

Legal Update

Bethan Gladwyn



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- A. Lewisham – what does it really mean?**

- B. Belongings left in the property at end of tenancy**

A. Lewisham

Do I still need a possession order?

- S3 Protection from Eviction Act (PEA) 1977 – “let as a dwelling”
- Relationship between PEA and Housing Act 1996 i.e. homeless duties



A. Lewisham

- Background

- The interim housing duties

- S188 – interim duty to house in cases of apparent priority need pending full decision

- S190 – duty to secure accommodation for persons eligible and in priority need but intentionally homeless

- S200 – duty to house pending referral

- S204(4) LA may secure accommodation pending appeal to county court



A. Lewisham

Background

- Housing Act 1985 schedule 4 – not a secure tenancy
- S209 Housing Act 1996 – tenancy granted by a private landlord cannot be assured until 12 months after decision on homelessness made
- PEA – basic level of protection
- s3A – “excluded tenancies and licences”
- Temporary housing of the homeless not included in s3A – omission or oversight?



A. Lewisham

- Background

- Previous cases considered

- *Mohammed v Manek and Royal Borough of Kensington & Chelsea (1995) 27 HLR 439*

- *Denousse v Newham LBC (2006) EWCA Civ 547*

- *Patel v Priabakaran (2006)*



A. Lewisham

- The facts of CN and ZH
 - 2 families
 - Both housed under s188
 - Both given licences
 - LA found both families intentionally homeless and moved to evict without a court order



A. Lewisham

- The facts of CN and ZH

- CN's parents evicted for rent arrears – sought assistance from Lewisham

- ZH's mother gave up an assured tenancy to stay with relatives in London, where ZH was born. Upon leaving that home sought assistance from Newham

- Both families sought Judicial Review of the Council's decision to evict without a court order

- The Supreme Court heard both cases together



A. Lewisham

The Arguments

- The LAs argued that to serve a 28 day notice and seek a court order would seriously “clog” property available
- Parliament’s intention could not have been to allow those temporarily housed an additional period of occupation whilst a court order was sought



A. Lewisham

•The Arguments

- The LAs argued that councils could be trusted to act responsibly
- The occupier has other safeguards e.g. the right to review under s202 and judicial review
- The occupiers argued Human Rights law required there to be a proportionality assessment of decision to evict in light of **Pinnock** and **Powell**
- Why was temporary housing not an “exclusion” in s3A?



A. Lewisham

- The conclusions

- The Supreme Court identified 2 questions

- (1) does PEA apply to accommodation provided in these circumstances?

- (2) would an eviction without a court order breach the occupants' Article 8 rights?



A. Lewisham

- Issue (1), majority 4 to 2 held that:
- The accommodation was not “a dwelling”
 - (a) as it is provided on a short term basis
 - (b) the licences were day to day or nightly
 - (c) to impose a duty to serve a minimum of 28 days notice and secure a court order would significantly hamper LAs in exercising their functions



A. Lewisham

- In relation to the human rights question there was no defence – the need to make accommodation available for other applicants was a proportionate aim and necessary
- Anyone housed under s188, s204 or any other interim/temporary provisions can be evicted without a court order



A. Lewisham

- What does this mean for you?

- Advantages**

- Flexibility
- Saving in cost
- Properties available for homeless applicants

- Disadvantages**

- Risk of challenge via Judicial Review
- Practicalities/risks of securing an eviction without the court bailiff



A. Lewisham

•Some things to consider

- Make it clear on all paperwork
- Review your tenancy/licence
- Make sure you only do it for s188/190 applicants
- Still must comply with whatever the agreement says about notice
- Beware those who have been in occupation longer than usual
- What if someone physically resists an eviction – damage to property/public order/health and safety risk to staff
- If you anticipate difficulties court order is advisable



B. Belongings

- **What not to do:**

- AA v Southwark [2014] EWHC 500 (QB)

- **What may be done:**

- Paula Campbell v Redstone Mortgages [2014] EWHC 3081
- Da-Rocha-Afodu & Anor v Mortgage Express and Anor (2014)



B. Belongings

- What are a landlord's responsibilities:
 - Involuntary bailee
 - Duty to do what is "right and reasonable"
 - Must do whatever is in your policy
 - Keep the items reasonably secure
 - Do what is reasonable to return them to owner
 - Not necessarily to store



B. Belongings

- What is Right and Reasonable will depend on:
 - Nature and value of the items
 - Circumstances of T's departure
 - Warnings/notice given to T
 - Tenant who is vulnerable/young
 - Indications from T as to intentions
 - Terms of Tenancy and Policy
 - Hazardous or perishable items – dispose of
 - Animals



B. Belongings

- Can you sell?
 - Torts (Interference with Goods) Act 1977
 - Local Government (Miscellaneous Provisions) Act 1982
 - Responsibilities to get best price
 - Account for balance



B. Belongings

•Your Tenancy and Policy

- Give staff clear guidance without being inflexible
- Strike the right balance
- Set out investigations required
- Check whether you are using an ex-LA policy if you are a stock transfer association
- Storage?
- Make sure tenancy contains clear information for tenant
- Ensure letters/notification to tenant requiring them to clear property
- Have a proforma for inventory

