

## Warrants for Possession

### Cardiff City Council v Lee (Flowers)

[2016] EWCA Civ 1034

The Senior Master has today issued her practice note on the approach that housing practitioners should be taking when applying to enforce warrants of possession.



**Elizabeth England**

**Cardiff City Council v Lee** sent shockwaves across the social housing legal world. In this case, the local authority had sought to enforce a suspended possession order following an alleged breach of term relating to anti-social behaviour, by simply applying for a warrant under CPR r.83.26.

The tenant argued that where there was enforcement of an outright order for possession, the wording of CPR r.83.26 meant that a warrant could simply be applied for administratively, but where there was a conditional order, the court's permission had to be sought under CPR r.83.2. Perhaps surprisingly, the local authority conceded that an application for permission should have been made, under r.83.2.

Both at first instance, and at first appeal, the court agreed that CPR r.3.10 could be invoked to remedy any defect in the administrative act of enforcing the possession order.

The point for the Court of Appeal was whether, having failed to comply with CPR r.83.2(3) to seek the court's permission to issue the warrant for possession, the court could either remedy the defect using CPR r.3.10, or waive it under its general case management power in r.3.1(2)(m).

Although the appeal was dismissed, the Court of Appeal gave guidance on the proper use of CPR r.3.10 in remedying an "error of procedure" (as set out in paragraphs 22 to 24 of **Steele v Mooney** (2005)):

- (i) the rule is not to be given a narrow meaning, but a broad, common sense one;
- (ii) the rule gives a discretion that is to be exercised in accordance with the overriding objective (i.e. the post-April 2013 overriding objective); and
- (iii) the rule cannot be used to achieve a result prohibited by another rule.

**The Senior Master's Note: What is the practical effect of the Court of Appeal's decision in *Cardiff City Council v Lee*?**

- 1** The Senior Master's view is that in order to enforce possession of a suspended possession order, a without notice application under CPR r.83.2 must be made.
- 2** Failure to do that would be a procedural irregularity.
- 3** In such circumstances, the enforcement order would be voidable, and would be capable of cure under CPR r.3.10.
- 4** In each individual case where an application under r.3.10 is made, the party in default would have to satisfy the Court that the overriding objective was satisfied, in order to obtain an order remedying the error.

**What Next?**

The local authority in *Cardiff City Council v Lee* conceded that there was a procedural error. The *obiter* comments of Arden LJ suggest that the Court of Appeal agreed with that approach, and believed that the correct procedure should be to make an application for permission, under CPR r.83.2, for the enforcement of every conditional order.

But whether it is, in fact, necessary to use CPR r.83.2 to enforce conditional orders was not argued before the Court of Appeal at all: so that question has not yet been definitively decided. We await further cases with interest!

**This practice note has been written by Elizabeth England, a tenant at 42 Bedford Row who regularly undertakes landlord and tenant work including the wide range of issues which relate to social housing.**