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Welcome to the December issue of SHLA Newsletter.

December is upon us and we wish our members a happy festive season. The last few months have been busy ones for SHLA as interveners in *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416, organising the annual conference which will take place on 14 March 2024 and holding our first webinar run by SHLA Wales. This newsletter also brings our members a variety of interesting and topical articles should you find yourself at a loose end between the festivities.

Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416

In early-mid 2023, SHLA, with a number of other organisations, was granted permission to intervene in *Churchill* and judgment was handed down on 29 November 2023. Members can read the judgment here.

Whilst what happened to Mr Churchill's case itself will not be of significant interest to members, the other issues before the court are of wider application. Those issues were as follows (see judgment at [6]).

a. Was the judge right to think that *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576; [2004] 1 WLR 3002 bound him to dismiss the Council's application to stay the proceedings so that Mr Churchill could use its internal complaints process?
b. If the judge was not so bound, can the court lawfully stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process?

resolution process?

Sir Geoffrey Vos, Master of the Rolls, giving a judgment with which Carr LCJ and Birss LJ agreed, concluded that paragraphs [9]-[10] of the judgment in *Halsey* was not a necessary part of the reasoning that led to the decision in that case and, therefore, the judge at first instance in *Churchill* was not bound by it (see judgment at [8]-[21]). He went onto hold, under the second issue, that the court can, as a matter of law, stay existing proceedings for, or make an order that, the parties to engage in a non-court-based dispute resolution process (see judgment at [50]-[58]).

In relation to how the court should decide if a stay is appropriate to allow the parties to engage in a non-court-based dispute resolution process, it will ultimately be a matter for the judge on the facts of the case; the Court would not lay down fixed principles (see judgment at [66]). The Court did, however, suggest that the matters mentioned by the Bar Council, Mr Churchill and the Court in *Halsey* would be likely to have some relevance to the exercise of the court's discretion (see judgment at [66]).

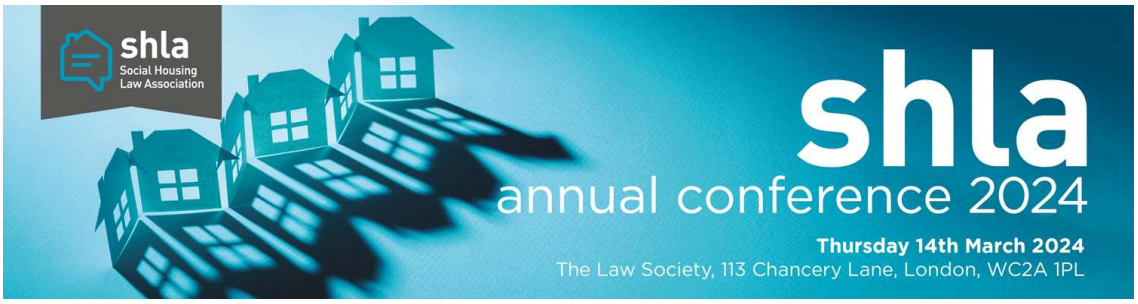
Those factors include (see judgment at [61]-[63]):

a. the form of ADR being considered (including whether there was a neutral third party involved, whether there was a written procedure for the process, the timeframe and the possible outcomes *i.e.* does a scheme allow for compensation);
b. whether the parties were legally advised or represented (or could be under any scheme for dispute resolution);
c. whether ADR was likely to be effective or appropriate without such advice or representation;
d. whether it was made clear to the parties that, if they did not settle, they were free to pursue their claim or defence (which may also include whether or not any limitation is suspended during the process);
e. the urgency of the case and the reasonableness of the delay caused by ADR;
f. whether that delay would vitiate the claim or give rise to or exacerbate any limitation issue;
g. the costs of ADR, both in absolute terms, and relative to the parties' resources and the value of the claim;
h. whether there was any realistic prospect of the claim being resolved through ADR;
i. whether there was a significant imbalance in the parties' levels of resource, bargaining power, or sophistication;
j. the reasons given by a party for not wishing to mediate;
k. the reasonableness and proportionality of the sanction, in the event that a party declined ADR in the face of a court order.

First SHLA Wales webinar

As one might expect - with the topic of the webinar being housing conditions - the first webinar held by SHLA Wales was a huge success. With the issues covered being relevant to social landlords in both Wales and England, the discussion was informative, engaging and insightful. It included information on initiatives in Wales in relation to claim farmers and how that is being tackled. For any members who missed it, the recording can be found here.

Annual conference



Details of SHLA's annual conference to be held on 14 March 2024, including the booking form, can be found here.

The newsletter

more details. The deadline for submissions is 4pm on 27 January 2024.

Finally, we are grateful to those who have provided articles for this newsletter. Readers will be able to enjoy articles from:

- Sarah Salmon and Olivia Davies, barristers at Cornerstone Barristers discussing the first case from Upper Tribunal to consider the Building Safety Act 2022;
- Aristide Hoang-Brown, barrister at Field Court Chambers who considers penalties for breaches of ASB injunctions one year on from *Wigan Borough Council v Lovett;*
- Andy Lane, barrister at Cornerstone Barristers and Jeremy Ogilvie-Harris, pupil at Cornerstone Barristers with a in-depth look at appealing district judge orders from the county court; and,
- Gwennan Jenkin, trainee solicitor at Sian Thomas, Daughter & Son Solicitors who looks at capacity, care-homes, and contracts when bring possession proceedings under Renting Homes (Wales) Act 2016;
- Elizabeth England, barrister at Five Papers takes a look at *Churchill* in more detail.

Enjoy the read!

Sarah Salmon & Katerina Birkeland

Life in the new world of the Building Safety Act 2022

To view this article, click here.

Capacity, Care-homes, and Contracts: Possession proceedings under Renting Homes (Wales) Act 2016 – a year on.

The implementation of Renting Homes Wales on 1 December 2022 ("RH(W)A 2016") brought with it a number of changes for housing practitioners in relation to possession proceedings. Such changes included a significant change in the way in which landlords are able to recover possession. One particular issue which quickly became of interest to many was the correct procedure to undertake to recover possession of a property when a contract-holder was no longer living at a property after they had been deemed to have lost capacity and as a result, moved into a care-home. The abandonment procedure had initially been considered, however it did not sit quite right to argue that a landlord was able to recover possession via this route. It is arguable that in order to abandon a property, a conscious decision to leave that property would had to have taken place. It became clear that if a person is deemed not to have capacity, that conscious decision could not be made. After careful consideration, it was concluded that the most appropriate approach was to pursue possession due to a breach of contract.

Read more

Appealing district judge orders from the county court

Andy Lane, Barrister, Cornerstone Barristers; Jeremy Ogilvie-Harris, Pupil, Cornerstone Barristers

"The trial is not a dress rehearsal. It is the first and last night of the show."

Lewison LJ in *FAGE UK Limited, FAGE Dairy Industry S.A. v Chobani UK Limited, Chobani, Inc.* [2014] EWCA Civ 5: [2014] E.T.M.R. 26 at [114]

It is not uncommon for a litigant or their advisers to feel unhappy with a first instance decision in the county court, whether concerning a case management order or final

consider the law, practice and practicalities of appealing from the county court.

This article aims to provide a broad overview of the appeal process from an order made in the county court by a district judge (**'DJ'**) or deputy district judge (**'DDJ'**). The article is structured into three parts: first, it sets out the relevant test for permission; second, it addresses to which type of judge an appeal should be lodged; third, it addresses the practice of drafting grounds of appeal and what to consider when deciding whether to appeal or not to appeal.

Read more

Penalties for breaches of ASB Injunctions – *Wigan Borough Council v Lovett* one year on

by Aristide Hoang-Brown, Field Court Chambers

It is approaching a year since the Court of Appeal intervened to provide some much-needed guidance as to how courts should approach penalties for contempt for breaches of Anti-Social Behaviour Injunctions made under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014.

Wigan Borough Council v Lovett [2022] EWCA Civ 1631 was decided in the context of a report by the Civil Justice Council in July 2020 entitled 'Anti-Social Behaviour and the Civil Courts'. Paragraph 379 of the report identified "serious concern about the inconsistency of penalties imposed … for breach of orders made under the 2014 Act", ranging from "judges not considering breaches to be sufficiently serious to warrant action" to "excessive penalties out of line with what the approach would have been in a criminal court".

Read more

James Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416

Test Case on Compulsory ADR

SHLA Members will remember that earlier this year their view was sought as to whether to intervene in the Churchill v Merthyr case, which had the potential to create a position in which a claim could be stayed for parties to explore resolution through the internal

The driver is housing conditions claims, and the many claims that are advanced by claims farmers who are interested only in their costs.

It was argued on behalf of SHLA that there can be compulsory ADR, and for that to happen that the court would have to rule that previous authority (a case referred to as *Halsey*) was no longer good law. The rest of the arguments were about whether the internal complaints procedure could be an avenue that the court could order a party to engage in.

Read more

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