

Case Comment by Robert Sutherland, Advocate, Terra Firma Chambers
Mitchell v Glasgow City Council. [2009] UKHL 11, 18 February 2009

The House of Lords has over-turned a decision of the Court of Session which threatened to cause considerable problems for local authorities and other registered social landlords. The tragic circumstances behind the case were that on July 2001 a tenant of Glasgow City Council was assaulted and killed by a neighbouring tenant who had a history of verbally abusing and frequently threatening to kill him over a 6 ½ year period, as well as intimidating other elderly neighbours. The Council had issued a number of warnings about this conduct and in January 2001 they took the first steps towards raising eviction proceedings against him. On the day of the assault the neighbour had been summoned to a meeting where he was told that a fresh notice of proceeding was to be issued. It was immediately following this meeting that the neighbour returned home and carried out the assault which led to Mr. Mitchell's death.

A damages action was raised against the Council by members of the deceased's family, claiming that the Council had been negligent in failing to warn the deceased about the meeting beforehand, and that this was also a breach of the Human Rights Act 1988. The Court of Session initially dismissed the case, but in 2008 the court, in majority decisions, decided to allow the case to proceed in respect of the negligence claim but not in respect of the Human Rights Act claim. Both sides appealed against these decisions.

In the House of Lords both grounds of action against the Council were held to be irrelevant and the case was dismissed. All five judges gave written judgements. None of the judges disagreed with each other, but four of them expressed the reasons for their decision in slightly different ways from each other whilst the fifth, Baroness Hale of Richmond highlighted the common ground between the judgements. The case had potentially very significant ramifications. As Lord Hope of Craighead noted, the implications of saying that there was a duty to warn would be complex and far reaching. If there was a duty to warn then it would apply in every case where a social landlord suspected that a tenant may react to steps to address anti-social behaviour by attacking the person or property of anyone suspected of informing against him. The same duty would also apply to social workers and private landlords. It was therefore decided that in the ordinary course of acting as a landlord it would not be fair just and reasonable to impose on landlords any duty under the law of negligence to warn tenants of a risk to them from the anti-social or criminal actions of another tenant. Nor was there any liability under the Human Rights Act because the Council had no reason to believe that there was a real and immediate risk to the tenant's life as a result of their meeting with the neighbour.

The decision will come as a welcome relief to all landlords as it makes clear that where a landlord takes steps to try to reduce anti-social behaviour they are not at the same time creating a risk of creating a liability for damages in their attempts to do so. It would only be in the circumstance of a landlord assuming a special responsibility towards a tenant which leads to that tenant relying on the landlord to provide a warning or take some other measure to protect the tenant which will give rise to any future risk of a claim. In the ordinary course of matters the landlord will have no liability to their tenants because of the anti-social behaviour of another tenant.