

## **BRIEFING NOTE**

### **REGISTERED SOCIAL LANDLORDS = PUBLIC AUTHORITIES**

On 5th November 2009, the Supreme Court of the United Kingdom refused London & Quadrant Housing Trust (LQHT) permission to appeal against the Court of Appeal's decision in the judicial review claim brought by Mrs Weaver. As a result, Registered Social Landlords (RSLs) must now regard themselves as Public Authorities, bound by Human Rights and Public Law principles, when exercising their housing allocation and housing management functions.

#### **THE HISTORY**

The facts:

- ◆ LQHT had served a Notice Seeking Possession on their assured tenant, Mrs Weaver, on Ground 8 of Schedule 2 to the Housing Act 1988 - the mandatory rent arrears ground.
- ◆ At the time, she had 19 weeks' rent arrears and there was a history of arrears and Court proceedings.
- ◆ Mrs Weaver applied to the High Court for a Judicial Review of the decision to serve the Notice. She argued that she had a legitimate expectation that LQHT would use discretionary possession grounds first, before resorting to Ground 8.
- ◆ LQHT argued that it was entitled to use Ground 8 and, in any event, housing management decisions and the termination of a tenancy are a matter of private law only and are therefore not subject to public law challenges by way of Judicial Review.

The High Court Decision:

The Court found that Mrs Weaver did not have a legitimate expectation that Ground 8 would not be used. It also held, however, that the management and allocation of housing stock by LQHT is a function of a public nature and LQHT is therefore a Public Authority in that regard. LQHT appealed to the Court of Appeal on that point of law.

The Court of Appeal Decision:

The Appeal Court held that LQHT is a hybrid Public Authority, that its housing allocation and housing management functions are public functions, and that the act of terminating a tenancy in this context is a public act.

## THE CURRENT POSITION

Following the Supreme Court's decision not to allow a further appeal by LQHT, and bearing in mind that LQHT was found to be a Public Authority on the basis of facts that would apply to almost any other RSL, all RSLs now need to proceed on the basis that:

- ◆ Their housing allocation and housing management functions are public functions in relation to which an RSL is a Public Authority.
- ◆ The acts which they carry out as an integral part of the exercise of those functions e.g. granting a tenancy or serving a Notice Seeking Possession, are public acts, which are subject to Human Rights considerations.
- ◆ The decisions which they make as part of the exercise of those functions will be challengeable by Judicial Review on Public Law grounds e.g. unlawfulness, irrationality or Wednesbury unreasonableness.
- ◆ Tenants and other occupiers of social housing may validly raise Human Rights and/or Public Law Defences in possession proceedings, even where possession is sought on mandatory grounds.

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Social Housing Team - Mary Martil, Steven Adabadze, Amy Churchill,  
Claire Pennycard, Greg Bush

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Marsons Solicitors Waterford House 4 Newman Road Bromley Kent BR1 1RJ  
t 020 8313 1300 f 020 8466 7920 [www.marsons.co.uk](http://www.marsons.co.uk)