EU Citizen and Homeless?

Wed, 07 Jun 2006 21:39:37 +0000

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There was briefly a loophole. If, somehow, an EU citizen in England was on Income Support and became homeless, there was a way they could be eligible for housing assistance from local authorities under the Homelessness (England) Regulations 2000, because they were subject to immigration control as non-workseekers, oddly enough. I was looking after a Housing Act appeal on these grounds and was happy when this was confirmed by the Court of Appeal in Barnet BC v Ismail and Abdi [2006] EWCA Civ 383.

But, from 20th April 2006, this is no more. Rushed through Regulations, which didn't even get the usual 21 days to be inspected by a Commons Committee before coming into force, plugged the gap. Odd, as even receiving Income Support should only be the result of a mess up by the DWP, so there can't be that many who'd slip in through this hole.

Luckily, after a quick and anxious check, my client should be covered by the transitional provisions. They are still in with a good chance with the homeless application. But if you are Italian, Spanish etc., getting Income Support and became homeless in England after 20th April 2006, tough. At least, that is what it looks like. We shall see.

And close the door behind you.

Thu, 30 Nov 2006 23:36:57 +0000

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In what would, were all the world a stage, be a rather overdone bit of dramatic irony, the final publication of the LSC's future legal aid funding arrangements took place yesterday, as did the showing of 'Evicted' on BBC1, part of the Beeb's 'No Home' project.

'Evicted' was a really rather good documentary, following a few evicted families through homeless applications, temporary accommodation, B&Bs, sofa surfing etc., with all the effects on the kids shown clearly, missing GCSEs and school, fearing being taken into care and so on. All the familiar problems were on display: eviction through housing benefit foul-ups by the same Council; findings of intentional homelessness on eviction for arrears, regardless of the basis for the arrears; Homeless units failing to accept applications; unsuitable temporary accommodation many miles from schools and support networks, that is then changed at a moment's notice. A depressing litany, which apparently took some people by surprise.

Many of the local authority's actions looked to me to be potentially challengeable or reviewable. Indeed, Shelter took action on one family's part. Viewed from that angle, the documentary was a clear demonstration of the need for civil legal aid.

Of course, the south west, where the documentary was largely made, is a notable 'advice desert', particularly for housing law. So, what is the LSC's published route to the future going to do about this? Given that I have already pointed to the irony involved with a large neon arrow, readers will not be surprised to learn that the answer isn't good.

They are setting the Legal Help fixed fee at a national rate of £170. All homeless work, apart from judicial review and Housing Act appeals, is conducted under Legal Help. There is currently a set fee, which has been based on a firm's 'average' costs of Legal Help cases from a few years ago. Now there is a set fee of £170, which is roughly 2.5 hours billable work at standard legal aid rates. Supposedly this is a notional national average. It looks to me like a significant cut.

I have heard of current Legal Help rates for firms I know of varying between £250 and £500, and Law Centres at about £210 or so. I would be delighted to receive comments from anyone in England whose firm does Legal Help at a rate less than £170 on the current scheme, because I can't really see how this can be done. Perhaps this post will be flooded with comments, but I doubt it.

Dealing with homeless cases tends to be detailed, protracted and time consuming work. It is extremely difficult to do effectively under the current Legal Help system without running a loss (at least at my firms current rate). Call me Cassandra, but the future isn't looking good and, given this juxtaposition, yesterday wasn't a great day either.

Degrees of Homelessness?

Sun, 25 Feb 2007 20:20:47 +0000

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Local Authority allocation policy, as it applies to those to whom the Authority has accepted a duty to secure accommodation, is still being thrashed out in the Courts.

Birmingham City Council is the latest to have their allocation policy found unlawful in *R. (Aweys and Others) v Birmingham City Council* [Link to Bailii added]. The Times Law Report describes Birmingham as having operated a two tier policy for priority in housing allocation for homeless. Those who were 'homeless at home' (due to unsuitability, statutory overcrowding, etc.) where placed in the lower priority band B, whereas those in temporary accommodation where placed in the top priority band A. Further, the homeless at home were expected to stay where they were.

Quite rightly, the Court gave this short shrift. Firstly, once a housing duty is accepted the Authority has a duty to secure suitable accommodation. Meaning the homeless at home can't simply be expected to stay there.

Interestingly, the Court gave a guideline for how long the homeless at home might be expected to remain where they were, before suitable accommodation (temporary at least) should be found. Six weeks - anything over that would need clear justification.

Secondly, the Local Authority's duty is to secure suitable accommodation and there is no basis in Part VI Housing Act 1996 for an allocation policy that states that some homeless will wait longer than others before this happens, simply because they are not in temporary accommodation (and here the Authority's excuse for not offering them temporary accommodation was the difficulty in finding suitable temporary places - so the homeless families were effectively being penalised becase of Birmingham's own problems). The Court found there was a clear duty to give priority to all homeless (where the duty is accepted). It is unlawful to give priority to a subset over others.

I am frankly puzzled that Birmingham thought it would get away with this. Once someone is accepted as homeless, the duty, and the priority, is clear under statute. Nice to have it confirmed, though. And that six week guideline could be useful.

Housing Duty - stating the obvious

Tue, 12 Jun 2007 22:01:39 +0000

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For once, Birmingham was on the winning side of an entirely predictable Court of Appeal judgment on homelessness law. *Omar -v- Birmingham City Council* 2007. (7 June 2007. Times Report. Not yet freely available elsewhere)

Birmingham had discharged duty to the appellant after he refused an offer of permanent accommodation, which was found to be suitable on review. Omar appealed on the basis that the offer letter had stated that it was 'a final offer' and that this did not comply with the requirements of s.193(7) Housing Act 1996, which states

(7) The local housing authority shall also cease to be subject to the duty under this section if the applicant, having been informed of the possible consequence of refusal and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part 6.

(7A) An offer of accommodation under Part 6 is a final offer for the purposes of subsection (7) if it is made in writing and states that it is a final offer for the purposes of subsection (7).

The statement that this was 'a final offer' was contended not to state that this was an offer of accomodation under Part VI, and so not meet the requirements of (7). The Appeal to the County Court was dismissed and taken to the Court of Appeal.

The Court of Appeal dismissed the appeal, holding that the explict reference to a final offer could only mean an offer under Part VI. The terms of (7) were mandatory, but there was no need to rigidly follow a form of words if the point was conveyed adequately. Here, the addition of words to the effect that this was an offer under Part VI would not add anything useful or necessary for the appellant's understanding.

Apparently some County Court appeal judgments had gone the other way, which is a surprise. What isn't a surprise is the Court of Appeal verdict. To be honest, I've never seen any client who didn't understand they were only getting the one offer and that this would be the end of it. What the clients do get very confused about is what constitutes 'suitable', usually being wildly over-optimistic.

In any case, the Court apparently adds for good measure, the appellant's refusal also fell under s.193(5):

(5) The local housing authority shall cease to be subject to the duty under this section if the applicant, having been informed by the authority of the possible consequence of refusal, refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section.
The rolling together of s.193(5) and (7) here is interesting. The way it is done appears to mean that (7) is more or less irrelevant if (5) is to apply to any offer, whether temporary or permanent accommodation (a Part VI offer). If so, this is slightly worrying, because (5) only has a test of 'suitable', where (7F) gives a two part test - 'suitable' and 'reasonable for him to accept'. It is entirely possible for an offer to be suitable but not 'reasonable to accept', as this latter is a subjective test (*Slater v LB Lewisham* (2006) [2006] EWCA Civ 394). I'm awaiting an approved judgment to see about this, because I'm not sure that (5) should apply to Part VI offers of permanent tenancy.

Nearly Legal's sage words to anyone facing their one offer are take the offer and request a review of suitability at the same time, thus minimising the risk of ending with nothing. There has to be a very significant problem for an offer not to be suitable, on the order of being

placed near to a previous abuser, or at a virtually impossible distance from medical support structures, for instance. Not liking the layout of the bathroom or the view from the front window won't do (and yes, I have heard those put forward).

Gilby v City of Westminster

Sun, 01 Jul 2007 21:19:53 +0000

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A Court of Appeal homeless case, *Gilby v City of Westminster* [2007] EWCA Civ 604 was handed down on 27 June, but I've been a bit slow to note it, partly because I've been busy and partly because, frankly, it is a bit of a *meh* of a case. Still, it is a Court of Appeal housing judgment, so...

The Appellant had been refused the housing duty because found intentionally homeless. Since giving up settled accommodation, she had been living in her sister's Council property, on what basis was not wholly clear.

The s.184 decision was that this was an illegal sub-let, so not settled accommodation. On s.202 review, it was said that this was on a bare licence, so not settled accommodation. The decision was upheld on s.204 appeal. The appeal to the CoA contended that the difference in the view on the nature of the accommodation should have triggered Regulation 8.2 of the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999. This states that where a reviewer finds there is a deficiency or irregularity in the original decision, but is minded to still find against the applicant, the applicant should be notified of this and given the opportunity to make fresh representatives.

So, was the difference enough to constitute a deficency or irregularity in the original decision, despite the identical finding that it was not settled accommodation?

The Court of Appeal, entirely unsurprisingly, said no. The key question was whether the accommodation was settled. Whether illegal sublet or licence doesn't matter. A deficiency for Reg. 8.2 means something lacking of sufficient importance to the fairness of the procedure, *Hall v. Wandsworth LBC* [2005] 2 All ER 192.

Shala v Birmingham City Council

Wed, 04 Jul 2007 20:54:18 +0000

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How did I miss this one in the Court of Appeal lists? I swear it didn't appear in the Bailii list of recent judgments for 27 June 2007. Shala v Birmingham City Council [2007] EWCA Civ 624

This is a *very* significant decision on Local Authorities' use of medical advice in homeless decisions, particularly review decisions. The actual matter is too reliant on its facts to go into at length here, but the issue at stake was priority by vulnerability, primarily through mental health issues - depression and post-traumatic stress disorder. As anybody in the field knows, these are very difficult cases to challenge, and usually much turns on the reports from GPs and, where possible, specialist psychiatric doctors.

Here a review decision and negative County Court appeal were overturned. The key points were the response to submitted medical reports, and the reliance on the Council's medical advisor in the s.202 review decision.

Significant points to note in the judgment:

The Council's medical advisor was not a psychiatric specialist and lacked any specialist training in the field. Dr Keen is a GP who:

also offers, through a business called NowMedical, medical advice to housing authorities and social providers, a number of whom he lists, as well as to NASS and the Home Office. (Para 18).
Authorities must not presume that in setting a report from a non-specialist against a qualified psychiatric specialist they are comparing like with like, *Khelassi v Brent LBC* [2006] EWCA Civ 1825 (Para 22). Dr Keen's advice was accepted as expert evidence in *Hall v Wandsworth LBC* [2005] HLR 23, however, absent an examination of the applicant, the advice should not be taken as expert evidence of the applicant's condition. (para 22).

If the medical advisor has not examined the applicant, the Authority must take this into account in making its decision. (Para 23) The authority and advisor may need to consider asking the applicant to consent to an examination, or if not, then consider a discussion between advisor and the applicant's doctor(s), with applicant's consent. (Para 23)

The Authority must recognise that the decision as to whether the statutory tests of need are met is theirs, not their medical advisors, and this requires a proper consideration of medical evidence submitted on behalf of the applicant where it differs from that of the medical advisor. (Para 16 & 20)

There is an interesting section on medical reports being directed towards the legal criterea for vulnerability, particularly the *Pereira* test. At para 21:

... Medical and other advisers, while it is not their task to take the local authority's decision for it, are helpful only to the extent that they furnish material within their professional competence which addresses issues which the local authority has to decide. Local authorities are doing applicants, and themselves, a service if they direct medical (and legal) advisers' attention to these issues. But they are not entitled, nor even well advised, to demand that the opinion or advice be couched in terms of their eventual decision. Medical practitioners, on the other hand, need to direct their opinions as nearly as possible to the issue which the recipient has to decide, and may well need to be told by their patients' lawyers what that issue is. There is no single right way of dealing with this, but in our view there is no harm and some good in medical advisers directly addressing, if appropriate in exact terms, those matters within their professional competence which the local authority has to make a decision about, so long as both they and the local authority recognise that it is for the latter to make its own appraisal of every opinion in the light of the available diagnostic and evidential material.
As far as I can see, this suggests that Authorities' medical advisors should not be requested to deliver opinions as verdicts on vulnerability under *Pereira*, while applicant's advisors may need to direct the applicant's doctors to what the issue at stake actually is.

The case also indicates a benchmark for what may constitute vulnerability by reason of depression and post-traumatic stress disorder. The terms used by the applicant's doctors are worth noting.

The judgment is well worth reading in full. These notes are after a quick read-through, but I suspect there is much more to absorb. Well done to the Community Law Partnership (and Counsel E. Fitzpatrick) for pursuing this one. This could be very useful indeed.

[And there is another homeless CoA decision today, a note on Denton v Southwark to come tomorrow]

Be good to your mother

Thu, 05 Jul 2007 18:29:47 +0000

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So, *Denton v London Borough of Southwark* [2007] EWCA Civ 623.

This won't take long, as the case rests almost entirely on its own facts.

Applicant, a 21 year old male, applied as homeless after being thrown out by his mother. First decision, upheld on review, was that he was intentionally homeless because his bad behaviour had led to his mother telling him to go.

The County Court apparently thought a bid of leeway should be given to a 21 year old man living with his mum - some friction and chafing at rules was to be expected, and the decision had erred in not considering the behaviour as part of a history of friction between mother going back to when he was 18 or so. The reviewer had also failed to consider the mother's situation and actions as a cause of his leaving. (The Court heard the argument that the son was entitled, as an independent person, to distance himself from his mother's rules) Decision overturned as *Wednesbury* unreasonable.

The Court of Appeal gave this idea a sound spanking and send it to bed without any supper. The rules set by the mother for living in the home were not excessive or unduly harsh. It would have been reasonable for the applicant to remain in the property if it were not for his behaviour, and the mother was indeed prepared to have him back if he behaved. The Authority's failure to make further detailed enquiries was not unreasonable and did not give a basis for a public law based challenge. And, the Court emphasised, this judgment did not set any general principles for dealing with situations where a young person leaves or has to leave the family home.

Homeless with shared residence order

Thu, 11 Oct 2007 23:18:04 +0000

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[Edit Feb 2008 - Richmond have been given permission to appeal this judgment to the House of Lords. No date yet.]

An interesting situation, if perhaps an increasingly common one, has just been set out in the Court of Appeal case of *Holmes-Moorhouse v London Borough of Richmond-Upon-Thames* [2007] EWCA Civ 970.

The situation is a family break up where, by consent or otherwise, a s.8 Children Act 1989 shared residence order has been made for the children. One parent then applies to the local authority as homeless and claims resident children as priority need.

In this case, the local authority said no priority need for the father as the mother was receiving benefits and had housing for the children. Upheld on review and on County Court Appeal.

In a Judgment that takes a survey of the current situation, the Court of Appeal held that in the case in question, the local authority was wrong in that its decision referred to the children 'staying' with the father and living with the mother. The Court was clear that

A child who is residing with each parent is living with each of them; he is not living with one and staying with the other.
But beyond this, the Court gave guidance on the assessment of homeless applications by those with residence orders.

To note:

Where the shared residence order is contested, the local authority has had the opportunity to make representations on housing issues. It is therefore for the local authority to follow the decision of the Family Court.

Where the shared residence order is made by consent, and the local authority has not had the opportunity to make representations, then

there is every reason that the local authority should consider afresh the reasonableness of an applicant's expectation that a dependent child will reside with the applicant. Furthermore, in considering the reasonableness of that expectation, a local housing authority is not just entitled, but obliged to consider the extent to which the children's needs require the child to live with, as opposed to stay with, the applicant.
The requirement is that the local housing authority be able, carefully, to enquire into and consider the children's needs in assessing the reasonableness of the parents' expectation.

The suggestion, via *R (Bibi) v Camden London Borough Council* [2005] 1 FLR, 413, seems to be that a 50/50 residence order should be sufficient to make the 'staying with'/'living with' difference.

Where the Local Authority, having considered afresh the reasonableness of the applicant' expectation, refuses the housing duty, the applicant should return to the Family Court for a reconsideration of the residence order.

Should the order be confirmed by the Court, one would imagine that a fresh homeless application could be made, this time with the equivalent of a contested order, but the Court doesn't say this.

Homelessness and Ex Parte Injunctions - a warning

Tue, 16 Oct 2007 19:47:07 +0000

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Mr Justice Munby has issued a stern statement on the use and abuse of ex-parte injunction applications to the Administrative Court in *R (Lawer) v Restormel Borough Council* [2007] EWHC 2299 (Admin).

Covering failure to use the Pre-Action Protocol, non-disclosure of material evidence, unexplained delay and requests for unreasonable periods of notice for application for discharge (48 hours, in this case) in draft Orders, the Judgment marks the Admin Court getting distinctly annoyed at what are scathingly described as 'prevailing professional approaches' in both the Family and Administrative Courts.

Overcrowding and homelessness

Mon, 22 Oct 2007 20:23:10 +0000

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Right then, *Harouki v Royal Borough of Kensington & Chelsea* [2007] EWCA Civ 1000.

The scene in a nutshell. A statutorily overcrowded household, in terms of Part 10 of the Housing Act 1985, s.326, which gives rise to a criminal offence under s.327

A homeless application under s.175 "entitled to occupy" and s.175(3) "reasonable to continue to occupy". A negative s.184 decision, and review decision and s.204 appeal decision on the basis that it was reasonable for the appellant to continue to occupy the property.

The whole case turns on the Code of Guidance issued by the Secretary of State in respect of Part VII applications. This guidance states:

"8.26. Section 177(2) provides that, in determining whether it is reasonable for a person to continue to occupy accommodation, housing authorities may have regard to the general housing circumstances prevailing in the housing authority's district.

8.27. This would apply, for example, where it was suggested that an applicant was homeless because of poor physical conditions in his or her

current home. In such cases it would be open to the authority to consider whether the condition of the property was so bad in comparison with other accommodation in the district that it would not be reasonable to expect someone to continue to live there.

8.28. Circumstances where an applicant may be homeless as a result of his or her accommodation being overcrowded should also be considered in relation to general housing circumstances in the district. Statutory overcrowding, within the meaning of Part 10 of the Housing Act 1985, may not by itself be sufficient to determine reasonableness, but it can be a contributory factor if there are other factors which suggest unreasonableness."

So, faced with statutory overcrowding in a household, does the local authority have to accept that the continued, overcrowded, occupation is unreasonable to occupy on the basis that a continuous criminal offence is committed?

Or, following the Guidance - which does not have statutory force - does the local authority have the right to consider local housing conditions in deciding whether continued occupation is reasonable, via s177(2) HA 1996 and the Guidance?

The Court of Appeal decides that the Guidance does, 'surprising though it may be', express the law. At para 20:

There are various ways to test that conclusion. If, as I have indicated, suitability and reasonableness are related concepts, then statutory overcrowding should receive similar treatment whether looking at it for section 175(3) or section 210 purposes. If not, then the ludicrous result is that if statutory overcrowding compels the conclusion that it is not reasonable for the applicant to continue to occupy the accommodation, then there is a duty to find alternative accommodation for her but that accommodation may be suitable even if it is overcrowded. In those circumstances the applicant would be bound to accept overcrowded accommodation and could consequently return to the local housing authority the next day and complain that the property may be suitable for section 210 purposes, but it would not be reasonable under section 175(3) to continue to occupy it. The applicant could once again demand to be rehoused. This could go on forever. That cannot be right. If, therefore, by virtue of the express recognition in section 210 that overcrowding does not necessarily render the accommodation suitable, it must follow if the statute is to be given a coherent and consistent construction that overcrowding does not necessarily prevent it being reasonable for the applicant to continue to occupy the accommodation for section 175(3) purposes.

And therefore, at para 24:

In those circumstances the Housing Review Officer was fully entitled to look at the prevailing circumstances in the borough, including the unfortunate extent of overcrowding in the borough, and, consequently, having properly had regard to the family's personal circumstances and ill health, he was not acting illegally or irrationally in concluding that it was reasonable to require Mrs Harouki and her family to continue to occupy the flat until it was her turn to be rehoused under Part 6. I see no error of law in his decision. Judge Knight QC was correct in his admirable ex tempore judgment to dismiss her appeal. I must now dismiss this appeal also.

For those of us who have looked to statutory overcrowding as a 'reasonable to continue to occupy' issue, this is a serious warning. If local conditions are usually overcrowded, then the Local Authority may well be able to make a negative decision on the basis of HA 1996 s.177(2).

This is not helpful, as, for instance, it means that a local authority in a bad area has a lesser responsibility than one in an area without such a housing problem. If a Local Authority can't offer a better accommodation than the one that the applicant is occupying in terms of overcrowding, then there is no housing duty seems to be the upshot. Hmm. Not good.

"Reasonable to Occupy" - Nipa Begum revisited

Tue, 04 Dec 2007 23:21:12 +0000

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In *Waltham Forest v Maloba* [2007] EWCA Civ 1281, the Court of Appeal has revisited the issue of 'reasonable to occupy' in terms of the homelessness provisions of Housing Act 1996.

Briefly, the facts were that Mr M had lived in the UK since 1989 and acquired British Citizenship in 1997. On a visit to his family in Uganda, he married and had a child. For two years, Mrs M and their daughter lived in an annex to a property in Uganda, which had belonged to his late father but was now occupied by Mr M's brother and one of his sisters. it was considered to be a 'family' property, where any of the family could live. In 2004 Mrs M and their daughter came to join Mr M in the UK. After a few months, it became clear that they would not be able to continue in their rented accommodation. Mr M applied to Waltham Forest as homeless.

The authority decided, and confirmed on review, that Mr M has accommodation that he was entitled to occupy - the property in Uganda - and thatthis property was reasonable for him to occupy. He was therefore not homeless. This despite Mr M reasonably pointing out that he was a UK citizen and his life was in the UK.

The decision was overturned as Wednesbury unreasonable on s.204 appeal. The authority went to the Court of Appeal.

The authority's grounds were

a) that a strict construction of HA 1996 s.175 meant that it was only obliged to consider whether accommodation was available, not whether it was reasonable.

b) if it was obliged to consider reasonableness to occupy, this was only in reference to size and facilities, not location or other factors.

c) Even of this was wrong, all relevant factors were in anyhow considered, so not Wednesbury.

For a) the authority relied on *Nipa Begum v Tower Hamlets London Borough Council* [2000] 1 WLR 306, in particular, Sedley LJ's statement that that s 175(3) stood apart from s 175(1) and (2), and that they could not be read together. Thus the requirement that accomodation was available was distinct from its fitness. The oddness of this distinction was saved in his view by the belief that no responsible local authority would ever contemplate expecting an applicant to act in that way.

Ah, how long ago the happy optimism of 2001 seems.

Auld LJ, in the minority of the final decision, instead said that

"In my view, it is plain that Parliament was not using continued occupation in the sense of continuance of an actual occupation at the time of the application, but of continuance stemming from one of the entitlements to occupy specified in section 175(1)."
thus expressly linking available accomodation with reasonableness of occupation and avoiding the perverse result that a local authority could require someone to return or go to accommodation that was available to them, regardless of whether it would be reasonable for them to occupy it.

Auld's view did not prevail in Begum, although it worth noting that nothing in that case hung on this point, it was purely hypothetical.

In an extended and interestingly purposive reading of the statute, LJ Toulson accepts Auld's view. The argument is that something like it was intended in the statute, via the incorporation of the intial judgment of Hodgson J in *R v Hillingdon London Borough Council, ex parte Puhlhofer* [1986] AC 484 into the terms of the Housing and Planning Act 1986 and thence the Housing Act 1996.

There is no distinction, for the purposes of s.175, between someone who is living in accommodation that is not reasonable for them to occupy, and someone who is not living there but has such accommodation available to them.

Given that it is possible to reach a construction of the terms of the statute that does not have this effect, it is not necessary to reach the conclusions that a strict construction would lead to.

For good measure, reasonableness of occupation is not solely restricted to the physical nature of the accommodation. Reasonableness is a question of fact, and there is no need or basis to set such a limitation on the facts to be considered.

There is also an interesting argument on costs and public funding in a successful appeal (or perhaps a Judicial Review), where the matter has been remitted for a fresh decision and a further appeal (or application for review) might be anticipated from it.

The authority wanted a costs order stayed until the outcome of such (entirely hypothetical) proceedings, so as to enable them to set the costs against a succesful outcome against the publicly funded opponent in that futrue case.

Sigh. If a legal aid lawyer wins a s.204 appeal or on permission or substantive Judicial Review, we get costs at commercial rates, not the legal aid rate. Something like 60 to 110% increase. As the Law Society, as intervener, pointed out, this is a factor in keeping legal aid practices going, doing this kind of work.

Thankfully, the Court of Appeal declined to set a precedent in these matters and allowed the first hearing costs order to stand.

Of orthopaedic footwear and possession orders

Sun, 16 Dec 2007 00:32:00 +0000

NL

Not a particularly significant case, but not one you see every day either. Nuisance by adverts for wigs, orthopaedic footwear, and dating agencies.

Accent Peerless Ltd v Kingsdon & Anor [2007] EWCA Civ 1314 was an appeal of an outright possession order on an assured tenancy. The possession order was made on the basis of Ground 14 Nuisance. The tenants, mother and daughter, both suffered from mental health disorders:

The main symptoms of their disorder were a hypersensitivity to noise, a propensity to exaggerate the effect of noise and other disturbances, agoraphobic tendencies, a tendency to misunderstand and chronic complaining.

So when their new neighbours undertook some apparently fairly extensive but reasonably conducted DIY work, the Kingsdons took action.
From para 5:
i) Between November 2001 and September 2005 they made 36 complaints to the Environmental Health Department. There were also two complaints to the local authority ombudsman.

ii) They made 90 complaints to the Housing Association between September and November 2001. These complaints seem to have been communicated to the Dixons.

iii) They made a number of complaints to the police, prompting several visits by the police to the Dixons. The police seem to have concluded that the Dixons were taking all reasonable steps to be considerate neighbours. In the course of these complaints, the defendants made allegations that Mrs Dixon had been in Brookwood Mental Hospital and that they had been evicted from a previous property for dangerous DIY activities and noise harassment. These allegations were false. Over a period of 12 to 18 months the beat officer for the area, who at one point issued a warning under the Harassment Act, received almost daily faxes from the defendants, though they had dropped off dramatically a short while before the trial.

iv) The defendants procured the sending of unwanted mail shots and other advertising material by apparently filling in coupons with the victim's address. The material which thereby arrived on the Dixons' doormat included advertising for erotic material, an introductory agency, a wigmakers, cosmetic surgery and orthopaedic footwear. The Dixons found this upsetting and depressive.

v) What was described as the "last straw" happened in 2005. One of the defendants made an anonymous telephone call to Mr Dixon's employers saying that he was not off ill because they had seen him working in his garden. At the time Mr Dixon was indeed off work and working in the garden, but it was pursuant to leave which had been agreed with his employer.

vi) One of the defendants wrote to the local MP, in Mrs Dixon's name, about some European food supplement.

The Circuit Judge found that this constituted nuisance for the purposes of Ground 14 and that it was reasonable to make an outright order in view of the likelihood of the nuisance continuing.

The appeal was dismissed on the basis that it was proportionate to make an outright order and the Judge was within his discretion, having heard and considered evidence on a supposed abatement of incidents. The Court of Appeal found that the Judge's decision

falls into the category of decisions with which this court will not interfere absent a manifest error of principle, a failure to take a relevant consideration into account or the taking into account of an irrelevant consideration.
Given the evidence of the appellants' mental health issues, one wonders how strongly a Disability Discrimination defence was run - reason for eviction being related to the disability. However, the County Court Judgment says that in making the order, the Judge was satisfied that these defendants will not be discriminated against under the Disability Discrimination Act.
I would imagine that there could have been a strong counter of justification to a DDA argument. But none of this is raised in the appeal.

Christmas rush

Fri, 21 Dec 2007 23:42:45 +0000

NL

It seems I wasn't the only one frantically getting cases progressed before the holiday break. The Court of Appeal has been churning out judgments at an extraordinary rate.

Amongst them one housing law judgment...

Green & Anor v London Borough of Croydon [2007] EWCA Civ 1367. This was an appeal on a homeless application. Briefly, there had been a somewhat iffy possession order, made where the actual rent due and owing was not clear at all. The Local Authority had even advised the appellants on the iffyness of the claim. However, a ground 8 possession order was made and the Council then returned an intentionally homeless s.184 decision on the subsequent homeless application.

The basis of the appeal was that the Council's inquiries had not gone far enough, or at all, into whether the possession order was soundly based or should have been made at all.

The Court of Appeal held that 'such inquiries as are neccessary' in the terms of s.184, in circumstances such as this where the County Court had made a decision as to what the rent was on the basis of mixed and uncertain evidence, need not take place, although the situation may be different where the County Court decision was 'clearly' wrong. This was not a boundary testing case. Appeal dismissed.

Bad luck to Flack & Co on this one.