Barry Smith v Contour Homes

Case No. A02MA809

Appeal No M15X260

County Court

1 April 2016

2016 WL 02772072

Before: His Honour Judge P.R. Main QC

Draft judgment handed down: April 01 2016

Hearing date: 18th March 2016

Representation

Mr Gary Willock (instructed Platt Halpern , Solicitors) for the Appellant.

Mr Gary Lewis (instructed by Symphony Legal Services) for the Respondents.

Judgment [1]

Judge P. R. Main QC

Introduction

1 The respondent is the registered social housing provider and owner of the freehold at 72 Stanley Grove, Longsight, Manchester (" *the property* "). On 2nd September 2013, the appellant was granted an assured short-hold 'starter' tenancy. The date for conversion into a full assured weekly tenancy, in the absence of a Section 8 or Section 21 notice, under the Housing Act 1988 , was 8th September 2014.

2 On 11th April 2014, the respondent served the appellant with a Section 21 notice, requiring him to give up possession of the property – the date he was required by the notice to give up possession was 15th June 2014. With the assistance of Sandra Meachin of the Manchester Assertive Outreach Service (' *outreach service* '), the appellant appealed against the service of the notice. The grounds of his appeal in essence were — the serving of the notice contravened his protection against discrimination under Section 15 of the Equality Act 2010 (" *2010 Act* ").

3 The appeal failed, the panel determining that absent any mental health disability, in the case of any starter tenant, it would have been entirely consistent in the respondent's approach to the antisocial behaviour complained of for a notice to be served with a view to the 'starter' tenancy being brought to an end and they found the appellant had not been treated unfairly. In fact the service of the section 21 notice was a reasonable and proportionate response by the landlord. Mrs Meachin was informed of the outcome of the appellant's appeal on 4th June 2014.

4 On 11th July 2014, the respondent issued possession proceedings – a defence was lodged, in effect relying on the appellant engaging the protection of the 2010 Act and his right not to be discriminated against due to a 'protected characteristic', namely his mental health disorder. Under section 35(1)(b) of the 2010 Act, in taking steps to secure his eviction, the respondent had discriminated against him and serving the section 21 notice, was a breach of Section 15 of the 2010 Act.

5 The matter was processed through the accelerated possession list under CPR Part 55.16 , without a hearing and district judge Matharu on 1st August 2014, made an order for possession,

requiring the appellant to give up possession by 11th August 2014, subject to any extensions that might thereafter be agreed. The appellant under CPR Part 55.19 sought to set aside the possession order and district judge Hovington considered the matter on 1st September 2014 – the appellant made a formal application on 16th October 2014 and in doing so, rather widened the scope of his attack. The appellant raised Public law issues, alleged breaches of Article 8 of the European Convention on Human Rights , as well as re-iterating his arguments under the 2010 Act.

6 On 19th January 2015, district judge Hovington heard the claim and reserved his judgment – he listed the handing down of his judgment for 27th April 2015. On 11th March 2015, the Supreme Court handed down its judgment in the case of Akerman-Livingstone –v- Aster Communities Limited [2] . In his draft judgment following the hearing on 19th January 2015, district judge Hovington had rejected all three claims made by the defendant – he recognised he had done so in a summary manner. On considering what their Lordships had said in Akerman , he resolved to give rather closer consideration to the 2010 Act arguments. He listed the matter for further considered argument on 23rd September 2015. He stood by his earlier determination on the Public law defence and the Article 8 points. In the event on considering yet further argument under the 2010 Act, as he set out in a yet further reserved judgment, initially handed down on 1st October 2015, he rejected a breach of the same and found no basis to set aside the earlier possession order made by district judge Matharu.

7 The judgment and the order that followed it, were formally handed down on 14th December 2015. Notice and grounds of appeal were lodged on 17th December 2015, seeking permission to appeal his decision. The permission application is limited to the judge's rejection of the 2010 Act arguments on unlawful discrimination arising out of the 23rd September 2015 hearing – so there is no challenge to the conclusions he reached on the Public law defence or the Article 8 points. District judge Hovington refused permission to appeal.

8 On 23rd December 2015, I gave directions as to the hearing of the permission application and intimated that if permission were granted, I would hear the full appeal, in the same sitting, so to speak. In readiness for that hearing both parties have provided detailed skeleton arguments and lodged a number of authorities

The powers of the court on appeal

9 I will grant permission to appeal, under CPR Part 52.3(6) , if either I find the claimant has a real prospect of success or there is some other compelling reason why the appeal should be heard. In the event, as the arguments were made, it is apparent that the second limb of this option is not really relevant. In effect, the applications under CPR Part 52.3 and 52.11 will rise and fall together, as I intimated to the parties. As I have now heard full argument and have been referred to the numerous authorities, if I find there is a real prospect of success, in reality the appeal will be allowed.

10 The powers of the court under CPR Part 52.11 are now very well known. On the facts here, the court can engage only in a ‘review’ of the decision of the lower court and can only interfere with the conclusion reached, if the judge was ‘plainly wrong’ or it was unjust, due to some serious procedural irregularity. In determining whether the judge was ‘plainly wrong’, there has to be a careful consideration of the White Book 2016 and the notes to the CPR under Rule 52.11.4 . The court must examine whether the judge erred in either his application of the law or in the findings of fact made or their application. Insofar as the judge exercises a discretion taking into account the often cited observations of Lord Fraser, the court is on the look out for where the judge has reached a conclusion which exceeds the generous ambit within which reasonable disagreement is possible [3] , only interfering if it falls outside.

The factual matrix

11 So what caused the respondent to issue their Section 21 notice and if I can put it this way – what was all the fuss about? In a letter accompanying the Section 21 notice, the respondent explained why they had taken the course they had and identified the relevant facts.

12 On 20th February 2014, in the course of daylights hours, the appellant had exposed himself in

public and in the full public gaze had engaged in masturbation outside his address. A number of local residents witnessed these events and unsurprisingly, complained about it. The behaviour was obviously alarming and further investigation revealed that this was not the first time the appellant had behaved in this way.

13 Prior to the appellant taking up his starter tenancy (and when the respondents were quite unaware of any such events), he had appeared before the Manchester & Salford Justices charged with a number of offences – specifically, exposure, possessing a blade or sharp pointed article in a public place and possession of controlled substances, namely amphetamine and cannabis. The appellant pleaded guilty to each of these offences and was sentenced on 24th October 2013 to 8 weeks in custody, suspended for 12 months and was made the subject of a community order with a drug rehabilitation requirement.

14 The particulars of the offences were that on 22nd December 2012, some 1.8 miles from his current address, the appellant had visited the Holy Name Church. While a service was being conducted, the claimant had walked around the back of the altar, exposed his penis and then proceeded to walk down the body of the church masturbating in the full gaze of the congregation. The appellant was immediately arrested. At the time of his arrest, he was found to have on his person a kitchen knife and a screwdriver as well as a quantity of controlled drugs.

15 The respondent was concerned that the current offences committed on 20th February 2014, was history repeating itself and it was concerned not just as to the risks of the behaviour being repeated but also for the risk the appellant's presence on the estate now presented for himself, so far as the local community was concerned. In fact, at the Manchester & Salford Justices on 17th March 2014, the appellant pleaded guilty to public order offences and was sentenced to an immediate period of 12 weeks custody, later reduced on appeal, to a 12 month community order with a supervision & drug rehabilitation requirement.

The Equality Act 2010

16 For current purposes the discrimination provisions under the 2010 Act are set out under Section 15 , which provides as follows:

> (1) A person (A) discriminates against a disabled person (B) if:
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had a disability.

17 In the context of discrimination, the 2010 Act recognises discrimination can take a ‘direct’ form as well as an ‘indirect’ form.

For ‘direct’ discrimination, Section 13 provides as follows:

> (1) a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably that A treats or would treat others…

For ‘indirect’ discrimination, Section 19 provides as follows:

(1) a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) for the purposes of section (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if:

(a) A applies, or would apply, it to persons with whom B does not share the characteristic;

(b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it;

(c) It puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim;

18 The determination of 'disability' was in part qualified by the Equality Act 2010 (Disability) Regulations 2010 (" *2010 Regulations* ") in the context of 'addictions', where under regulation 3 , the following is provided:

(1) Subject to paragraph 2 below, addiction to alcohol, nicotine or any other substance is to be treated as not amounting to an impairment for the purposes of the Act;

(2) paragraph (1) above does not apply to addiction which was originally the result of administration of medically prescribed drugs or other medical treatment…"

The Judge's decision

19 District judge Hovington, heard evidence from both the respondent's housing officer and one of the neighbours (Paul Ashworth) as well as evidence from the appellant and members of the 'outreach service'. He also considered the medical evidence from Dr Tim Garvey, consultant psychiatrist, in the form of his original report of 26th September 2014 (**238–259**) and his answers to Part 35 questions, dated 9th October 2014 (**260–266**). He refused the appellant's application to set aside the possession order. He recognised that the provisions of the 2010 Act were engaged on account of the clear diagnosis that the appellant suffered from a *schizoaffective* disorder, which he found, provided a sufficient causal link to the behaviour complained of. Under Section 15 of the 2010 Act, by implication, he recognised the reality of the respondent discriminating against the appellant – plainly, he had been treated unfavourably, indirectly , as a consequence of his disability but the judge was satisfied that under Section 15(2) of the 2010 Act, the respondent could demonstrate the treatment of the appellant was a ' *proportionate means of achieving a legitimate aim* '.

20 The learned judge came to this latter conclusion on the footing that on the evidence presented the disorder from which the appellant suffered was liable to recur, as the psychiatrist (Dr Garvey) had put it, when both he was acutely psychotic, or when (otherwise psychiatrically well) very intoxicated with drugs or alcohol or both. Here, the evidence was clear the appellant continued to abuse cannabis and take alcohol (which previously when combined with alcohol) had brought about his relapse into his psychotic behaviour. As the respondent did not have the resources, skills or expertise to meet the appellant's mental health needs but had an important ongoing duty to protect and safeguard their other residents from the effects of being exposed to this abusive behaviour (when seen in the context of their ongoing housing management function), it was a proportionate measure to seek the possession of the property. He was not satisfied there were

realistically any other measures, short of allowing the possession of the property, which would satisfactorily protect their other tenants weighing up the competing risks both to the appellant (in the event he was evicted) and the residents (if the appellant was allowed to remain). The judge specifically rejected as a fact, that the obtaining of an injunction would be a more appropriate or effective remedy.

21 Standing back from the decision, the judge concluded that the utility achieved by the respondent, in the exercise of the 'twin aims' as expressed in the case of Ackerman-Livingstone (*infra*), which was a perfectly legitimate aim to pursue, outweighed any detriment to the appellant.

The appellant's submissions

22 Mr Willcock underlined a number of matters – since the starter tenancy's inception, there had only been one transgression – this then had to be seen in the context of there not having been any recurrence for a period of 22 months to the making of the order of 22nd December 2015, with the appellant cognisant of his difficulties and anxious to keep his tenancy and co-operating with his local mental health trust support. In the context of the protective framework of the legislation and the need for the respondent to prove that it had acted in accordance with the new four stage test expounded by the Supreme Court in Akerman-Livingstone , the learned judge erred in finding that it had acted in a proportionate manner in seeking to further a legitimate interest.

23 The judge erred in unreasonably elevating the risk of a recurrence from the evidence of Dr Garvey, who had stated the risks to be 'low'. Given the fact of the appellant's capability of avoiding any recurrence, the respondent's legitimate concerns as to the need to protect other tenants from such a recurrence, would amply have been met, as a proportionate measure, by the obtaining of an injunction – there was no 'need' for an outright order. The Law enjoined the judge to make an order of 'no more than was necessary' to protect their interests and the judge in concluding only an outright order was appropriate, he simply got it wrong. On ill-defined and poorly expressed reasons, the judge wrongly found that the obtaining of an injunction would not reasonably have protected the residents, in keeping with the respondent's duties towards them – the injunction in place for 22 months, had protected the residents — why did the judge find it was likely to be ineffective into the future?

24 The continuing of the injunction was a proportionate and flexible way of controlling affairs, under the supervision of the court – in the light of the protective framework, as outlined in Akerman-Livingstone , this had to be the way forward. The alternative – an outright order given the appellant's vulnerability, would a have a very serious effect on him and the balance plainly fell in his favour. The judge was wrong to conclude otherwise.

The respondent's submissions

25 Mr Lewis started by stating that the learned judge had acted entirely reasonably in refusing the appellant's application. Short of the making of an outright possession order, the respondents had no other way of really guaranteeing the protection of the other residents and members of the public that might come into contact with any repetition of such behaviour. Within a couple of minutes' walk of Stanley Grove, was a Primary school — the estate and area more generally, in keeping with many residential areas, was alive with children. The nature of his condition was that it was liable at some stage to recur – Dr Garvey had not been able to rule that out, even if he had stated the risks to be low. The taking of illicit substances, with or without alcohol was liable to increase the risks of such a recurrence.

26 As the appellant himself admitted (that admission being made then equivocal) he continued to use cannabis every other day – the fact of this in any event being supported by his community psychiatric nurse ("CPN"), who confirmed the appellant's flat smelling of cannabis. So too, he admitted to Dr Garvey, he continued to take alcohol at time, albeit (on his account not often). Given his underlying psychiatric presentation and Dr Garvey's acceptance that the use of drugs and alcohol increases the risk of a recurrence of further incidents (with the advice that he avoids drugs and excessive alcohol), the judge was perfectly entitled to reach the conclusion he had reached, as the appellant's risks, in the light of this, remained 'heightened'.

27 The propensity for the appellant to engage in grossly errant behaviour had been displayed notwithstanding, his engagement with the ‘outreach’ service and the support of his CPN and in the event everyone involved in support the appellant had been powerless to prevent the incident. It was therefore no use speaking in terms of injunctions being likely to control events longer term. In the event of the eviction being carried forward, the appellant would not be rendered street homeless, as there was a support structure in place.

28 Permitting the appellant to remain in his tenancy had an adverse effect on the respondents (a) in the way it sought to manage its housing stock — the appellant still breached by his own admission the terms of his tenancy agreement by the taking of cannabis and (b) in seeking to protect its tenants – a risk which it was really helpless to eliminate or control.

Dr Garvey's report

29 Dr Garvey examined and interviewed the appellant on 3rd September 2014. He also reviewed the appellant's medical/psychiatric history, and spoke to Mr McAndrew, the CPN. Having noted that the appellant had stopped taking amphetamines and had been found to be clear of the drug following his drug treatment & testing requirement attached to his 12 month probation order (at least to the April 2015, when the testing stopped), he still noted the appellant to be smoking cannabis and taking alcohol. He was informed and satisfied the appellant remained compliant with his medication regime (fortnightly depot injections (IM) of 300mgs *clopizol* together with *sertraline*). In being so compliant with the regime, Dr Garvey was satisfied that at the time of the event in question on 20th February 2014, the appellant was not suffering from any active psychosis but rather having been placed in a very low mood after news of the death of his grandmother, had drunk to excess (6 cans of strong cider) and smoked 6 joints of cannabis. His behaviour was nevertheless linked to his underlying psychiatric vulnerability as he was able to call upon fewer coping strategies and thus, became over-reliant of alcohol and drugs as his main strategy – in the event, it was this that caused his grossly errant behaviour on the day. So the precipitating cause of the events was not his underlying psychotic risk but rather his aberrant dependence on drugs and alcohol in a stressful situation. He dealt with this in paragraph 6.9.1 of his report.

30 Dr Garvey observed that at the time of the events in question, the appellant was quite adequately supported (his support remains the same today) and he did not think that any additional support was necessary. He recognised that when ‘unwell’, the appellant could be sexually disinhibited – the risk of the recurrence of the relevant behaviour was present (a) when he was psychotic and/or (b) when very intoxicated with drugs or alcohol or both.

31 Dr Garvey was obviously concerned by the potential effects on the appellant in the event of the loss of his tenancy – it might well lead to support services experiencing greater difficulty in being able to monitor him – it might lead to a more chaotic lifestyle with a greater risk of damaging drugs and alcohol abuse with the real risk of relapse into a psychotic illness.

32 The report does not touch upon the risk of the appellant resuming his amphetamine dependency or the use of alcohol increasing at times of stress, save an increased chance of a relapse if he were to lose his tenancy. He recognised the drug treatment and testing order was still in place – although due to end, with the Probation order, in April 2015. He does not address the risks then – save from observing the appellant was in a better position to engage with his support, to sustain his recovery?

The Law

33 The decision of the Supreme Court in Ackerman-Livingstone has provided clarity in relation to the law and the issue of discriminatory behaviour against a tenant with a ‘protected characteristic’. The leading speech of Lady Hale, with whom all of the Justices agreed, now points to their being a four part test – extending the earlier three part test expounded by Mummery LJ in the Court of Appeal in R (Elias) –v- Secretary of State for Defence [4] . The test therefore is:

(a) Is the objective sufficiently important to justify limiting a fundamental right?

(b) Is the measure rationally connected to the objective;

(c) Are the means chosen no more than is necessary to accomplish the objective;

(d) Do the 'ends' justify the 'means' in assessing an overall balance between the aims pursued and the disadvantages caused;

34 In the course of her speech, Lady Hale reiterated the point established in earlier cases, that where a landlord raised a discrimination defence (as here), the question was not simply whether the landlord was entitled to recover the property in order to fulfil its public housing management function but also whether the landlord had done all that it reasonably could do, to accommodate the consequences of the disabled person's disability and then standing back from the facts, by asking the question, whether the landlord's aim in pursuing the 'twin aims' [5] outweighed the effects on the disabled person [6] .

35 In the course of argument, this has been approached under the heading of 'proportionality' – here, it is for the landlord to prove the proportionality exercise falls in its favour. Pursuit of the 'twin aims' whilst if established they weigh heavily in favour of the landlord, they do not tip any balance.

Discussion

36 It surely cannot be disputed that any landlord faced with a tenant acting in the fashion as the appellant acted, in broad daylight in the public gaze with families and children being potentially exposed to such behaviour — it being so far removed from ordinary tenantable behaviour, warranted immediate intervention and a requirement that the like, could not tolerably be repeated.

37 The end sought by the landlord in protecting the other tenants from the possible repetition of such behaviour and in managing its own estate, in ensuring that its tenants should abide by proper standards of behaviour, in accordance with its tenancy agreement, was surely a perfectly legitimate aim – the 'twin aims' here therefore obviously spoke in favour of the action being taken by the landlord.

38 The issue here therefore was one of 'proportionality' – whether the aim to be achieved in the event, was so outweighed by the damaging effect on the appellant, in view of his vulnerability – and whether there were other measures available to the landlord which reasonably, would have achieved their legitimate ends?

39 Having reviewed the decision of the learned judge, I have no doubt he did seek to go about considering both of these issues — the question is (a) did he see it through properly and take into account all that he should have taken into account and (b) did he reach a legitimate conclusion, in the exercise of what amounted to the exercise of his discretion?

40 In considering those matters and in standing back from that exercise, so as to give effect to the 4th test of Lady Hale in Ackerman – Livingstone , it seems to me the court needed to carefully consider the nature of the claimant's vulnerability (which secured protection under the 2010 Act) and the realistic outcomes for the future, in assessing the real risks the appellant poses to his community. Having assessed those matters, the court needed to give careful consideration as to what measures would achieve the landlord's aims and whether the effect on the appellant was outweighed by the aim in being achieved.

41 The appellant was an unrepentant and habitual cannabis user – he knew he was prohibited from using cannabis on, in/or around his tenancy but he did it anyway. He also continued to use alcohol (on his account moderately). So too, he had been an abuser over many years of amphetamines – his use of amphetamines was seemingly curtailed, as supported by the drug treatment and testing requirement (part of his 12 month Probation order). That order came to an end in April 2015. There is no evidence the appellant had been tested after that requirement ended. Although passed over as a feature of the case by Dr Garvey (it was not discussed by

him), there remains a risk, the claimant might in the future return to his amphetamine addiction – just as there remained a risk that the appellant might increase his cannabis consumption from every other day (which he admitted to) to every day or several times a day and his alcohol consumption.

42 Whilst the claimant was compliant with his medication and seemingly was willing to receive his depot injections every 2 weeks, he had not always been so compliant before the events in question — he did not see himself as ill and on more than one occasion in late 2014 and early 2015, asked to come off the *clopizal* or to have the dosage reduced, as " *he felt trapped in his mind* " (**207/215**).

43 The incident which occurred on 20th February 2014, did not strictly involve his protected characteristic — it more reflected, when he was stressed, his abuse of alcohol and drugs, which were excluded under the 2010 Regulations. It is of note that neither the claimant's abuse of cannabis nor his taking of alcohol had stopped. As Dr Garvey was forced to recognise, this inevitably raised the risk of such a recurrence, at times of stress, even if the depot injections did keep him on an 'even keel', protected from an acute psychosis. However, maintenance of his depot administered dosage of *clopizal* did not guarantee, he would not have a further psychotic episode. The hope was the outreach team would catch it in time – when ill, the appellant became more liable to sexually inappropriate behaviour.

44 Any injunction could only operate <u>reactively</u> – hopefully, as the outreach team operated a system of 'red flags' in monitoring the appellant, they would pick up the signs and take steps to protect the appellant and those around him from any recurrent psychosis, but again, there were no guarantees (just as had been the case in December 2012). In the meantime, those living around the appellant faced the risk of his aberrant behaviour, if he fell through that net. Talk of abiding by injunctions and controlling his behaviour was in essence engaging the claimant's conscious and controllable traits, appropriately motivated – but it could not address sub-conscious or overwhelmingly addictive urges or an acute psychosis.

45 The judge's exercise of discretion had to be seen in this context from the landlord's perspective.

46 From the appellant's perspective, whilst the judge was bound to take into account the effects on the appellant of the loss of his tenancy, as both the CPN and Dr Garvey highlighted (and as the judge was aware of), he still had to take heed of the fact (and it was not disputed) the appellant would not have been made 'street homeless', due to his support network and that support network would only continue, with the appellant being housed elsewhere.

The permission application

47 The Judge was not obliged to take Dr Garvey's evidence as answering the issue of risk and he was well able to take heed of the limitations of granting injunctions.

48 I am entirely satisfied that the exercise of the judge's discretion in refusing the appellant's application to set aside the possession order of 1st August 2014, was a legitimate decision that could have been reached on the facts – his conclusion was one that fell well within the range of reasonable disagreement.

49 Accordingly, the judge was entitled to find that the risks of relapse and repeated aberrant behaviour, even allowing for the long period of uneventful occupation, since February 2014, was a very real one and one against which the landlord could not take any realistic measures to prevent, absent a possession order.

50 An injunction simply would not have protected the other residents from the real possibility of recurrence. He was also well aware of the effects the making of the order would have on the appellant and in balancing the differing aims concluded, the aim sought by the landlord was not disproportionate, notwithstanding the requirement that the appellant leave the tenancy, allowing for his psychiatric presentation and vulnerability. I cannot find he has mis-directed himself on the test to be applied or failed to properly consider the issue of 'proportionality'.

51 Specifically, to address the four point test — the objective of the respondent in safeguarding other tenants and controlling aberrant behaviour of the appellant was a sufficiently important

objective – surely there can be few more important objectives. Once the respondent took the view the only real way of ensuring the behaviour was stopped was by having the tenant removed, the measure adopted – the service of the section 21 notice, was rationally connected to the objective. Once the judge found legitimately, there were no other lesser means of achieving the objective, they did adopt the means that were no more than necessary to achieve that objective and here, on the facts as presented to the judge, he could conclude that the aim to be achieved given the risks to the other tenants (leaving aside the risks to the claimant were he to remain from members of the public) well outweighed the risks to the claimant, given he would remain well supported within the outreach service and he would not be made 'street homeless'.

52 Permission to appeal is therefore refused under CPR Part 52.3(6)(a) on footing it has no real prospect of success. To avoid any doubt, were I to have been exercising my own discretion, in the place of the judge, I would have reached the same conclusion.

53 I am circulating this judgment in draft to the parties. I invite the parties to agree a form of order, arising out of this dismissed permission application. It will be my intention in due course to direct under CPR PD 39A para 6.1 that no shorthand note shall be taken of this judgment and that copies of this version as handed down, shall be treated as authentic.

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1. In the course of this judgment, I will refer to the appeal bundle, two authorities' bundles and skeleton arguments prepared by counsel for both parties, for which I am very grateful.

2. *[2015] UKSC 15*

3. *G –v- G (Minors: Custody Appeal) [1985[1 WLR 647* at 652, as applied in *Tanfern Ltd –v- Cameron MacDonald [2000] 1 WLR 1311* para 32 per Brooke LJ and as further explained by Lord Woolf MR in *Phonographic Performance Ltd –v- AEI Redifffusion Music Ltd [1999] 1 WLR 1507* at 1523.

4. *[2006] 1 WLR 3213* at para 165 – a principle noted by Lady Hale to have been drawn from earlier authorities.

5. The ongoing duty to protect and safeguard other tenants and its need to maintain proper control over its housing management function.

6. Para 32;

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