



Housing Law Update: Equality Act Defences to Accelerated Possession Claims

On 11th March 2015, the Supreme Court issued its much awaited judgment in the case of *Akerman-Livingstone (Appellant) v Aster Communities Limited (formerly Flourish Homes Limited) (Respondent) [2015] UKSC 15* which concerned the approach to be taken by county courts where defendant-tenants to claims for possession under the accelerated procedure rely upon defences under the discriminatory provisions of the Equality Act 2010 ("EA 2010").

At its heart, the question before the Supreme Court was as to whether the proportionality jurisdiction under the provisions of the EA 2010 was the same as that under Article 8 of the European Convention of Human Rights ("ECHR")? If the answer to that question was 'yes' – as indeed the Court of Appeal had previously held (*[2014] EWCA Civ 1081*) – then such defences would fall to be summarily assessed in accordance with the principles established by the Supreme Court in *Manchester City Council v Pinnock [2010] 3 WLR 1441* as later refined in *Hounslow LBC v Powell [2011] 2 WLR 287*. If the answer was 'no', then the Court was invited to provide guidance as to the jurisdiction and the approach to be taken by county courts.

In answering 'no' and declaring that the approach to a defence under the EA 2010 is different to that under the ECHR, the Court held that a tenant's rights secured by the EA 2010 are different to those secured by the ECHR and are much wider and stronger in scope. Unlike with a defence under the ECHR, it cannot be taken as a given that the aim of vindicating a landlord's property rights will almost always make eviction proportionate. A burden rests firmly

with the landlord to demonstrate that there would be no “less drastic” means available to it. Accordingly, while summary disposal may still be appropriate in some EA 2010 cases, it will be far less so than in ECHR cases given that disclosure and expert evidence will be required.

The immediate fall-out from the judgment would go some way to suggest a significant victory for tenants whilst ensuring that landlords have a much greater hurdle to overcome in securing possession using the accelerated procedure.

A full copy of the judgment can be found on the Supreme Court website via the following link: -

https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0202_Judgment.pdf

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