RECENT DEVELOPMENTS IN POSSESSION PROCEEDINGS

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Liz Davies
Housing Team
Garden Court Chambers
Materials

Books:
• Defending Possession Proceedings, LAG

Case-law:
• [www.bailii.org](http://www.bailii.org)

Recent developments:
• In housing law, Legal Action, Luba and Madge, monthly.
Possession procedure

- CPR 55
- Correct parties: *Hounslow LBC v Cumar*
- First hearing: is the claim genuinely disputed on grounds which appear to be substantial? CPR 55.8
Nuisance/anti-social behaviour

Outright or suspended order:

- **Liverpool Mutual Homes v Nugent;**
- **Birmingham CC v Ashton:**
  - 20 – 30% risk of recurrence not low;
  - Assessment of risk itself flawed;
  - Onus on party seeking the benefit of suspension to provide cogent evidence that behaviour will not recur or will be unlikely to do so.
Sentences on committal

Doey v Islington LBC:
• Sentencing Guidelines should be applied

Willoughby v Solihull MBC:
• Custody most serious sanction and should only be made for minimum appropriate period.
Succession and possession

More extensive than reasonably required:
• Brent LBC v Tudor;

Reasonable to make an order:
• Redbridge LBC v West: not reasonable on its fact;
• Reading BC v Holt: order was reasonable on the particular facts; not appropriate to draw comparisons with facts in other cases.
Availability of suitable alternative accommodation

Reading BC v Holt:

• Requirement is that suitable accommodation available on date when order takes effect;
• Court may make conditional order where satisfied that accommodation having particular circumstances would be reasonably suitable and will become available;
• Not in every case, Courts should consider with great care whether conditional order necessary and appropriate or whether justice better served by adjourning;
• Conditional order should include liberty to apply and time-scale.
Article 8 defences

• Relevant where mandatory grounds for possession relied upon;
• 3 means of raising Article 8:
  • Declaration of incompatibility of statutory provision;
  • Public law defences;
  • Proportionality defences (Pinnock, Powell).
Who is public authority?

- Local housing authorities;
- Any person certain of whose functions are functions of a public nature: **Weaver v London & Quadrant Housing Trust**;
- The Court: does that mean Article 8 applies in possession claims brought by private landlords? **Malik v McGahan**.
CPR 55.8 threshold

- **Corby BC v Scott**: exceptional cases;
- **Fareham BC v Miller**: for the tenant to raise proportionality, only in exceptional cases is personal circumstances enough;
- **Lane v Kensington & Chelsea RLBC**: unusual circumstances warranted proportionality consideration.
Article 8 proportionality: substantive hearings

• **Birmingham CC v Lloyd**: where no right to occupy, Article 8 could only succeed in extraordinarily exceptional circumstances;

• **Thurrock BC v West**: public policy and public benefit in local housing authority dealing with its own stock; nothing exceptional about couple with limited financial means and young child;

• **Southend on Sea BC v Armour**: on its facts, Judge’s decision that it would be disproportionate not wrong in law.
Article 8 proportionality: substantive hearings

- **Dacorum BC v Sims**: termination of joint tenancy by one joint tenant not incompatible with Article 8;
- **Birmingham CC v Beech**: personal circumstances of occupier without right to occupy not outweighing importance of compliance with council’s allocation scheme.
Article 8: after order is made

- **R (JL) v SS for Defence**: generally Article 8 to be raised in possession claim; in these unusual circumstances, could be raised at enforcement stage.