

**Not-so-exceptional circumstances for the purposes of PD51Z: *Bromford Housing Association Limited v Nightingale* [2020] EWHC 532 (QB)**

By way of update to yesterday's note on [Copeland v Royal Bank of Scotland plc \[2020\] EWHC 1441 \(QB\)](#), there has been a further decision of the High Court considering the circumstances in which it will be appropriate to lift the stay imposed by PD51Z in order to hand down judgment.

*Bromford Housing Association Limited v Nightingale* [2020] EWHC 532 (QB) also involved a rolled-up application for permission to appeal. Unlike in *Copeland*, where the case had been heard prior to PD51Z's entry into force, the hearing in *Nightingale* took place (remotely, over Skype for Business) on 28 April 2020 - prior to confirmation from the Court of Appeal in *London Borough of Hackney v Okoro* [2020] EWCA Civ 681 that appeals are caught by PD51Z.

Exactly one month later, on 28 May (*Okoro* and *Arkin v Marshall* [2020] EWCA Civ 620) having been handed down in the meantime), Cavanagh J ruled that he would not hand down his own judgment in *Nightingale* until the stay had been lifted.

Subsequently, however, the judgment in *Copeland* was handed down. The parties in *Nightingale* drew the decision to the Court's attention, but Cavanagh J was ultimately unpersuaded that it justified reconsideration of his 28 May decision to defer hand down until the stay was lifted. The "key difference" in his view was that the hearing in *Copeland* had taken place prior to the stay, whereas in the present instance, it had occurred subsequently.

It could be said that, given the hearing in *Nightingale* had in fact proceeded notwithstanding PD51Z coming into force, there was no compelling distinction between the present case and the position in *Copeland*. Cavanagh J was however candid about the fact that had he and the parties "enjoyed the benefit of seeing the Court of Appeal judgments in *Arkin* and *Okoro* at the time of the hearing, the proceedings would inevitably have been stayed and the hearing would not have taken place". It was important "and in keeping with the spirit of the stay, that the parties [be] given a further opportunity make submissions after the stay is lifted" and before judgment is handed down.

It is also understood that the Court of Appeal this week heard the second appeal in *Jarvis v Evans*, which concerns a possession order made (and subsequently set aside on the first appeal) following the service of a notice under section 8 of the Housing (Wales) Act 2014 by a landlord

who was neither registered nor licensed for the purposes of that Act, and that the Court had earlier confirmed that it was prepared to lift the stay, as the case raised an important point which required determination early on.

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