



# Tenant management update

Social Housing - May 2010

## A briefing from our Property litigation team

**Part of a series of briefings, setting out the updates in the law governing anti-social behaviour, recovery of rent, homelessness and social housing.**

### Gas service injunctions

The Housing Association in [Paddington Churches HA v Campbell \(2010\)](#) applied for an injunction requiring its tenant to allow staff into the property to carry out a gas safety inspection. A judge granted the injunction and awarded £1,000 costs of the application. The tenant appealed.

The basis for the appeal was that no injunction application should have been made because (a) other proceedings (for possession and a disrepair counterclaim) were outstanding between the parties and the question of access could have been addressed in them and (b) the tenant had notified the Housing Association's agents that she did not use gas at the property.

The High Court upheld the original order for the injunction but reduced the costs from £1,000 to £150. However, as the tenant had lost the substantive issue on appeal, she was ordered to pay £1,499 costs of the appeal.

### Public law challenge to termination of assured shorthold tenancy

The registered social landlord in [Eastlands Homes v Whyte \(2010\)](#) granted an assured shorthold (starter) tenancy to the Sandra Whyte. Eastlands Homes subsequently served notice seeking possession under the Housing Act 1988 Section 21 on the basis of rent arrears.

Sandra Whyte appealed against the decision to evict her but the appeal was rejected by Eastlands Homes' appeals panel.

In the possession proceedings, Sandra Whyte claimed that the decision to evict her was unlawful on public law grounds. The High Court agreed with her and decided that Eastlands Homes had unlawfully exercised its powers for the following reasons:

1. Eastlands Homes failed to supply written evidence in advance of the appeal panel hearing;
2. Eastlands Homes' appeal panel considered matters beyond the information contained in the case summary; and
3. Eastlands Homes failed to consider its "clearly stated policy for dealing with rent arrears, which applied to starter as well as assured tenancies".

This case demonstrates the increased judicial consideration being given to a registered social landlord's compliance with policy and procedures when seeking possession of property.

### Termination of Assured Shorthold Tenancies: Problems with the Section 21 Notice

The issue in [Elias v Spencer \(2010\)](#) was whether a Section 21 Notice was valid as the incorrect date for possession had been given. [Section 21\(4\)\(a\)](#) of the Housing Act 1988 provides:

"...a court shall make an order for possession of a dwelling house let on an assured shorthold tenancy which is a periodic tenancy if the court is satisfied

(a) that the landlord ... has given to the tenant a notice stating that, after a date specified in the notice, being the last day of a period of the tenancy and not earlier than two months after the date the notice was given, possession of the dwelling-house is required by virtue of this section".

The landlord in this case served a Section 21 Notice which specified that possession was sought: "After: 22ND NOVEMBER 2008 or, if this notice would otherwise be ineffective, after the date being the earliest date not earlier than two months after the date of service of this notice when shall expire a period of the assured shorthold tenancy".

The date of 22 November was wrong. In order to comply with the statute it should have been 21 November because this was a periodic tenancy expiring on a Friday. The 21 November was a Friday with the 22 November being a Saturday.

The tenant argued that the combination of a specified date and the saving provision giving another date meant that there were two dates and the notice thereby did not specify the date for possession, as required by s.21(4)(a). The Court of Appeal disagreed and held that the saving clause did result in the correct date being given and that in any event, the error was to the benefit of the tenant. The notice was held to be valid.

The lesson to be learnt from this decision is that in drafting a Section 21 Notice it pays to be cautious and include a "catch all" provision.

## Allocation

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In [R. \(on the application of Bauer-Czarnomski\) v Ealing LBC \(2010\)](#) the Court considered the weight which should be given to medical evidence when allocating applicants on a waiting list. The local authority instructed a doctor to assess the health of an applicant for housing, but the doctor went beyond offering an opinion on the applicant's health, but also as to which of the local authority's housing allocation priority bands he should be placed within.

The court found that the doctor had gone well beyond his remit in advising on the priority under the scheme, which was the local authority's decision, and that the local authority had been wrong to simply accept the doctor's advice.

## Housing law updates

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**Goodbye RSLs:** One consequence of the new regulatory regime for social housing which took effect on 1 April 2010 was a change in terminology from "registered social landlord" (RSL) to "private registered provider of social housing" (PRPSH). Among the range of statutory and non-statutory materials requiring amendment to reflect the change are the rules, practice directions and protocols in the Civil Procedure Rules (CPR). Amendments to the Pre-action Protocol for Rent Arrears, among others, are made by the 52nd update

to the CPR. For the rent arrears protocol: [http://www.justice.gov.uk/civil/procrules\\_fin/contents/protocols/prot\\_rent.htm](http://www.justice.gov.uk/civil/procrules_fin/contents/protocols/prot_rent.htm)

## Anti Social Behaviour

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The Chartered Institute of Housing (Cymru) has published guidance for social landlords in Wales on implementation of the Wales Housing Management Standard for Tackling Anti-Social Behaviour. For a copy of the guidance: <http://www.cih.org/cymru/policy/ASB-Guidance/ASBGuidance-E.pdf>. In a speech delivered on 9 March 2010 the Home Secretary announced two new developments on enforcement action to tackle anti-social behaviour (ASB): (1) from 5 April 2010, the Ministry of Justice will give judges new powers to set targets to ensure applications for ASBOs are dealt with speedily by the courts; and (2) when agencies and the police fail to take action to protect communities from ASB, the victims will get the support necessary to pursue any legal action against the perpetrator, with the agency which has failed them obliged to meet the costs. All those involved in this area will need to keep developments in this area under review as it could lead to complaints and challenges being made by victims dissatisfied with the steps being taken to address anti-social behaviour problems.

## More information

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To discuss your individual requirements, in the first instance please contact Sian Jones or Russell Price in our Property litigation team.



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