FIELD COURT CHAMBERS

Housing Law e-bulletin

***Holmes - Moorhouse v Richmond upon Thames LBC* [2009] UKHL 7, HL**

A Shared Residence Order, made by consent, provided that Mr H-M's children spend alternate weeks and half their school holidays with each of their parents. Subsequently, he applied to the Council for accommodation under Part VII HA 1996. The Council decided he was homeless but not in priority need (s.189(1)(b)) because the children could not reasonably be expected to reside with their father if that required it to provide a second home for them.

Mr H-M lost before the County Court Judge but won in the Court of Appeal.

Held: allowing the Council's appeal (i) the only question is whether dependant children might reasonably be expected to reside with a homeless parent; (ii) that is a question for the housing authority to decide; (iii) in doing so, the housing authority may have regard to its housing resources; (iv) only in exceptional circumstances will it be reasonable to expect a child who has a home with one parent to be provided under Part VII with another, e.g. where a child suffers from a disability which makes it imperative for care to be shared between separate parents; (v) *per* Lord Neuberger – a "benevolent approach" should be adopted to the interpretation of review decisions; a court should not take a too technical view of the language used, search for inconsistencies, or adopt a nit-picking approach when confronted with a homelessness appeal.

Notting Hill Housing Trust v Deol, Brentford CC, Legal Action December 2008

Mrs Deol's 6 month fixed term assured shorthold tenancy commenced on 13th June 2005. Rent was paid weekly. In November 2007 her landlord served a notice purportedly under s.21(4) HA 1988, which stated that possession was required *"at the end of the period of your tenancy or after expiry of 2 months from the service upon you of this notice. Dated 15th November 2007. Notice expires 20th January 2008"*

Held: dismissing the claim for possession (i) Mrs Deol's 6 month fixed term AST commenced on 13th June 2005 and expired on 12th December 2005; (ii) a 'month' clearly meant a 'calendar month', not a lunar month; (iii) thereafter the statutory periodic weekly tenancy started on 13th December 2005 (a Tuesday) and ran from Tuesday to Monday; (iv) the notice was invalid as (a) 20th January 2008 was a Sunday, not a Monday, and (b) the 'saving provision' did not assist the landlord as the date of service of the notice was 15th November 2008 and therefore the notice expired on 15th January 2008, a Tuesday.

Bernard Lo of Chambers appeared for Mrs Deol

***Alexander - David v Hammersmith & Fulham LBC* [2009] EWCA Civ 259, CA**

Ms A-D was 16 years old and pregnant when she applied to the Council for accommodation under Part VII HA 1996. The Council discharged its s.193(2) duty towards her by giving her a non secure tenancy of a

property ("the agreement"). Following complaints about her, the Council served her with a NTQ and issued possession proceedings. By the time Ms A-D served her defence, she had ceased to be a minor.

In the lower courts Ms A-D argued that (a) she could not hold the legal estate in the property as she was a minor at the time the tenancy was granted; (b) the agreement operated as a declaration by the Council that it held the property in trust for her; (c) as her trustee, the Council could not, without committing a fundamental breach of trust, serve a NTQ determining the trust; and (d) the NTQ was not validly served because it had only been served on her, and not on her trustee, the Council: s.1(6) LPA 1925 & Schedule 1 TOLATA 1997. Primarily, the Council countered that, construing the agreement in context, it had granted, not a legal, but an 'equitable tenancy' and thus TOLATA did not apply. Additionally, it argued that the NTQ was valid.

Held: allowing her appeal (i) in giving one of its standard form tenancy agreements, the Council had purported to grant her a legal estate; there was nothing in the agreement itself to displace that obvious inference (ii) as long as the Council was her trustee, it could not lawfully destroy the subject matter of the trust by serving a NTQ upon her; (iii) similar situations might be avoided by, for example, granting homeless 16 or 17 year olds genuine licences (iv) any agreement with a homeless 16 or 17 year ought to expressly state that because the applicant is a minor the local authority is not granting a legal estate but is instead securing that accommodation is available by granting something other then a legal estate.

***McGlynn v Welwyn Hatfield DC* [2009] EWCA Civ 285, CA**

The Council granted Mr McGlynn a non secure tenancy of a property. After receiving numerous complaints of anti-social behaviour emanating from the property, the Council served a NTQ in April 2004. In a subsequent letter to him, the Council's stated policy was that it would not take action against him unless satisfied that there had been a significant breach causing a nuisance to other residents in the locality. Following further complaints of nuisance, the Council issued possession proceedings in April 2005. Mr McGlynn argued that the Council's decision to seek a possession order in the manner that it did was one which no reasonable person would have made: 'gateway b' of *Doherty v Birmingham CC* [2008] UKHL 57

Held: allowing his appeal (i) on the facts of this "*unusual case*", given the lapse of time between service of the NTQ and the issue of proceedings, it was seriously arguable that a reasonable council would not have issued unless satisfied that some significant further breach by him had occurred; (ii) there was a lack of proper evidence as to what consideration the Council had given to the further complaints; (iii) on the paucity of information available to the trial judge, he was wrong to conclude that Mr McGlynn's *Doherty* defence was not seriously arguable.

***R (Ariemuguvbe) v Islington LBC* [2009] EWHC 470 Admin**

When offering the Claimant accommodation under Part VI HA 1996, the local authority refused to treat her 5 adult children as part of her household, even though they had been living with her since 1998, on the basis that they were subject to immigration control and, as adults, were capable of making arrangements for themselves. Cranston J refused to quash the local authority's decision, holding that it was for the

council to determine who formed part of the Claimant's "household", according to ordinary usage. The local authority was entitled to have regard to the age and immigration status of the Claimant's children when deciding whether or not they formed part of her household.

Austin v Southwark LBC **[2009] EWCA Civ 66, CA**

B had been a secure tenant but that tenancy had come to an end following the making of a possession order. B had continued to reside in the property as a tolerated trespasser and therefore would have been entitled to apply to revive the tenancy under s.85(2) HA 1985. B died; his brother A would have been eligible to succeed to the tenancy, had the tenancy not already come to an end. A applied to represent B's estate in the possession proceedings under CPR 19.8, in order to make an application to revive the tenancy under s.85.

Held: The right to apply under s.85 is a personal right and is not capable of being inherited. Therefore B's estate could not make an application under s.85(2) and A's application failed. Art 1 of the 1st Protocol to the ECHR was not engaged as the right to make an application under s.85 had ended upon B's death.

(X) and (Y) (Protected parties represented by their litigation friend The Official Solicitor) v London Borough of Hounslow **[2009] EWCA Civ 286**

X and Y were vulnerable adults in need of support in the community. One weekend, they and their children were subjected to a series of degrading and sexual assaults by youths. The trial judge found Hounslow was liable at common law for failing to move them to emergency accommodation in light of the developing crisis prior to the assaults that weekend.

Held: Reversed on appeal. In carrying out their duties as they did, Hounslow were simply carrying out their statutory duties under the HA 1996 and the NAA 1948. It was not contended Hounslow were in breach of statutory duty actionable in a private law action for damages. The exercise of those duties did not give rise to a duty of care. There was no assumption of responsibility or other special factor that could give rise to the imposition to a duty.

R (on the application of Ahmed) v Newham **[2009] UKHL 14**

Newham operated a choice-based letting scheme ("CBL"). Where more than one applicant in a priority home-seeker group bids for a property, it is awarded to the applicant who as been a priority home-seeker for longest. Newham appealed a decision that its allocation policy was unlawful for failing to afford people in the groups listed in s.167(2) reasonable preference over other groups and for failing to determine priority between people in those groups in accordance with the relative gravity of their individual needs.

Held: Allowing Newham's appeal, the 1996 Act only requires a reasonable preference to be given to particular groups of people, rather than the individual households within those groups. An authority is not obliged to rank all reasonable preference applicants by reference to the strength of their respective cases. Identifying individual households in greatest need could only be done through a points based system, and case law has shown these too may be open to attack on the ground they are too rigid or irrational. The court is no position to re-write the whole policy and weigh the claims of the multitude who are not before the court against the claims of the few who are. Relative needs

change over time so if the relative needs of individual households were being assessed, a council would need to hold regular reviews of every household on its waiting list. The "waiting time" aspect of the scheme may have been "rough and ready" but it was clear, simple, easy to administer and highly transparent. Once a housing allocation scheme complies with s.167 and any other statutory requirements, the courts should be very slow to interfere on the grounds of alleged irrationality. Save in the most exceptional circumstances, it would be wrong in principle to have regard to the housing circumstances and requirements of an individual applicant when considering the validity of an allocation scheme under Part VI.

And finally…

The provisions of the **Housing and Regeneration Act 2008** continue to be brought into force piecemeal. On 2nd March 2009 s314 and sch15 came into force (by **SI 2009/415)**, amending s.185(4) HA 1996 which had been declared incompatible with Art 14 ECHR in *Westminster CC v Morris* [2005] EWCA Civ 1184. In outline, where the applicant is a British citizen, EEA or Swiss national exercising an EU Treaty right or a Commonwealth citizen with the right of abode, the local authority can no longer disregard ineligible members of the applicant's household when considering whether the applicant is homeless or in priority need. Instead, a new class of restricted cases has been introduced, where the local authority owes the applicant a full s193 or s195 housing duty, but only because it has taken into account a person who is subject to immigration control and either does not have leave to enter the UK or who has leave subject to a prohibition on having recourse to public funds. In such cases the local authority may discharge its duty by arranging a private sector assured shorthold tenancy for a term of 12 months or more. Sections 184, 185, 193, 195 and 202 HA 1996 are amended accordingly. Section 167 HA 1996 is also amended so that restricted cases do not attract reasonable preference for an allocation of accommodation under Part VI HA 1996.

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