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What 7 things do you need to do quickly to ensure your allocation policy complies with the important court judgments of the last 12 months?

Dean Underwood

Barrister and Chair of the Social Housing Law Association

Contact details:

Dean Underwood
Cornerstone Barristers
2-3 Grays Inn Square
London
WC1R 5JH



Tel: 020 7421 1835
Fax: 020 3292 1966
Email: deanu@cornerstonebarristers.com
Twitter: [@deanunderwood01](https://twitter.com/deanunderwood01)

Spent means spent!



- *R (YA) v Hammersmith & Fulham LBC* [2016] EWHC 1850 (Admin)
- Allocation scheme:
 - disqualified “applicants .. guilty of unacceptable behaviour, which makes them unsuitable to be a tenant.”
 - but gave Director of Housing discretion re care leavers in exceptional circumstances
- 2015: Director of Housing - unlawfully - refused to exercise discretion in YA’s favour because of offences committed in and before 2012
- s.4(1) Rehabilitation of Offenders Act 1974: once conviction is spent, rehabilitated person is treated as not having committed the offence; and s.4(1)(b) prohibits questioning about spent convictions, including the conduct that constituted the offence.

4.— Effect of rehabilitation.

(1) ... a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction; and, notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject as aforesaid—

(a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and

(b) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

Understand and apply your scheme!



- *R (Woolfe) v Islington LBC* [2016] EWHC 1907 (Admin)
- Islington LBC adopted 'New generation' policy as part of allocation scheme, open to children of tenants living in borough with their parents
- more particularly 'living continuously as an agreed member of the household for at least three out of the last five years'
- claimant had moved out of her mother's property at the date of application and was not awarded points under Islington LBC's 'New generation' policy.
- Held: the scheme did not require an applicant to be so living at the date of her application. It would suffice to prove that she had been living as a member of the household for at least three years out of the last five years.

56 ... The reason why Islington rejected an award of New Generation points is specifically that the claimant herself is not eligible, because as she had been temporarily rehoused by Islington she was no longer living with her mother at the date of the decision...

68 In my view, the words "... continuously ... for at least three out of the last five years ...", considered in conjunction with the overall policy objective, must be decisive. It is possible to read the words "be living" as meaning also "or have been living". It is not possible to strike out the words "out of the last five years" as the argument requires. In my view, this construction is the more common sense and practical, and the less legalistic, of the rival interpretations contended for. To a lay person, three out of the last five years means exactly what it says.

69 It follows that in my view Islington misapplied their own policy. I will quash the decision of 23 February 2016 insofar as it refused or declined to award to the claimant any New Generation points.

Consider your scheme's indirect effects



- *R (H) v Ealing LBC* [2016] EWHC 841 (Admin)
- Scheme reserved 20% of allocations for existing tenants seeking transfer and 'working households', i.e. including persons employed for at least 24 hours a week during 12 of last 18 months
- Claimants:
 - single mother of 5, unable to work because of mental ill-health and childcare; and
 - married couple, unable to work due to disability
- Both claimed successfully:
 - 'working household' quota discriminated indirectly against disabled, elderly and women with childcare responsibilities, under s19 Equality Act 2010 and Articles 8 and 14 ECHR
 - Ealing LBC had not complied with Public Sector Equality Duty or section 11 Children Act 2004

19 Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

Consider your scheme's indirect effects



Children Act 2004

11 Arrangements to safeguard and promote welfare

(1) This section applies to each of the following—
(a) a local authority in England;
(b) a district council which is not such an authority;
...

(2) Each person and body to whom this section applies must make arrangements for ensuring that—
(a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and
(b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.

...

(4) Each person and body to whom this section applies must in discharging their duty under this section have regard to any guidance given to them for the purpose by the Secretary of State.

Equality Act 2010

149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

Don't forget the duty to co-operate!



- *R (M & A) v Islington LBC* [2016] EWHC 332 (Admin)
- severely autistic children with impaired sense of danger, living in above-ground-floor flats
- mothers applied for transfer to ground-floor flats
- Islington awarded additional points to aid re-allocation and made interim risk management plan
- claimants argued: social services should, under s.27 Children Act 1989, have asked housing department to make a direct offer of housing
- Held: s.27 did *not* impose duty of co-operation between different departments within same authority; but guidance *did*
- Islington entitled not to ask housing to make direct offer in light of interim risk management plans

27. Co-operation between authorities.

(1) Where it appears to a local authority that any authority mentioned in subsection (3) could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of that other authority, specifying the action in question.

(2) An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.

(3) The authorities are—

(a) any local authority;

(b) [repealed]

(c) any local housing authority;

(ca) the National Health Service Commissioning Board;

(d) any [clinical commissioning group, Local Health Board, Special Health Authority, National Health Service trust or NHS foundation trust

(da) any local authority in Wales, and

(e) any person authorised by the Secretary of State for the purposes of this section.

An order ... is an order ... unless stayed!



- *R (A) v Ealing LBC* [2015] EWHC 4108 (Admin)
- 5-year residence requirement in Ealing LBC allocation scheme declared unlawful in claim by A
- Ealing LBC appealed, but did not apply for a stay
- claimant (A) asked to be placed on the register
- Ealing LBC declined, continuing to apply residence requirement pending appeal
- Judicial review claim allowed:
 - no grounds for staying the claim pending the appeal: proceeding would not cause irreparable harm; and Ealing LBC could use an interim policy pending appeal
 - reliance on unlawful policy was ‘a blatant misdirection and a clear error of law’

52 On 21 September, the defendant again used the fact of its pending application for permission to appeal as a reason for applying the provisions of the current scheme, notwithstanding the fact that those provisions had been found to be unlawful a matter of a few weeks earlier.

53 To rely on an unlawful scheme as a basis of proceeding to reconsider the claimant's application was thus a blatant misdirection and a clear error of law. The normal position is that a claimant is entitled to a quashing order where a relevant error of law has been found and a decision is flawed.

54 Although I accept that remedy is discretionary, there is no reason here why that remedy should not be forthcoming. I find that the claimant is entitled to a quashing order in relation to both impugned decisions. She is entitled to have her application considered in accordance with the law.

per Petterson J

Seven things?



- Don't rely on spent convictions or the conduct relating to them to justify disqualification.
- Read, understand and apply your own scheme.
- Consider carefully your scheme's indirect effects
- Be mindful of (and comply with) your duties under:
 - section 149 of the Equality Act 2010; and
 - section 11 of the Children Act 2004.
- Don't forget your duty to co-operate.
- If you need to appeal, don't forget to apply for a stay of execution!

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