***Khoo* do you think you are? Licensees vs Tenants in the Property Guardianship Sector**

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**Dr Jed Meers\***

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**Case:** *Camelot Guardian Management Limited v Heiko Khoo* [2018] EWHC 2296 (QB)

‘Property guardianship’ lends itself to clichés. It is tempting to begin any description by referring to the practice as an ‘alternative to renting’, a ‘growth industry’, or ‘millennial phenomenon’ – the reality of the day-to-day experiences of living as a property guardian is more complicated than all three imply.[[1]](#footnote-1) The basic proposition is simple: owners of otherwise empty properties secure them by contracting with a company who subsequently licence with ‘property guardians’ to live in the building. The ‘guardians’ get cheap(er) accommodation than elsewhere in the private rented sector, the property owners avoid security costs, and the company creams money off the top from either/both side/s. Writing about property guardianship in this journal in 2013, Hunter and Peaker argued that ‘it is about time that their operation received some legal scrutiny as providers of accommodation.’[[2]](#footnote-2) As this sector (seemingly) continues to grow, they are increasingly getting their wish: the recent judgment of the High Court in *Camelot Guardian Management Limited v Heiko Khoo* [2018] EWHC 2296 (QB) is a microcosm of the legal issues at play.

After providing an outline of the facts and decision in *Khoo*, this article reflects on two key implications for the property guardianship sector.

**The facts**

This case concerns a building which is typical of the property guardianship sector: a large office block owned by a local authority, here Westminster City Council.[[3]](#footnote-3) This was located in a desirable location on the outskirts of Mayfair. When the building fell empty, Westminster City Council contracted with Camelot Guardian Management Limited (hereafter, Camelot), one of the UK’s largest property guardian companies, to provide a right of possession for Camelot to secure the property through offering licences to guardians.

The agreement specified that Westminster City Council could inspect the property at all ‘reasonable times’[[4]](#footnote-4) and could determine the property at ‘not less than five weeks’ notice’.[[5]](#footnote-5) Importantly, however, the agreement specified that the terms in any accompanying offer letter trump those laid out in this document – in this case, such an offer letter specified a one-week notice period, ‘after which the Property will be delivered clean and empty on the next Monday morning.’[[6]](#footnote-6)

Mr Khoo had been living in another of Camelot’s properties as a ‘property guardian’ for just over a year and – due to having to vacate the premises – was invited to view this office block. Churning between properties with short periods of occupation is a common occurrence in the sector, particularly for those who have lived in it for a considerable period of time.[[7]](#footnote-7) He entered into a self-proclaimed ‘licence agreement’ with Camelot in the new premises following his viewing on 17 December 2015 (though the agreement itself is dated 22 December 2012).[[8]](#footnote-8) Subsequently, on 11 September 2017, Camelot served a notice to determine on Mr Khoo by 11 October 2017.[[9]](#footnote-9) Mr Khoo argued that he occupied the property pursuant to a tenancy, not a licence.

Clearly, Camelot had gone to great length to underscore that the agreement itself (more on the actual occupation below) was not to create a tenancy. Prosaic sections – such as ‘licence agreement’ and ‘permission to share living space’ – sat alongside the more direct heading, perhaps with an eye on any future challenges: ‘This is not a tenancy’.[[10]](#footnote-10) The agreement denies exclusive possession expressly, stating that ‘you will not get a right to exclusive occupation of any part of the living space’, and that ‘the space will be shared with other individuals who Camelot permits to share the space.’ The case of AG Securities v Vaughan [1991] AC 417 is invoked to underscore that ‘the House of Lords has held that this sort of sharing agreement does not create a tenancy’.[[11]](#footnote-11) The agreement, therefore, could not be any clearer – on its own terms – of its intention to create a licence arrangement, as opposed to a tenancy.

Mr Khoo, however, argued that the reality of his occupation was different. In the course of his day-to-day occupation, he had exclusive possession of one room and two storage rooms at the property and – as a result – his occupation of those spaces took effect as an assured shorthold tenancy.[[12]](#footnote-12) When shown around the property prior to signing the agreement, he was taken to specific rooms which it was – he argued – understood that he alone would occupy.

**The legal issues at play**

The root legal issue is a familiar one for all housing lawyers: the lease/licence distinction, stemming from the seminal case of *Street v Mountford.*[[13]](#footnote-13)The basic principle is that where an agreement: (i) confers exclusive possession of a premises, (ii) for a fixed term, and (iii) with a periodic payment, then it is – in almost all cases – a tenancy. Justice Butcher provides an outline of six key features of this decision,[[14]](#footnote-14) but for our purposes we can distil them safely into three key points.

First, there is a process of construction when assessing whether a right to exclusive possession is conferred by an agreement. The court must recognise relevant circumstances which may colour the agreement, such as the basis on which the property was let or other communications from the (in this case) company to the guardian. Second, the court will not be bound by the label chosen in the agreement or denials within it that it takes the form of a tenancy. However, the court will assume normally that the parties intended to give the words they use their natural meaning. Thirdly, the agreement should not be a ‘sham device’; a dishonest agreement ‘whose object is to disguise the grant of a tenancy’.[[15]](#footnote-15) If the conduct of the parties after the agreement has been entered into indicate that the terms were not intended to be honoured (for instance, in the actual day-to-day occupation of the property), then this may infer that the original agreement was merely a pretence.

In applying this distinction, Justice Butcher was – unsurprisingly – quick to dismiss that the agreement itself created a tenancy; it clearly was designed carefully to avoid doing so.[[16]](#footnote-16) In reading its terms in the context in which it was agreed, he considered both communications on Camelot’s website and Mr Khoo’s initial viewing of the property.[[17]](#footnote-17) Although the former used the word ‘let’, the website provided an overview of property guardianship in some detail and underscored itself as an ‘alternative, and a more social one, to private rental.’[[18]](#footnote-18) On the latter, the fact that Mr Khoo had been shown to specific rooms during his initial visit to the property – prior to signing the agreement – was not sufficient to indicate that he was to have exclusive possession of those spaces.[[19]](#footnote-19)

In considering the final issue – whether the agreement was effectively a ‘sham device’ – the Court considered that this accusation was not made out by Mr Khoo. After the agreement was entered into, although Mr Khoo did occupy particular spaces within the office block, there would be nothing to stop other Guardians decided to sleep in a different room to the one originally indicated in discussions on first viewing – the fact that this did not happen is not enough to evidence that terms to this effect in the agreement were not available.[[20]](#footnote-20)

**Property guardianship**

In my view, the most interesting element of this judgment is the court’s willingness to involve the proposition of ‘property guardianship’ as an alternative form of occupation, as part of the key context in which the agreement was made. Put another way, the thrust of the interpretation of the agreement is that the guardian here knew what they were letting themselves in for. This provides a point of contrast with the County Court decision in *Camelot Property Management Limited v. Greg Roynon*,[[21]](#footnote-21) where – in the face of an agreement which clearly conferred a licence but where exclusive possession was in reality attained – the court decided that a tenancy was indeed granted. The court’s consideration of the Camelot website in particular in the present case demonstrates that the way in which the sector presents itself to potential guardians can be important in the later construction of the arrangement.

I would argue this is a particularly acute issue for the widespread practice of property guardians listing properties on websites aimed at the private-rented sector – particularly SpareRoom[[22]](#footnote-22) ­– where adverts have to specify ‘deposits’ and ‘rent’, and sit alongside advertisements by lettings agents and private landlords with little obvious distinction. Visitors to these platforms are less likely to start out as the willing participant for this ‘alternative to renting’ that the court considered Mr Khoo to be.

More broadly, the case highlights the gulf between the written agreements that property guardian companies provide and what some guardians assert is the reality of their occupation of these premises. Although exclusive possession is one such issue, a parallel problem can be seen in the context of de-facto deposits. Although the payment of significant ‘deposits’ is widespread in the property guardianship sector,[[23]](#footnote-23) there is no requirement to protect these under a registered scheme, as per s.212 Housing Act 2004, as in the private rented sector. The guardian experience is that this money is often subject to deductions, but the same rights of redress do not apply. As the sector (seemingly) continues to grow, this gulf in reality between the property guardian companies’ legal position – integral to their business model – and the lived experiences of their guardians, will only continue to generate problems.

1. \*Lecturer in Law, York Law School, University of York, UK

 For a detailed overview of the phenomenon and the views of guardians living in London, see Caroline Hunter and Jed Meers, ‘Property Guardianship in London’ (London Assembly, 2017) Available at: https://bit.ly/2sHvkIy. [↑](#footnote-ref-1)
2. Caroline Hunter and Giles Peaker, ‘Who guards the guardians?’ (2013) 16(1) Journal of Housing Law, 13-17, 17. [↑](#footnote-ref-2)
3. [6]. [↑](#footnote-ref-3)
4. [6]. [↑](#footnote-ref-4)
5. [7]. [↑](#footnote-ref-5)
6. [7]. [↑](#footnote-ref-6)
7. Hunter and Meers (n 1). 20-22. [↑](#footnote-ref-7)
8. [8]. [↑](#footnote-ref-8)
9. [16]. [↑](#footnote-ref-9)
10. [12]. [↑](#footnote-ref-10)
11. [9]. [↑](#footnote-ref-11)
12. [1]. [↑](#footnote-ref-12)
13. [1985] 1 AC 809. [↑](#footnote-ref-13)
14. [19]. [↑](#footnote-ref-14)
15. AG Securities v Vaughan [1990] 1 AC 417 at 462H. [↑](#footnote-ref-15)
16. [20]-[24]. [↑](#footnote-ref-16)
17. [26]-[27]. [↑](#footnote-ref-17)
18. [26]. [↑](#footnote-ref-18)
19. [27]. [↑](#footnote-ref-19)
20. [35]. [↑](#footnote-ref-20)
21. Ref here for this. [↑](#footnote-ref-21)
22. See [www.spareroom.co.uk](http://www.spareroom.co.uk). [↑](#footnote-ref-22)
23. Hunter and Meers (n 1) 39-45. [↑](#footnote-ref-23)