Neutral Citation Number: [2020] EWHC 2648 (QB)

Case No: BM00027A

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM APPEALS CENTRE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/10/2020

Before :

MR JUSTICE CAVANAGH

- -

Between :

BROMFORD HOUSING ASSOCIATION LIMITED	**Claimant**
- and -	
MR KEVIN NIGHTINGALE	**Defendant**
- and –	
MRS CAROLINE NIGHTINGALE	

- -
- -

David Renton (instructed by **Shelter Legal Services**) for the **Appellants**
Aadhithya Anbahan (instructed by **GC Law**) for the **Respondent**

Hearing dates: 28 April 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Cavanagh :

Introduction

1. This is my judgment following the rolled-up application for permission to appeal in this case by the Appellants/Defendants.

2. This appeal arises in possession proceedings that have been brought by the Claimant against the Defendants. The appeal is against an order made on 24 February 2020 by HHJ Hedley, sitting with an assessor, at the Northampton County Court, in which the Defendants were refused permission to rely upon a witness statement, also dated 24 February 2020, of Ms Babra Ushewekunze, Housing Options Officer for South Northamptonshire Council, at the final hearing of the possession proceedings. At the 24 February 2020 hearing, the final hearing was listed to take place over four days beginning on 4 May 2020, but that hearing was adjourned as a result of the stay that has been in place for possession proceedings.

3. As is customary in rolled-up appeals, I invited counsel to make submissions both about whether there should be permission to appeal, and on the substantive appeal if permission is granted. The order for a rolled-up hearing was made by Andrews J on 9 March 2020.

4. I will refer in this judgment to the Appellants as the Defendants, and to the Respondent as the Claimant. The Defendants have been represented by Mr David Renton, and are supported by Shelter. The Claimant Housing Association has been represented by Ms Aadhithya Anbahan. Both counsel appeared below. I am grateful to them for their helpful submissions, both oral and in writing.

5. This judgment has had a long gestation period. On 28 April 2020, I heard oral argument. The hearing before me took place remotely via Skype for Business. At the time of the hearing, counsel and I were aware of the stay on proceedings for possession, which had been imposed in response to the Covid-19 Pandemic. This stay was imposed by CPR PD 51Z on 26 March 2020, and was initially imposed for 90 days. No application was made in advance of the hearing of this appeal for its adjournment, but I heard oral submissions at the start of the hearing on whether I should adjourn the hearing and I decided not to do so. At that time, I took the view that the stay did not apply to an appeal such as this which, whatever its outcome, would not lead without more to an order for possession. Therefore, I proceeded to hear argument from the parties' representatives. However, Mr Renton, counsel for the Defendants, drew my attention to the fact that a hearing was listed for a few days' time in the Court of Appeal which was to deal with the scope of the stay that was imposed by PD 51Z. I therefore decided to reserve my judgment, on the basis that I would invite further submissions on whether to proceed to deliver my judgment whilst the stay in PD 51Z was in force, after the Court of Appeal had handed down its judgment. This was in accordance with a proposal that had been made by both parties' counsel.

6. In the event, the Court of Appeal handed down two relevant judgments shortly after the hearing in this matter on 28 April 2020, the second of which made absolutely clear that my initial view had been wrong, and that the stay on possession proceedings imposed by PD 51Z applied to appeals to such as this. The judgments are **Arkin v**

Marshall [2020] EWCA Civ 620, handed down on 11 May 2020, and **London Borough of Hackney v Okoro** [2020] EWCA Civ 681, which was handed down 27 May 2020.

7. In light of these judgments, I handed down a ruling on 27 May 2020 in which I said that I would not hand down judgment in this appeal until after the stay was lifted, and that the parties would be given 14 days from the lifting of the stay to lodge any further written submissions, or to apply for a further oral hearing, or to indicate to the court that they did not intend to make any further submissions.

8. Then, in June 2020, the parties helpfully drew my attention to the judgment of Freedman J in **Copeland v Royal Bank of Scotland plc** [2020] EWHC 1441 (QB). In **Copeland**, the oral argument in a possession appeal took place in February 2020, before PD 51Z was issued and before the stay on possession proceedings was imposed, but the judgment had not been handed down at the time when the stay came into force. Freedman J decided to lift the stay under CPR 3.1 for the narrow purpose of issuing the reserved judgment and making consequential orders, but also ordered that any possession order would be stayed under PD 51Z, for however long PD 51Z applies, and that he would grant an extension of time to bring a second appeal until after PD 51Z had ceased to apply. The parties did not invite me to do what Freedman J had done, but, very properly, considered that the judgment in **Copeland** should be drawn to my attention. In a short further ruling dated 12 June 2020, [2020] EWHC 1532 (QB), I decided that I should not lift the stay so as to issue the judgment on this appeal, but that I should follow the course of action that I had set out in my ruling on 27 May 2020. The present case is different from the **Copeland** case, in that **Copeland** was an appeal against a possession order made at a final hearing. In the present case, the appeal is not against an order for possession. I have taken the view (explained in greater detail in my rulings on 27 May and 12 June 2020) that the spirit and purpose of PD 51Z, and the overriding objective, would best be met if I delayed the hand-down of my judgment until after the stay had been lifted, provided that I gave the parties the opportunity to make further submissions after the stay had come to an end. No sensible purpose would be served by pretending that oral argument had not taken place in April 2020, or by putting the parties to the extra and unnecessary expense of having a second hearing so that they could repeat the same submissions they had already made at the April hearing. Both parties have made clear that they agree that this would serve no useful purpose. The practical effect of my ruling is the same as the practical effect of **Copeland**.

9. In the event, the stay that was imposed on 26 March 2020 was extended several times, and was finally lifted on 20 September 2020. Since then, Mr Renton has provided the court with a short further skeleton argument in which he provided an update about the proceedings. He has also indicated that the Defendants do not apply for a further oral hearing to take place. Ms Anbahan has indicated that the Claimant does not wish to make any further submissions. In those circumstances, there is no reason for me to delay the hand-down of this judgment any further.

10. It is worth adding that, although, for the reasons set out above, there has been a delay of over five months between oral argument and judgment, this has not caused any difficulty or inconvenience for the parties. The appeal is concerned with whether a particular witness statement can be given in evidence at the final hearing of the possession proceedings. As a result of the stay in PD 51Z, there was no possibility

that the final hearing would take place at any stage over the last five months. Indeed, Mr Renton's skeleton argument informs me that no trial date has yet been set. A directions hearing has been listed for 30 October 2020, but the Defendants' representatives believe that this is likely to be adjourned. Whether it is adjourned or not, given the number of possession actions that have been stayed and now need to be dealt with, it may be some time before the final hearing can take place.

The issue in this appeal

11. The Claimant is pursuing possession proceedings against the Defendants. The Claimant seeks to evict the Defendants and their children because of alleged anti-social behaviour, mainly but not exclusively on the part of the Defendants' children.

12. The hearing of the possession proceedings came on before HHJ Hedley and a lay assessor at Northampton County Court on 24 February 2020. In the event, the hearing was adjourned by the Judge because he took the view that there was insufficient time to deal with the matter. However, at the hearing on 24 February, the Judge considered an application by the Defendants to rely upon a witness statement, dated the same day, from Ms Babra Ushewekunze, Housing Options Officer for South Northamptonshire Council. Ms Ushewekunze had attended the hearing on 24 February as an observer and, following a conversation with the Defendants' legal advisers, had provided them with a short handwritten witness statement.

13. The application to rely upon the witness statement took the form of an application for relief for sanctions, pursuant to CPR 3.9, on the basis that the statement had been served at the hearing and so after the deadline for exchange of witness statements.

14. HHJ Hedley refused to grant relief from sanctions, and so declined to permit the Appellants to rely on the witness statement. The Defendants seek permission to appeal against this decision.

15. At the hearing on 24 February 2020, as I have said, the court relisted the final hearing of the possession proceedings, and ordered that the hearing should begin on 4 May 2020, with a time estimate of four days. In the event, as a result of the stay of possession proceedings, this hearing did not take place, and it is unlikely to take place for some months yet.

The relevant facts and the procedural history

16. The Defendants, who are husband and wife, live with their three children at 9 Harper's Brook, Towcester, Northants. The Claimant is a Housing Association which owns the property in which they live.

17. On 28 September 2018, the Claimant took a decision to terminate the Defendants' tenancy, because of extensive and persistent anti-social behaviour, mainly involving their older son (C), then aged about 12, and their daughter (K), then aged about 16.

18. The Claimant served a Notice on the Defendants under section 21 of the Housing Act 1988, which, the Defendants accept, was valid.

19. However, the Defendants resist possession on several grounds. These focus on the contention that the Defendant's older son, C, who is now 13, is disabled, suffering from Autism, learning difficulties, and ADHD, and that his anti-social behaviour has been caused by his impairments. The Defendants also say that in the last 12 months he has been receiving medication for ADHD and that his anti-social behaviour has reduced drastically.

20. The Defendants deny that the Claimant is entitled to possession because they say that, in bringing the possession proceedings, the Claimant has discriminated for a reason resulting from C's disability or has failed to make reasonable adjustments, short of eviction, for C's disability, in breach of section 15 and 20 of the Equality Act 2010, respectively. The Defendants say, in addition, that the decision to terminate their tenancy is, in public law terms, irrational, or is invalid because the Claimant failed to take account of the best interests of the Defendants' children, in breach of the Children Act 1989. Still further, the Defendants say that the Claimant failed to comply with its Public Sector Equality Duty ("PSED"), imposed by s149 of the Equality Act 2020.

21. The Defendants have three professional witnesses to support their opposition to the possession proceedings, consisting of a social worker and representatives of the Youth Offending Service and Multisystemic Therapy teams.

22. It is not necessary to summarise the Claimant's arguments in support of possession in any detail. They are set out in a written "justification exercise" document dated 23 January 2020, which was served on the Defendants on 24 January 2020. Suffice it to say that the position that is taken by the Claimant is that it will not rely on any of the incidents involving C, but will rely upon incidents involving K and the First Defendant, neither of whom has a disability.

23. I should make clear that my decision in relation to the application for permission to appeal in relation to the decision regarding the witness statement is not based upon the merits of the parties' respective arguments on the substantive issue.

24. The Defendants say that one of the issues which the court will take into account when deciding whether or not to grant possession is the likelihood that the family will obtain accommodation elsewhere. They say that this question will be relevant to the Equality Act and public law issues. If there is a serious risk of the family being broken up or having to move into insecure accommodation, this will have to be weighed in the balance, and it may be relied upon to support the contention that the decision to bring possession proceedings was irrational, or unlawful on Equality Act grounds.

25. The justification exercise document states that if possession is granted the local authority will "support the family in finding suitable accommodation elsewhere which would keep any disruption to a minimum".

26. The final hearing in the possession proceedings was originally listed to commence on 24 February 2020 before Judge Hedley and an assessor. On 24 February 2020, Ms Ushewekunze, who is a housing officer employed by the local authority in whose area the Defendants live, attended the hearing, intending to do so only as an observer. The local authority is not itself a party to the proceedings.

27. Ms Ushewekunze had not been asked by either party to attend court or to give evidence. However, before the hearing began on 24 February 2020, Ms Ushewekunze spoke to the Defendant's legal representatives and, in light of that conversation, she was asked to provide them with a short witness statement, which was drawn up in manuscript. The witness statement dealt with two matters: The first was the local authority's position in relation to rehousing tenants who had been evicted for anti-social behaviour. The second was a statement of Ms Ushewekunze's view that it would be virtually impossible for the Defendants be rehoused in the local private sector if they were evicted for anti-social behaviour.

28. As I have also already said, the Defendants applied to rely on the witness statement, and did so by means of an application for relief from sanctions, pursuant to CPR 3.9, on the basis that the deadline for serving evidence had passed.

29. The submissions made by the Defendants to HHJ Hedley as to why the evidence should be admitted are essentially the same submissions are were made before me as to why the Judge erred in the exercise of his discretion.

30. The Defendants submitted that the tests set out in **Mitchell v News Group Newspapers** [2013] EWCA Civ 1537 and **Denton v T H White Ltd** [2014] EWCA Civ 906 applied, and so that the court must decide whether there had been a breach of directions, and if so, must go on to consider three matters, (1) whether the breach was serious or significant, (2) whether there was good reason for it, and (3) if not, whether the court should nonetheless exercise its discretion in all the circumstances of the case to permit the evidence to be relied upon.

31. It was not in dispute either before HHJ Hedley or before me that these were the right tests to apply.

32. The Defendants accepted that there had been a breach of directions that had been made in the case, in that the Judge had ruled at a previous directions hearing on 16 September 2019 that the Claimant had until 3 February 2020 to file updating evidence and the Defendants had until 10 February 2020 to file evidence in reply. The evidence was, therefore, two weeks out of time. The directions were subject to the usual express and implied sanctions.

33. As for the first part of the **Denton** test, The Defendants did not dispute that the breach was serious, in that it was a clear and direct breach of a court order.

34. Again, as for the second part, the Defendants did not contend that there was a good reason for their failure to file this evidence prior to the deadline. In particular, the Claimant had complied with the deadline for service of its evidence, having served its justification exercise on 24 January 2020.

35. The Defendants relied on issue (3), the Court's residual discretion. Their submission was that, in all the circumstances of the case, the Judge should have exercised his discretion to permit the evidence to be relied upon, even though there was a serious breach and no good reason for the delay. The Defendants submitted that there were understandable reasons for the delay, even if they did not amount to a good reason.

36. The Defendants said that there were two reasons for the delay.

37. First, prior to the justification evidence received on 24 January 2020, the case was proceeding on the basis that the Claimant accepted that there was no prospect of the Defendants being rehoused by the local authority, and so this had not been a live issue until recently. At a meeting on 4 April 2019 between the local authority and the parties, the local authority had said: "Barbara" [i.e. Ms Ushewekunze] confirmed that they have been disqualified from the housing register due to being evicted for ASB they" [i.e. the Defendants] "will need to look at private renting". However, the Claimant's justification case, dated 23 Jan 2020 and served on 24 Jan 2020, had asserted that the local authority would support the Defendants to find alternative accommodation. This was one of the reasons why the Claimant decided to continue with the claim.

38. Second, it was only on the attendance of Ms Ushewekunze at the Court on 24 February 2020 that the Defendants became aware that she had evidence that she could give to the Court.

39. Moreover, and most importantly, the Defendants submit that Ms Ushewekunze's evidence was important evidence and so should have been admitted pursuant to the Court's discretion.

40. As for the two points that were made in Ms Ushewekunze's evidence, the first, at paragraph 2, was that it is the local authority's position that if the Defendants are evicted for reason of anti-social behaviour they will be unable to join the housing register due to disqualification for at least 12 months and this means that they will not be eligible to be placed into social housing.

41. The Defendants submit that this statement of position is relevant. It tends to show that the Claimant's optimism in its justification case as to the Defendants' prospects post-eviction is baseless, and that the justification exercise done by the Claimant is – at least on that point – unsupportable. The justification exercise had said that "The local authority will support the family in finding suitable accommodation."

42. The second important piece of evidence, according to the Defendants, was a statement in paragraph 3 that Ms Ushewekunze was aware that if the Defendants were evicted for reasons of antisocial behaviour they were not likely to be housed in the local private rental sector, since – irrespective of any other support the authority can give, e.g. by offering to pay a deposit – a landlord in that sector will ask the local authority to obtain a reference for the tenants from their landlord and without one a private landlord would be "very unlikely" to house the family.

43. The Defendants submit that this statement of fact was relevant because it was new information and it shows that the impression given by the Claimant's justification exercise to the effect that it was likely that alternative accommodation could be found for the Defendants was unsustainable.

44. The Claimant opposed the application on the basis that the deadline for serving evidence had passed and that this was not an appropriate case for providing relief from sanctions. The Defendants could have investigated these matters before 10 February. The evidence was of very limited relevance. Moreover, the Defendant submitted that it did not have an opportunity to investigate the evidence and, if necessary to provide evidence in response.

The ruling of HHJ Hedley

45. I have been provided with an approved transcript of the ruling of HHJ Hedley and I have read a transcript of the hearing.

46. The Judge reminded himself that it was only at the time of the Claimant's further justification exercise on 23 January 2020 that it became clear that part of the reason why the Claimant decided to continue with the possession proceedings was because the local authority would support the family in finding suitable accommodation. He noted that Ms Ushewekunze's statement said that if the Defendants were evicted for anti-social behaviour, they would be intentionally homeless, under section 191 of the Housing Act 1996 and would be ineligible to join the Housing Register for at least 12 months and would not be eligible for social housing. The only other option would be private housing which would be unable to produce anything.

47. As for the unavailability of private housing, the Judge said that this was almost so obvious as to require no witness evidence and so the real reason why the Defendants want Ms Ushewekunze to be called at the final hearing in May 2020 was to give evidence that the local authority would not rehouse the family.

48. As for the first two parts of the **Denton** test, the Judge decided that there was a serious or significant breach of the order, and there was no good reason for it. As I have said, the Defendants do not challenge these parts of the Judge's ruling. He said that this was evidence which could have been anticipated as being relevant as far back as October 2019, and it would have been perfectly possible for the Defendants, legal team to have enquired of the local authority at that point. He accepted however that the point was thrown into sharp focus by the justification exercise of 23 January 2020 and that it was not until Ms Ushewekunze attended court on 24 February 2020 that the Defendants appreciated what she might say.

49. The Judge went on to consider the question of discretion. He took account of CPR Part 3, the overriding objective, and all of the circumstances of the case.

50. He noted that the Claimant had submitted that the evidence came too late, that it was not entirely clear what issues would be engaged by it, and, if it was admitted, satellite issues would have to be dealt with. The Claimant pointed out that the local authority is subject to its statutory duty under the Housing Act 1996. The scope of its obligations are matters of law, not evidence. If this evidence were admitted, the Court would have to look at the nature of those statutory duties and whether the local authority has properly engaged with them. This would involve undertaking further enquiries with the local authority, and, possibly, further disclosure.

51. The Judge accepted the Claimant's submissions, saying that they were entirely justified. He accepted that if the statement had been served in time, those enquires would have had to be made. But, if the application is allowed, it is inevitable that the Claimant will have to investigate a satellite issue of whether a local authority intends to comply with its statutory duty. The unavailability of private tenancies goes without saying. Consideration of the duties of the local authority, which is not a party to these proceedings, would give rise potentially to all sorts of additional issues.

52. For these reasons, the judge refused to grant relief from sanctions and refused to grant leave to the Defendants to rely upon the witness statement.

53. I should add that, at the appeal hearing, I was shown an email that had been sent to the Defendant's solicitor on 21 April 2020 (so after the date of the hearing before HHJ Hedley) in which a Senior Housing Options Manager at the local authority requested that Ms Ushewekunze's statement be withdrawn. However, the parties agreed that I should not take this email into account and so I have not done so.

The Defendants' submissions

54. Mr Renton accepted that his clients' appeal is against a case management decision and that it is only in an unusual case that a judge's case management decision can be overturned on appeal. However, he said that this is such a case. The Judge had accepted that if the statement had been served in time it would have been admitted in evidence on the basis that it was relevant evidence, and Mr Renton submitted that the overriding consideration when dealing with the third stage of the **Denton** analysis should have been relevance. On that basis, the statement should have been admitted.

55. Mr Renton said that whereas in a standard claim for possession under section 21 of the Housing Act 1988 the question of how easy it would be for the tenants to be accommodated elsewhere did not arise, the question arises in the present case. This is because it is relevant to the argument relating to alleged breach of the PSED, imposed by section 149 of the Equality Act 2010, and to the arguments based on sections 10 and 15 of the same Act, and on public law. The justification exercise of 23 January 2020 was carried out by the Claimant in purported compliance with its PSED duty. The Claimant appreciated that the PSED was engaged because the Defendants' son, C, was disabled. The Defendants will be contending that the Claimant failed to have any or sufficient regard to whether eviction would render C, a disabled person, homeless. The witness statement is relevant to this issue. In addition, the availability of alternative accommodation can be a relevant factor in deciding whether it is appropriate to order possession against a disabled tenant. Mr Renton submitted that the Judge had been wrong, therefore, to regard this as a satellite issue.

56. Mr Renton also said that it was not until the Defendants' advisers received the justification exercise on 24 January 2020 that the Defendants' advisers had appreciated that the Claimant was contending that the Defendants would be rehoused. He pointed to the concluding sentence in the justification exercise, which stated as follows:

> "In addition and as discussed in the previous justification exercise the Defendants have a vast amount of support and the local authority will support the family in finding suitable accommodation elsewhere which will keep any disruption to a minimum."

57. Mr Renton said that this sentence showed that the Claimant believed that the local authority would rehouse the Defendants, and that the reference to keeping any disruption to a minimum meant that the Claimant believed that the alternative accommodation would be near to the children's schools.

58. Mr Renton accepted that paragraph 2 of Ms Ushewekunze's statement did not say anything new. In saying that the Defendant's would not qualify for a place on the housing register, she was just repeating what she was recorded as having said at a meeting on 4 October 2019. He said that the important new information set out in the witness statement related was M Ushewekunze's observation that it was very unlikely that the family would be accommodated in the local private rental sector. He submitted that this was "absolutely crucial" evidence. The fact that the Judge had said that it was so obvious that it "almost" went without saying that it would be very unlikely that the family would be accommodated by the private sector mean that it did not actually go without saying, and that evidence was required about the position in relation to private renting in the Towcester area.

59. Mr Renton submitted that none of the other witnesses who have provided witness statements for the Claimant or the Defendants had expertise of the local housing market and this meant that the evidence of Ms Ushewekunze was crucial. The question of what was likely to happen to the family when they were evicted was central to the argument that the Claimant had failed to give due regard to the needs of the family as one containing disabled persons, and the evidence of Ms Ushewekunze was the best available.

60. Mr Renton also made clear that it was not being said on behalf of the Defendants that the local housing authority would fail to comply with its statutory obligations relating to homeless persons or to the housing of homeless children.

61. It was submitted that there was no risk of the final hearing exceeding its time estimate as a result of the admission of this evidence.

62. For these reasons, Mr Renton submitted that the Judge had erred in failing to exercise his discretion, under the third limb of **Denton,** to admit the witness statement. He submitted that the Judge had placed too much significance on the importance of complying with orders, and had failed to pay sufficient account to the relevance of the evidence.

63. Mr Renton made a further submission to the effect that, even if I was not persuaded that the appeal would have a real prospect of success, I should grant permission to appeal because there was some other compelling reason for the appeal to be heard (CPR 52.6(1)(b)). This was that no previous appellate case has set out the test that applies to a claim for possession in a case in which a main protagonist who has been accused of anti—social behaviour is a child. Mr Renton submitted that, in these circumstances, there is an unusual premium on ensuring that the procedure for hearing the case is fair. As he put it in oral argument, there should not be an "over-fussy" approach to case management in a case involving a vulnerable disabled child.

Discussion and conclusions

64. The starting point is that a Judge has a wide discretion under CPR 3.9 to decide whether to grant relief from sanctions by admitting a witness statement which had been served outside the time limit for serving such statements. An appellate court will not overturn the decision of the Judge below unless his or her decision was wrong in the sense of being unsustainable or was unjust because of a serious procedural irregularity (see, eg **Abrahams v Lenton** [2003] EWHC 1104 (QB)).

65. It is not sufficient that the appellate judge might have come to a different decision. The question is not whether I would have reached the same decision if I had been dealing with this question. Robust and fair case management decisions should be supported even if the appellate judge would not have decided it the same way. Rather, an appeal against a case management decision will only succeed if it "plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree": see Lewison LJ expressed it in **Broughton v Kop Football (Cayman) Ltd** [2012] EWCA Civ 1743 , para 51

66. In my judgment, there is no arguable ground for appeal in this case. The exercise of discretion by HHJ Hedley was not arguably wrong.

67. There is no suggestion in the present case that the judge misdirected himself in relation to the legal test which applies to relief from sanction and which is set out in CPR 3.9 and in **Denton v TH White.** The Defendants, rightly, do not dispute that there was a serious and/or significant breach of the directions order, and they accept that there was no good reason for the breach. There was no reason why the two matters that are dealt with in Ms Ushewekunze's statement could not have been dealt with in a witness statement which was served within the time limit provided for in the directions. It had been clear for a long time question of how far the Claimant had grounds for optimism as to whether the Defendants would be rehoused if they were evicted was a live issue in the case. As HHJ Hedley observed, the issued was thrown into sharp focus by the justification exercise of 23 January 2020. Even if the Defendants' legal advisers had only been alerted at that stage to the importance of this issue, they still had two weeks to obtain evidence and to serve a witness statement in accordance with the directions. There are good reasons for enforcing compliance with the Court's directions.

68. In my judgment, the Judge was plainly entitled to conclude that, in all the circumstances of the case, he should not grant relief from sanctions, given the importance of enforcing compliance with the Court's orders, and the disadvantages of admitting this additional evidence.

69. The evidence in Ms Ushewekunze's very short statement covered two issues.

70. The first was that it was highly unlikely that the family would be given a place on the housing register if they were evicted for anti-social behaviour. In his oral argument, Mr Renton accepted that this was not significant new evidence. Ms Ushewekunze was simply repeating a statement of opinion that she had been recorded as having said at a meeting some months previously, on 4 October 2019. In any event, Ms Ushewekunze, as a housing officer (who is not a member of the local authority's homelessness team), cannot bind the local authority in the exercise of its statutory functions. She cannot pre-judge whether the local authority will treat the Defendants as being intentionally homeless for the purposes of the Housing Act 1996, section 191. Still further, the short paragraph in Ms Ushewekunze's witness statement plainly did not do justice to the complex web of obligations which will arise in relation to the local authority if the Defendants are evicted. It is clear from statute that, even if the Defendants are intentionally homeless, as they are in priority need (as they have dependent children) so the local authority will have duties to assess the family's needs and to provide accommodation, at least temporarily, under sections 189A, 189B and/or190 of the Housing Act 1996, and to assist them in finding suitable

accommodation. On the face of it, this is what the last sentence of the justification exercise was referring to. With respect to Ms Ushewekunze, her personal view about whether the local authority would treat the Defendants as being intentionally homeless is of no real relevance. Nor is her view about whether they would be placed on the housing register. As the Judge said in his judgment, what matters is the nature and the scope of the local authority's statutory duties. It is not being alleged that the local authority will fail to comply with its statutory duties.

71. In addition, the only person who is disabled, and who triggers the PSED, and who has rights under the Equality Act 2010,, is C, and, as he is a child, the children's services authority has responsibilities to ensure that he is provided with accommodation if he would otherwise be homeless, under section 20 of the Children Act 1989. Once again, this is not a matter of evidence, but of statutory interpretation. It has not been addressed in paragraph 2 of Ms Ushewekunze's statement.

72. This leaves Ms Ushewekunze's statement to the effect that it was very unlikely that the family would be accommodated in the local private rental sector. It does not appear to me that this is an issue in dispute in the case. As the Judge pointed out, although these are my words, it was blindingly obvious that a family that is evicted on the ground of the anti-social behaviour that has been alleged against the Defendants will struggle to obtain accommodation in the private sector. The Claimant has made clear that it does not disagree with this. There is simply no need for a witness statement to be admitted in order to deal with this issue. The fact that the Judge said it "almost" goes without saying does not mean that he was acknowledging that evidence was, in fact, required on this issue. It is clear, reading the judgment as a whole, that the Judge was saying that no evidence was required, because the point is self-evident.

73. The statement at the end of the justification exercise to the effect that the Defendants have a vast amount of support and the local authority will support the family in finding suitable accommodation elsewhere which will keep any disruption to a minimum was not, expressly or implicitly, a statement that they would find it easy to obtain suitable accommodation in the private sector. The thrust of the justification exercise is to the effect that the harmful effects of the behaviour of members of the Defendants' family on their neighbours, extending to damage to their mental health, is so great that there is no alternative but to evict them, even when C's disability is taken into account, and even given the difficulties that eviction will cause for the family. There is no reason to think that there will be a dispute at the final hearing about whether it is likely that the Defendants will obtain alternative accommodation in the private rental market in the Towcester area.

74. It follows that the judge was fully entitled to take the view that no real purpose would be served by the admission of Ms Ushewekunze's statement into evidence, and that the alleged relevance of her observations did not outweigh the grounds for refusing relief from sanctions. It was irrelevant that, if the statement had been admitted, it would not have caused an issue with the time estimate of the final hearing. It is equally irrelevant that, as things have turned out, many months will have elapsed between the hearing on 24 February 2020 and the final possession hearing. The point is that the evidence which the Defendants sought to adduce was of no real significance.

75. As for the submission that there is a compelling reason for granting leave to appeal because no previous appellate case has set out the test that applies to a claim for possession in a case in which a main protagonist who has been accused of anti—social behaviour is a child, I do not accept it. This appeal is about a case management decision. It is not about the appropriate test to apply in cases such as this. As I have already said, the central reason why there is no arguable ground for appealing against HHJ Hedley's ruling is that the statement that the Defendants wish to rely upon simply does not contain anything of sufficient significance to justify its admission.

Conclusion

76. For these reasons, which are essentially the same reasons as were put forward by Ms Anbahan on behalf of the Claimant, I refuse permission to appeal in this case. There is no arguable error in HHJ Hedley's clear and thorough judgment.