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## Housing Law e-bulletin

***De-Winter Heald, Al-Jarah, Ahmad & Kidane v Brent LBC* [2009] EWCA Civ 930**

In four conjoined appeals, the Appellants contended that it was unlawful for the Council to contract out the performance of its homelessness reviews or any part of a review to a person who was not an officer or employee, in this case Mr Minos Perdios; second, they argued that there was an appearance of bias of the part of Mr Perdios himself, which meant that the reviews were not fairly conducted and the Appellants' Article 6 ECHR rights were infringed.

**HELD:** (dismissing all the appeals):

(1) the statutory provisions clearly permit local authorities to contract out their homelessness reviews or any part of them: ss 202 & 203 Housing Act 1996; s 70 Deregulation and Contracting

Out Act 1994; Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996 (SI 1996 No. 3205);

(2) the obiter comments made by Lords Bingham, Hoffman and Millett in *Runa Begum v Tower Hamlets LBC* [2003] 2 AC 430, which suggested that local authorities could not contract out their review functions, were disapproved;

(3) on the facts, there was no appearance of bias on the part of Mr Perdios.

**Mr Martin Russell appeared for the Appellants Al-Jarah, Ahmad & Kidane.**

**Mr Adrian Davis appeared for the Council in the county court (see E-Bulletin February 2009)**

***Forcelux Ltd v Martyn Ewan Binnie* [2009] EWCA Civ 854**

The tenant held a long lease containing a forfeiture clause. He fell into arrears. The landlord obtained judgment in default on the rent arrears and subsequently commenced Part 55 possession proceedings. A possession order was made at the first hearing (Rule 55.8.1) in the tenant's absence. The tenant successfully applied to the District Judge to set aside the order and sought relief from forfeiture. The landlord appealed.

**HELD:** In the absence of the defendant, the Judge of first instance looks at the claimant's evidence and makes a determination in a summary procedure, akin to a disposal hearing. That being so, the decision to make a possession order at a first hearing was not made at trial within the

meaning of CPR 39.3. On a set aside application, the court could apply its wider case management powers under CPR Rule 3.1.

***Birmingham CC v Qasim and 11 Others* [2009] EWCA Civ 1080**

Between May 2005 and March 2006 a housing officer of the Council, who was responsible for allocating residential accommodation, let 7 council properties to the various Respondents who did not have priority under the authority's own housing allocation scheme. Although the Council subsequently established 'misconduct' on behalf of the officer it could not establish any wrongdoing on the part of the Respondents.

The Judge at first instance found that the Council had grant valid secure tenancies of the properties, despite the fact that the Respondents did not have priority under the allocation scheme.

The Council appealed. It argued, first, that allocation under Part VI HA 1996 extends to, or includes, the actual *grant* of a tenancy – therefore, if a secure tenancy is granted by the Council which should have been allocated under the terms

of the allocation scheme but was not, then that tenancy will be void. Alternatively, the Council argued that, if allocation and grant are separate concepts, the grant by the Council of a secure tenancy which should have been allocated pursuant to the scheme will be void unless the accommodation has been allocated strictly in accordance with the term of the scheme.

**HELD:** (dismissing the appeal)

(1) it is plain from the statutory provisions that there is a clear distinction between allocation under Part VI HA 1996 and disposal, or grant, under Part II of the Housing Act 1985: s 159 HA 1996;

(2) the Council's second argument was also rejected. The Council had failed to comply with the statutorily required allocation procedures leading up to the grant of the tenancy, rather than with any statutory requirements relating to the grant of the tenancy itself. The Council's failure related to allocation, which is a purely public law obligation and procedural in nature – the allocation remained effective unless and until it was set aside by a court. In those circumstances it would clearly follow that the subsequent grant of a tenancy, although effected

pursuant to the defective allocation, was not ultra vires, at least unless the terms of the HA 1996 provided otherwise.

***R (on the application of Tsega Gebremariam) v Westminster CC* [2009] EWHC 2254 (Admin)**

The Council refused to provide a homeless applicant with interim accommodation in a case concerning local connection. The applicant sought judicial review of its decision.

**HELD:** It was only in exceptional cases that a court would interfere with an authority's discretion under s.200(5). Having regard to the correspondence, it could not be said the local authority had failed to consider all the relevant factors. *R v Camden LBC ex p. Mohammed* (1998) 30 HLR 315 followed.

***Swindon BC v Redpath* [2009] EWCA Civ 943**

The Defendant was a former tenant of the Council, having been evicted for anti-social behaviour in 2006. He continued to commit acts of

anti-social behaviour as part of a continuing campaign against his former neighbours. The Council obtained a number of ASBIs, most recently in 2008. D appealed against the most recent injunction order, arguing that his behaviour was not "housing-related" for the purpose of s.153A HA 1996 and that the court therefore had no jurisdiction to make the ASBI.

**HELD:** Viewed as a whole, and in the light of his earlier behaviour, D's behaviour was "housing-related" and the court did therefore have jurisdiction to make the order. It did not matter that D was no longer a tenant of the Council at the date of his most recent bout of anti-social behaviour.

### *And finally...*

Over the past few months Emma, Adrian and Genevieve have been giving a series of seminars upon recent developments in homelessness law to the members of the West London Alliance. If your organisation would like to receive information about such seminars please contact our clerk Hayley Walker on 020 7405 6114 or [Hayley.Walker@fieldcourt.co.uk](mailto:Hayley.Walker@fieldcourt.co.uk)

Members of Field Court Chambers who practice in housing law can be found at our website [www.fieldcourt.co.uk](http://www.fieldcourt.co.uk)

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