Post course resources: Tenancy management – the essential guide for housing officers – England only

Mel Cant

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hqn TRAINING

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R (Uddin) v Southwark LBC [2019] EWHC 180 (Admin) - 18th January 2019 - LAG Mar 19

Mr Uddin was a single man. In May 2018, he was assaulted and sustained a serious brain injury. By October 2018, he was fit for discharge from hospital but had nowhere to go. He presented himself at the council's offices and was offered temporary accommodation at a local hostel. When he visited the hostel, it was in a very poor condition and he recognised another resident there as a person who had assaulted him. He did not take up the hostel place and remained in hospital.

He brought a claim for judicial review in which he sought an interim order for the provision of ordinary housing accommodation with a package of care and support. His treating consultant neurologist wrote that:

'I remain of the view that he does not have the mental capacity to make general decisions regarding discharge destination, because he does not have any insight into his ongoing cognitive impairments. He does not understand that he will need care and support for these after discharge, meaning he does not demonstrate an ability to weigh up information relevant to these decisions; one of the criteria for having capacity to make a decision. However, when presented with a more specific decision, eg, to say yes or no to a placement option that his treating team and family have agreed as suitable, he does demonstrate that capacity to make these more limited and specific decisions. On this basis, I would say Mr Uddin does currently have the capacity to understand the obligations and responsibilities of a tenant to understand and evaluate an offer of accommodation, provided that it is a specific offer.' (see para 8)

Dingemans J declined to make the order sought. He said:

'I am concerned about whether Mr Uddin has capacity to make the application for homelessness in circumstances where [the consultant] has drawn a distinction between evaluating the obligations of a tenancy and evaluating a single offer on the one hand and making a distinction between, for example, hostel accommodation, residential accommodation or ordinary housing accommodation on the other hand. It is not apparent to me from the materials that he does have that capacity and therefore the application cannot be made by him acting alone. In those circumstances I do not propose to make the order.' (para 13).

Teign Housing v Lane [2018] EWHC 40 (QB) - 16 January 2018

Teign Housing provided social housing. It granted an assured tenancy of a flat to Mr Lane, who was a vulnerable person. Later, Teign Housing claimed possession under Housing Act 1988 Schedule 2, Grounds 12 and 14. The particular acts relied on included:

1. Removing fixtures and fittings in the kitchen without consent.
2. Removing a gas flue without consent

3. Excluding contractors from the flat
4. Installing CCTV without permission so that the cameras covered communal areas and unsettled the other tenants
5. Playing loud music so as to cause nuisance and annoyance
6. Behaving aggressively to neighbours
7. Threatening a member of Teign Housing's staff in a telephone conversation; and
8. Leaving an untaxed car blocking access to the communal car park.

Mr Lane defended on the bases that:

1. Breaches of the tenancy agreement had not been proved, in part, because Teign Housing had given permission for works to be carried out, and Mr Lane had not caused nuisance and annoyance
2. It would not be reasonable to make an order for possession; and
3. An order for possession would amount to disability discrimination

A Consultant Psychiatrist, appointed as a single joint expert, produced a report stating that Mr Lane suffered from a paranoid personality disorder, possible adult attention deficit hyperactivity disorder and harmful use of alcohol. The personality disorder was a 'deeply ingrained, pervasive and maladaptive pattern of behaviour. Mr Lane had a pervasive distrust and suspicion of others and their motives' (para 11). It stated that compliance with any Court Order would be difficult for Mr Lane because of his condition.

It was common ground that Mr Lane was disabled within the meaning of the Equality Act 2010.

HHJ Simon Carr dismissed the claim for possession. The Judge found that Mr Lane believed that he had been given permission to install cameras and carry out some works when no permission had been given. He stated 'given Mr Lane's honest believe that it had been authorised, it cannot amount to a relevant breach'.

He found some limited breaches of the tenancy agreement but stated that making 'a possession order would not be reasonable, proportionate or fair'. He did not address the Equality Act 2010 but said that in light of the medical evidence, he would have concluded that a possession order would have amounted to disability discrimination.

Teign Housing appealed.

Dingemans J allowed the appeal. He noted:

- The issue of whether there is a breach of a tenancy agreement does not require personal fault (Kensington & Chelsea RLBC v Simmonds [1997] 29 HLR 507)
- Serious breaches of tenancy agreements need to be marked (West Kent Housing Association v Davies [1999] 31 HLR 415)
- Neighbouring tenants are entitled to live free from the anxiety of a recurrence
- The fact that treatment might improve the position of the tenant is a relevant factor (Croydon LBC v Moody [1998] 31 HLR 738)

- The Trial Judge's duty when considering the issue of reasonableness is 'to take into account all relevant circumstances as they exist at the date of the hearing… In a broad common sense way' (Cummings v Danson [1942] 2 All ER 65 quoted at para 37 of the present Judgment)
- When a tenant has been induced by the landlord's agent to act in a particular way, this is relevant to the issue of reasonableness (Upjohn v Macfarlane [1922] CH 256)
- Reasonableness involves a consideration of the position of both parties.
- On appeal, when considering reasonableness, the question is whether the Judge 'has so plainly gone wrong in law that this Court should interfere, presumably by way of order a new trial' (Cresswell Hodgson [1951] 1 All ER 710 quoted at para 38 of the present judgment).
- Whether or not to suspend an order for possession is an issue that looks to the future. Courts need to look for evidence that the past behaviour will cease (Manchester City Council v Higgins [2005] EWCA Civ 1423; [2006] HLR 14)
- If it is inevitable that a tenant will breach the condition of a suspended order, the Court should not make such an order (Lincoln City Council v Bird [2015] EWHC 843 (QB); [2015] 2 P&CR DG12)
- Tenants need to produce 'cogent' evidence that there is a sound basis for hope for the future, thereby pitching the standard at a realistic level (City West Housing Trust v Massey [2016] EWCA Civ 704)
- Where there are issues of disability discrimination under the Equality Act 2010, Courts should adopt a structured approach and landlords have to show that there is no less drastic means of solving the problem than ordering possession (Akerman-Livingstone v Aster Communities Ltd [2015] UKSC 15; [2015] AC 1399; May 2015 Legal Action 44).

In this case, the Court should consider:

1. Whether Mr Lane could show that he had a mental disability;
2. Whether he could show that there was a sufficient causal link between the mental disability and the conduct on which the decision to evict was based; and
3. If so, whether Teign Housing could show that evicting Mr Lane was a proportionate means of achieving a legitimate aim.

The landlord had to show that there were no less drastic means of achieving its aims and that the effect of eviction on Mr Lane would be outweighed by the benefits to Teign Housing.

Dingemans J stated that the fact that Mr Lane believed that his actions had been authorised did not provide him with a defence to the claims for breach of the tenancy agreement. The concept of 'relevant breach' was not a basis on which the Judge should have rejected Teign Housing's claimed grounds for possession. The Judge was therefore wrong not to have found that Mr Lane had breached the terms of the tenancy agreement by installing CCTV cameras. This amounted to a ground for possession. The Judge had made insufficient findings of fact, either to allow Dingemans J to dismiss the appeal or to make a possession order.

He therefore remitted the action to be retried.

Right to Repair - The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 SI No 133

Defect	Prescribed number of days
Total loss of electrical power	1
Partial loss of electrical power	3
Unsafe power or lighting socket or electrical fitting	1
Total loss of water supply	1
Partial loss of water supply	3
Total or partial loss of gas supply	1
Blocked flue to open fire/boiler	1
Total or partial loss of space or water heating between 31st October and 30th April	1
Total or partial loss of space or water heating between 1st May and 30th October	3
Blocked or leaking foul drain, soil stack or where no other toilet in the property	1
Toilet not flushing where no other toilet	1
Taps can't be turned	3
Blocked sink/basin	3
Water leak	1
Leaking roof	7
Insecure exterior window door/lock	1
Loose/dis-attached banister	3

Rotten timber flooring/stair tread	3
Door entry phone not working	7
Extractor fan in internal kitchen or bathroom not working	7

Sims v Dacorum Borough Council [2014] UKSC 63

Dacorum let a house to Mr Sims and his wife as joint tenants. Initially the tenancy was an introductory tenancy, but it became a secure tenancy.

It was a term of the tenancy that either party could terminate it by giving one month's notice to quit (clause 100) and that in such circumstances Dacorum would decide whether the remaining tenant would be allowed to remain in the property or be provided with alternative accommodation (clause 101).

On the breakup of their marriage, Mrs Sims left the property with their two youngest children and moved into a women's refuge as she had been the victim of domestic violence from Mr Sims. She then validly terminated the joint tenancy by notice to quit served on the Council.

There was accordingly no longer any tenancy in legal existence under which Mr Sims could claim the right to occupy the property as a secure tenant, jointly, solely, or in any other recognised legal capacity (Hammersmith and Fulham LBC v Monk). Dacorum Council sought possession. Deputy District Judge Wood made a possession order.

Mr Sims' appeal to the Court of Appeal was refused and he appealed to the Supreme Court.

The Supreme Court dismissed the appeal. Mr Sims had been deprived of his tenancy (a possession) in accordance with the terms of his tenancy. In such circumstances, any argument that the deprivation of his tenancy amounted to a breach of Article 1 of Protocol 1 was difficult to sustain unless he could show that the authority had operated clause 101 unfairly or irrational, which was also unsustainable: the tenancy had ended because of Mr Sims' perpetrating domestic violence, Mrs Sims had not been pressurised into serving the notice to quit, the property was larger than Mr Sims reasonably required and the district judge had considered the proportionality of Mr Sims' eviction. Nor, for the same reasons, had there been a breach of Article 8. The Court had considered the proportionality of his eviction and, in the circumstances; the only decision available to the judge was that his proportion was proportionate.

Eastleigh BC v Walsh [1985] AC 809

Mr Walsh and his family were offered temporary accommodation in a three-bedroomed house while the council made enquiries about their application for housing under the Housing (Homeless Persons) Act 1977 (now Housing Act 1996 Part VII).

The letter offering them the accommodation referred to a 'tenancy … pending a decision' and they received the Council's standard 'conditions of tenancy'.

Mrs Walsh and the children later left the house and the council then notified Mr Walsh that he had no priority need and required him to leave the house. The Council did not serve a notice to quit complying with the Protection from Eviction Act 1977, but took possession proceedings, contending that he was a licensee and that the licence had been terminated.

If a property notice to quit had been served, Mr Walsh would have had no defence because his occupation would have been excluded from security by Schedule 3 Paragraph 5 of Housing Act 1985.

Mr Walsh defended, contending that he had a tenancy, not a licence, and that the tenancy had not been terminated by notice to quit.

The House of Lords held that Mr Walsh had a tenancy. He had signed the conditions of tenancy and the documents were unambiguous.

Street v Mountford [1985] AC 809

Mr Street was the owner of a house divided up into furnished rooms. Mrs Mountford signed a 'licence agreement' giving her the right to occupy two rooms.

It was conceded by Mr Street that under the agreement, Mrs Mountford was entitled to exclusive possession of those two rooms. The agreement contained ten 'rules' which were to be observed by Mrs Mountford.

No one apart from her was to sleep in the rooms. The owner was entitled to enter the rooms to inspect their condition, to empty meters, to carry out repairs, etc. The owner reserved a right of re-entry and was entitled to terminate the agreement on giving 14 days' notice. The agreement also stated that the occupant understood that she did not have protection from the Rent Act 1977.

The House of Lords held that the agreement created a tenancy, not a licence. In the absence of special circumstances, if it is agreed that an occupant should have exclusive possession for a fixed or periodic term in return for paying rent, a tenancy is created, irrespective of how the parties may describe the arrangement. Lord Templeman stated that the key distinction is between tenants on the one hand and lodgers, who are merely licensees on the other:

'An occupier of residential accommodation at a rent for a term is either a lodger or a tenant. The occupier is a lodger if they landlord provides attendance or services which require the landlord or his servants to exercise un-restricted access to and use of the premises.' ([1985] 2 All ER 289 at 293f)

The fact that the parties describe an agreement as 'a licence' cannot turn a tenancy into a licence:

'If the agreement satisfied all the requirements of a tenancy, then the agreement produced a tenancy and the parties cannot alter the effect of the agreement by insisting that they only created a licence. The manufacture of a five-pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade.' (Ibid at 294h)

Exceptions to the basic rule that the grant of exclusive possession for a term in return for the payment of rent creates a tenancy include:

1. Service occupants. *'Where occupation is necessary for the performance of services, and the occupier is required to reside in the house in order to perform those services, the occupation being strictly ancillary to the performance of the duties which the occupier is to perform, the occupation is that of a servant.'* (Smith v Seghill Overseers (1875) LR 10 QB 422 at 428).
2. Where there is no intention to create legal relations (eg Marcroft Wagons Ltd v Smith and Errington v Errington and Woods; and
3. Other exceptional circumstances which negative the prima facie intention to create a tenancy.

Enfield LBC v Turner [2018] EWHC 1431 (QB) – 25th May 2018

Ms T's father was the secure tenant of a three-bedroomed council house. After his death, her mother succeeded to the tenancy.

When her mother died, Ms T had no succession rights.

Enfield served a notice to quit and initiated a possession claim. Ms T and her son, who had lived with her, had many medical issues.

The next year, Enfield offered them alternative accommodation in a ground floor flat with level access. She refused the offer of new accommodation. A trial took place and a possession order was made. Ms T appealed.

Whipple J dismissed the appeal. The possession order was necessary and proportionate as there were others with greater need for three-bedroom properties. The trial Judge knew that Ms Turner did not want to move and that doctors had said that it would be detrimental to her well-being. The Judge had not misunderstood Thurrock BC v West [2012] EWCA Civ 1435 and Hillingdon LBC v Holley and there had been no defect in her approach. Medical issues coupled with long residence would not defeat a local authority's claim where there was no succession. The judge was also correct to hold that Enfield's interest prevailed and that it had acted within the framework of the Human Rights Act 1998 Schedule 1 Article 8. It was for the local authority to decide, according to policy, how to allocate its housing stock. At the time of Ms Turner's application, there were 1,479 people waiting for three-bedroom properties. Enfield was entitled to say that the house could be allocated to someone with a greater need of it.

Turley v Wandsworth LBC [2017] EWCA Civ 189 – 24/3/17

Mr Doyle was the secure tenant of a Wandsworth Council flat. He and Ms Turley had four children.

They lived in the flat in a relationship akin to marriage from 1995 until 2010 when the relationship broke down and he left the property.

The relationship was rekindled in January 2012 when Mr Doyle returned to the property. However, he died on 17th March, 2012 (days before amendments to the Housing Act 1985 were made by the Localism Act 2011 taking effect).

Wandsworth contended that Ms Turley could not succeed to the tenancy because, inter alia, she had not resided with Mr Doyle at the flat for a period of 12 months immediately prior to his death.

Ms Turley contended that this additional requirement, imposed by s87(b) Housing Act 1985, which would not have applied if she was married or in a civil partnership (or if the tenancy had been granted to Mr Doyle after 1st April, 2012), was unlawful as it amounted to unjustified discrimination under Articles 8 and 14 of Schedule 1 Human Rights Act 1998.

The Judge dismissed Ms Turley's claim for judicial review.

The Court of Appeal dismissed Ms Turley's appeal.

Local Authority secure tenancies are a valuable and limited resource. It would not be fair to grant succession rights to family members whose relevant relationship with the tenant was essentially transient.

The purpose of imposing the 12 month condition was that a reasonably long period of living together might be taken to demonstrate an element of permanence and constancy in the relevant relationship. That aim was legitimate.

It was impossible to say that the imposition of the 12 month condition was manifestly without reasonable foundation as a criterion for demonstrating the necessary degree of permanence and constancy. The Judge at first instance had been right to find that even if the situations of common law spouses and married spouses were analogous for the purposes of Article 14, the difference in treatment between them is justified.

Havering LBC v Dove [2017] EWCA Civ 156 – 22/3/17

The defendants were twin sisters and were secure tenants of a flat.

Both spent several days each week with long term partners who lived elsewhere.

The Council carried out an investigate and produced a report stating that the property was not normally occupied by either sister. On the basis of the report, housing benefit and council tax benefit were withdrawn from both of them.

Havering served a notice to quit, arguing that the tenancy was no longer secure and, in the alternative, a notice seeking possession relying on rent arrears.

In the subsequent possession claim, the Judge refused an application for an adjournment to obtain legal aid and made a possession order. He held that the doctrine of issue estoppel determined the question whether the property was their only or principal home, because it was difficult to conceive of a situation where the test for housing benefit would produce a different outcome from the only or principal home test.

He also held that even if he was wrong on the estoppel issue, the property was not in fact the only or principal home of either sister, there was no way they would be able to pay their rental arrears. It was reasonable to make an Order for Possession; and neither of them could resist the order on the basis of Article 8 in the light of their personal circumstances.

The sisters were granted permission to appeal.

The Court of Appeal dismissed the appeal. It rejected a procedural ground of appeal based on the Judge's refusal to adjourn. In addition to the general undesirability of adjourning a trial, there were a number of factors specific to this case that mitigated against an adjournment.

The application was made very late, the cause of the difficulty was Ms Dove's legal representative's tardiness in apply for an extension of legal aid. The trial date had already been adjourned once before; rent at the rule rate had not been paid for many years.

There was no realistic prospect that the sisters could pay off the arrears or even pay the current rent. There was no realistic prospect that they could pay the costs thrown away by an adjournment. An adjournment would have caused disruption and inconvenience to other court users.

There was no certainty that an adjournment would serve any useful purpose.

What weight to give to these factors was essentially a matter for the judge.

The Court of Appeal should not interfere with case management decisions of this kind unless compelled to do so.

Turning to the substantive ground of appeal, Lewison LJ noted that there are two parts to the question of what amounts to occupation of a dwelling as an only or principal home, namely:

(a) Does the person in question occupy the dwelling as a home? And
(b) If so, does s/he occupy it as his/her only or principal home?

The Court of Appeal was not required to resolve the question of whether the decision of the FTT created an issue estoppel between Havering and the sisters because the judge heard the evidence and made his own findings of fact, and came to the same conclusion as the FTT.

The Judge's findings of fact were that neither of the sisters was occupying that flat as her principal home. He was entitled to reach that conclusion. Neither therefore was a secure tenant. Havering were entitled to possession without the need to prove a statutory ground.

Forward v Aldwyck Housing Group [2019] EWHC 24 (QB) – 11 January 2019

Mr F was an assured tenant. Aldwyck brought a claim for possession after a Closure Order had been obtained by the Police (but they did not rely on HA 1988 Sch 2 Ground 7A – the mandatory ground for possession).

Aldwyck claimed that he used, and permitted others to use various Class A drugs in his flat and that this had resulted in related nuisance and ASB. Once such incident involved a man being hit with a baseball bat, by another visitor in the flat.

It was the Police's opinion that Mr F was vulnerable and that, while he used drugs himself, his flat had been taken over by drug dealers.

By the date of trial, Mr F had been referred to the CMHT (but had not yet been seen by them) and it was asserted on his behalf, although not supported by medical evidence, that his mental ill health had had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities: in this case refusing admission to drug users, controlling the behaviour of his visitors and safely using his home.

It was common ground at trial that Aldwyck had failed to have regard to the PSED (s149 Equality Act 2010). The trial judge decided that the failure was immaterial to the question of whether it was reasonable to make a possession order. Mr F appealed.

The appeal was dismissed.

Mr F had failed to adduce any evidence at trial to support his assertion that the drug use, nuisance and ASB had been caused by his mental health. Although the PSED assessment before trial had been inadequate, this did not mean the defence was bound to succeed. The trial judge had been entitled to rely on a substantial body of other evidence that suggested Mr F had been complicit in the drug use at the flat. In the circumstances, the trial judge had been entitled to find that the only reasonable way of alleviating the nuisance was to evict Mr F.

Accordingly, there was no evidence to suggest that, had an adequate equality assessment been carried out before trial, it would have been possible for an alternative conclusion to have been reached. Therefore, while the trial judge ought to have recognised that there had been a failure to comply with s149 Equality Act 2010 this did not undermine her decision.

Powell v Dacorum Borough Council [2019] EWCA Civ 23

Mr Powell was a tenant of Dacorum Borough Council ('the Council'). In November, 2014 the Council issued possession proceedings against him because of rent arrears and because of a criminal conviction in September 2014 for possession of cannabis.

Mr Powell filed a defence to the possession claim, arguing that the making of a possession order would not be reasonable and would violate inter alia Mr Powell's Article 8 ECHR right to respect for his home and private and family life. In his defence, Mr Powell raised various mental and physical health issues.

On 23rd October, 2015, the County Court made a possession order suspended on terms that Mr Powell comply with the terms of his tenancy agreement in the future.

In late 2015, it was suspected that Mr Powell was dealing drugs from the property. In January 2016, the property was raided by police and various drugs paraphernalia were found; on 25th January 2016 the Magistrates' Court made a Closure Order, which was ultimately extended to expire in July 2016.

Mr Powell's application: The Council applied for an eviction date in order to enforce the possession order. Before doing so, the Council sought to make enquiries of Mr Powell and of various support services without success.

Mr Powell applied to suspend the warrant, again, raising various health issues. After various adjournments, Mr Powell's application was concluded on 21 March 2017 and was dismissed in a Judgment delivered on 13 June, 2017.

Just days before the trial of Mr Powell's application began, Mr Powell's solicitors had been provided with a letter from a doctor setting out various medical circumstances. Following receipt of that letter, and before the trial, the Council carried out a proportionality assessment which expressly made reference to Section 149 of Equality Act 2010 – the Public Sector Equality Duty ('PSED').

In his Judgment, the Deputy District Judge found that Mr Powell had breached the suspended possession order by dealing drugs. He found that there was a real risk that such behaviour would resume if the warrant were suspended. He held that even if the Council had breached the PSED, any such breach would have been remedied by the proportionality assessment which the Council later carried out once it had received a letter from Mr Powell's doctor.

Appeal to the Circuit Judge: On appeal, the Circuit Judge held that the Council had not breached the PSED at the stage of applying for a warrant for possession because the extent of Mr Powell's mental health problems did not become known until later one when Mr Powell's doctor sent a letter reciting them.

Like the Deputy District Judge, the Circuit Judge found that any breach of the PSED would, in any event, have been remedied after the event by the proportionality assessment which the Council had carried out a few days before the trial and which demonstrated that earlier compliance with the PSED would not have resulted in any different decision by the Council as regards whether to apply for a warrant for possession.

Appeal to the Court of Appeal: Before the Court of Appeal, Counsel for Mr Powell drew attention to the transcript of the trial before the Deputy District Judge. It was argued that that transcript showed that under cross examination, the Council's officer had had some difficulty answering questions about the PSED as a legal concept. It was therefore argued that the Council's officer had had no understanding of the requirements of the PSED and therefore that the Council could not be said to have complied with the PSED.
The Council argued that before applying for a warrant, its officer had sought to make enquiries of Mr Powell and various support services but had been met with a lack of engagement. It was argued that the Council had therefore been entitled to proceed on the assumption that there had been no change in Mr Powell's circumstances.

The Council argued that, on the basis that there had been no change of circumstances which it could have been expected to know about, Mr Powell was not entitled to raise on a warrant suspension an issue of compliance with the PSED when that issue could be taken to have been satisfied by the Council by the making of a possession order by the County Court (by analogy with the decision in Paragon Asra Housing Ltd v Neville [2018] EWCA Civ 1712, in which it had been held that, absent a change of circumstances, a tenant could not raise on a warrant suspension an argument about proportionality under the Equality Act 2010 when the Court considered that issue already when making a possession order).

The Court of Appeal rehearsed the summary of the law on the PSED contained in paragraph 26 of the Court's decision in Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345. The Court went on to stress that each Judgment on the PSED must be seen in its own context and such judgments should not be read and applied as if they were statutes (a point stressed in Haque v Hackney LBC [2017] EWCA Civ 4).

The Court of Appeal held that the Council had not breached the PSED in seeking to execute the possession order: the Council had sought to make enquiries of Mr Powell and his support services before applying for a warrant but had been met with a lack of engagement; furthermore, the Court held that even if the Council's officer had been unaware of the terms of Section 149 of the Equality Act 2010 (the PSED), she had nevertheless conscientiously considered Mr Powell's circumstances in a way which complied with the PSED; moreover, the Court of Appeal held that if the Council had breached the PSED when applying for a warrant, any such breach would have been remedied by the proportionality assessment which was later carried out; finally, the Court of Appeal held that the decision in Paragon Asra Housing v Neville applied by analogy, meaning that a tenant could not raise on a warrant suspension application the PSED when the County Court could be taken to have been satisfied, when making the underlying possession order, that the PSED had been complied with.
In all circumstances, the Court of Appeal dismissed Mr Powell's appeal.

Places for People Homes Ltd v Sharples; A2 Dominion Homes Ltd v Godfrey [2011] EWCA Civ 813

Ms Sharples was an assured tenant. Her landlord sought possession on the ground of rent arrears. Before the hearing of the claim, Ms Sharples was made bankrupt.

A District Judge refused to order payment of the rent arrears since they were provable in the bankruptcy, but he rejected Ms Sharples' argument that he was precluded from making a possession order by s285(3)(a) Insolvency Act 1986, which provides that after the making of a bankruptcy order no creditor should 'have any remedy against the property … of the bankrupt in respect of that debt'. Ms Sharples' appeal to HHJ Tetlow was dismissed. She brought a second appeal to the Court of Appeal.

The Court of Appeal dismissed that appeal. The grant of a tenancy created a property interest which was an incumbrance on the landlord's title. An order for possession was a remedy which restored the landlord's full proprietary rights in respect of property. The failure to pay rent was a breach of a contractual obligation. Neither forfeiture, a possession order, recovery of possession by the landlord, nor a bankruptcy order, eliminated the personal indebtedness constituted by rent arrears. It followed as a matter of general principle that an order for possession of property, whether let under an ordinary contractual tenancy or a secure or an assured tenancy, was not a remedy 'in respect of' the debt represented by the rent arrears within s285(3)(a). It made no difference whether a possession order was made before or after bankruptcy. Section 285(3)(a) did not preclude the making of a possession order on the ground of rent arrears. In this connection, there was no difference between an outright possession order and a suspended possession order. However, in Mr Godfrey's case, the existence of a debt relief order made it unreasonable for the court to make a possession order condition on the repayment of arrears. His appeal was allowed to the extent of varying the order to exclude payment of the arrears.

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