***Thomas Norton v LB Haringey* [2022] EWCA Civ 1340**

**Urgent Notice for LHAs re PRSOs**

The Court of Appeal (‘CA’) yesterday morning handed down judgment in the above case. It concerns the technical requirements that have to be satisfied when a Local Housing Authority makes a PRSO to bring its duty under the Housing Act 1996 (“HA 96”), s. 193(2) to an end.

The requirements are set out in HA 96 ss. 193(7AA), (7AB), (7AC), (7F) and (8) and in the Homelessness (Suitability of Accommodation) (England) Order 2012, Article 3.

In the case three technical points were taken in relation to a PRSO LB Haringey (‘LBH’) made to Mr Norton:

1. First, that whilst the offer letter told Mr Norton about the effect of s. 195A(1) of a further application by him within two years of his acceptance of the PRSO, it did not tell him about the effect of the provisions of s. 195A(2) as to the date of his deemed homelessness if his landlord served a section 21 Notice to bring his tenancy of the accommodation offered to him by way of a PRSO to an end.
2. Second, that LB Haringey could not have been satisfied, when the PRSO was made, that Mr Norton could end his contractual obligations under his licence of temporary accommodation which he had been granted by a third party to perform the housing duty under s. 193(2);
3. Third, that LB Haringey could not evidence that it was satisfied at the date it made the PRSO that the accommodation offered was in a satisfactory condition.

The CA decided all three issues in Mr Norton’s favour.

The decision further illustrates the CA’s reluctance to apply the doctrine of the presumption of regularity in relation to homeless cases and that LHAs are going to have to be able to evidence the reasons for their decisions.

The sections of HA 96, s. 193 and 195A that provide for PRSOs are as follows:

***s.193***

*(7AA) The authority shall also cease to be subject to the duty under this section if the applicant, having been informed in writing of the matters mentioned in subsection (7AB) –*

*(a) accepts a private rented sector offer, or*

*(b) refuses such an offer.*

*(7AB) The matters are –*

*(a) the possible consequence of refusal or acceptance of the offer, and*

*(b) that the applicant has the right to request a review of the suitability of the accommodation, and*

*(c) in a case which is not a restricted case,* *the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer.*

*(7AC) For the purposes of this section an offer is a private rented sector offer if –*

*(a) it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant’s occupation,*

*(b) it is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority’s duty under this section to an end, and*

*(c) the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988) for a period of at least 12 months.*

*(7F) The local housing authority shall not –*

1. *make a final offer of accommodation under Part 6 for the purposes of subsection (7);*

*(ab) approve a private rented sector offer,*

*unless they are satisfied that the accommodation is suitable for the applicant and that subsection (8) does not apply to the applicant.*

*(8) This subsection applies to an applicant if –*

*(a) the applicant is under contractual or other obligations in respect of the applicant’s existing accommodation, and*

*(b) the applicant is not able to bring those obligations to an end before being required to take up the offer.*

And s 195A, which is referred to in s. 193(7AB)(c):

***195A Re-application after private rented sector offer***

*(1) If within two years beginning with the date on which an applicant accepts an offer under section 193(7AA) (private rented sector offer), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority -*

*(a) is satisfied that the applicant is homeless and eligible for assistance, and*

*(b) is not satisfied that the applicant became homeless intentionally,*

*the duty under section 193(2) applies regardless of whether the applicant has a priority need.*

*(2) For the purpose of subsection (1), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) has been given is to be treated as homeless from the date on which that notice expires.*

*(5) Subsection (1) does not apply to a case where the local housing authority would not be satisfied as mentioned in that subsection without having regard to a restricted person.*

*(6) Subsection (1) does not apply to a re-application by an applicant for accommodation, or for assistance in obtaining accommodation, if the immediately preceding application made by that applicant was one to which subsection (1) applied.*

**Point 1**

By s. 193(7AA), when the LHA makes a PRSO it must inform the applicant of the matters set out in s. 193(7AB). These include, in ss. 193(7AB)(c) *the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer.*

The letter offering Mr Norton a PRSO told him about the effect s. 195A(1), but did not inform him of the date of his deemed homelessness under s. 195A(2); i.e. that, if the landlord of the premises offered to him as a PRSO served a section 21 Notice, his deemed date of homelessness is the date of expiry of that notice and not when any possession order is enforced.

The CA held that the requirement under s. 193(7AB)(c) includes an obligation to tell the applicant about that effect of s. 195A(2).

The CA also raised whether a PRSO should also tell an applicant about the effect of s 195A(6); i.e. that the deemed priority need on a further homeless application within two years of acceptance of a PRSO only applies after the end of a first PRSO and not after the second PRSO. In the event, the CA did not need to decide that question.

**Action Required: Check your PRS Offer letters. They must include details of the effect of s. 195A(2) and we would advise that they also include details of the effect of s. 195A(6). It may be advisable to set out s. 195A in its entirety as well as explaining its effect.**

**Point 2**

Mr Norton’s licence required him to give 7 days’ notice to quit. In reality the licence was determined when LB Haringey withdrew any temporary accommodation booking. However, ss. 193(7F) and 193(8) have the effect that the LHA cannot make a PRSO unless they are satisfied that the applicant can end his contractual obligations in relation to his current accommodation before being required to take up the PRSO. This may require the LHA to know the terms of the applicant’s current accommodation; i.e. on what notice period it can be determined by the applicant and to get the landlord of the PRSO accommodation to vary the date of commencement of the tenancy to be granted accordingly so as to give the applicant enough time to determine those obligations. There may be other mechanisms by which the LHA can satisfy itself that the applicant will have time to determine their relevant contractual obligations: e.g. providing in relevant licensed that where the applicant has been made a PRSO and accepts it, they can determine that licence with immediate effect.

**Action Required: Look at the contract pursuant to which the applicant is occupying their current temporary (or unreasonable) occupation, and provide enough time before commencement of the PRSO to allow them to end the obligations under it before they are required to take up the tenancy granted by way of PRSO. Or contact the provider of that accommodation and ask them to agree that the applicant can determine their occupation contract on short notice.**

**Point 3**

Under the 2012 Suitability Order, Art 3, the LHA must be satisfied of certain matters in relation to the physical characteristics of the accommodation to be offered by way of a PRSO or of the landlord. One of the factors, under para. (a), is that: *the [LHA] are of the view that the accommodation is not in a reasonable physical condition*. In this case the PRSO offer letter, dated 8.1.2021 referred to a report that post dated the offer; i.e. 21.1.2021. No evidence was ever produced of such a report before the PRSO was made notwithstanding that Mr Norton’s solicitors asked for it. It was clear from a schedule to the tenancy agreement that set out the condition of the premises that if LB Haringey had had a report before the offer was made it could very easily have been satisfied that the premises were in a reasonable physical condition.

The appeal was allowed on this ground because there was no evidence provided that LB Haringey a report upon which it could satisfy itself of the requirement in Art 3, para (a) before the PRSO was made. The Court of Appeal did not accept that the reference to a report dated 21.1.2021 must have been a typing error and that there must have been a relevant report.

**Action Required: Make sure that there is on file, in relation to each premises that it is proposed to offer as a PRSO, the evidence to meet the Art 3 requirements before the offer is made.**

19th October 2022

Nicholas Grundy KC and Sean Pettit

Five Paper