THE BIG COURT OR THE HOME COURT?

The Court of Appeal has decided that interim relief can only be sought via s.204A Housing Act 1996 if the s.204 appeal is challenging a review decision rather than the original decision – *Davis v Watford Borough Council* [2018] EWCA Civ 529.

Michael Paget and Zoë Whittington of Cornerstone Barristers, who acted for Watford Borough Council, explain the decision.

The Case

This case is all about Parliament not actually saying what it means. Did the court need to follow a purposive approach to statutory interpretation? Mr Davis applied to Watford BC as homeless, after a negative s.184 decision and no further review decision Mr Davis issued a s.204 appeal in the County Court. He then sought interim relief by way of judicial review in the High Court (accommodation pending appeal). The judicial review was initially dismissed, on the basis that any interim relief could be sought from the County Court via s.204A, but reinstated by the Court of Appeal because s.204A did not cover Mr Davis's situation.

Section 204 appeals can be brought to challenge a s.202 review decision and also where no review has taken place within 8 weeks (or any longer time agreed by the parties) ('a non-completion appeal').

Either type of appeal will only be successful if the appellant can identify a public law error in the decision (for normal appeals the review decision and for non-completion appeals the original decision). Non-completion appeals are very rare because the local housing authority is normally able to issue a review decision within 8 weeks or any other time agreed by the parties.

The Housing Act 1996 hived off the jurisdiction of s.204 appeals from the High Court to the County Court because the Admin Court judges were getting fed-up

dealing with housing matters. It did not also hive off challenges to interim relief decisions – for example, challenging a refusal to provide temporary accommodation pending any review. This was probably just an error on Parliament's part – and that was the view expressed by Simon Brown LJ in *Francis v Kensington and Chelsea LBC* 2003 1 WLR 2248 – para 27. But it has not been corrected by Parliament since.

What Parliament did do, in the Homelessness Act 2002, was hive off jurisdiction to deal with interim relief pending the s.204 appeal. This is set out in s.204A. The specific wording of s.204A provides that any application for interim relief following a review decision should be made to the County Court.

At first instance Mitting J considered that s.204A covered both types of appeal. The Court of Appeal (LLJs Davis, Ryder and Sales) disagreed. s.204A does not apply to 'an appeal under s.204' but applies 'where an applicant has the right to appeal... a decision on review'.

As other types of interim relief have not been hived-off to the County Court it did not feel the need to interpret s.204A as hiving-off interim relief in non-completion appeals. Parliament may well have intended to cover both types of appeal under s.204A but it does not actually say that. The court did not to go beyond a literal interpretation of the section.

Lessons learned

This is a decision on court procedure and not on substantive practice. It will not affect how housing authorities considers requests under s.204(4). It just affects the forum for any challenge. If the s.204 is a non-completion appeal the Appellant will need to apply to the High Court for judicial review. If the Appellant launches a s.204A appeal it should be struck out for lack of jurisdiction