

**The possible impact of
*The Mayor and Burgesses of the London Borough Council of Islington v
Raymond Dyer* [2017] EWCA Civ 150
on the validity of notices**

By Edward Ross

The Decision

1. On 22 March 2017 the Court of Appeal delivered a short but important unanimous judgment on the construction and interpretation of a notice purportedly served pursuant to s.128 of the Housing Act 1996.
2. It held that the notice was valid and complied with the requirements of s.128 despite the fact that the statutorily required information was contained in two documents, one headed 'Notice' and the other headed 'Information Leaflet'.
3. Taking the necessarily objective view, "*any reasonable tenant...would...have realised*" the documents needed to be read together and so "*they did function together as the notice*" [16].

3PB Analysis

4. Mr Dyer occupied premises under an introductory tenancy. In order for the Council to obtain a possession order it was required to serve a s.128 notice. On 18 November 2013 the Council served a covering letter together with two documents, the 'Notice' and the 'Information Leaflet'.
5. Mr Dyer sought a review pursuant to s.129, within the required 14 days following service. A review was arranged for 20 December 2013; Mr Dyer could not attend and the decision to seek possession was confirmed. Proceedings were issued on 1 February 2014 and a possession order granted thereafter.
6. The case centered on s.128(7):

"The notice shall also inform the tenant that if he needs help or advice about the notice, and what to do about it, he should take it immediately to a Citizens' Advice Bureau, a housing aid centre, a law centre or a solicitor."

7. It was common ground that the s.128(7) information was contained only in the 'Information Leaflet'. The 'Notice' advised Mr Dyer to "*read it, and all the notes, very carefully*". On the appeal from the first instance County Court decision, HHJ Baucher had held that despite this reference and despite the two documents being served together, the Council had failed to include the information required by s.128(7): the 'Information Leaflet' was not part of the 'Notice'.

8. The Court of Appeal disagreed. Patten LJ, giving the judgment, noted that there is no prescribed form for a s.128 notice and nothing within the statute that limited the notice to a single page or single document:

“[w]hat one needs to ask is whether, from an objective point of view, both documents were intended to and did perform the function of a s.128(1) notice.” [16]

9. There was no direct authority with respect to s.128 but the Court of Appeal applied by analogy the case of **City of London Corp v Devlin [1997] 29 HLR 58**. In **Devlin** a signed letter served with an unsigned s.83 Housing Act 1985 notice in the prescribed form were held to constitute together one valid notice. It is noteworthy that the 1985 Act required the notice to be in the prescribed form or substantially to the same effect.

Impact of The Decision

10. The potential impact is wide-ranging. The argument that two, or potentially a multiplicity of, documents constitute a single valid notice seems now to be open not only for those notices required to be in a prescribed form or substantially the same (**Devlin**) but also those that do not have a prescribed form (**Dyer**).
11. What is still always necessary is compliance with all the statutory requirements, but at first blush **Dyer** does appear to be a softening of the usual rigours required for the service of valid property notices by local authorities, and potentially also private landlords.
12. Further, one can well envisage satellite disputes about exactly which documents were served and so whether a notice was valid. The safest option is still to ensure that the notice is either in the prescribed form, or comprised of a single and compliant document.
13. Conversely the argument from the tenant perspective is far from over. First, because permission for a second appeal has been granted, so ‘watch this space’. Secondly, where the facts and the documents allow, there is still room to argue that two or more documents, when viewed objectively, do not function together so as to provide a valid notice.

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6 April 2017