

Housing & Community Safety Scrutiny Sub-Committee

Tuesday 25 November 2014

7.00 pm

Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

Membership

Councillor Tom Flynn (Chair)
Councillor Ben Johnson (Vice-Chair)
Councillor Vijay Luthra
Councillor Claire Maugham
Councillor Damian O'Brien
Councillor Martin Seaton
Councillor Johnson Situ
Cris Claridge
Miriam Facey
John Nosworthy
Michael Orey

Reserves

Councillor Neil Coyle
Councillor Karl Eastham
Councillor Gavin Edwards
Councillor David Hubber
Councillor Lorraine Lauder MBE
Councillor Hamish McCallum

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Contact Fitzroy Williams on 020 7525 7102 or email: fitzroy.williams@southwark.gov.uk

Members of the committee are summoned to attend this meeting

Eleanor Kelly

Chief Executive

Date: 17 November 2014



Housing & Community Safety Scrutiny Sub-Committee

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7.00 pm

Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

Order of Business

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PART A - OPEN BUSINESS

1. APOLOGIES

2. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

In special circumstances, an item of business may be added to an agenda within five clear working days of the meeting.

3. DISCLOSURE OF INTERESTS AND DISPENSATIONS

Members to declare any interests and dispensations in respect of any item of business to be considered at this meeting.

4. MINUTES

To follow

To approve as a correct record the Minutes of the open section of the meeting held on

5. BOROUGH COMMANDER INTERVIEW - POLICE

6. HIGH COURT JUDGEMENT MR AA

1 - 5

DISCUSSION OF ANY OTHER OPEN ITEMS AS NOTIFIED AT THE START OF THE MEETING.

PART B - CLOSED BUSINESS

DISCUSSION OF ANY CLOSED ITEMS AS NOTIFIED AT THE START OF THE MEETING AND ACCEPTED BY THE CHAIR AS URGENT.

Item No.

Title

Page No.

[COMMENT...]

Date: 17 November 2014

Item No:	Classification: Open	Date: 25 November 2014	Meeting Name: Housing & Community Safety Scrutiny Sub-Committee
Report Title:		Mr AA High Court Judgement	
Ward(s) or Group affected:		All	
From:		Strategic Director of Housing and Community Services	

BACKGROUND

1. Mr AA, a secure tenant, was evicted on 23 April 2013 for rent arrears. The rent arrears were substantial and ongoing – at the time of eviction he owed £2,353.26.
2. The eviction was not attended by an income or resident officer, despite it being a procedural requirement for both to do so. No action was taken by the officer responsible to conduct an inventory of goods remaining at the address at the time of eviction or to arrange for the goods to be put into storage. Consequently, Mr AA's belongings were destroyed and he therefore took a claim against the council for damages at the High Court.

ACTION AT THE TIME

3. Action at the time was taken on the basis of the removal and destruction of Mr AA's property. Senior management were advised and the matter was immediately referred for an internal investigation.
4. A full investigation was undertaken by an independent senior manager in line with council processes and concluded in August 2013. The following recommendations were made:
 - The actions of two income officers and one resident officer clearly amounted to gross misconduct and should proceed to disciplinary panels.
 - The actions of one income officer clearly amounted to misconduct and should proceed to a disciplinary panel.
 - The actions of one resident services manager and one income and debt manager clearly amounted to a lack of supervision.
5. In each case charges were levelled and heard by independent disciplinary panels. This resulted in sanctions being issued to all the staff involved.

PROCEDURAL CHANGES

6. The relevant process is laid down in the rent income and arrears procedure. This is a significant procedure document and includes sections relating to the following:
 - Rent composition and payment methods
 - Working with tenants to prevent rent arrears
 - Housing benefit
 - Supporting the tenant

- Managing tenancies
 - Dealing with secure tenants in arrears
 - Introductory tenancies
 - DIY possessions
 - Other remedies
 - Eviction
 - Former tenant arrears
 - Bankruptcy
7. The eviction section includes clear instructions on the removal and storage of property left behind following an eviction for rent arrears. There is also reference to the more general goods storage or disposal procedure.
 8. It is important to note that the procedures in place at the time were fit for purpose - the issue was that the procedures were not followed by the officers involved. In any case, the procedures were reviewed and some minor amendments were made to ensure absolute clarity.
 9. Immediate communications were issued to all officers responsible for eviction procedures. There was a clear management instruction to always follow processes and procedures, particularly in relation the importance of staff always attending evictions.
 10. Immediate refresher training was put in place to ensure all relevant officers understood processes and procedures.

THE TRIAL

11. Mr AA claimed in the High Court for £2.4 million in damages. The trial took place on 18, 19, 20, 28 and 29 November and 23 December 2013. The judgment was formally handed down on 14 October 2014, prior to which the council had reached a confidential settlement with Mr AA.

KEY LEGAL ISSUES

Unlawful eviction

12. Master Kay QC, who had dealt with the early hearings in the case, gave summary judgment for Mr AA on the council's admission that the destruction of the contents of the flat was unlawful. He set the case down for a trial essentially to establish three things:
 - Which items on a list of 36 were removed from the flat and destroyed
 - Whether they belonged to Mr AA or not
 - Their value
 Master Kay's directions said nothing about any claim for unlawful eviction.
13. The council acted with fairness throughout all the litigation but especially in the early stages when the matter was in Master Kay's hands by admitting liability for unlawful interference with goods and by volunteering interim payments to Mr AA to ensure that he had funds whilst awaiting a ruling from the court on the overall valuation of his claim.

14. Throughout the court case Mr AA acted as a litigant in person. The council contributed £5,000 for Mr AA to obtain independent legal advice.
15. Southwark Council maintained throughout the trial that the grounds for eviction were lawful.
16. The finding of unlawful eviction against the council could be argued to be unjust because it was not considered to be an issue before the court. As noted above it did not feature in Master Kay's directions. However, as a discrete legal point it is not straight-forward. The general position is that a warrant for possession cannot be issued after 6 years from the date of the possession order unless the court gives permission. In this case 6 years had expired and permission was neither sought nor given, at least not expressly. A new form of order and court procedure was introduced in 2007 following a Court of Appeal decision in Hassan which provided for an application to fix a date for possession prior to the issue of a warrant. The council applied to fix a date for possession in 2008 in order to issue a warrant, this being within the last 6 years. The judge held that this application to fix a date did not amount to permission and hence the eviction was unlawful.

Appealing the decision

17. The judgment of His Honour Anthony Thornton QC has been extremely critical of the council and its employees. The judge in his findings found that council staff had conspired to evict Mr AA from his home and acted in bad faith.
18. It is arguable that the decision of the judge is appealable for various reasons; primarily because the council's view is that the conclusions on conspiracy and misfeasance at least were clearly wrong and also because the trial itself was unjust. It is rare for an appeal to be brought on the latter ground but the circumstances of this case were exceptional. Finally the lawfulness of the warrant of possession is a difficult issue on which the Court of Appeal could find against the council.
19. An appeal now would be difficult and not financially prudent. The council has never disputed that it was at fault for the destruction of Mr AA's belongings. The claim has been settled and the proceedings discontinued. While the Court of Appeal may look critically at both the judge's findings on conspiracy and misfeasance and also on his conduct of the case generally, the appeal would not change the settlement between the council and Mr AA. Consequently there would be no material benefit to the council in successfully appealing Judge Thornton's judgment. On the contrary, the exercise would involve the council in further costs which it could not recover.
20. In relation to Mr AA's possessions, Southwark Council accepted full responsibility from the outset for the disposal and destruction of Mr AA's property. Our internal processes found that the incident was a result of misconduct on the basis of the failure to follow our own processes and procedures by the officers involved - not as a result of conspiracy and misfeasance in public office to evict the tenant at all costs and deliberately destroy his possessions.

CURRENT STATUS

Original investigation review

21. The original investigating manager conducted a page by page review of the findings of the judgment against the original investigation findings. This was to clarify whether any new evidence or fact came to light as part of the court case that was not considered at the time.
22. Following on from this review, it is the view of the investigating officer that the judgment has no additional evidence in it of potential wrongdoing by staff which was not already known at the time of the investigation and subsequent disciplinary proceedings.
23. During the review of the judgment, the investigating officer also did not consider that the evidence obtained disclosed a conspiracy by staff to act in an unlawful manner. It was the view of the investigating officer that this remained a case of gross negligence, incompetence, lack of supervision and poor record keeping.
24. The officers named within the judgment who were subject to disciplinary panels were placed on temporary leave until further notice. This was to both to protect the council's interests and to fulfil our duty of care as an employer.

Evictions review

25. Officers are conducting a review of all evictions carried out from the start of 2013/14 to date 2014/15. A large sample will be assessed against the following criteria:
 - Grounds for eviction
 - Orders and any potential timing concerns
 - Presence of the correct officers
 - Removal and storage of goods
26. This review will report before the end of the calendar year. Senior officers will take any action required based on the findings of this review.

Process and procedure

27. Processes and procedures are subject to regular and frequent review and action is taken to ensure that all procedures are followed by officers.
28. Eviction procedures are being reviewed in order to ensure that the calculation of the six year period is taken from the earliest possession order rather than any subsequent order or application whereby the date for possession is fixed.

Background Papers

Background Papers	Held At	Contact
AA and London Borough of Southwark http://www.bailii.org/ew/cases/EWHC/QB/2014/500.html	Scrutiny Team	Fitzroy Williams 020 7525 7102

APPENDICES

No.	Title
	n/a

AUDIT TRAIL

Lead Officer	Paul Langford, Head of Operations	
Report Author	Angela d'Urso, Business development manager	
Version	Final	
Dated	17 November 2014	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	yes	yes
Finance Director	n/a	n/a
Cabinet Member	n/a	n/a
Date final report sent to Scrutiny Team	17 November 2014	

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**HOUSING & COMMUNITY SAFETY SCRUTINY SUB-COMMITTEE
MUNICIPAL YEAR 2014-15**

AGENDA DISTRIBUTION LIST (OPEN)

NOTE: Original held by Scrutiny Team; all amendments/queries to Fitzroy Williams Tel: 020 7525 7102

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Councillor Ben Johnson (Vice-Chair)	1	Deborah Collins, Strategic Director of Environment & Leisure	1
Councillor Vijay Luthra	1	Jonathan Toy, Head of Community Safety and Enforcement	1
Councillor Claire Maugham	1	Shelley Burke, Head of Overview & Scrutiny	1
Councillor Damian O'Brien	1	Aine Gallagher, Political Assistant	1
Councillor Martin Seaton	1	Tom Layfield, Assistant to the Opposition	1
Councillor Johnson Situ	1	Tania Robinson, Executive Assistant	1
Reserves		Barbara Asaam, Executive Assistant	1
Councillor Neil Coyle	1	Fitzroy Williams, Scrutiny Team SPARES	10
Councillor Karl Eastham	1		
Councillor Gavin Edwards	1		
Councillor David Hubber	1		
Councillor Lorraine Lauder	1		
Councillor Hamish McCallum	1		
One Labour vacancy		Total:	37
Co-Opted Members		Dated: June 2014	
Michael Orey (Homeowners' Council)	1		
John Nosworthy (Homeowners' Council Reserve)	1		
Miriam Facey (Tenants' Council Reserve)	1		
Cris Claridge (Tenants' Council)	1		
Other Members			
Councillor Richard Livingstone	1		
Councillor Michael Situ	1		