

Our guide to avoiding a Judicial Review

Expensive and time-consuming, these actions don't have to pose a danger if you follow a few simple rules

In our last newsletter, we broke the news that in the wake of **Weaver v London and Quadrant**, Registered Social Landlords (RSLs) could be subject to judicial review.

As part of the possession case heard in the High Court, London and Quadrant had claimed they were not a public body and were therefore not subject to the Human Rights Act, which was the crux of the tenants' argument against the possession order being made against her.

She claimed the landlord was in breach of the Human Rights Act 1998 by threatening to take her home and disrupting her right to "private and family life".

The High Court held that an RSL, when operating in the social sector of rented housing, acted like a local authority on those occasions and was subject to state control, which meant it was a public body. An RSL can be a public body for the purposes of Judicial Review.

The case is going forward to the Court of Appeal.

This is bad news for RSLs because a Judicial Review is expensive and it is another set of rules to follow. However, if RSLs keep to "The Key Points", they can limit the danger of any action

being taken against them.

In a Judicial Review, a judge examines a decision by a public body to see whether it was lawful. This is about the way the action was taken and whether the right procedures were followed, as well as the decision that was arrived at in the end. It focuses both on the procedure used and the outcome.



Answerable: public bodies are accountable under Human Rights Act

This could apply to a possession order, so in theory, an RSL's decision to instigate possession proceedings or serve a notice on a tenant with rent arrears could be subject to a Judicial Review.

However, the crucial thing here is the procedures that an RSL would have followed before launching the action for possession. If those are in order, then there is little danger of being hit with a Judicial Review.

The main grounds for a Judicial Review are if a public body is acting illegally, exceeding its powers, delegating power improperly, having inflexible policies, taking irrelevant matters into account, behaving irrationally, acting unreasonably, not following proper procedures, showing bias, not conducting a consultation properly or not giving adequate reasons for a decision.

The Key Points

- RSLs can be subject to a judicial review
- Proper policies and procedures will protect you
- Take advice about how to overcome the danger
- Wait for outcome of the Court of Appeal case

Come and meet us at the NHF conference

Glazer Delmar will be attending the National Housing Federation Leaders Forum and Exhibition conference at the Russell Hotel in Bloomsbury, London, on 3 and 4 March 2009.

The conference deals with the latest issues in social housing. You can find us on stand 4.

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