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Housing Law E-bulletin

INTRODUCTION

Welcome to the latest issue of our regular Housing Law E-bulletin.

There have been a number of significant cases in housing law this quarter. We think the highlights include:

- *Makisi & Others v Birmingham CC* [2011] EWCA Civ 355 – the right to an oral hearing under Regulation 8(2) of the Allocation of Housing and Homelessness (Review Procedure) Regulations 1999;

- *Aktar v Birmingham CC* [2011] EWCA Civ 383 – no duty upon local authorities to give reasons for offers of accommodation under s.193(2) HA 1996 or favourable review decisions;

- *Sharif v Camden LBC* [2011] EWCA Civ 463 – an offer of accommodation comprising two flats on the same floor did not satisfy the requirements of s. 176 HA 1996;

- *Beedles v Guinness Northern Counties, Equality and Human Rights Commission (Intervener)* [2011] EWCA Civ 442 – the meaning of the word 'enjoy' in s.24C Disability Discrimination Act 1995;

Emma Godfrey, Adrian Davis, Genevieve Screeche-Powell©
Editors
Housing Team

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Contacts: Sabina.Smith@fieldcourt.co.uk
Hayley.Walker@fieldcourt.co.uk

CASE UPDATES

***Makisi & Others v Birmingham CC* [2011] EWCA Civ 355**

The issue for the Court of Appeal was whether regulation 8(2) of the Allocation of Housing and Homelessness (Review Procedure) Regulations 1999 ("Regulation 8(2)") conferred on an applicant the right to an oral *hearing*.

In each of these conjoined appeals, the appellant argued that the Council had failed to comply with the requirements of Regulation 8(2) because it had refused them a face to face meeting with its review officer. Each appellant had been given the opportunity to make oral representations by way of a telephone conference, the Council's review officer expressing the view that a face to face meeting was unnecessary. Before the Court of Appeal, the Appellants argued that (i) Regulation 8(2) gave them a right to make oral representations at a hearing and (ii) at such an oral hearing, an applicant was also entitled to bring along third parties to give evidence.

Held:

(a) Regulation 8(2) does not prescribe or limit the manner in which oral representations may be made by an applicant;

(b) oral representations could be made on the telephone as well as at a face to face meeting: *Bury MBC v Gibbons* [2010] EWCA Civ 327;

(c) specifically, Regulation 8(2) does confer on an applicant the right to demand an oral hearing. It is not for review officers to decide the manner in which oral representations are given;

(d) however, Regulation 8(2) does not authorise the applicant to call any third party witnesses or permit any cross-examination. It authorises only a face to face meeting between the applicant (with or without a person acting on his behalf) and the review officer, at which oral representations can be made to the latter. (*AD*)

***Aktar v Birmingham CC* [2011] EWCA Civ 383**

In this unusual case, the Appellant ("A") argued that the Council had a duty to give reasons for certain homelessness decisions which it determined in A's favour.

The facts were as follows. The Council accepted that it owed A the 'full' housing duty under s.193 HA 1996. To discharge that duty, the Council offered A permanent accommodation 41 Twickenham Road, Kingstanding ("41TR"). A refused that offer; subsequently the Council informed her that it had discharge its duty, as it considered that 41TR was both suitable and reasonable for her to have accepted, pursuant to s.193(7) HA 1996. A sought a review, arguing that 41TR was unsuitable because it was (i) too small; (ii) too far from certain facilities; and (iii) in an unsafe area in which A felt isolated.

On review, the Council overturned its original decision but gave no reasons for its review decision that was favourable to A.

Subsequently, the Council offered A accommodation at 45 Hartley Road, Kingstanding ("45HR") in discharge of

its duty towards A. Having viewed this property, A refused it. Consequently, the Council again claimed to have discharge its duty towards her. A requested another review, arguing that (i) the property was too small; and (ii) as it was in the same area as 41TR, it too was far from certain facilities and in an unsafe part of Birmingham. The subsequent review upheld the decision to offer A 45HR.

A's appeal to the county court was dismissed. She appealed to the Court of Appeal, arguing that the Council ought to have given reasons for its decision to offer her 45HR and for its first review decision, which was decided in her favour.

Held: (dismissing A's appeal)

(a) a local authority, when it makes an offer of accommodation pursuant to its duty under s.193(2) HA 1996, is not under any duty to give its reasons for considering a property to be suitable and reasonable for the applicant to accept; and

(b) a local authority is not under a duty to give reasons for a review decision which it has decided in favour of an applicant.

In addition to the absence of any express statutory requirement to give reasons in such circumstances, the Court also pointed to the parallel of appeals between courts. Etherton LJ said: "*…it trite that, in the case of appeals from one court to another, the appeal is against an adverse order of the court and not against the reasoning underlying a favourable order. I can see nothing in the [Housing] Act [1996] to suggest that a different principle applies in relation to decisions of a housing authority appealable on a point of law under section 204*." (*AD*)

***Sharif v LB Camden* [2011] EWCA Civ 463**

A lived with her father (for whom she acted as carer) and her sister, who was a minor and still at school. A became homeless and the local authority C accepted a full housing duty under s193 HA 1996. In performance of that duty C offered 2 separate flats on the same floor of a building used by C as a hostel. The intention was that 1 flat would be occupied by A and her sister, the other by A's father. A refused the offer and C purported to discharge duty. A appealed under s.204 HA 1996.

Held:

By virtue of s 176 HA 1996, accommodation was only available if it was "available for occupation by the applicant together with any person who normally resides with her" as a member of her family. On an ordinary use of language, the accommodation offered was not accommodation for A to occupy "together with" her father. Accordingly C had not discharged its duty towards A. The policy of Part VII HA 1996 is to keep families together. (*EG*)

***LB Tower Hamlets v Various Leaseholders* (Central London CC, Recorder McAllister, 19th April 2011)**

In August 2003 the landlord served notices pursuant to s.20(4) Landlord & Tenant Act 1985 in respect of major works at 2 blocks. The notices were defective in that they referred to 2 estimates, 1 of which had been withdrawn. Although summaries of all 5 tenders received were attached to the notice, these did not break the total expenditure down on a block-by-block basis, whereas the service charge payable was calculated as a proportion of the expenditure on the relevant block. In addition, applying the normal postal rules, the notices were deemed served on 1 September 2003 but gave the deadline for making observations as 30 September 2003, 1 day short of the required period.

The landlord accepted the lowest tender. It subsequently applied for dispensation from the requirements of s.20(4), pursuant to s.20(9) L&TA (as it applied prior to the commencement of s.151 CLRA 2002).

The represented Leaseholders argued that the court had no jurisdiction under s.20(9) because the notices were defective and therefore were not "notices" for the purpose of the transitional provisions in r3 Commonhold and Leasehold Reform Act 2002 (Commencement No.2 and Savings) (England) Order 2003. They also argued in the alternative that unless the landlord could show a good reason for failing to comply with the requirements of s.20(4), it could not be found to have acted reasonably and dispensation therefore could not be granted.

Held:

(a) The court did have jurisdiction under s.20(9). Either the new scheme under s.151 CLRA 2002 applied in its entirety or not at all. As the s.20 notices were served prior to 31 October 2003 it was the old law that applied.

(b) When considering whether the landlord had acted reasonably, the question was whether it had acted reasonably in all the circumstances and not just whether there was a good reason for non-compliance (*Martin v Maryland Estates* [1999] 2 EGLR 53 applied). On the facts the landlord had acted reasonably and there was still meaningful consultation. Dispensation granted. (*EG*)

Emma Godfrey appeared for the landlord.

***Michael Beedles v Guinness Northern Counties, Equality and Human Rights Commission (Intervener)* [2011] EWCA Civ 442**

Mr Beedles ("B") was the tenant of a house owned by Guinness Northern Counties let under the usual terms whereby the Landlord agreed to the usual repairing obligations and B agreed to be responsible for keeping the property in good decorative order. B suffered from Grand Mal epilepsy and was therefore a disabled person for the purposes of the DDA 1995. B had not decorated the house for some time and it became shabby. He claimed that whilst he could afford paint and other materials he could not afford to pay anybody to decorate the property and his disabilities prevented him from doing it himself. Invoking section 24C of the DDA 1995 B requested that Guinness provide him with "an auxiliary aid or service" namely the labour to decorate the house. When Guinness refused B instituted proceedings. A duty only arises under section 24C when unless the auxiliary aid or service is provided it would be "impossible or unreasonably difficult" to "enjoy" the premises.

At the trial, heard by Langstaff J, Guinness conceded that (1) B was disabled (2) that decoration could amount to an auxiliary aid or service and (3) there had been a proper request. The issues that remained were (1) whether it was unreasonably difficult for B to "enjoy" his house, and (2) whether it was reasonable for the landlord to carry out the works. B contended that the expression "enjoy" meant "to derive pleasure from". Guinness contended that it meant "occupy in accordance with the terms of the tenancy agreement". Langstaff J accepted Guinness's interpretation and dismissed the claim finding that B could have done more to tidy up the premises than he believed and that it was not unreasonably difficult to enjoy the house. B appealed to the Court of Appeal.

Held:

On appeal B's Counsel stepped back from the position taken at trial that "enjoy" meant to derive pleasure from but instead argued that it meant "to enable B to live in his house like any other tenant". B and the EHRC argued for a purposeful approach to the statute and relied upon the relevant Code of Practice. The Court of Appeal agreed with the suggestion that the statute should be construed purposefully and that regard was to be had to the Code of Practice but held that there was no difference between B's new formulation and the meaning adopted by the trial judge. The findings of the trial judge that B was capable of some decorative work and that the house was not in too poor a state were sufficient to dispose of the appeal.

The Court of Appeal disagreed with the trial judge who had appeared to suggest that the cost of decorative works was irrelevant to whether it would be reasonable to do the work holding that cost was a relevant consideration.

Comment: Carnwarth LJ said, in obiter dicta, that he reserved his position as to whether the statutory provisions of the DDA 1995 could ever override a contractual agreement that the tenant should redecorate. With respect, it is quite clear that it could.

The former duties under the DDA 1995 are now found in amended form in the Equality Act 2010. There is nothing in this case that would suggest that a duty to provide decorative services to a disabled tenant could never arise. Ultimately, once the word 'enjoy' was held to have the same meaning that it has held for around 800 years this case turned on its own facts. (*JCr)*

John Crosfill appeared for the landlord.

***R (on the application of TG) v LB Lambeth (Respondent) and Shelter (Intervener)* [2011] EWCA Civ 526**

G was accommodated between the ages of 16 and 17 for a period of seven months under s.188 HA 1996. G should have been accommodated under s.20 Children Act 1989, but that did not occur because the social worker referred G to the Homeless Person Unit, instead of Children's Services. G sought a declaration quashing the Authority's decision that he not was a "former relevant child" under s.23(C)(1) CA 1989.

Held:

The phrase "a child in need" constituted a 'term of art' under CA 1989 and triggered particular duties, the discharge of which was the responsibility of the Authority's children's services. Having concluded G was a child in need, the social worker should have referred G to children's services. The HPU provided TG with s.188 HA 1996 accommodation without referring TG to Children's Services. The accommodation provided under s.188 should be treated as having been provided under s.20 CA 1989 for the purpose of determining whether the local authority looked after him within the meaning of s.22 of the CA 1989. The Court of Appeal granted a declaration that as of his 18th birthday, G was a "former relevant child" for the purposes of s.23(c)(1) CA 1989.

Comment: Once a child is "looked after", other duties arise that do not if a child is accommodated under the homelessness legislation. The court also noted concerns that a number of vulnerable children were suffering from a failure of co-ordination between authority's homelessness services and children's services. Local authorities should take urgent steps to remedy such failings (*GSP*).

Statutory instruments

Accession (Immigration and Worker Registration) (Revocation, Savings and Consequential Provisions) Regulations 2011 (SI 2011/544)

These 2011 Regulations revoke the 2004 Accession (Immigration and Worker Registration) Regulations, so that with effect from 1st May 2011, A8 nationals (Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia, Slovakia) will be entitled to reside in the UK in accordance with the 2006 Regulations (Immigration (European Economic Area) Regulations 2006) governing EEA nationals.

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