

When no means *no*: time limits that cannot be extended, even if non-compliance is outside your control

***Harris v London Borough of Hounslow* [2017] EWCA Civ 1476 is a warning to all secure tenants that face eviction under the new absolute grounds for possession: you must comply with the 7-day statutory time limit to request a review even, it seems, if you can't.**

Legal framework

Recent amendments to the Housing Act 1985 (“the Act”) introduced a new absolute (mandatory) ground for possession that is available where a secure tenant has been found to have caused serious anti-social behaviour (s.84A, Conditions 1 to 5). This ground is subject only to a review procedure that must be activated within 7 days of service of a notice under s.83ZA of the Act. To do so the tenant must make a request in writing setting out, *inter alia*, “a description of the original decision” and “the grounds on which the review is sought” (Absolute Ground for Possession for Anti-social Behaviour (Review Procedure) (England) Regulations 2014).

If a request is *duly* made, the landlord must review its decision and “if the decision is to confirm the original decision [to seek possession], the landlord must also notify the tenant of the reasons for the decision” (s.85ZA(3)-(5)). The review must be carried out, and the tenant notified, “before the day specified in the notice under section 83ZA as the day after which proceedings for the possession of the dwelling-house may be begun” (s.85ZA(6)).

Facts

On 23 December 2015 a possession notice was served on the Appellant under 83ZA of the Act and relying on Condition 4 (s.84A(6)). The Council’s offices were then closed from 24 December 2015 to 4 January 2016 - as were most, if not all, housing solicitors in the borough. The Appellant instructed solicitors on Monday, 4 January 2016 and a request was made to extend time in which to make a request for a review of the decision to seek possession. The request was refused because it was “out of time”, no extension was granted and possession proceedings were issued. In the

weeks prior to trial the Council conducted a non-statutory review and the decision to seek possession was upheld.

Trial

The Appellant's case at trial was, *inter alia*, that the Respondent acted unlawfully by (a) serving the notice on 23 December 2015 and/or (b) refusing to accept the late request or otherwise extend time.

The District Judge found that the Respondent had acted perversely in refusing the extension or, if the time limit could not be extended, failing to serve a fresh notice to re-activate the 7-day period. However, the non-statutory review "cured" the defect and possession was granted. The District Judge granted permission to appeal directly to the Court of Appeal.

The appeal

The Court of Appeal dismissed the appeal for different reasons: a tenant who requests a statutory review outside the seven day period is out of time, he is not entitled to a statutory review and the landlord has no obligation or power to conduct one. The court rejected (on the facts) the Appellant's alternative position that the Respondent had an obligation to serve a fresh notice if the tenant's failure to make a request in time was outside his control. Whilst accepting that in the course of possession proceedings a local authority landlord makes a series of decisions, any of which might be the subject of challenge on public law grounds, the general application of public law principles to decisions of a local authority landlord "must not be allowed to undermine the legislative scheme of this mandatory ground for possession".

Implications

Once a review has been duly requested by the tenant the Regulations governing the review procedure are engaged and designed to be informal and flexible (note the contrast to the rigid 7-day time limit): the tenant has the option to be heard orally and

there is express provision for circumstances where the tenant fails to attend the oral hearing (see Regulation 7 and 8).

If a request is made outside the 7-day time limit the decision in *Harris* is not necessarily fatal: the Court of Appeal rejected *on the facts* the argument that a fresh notice should have been served. Therefore, where the non-compliance is outside the tenant's control, any late request for a review must specifically state that the Respondent is required to withdraw the notice and serve a fresh notice (so as to re-activate the 7-day period). Further, grounds must be put forward with the request to support the contention that "a review might lead to a different decision being made". The door is not, therefore, closed and in an appropriate case the Court of Appeal may have to consider whether a tenant has put forward sufficient grounds to permit a late request for a review.

Anthony Katz of 36 Bedford Row represented the Appellant at trial and on appeal