

Social landlord is public body

Regina (Weaver) v London and Quadrant Housing Trust in the Queen's Bench Divisional Court

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Regina (Weaver) v London and Quadrant Housing Trust

Before Lord Justice Richards and Mrs Justice Swift

Judgment June 26, 2008

The management and allocation of housing stock by a registered social landlord was a function of a public nature, so that it was amenable to judicial review and regarded as a public authority for the purposes of the Human Rights Act 1998.

The Queen's Bench Divisional Court so held in a reserved judgment dismissing in part the application by the claimant, Susan Weaver, for judicial review of the decision of the London and Quadrant Housing Trust, a registered social landlord under section 1 of the Housing Act 1996, of March 27, 2007, to seek an order for possession against her on the ground that she was at least eight weeks in arrears with her rent.

The claimant, an assured tenant, contended that the trust was in breach of a legitimate expectation in failing to pursue all reasonable alternatives before resorting to a mandatory ground for possession and that the decision was in breach of, inter alia, article 8 of the European Convention on Human Rights, guaranteeing respect for home life.

Mr Richard Drabble QC and Mr Matthew Hutchings for Ms Weaver; Mr Andrew Arden QC and Mr Christopher Baker for the trust.

LORD JUSTICE RICHARDS said that the trust was regulated under the 1996 Act by the Housing Corporation, an executive non-departmental public body, responsible to the Secretary of State for Communities and Local Government and having a range of functions designed principally to fund the development of affordable housing in England and to regulate the registered social landlord sector.

There were factors which pushed the case further towards the public function side of the line than in *YL v Birmingham City Council* (The Times June 21, 2007; [2008] AC 95).

The management and allocation of housing stock was not in itself an inherently governmental activity. Although the trust was constituted and governed by its own rules, owned and managed housing stock and entered into private law contracts with tenants, the nature of its activities and the context within which it operated was a very different situation from an ordinary commercial business.

The social rented housing sector was permeated by state control and influence and was one in which registered social landlords could be said to take the place of local authorities. Of particular importance was the nature and extent of public subsidy involved. That the trust's business was heavily subsidised by the state was attributable to the role it played in the implementation of Government policy.

Another relevant feature was the voluntary transfer of housing stock to registered social landlords from the public sector. The duty of co-operation with local authorities under s 170 of the 1996 Act, as amended by paragraph 5 of Schedule 1 to the Homelessness Act 2002, was also of significance.

The trust was for relevant purposes a public authority within s 6(3)(b) of the 1998 Act. In so far as a function of the trust was a public function which made it a public authority for the purposes of the 1998 Act then it should be equally amenable to judicial review on conventional public law grounds in respect of its performance of that function.

On the facts of the case the claimed legitimate expectation was too tenuous and general in character to be enforceable in public law and there was in any event no breach of it. In view of the other conclusions reached, the Convention issues necessarily fell away.

Mrs Justice Swift agreed.

R (Weaver) v London & Quadrant Housing Trust (Equality & Human Rights Commission intervening) **[2009] EWCA Civ 587; [2009] WLR (D) 202**

CA: Rix LJ, Lord Collins of Mapesbury, Elias LJ: 18 June 2009

On the facts of the particular case, a registered social landlord was a hybrid public authority and the act of terminating the tenancy of its assured tenant was not a private act and was susceptible to judicial review.

The Court of Appeal so held (Rix LJ dissenting), dismissing an appeal by the London & Quadrant Housing Trust, a registered social landlord, from a declaration of Richards LJ and Swift J in the Queen's Bench Divisional Court in judicial review proceedings brought by the trust's tenant, Susan Weaver, that the trust's management and allocation of housing stock, including decisions concerning the termination of a tenancy, was a function of a public nature. The effect of the Divisional Court's decision was to make the trust a public authority in respect of the management and allocation of housing stock for the purpose of s 6(3)(b) of the Human Rights Act 1998, so that this aspect of the trust's activity was amenable to judicial review on conventional public law grounds.

ELIAS LJ said that Mrs Weaver was an assured tenant, served with an order for possession for rent arrears. She had challenged the order on the basis that the trust has acted in breach of a legitimate expectation arising out of guidance issued by the Housing Corporation. She also claimed that eviction would interfere with her rights under art 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Those challenges were available only if the trust, in the exercise of its eviction powers, was a public body. The Divisional Court found that there had been no legitimate expectation created and the case failed on the facts.

The court had determined the wider question raising the public law status of the trust, though it was not strictly necessary to do so. His Lordship referred to *YL v Birmingham City Council* [2008] 1 AC 95 and *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2004] 1 AC 546 and concluded that the source of the trust's power would be a relevant factor in determining whether its act of eviction was or was not in the nature of a private act. But that would not be decisive, since the nature of the activities at issue was also important.

The character of an act was likely to take its colour from the character of the function of which it formed part. The trust was significantly reliant on public finance and operated in close harmony with local government. The provision of social housing could properly be regarded as a governmental function. The trust was acting in the public interest and had charitable objectives, so it was outside

the traditional area of commercial activity. It was subject to regulations designed to render its activities more transparent and ensure proper standards in the public interest. Cumulatively, those factors established sufficient public flavour to make the trust a hybrid authority. The act of termination of the tenancy was part and parcel of determining who should be allowed to take advantage of a public benefit. If the fact that the act involved the exercise of private law rights made it a private act, the protection offered by Parliament to the potential victims of hybrid authorities would be undermined.

LORD COLLINS OF MAPESBURY concurred and RIX LJ delivered a dissenting judgment.

Appearances: Andrew Arden QC and Christopher Baker (instructed by Devonshires) for the housing trust; Richard Drabble QC and Matthew Hutchings (instructed by Brian McKenna & Co) for the tenant; Jan Luba QC (instructed by Louise Curtis, Equality & Human Rights Commission) for the intervener.