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E-Flash

The Licensees of Ashley Community Housing v Bristol City Council (CH/127/2016 and 53 others)

Upper Tribunal (Administrative Appeals Chamber)
Judge Rowland
8 March 2019

The Upper Tribunal has held that the FTT was wrong to strike out a series of housing benefit appeals on the basis of suspicions by the local housing benefit authority as to the validity of the appeals and of the appointment by the appellants of a representative.

Jonathan Manning and **Clara Zang** of 4-5 Gray's Inn Square appeared for the Appellants.

Background

Ashley Community Housing (“ACH”) was an organisation which provided supported housing under licences to vulnerable people, who were mainly Somalian refugees, on a not-for-profit basis. The Licensees claimed a higher rate of housing benefit from the authority under the “exempt” accommodation rules pursuant to paragraph 4 of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (SI 2006/217), on the basis that their accommodation was “provided by a...voluntary organisation where that body or person acting on its behalf also provides the claimant with care, support or supervision”.

On 19 September 2011, the Council informed ACH that the Licensees were no longer to be treated as occupying exempt accommodation and would therefore only receive housing benefit at the local housing allowance rate. The Licensees appealed to the Council against this decision in three batches: October 2011, April 2012, and February 2013. In March 2012, ACH arranged for a representative who was willing to represent the licensees in their appeals.

The representative provided appointment forms to be completed and signed by any Licensee who wished to be represented, and ACH support workers assisted the Licensees with the forms. The forms expressly extended the authority to act to cover proceedings in any tribunal or court, unless and until written notice was provided to the contrary, which reflected the position under the relevant tribunal procedural rules).

The Council took until 28 July 2014 to lodge the appeals with the First-tier Tribunal, Social Entitlement Chamber (“FTT”). During that time, it corresponded with the representative without raising any issues at all about the validity of the appeals. When lodging them, however, the Council applied for directions in a written submission that it served on neither the representative nor the appellants themselves. One of the key issues raised by the Council was whether the signatures on the representative’s appointment form, and on the appeal notices themselves, were genuine. They argued that some signatures were “noticeably different” from the signatures provided by the same licensee in other documents.

The FTT refused to recognise the representative and issued directions requiring each Licensee to confirm that they wished to continue with their appeals failing which the appeals would be struck out. Directions were also issued to the representative requiring it to supply fresh letters of appointment and fresh confirmation that each Licensee wished to pursue the appeal, if it wished to be recognised. The FTT refused to provide the representative (or the appellants) with the Council’s written submissions or any of the relevant signatures about which the Council had complained.

Hardly any of the Licensees replied to the Direction; the representative submitted written arguments to the effect that the Council’s and FTT’s approach was a fundamental breach of the requirements of natural justice, and that the FTT had misunderstood the position of the representative in the tribunal; that the Council had acted unfairly in failing to raise any of these points with the representative or the Licensees during the years between the sending of the appeals to the Council

and the Council lodging them with the FTT, and that there was no proper basis for the appeals to be struck out.

In July 2015, the FTT struck out the appeals and, in November 2015, granted permission to the appeal to the Upper Tribunal.

The Decision of the Upper Tribunal

After a hearing in April 2018, Judge Rowland issued an interim decision holding that the FTT had erred in law in respect of all the cases before it. The question of what to do about it, however, required further argument.

On the key issues, the Judge made the following rulings.

- There was nothing necessarily suspicious or improper about ACH's role in the appointment of the representative. There is not necessarily a conflict of interest between a landlord and a claimant occupier in these types of cases. The claimant will have nothing to lose as a result of the landlord successfully arguing that they are eligible to receive the higher rate of housing benefit. Nor does the claimant have anything to gain, as voluntary organisations that provide supported accommodation do not in practice expect their occupiers to pay more rent than the housing benefit allowance granted by the local authority.
- The extent of a representative's authority depends on the scope of the authorisation. The FTT had described the letter of authority as being "so wide as to be excessive". This was not necessarily so, however, in cases where the claimant does not have any real financial interest, provided that the authorisation is read as being subject to an implied condition not to expose the claimant to any personal liability of any kind without express instructions. In the present case, the Licensees had no reason to appeal other than to help ACH and were not at risk of any unfavourable costs orders. Therefore, the appointment of the representative should be read as giving it a wide discretion on how to conduct the case, what evidence to call and whether to pursue the appeals.
- Nor was it necessarily wrong for the representative to pursue the appeal in the absence of any current contact with the Licensees whom it represented. There is no rule that representatives may not give evidence. The representative was therefore entitled to adduce evidence from ACH to support the appeal. It would be for the FTT to make what it might of any

contradictory evidence or non-attendance by the Licensees at the substantive appeals.

- Although there was a delay by the Council in making its decisions and submitting the appeals to the FTT, the procedure they adopted was not unfair. The delay increased the risk of ACH and the representative losing touch with the Licensees, but the issue was whether the FTT had acted unfairly or unlawfully.
- The procedure adopted by the FTT was unfair. Given the relationship between ACH and the representative, it was not appropriate for the FTT to approach the Licensees directly rather than their purported representative. The manner in which they approached the Licensees also failed to pay adequate attention to the lapse of time since the appeals were first submitted and the fact that the Licensees were unlikely to have any financial interest in the appeals and may not even have remembered appealing.
- Once instructed, a representative remains instructed until those instructions are withdrawn. Therefore, a new authority was unnecessary as long as MRA had been validly appointed in the first place.
- The FTT had erred in holding that the appeals should be struck out automatically unless their directions were complied with, when it had neither decided that the representative had not been validly appointed nor sent it a copy of the directions as was required if it had been validly appointed.
- The FTT had failed to address the point raised by the representative that it could not answer the FTT's points of concern unless it was given a full picture, especially regarding the validity of some of the signatures. The FTT had erred in failing to provide the full picture to the representative and depriving them of the opportunity to address the issues before the FTT made their decision.
- The FTT also erred in taking account of what some of the Licensees who had responded to the original directions had said, without giving the representative or the other Licensees an opportunity to comment.

Commentary

This is a welcome decision reaffirming the principles of public law that the right to a fair hearing necessarily includes the right to know the case against you, that a representative in tribunal proceedings is not in the same position, with regard to the need to have current instructions as a solicitor in court proceedings, and that a procedure which fails to give effect to these principles will be unfair.

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Jonathan specialises in local government, housing and public law. He has, for many years, been recommended by Chambers and Partners and Legal 500 in the fields of social housing and local government work. He regularly appears for individual applicants (including tenants and homeless persons) as well as for local and other public authorities (including private registered providers of social housing), in all courts and tribunals. To view Jonathan Manning full website profile, please [click here](#).



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