



# Tenant management update

Social Housing - February 2010

## A briefing from our Property litigation team

**The first of a series of briefings reviewing recent legal decisions which impact on tenant management issues in the social housing sector**

### Mutual exchanges

The registered social landlord in [R. \(McIntyre\) v Gentoo Group Ltd](#) sought to impose a condition when asked to consent to a mutual exchange by two assured tenants that a judgment debt owed to it in respect of rent arrears incurred at another property previously occupied by one of the parties would be paid.

The High Court held that the condition imposed by the Registered Social Landlord was unlawful. Any condition imposed by a landlord, under Section 1 of the [Landlord and Tenant Act 1988](#) had to be reasonable and had to affect the subject matter of the contract (tenancy agreement). As the condition did not relate to the property subject to the exchange, the Registered Social Landlord had acted unreasonably.

### Judicial review

The High Court has given its first demonstration of its approach in dealing with challenges from tenants to a Registered Social Landlord's decision on tenant management issues.

The tenants in [R. \(McIntyre\) v Gentoo Group Ltd](#) applied for judicial review of the conditional grant of consent to a mutual exchange on the ground that the decision regarding consent was amenable to judicial review following [R \(Weaver\) v London & Quadrant Housing Trust \[2009\]](#).

The Court held that the decision as to whether or not to grant consent (and if so, on what terms) was amenable to judicial review because it formed part of the registered social landlord's public function of managing and allocating social housing. Judicial review of the decision was, however, refused because the tenants had an alternative remedy.

This judgement has reinforced the applicability of one of the general principles governing judicial review challenges, namely that it will normally be granted where the applicant has an alternative remedy.

### Anti-Social Behaviour – compliance with policies

A registered social landlord's need to act in accordance with its own policies is demonstrated by the decision in [Barber v London Borough of Croydon](#). Mr Barber, a single man, applied to the Council for homelessness assistance. It was decided that he was vulnerable given his mental health history. He was provided with non-secure Council accommodation in accordance with the Council's duty. Following a one-off incident in which the caretaker was abused, the Council gave notice to quit and claimed possession. The judge granted an outright possession order.

The Court of Appeal allowed an appeal and dismissed the possession order. In breach of its own procedures for tackling anti-social behaviour where the perpetrator was vulnerable, the Council had failed to consult the relevant statutory agencies or take their advice as to whether other measures, short of eviction, might control the behaviour.

## Anti-Social Behaviour – problems with dogs

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The Court of Appeal in [Thomas-Ashley v Drum Housing Association](#) heard recently that a woman is facing eviction from her housing association flat because she keeps a dog in the flat. The tenant suffers from mental health problems and her doctor says that the dog, Alfie, is essential to her recovery and that losing him could leave her in a severe depressive state. The housing association argued that dogs are banned from its properties and that she lived for a year in the flat without Alfie. The County Court granted an order for possession but Ms Ashley-Thomas launched an appeal. The Court of Appeal has reserved its judgment.

## Anti Social Behaviour Orders (ASBO)- amendments

The decision in [James v Birmingham City Council](#) considered whether or not it was necessary to establish a fresh act of anti-social behaviour before any variation of an ASBO could take effect. Mr James had been subject to a three-year ASBO granted on the basis of his gang membership and acts of swearing, shouting, dropping litter and congregating with others in a manner likely to cause harm or distress to residents in the area. The ASBO prevented him from associating with named persons and prohibited him from entering a specified area of Birmingham.

Before it expired, the Council applied for a variation to extend its scope (in terms of area and the people listed) and duration. It relied upon two drug related incidents outside of the exclusion area. The application was defended on the basis that the Council ought to have applied for a fresh ASBO which would have required it to prove that a further act of anti-social behaviour had occurred in the six months prior to the application. The variation was nevertheless granted and Mr James appealed.

The Divisional Court dismissed the appeal. A variation of an ASBO does not require the establishment of a fresh anti-social act. It would ultimately be a question for the judge hearing the case to determine whether variation was necessary. If the original ASBO ceased to be sufficient to achieve the objective of protecting the public or that section of the public which the order was designed to protect, then a further or modified protection would in principle be necessary.

## Allocation of housing

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The decision in [Birmingham City Council v Qasim](#) looks at the position a landlord will find itself in if it grants a tenancy in breach of its own allocation policy. Birmingham Council brought claims for possession against seven tenants on the basis their tenancies were granted by a housing officer without authority, outside the terms of its allocation scheme, and were therefore void. The claims were refused and the tenants allowed to remain.

The Court of Appeal said that there was a distinction between a council's duty to allocate residential accommodation in accordance with its statutory housing allocation scheme and its ability to dispose of accommodation by way of secure tenancy in accordance with its statutory powers. Secure tenancies granted to tenants who had not been selected in accordance with the allocation scheme were valid.

The Court of Appeal dismissed the claims and an appeal was rejected. An appeal panel of the UK Supreme Court refused the Council's application for permission to appeal stating that the Court of Appeal decision had been "plainly right".

## More information

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



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