



In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month: costs in the First-tier Tribunal, variation of possession orders, and assessment of evidence on appeal.

OCTOBER 2024

Lea v GP Ilfracombe Management Company Limited [2024] EWCA Civ 1241

Summary

The Court of Appeal considered the applicable tests on an application for costs in the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

The appellants were leaseholders of units in a holiday park. The management company of the park had issued service charge demands totalling £2.4m and made a reference to the FTT the following day seeking determinations as to their payability. The FTT rejected the claim in full, finding that the service charge budget had been set with ‘no genuine belief’ that it reflected the sums required to manage the property and was in fact based entirely one director’s self-professed expertise. However, the FTT refused to make an award of costs in the leaseholders’ favour, and that refusal was upheld on first appeal.

The Court of Appeal set aside the FTT’s decision and, exercising its own discretion to remake the decision, ordered the management company to pay the leaseholders’ costs.

Why it’s important

This case clarifies the approach the FTT must take when considering whether to make an award of costs. The Court of Appeal stressed that whether an award should be made is a fact-specific question, and so it is not appropriate for the court to give more prescriptive guidance than that the Tribunal should ask: “‘would a reasonable person acting reasonably have acted in this way? Is there a reasonable explanation for the conduct in issue?’”. It is apparent that this is to be assessed objectively, and that while vexatious conduct or harassment may justify an award of costs, neither is a prerequisite for such an award.

**Amer Hajan v The Mayor & Burgesses of the London Borough
of Brent [2024] EWCA Civ 1260**



Summary

The Court of Appeal considered two cases concerning possession orders and the jurisdiction to amend or vary them.

In the first case, *Hajan v Brent*, a possession order was sought on grounds 1 and 2 of schedule 2 to the Housing Act 1985 (which are discretionary grounds relating to rent and to antisocial behaviour). The defendant was then convicted of a serious offence, which formed the basis for a claim for possession on the ground of s.84A. The claimant sought to amend its proceedings to rely on a subsequent notice specifying that ground, rather than issuing fresh proceedings.

In the second case, *Poplar v Kerr*, a suspended possession order had been made on the basis of rent arrears. The landlord later applied for a variation of the existing possession order to 'convert' it into an outright possession order on the basis of a subsequent criminal conviction which formed the basis for a mandatory ground.

The Court of Appeal found that in both cases, the landlords' courses of action were permissible.

Why it's important

This case is of significant practical importance in housing cases, where it is not uncommon for multiple notices to be served. This case establishes that in such circumstances it is permissible for proceedings to be amended so as to rely on a later notice, and on grounds which have arisen subsequent to the issue of proceedings.

Specifically, the Court of Appeal's judgment contains detailed consideration of what it means proceedings to be 'begun', and the scope of s.9 of the 1985 Act.

Mohammed v Daji [2024] EWCA Civ 1247

Summary

The Court of Appeal dismissed an appeal against a finding that land was held on trust for one side of a religious movement which had been divided into different factions.

The appeal was brought on the basis that the judge at first instance had not reached proper conclusions in respect of receipts given to lenders, the analysis of 'holding out', the treatment of the evidence of a particular witness who was known to have been untruthful and who had testified in respect of events many years previously, and the differences or lack thereof between the different trusts.

The Court of Appeal dismissed the appeal, finding that the judge below had reached proper conclusions.



Falcon Chambers

Why it's important

This case is a reminder of the difficulties of challenging the evaluations of a trial judge who has had the benefit of live evidence and their consequential findings of fact. In this case, the judge had exercised proper caution, and had assessed the evidence appropriately.

STEPHANIE TOZER K.C.

FERN SCHOFIELD