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PROTECTION FOR DISABLED TENANTS: RECENT DEVELOPMENTS

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People's rights through justice

Article 8: possession hearings



- Pinnock: Establishes right to raise article 8 in county court as defence to possession proceedings.
- Later cases demonstrate how difficult it is to succeed in doing this (*Hounslow v Powell* [2011] UKSC, *Corby BC v Scott* [2012] EWCA Civ 276 [2012] HLR 23, *Birmingham City Council v Lloyd* (2012) EWCA Civ 969 and *Thurrock BC v West* [2012] EWCA Civ 1435)
- Exception: *Southend-on-Sea Borough Council v Armour* [2014] EWCA Civ 231

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Equality Act 2010

- Distinct concept of disability discrimination in s15
- S35 places managers of premises under duty not to discriminate against occupiers of those premises
- Defences in possession proceedings which rely on breach of s35 within the meaning of s15 became more commonplace.

Akerman-Livingstone

- Case of *Akerman-Livingstone v Aster Communities Ltd* [2015] UKSC 15 establishes that defences of disability discrimination should usually go through to trial, rather than be summarily determined, save for in rare cases
- Distinct policy differences between article 8 and Equality Act 2010
- Test of structured proportionality applies to disability discrimination defence
- S136 Equality Act 2010 places burden on landlord to prove its actions are proportionate
- Landlord is required to show there is no less drastic measure

Birmingham City Council v Stephenson [2016] EWCA Civ 1029

- When considering whether ample time has been given for filing a defence court should consider any mental health issues suffered by tenant
- Judges should be alive to the possibility of a disability discrimination defence under the Equality Act 2010 even if it is not explicitly raised
- Following *Akerman-Livingstone*, if a tenant is disabled and it is arguable that there is a causal link between his/her disability and the reasons for eviction, the burden shifts to the landlord to prove that its actions are proportionate (s136) and the matter should proceed to trial
- The courts and landlords are not given a binary choice between doing nothing and eviction, structured proportionality allows consideration of any less drastic measure

Discussion

- How do these two cases improve things for disabled tenants defending possession proceedings?
- What will social landlords in these cases need to be showing?
- What role will community care law take in these sorts of cases?
- What circumstances might result in a summary determination at first instance in these sorts of cases?
- Are there any procedural implications that follow from *Stephenson*?

The 'bedroom tax'

- Regulation B13: Applies 'bedroom tax' of 14% for one extra bedroom and 25% for two or more
- *Burnip v Birmingham City Council & Anor* [2012] EWCA Civ 629 led to exemptions where claimant or the claimant's partner is an adult who requires overnight care (B13(6)(a)); is a qualifying parent or carer (being a foster parent or carer) (B13(6)(b)) and; Claimant's children are unable to share a room because of disability (B13(8))

R(MA & Ors) v The Secretary of State for Work and Pensions [2016] UKSC 58

- MA unable to share a room with her husband because of disability. Not entitled to exemption though a child would have been (*Gorry*). Court of Appeal found that it was reasonable to treat children better than adults
- *Rutherford* case: Child required an overnight carer. Not entitled to exemption though an adult would have been (*Burnip and Trengrove*). Court of Appeal found there was no justification for this
- Supreme Court found that in *MA* and *Rutherford* there was a clear medical need for an extra room and there was no objective and reasonable justification for treating adults and children differently
- Further amendments to Housing Benefit Regulations 2006 by way of Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017 (in force 1 April 2017) to provide exemptions for these two classes of case

DA and Others v Secretary of State for Work and Pensions [2017] EWHC 1446 (Admin)

- Challenge to application of reduced benefit cap to lone parents with children under the age of 2
- In *MA & Ors* Supreme Court accepted that article 8 is triggered by provision of housing benefit. In *DA*, it was accepted that this includes where it is the rights of young children that are affected
- Article 14 ECHR is therefore engaged
- Best interests of the child are relevant (article 3.1 UNCRC)
- ‘powerful evidence’ before court of the damaging effect of the cap on lone parents with children under the age of 2
- R’s justification was advantage to children of having parents in work. Not material to child under 2 therefore no objective and reasonable justification

Discussion

- What about those tenants who do not benefit from *MA & Ors*?
- What are the possible implications of the Supreme Court finding that article 8 is triggered by the provision of housing benefit?



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Thank you

ANY QUESTIONS?

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