



**IN THE COURT OF APPEAL, CIVIL DIVISION  
APPLICATION FOR A SECOND APPEAL**

REF: B5/2020/0358



**TM (a protected party, by his litigation friend) –v– Metropolitan Housing Association Limited**

**Decision on an application for a second appeal.** The Judge will not give permission unless he or she considers that (a) the appeal would i) have a real prospect of success; and ii) raise an important point of principle or practice; or (b) there is some other compelling reason for the Court of Appeal to hear it.

**ORDER made by the Rt. Hon. Lady Justice Asplin**

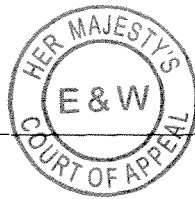
On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

**Decision:** Permission granted on both grounds of appeal.

Application for anonymity granted.

**Reasons**

Both grounds of appeal have a real prospect of success in the light of the recent Court of Appeal decision in Durdano. In the light of that case, there is also a compelling reason why this matter should be heard. Furthermore, the issue in this case in relation to the PSED and the way it was addressed in cross examination, raises a point of principle.



**Information for or directions to the parties**

**Mediation:** Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? No

**Pilot categories:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• All cases involving a litigant in person (other than immigration and family appeals)</li> <li>• Personal injury and clinical negligence cases;</li> <li>• All other professional negligence cases;</li> <li>• Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;</li> </ul> | <ul style="list-style-type: none"> <li>• Boundary disputes;</li> <li>• Inheritance disputes.</li> <li>• EAT Appeals</li> <li>• Residential landlord and tenant appeals</li> </ul> |
|---|---|

If yes, is there any reason not to refer to CAMS mediation under the pilot? N/A

If yes, please give reason:

**Non-pilot cases:** Do you wish to make a recommendation for mediation? No

**Where permission has been granted, or the application adjourned**

- a) time estimate (excluding judgment) ½ to 1 day  
b) any expedition No

Signed:

Date: 9 March 2021

*By the Court*

**Notes**

- (1) Permission to appeal will only be granted in respect of second appeals if the court considers that:
- (a) the proposed appeal would have a real prospect of success and would raise some important point of principle or practice; or  
(b) there is some other compelling reason for the relevant appellate court to hear the appeal.
- In respect of second appeals from the county court or High Court, see CPR 52.7  
In respect of appeals from the Upper Tribunal, see Article 2 of the Appeals from the Upper Tribunal Order 2008 (SI 2008/2834).
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed.  
See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **B5/2020/0358**

DATED 9TH MARCH 2021  
IN THE COURT OF APPEAL

**ORDER**

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Ref: TG/1703

Lower Court Ref: QA2019000278