Neutral Citation Number: [2012] EWCA Civ 839

Case No: B5/2011/2978

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CENTRAL LONDON CIVIL JUSTICE CENTRE
HHJ BAILEY
0CL01123

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/06/2012

Before :

LORD JUSTICE MAURICE KAY, Vice President of the Court of Appeal, Civil Division
LORD JUSTICE ETHERTON
and
LORD JUSTICE AIKENS

- -

Between :

LONDON BOROUGH OF CAMDEN	**Appellant**
- and -	
STAFFORD	**Respondent**

- -
- -

Mr Andrew Arden QC and **Mr Abimbola Badejo** (instructed by **Law and Governance**) for the **Appellant**
Mr Jan Luba QC and **Ms Victoria Osler** (instructed by **Hodge Jones & Allen LLP**) for the **Respondent**

Hearing date : 16 May 2012

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Approved Judgment

Lord Justice Maurice Kay :

1. Introductory tenancies are creatures of the Housing Act 1996. Their characteristic feature is that they operate for a trial period and only ripen into secure tenancies at the end of that period. By section 124(1) of the 1996 Act a Local Housing Authority or a Housing Action Trust may elect to operate an introductory tenancy regime. Usually, the trial period is one year (section 125(2)) but it can be extended by six months (section 125A). This case is concerned with the statutory procedure for terminating an introductory tenancy. By section 127(1) the landlord may only bring an introductory tenancy to an end by obtaining a court order. The provisions with which we are concerned are contained in sections 128 and 129, the material parts of which are in the following terms:

> "128
>
> (1) The court shall not entertain proceedings for the possession of a dwelling-house let under an introductory tenancy unless the landlord has served on the tenant a notice of proceedings complying with this section.
>
> (2) The notice shall state that the court will be asked to make an order for the possession of the dwelling-house.
>
> (3) The notice shall set out the reasons for the landlord's decision to apply for such an order.
>
> (4) The notice shall specify a date after which proceedings for the possession of the dwelling-house may be begun.
>
> …
>
> (6) The notice shall inform the tenant of his right to request a review of the landlord's decision to seek an order for possession and of the time within which such a request must be made.
>
> …
>
> 129
>
> (1) A request for review of the landlord's decision to seek an order for possession of a dwelling house let under an introductory tenancy must be made before the end of the period of 14 days beginning with the day on which the notice of proceedings is served.
>
> (2) On a request being duly made to it, the landlord shall review its decision.

> (3) The Secretary of State may make provision by regulations as to the procedure to be followed in connection with a review under this section. Nothing in the following provisions affects the generality of this power.
>
> …
>
> (5) The landlord shall notify the person concerned of the decision on the review.
>
> If the decision is to confirm the original decision, the landlord shall also notify him of the reasons for the decision.
>
> (6) The review shall be carried out and the tenant notified before the date specified in the notice of proceedings as the date after which proceedings for the possession of the dwelling-house may be begun."

Thus, during the introductory period there is a procedure whereby the landlord can terminate the tenancy and obtain possession of the dwelling house without the need to prove grounds for possession such as apply in relation to secure tenancies by reason of Part 4 of the Housing Act 1985.

The facts

2. Kellie Stafford is now aged 24. She left her family home at the age of 16 and initially lived either in hostel accommodation or as an informal lodger in the homes of friends. At times she was enduring street homelessness. In 2009 she was placed on the housing register of the London Borough of Camden (the Council). Eventually she obtained an introductory tenancy of a one bedroom flat at 61 Broadfield Lane into which she moved on 21 December 2009. Her introductory tenancy agreement is dated 4 January 2010.

3. Almost immediately the Council began to receive complaints about noise from the flat. On 18 February 2010 the Council served a notice of proceedings for possession pursuant to section 128. It referred to noise nuisance and gave particulars of three occasions – 15 January, 23 January and 8 February. Ms Stafford requested a review pursuant to section 129. In her letter, she apologised for any nuisance caused and said that her ex-partner had been responsible for most of it and would not be returning. She also questioned the motives of one of the complainants.

4. The Review Panel met on 22 March 2010. A contemporaneous note of the meeting was made by Mr Ken Robson, the rent services manager. It suggests that the tone of the meeting was conciliatory. The Review Decision was notified in a letter dated 22 March 2010. It included the following passages:

> "**Decision**

> The Panel decided that the Notice was correctly and justifiably served: there had been allegations of anti-social behaviour expressed by four complainants between 29 December and the date of service of the Notice. You accepted that at least some of these complaints were justified. However, we do not believe that an application to the court for possession of the property should be made at this point in time.
>
> **Recommendations to Maiden Lane housing officers**
>
> Whilst the decision to serve the Notice is upheld, we consider that the following alternatives to possession proceedings should be implemented, as discussed with you during the meeting:
>
> 1. The police should be contacted for clarification of the nature of the warning or court order in respect of your former partner. The behaviour of your former partner is a key element of some of the initial complaints.
>
> 2. An Acceptable Behaviour Agreement shall be prepared for your signature. As explained, this is not a legal document but it could be produced in court if any commitments you make within it are breached.
>
> 3. Julian Coutts [the anti-social behaviour manager] will ask a member of YISP Plus … to contact you to discuss your difficulties and what support can be offered to help you overcome them. Details of YISP Plus are enclosed.
>
> In the meeting you seemed keen to ensure that your neighbours should have no further cause for complaint and you clearly understood the potential consequences of continuing complaints if they appear to be warranted. I explained that the courts have no discretion in granting a possession order if the Council follows the correct procedure in entering its claim."

I should add that YISP stands for Youth Intervention Support Panel.

5. On 25 March 2010 Mr Togher of the Maiden Lane Estate Office wrote to Ms Stafford to say that he would draft an Acceptable Behaviour Agreement and that the principal complainant neighbour had agreed to mediation. However by 30 March further complaints had been received and Mr Togher wrote to Ms Stafford in these terms:

> "I have received further complaints from several neighbours about continuing noise nuisance from your flat. The reports state that nearly every night you have had friends visit, who make a lot of noise entering and leaving the building, loud music being played in your flat, and people shouting and arguing in your flat. This activity has prompted a lot of complaints and in light of the increased level of complaints

> there is no point in pursuing mediation, since it is no longer one neighbour making complaints. Regarding the Acceptable Behaviour Agreement, I am seeking advice as to whether there is any need to go ahead with this, since your noise nuisance seems to have got worse since the Review meeting. It is now likely that we will have to apply to court for possession of your property. Before I take this action I want to discuss this matter with you. Please could you come into the office on Thursday April 1st at 2.30pm."

It seems that Ms Stafford did not attend on that occasion. There was some email traffic between Mr Togher and his colleagues but I do not need to refer to that at this stage.

6. On 19 April 2010, the Council issued proceedings for possession based on the notice of 18 February 2010. By her Defence Ms Stafford asserted that the statutory requirements had not been met because the Review Panel had decided not to pursue proceedings for possession and had not thereafter served a fresh Notice pursuant to section 127. She also asserted that the decision to issue Possession Proceedings was ultra vires because it was taken by Mr Togher, an officer of the Council who was junior to the Review Panel; that she had a legitimate expectation that proceedings would not be issued unless and until the contemplated alternative measures had been put in place; that the decision to issue proceedings was irrational; and that to evict her from the flat would be a disproportionate interference with her rights under Article 8 of the European Convention on Human Rights and Fundamental Freedoms.

The proceedings

7. The claim for possession was heard by His Honour Judge Bailey in the Central London County Court. He dismissed the claim. The essence of his decision is to be found in paragraph 20 of his judgment which reads:

> "The sole question for the Court is this: does the review decision notice dated 22 March 2010 confirm the decision to seek an order for possession or does it do otherwise? Quite plainly, in my judgment, it does otherwise. As soon as the decision notice does not confirm the decision to seek an order for possession it is not then open to Camden to rely on the section 128 notice previously served in order to seek possession."

He observed that all the Council needed to do, given the evidence of continuing "appalling behaviour", was to serve another section 128 Notice immediately after the review decision. In the circumstances, he did not proceed to deal with the other grounds upon which Ms Stafford had sought to defend the proceedings.

8. On this appeal, the Council maintains that the judge was wrong to conclude that it was no longer open to it to rely on the section 128 Notice which it had served. By a respondent's notice, Ms Stafford, whilst seeking to uphold the decision of the judge for the reasons which he gave, continues to press her alternative defences if that should be necessary.

Discussion

9. The judge was undoubtedly correct to identify the central issue in the case as being whether, by its review decision on 22 March 2010, the Council had confirmed its decision to seek an order for possession. It seems to me that he was also correct to seek the answer to that question in the letter of 22 March whereby the Council notified Ms Stafford of its review decision. It is submitted on behalf of the Council that he ought not to have limited his investigation in that way but, rather, he should have had regard to evidence contained in the witness statements of Mr Robson, Mr Coutts and Mr Togher. In my judgment, he was right to reject such an approach. It is predicated in part on a submission that the statute does not require the decision or its communication to the tenant to be in writing. Section 129(5) simply requires that the landlord "shall notify the person concerned of the decision on the review". Thus, it is suggested, evidence as to the true extent of the decision may take the form of subsequent amplification by witness statement of that which is contained in the letter. Mr Andrew Arden QC refers to section 203 of the 1996 Act which deals with reviews of homelessness decisions. Section 203(4) provides that if the decision of the review body is to confirm the original decision on any issue against the interests of the applicant, the housing authority "shall also notify him of the reasons for the decision". There, however, it is expressly provided that notice required to be given to a person under section 203 must be given in writing: section 203(8). The suggestion is that the absence of a provision such as section 203(8) in section 129 points to there not being a duty to notify in writing, thereby opening the door to other evidence about the content of the decision. I am unpersuaded by this submission. Quite apart from the fact that any sensible local housing authority would notify such a decision in writing if only for its own protection in future litigation, it is noticeable that another provision in the homelessness part of the 1996 Act, section 193(5) also has a provision concerning notification which is unaccompanied an express requirement of writing. In *Ali v Birmingham City Council* [2009] EWCA Civ 1279, [2011] HLR 17 Sir Antony May said (at paragraph 39):

> "… it is clear in my view that 'notify' requires the giving of a notice which imports a degree of formality sufficient to constitute the document, as it will usually be, a notice. … This conclusion is fortified by the frequent juxtaposition in this statute of the words 'notify' and 'inform'. 'Notify' as I have indicated, imports the requirement for a notice and the question is whether the notice contains the required information."

Mr Arden's submission lives uneasily with these observations.

10. The real question remains: did the decision communicated in the letter of 22 March amount to confirmation of the original decision to seek an order for possession? Two relevant authorities have been drawn to our attention. The first is *Cardiff City Council v Stone* [2003] EWCA Civ 298, [2003] HLR 47. There the local authority had served the introductory tenant with a notice of possession proceedings pursuant to section 128. The reason related to rent arrears. Following a review under section 129, the authority wrote to the tenant stating:

> "I would confirm that a decision to terminate your tenancy by serving you with a notice is upheld. However, the panel

> decided to suspend action at this stage on condition that the weekly collectable rent and £3 is paid each week, without fail."

11. The tenant did not pay off the arrears and possession proceedings were later commenced. A District Judge made an order for possession, confirmed on appeal by a Circuit Judge, and the tenant's appeal to this Court was dismissed. The primary submission on behalf of the tenant was that the review decision was invalid because no reasons were provided pursuant to section 129(5). As to this, Arden LJ (with whom Judge LJ agreed) said (at paragraph 34):

> "As I see it, [the] letter does clearly refer to the notice. It states quite clearly that it is confirming the notice and on that basis, given the course the proceedings took on the preceding day, it seems to me that it must have been clear to the appellant that the reason for upholding the notice was her failure to pay rent regularly. Therefore I agree with the judge that the notice was unequivocal and, when read together with the schedule, notified the reasons by implication. There is no requirement in the statute that the reasons should be set out expressly in the communication with the tenant. It is sufficient if it is clear from the communication read as a whole what the reasons were."

12. In a later passage of her judgment, Arden LJ made some observations of a policy nature. She said (at paragraph 38):

> "[The submission on behalf of the tenant] would lead to the possibility of a local authority having to serve numerous notices. That would have the consequence that the procedure for terminating an introductory tenancy, which only has a very short life anyway, would become very formal. It is quite possible that it would discourage landlords from allowing introductory tenants to remain as tenants while they were given a second chance, and it may well be very undesirable to discourage landlords from doing so. On the other hand, it is possible to contend that Parliament intended that separate notices should be served under section 128 so that tenants would use the more informal and less expensive review process rather than having to apply to the court by judicial review. I can see the argument in that direction, but if that is what Parliament intended, as I see it, it did not use clear wording to produce that result."

13. Judge LJ added (at paragraphs 40 to 41):

> "… if the case advanced [on behalf of the tenant] were right, the likely consequence would be that housing authorities would almost inevitably be driven to adopt a less humane, more rigorous, unrelenting approach to introductory tenants who had failed to pay rent when it was due. In many cases there is much to be said for full, indeed generous, weight to be given by the

> housing authority to any relevant extenuating circumstances and for the tenant to be offered (as this tenant was) a reasonable opportunity to make amends.
>
> However, if that opportunity is rejected by the tenant, then the housing authority's position under section 128 of the 1996 Act should not be prejudiced simply because it made allowances for a tenant's difficulties and deferred proceedings to bring the tenancy immediately to an end."

14. *Stone* is often referred to as authority for the proposition that a local authority can effectively suspend a notice to seek possession. That may be one way of putting it, although Mr Jan Luba QC says that, if necessary, he would wish to challenge that proposition in a court which was not bound by *Stone*. Be that as it may, it seems to me that the ratio of *Stone* is that the decision letter, properly construed, constituted an unequivocal confirmation of the notice which, when read together with a schedule, sufficiently communicated the reasons for that confirmation.

15. The second authority is *Forbes v Lambeth London Borough Council* [2003] EWHC 222 (QB), [2003] HLR 49. There, the section 128 notice was given to an introductory tenant because the premises were being used "for selling of drugs and for immoral purposes". Following a requested review, the local authority wrote to the tenant to notify him of the review decision. The letter was headed "DECISION NOT TO TERMINATE YOUR INTRODUCTORY TENANCY". It stated:

> "The Council has decided not to proceed with terminating your tenancy but will be monitoring your tenancy for a period of twelve months and then will review the situation and advise you. You will continue as an introductory tenant during this period."

16. Crane J identified his task as being one of interpretation of the notified decision. He said (at paragraph 34):

> "It was the Council's letter. They chose how to express it. The tenant was entitled to be notified 'of the decision on the review', with reasons. In my judgment the review letter did not have the effect of the letter in *Stone*, which made it very clear that the decision was being upheld. Here the original decision was not confirmed. I consider on the contrary that the natural meaning of the letter to a tenant receiving it was, as the heading in capital letters indicated, that there had been a decision not to terminate the tenancy after all. There was in reality a decision to reverse or quash the original decision, albeit with a warning about future conduct. This conclusion is supported by the absence of any reasons, which, if the decision had been confirmed, were required by section 129(5). I do not accept the submission that a notice remains valid unless expressly withdrawn or that a decision remains unless expressly quashed or reversed. No particular words are laid down and the natural meaning of the words must prevail."

I have no difficulty in accepting Mr Arden's submission that *Forbes* was a very clear case at or towards the extreme of the spectrum.

17. I return to the notification letter in the present case. I am mindful of the need to adopt "a benevolent approach", to the interpretation of such documents. In *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, Lord Neuberger said (at paragraph 50):

> "The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions."

18. There is no doubt that the Review Panel consciously determined that the section 128 notice had been correctly and justifiably served. I observe that in the guidance given to local authorities by their national associations, it is stated (at paragraph 6.44) that the first purpose of a Review Panel is "to ensure that the notice has been correctly served". However, ensuring correctness of service is not the limit of the statutory requirement. A review under section 129 is a review of "the landlord's decision to seek an order for possession". That is the decision which is to be reviewed pursuant to section 129(2) and it is the "original decision" referred to in section 129(5). The practical alternatives are that the Review Panel will either withdraw or confirm the original decision. Confirmation of the original decision does not oblige the local authority immediately to issue proceedings. That is made clear by *Stone*. The effect of the statutory timelines is that the earliest date upon which proceedings may be issued will be specified (usually not less than 28 days after the service of the section 128 notice: section 128(4)). An application for review of the original decision has to be made within 14 days beginning with the day on which the section 128 notice is served: section 129(1). The assumption appears to be that the review decision will be notified before the date specified in the section 128 notice as the date after which proceedings may be issued: section 129(6). Mr Luba accurately describes this as "an all or nothing and tight framework". Its importance cannot be understated because, where a request for a review has been made, it is confirmation of the original decision which provides the County Court with its jurisdiction to entertain possession proceedings pursuant to section 128(1). Thus, the notification of a review decision pursuant to section 129(5) is not simply a question of disseminating information to the tenant. It is also a document which, when it confirms the original decision, is the foundation of jurisdiction. It is not only the tenant who needs to know where he or she stands.

19. The case for the Council is that the letter of 22 March, on its face, confirmed the original decision to seek possession. Mr Arden refers to the fact that the Review Panel not only "decided that the notice was correctly and justifiably served" it also stated that "whilst the decision to serve the notice is upheld …". He submits that the decision as a whole was effectively the same as the review decision in *Stone*, namely a confirmation of the original decision coupled with a suspension of the commencement of proceedings to allow Ms Stafford the opportunity to demonstrate that her antisocial behaviour would not recur. Mr Luba, on the other hand, points to

the structure and language of the letter, including the statement that "we do not believe that an application to the court for possession of the property should be made at this point in time". He further submits that, if this had been an unequivocal confirmation of the original decision, the letter would have had a part headed "Reasons" so as to demonstrate compliance with section 129(5). He also places great reliance on the part of the letter under the heading "Recommendations to Maiden Lane Housing Officers".

20. I have come to the conclusion that the decision evidenced by the letter of 22 March did not amount to a confirmation of the original decision to seek possession. Whilst I do not consider it to be as clear a case as *Forbes*, I find it significant that when setting out "the following alternatives to possession proceedings" which "should be implemented, as discussed with you during the meeting", the Council was putting forward three matters which were contemplated to involve detailed and on-going developments over a significant but unspecified period of time. The first matter, involving clarification with the police regarding Ms Stafford's former partner, could be achieved without significant delay. However, the other two matters were of a very different character. They involved the operation of an Acceptable Behaviour Agreement and support from YISP Plus. The letter enclosed details of the latter. It is a multi-agency programme designed to prevent anti-social behaviour "by offering support services, other complementary interventions and the use of enforcement options where appropriate". It seems to me that at the review hearing on 22 March, the Panel members did not confirm the original decision to seek possession. Instead, having regard to their assessment of Ms Stafford at that time, they considered that there were "alternatives to possession proceedings". Indeed, this is consistent with the contemporaneous notes made by Mr Robson who recorded Mr Togher as saying "nuisance not very significant now" and mentioned Ms Stafford's positive response to proposals for mediation, an Acceptable Behaviour Agreement and referral to YISP Plus. All this may have represented a generous approach on the part of the Council. However, what it did not amount to was an unequivocal confirmation of the original decision to seek possession. In effect, the Council was creating a situation in which, in the event of further anti-social behaviour, they would no longer be able to rely on the original section 128 notice but would have to begin the process again. I quite understand the sort of policy considerations articulated by Arden and Judge LJJ in *Stone*. However, each case has to be considered within its own factual matrix. In my judgment, the decision of 22 March and its articulation in the letter of the same date fell short of a confirmation of the original decision.

21. There is a further aspect of this case to which I should refer. It derives from the fact that, as I have said, a section 128 notice is a jurisdictional document. Only a properly served notice, confirmed on a section 129 review (where sought), opens the door to possession proceedings. For this reason, it is important that, when the original decision is confirmed on review, jurisdiction should be a matter of clarity. If the review decision in the present case could be correctly construed as one of confirmation of the original decision, it could only be on a conditional basis. Possession would only be sought in the event of "the alternatives to possession" having broken down. Such an assertion would be pregnant with potential for factual dispute, the resolution of which would determine jurisdiction. Thus, complex "alternatives to possession" of an open-ended kind should not be attached to a review decision which is confirmatory in the sense of section 129(5). Whilst I see the force

of the policy considerations articulated in *Stone*, it behoves local authorities to ensure that, if they wish to preserve their original decision, they express confirmation of it with clarity and without encrusting it with complex "alternatives". It seems to me that the decision taken by the Review Panel on 22 March was essentially reasonable. The consequence, however, was that, in the event of adverse developments, a new notice under section 128 would need to be served.

22. I have now read the following judgment of Lord Justice Etherton in draft. It expands upon what I have said in the preceding paragraph. I am in substantial agreement with it.

Conclusion

23. For all these reasons I would dismiss this appeal because the judge was correct to conclude that it was no longer open to the Council to rely on the section 128 notice. In these circumstances, it is not necessary to deal with the matters raised by the respondent's notice, upon which we did not hear oral argument.

Lord Justice Etherton:

24. I agree with Lord Justice Maurice Kay that this appeal should be dismissed for the reasons he gives.

25. I am adding a few comments of my own in view of some wider issues about sections 128 and 129 of the 1996 Act that were debated before us.

26. I do not accept that a notice under section 128 can be expressed conditionally, that is to say as a notice that the court will be asked to make an order for possession but only if the tenant does not comply with certain conditions; or, to the same effect, as a notice that the court will be asked to make an order for possession but steps will not be taken to achieve that result so long as the introductory tenant complies with certain conditions. Equally, I do not accept that a review decision under section 129 which is so expressed is a confirmation of the decision notified under section 128.

27. Section 128(2) provides that the notice "shall state that the court will be asked to make an order for the possession of the dwelling-house". The ordinary meaning of that provision does not include a conditional notice such as I have described. I do not consider that a different meaning should be placed on that straightforward language because the housing authority would otherwise be placed under an undesirable straightjacket in its dealings with the tenant, without room to encourage the tenant to improve his or her conduct in order to avoid litigation and a possession order. I do not accept that there is any such straightjacket. The reality is that the authority will have had discussions with the tenant and sought an improvement in the tenant's conduct before the service of a notice under section 128, and it is only if the tenant fails to improve to the authority's satisfaction that the notice will be served.

28. Furthermore, once the notice under section 128 has been served, the authority will have the right, indeed the duty, to keep the situation under review: see, eg *Barber v Croydon* LBC [2010] EWCA Civ 51, [2010] HLR 26 at [18] and [19] (Patten LJ). Even if a notice is served, the authority is not bound to take possession proceedings or, if commenced, to take them to a conclusion. That is clear from the permissive

terms of section 128(3): "… a date after which proceedings for the possession of the dwelling-house may be begun". There is, therefore, nothing to prevent the authority from desisting from commencing or continuing possession proceedings if the tenant's conduct improves and nothing to prevent the authority from telling the tenant, even after the notice under section 128 has been served, that, while the authority's present intention is to seek possession, it may change its mind if the tenant's conduct improves.

29. The urgency and strict time limits of the review procedure under section 129 are inconsistent with a conditional notice, such as I have described, which is dependent on continuing compliance by the tenant with some prescribed standard of conduct: see section 129(1) (request for review within 14 days of the notice), and section 129(6) (review to be completed and tenant notified of the result before the date specified in the section 128 notice).

30. If the section 128 notice cannot be a conditional notice, such as I have described, then it does not seem to me to be possible, on a review under section 129, for the review decision to introduce a conditionality which the section 128 notice itself cannot have. There are two reasons for that, one of principle and one of fact. As a matter of principle, the section 128 notice will only continue to stand, so founding the jurisdiction of the court under section 128(1) to make an order for possession, if "the original decision" is confirmed under section 129(5), and that original decision cannot be expressed conditionally. As a matter of fact, a decision on review that the court will be asked to make an order for possession only if the tenant fails to adhere to certain conditions is not a confirmation of an earlier unconditional decision to ask the court to make an order for possession.

31. Crane J considered in *Forbes v Lambeth London Borough Council,* [2003] EWHC 222 (QB), [2003] HLR 49, at [32] that *Cardiff City Council v Stone* is binding authority to the contrary, but I do not agree. Neither Arden LJ nor Judge LJ addressed the point of principle on conditionality separately and distinctly. The most that can be said is that it is implicit in their judgments that the review notice in that case was "unequivocal" (as Arden LJ put it in paragraph [34]) in the light of the wording of the review notice. I consider that the judgments in *Stone* should be taken as interpreting the review notice in that case not as a promise by the authority to suspend taking possession proceedings conditionally, but as merely indicating what conduct might in the discretion of the authority influence the implementation of its original decision pursuant to the authority's right and obligation to keep the matter under review at all times up to the conclusion of the possession proceedings.

32. That analysis of section 129 is consistent with important practical considerations. If conditionality could be introduced on review, there might have to be careful interpretation of the language of the review notice, as the present dispute illustrates, so as to see whether it falls on the *Stone* side of the line (confirmation but suspension) or the *Forbes* side of the line (suspension and no confirmation). Further, that exercise may require, as Mr Arden argued, resort to what was said orally in a review meeting and looking at other documents and interpreting them (such as minutes of meetings). That may itself result in the need for oral evidence and cross examination in the possession proceedings on a preliminary point (as in the present case) as to the court's jurisdiction to entertain the proceedings. It may involve identification of precisely what are the suspensory conditions, and whether they have been breached. Those

matters could, again, only be resolved finally by the court, possibly on contested oral evidence, when hearing the possession proceedings. That potential for confusion, expanded litigation and consequential costs and delay seems entirely inconsistent with the statutory regime for introductory tenancies, and particularly their termination.

33. By contrast, if the making of suspensory conditions is inconsistent with confirmation of the original decision, then any dispute about what such conditions were and whether they have been complied with would be crystallised by the service of a further section 128 notice and a subsequent review (if sought) and would be taken into account on that review in deciding whether or not the original decision should be confirmed.

34. I do not consider that the need to serve a further section 128 notice would create unacceptable delay in commencing possession proceedings. The practicable consequences, in that connection, can be overstated in view of the tight time limits for the completion of any review. Proceedings might be delayed for as little as 4 weeks or a month.

35. In any event, for the reasons given by Maurice Kay LJ, I regard the actual review notice in the present case as an unequivocal non-confirmation of the authority's original decision to seek possession. The contrast with the wording in *Stone* is marked.

36. Like Aikens LJ, I particularly endorse what Maurice Kay has said in paragraph [21] about the need for a review decision to be expressed in clear terms so as to avoid the type of dispute which has arisen in the present case.

Lord Justice Aikens:

37. I agree with both judgments.