23 February 2011

PRESS SUMMARY

Mayor and Burgesses of the London Borough of Hounslow (Respondents) v Powell (Appellant)
Leeds City Council (Respondent) v Hall (Appellant)
Birmingham City Council (Respondent) v Frisby (Appellant)
[2011] UKSC 8
On appeal from [2010] EWCA Civ 336; [2010] EWCA Civ 326

JUSTICES: Lord Phillips (President), Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lady Hale, Lord Brown, Lord Collins

BACKGROUND TO THE APPEALS

These appeals concern the making of orders for possession of a person's home in favour of a local authority. The issue is whether, in circumstances where the occupier is not a secure tenant, the court that makes the order must consider the proportionality of making it.

Most residential occupiers of property owned by local authorities are secure tenants under the Housing Act 1985. This restricts the circumstances in which they can be evicted. Certain types of tenancy, however, are excluded from that regime. The case of *London Borough of Hounslow v Powell* involved one such type: accommodation provided under the homelessness regime in Part VII of the Housing Act 1996. In order to regain possession of such accommodation, domestic law requires only that the local authority must give notice to quit and obtain a court order. Ms Powell, as a homeless person to whom the local authority owed a duty to provide accommodation, had been given a licence to occupy property under Part VII. Rent arrears of over £3,500 accumulated and the local authority issued a claim for possession of the property. The court hearing the claim made an order requiring Ms Powell to give up possession.

The cases of *Leeds City Council v Hall* and *Birmingham City Council v Frisby* involved a second type of non-secure tenancy: introductory tenancies entered into under Part V of the Housing Act 1996. This type of tenancy is designed to provide an initial period of probation. It remains introductory for a period of one year, after which it becomes secure unless the introductory tenancy has been terminated. If the local authority decides to terminate the introductory tenancy the tenant is entitled to a review of that decision, but once the relevant procedures have been gone through section 127(2) of the 1996 Act provides that the court "*shall make*" a possession order. Mr Hall and Mr Frisby had both been granted introductory tenancies, by Leeds and Birmingham City Councils respectively. Allegations were made against them of noise nuisance and anti-social behaviour. The local authorities served notices indicating their intention to seek possession, which were upheld on review. In possession proceedings the courts found in favour of the local authorities.

The three occupiers appealed to the Court of Appeal. They argued that Article 8 of the European Convention on Human Rights, which provides that "*Everyone has the right to respect for his … home*", required that the court hearing the possession proceedings must be able to assess the proportionality of making the orders against them. As the court did not do this, there was a breach of their Article 8 right. The Court of Appeal dismissed the appeals and the occupiers appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously holds that a court must have power to consider the proportionality of making possession orders under the homelessness and introductory tenancy schemes. In the cases of *Powell* and *Hall* the Court allows the appeals and, having considered the facts in the case of *Frisby*, it dismisses his appeal. Lord Hope and Lord Phillips give judgments.

REASONS FOR THE JUDGMENT

These cases were a sequel to the case of *Manchester City Council v Pinnock* [2010] UKSC 45. There the Supreme Court held that Article 8 of the European Convention on Human Rights requires that a court, which is being asked to make a possession order against a person occupying under the "demoted tenancy" scheme in Part V of the Housing Act 1996, must be able to consider whether it would be proportionate to do so. The present cases raised the question of whether that principle applied to the homelessness and introductory tenancy schemes and, if so, how cases of this kind should be dealt with in practice by the courts.

The Court held that the principle from *Pinnock* applied to the homelessness and introductory tenancy schemes: in all cases where a local authority seeks possession of a property that constitutes a person's home under Article 8, the court must be able to consider the proportionality of making the order. **[3]**

The Court then set out general guidance on meeting this requirement. A court will only have to consider whether the making of a possession order is proportionate if the issue has been raised by the occupier and has crossed the high threshold of being seriously arguable. The threshold will be crossed in only a small proportion of cases. The question then will be whether making an order for possession is a proportionate means of achieving a legitimate aim. Two legitimate aims should always be taken for granted: the making of the order will (a) vindicate the authority's ownership rights; and (b) enable the authority to comply with its public duties in relation to the allocation and management of its housing stock. The authority is not required to plead in advance any more particularised reasons or to advance a positive case that possession would accord with the requirements of Article 8: such a requirement would collapse the distinction between secure and non-secure tenancies. Where the local authority has a particularly strong or unusual reason for seeking possession, however, it is entitled to ask the court to take that reason into account and it should plead the reason if it wishes the court to do so. If a court entertains a proportionality argument, it must give a reasoned decision as to whether or not a fair balance would be struck by making the order sought. **[33]-[49]**

On the face of it, section 127(2) of the Housing Act 1996 gives the court no discretion in the case of an introductory tenancy. But this does not prevent the court considering proportionality. Given that lawfulness is an inherent requirement of the procedure for seeking a possession order, it is open to the court to consider whether that procedure has been lawfully followed in respect of the defendant's Article 8 rights. **[56]** Section 89 of the Housing Act 1980, however, does restrict the court's discretion as to the period for which the taking effect of the order can be deferred. The section provides that a court making a possession order cannot postpone the date for possession for more than fourteen days or, in the case of exceptional hardship, six weeks. The Supreme Court held that the mandatory language of the section prevents a court allowing a longer period to comply with the requirements of proportionality. There was, however, no indication that proportionality requires a longer period and therefore no reason to declare section 89 incompatible with Article 8. **[64]**

References in square brackets are to paragraph numbers in the judgment.