

A hand holding a pen over a document, with a large stylized letter 'P' in the background.

Housing Law Update

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21 February 2021

It has been a funny old year...

AnthonyGold

A lot of law

Not much case law

Coronavirus changes to notices seeking possession

Coronavirus restrictions on eviction

Some possession and more homelessness cases.

*Notices seeking possession March
to August 2020*

It is all a bit of a mess...

For the period 26 March to 28 August 2020, all Notices Seeking Possession required 3 months notice. This also covered Rent Act Notices to Quit.

It did not include licenses, contractual tenancies or lodgers, which remained as before.

*Notices seeking possession –
March to August 2020*

For section 21 notices, any possession proceedings had to be begun within 6 months of service of the notice (even if those proceedings would then immediately have been subject to the general stay).

The statutory forms were, eventually, updated to reflect this.

*Notice Seeking Possession – from
28 August 2020 to 31 March 2021*

For Notices Seeking Possession served on or after 29 August 2020, the general rule became that 6 months notice was required.

However, there are exceptions:

Rent Act 1977 and Protected Tenancies

Case 2, where rent arrears are more than 6 months – notice period of 4 weeks, whether or not any other cases apply.

Case 10A (no right to rent) – notice period of 3 months

*Notice Seeking Possession – from
28 August 2020 to 31 March 2021*

Housing Act 1985 Secure tenancies

Ground 1, where rent arrears are at least 6 months, and no other ground is specified (save 2ZA, 2A or 5) – notice period of 4 weeks

Ground 2 (nuisance/annoyance/illegal purposes/indictable offence in locality) – no notice period.

Grounds 2ZA (indictable offence at riot), 2A (Domestic violence and non-perpetrator partner has left) and ground 5 (false statement in obtaining tenancy) – notice period of 4 weeks, so long as no other ground (except ground 1) is specified.

Every other ground, and for flexible tenancies – 6 months notice.

*Notice Seeking Possession – from
28 August 2020 to 31 March 2021*

Housing Act 1988 – Assured and Assured shorthold tenancies.

Section 21 – 6 months notice in all cases. The period in which possession proceedings may be brought on a s.21 notice has been extended from 6 months from date of service to 10 months from date of service.

Section 8 grounds.

Ground 8, 10 or 11 where rent arrears are less than 6 months at the date service of notice – 6 months notice.

Grounds 8, 10 & 11, where no other ground is specified in the notice, and rent arrears at the time of service of the notice are not less than 6 months – 4 weeks notice.

Ground 7 (after death of tenant) and/or 7B (notice of no right to rent), where no other notice is specified – 3 months notice.

(There's more)

*Notice Seeking Possession – from
28 August 2020 to 31 March 2021*

Housing Act 1988 – Assured and Assured shorthold tenancies.

Section 8 Grounds contd...

Ground 7A (offence in locality, closure order etc.) – 4 weeks notice for weekly tenancy or one month for monthly tenancy.

Ground 14 (nuisance/annoyance/illegal purpose/indictable offence in locality) – no notice period

Grounds 14A (domestic violence and non perpetrator partner has left), 14ZA (indictable offence in riot) or 17 (tenancy granted on false representation) are specified in the notice, but no other grounds – two weeks notice

Introductory and Demoted tenancies

Notice of proceedings on ASB reason (whether or not other reasons) – notice of 4 weeks

*Notices Seeking Possession – from
28 August 2020 to 31 March 2021*

There is again no provision for licenses or contractual tenancies.

After 31 March 2021, unless there is further legislation, all notice periods revert to the pre-26 March 2020 periods.

Initially (and probably unlawfully) from 21 August 2020 in tier 2 and tier 3 areas (remember those?)

Then from 5 November 2020, national in England and Wales, with ASB and trespasser exceptions (and again probably unlawfully).

Statutory basis from 17 November 2020, with ASB and trespasser exceptions, and exception for 'substantial rent arrears' (being 9 months arrears, all predating 23 March 2020, at date of possession order.) This applied until 11 January 2020. And then...

The eviction ban was extended from 11 January to 21 February 2021, with a change to the ‘substantial rent arrears’ provision to be ‘6 months arrears’. There was no requirement that this was at the date of the possession order, and no requirement that the arrears pre-dated 23 March 2020, but the possession order has to have been made on rent arrears grounds.

This formulation was extended on 19 February 2021 (yes, the Friday afternoon), to apply to 31 March 2021.

Unsurprisingly, little case law in this area in the last year, but...

The Master, Wardens and Assistants of the Guild Fraternity of the Brotherhood of the Most Glorious and Undivided Trinity and St Clement in the Parish of Deptford Strond, commonly called the Corporation of the Trinity House of Deptford Strond v (1) Prescott (2) Byrne (2021) EWHC 283 (Ch)

A challenge to the ‘substantial rent arrears’ exception to the eviction ban being restricted to possession orders made on rent arrears grounds.

A possession claim on an assured shorthold tenancy. Claim brought under section 21, but section 8 notice also served. At possession hearing, landlord as not given permission to amend to seek possession on grounds 8, 10 and 11. Possession order made on section 21, but also money judgment made on arrears of £28,000 (in January 2020). Then caught by possession stay and eviction ban.

Landlord applied for a declaration that the eviction ban breached landlord's human rights – Article 1 Protocol 1 – and had to be read as if arrears exception (£70,000 arrears by this point) applied regardless of ground possession order made on.

This was refused.

The interference with A1 P1 rights was justified and proportionate.

There was a distinction between a case where the *reason*, as determined by the court, for the possession order was the arrears and a case under s.21. The latter simply reflected the fact that the landlord wanted to recover possession.

Croydon London Borough Council v Kalonga [2021] EWCA Civ 77

Court of Appeal upheld first instance decision that, in order to terminate a flexible tenancy during the fixed term, both a notice seeking possession and forfeiture were required. This meant that the tenancy agreement had to contain a forfeiture clause for the notice to quit to have effect.

Croydon's flexible tenancy agreement did not contain a forfeiture clause, so the tenancy was not ended by Croydon's notice.

Public Sector Equality Duty

Forward v Aldwyck Housing Group Ltd [2020] 1 WLR 584

Defence of breach of PSED will not succeed where “highly likely outcome would not have been substantially different if no breach.

Taylor v Slough BC [2020] EWHC 3520 (Ch)

Breach of PSED can be cured by subsequent compliance at any later stage in possession proceedings (pre possession order)

AB v London Borough of Barnet. County Court at Central London,
1 October 2020

The Council's decision that an offer of accommodation in West Yorkshire in discharge of duty was suitable was quashed. The council had not given sufficient weight to the applicant's medical evidence and, on the Council's s.11 Children Act duty:

there is nothing within the Review Decision letter which indicates that the children's welfare was considered as a primary consideration – in fact, the Respondent's argued position suggests that it was considered along with many other considerations. That, in my view [...] is not correct.

Khayat v Westminster City Council. County Court at Central London. 1 October 2020

The Council's decision that the applicant was not vulnerable was quashed.

The correct comparator for the Hotak test of vulnerability was not 'an ordinary robust and healthy person', but 'the ordinary person if made homeless'.

The original decision was deficient because the Council failed to make any inquiry of the appellant's care co-ordinator or GP as to her ability to comply with her medication regime or engage with counselling if without accommodation.

The review officer, who had three new and key pieces of evidence on the appellant's medical conditions, should have so found.

In addition "the emergence of the Covid-19 virus with its grave implications for the population constituted a matter that had not been previously at the original decision stage."

Merritt v Thurrock Council & Anor (2021) EW Misc 2 (CC)

The applicant had re-entered accommodation which had been provided under s.188, then s.193, then s.188(3) on review following a discharge of duty by the Council for refusing a suitable offer. The locks had been changed but she got in by the back door.

The Council and the housing provider sought an injunction to remove Ms M and she sought an injunction to stop removal.

The Circuit Judge held s.188(3) accommodation did not require a possession order, as it was effectively the same as s.188(1) accommodation in *R (N) v Lewisham LBC, R (H) v Newham LBC* [2014] UKSC 62 – not let as a dwelling

Bullale v City of Westminster Council [2020] EWCA Civ 1587

Intervening settled accommodation – Ms B had had duty discharged by Westminster for refusal of suitable offer of accommodation. Ms B then obtained PRS accommodation in 2016. This was overcrowded from the start. On receiving a section 21 notice in 2018, Ms B applied again. Westminster said intervening accommodation was not ‘settled’ as overcrowded throughout.

Court of Appeal held:

It was a commercial arrangement, not entered to allow Ms B to make a further application.

Council had not addressed why overcrowding was relevant to whether accommodation was settled or not.

Accommodation was best that Ms B could find for herself.

On *Doka v LB Southwark*, the ‘more precarious than previously enjoyed’ reference should effectively be ignored as not binding.

London Borough of Bromley v Broderick (2020) EWCA Civ 152

Suitability of accommodation should be considered as at the date of the council's decision on suitability

Whether the Council may have been able to find a different property during the review period was not a factor for the review decision, unless an exceptional case.

R(Minott) v Cambridge City Council [2021] EWHC 211 (Admin)

Mr M had applied to Cambridge as homeless. The application was referred to Sandwell MBC under s.198/199 Housing Act 1996 on the basis that Mr M had a local connection to Sandwell, but not to Cambridge. Sandwell accepted that referral. Cambridge terminated Mr M's temporary accommodation.

Mr M stayed, and opposed attempted lock changes.

Mr M then made a second application to Cambridge, on the basis that he now had a local connection having been resident for over 6 months. Cambridge said there were no changed circumstances.

High Court held Mr M's actions were tantamount to a manipulation of the homeless regime, the unlawful occupation did not establish residence.

Stanley v Welwyn Hatfield Borough Council (2020) EWCA Civ 1458


Late reviews...

Court of Appeal held that emails agreeing an unspecified extension of time on a s.202 review meant an appeal against the original s.184 decision on the basis that review was out of time must be dismissed.

Further – a late review decision is not a nullity, so where a review is out of time (with no agreed extension), the applicant can bring a s.204 appeal against the original s.184 decision. But, if a review decision is subsequently provided, even after that appeal has been lodged, it is a valid decision and will require a second s.204 appeal, albeit that the appeals would be treated as a composite case.

McMahon v Watford Borough Council [2020] EWCA Civ 497

No requirement to make express findings in s.184 assessment of vulnerability on applicant's disability or effect of the PSED. What matters is substance not form and significant overlap between Housing Act 1996 assessment duty and PSED.



Giles Peaker
Accurate as of
21/02/2021