Neutral Citation Number: [2016] EWCA Civ 704

Case Nos B5/2014/4125
+ B5/2014/2763

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
(1) Manchester County Court and Family Court
His Honour Judge Platts
MIRX289
(2)Altrincham County Court and Family Court
His Honour Judge Armitage QC
MI4X094

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/07/2016

Before :

LADY JUSTICE ARDEN
LORD JUSTICE FLOYD
and
LORD JUSTICE SALES

- -

Between :

(1)	
City West Housing Trust	**Appellant**
- and -	
Lindsey Massey	**Respondent**
And Between	
(2)	
Manchester & District Housing Association	**Respondent**
- and -	
Vincent Roberts	**Appellant**

- -
- -

(1)
Mr Peter Marcus (instructed by **BLM Solicitors**) for the **Appellant in City West**
Mr Gary Lewis (instructed by **Stephensons Solicitors**) for the **Respondent in City West**

(2)
Mr Gary Lewis (instructed by **Stephensons Solicitors**) for the **Appellant in Roberts**
Mr Christopher Moss (instructed by **DWF Solicitors**) for the **Respondents in Roberts**

Hearing dates: 11 May 2016

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Approved Judgment

LADY JUSTICE ARDEN :

1. These are appeals arising out of orders made in the County Court on appeals from orders ("SPOs") of district judges suspending previously made orders for immediate possession of dwelling houses where the police had discovered that cannabis was being cultivated.

2. In each case, the tenancy agreements contained the usual term that the dwelling house was not to be used for unlawful purposes. This term covered conduct by the tenant or someone else. In each case, there was a clear breach of the terms of the tenancy agreement.

3. The tenants claimed that they were not responsible and had no knowledge of the use of their property. They were disbelieved in whole or part on their evidence but yet SPOs were made conditionally on the tenants' performance of their covenants in future and mechanisms for surprise inspections of their property by their landlord.

4. In each case the housing association appealed against the suspension of the possession order to the County Court. In one case (that brought by Manchester and District Housing Association ("Manchester")) the judge, HHJ Armitage QC, allowed the appeal on the ground that the district judge had come to a perverse conclusion. In the other case (that brought by City West Housing Trust ("City West")), HHJ Platts dismissed the appeal. The making of a SPO is necessarily a fact-sensitive exercise.

5. However, in these cases, Vos LJ gave permission to bring second appeals because the appellants argued that there was uncertainty as to the way in which district judges should exercise their discretion where they have found that the tenant's evidence was untrue in whole or part, and as to whether the court should impose conditions which place responsibility on the landlord. Accordingly this judgment addresses two points.

6. The first point I shall address is: was there any error in the orders made by HHJ Platts or HHJ Armitage QC? This involves considering whether the district judges' orders demonstrated any error of the kind that would entitle an appellate court to intervene. In my judgment, for the reasons given below, the district judges were entitled to make those orders so that they were not open to review. In consequence, the appeal to this Court in the City West case must fail and the appeal in the Manchester case succeeds.

7. The second point I shall address is: should this Court give any guidance for the future? I consider that there is some limited guidance that we can give though not as much as was sought. Moreover, it is important to make it clear that a judge's failure to follow this guidance would not of itself be a ground on which an appellate court could set the exercise by a judge of their discretion.

8. Both issues raised the question of the appropriate standard for review on appeal. The court has a discretion as to whether to suspend a possession order and it is well established that the exercise of discretionary judgment by a judge is subject to appellate review only if the judge has applied the wrong legal principle, reached a conclusion that no reasonable tribunal, properly informed as to the law and facts, could have reached, had regard to factors that were irrelevant or failed to have regard to factors which were relevant. It is not relevant whether an appellate court would itself have come to the same view.

BACKGROUND TO THE MAKING OF THE SPOs IN EACH APPEAL

THE LAW

9. In each case, the housing association sought an immediate possession order of the flat under "discretionary" grounds in Schedule 2 to the Housing Act 1988. So the housing association had to show not just the breach of the tenancy but also that it was reasonable to grant an order for possession.

10. The relevant grounds were 12 and 14, which provide:

> 12. Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed
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> …
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> 14. The tenant or a person residing in or visiting the dwelling-house—
>
> (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or
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> (b) has been convicted of—
>
> (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
>
> (ii) an indictable offence committed in, or in the locality of, the dwelling-house.

11. When a possession order has been made, the court has a discretion to make an order postponing the date of possession or staying or suspending the execution of the possession order subject to certain conditions (Housing Act 1988, section 9).

12. In each case under appeal, those conditions included a condition giving access to the housing association on two hours' notice so that the housing association could inspect whether cannabis was in fact being grown.

13. The court would have had the same powers to make a possession order and suspend the execution of it if either landlord had been a local authority and the tenancy had been a secure periodic tenancy. The landlord would have been able to apply for a possession order under section 84 of, and Schedule 2 to, the Housing Act 1985. Under these provisions, the court can make an immediate possession order where it is reasonable to do so if the tenant or a person visiting or residing at the dwelling house has used it for an illegal purpose (Housing Act 1985, schedule 2, paragraph 2, which is in the same terms as ground 14 in paragraph 10 above). Under section 85(2), the court can then suspend the execution of the possession order on such conditions as it thinks fit.

14. The leading authority as to the exercise of discretion is *Sandwell MBC v Hensley* [2008] HLR 22 (Sir Andrew Morritt C, Gage and Arden LJJ). In that case, the police found that the tenant had been cultivating cannabis at the dwelling house let to him by the local authority. The tenant said that he had given permission for a woman and her child to live there and he was not responsible. However, he later admitted the offence ("the index offence") and was convicted of being concerned in that cultivation. The assistant recorder made an order for immediate possession but suspended it. This Court allowed an appeal on the basis that there was no basis on which the assistant recorder could have been satisfied that the tenant would observe the terms of his tenancy in future. He had previous convictions for possessing or growing cannabis. He regarded its cultivation as his hobby and as no more offensive to his neighbours than growing tomatoes. He had not given any oral evidence and therefore the landlord could not cross examine him. The one factor in his favour, which satisfied the assistant recorder that he had turned over a new leaf, was the fact that he had not committed any further offence since the index offence. This Court rejected the landlord's argument that, where a criminal offence had been committed, there had to be exceptional circumstances before the court could suspend an immediate possession order. However, where a possession order had been made on the basis of serious misconduct by the tenant, there had to be cogent grounds for hope that the tenant would cease his previous conduct, and there was none in that case. Gage LJ, with whom the other members of the Court agreed, held:

> **[17]** What in my judgment can be said is that the effect of [*City of Bristol v Mousah* (1997) 30 HLR 32] is to stress the serious nature of a breach of a condition which involves the committing of a criminal offence. The more serious the offence, the more serious the breach. Convictions of several offences will obviously be even more serious. In such circumstances, it seems to me that the court should only suspend the order if there is cogent evidence which demonstrates, as Ward LJ put it in *Manchester County Council v Higgins*[2005] EWCA Civ 1423, [2006] 1 All ER 841, [2006] 1 P & CR D53, a sound basis for the hope that the previous conduct will cease.
>
> …
>
> **[26]** In my view, unless there was cogent evidence providing a real hope that the defendant had mended his ways, the council was in all the circumstances entitled to an outright order. In my judgment, there was no such evidence. Exercising the discretion afresh, I would allow the appeal and make an outright order for possession.

15. The assistant recorder had not invited the tenant to give evidence, nor did the reasoning of the assistant recorder refer to the tenant's earlier convictions. In those circumstances, the assistant recorder had left out of account material matters and the

exercise of discretion was flawed so that this Court had to set it aside and exercise the discretion afresh.

16. There is a factual difference between *Sandwell*, on the one hand, and *City West* and *Manchester*, on the other hand. In the former case, the tenant committed a breach of the tenancy agreement by cultivating the cannabis and thereby committed a breach of his tenancy agreement. In the latter cases, the tenants committed breaches of their tenancy agreements because third parties, whom they had permitted to enter the premises, had cultivated cannabis. The latter situation was not expressly addressed in *Sandwell* but fundamentally the same test applies: before making a SPO the court must be satisfied that there is a sound basis for hope that the tenant will observe the terms of the tenancy agreement in future. In practice, the fact that the tenant was not the person who cultivated the cannabis is likely to mean that the tenant relies on his or her lack of knowledge of, or control over, the cultivation so these cases may be factually more complex than the *Sandwell* type of case.

17. No party relies on Article 8 (Right to respect for private and family life) of the European Convention on Human Rights ("the Convention"). Any Article 8 rights of a tenant are considered when a possession order is made. Applications for a possession order and an SPO have to be viewed as a whole so that it is unlikely that any further issues under Aticle 8 arise on the further application for suspension: see *Manchester City Council v Pinnock* (Nos 1 and 2) [2011] 2 AC 104 at [45](c).

CITY WEST

18. Ms Massey was the tenant of 10 Beechfield Road, Swinton ("the flat"), and she lived there with her three children. Her partner, and father of the children, Mr Jamie Parker, had converted one of the bedrooms for growing cannabis. A police officer said that six of the plants were the largest he had seen in his experience and there were some 300 plants in all. Ms Massey said that she did not know about this. She said that he had asked for permission to store his possessions there and she had given permission. Mr Parker was convicted of being involved in cannabis production. Ms Massey was questioned by the police but not prosecuted.

19. City West sought an immediate order for possession.

20. In her witness statement Ms Massey said:

> 6. After his mother asked him to leave Jamie asked if he could store some of his belongings and furniture in my spare room until he could find himself somewhere else to stay. He did not have any permanent accommodation and was staying odd nights on the sofas of friends and family. He did occasionally stay at my property on the sofa during those two weeks because I did not want to see him out on the street. I agreed to let him use the bedroom to store his belongings as I was not using it at the time. My sons Kaylum and Jamie were sharing a bedroom and Thomas was still sleeping in my room so it was just sitting empty. After Jamie had moved his belongings in the bedroom I had no reason to go in there and therefore had no idea what was

being stored there. I had not been at the property while he was moving his things in. I understand that Jamie had also stored plant food in the built in cupboard in the bathroom. I did not use the cupboard in the bathroom or store anything in it because it did not have a handle on it so it was not easy to access.

7. I understand that it is alleged that cannabis could be smelt inside the property and that there was a humming noise coming from the equipment used to grow the cannabis. I had not been aware of any smell or noise at the property. Jamie smokes a lot of cannabis, he has been addicted from quite a young age and smokes it on a daily basis. And you can smell it on him and his clothing. If I ever notice the smell of cannabis during those two weeks I just assumed it was coming from Jamie himself. I certainly never heard a humming noise at the property. I understand from information provided to me by my solicitor in the criminal proceedings that because the plants recovered were juvenile there would not have been very much of a smell of cannabis coming from them."

21. In the course of argument, DJ Harrison observed:

> The District Judge: I then have to move on to consider whether I should suspend, yes?
>
> Mr Lewis: Yes
>
> The District Judge: The fact that there might not have been contrition in the past is not necessarily an indication that there is not some real prospect for the future. One could reach the conclusion, for example, having been brought through this process and having heard what the judges had to say about matters, future conduct would be properly controlled.

22. In his judgment DJ Harrison said that he did not believe a word of Ms Massey's case that she did not know about the cultivation of cannabis at her flat. But, he held, "on a very strong balance of probabilities, she is lying to me, and she is lying to me because she is frightened that she will lose her property." The district judge made it clear that she had no excuse for lying to him and moreover that the production of cannabis had an important impact on society in general. An immediate order for possession should be made.

23. On the question of suspension, DJ Harrison held:

> 9. The claimant says the defendant showed no remorse; showed an unwillingness in the pre-action period to accept

responsibility. That is undoubtedly the case. The minutes of interview demonstrate the defendant failing initially to accept responsibility for the situation or any liability under the tenancy agreement and dissolving into tears and leaving meetings. Again, I have little doubt that the reason for her emotional reaction and her failure to accept responsibility and engage properly with the claimant arose from her fear of the loss of her property.

10. The parties agree that the question for me is really whether there is any realistic prospect for the future….[Ms Massey] was prepared to accept…that [Mr Parker] would not come to the property. It is noted that there are children and there are issues of contact…conditions appropriately worded to keep the partner away from the property for so long as is reasonable would appear to be appropriate. Secondly, Ms Massey accepted that she would, in so far as was necessary, grant to the claimant a right to come and have a look around the property whenever they wanted to and to see what was there..[There would also be a condition] for future compliance with the tenancy agreement.

11. What do all of those conditions mean? There may be some argument as to whether the partner should be allowed to come near the property at all. However, what we are actually trying to stop here is not the partner being there but the property being used for an illegal purpose. Since the defendant is willing to accept that the property can be inspected, and since she was willing to accept that the terms of suspension would include continued or future compliance with the terms of the tenancy agreement, then, in fact, keeping the partner away from the property entirely adds nothing by way of security under the terms and conditions of suspension.

12. Am I satisfied that there is sufficient hope for the future? Well, Ms Massey, you just have to hear me say this to you: you lied to me. I do not accept for a moment the lies that you put to me. I understand your fear but it is not a good reason to come and lie to this court. Further breach of the terms of suspension, if proven, will put you in a very very difficult position, and you may find on the next occasion that the judge will decide that you have had sufficient opportunity. However, I am satisfied that you have now had your position made clear to you. You having acceded to terms of suspension to control the future situation, you have sufficiently demonstrated willingness to comply for the future with the terms of your tenancy….

14. I am satisfied that it is reasonable, in the circumstances, that there should be an order for possession of the property. I

> believe that the terms and conditions, subject to any further submissions on the matter and decision by the court if necessary upon the precise wording, of those which I have already outlined, are appropriate for the security of all concerned. Because of the seriousness of the breach and the failure so far to accept liability and responsibility properly and to engage properly, those terms and conditions should remain in force for a period of three years. A form of order has been handed to me and I believe Mr Marcus has some observation and may wish to make further submission."

24. The order made by DJ Harrison suspended the possession order for three years on three conditions:

    a. Ms Massey complying with terms of her tenancy;

    b. Ms Massey giving City West or its agents reasonable access to the flat for the purpose generally of inspecting the same on not less than 2 hours' notice either orally or in writing;

    c. Ms Massey not permitting Mr Parker to reside or stay overnight at the flat or to store any belongings there.

25. City West appealed. HJJ Platts heard the appeal, considered the authorities including the *Sandwell* case and examined DJ Harrison's judgment in detail. The judge asked whether the decision to make an SPO was irrational and noted that the judge had relied on his assessment of the witness. In addition the principal criminality was that of Mr Parker, not Ms Massey, and DJ Harrison was satisfied that the conditions would be sufficient protection against a future breach. Ms Massey had offered to exclude Mr Parker from the flat altogether at the start of her evidence. The judge concluded that the making of the SPO was a non-reviewable exercise of discretion:

> 19. Dismissing the appeal, therefore as I do, I do not think it has been shown that the learned district judge exceeded the generous ambit of discretion which is allowed to him under section 9 of the Housing Act, either in relation to not ordering an outright order or in relation to the conditions which he [imposed]. Some may say it was charitable to the defendant but it was a decision he was entitled to come to. I did not see the tenant give her evidence, I have only seen the papers and heard the argument and I have to say – and I say this, so that the defendant can hear it – had the matter come before me, I may well have been persuaded to make an outright possession order in all the circumstances. However, that is not the test. As I have been reminded, the test is whether this experienced district judge was entitled to come to the conclusion which he did, and my judgment

> on that is that he was. Therefore, for those reasons, the appeal will be dismissed.

MANCHESTER

26. Mr Roberts was the tenant of Flat 64, Tulip Road, Partington, Manchester, a one-bedroom flat. The police raided this property and discovered a large quantity of cannabis growing in the back bedroom. Mr Roberts' evidence was that this room was used by a gang, that he could not enter it because it was padlocked and that the gang threatened him and he was fearful for his safety. Mr Roberts was convicted of the offence of permitting the production of cannabis at his flat and served a short custodial sentence. He received about £1,200 from the gang but did not disclose this until the hearing of Manchester's application for possession. The police doubted that he did not know what was in the room because, while it was apparently kept padlocked, they found the padlock on his table and the bedroom door open. DJ Hayes who heard the case did not explicitly reject Mr Roberts' account of how the cannabis came to be in his one-bedroomed flat but made it clear he did not accept that he had given a full and truthful account of what had happened. There was a problem with drugs on the Partington estate.

27. In his evidence, Mr Roberts welcomed the suggestion that the court should attach conditions so that the landlord could inspect the property weekly or fortnightly to ensure that there was no drug activity going on. He confirmed his defence and said he was too afraid to tell the police. DJ Hayes found that he pinned his hopes about not being in the same position again on the fact that the police have raided his property, which means that he will not be targeted again for the use of his home, coupled with regular surprise inspections by Manchester.

28. DJ Hayes' conclusion on the question of hopes for the future is at paragraph 14 of his judgment:

> The question is whether I am satisfied that he will not engage in that again, the practice of growing a cannabis farm in his flat, either of his own volition or under pressure from elsewhere. I am satisfied about that, albeit not necessarily because I accept what he says about the reason why it will not happen. I take the view that he does understand the seriousness of the situation. I take account of his early guilty plea in relation to the criminal proceedings in this regard as well, which was dealt with at the Magistrates Court level. He expressed sorrow, which is in his favour before me today. He accepted he should not have done it. There are no other breaches of tenancy that could be relied upon by the claimant. There are no other complaints that were referred to me today, despite the length of the apparent use of the flat for this illegal purpose.

29. DJ Hayes made an SPO on terms that Manchester could inspect the flat monthly and Mr Roberts would observe all the terms of his tenancy agreement.

30. Manchester appealed to the County Court. HHJ Armitage QC allowed the appeal. The judge did not depart from DJ Hayes' findings of primary facts but he did not consider that there was a sound basis for finding cogent evidence for hope as to the future conduct in the light of the discrepancies in Mr Roberts' evidence. The judge also held that, in making a decision about whether there was cogent evidence to support an assurance of proper conduct in future, the district judge was only able to take into account matters internal to the tenant and could not rely on the fact that the landlord would be making inspections of the property.

> 13. It seems to me therefore that on his own analysis the District Judge has found that there is no sound basis for such a hope and that is the error into which, in my judgment, he has fallen. However, if one needed to confirm it one only has to look at the order which he made. If he really did have a sound basis for the hope that the conduct would not recur why did he impose condition 2? If he did have a sound basis for such a hope, there was no need for paragraph 2 of the condition which, as the District Judge had accepted, imposed an obligation upon a landlord which it ought not to have with a cost attached to it. In fact what the District Judge has demonstrated in my judgment is that the *Sandwell* conditions were not satisfied, certainly not satisfied by the defendant. They were satisfied only by external factors.
>
> 14. It seems to me therefore that on the basis of the District Judge's judgment alone, without having to go into any criticism that is made of his assessment of the evidence, that the District Judge reached the wrong conclusion on his own findings. There was no sound basis. He has not articulated one. To say that somebody else will prevent a defendant or a tenant from committing an offence or committing a breach of a tenancy is not of great assistance to the respondent. If he was in prison he would not be able to breach this tenancy but that does not redound to his benefit. There are all sorts of reasons why past conduct may not reoccur. It has to be something to do with the tenant. Reasons which depend upon imposing a positive obligation upon a landlord going well beyond those ordinarily present are not an appropriate factor upon which to found a sound basis for hope.

SUBMISSIONS

31. As the arguments for the tenants on the one hand and the housing associations, on the other, are similar, I will set out the arguments for the housing associations together and then for both tenants together.

Submissions for the housing associations

32. Mr Peter Marcus, for City West, submits that DJ Harrison's exercise of his discretion was flawed and that HHJ Platts should have intervened to set it aside. It is an essential condition of an SPO that a tenant should change his ways. The tenant had to persuade the court that this was so: the burden was on him (*Sandwell* at [27] per Arden LJ; *Birmingham City Council v Ashton* [2012] EWCA Civ 1557). The question becomes: is this tenant to be trusted in complying with this tenancy? A tenant's dishonesty when giving evidence to the court was not a bar to an SPO but was a factor that the court should take into account.

33. Moreover, submits Mr Marcus, the grounds on which the judge makes an SPO should be supported by tangible evidence. DJ Harrison came to conclusions for which there was no evidence. In particular, there was no cogent evidence for the prospect of change. The tenant had not shown any remorse. She took no advice from the tenancy sustainability officers. She turned her back on offers to help. She was not honest in her evidence. She said in her witness statement in the criminal proceedings that she wanted her partner, Jamie Parker, back after his prison sentence. Yet at the hearing before the district judge she said, and DJ Harrison accepted, she was prepared to abide by a condition that Jamie was excluded. DJ Harrison considered that she had acted out of fear, but there was no suggestion of this until Mr Lewis's closing speech.

34. Mr Marcus submits that district judges should be urged, when making an SPO, to give reasons why the district judge concluded that the tenant, despite lying, could be relied on as regards her future conduct. Sometimes express conditions can give the landlord comfort but the tenant has to bring cogent evidence herself. If she does not cooperate with the landlord, that should be the end of the matter.

35. Mr Marcus suggests a check-list along the lines proposed by Mr Christopher Moss in his skeleton argument where he submits that cogent evidence of hope that the previous conduct will cease is evidence of the following conduct on the tenant's part:

- cooperation with housing authorities and prosecuting authorities
- honesty and full disclosure of previous inappropriate behaviour
- genuine remorse
- early acceptance of culpability
- the length of time the illegal activity took place ("the less the better")

36. Mr Marcus submits that district judges should demonstrate that they have considered these sort of matters as a matter of fairness. The expression "sound basis that the conduct has ceased" must include good prospects for better conduct in the future. Mr Marcus submits that the requirement for cogent evidence is being ignored.

37. Mr Christopher Moss, for Manchester, adopts Mr Marcus's submissions and submits in addition that HHJ Armitage was correct to hold that the court should not take into account external matters and should seek to find cogent evidence from the tenant

himself that there will be appropriate conduct in the future. Moreover there was no cogent evidence in this case in any event even though some parts of Mr Roberts' evidence, such as his acceptance of the seriousness of the breaches of his tenancy agreement, had been accepted. In effect HHJ Armitage in effect held that the judgment of DJ Hayes was perverse and that on the facts as found by him the *Sandwell* test could not be met.

Submissions for the tenants

38. Mr Gary Lewis appears for the tenants in both cases.

39. On behalf of Ms Massey, he submits that her case is distinguishable from *Sandwell* because the tenant there was a serial offender and he did not offer to give evidence in court. He submits that the question whether the evidence is cogent is a matter for the judge and can be determined by him following cross-examination. He urges that an appellate court should be reluctant to interfere: in particular the weight to be given to factors for and against the making of an SPO is a matter for the trial judge.

40. The judge's duty was to take into account all the circumstances at the date of the hearing. Weight was a matter for the trial judge. A tenant's knowledge of the cannabis farm is relevant but not necessarily fatal. Different judges could give different weight to knowledge.

41. DJ Harrison had applied the right test. It is clear from the judgment of the district judge read in the light of the transcript of the proceedings that DJ Harrison was well aware that there had to be a sound basis for holding that there was a good prospect of compliance in the future. He thought that it was enough that the fact that the landlord could inspect at any time. Many judges might have come to a different conclusion but that was his judgment having regard to his knowledge of the problem in Salford.

42. Mr Lewis submits that HHJ Armitage QC was wrong to hold that DJ Hayes was perverse because there was remorse and an acceptance of responsibility, and DJ Hayes had accepted some of Mr Roberts' evidence. In his submission, HHJ Armitage also erred in excluding external factors. The conditions are likely to help the tenant keep his word. As Maurice Kay LJ observed in *Canterbury City Council v Lowe* (2001) 33 HLR 583 at 590, in relation to the grant of an injunction at the same time as an SPO, the court could take into account whether an individual would be likely to obey the injunction:

> **[25]** … in this case … the assistant recorder did conclude that it was reasonable to make a possession order, and consideration of matters relating to an injunction only came in to play in her reasoning when she came to consider whether notwithstanding the making of the order she should suspend the immediate operation of the order. The issue of whether to suspend must be very much a question of the future. There is no point suspending an order if the inevitable outcome is a breach. Any factor which is relevant as to whether there will be future breaches must, in my judgment, be relevant to the question of suspension. This would include the fact that following an injunction things had considerably improved or that a person is likely to observe an injunction if one was granted at the same time.

43. As to the objection that the conditions call for resources to be expended by a housing association, supervision by social landlords and the police is inherent in social housing.

44. The court has simply to be satisfied that the tenant can comply with the order. The distinction between external and internal factors made by HHJ Armitage is unjustified. Moreover, where for instance the tenant is a vulnerable person and needs the support of say a mental health worker, there have to be external factors so that the court can be satisfied that the tenant can comply with the order.

DISCUSSION

45. As explained above, I have to consider two points: first the question whether the orders of the County Court were wrong and, second, the question of any guidance for the future. I consider that it would be more helpful if I took the second issue first, before determining these appeals. It is to be hoped that the guidance may assist the parties as well as the court. Indeed, in many instances, the parties will want to come to some agreement and avoid litigation.

46. Anyone applying this guidance must bear in mind that the grant of an SPO is case-sensitive. The proper resolution of every case must turn on its own facts, as well as the law, and so guidance must be applied appropriately to the circumstances of a particular case.

GUIDANCE FOR THE FUTURE

What amounts to "cogent" evidence for the hope that the previous conduct will cease?

47. "Cogent" evidence that there is a sound basis for hope that the previous conduct will cease is not simply evidence which shows there is some basis on which it could be said that the tenant will observe the terms of his tenancy in future. The adjective used by Gage LJ was not "credible" but "cogent". To be "cogent", the evidence must be more than simply credible: it must be persuasive. There has to be evidence which persuades the court that there is a sound basis for the hope that the previous conduct will cease or not recur.

48. This Court has repeatedly made it clear that when making an SPO the court has to make a judgment about the future and that the focus at this stage is on the future and not the past (see, for example, per Gage LJ in *Sandwell* and per Maurice Kay LJ in *Canterbury CC v Lowe*). By stating the requirement to be "cogent" evidence that there is a sound basis for hope for the future, the standard is pitched at a realistic level. On the one hand, the tenant does not have to give a cast-iron guarantee. On the other hand, a social landlord does not have to accept a tenant who sets out to breach the terms of his tenancy and disables the landlord from providing accommodation in more deserving cases.

49. There is no principle that the cogent evidence regarding future compliance must stem solely from the tenant himself, without any regard to how others might behave. The likelihood or possibility of action by others, or even the perception that others might take action, may in an appropriate case be evidence which supports an overall assessment that there is a real hope of compliance in the future. For example, a tenant

who has mental health problems affecting his ability to comply might be able to show that his compliance in future is made likely because of support received from others. Similarly, the inclusion of an inspection condition in a SPO might provide support for an assessment that the tenant will comply in future, if his fear of being evicted is sufficiently strong and he thinks the risk of inspection is real rather than illusory.

Resources of the social landlord

50. Mr Moss makes the point that social landlords have limited resources and that idea of having regular inspections in the *Manchester* case came from the judge. I accept that the judge, when framing conditions, has to be careful not to expect a social landlord to do more than is reasonable, having regard to all the circumstances. Those circumstances include the resources of the social landlord, which will be limited. As Mr Lewis points out, social landlords may be expected in some circumstances to be ready to take an active role, as an ordinary incident of checking on their housing stock. Similarly, the police may be expected to have a general interest in keeping an eye on what goes on in their area. It will be a matter of evaluation for the district judge whether the prospect of inspection in fact, or the perception of a risk of inspection, is sufficient to support an overall assessment that there is cogent evidence which provides real hope that the terms of the tenancy agreement will be properly respected in future.

Dishonest evidence does not prevent the court from finding cogent grounds

51. Mr Marcus and Mr Moss correctly held back from arguing that dishonesty in a tenant's evidence in regard to the grounds for possession is a complete bar to the making of an SPO. Mr Lewis suggests many reasons why this is not so. Among those reasons, Mr Lewis submits that ground 17 in schedule 2 to the Housing Act 1988 (which makes a false statement by a tenant in his application for a tenancy a discretionary ground for possession) shows that dishonesty cannot be a bar. On this, Mr Marcus is right that this may not be a helpful analogy as the false statement may have been made many years previously. It is enough to say that even a person who genuinely wants to comply with his tenancy agreement in the future may give false evidence and make up a false story because he thinks that the truth is unlikely to be plausible or acceptable. That is one of many possibilities for the court to consider.

52. Tenants should realise that if they lie in their evidence to the court they run the risk that the court will find that their evidence is not to be trusted on other matters and that the court will not accept assurances from them for the future. Giving false evidence is a very serious matter and it may have very serious consequences for the tenant.

53. However, because each case must be considered on its own facts, the judge has to decide whether there is a sound basis for saying that the tenant changed his or her ways. There is no absolute rule that a tenant who has lied in his evidence cannot ever succeed in having a SPO made in his favour. Even though lies have been told, it may be appropriate for a district judge nonetheless to make the assessment that cogent evidence exists which provides a real hope that the terms of the tenancy agreement will be respected in future. That will require careful consideration and appropriate explanation when the district judge gives his reasons for making an SPO.

The decision to grant or not to grant an SPO involves two stages

54. An application for a suspension involves not just the exercise of discretion but also the making of findings of fact on the basis of which the discretion is to be exercised.

55. The trial judge hearing the evidence should determine which of the relevant evidence of the tenant he accepts and which he rejects. In this he will be much assisted if the tenant has been challenged in cross-examination on any discrepancy in his evidence. The judge may well want to consider the circumstances of any testimony by the tenant. As *Sandwell* shows, the tenant should normally give evidence in court so that the court can assess his credibility.

56. The court making the order for suspension on the basis of the tenant's assurance that he will comply with the terms of the tenancy in future, or some conditions which the court decides to impose, may choose to cross-check his assessment of the assurance by reference to the other available objective evidence, and the probabilities based on the surrounding circumstances, together with what he finds to be the motives and interests behind a tenant's actions.

57. Mr Marcus suggests that this Court should be specific as to the matters that the trial judge has to consider and provide a check-list, which could be based on matters identified by Mr Moss in his skeleton argument (see paragraph 35 above). This is not an appropriate course. The danger of a check-list is that it gives rise to an expectation that other matters are not relevant or should have less weight attached to them.

58. In any event, many district judges already have considerable experience of dealing with applications for possession orders and in considering whether to make SPOs, and therefore in assessing the cogency of excuses and explanations put forward by tenants who have possession orders made against them as to why they can be trusted to comply with their tenancy agreements in the future, despite breaches in the past.

59. Moreover, cases will vary and a check-list might induce a judge to fail to recognise as relevant matters which are not set out in it; it might also induce an unhelpful tick-box approach in place of a true exercise of judgment, which is what is required; and an insistence that a check-list be followed might needlessly take up time and resources and detract from the expeditious dispatch of business in heavily loaded court lists.

60. That said, the items in Mr Moss's list - cooperation with housing authorities and prosecuting authorities, honesty and full disclosure of previous inappropriate behaviour, genuine remorse, early acceptance of culpability – may be matters which a court wishes to consider in any individual case.

61. The decision whether to make an SPO not only involves a multi-factorial assessment. It also calls for a broad, commonsensical assessment as Lord Greene MR held in *Cummings v Dawson* [1942] 2 All ER 653 (CA) in relation to reasonableness:

> "In considering reasonableness… it is, in my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common-sense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in

> the situation. Some factors may have little or no weight, others may be decisive…"

Reasons for a judicial decision

62. The principles governing the giving of reasons in judicial decisions apply to decisions about SPOs, and they need not be set out here. Reasons must be given which adequately explain why one party has lost and the other has won. The decision must be fairly read. An appellate court would be slow to hold that a trial judge who referred to a point at one stage in his judgment but not when he came to exercise his discretion had therefore failed to give adequate reasons for the exercise of discretion.

WERE THE ORDERS OF THE COUNTY COURT IN ERROR?

63. I can deal with this issue more shortly as my answers to the submissions made on these appeals largely appear from the guidance.

64. In both appeals, the tenant was found to have lied to the court about the circumstances in which they breached their tenancy agreement. Relevant to the court's assessment of the impact of that fact, there were a number of features common to each case, including the following. First, the tenant was not found to be primarily responsible for the cannabis cultivation. Second, there was no evidence of previous offences or breaches by the tenant of the terms of the tenancy agreement. Third, each tenant expressed a willingness to comply with the terms of the tenancy in future. Expressly or impliedly the district judges were persuaded that the tenants would comply with the terms of their tenancies if conditions (tailored to their circumstances) were imposed. Each of these common features was relevant to the judge when weighing up the tenant's assurances for the future.

ORDER MADE BY HHJ PLATTS IN CITY WEST

65. DJ Harrison clearly recognised that Ms Massey had not been truthful in giving evidence. Nonetheless he made an SPO. He was persuaded that there was a sound basis for the hope that she would be able to, and would, comply with the conditions excluding Mr Parker from residence. The reasons are perhaps not hard to seek – she was a single mother of three young children.

66. The most important criticism of the judgment which remains to be addressed is Mr Marcus's submission that the judge's conclusion that Ms Massey was fearful of her partner was not supported by the evidence. But the fact of the matter is that the assessment of evidence of a tenant is in all cases a question for a trial judge. The product of that assessment is not properly described as mere speculation, but an assessment by the court based on demeanour. The judge was entitled to make that assessment. He could, if he thought it right, cross-check that assessment by reference to objective facts and other matters. The judge was entitled to ask himself about Ms Massey's motive for lying and being unco-operative because he had to decide if that affected the credibility of her assurance about future conduct.

67. I would dismiss this appeal. The common features provided grounds for the judge to make an SPO. The question whether another court would make the same decision does not require to be asked.

ORDER MADE BY HHJ ARMITAGE QC IN MANCHESTER

68. One of the grounds on which HHJ Armitage QC allowed the appeal to him was that he took the view that under the *Sandwell* test DJ Hayes was wrong to take into account the impact of inspections by Manchester when considering whether there were cogent evidence that there was a sound basis for hoping that Mr Roberts would comply with the terms of his tenancy in future. In my judgment, this is to read the test too literally. As explained in paragraph 53 above, the *Sandwell* test does not require the court to exclude external means of monitoring the tenant. On the contrary such means constitute one of the relevant circumstances to be taken into account. A tenant may show that there is cogent evidence in any way. Nor would it be right to restrict the type of evidence because there are circumstances in which people require some help to honour their commitments. For example, a tenant who suffers from schizophrenia which causes him to forget that he has to pay his rent may need to report that he has taken his medication to some health worker. Obviously the tenant has to be willing to comply with his tenancy agreement – that is something which can only come from him - but he may not be able to do so unless there is some action that a third party takes or can take.

69. In my judgment, the decision of HHJ Armitage QC is flawed because of the view he took about external means. I can understand how the judge reached his conclusion on this, but nonetheless it is wrong. The judge set aside the decision of DJ Hayes on the basis of the evidence in the case excluding the impact of the conditions and he then inevitably and erroneously proceeded to exercise the discretion afresh by following the same line. It follows that his own exercise of discretion is vitiated. As it was, the common features referred to in paragraph 64 above entitled DJ Hayes to reach the conclusion he did.

70. In the *Manchester* case, I would therefore allow the appeal and reinstate the order of DJ Hayes. Manchester did not submit that the matter should be remitted back to the district judge.

CONCLUSION

71. In the *City West* matter, I would dismiss the appeal. In *Manchester*, I would allow the appeal and reinstate the order of DJ Hayes. In each case, the district judges carefully considered the matters before them, and the conclusions which they came to were not capable of being upset by an appellate court.

Lord Justice Floyd

72. I agree.

Lord Justice Sales

73. I also agree.