



● ● ● cornerstone

● ● ● barristers

**Plenary session:**

**Tenancy management, fraud & enforcement**

Catherine Rowlands & Andy Lane



# Social Housing Fraud



- Allocation
- Sub-letting
- Parting with Possession
- Right to Buy/Right to Acquire/Shared Ownership
- Succession

# Getting the Property back



- Amnesty



- Rescission
- Ground 5/Ground 17
- NTQ

# Rescission (1)



- False representation/fraud (can be common mistake)
- Common law (equitable) remedy
- Discretionary
- Damages alternative
- Affirmation
- Killick v Roberts [1991] 1 W.L.R. 1146: no ground 5

# Rescission (2)



*“29 In my judgment, the express wording of [section 82](#), when read with [section 84](#), is a negative enactment in Coke's sense. It clearly shows that Parliament intended to take away from landlords the right to bring secure tenancies to an end by rescission, whether for misrepresentation or on any other ground. [Schedule 2](#) provides a detailed and exhaustive code of the grounds on which a landlord may bring a secure tenancy to an end and obtain an order for possession. It is to be assumed that Parliament decided on policy grounds that a landlord should be able to bring a secure tenancy to an end and obtain an order for possession where it has been induced to grant a tenancy by a fraudulent misrepresentation, but not where it has been so induced by an innocent or negligent misrepresentation.”* (emphasis added)

# Rescission (3)



- Relevant to RTB/RTA/Shared Ownership (?)
- Lapse of time
- Restoration to pre-contract position
- *Salt v Stratsone Specialist Ltd* [2015] EWCA Civ 745; [2015] 2 CLC 269

# Possession Ground – Schedule 2



*“The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by*

*(a) the tenant, or*

*(b) a person acting at the tenant's instigation.”*

[Ground 5 Housing Act 1985/Ground 17 Housing Act 1988]



# Key Points



- Applies to omissions
- Statement can come from a 3<sup>rd</sup> party
- There must be reliance
- Public policy relevant to reasonableness
- Rescission not available

# Key Authorities

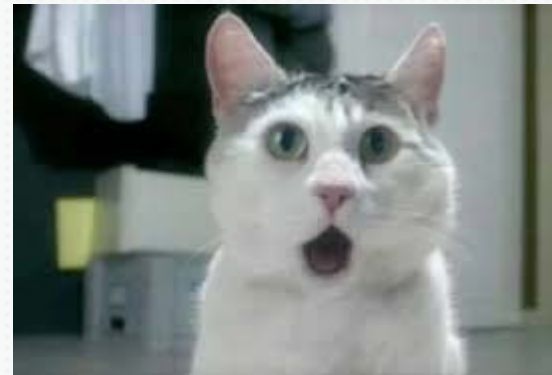


- *North Hertfordshire DC v Carthy* [2003] EWCA Civ 20
- *Islington LBC v Uckac & another* [2006] EWCA Civ 340; [2006] 1 WLR 1303; [2006] HLR 35
- *Merton LBC v Richards* [2005] EWCA Civ 639; [2005] H.L.R. 44
- *Waltham Forest LBC v Roberts* [2004] EWCA Civ 940; [2005] HLR 2
- *Rushcliffe BC v Watson* (1991) 24 H.L.R. 124, CA.
- *Lewisham LBC v Akinsola* (2000) 32 HLR 414

# Southwark LBC v Erekin [2003] EWHC 1765 (Ch)



- Appeal against HHJ Cotran
- Fraudulent housing application
- 18 months imprisonment
- Ground 5 satisfied
- No PO – children
- “19 I think there may be reasonable disagreement as to the outcome of the balancing exercise in this case, but in my view there is nothing to suggest that the learned judge exceeded the generous ambit which is given to him in deciding issues like this. For that reason I will dismiss this appeal.”



# Sub-letting/Parting with Possession



- Can be an offence: PSHFA 2013 (ss. 1 & 2)
- Can occupy “through” spouse/civil partner
- Security of tenure cannot be regained: ss15A/93
- NTQ with NSP in alternative
- Fixed term tenancies different!

# Evidence



- Part 18 Request for Further Information
- Data Protection Act 1998 – ss29 & 35
- Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014
- Witness Summons/Disclosure



# Key Authorities



- *Brent LBC v Cronin* (1998) 30 HLR 43
- *Ujima Housing Association v Ansah* (1997) 30 HLR 831
- *Hussey v London Borough of Camden* (1995) 27 HLR 5
- *Lambeth LBC v Vandra* [2005] EWCA Civ 1801; [2006] HLR 19

# Loyalty to Wayne



Neutral Citation Number: [2017] EWHC 2040 (QB) Case No: QB/2017/0113  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

**IN THE MATTER OF AN APPEAL**  
**FROM THE COUNTY COURT AT CENTRAL LONDON**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 04/08/2017

Before :

**MR JUSTICE TURNER**

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Between :

Poplar Housing & Regeneration Community Association Limited	<u>Appellant</u>
- and -	
(1) Ms Afsana Begum	<u>Respondents</u>
(2) Mr Mohammed Rohim	

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Dean Underwood and Liam Wells (instructed by Capsticks LLP) for the Appellant  
Martin Hodgson (instructed by Moss & Co Solicitors) for the Respondents

Hearing dates: 20<sup>th</sup> July 2017

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**Judgment**

# Succession



- Limited statutory rights of succession
- Rescission
- Set Aside
- Ground 5/17





# It's a crime...



- Housing Act 1996 – ss. 171 and 214

- Fraud Act 2006 – ss. 1-4



- Prevention of Social Housing Fraud Act 2013 – ss. 1 and 2

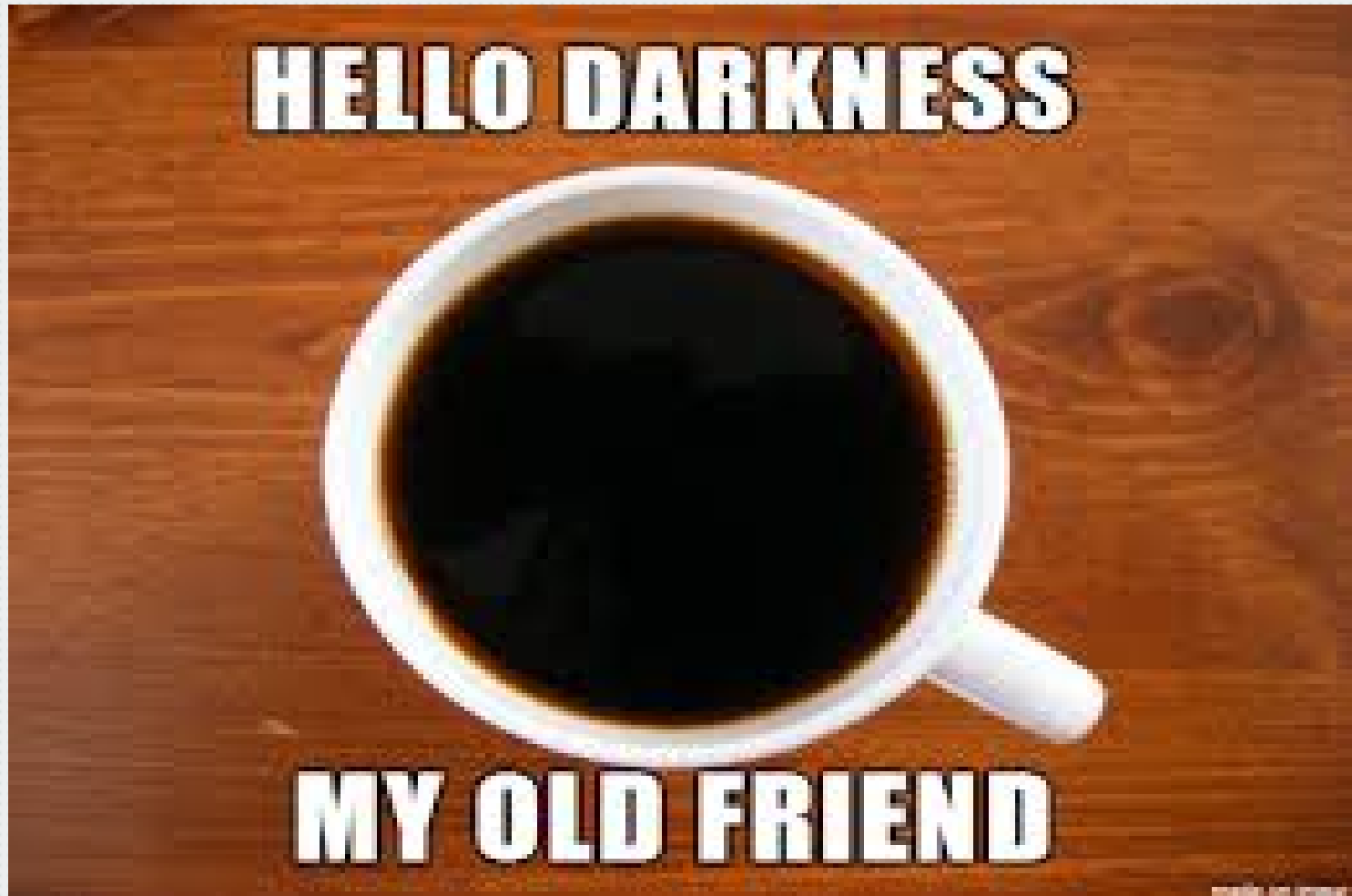
- Proceeds of Crime Act 2002 – s.6

# Thank you for listening





And breath out...





**Cornerstone Housing**