RSLs and Human Rights Act Challenges:
implications of the Court of Appeal judgment
in *R (Weaver) v L&Q Housing*

*Special senior practitioner briefing by*

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Summary:
The decision of the Court of Appeal (18 June 2009) in the case of *Weaver* has garnered much interest in the housing press. This briefing by Professor Caroline Hunter of York University Law School is intended to give senior housing management some guidance on the implications of the decision and appropriate responses to it.

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1. What were the facts?
Ms Weaver was an assured tenant of London and Quadrant Housing Trust (L&Q). It obtained possession against her on the basis of Ground 8 (8 weeks rent arrears at Notice of Seeking Possession and hearing). She issued judicial review proceedings in the Divisional Court to challenge the eviction on the basis that she had a legitimate expectation, given the Housing Corporation Guidance that Ground 8 would not be used, and that to use it was a breach of her right to respect for home under article 8 of the European Convention on Human Rights.

The Divisional Court dismissed the substance of the case, but did make a declaration that L&Q is a public authority for the purposes of the Human Rights Act. L&Q sought to appeal that decision.
2. What was the Court of Appeal decision?
The decision of the Court of Appeal, briefly, was:

- that L&Q is a “hybrid authority” for the purposes of the Human Rights Act 1998, s.6(3)(b) (this was in any event conceded, given the powers that RSLs have to apply to ASBOs and parenting orders)
- that the termination of Ms Weaver’s tenancy was not a private act under s.6(5).

More broadly it was decided that the allocation and management of tenancies by L&Q are public functions and that this was relevant in deciding whether the particular act (in this case termination of the tenancy) was a private act. It was also decided that such decisions were subject to judicial review.

3. Does the decision apply to all RSLs and all their tenants?

- It is explicitly stated that it does not automatically apply to all RSLs. The court says that in each case it is fact specific (the example of one which has never received any public subsidy is given as arguably falling outside the decision), but the basis of the decision is likely to mean that most RSLs will fall within it.

- The decision applies to social housing. It will not apply to tenants on market rent schemes or the management of long leaseholds. More difficult questions may arise, for example, about shared ownership schemes, but these are not addressed.

4. What are the implications of the decision?
The effect of this decision is to give those being evicted from their homes the protection of the Human Rights Act and the potential to bring a claim under article 8 of the European Court of Human Rights for breach of the right to respect for home.
It will also permit judicial review to be sought. It has been suggested that this will have major implications for RSLs. This may not be the case, however, for the following reasons:

(i) The substantive claim in this case, that the tenant had a legitimate expectation that Ground 8 would not be used, failed in the Divisional Court, and the Court of Appeal found that decision to be correct.

(ii) As pointed out in the decision, challenges to local authority decisions to evict under mandatory powers have not been successful (see in particular Kay v Lambeth LBC [2006] UKHL 10, [2006] 2 AC 465 where the House of Lords held that the right of a public authority landlord to enforce a claim for possession would in most cases be justifiable under Article 8(2)).

(iii) The Court only considered allocation and management functions. It does not define those and it certainly will not encompass everything that RSLs do. Where housing development falls is not clear but it could be arguable that this is not a public function and that in any event the commercial arrangements with lenders and contractors are private acts (Rix L.J. in the Court of Appeal suggested that raising finance private or public could well be a private function).

(iv) The decision does not affect other legislation that has specific definitions of public authorities, which do not include RSLs, e.g. Freedom of Information Act 2000; the Regulation of Investigatory Powers Act 2000.

5. How should RSLs respond?
RSLs that have clear, transparent and fair procedures should have nothing to fear from this judgment. The eviction of assured and secure tenants through the courts will be compliant with the Human Rights Act.
It may be worth reviewing the following policies and procedures, however, to ensure that they are compliant with the standards expected under both the Human Rights Act and the courts under judicial review challenges:

(i) **Allocation policies and procedures**: in particular, do these inform applicants of the basis of any adverse decisions and provide a way for them to challenge them internally (e.g. decision to exclude applicants on the basis of anti-social behaviour or previous rent arrears)?

(ii) **Eviction of tenants without security**. The largest group is likely to be those on starter or demoted (assured shorthold) tenancies. In all such cases, again, are tenants told the basis on which they are being evicted and given a chance to challenge this through a transparent internal review procedure?

(iii) **If ground 8 is used in possession cases**, is the decision to proceed on that basis reviewed at every stage. Is the use of it reasonable? Note in a recently reported case (Legal Action) an RSL sought to enforce a Ground 8 possession order against a woman who was disabled, whose benefit was temporarily cancelled in August 2007. Before the warrant was enforced in May 2008, a backdated payment of housing benefit was received which cleared the arrears in full. The judge set the challenge to the warrant down for a full hearing. The RSL decided to concede the case before the full hearing, but this is the sort of decision-making that may now be caught by a challenge.

(iv) **Decisions to increase rents** should be transparent and show clearly that all relevant factors (including the impact on tenants) have been taken into account.

There are undoubtedly other areas which could potentially come under scrutiny, but a focus on the tenant as an individual whose rights must be respected when
decisions are made in relation to him or her will mean that any potential challenges can be headed off.

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About the author

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