

Community Housing Association Held to be a 'Public Authority'

R (Weaver) v London and Quadrant Housing Trust [2008] EWHC 1377 (Admin) (24 June 2008)

The UK High Court of Justice has recently considered the meaning of 'public authority' under the *Human Rights Act 1998* (UK). In this decision, Registered Social Landlords were held to be public authorities for the purposes of the Act.

Facts

The claimant, Susan Weaver, was an assured tenant of the London & Quadrant Housing Trust ('LQHT'). LQHT was a Registered Social Landlord ('RSL') under the *Housing Act 1996* (UK), and was responsible for providing affordable housing to people whose needs were not met by the market.

Weaver applied for review of LQHT's decision to seek an order for possession against her on the ground that she was at least eight weeks in arrears in paying rent. She alleged, in part, that the decision was incompatible with the right to respect for the home under art 8 of the *European Convention on Human Rights*. She also alleged a breach of a legitimate expectation that LQHT would pursue all reasonable alternatives before resorting to a mandatory ground for possession of the property.

Under s 6(1) of the UK HRA, a public authority may not act in a way which is incompatible with a *Convention* right. The question therefore arose whether an RSL and, in particular LQHT, was a public authority within the meaning of the Act. The claimant argued that LQHT was a 'hybrid' or 'functional' public authority, in that some of its functions were public in nature (including the decision to grant or terminate social housing tenancies).

Decision

The Court held that the management and allocation of housing stock, including decisions relating to the termination of tenancies, was a function of a public nature. The Court regarded LQHT as a public authority despite several characteristics that were 'private' in nature. For example, LQHT was a privately formed body, was governed by its own rules, managed its own housing stock, shared no board members with a relevant public body and had limited or no statutory powers.

However, the following factors were relevant to the finding that LQHT was a public authority:

- LQHT's status as a not-for-profit organisation. While not in itself a determinative feature of a public authority, it was significant that LQHT lacked the private and commercial features of an entity acting for profit;
- The fact that the sector within which LQHT acted (social rented housing) was 'permeated by state control and influence with a view to meeting the Government's aims for affordable housing'. In this sense RSLs could be said to take the place of local authorities;
- LQHT received substantial public subsidy for particular development programs through capital grants from the UK Housing Corporation, in common with other RSLs;
- More than ten per cent of LQHT's housing stock had been transferred to it from the public sector, reflecting the fact that RSLs and local authorities were performing similar functions in the provision of social rented housing; and

- LQHT had a statutory duty to cooperate with local authorities in the way that it rented out its houses. This indicated that the relationship between LQHT and the local authorities was not purely contractual.

On this basis, LQHT was a public authority in relation to both the grant and termination of a tenancy. However, the Court did not hold that the claimant's legitimate expectation was enforceable or that she was in fact led to believe that LQHT would act differently from the way in which it did act.

The finding that RSLs are public authorities represents a move towards a broader interpretation of the concept of 'public authority'. The most recent previous case on the issue, *YL v Birmingham City Council*, held that a privately run aged care facility did not fall within the definition of public authority under the *Human Rights Act 1998* (UK), despite the fact that the facility achieved a purpose in the public interest and was subject to substantial regulation.

The Court in *Weaver* did distinguish some aspects of *YL*; for example, the aged care facility in *YL* was a commercial organisation run for profit and received no public funding as such. However, the decisions on the meaning of 'public authority' sometimes appear difficult to reconcile. Perhaps *Weaver* was decided with an awareness that the UK legislature was in the process of overturning the decision in *YL*. In the June 2008 edition of this Bulletin, James Welch of leading UK civil liberties group Liberty identified the courts' narrow interpretation of public authority as one of the key weaknesses of the UK human rights legislation.

LQHT intends to appeal this aspect of the decision, and therefore confirmation of the trend towards a broader definition of public authority may come from an appellate court. In the meantime the area remains, in the words of the Court in *Weaver*, not 'altogether easy to resolve'.

Relevance to the Victorian Charter

The definition of 'public authority' under the Victorian *Charter* is more detailed than that under the *Human Rights Act 1998* (UK). Nevertheless, this decision provides useful guidance on whether a particular entity will be a public authority when it is exercising certain functions.

If the *Weaver* decision is upheld, Australian courts may be encouraged to take a more liberal approach to determining what constitutes a public authority under the *Charter*. As government agencies continue to outsource their obligations to private enterprise, this could be a positive step in reinforcing the obligation to protect human rights regardless of technical distinctions as to the institutional nature of the entity. The decision is available at <http://www.bailii.org/ew/cases/EWHC/Admin/2008/1377.html>.

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