY v CROYDON LONDON BOROUGH COUNCIL CA (Civ Div) (Lewison LJ, McCombe LJ) 25/07/2017

The local authority appealed against a section 204 appeal decision quashing its decision because of the review officer applying the wrong priority need test. Both parties accepted that *Hotak v Southwark LBC* [2015] UKSC 30 had changed the previous "*Pereira*" test, which had been used by the review officer. It was argued that given the Judge's findings the same decision would have been reached regardless and as such there was no material error. The Court of Appeal however was not sufficiently confident that the review officer would have reached the same decision and the quashing of his decision was therefore upheld.

David Lintott appeared on behalf of the Appellant authority.

R (on the application of LETIZIA ESPOSITO) v CAMDEN LONDON BOROUGH COUNCIL QBD (Admin) (May J) 31/07/2017

A judicial review claim was brought against the local authority's decision to refuse to provide extended emergency accommodation without further tests being carried out and results obtained in respect of the tower block in which the claimant lived. The application was refused by Mrs Justice May who held that the local authority's decision to cease the emergency accommodation could not be said to be irrational. They had acted on the advice of the Fire Service in respect of the original evacuation rather than because there had been any failure of the cladding. (on Lawtel)

Possession

HERTFORDSHIRE COUNTY COUNCIL v BRYN COLIN DAVIES [2017] EWHC 1488 (QB)

Mr Davies, a school caretaker, was held to be a service occupier whose right to occupy school premises had determined when he was dismissed from his employment. The public law and discrimination defences did not affect the local authority's right to possession. Paragraph 2 of Schedule 1 to the Housing Act 1985 was not incompatible with art. 14 when read with art. 8.

Andy Lane and Tara O'Leary appeared for the local authority.

See the Cornerstone Barristers' e-flash on this decision.

POPLAR HOUSING & REGENERATION COMMUNITY ASSOCIATION LTD v (1) AFSANA BEGUM (2) MOHAMMED ROHIM [2017] EWHC 2040 (QB)

The Recorder had exercised his discretion in respect of a possession claim based on allegations of sub-letting on a demonstrably flawed basis when suspended such an order on terms, and the Court instead made an outright order to take effect in 21 days. The treatment of an unlawful profit order application was also wrong and the housing benefit being received during the sub-letting period should have been treated as monies received for the purposes of step 1 of the calculation provided for at section 5(6) of the Prevention of Social Housing Fraud Act 2013.

Dean Underwood and Liam Wells appeared on behalf of the Appellant housing association.

See the Cornerstone Barristers' e-flash on this decision.

DACORUM BOROUGH COUNCIL v CHENALEE BUCKNALL (FORMERLY CHENALEE ACHEAMPONG) [2017] EWHC 2094 (QB)

The appellant had been provided with accommodation by the local authority when she applied for homelessness assistance. This was under a licence and continued after the authority accepted that she was owed the full housing duty. When she refused alternative accommodation the authority sought to discharge its duty and served a notice to quit in respect of the premises she was occupying. This was defective as it did not contain the prescribed information required but it was argued that the appellant had not been occupying the premises "as a dwelling" at the time when she was served with notice to quit, with the result that she was not entitled to the procedural protections provided for by the Protection from Eviction Act 1977. Mr Justice Popplewell held that whilst she had not occupied the premises as a dwelling while the local authority was performing its interim housing duty, the position changed when the local authority acknowledged its full housing duty and allowed her to stay where she was while it searched for suitable permanent accommodation. A valid notice to quit was therefore required and the appeal against the possession order was allowed.

Matt Hutchings QC and Jack Parker appeared on behalf of the Respondent authority.

See the Cornerstone Barristers' e-flash on this decision.

Private Rented Sector

DAVID WOOD v KINGSTON UPON HULL CITY COUNCIL [2017] EWCA Civ 364

When quashing an improvement notice served by a local housing authority under the Housing Act 2004 s.12 the Upper Tribunal had not erred in concluding that, as a matter of practicality, it was preferable to serve a notice specifying a single course of remedial work to be carried out by a single owner.

Michael Paget appeared on behalf of the Appellant authority.

AB v London Borough of Newham [2017] UKUT 299 (LC)

A landlord appealed against a rent repayment order pursuant to section 73 of the Housing Act 2004, after she had failed to obtain a mandatory HMO licence. The decision of the first-tier tribunal was set aside to the extent that it dealt with the amount to be repaid by the landlord (but not so far as it concerned the principle that a rent repayment order was to be made). There had been procedural

mishap, insufficiency of reasons with regards to the landlord’s case on why she had not obtained a licence and a failure to make an assessment of the mandatory issues it was required to take into account by reason of section 74(6).

Repairs

MOHAMED ABDULRAHMAN v CIRCLE 33 HOUSING TRUST LTD CA (Civ Div) (King LJ, Burnett LJ) 29/06/2017

Service of an injunction by alternative method under CPR r.81.8 had been effected by posting the order through an individual's letterbox. The judge had been entitled to make a committal order against him after finding on the evidence that he had prevented access to his property for the purpose of carrying out repairs, in breach of the injunction. (on Lawtel)

Service Charges

JLK LTD v EMMANUEL CHIEDU EZEKWE [2017] UKUT 277 (LC)

A landlord successfully appealed against the decision of the First-tier Tribunal that it had jurisdiction to hear applications brought by 56 leaseholders (student accommodation) for a determination of the amount of service charges they were liable to pay. The accommodation was not occupied or intended to be occupied as a separate dwelling and they were not dwellings within the meaning of section 38 of the Landlord and Tenant Act 1985.