# Recent developments in housing law

**Nic Madge** and **Jan Luba QC** continue their monthly series. They would like to hear of any cases in the higher or lower courts relevant to housing. In addition, comments from readers are warmly welcomed.

## POLITICS AND LEGISLATION

### Homelessness

A new report from the charity Crisis highlights the experiences of single homeless people in seeking assistance from local housing authorities in England: *Turned away: The treatment of single homeless people by local authority homelessness services in England* (Crisis, October 2014).[1] It reveals that large numbers are wrongly turned away without the authorities recording or responding to applications for homelessness assistance.

Homelessness among care-leavers is explored in a new report which indicates that the statutory schemes, and the authorities entrusted to operate them, are failing many vulnerable young people leaving care: *Too much, too young. Helping the most vulnerable young people to build stable homes after leaving care* (Action for Children, October 2014).[2]

The House of Commons Library has published recently updated versions of its two key briefing notes on homelessness: *Homelessness in England* (Standard Note: SN/SP/1164, October 2014), and *Homeless households in temporary accommodation (England)* (Standard Note: SN/SP/2110, October 2014).[3]

The Welsh Government has published *Housing (Wales) Act 2014 Explanatory Notes* (Welsh Government, October 2014).[4] The notes set out how the new homelessness provisions for Wales, contained in Part 2 of the 2014 Act, are intended to work when they are brought into force in 2015.

### Private renting

On 1 December 2014, the provisions of the Immigration Act (IA) 2014 relating to lettings by landlords to certain migrants start coming into force (initially in designated parts of the West Midlands). Two new statutory instruments have been made which also take effect on 1 December 2014. The Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 SI No 2874 sets out the requirements for the prescribed identity checks which must be carried out by landlords before entering into residential tenancy agreements. The Order also brings the statutory Codes of Practice into force. The two Codes are: (1) *Code of Practice on illegal immigrants and private rented accommodation: Civil penalty scheme for landlords and their agents* (Home Office, October 2014) and (2) *Code of Practice for landlords: Avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector* (Home Office, October 2014).[5]

The Immigration (Residential Accommodation) (Prescribed Cases) Order 2014 SI No 2873 sets out circumstances, in addition to those in IA 2014 s20, in which a residential tenancy agreement will and will not be treated as being entered into for the purposes of the civil penalty scheme (see also page 16 of this issue).

The Tenancies (Reform) Bill had its House of Commons second reading on 28 November 2014. Its purpose is to protect tenants against retaliatory eviction and to amend the law on notices requiring possession from assured shorthold tenancies.

The All Party Parliamentary Group for the Private Rented Sector (APPG for the Private Rented Sector) launched a consideration of the bill's proposals and issued a call for the submission of evidence.[6] The group sought to understand the impact that the legislation would have on the sector, the extent of the problem it seeks to address and what, if any, changes could be made to improve it. It intends that a report will be produced, with recommendations, before the committee stage of the bill is reached.

The Scottish Government is consulting on new arrangements for security of tenure and/or rent control in the private rented sector in Scotland: *Consultation on a new tenancy for the private sector* (Scottish Government, October 2014).[7] The closing date for responses is 28 December 2014.

The House of Commons Library has published two new briefing notes on private sector renting: *Can private landlords refuse to let to housing benefit claimants?* (Standard Note: SN07008, October 2014) and *The regulation of private sector letting and managing agents (England)* (Standard Note: SN/SP/6000, October 2014).[8]

Ombudsman Services has published a new free guide for students renting in the private sector: *Know your rights* (October 2014).[9]

The latest official annual statistics on private sector rents show that, in Great Britain, such rents rose by one per cent in the 12 months to September 2014: *Index of private housing rental prices, July to September 2014* (Office for National Statistics, October 2014).[10]

The Welsh Government has also published official annual statistics on private sector rents in Wales: *Private sector rents for Wales, 2013* (Welsh Government, October 2014).[11]

The APPG for the Private Rented Sector has published a new report on access to private renting for young people: *Access to private rented housing for the under 35s: Report and oral evidence* (October 2014).[12]

## HUMAN RIGHTS

### Possession claims

#### ■ Brogan v UK

*App No 74946/10,*
*13 May 2014*

Mr Brogan bought a house with the aid of a mortgage from GMAC-RFC. Later, he entered into a second mortgage with Kensington Mortgage Company Limited (KMCL). In 2008, he fell into mortgage arrears and KMCL began a possession claim against him. Around this time, his solicitor became concerned that he lacked the capacity to manage his own affairs. Medical reports indicated that he had Asperger's Syndrome and a schizophrenic illness. The Court of Protection made an order authorising his solicitor to act as an interim deputy for property and affairs to defend the possession proceedings on his behalf. However, it appears that no one attended the possession hearing. KMCL told the court that no payments had been made and a district judge made a possession order. The following year, Mrs Brogan complained to the Office of the Public Guardian about the conduct of the interim deputy, claiming that she had failed to use funds to discharge the mortgage arrears, had been on sick leave for five weeks, and was not dealing with her deputyship duties. KMCL also complained about the interim deputy's conduct; the company claimed that it had discontinued possession proceedings after she verbally agreed a settlement with KMCL, but that she had subsequently reneged on that agreement by insisting, without foundation,

that KMCL pay her costs. Subsequently, KMCL obtained a warrant for possession, and, after a number of further hearings, Mr and Mrs Brogan were evicted. Mr and Mrs Brogan complained to the European Court of Human Rights (ECtHR) that there had been breaches of the following articles of the European Convention on Human Rights ('the convention'):

- Article 3 (alleging that the eviction and subsequent period of homelessness constituted inhuman and degrading treatment).
- Article 6 (alleging that they did not have the opportunity to have the proportionality of the eviction assessed before an independent and impartial tribunal).
- Article 8 (alleging that their eviction violated their right to respect for their family and private life and home).

The ECtHR noted that Mr Brogan had been represented throughout the possession claim, not only by the interim deputy but also, in many of the court hearings, by counsel. Although Mrs Brogan had not been represented, it had been open to her to apply to be joined as a party under Family Law Act 1996 s5, but she had not done so. Both could have made applications under Administration of Justice Act 1970 s36, which gives the court a broad discretionary power to adjourn possession proceedings, stay or suspend the execution of any order made for repossession, or to postpone eviction from the property for such periods as the court thinks reasonable. The ECtHR stated that such an application would have given Mr and Mrs Brogan the opportunity to pay off the mortgage, and so to avoid the eviction. In view of that, the court found that the complaints were inadmissible for failure to exhaust domestic remedies.

The ECtHR considered that there was 'cause for concern [due to] the facts underlying the applicants' claim that the interim deputy had acted inadequately and negligently in the exercise of her duties and thereby prejudiced [Mr Brogan] in the repossession proceedings' (para 55). Furthermore, there did not appear to have been any attempt by the Office of the Public Guardian to liaise with the courts dealing with the enforcement proceedings to ensure that Mr and Mrs Brogan were not prejudiced by the errors of the interim deputy. This was 'particularly troubling given that, on account of the particular vulnerability of persons lacking legal capacity, states may have a positive obligation under article 8 to provide them with specific protection by the law' (*Zehentner v Austria* [2009] ECHR 1119; App No 20082/02). However, even though Mr and Mrs Brogan might have had an arguable complaint against the Office of the Public Guardian, the ECtHR could only consider it if they had first exhausted domestic remedies.

***Comment***: It is interesting to note that, yet again, the ECtHR appears to have made no distinction between the way in which it considers possession claims brought by private companies or individuals and those brought by public sector landlords (see too *Lemo and others v Croatia* [2014] ECHR 755; App Nos 3925/10, 3955/10, 3974/10, 4009/10, 4054/10, 4128/10, 4132/10 and 4133/10; October 2014 *Legal Action* 46).

### ■ JL v UK

*App No 66387/10,*
*30 September 2014*

JL was married to an army officer. He was violent to her and abused one of their daughters. In July 1989, he resigned from the army. Although the army no longer had any duty to house JL, on compassionate grounds, because of her husband's misconduct towards her and the family, she was granted a licence of accommodation in Leeds where her children attended a boarding school. Even if there had been a tenancy, there could be no assured tenancy as a result of Housing Act (HA) 1988 Sch 1 para 11. In 2005, a notice to quit was served. By this time JL suffered ill health, was registered disabled and had to use a wheelchair. She defended possession proceedings relying on article 8 of the convention. Collins J made a possession order in May 2009 (*Defence Estates v JL* [2009] EWHC 1049 (Admin); August 2009 *Legal Action* 33). In February 2011, the secretary of state decided to enforce the possession order. JL brought a claim for judicial review of that decision. She argued that: there had been a failure to have regard to considerations of mandatory relevance; the decision to enforce the possession order was a disproportionate interference with her article 8 rights; and the decision was unreasonable. She claimed that, as a matter of common humanity, the defendant was required to take into account the absence of suitable alternative accommodation and the consequences of eviction.

Ingrid Simler QC, sitting as a deputy High Court judge, dismissed the claim for judicial review ([2012] EWHC 2216 (Admin), 30 July 2012; September 2012 *Legal Action* 18). The Court of Appeal dismissed JL's appeal. Although her case was a (probably unique) example where it was not an abuse of process to pray in aid article 8 rights at the enforcement stage, the appeal failed on the facts of her case ([2013] EWCA Civ 449, 30 April 2013; June 2013 *Legal Action* 32). JL complained to the ECtHR that there had been a breach of article 8.

The ECtHR repeated that the loss of one's home is the most extreme form of interference with the right to respect for the home and, as such, any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under article 8, notwithstanding that, under domestic law, his/her right to occupation has come to an end. However, it also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, the court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation. It noted that insofar as the ECtHR has found violations of article 8 in housing cases, it has principally done so in cases where there has been a lack of procedural safeguards.

Although the domestic courts in this case could not consider proportionality when deciding whether or not to make a possession order, the proportionality of dispossessing JL of the property she occupied and of evicting her from her home was, exceptionally, subsequently scrutinised by the domestic courts at the enforcement stage of the proceedings taken against her. It could not be said that those proceedings were not properly equipped with the procedural tools and safeguards to conduct the proportionality review at the enforcement stage. The full and careful assessment of proportionality carried out by the British courts at two levels of jurisdiction was adequate for the purposes of ensuring the protection afforded by article 8. JL was no longer a victim of any violation of article 8 and the complaint was found to be inadmissible as manifestly ill-founded.

### ■ Stojanovski and others v Former Yugoslav Republic of Macedonia

*App No 14174/09,*
*23 October 2014*

In 1950, two plots of land were confiscated from the late Mr KS, Mr Stojanovski's predecessor in title. The land was divided into several new plots. Mr Stojanovski sought to recover the land. The Restitution Commission allowed the claim in part, but the government declined to return all of the plots as some were being used for the construction of a petrol station by a third party and, under domestic law, land could only be returned if it was undeveloped when the restitution claim was submitted. Monetary compensation in the form of government bonds was awarded in respect of the unreturned plots.

The ECtHR found as a fact that the restitution claim had been lodged in March 2002, while an inspection, in August 2002, revealed no sign of any development on the land, although it appeared that the construction work started shortly thereafter. As the claim had been made before work had started, the domestic authorities had been wrong to refuse to restore the entire plot to the applicant. It followed that there had been a

violation of article 1 of Protocol No 1 of the convention because the refusal to return the land had not been in accordance with law. The court awarded the applicants €3,000 each in respect of non-pecuniary damage, but found that the question of pecuniary damage under article 41 of the convention was not ready for decision.

### Enforcement of orders

#### ■ Bondarenco v Moldova

*App No 10823/06,*
*14 October 2014*

Mrs Bondarenco was a council tenant who lived in a block of flats which was under threat of collapse. In 2000, the council moved the tenants out and demolished the block. Mrs Bondarenco sought a replacement council flat. In a judgment in 2003, she obtained a court order requiring the council to provide her with a flat; by 2014, it had not been enforced. The government said that there were a number of such unenforced judgments with which local councils did not have the funds to comply.

After referring to *Prodan v Moldova* App No 49806/99 and *Olaru v Moldova* App Nos 476/07, 22539/05, 17911/08 and 13136/07; [2010] ECHR 1498, the ECtHR noted that the government had not put forward any fact or argument capable of persuading the court to reach a different conclusion in this case. It held that the failure of the state to comply with the court's order amounted to breaches of article 6 and article 1 of Protocol No 1. However, as Mrs Bondarenco had not submitted any claims for just satisfaction, the court did not award any damages.

## UNLAWFUL EVICTION AND HARASSMENT

### Damages

#### ■ AA v Southwark LBC

*[2014] EWHC 500 (QB),*
*14 October 2014*

AA was a social housing tenant for 23 years. His rent was paid mainly by housing benefit, except for a small weekly shortfall which, by 2012, had risen to £18.59 per week. He accrued rent arrears since this shortfall was only paid in part and intermittently. By 2013, those arrears had reached £2,353.26. In November 2006, a possession order was made. Later, it was suspended by a succession of four orders, requiring AA to meet his current weekly rent and pay off the arrears in small weekly instalments. Nothing was paid following the last of these orders, and Southwark applied for the execution of a warrant for possession. When the warrant was executed, the entire contents of his flat including his passport, lap tops, papers, personal belongings and furniture were removed and taken to, and destroyed in, a refuse disposal facility. AA made repeated unsuccessful attempts in the High Court and county court to regain possession and his belongings. He also made repeated unsuccessful attempts to discuss his predicament with various representatives of the council. For a period of over a year, he was street homeless and without financial resources except for the use of a sofa or floor space in accommodation of friends for part of this period, and financial assistance from those friends. He claimed reinstatement and damages for his unlawful eviction, unlawful homelessness and for the unlawful destruction of his possessions based on the torts of conspiracy, interference with goods, negligence and misfeasance in public office, breaches of the terms of his contractual tenancy and pursuant to the Human Rights Act 1998 under article 8 of the convention.

HHJ Anthony Thornton QC, sitting as a deputy judge of the High Court, noted that a landlord must apply to a judge for permission to issue a warrant for possession if the original possession order was made more than six years previously, even if the order had been suspended by a judge on terms that had not been complied with in the intervening period (County Court Rules Order 26 r5(1)(a); *Hackney LBC v White* (1996) 28 HLR 219). He found that:

■ The eviction was unlawful and an abuse of process both because the warrant was issued without the prior permission of the court and in the manner in which it was executed.

■ Southwark's officers conspired to evict AA, seize and destroy his possessions and cause him harm and loss by unlawful means. This conspiracy was subsequently covered up by a further conspiracy which gave rise to abuse of process in the subsequent court proceedings and to a continuing deprivation of the claimant's enjoyment of his tenancy and loss of his possessions.

■ Three officers exercised their powers as public officers for an improper motive with the intention of harming AA by having him evicted when there were no reasonable grounds for his eviction and by arranging for his possessions to be seized and destroyed unlawfully.

■ AA had, as a result, also been caused loss by Southwark's negligence, by its breach of his right to the quiet enjoyment of his tenancy and as a result of the lack of respect shown to his private life.

■ AA was entitled to substantial damages, including special or general damages, aggravated and exemplary damages, damages for breach of contract, damages for the various torts he had been subject to and equitable remuneration for the lost work stored on his hard drives, discs and memory sticks and for his lost photographs, as well as a remedy for the loss of his tenancy.

■ The remedies and damages to be awarded were to be dealt with at a second trial. However, the parties reached an out-of-court settlement.

#### ■ Alabbas v Uppelle

*Leicester County Court,*
*8 October 2014*[13]

Mr Alabbas became Ms Uppelle's assured shorthold tenant in April 2008. In April 2009, he complained to Ms Uppelle that water was leaking through to the kitchen from the bathroom. The ceiling partially collapsed as a result; however, no action was taken. Mr Alabbas complained to the local council's environmental health department, which in turn contacted Ms Uppelle. Her response was to serve notice requiring him to leave the property. He sought advice, and was told that the notice was invalid. Ms Uppelle then rang Mr Alabbas several times to urge him to leave, culminating in two calls in which she swore at him and made threats down the phone that his legs would be broken if he did not go. He did not leave but remained in the property. In September 2009, he was evicted by four men, acting at the instigation of Ms Uppelle. They entered the property using a key. One man had a knife. They shouted racist abuse, punched and beat Mr Alabbas and threatened to kill him. They said that the reason he was being evicted was that he owed rent. As a result, Mr Alabbas went to hospital, where he then stayed overnight. He spent the next 16 days street homeless, sleeping in the doorway of a local mosque, before then moving into unsuitable hostel accommodation for a further 160 days. At the hostel he had his own room, but shared facilities with ten to 15 others. During the assault, Mr Alabbas sustained soft tissue injuries to his nose and was left with a small visible scar. He was treated by his GP for symptoms of post-traumatic stress disorder for around two months after the eviction.

At trial, Miss Recorder McNeil QC awarded damages in the total sum of £34,209, comprised of:

■ £1,000 for the pre-eviction harassment;

■ £4,950 for the first 16 days post-eviction, during which time he was street homeless, calculated at £330 per night (being a sum at the top end of the usual scale and with the addition of a further ten per cent to take into account the effect of *Simmons v Castle* [2012] EWCA Civ 1039);

■ £17,600 for the 160 days during which he resided in a hostel, calculated on the basis of £110 per night for the whole of that period (and justified because Mr Alabbas had attempted to mitigate his losses by searching for alternative accommodation). The recorder was also satisfied that it would have taken Ms Uppelle a significant period of time to evict Mr

Alabbas lawfully given that no valid HA 1988 s21 notice had been served as at the date of the unlawful eviction;
- £300 for the disrepair;
- £3,000 for the personal injuries;
- £3,000 aggravated damages;
- £2,500 exemplary damages;
- £230 special damages; and
- £1,629 interest.

**■ Bitan v Holme**

*Stockport County Court, 14 April 2014*[14]

Mr Bitan claimed possession against Ms Holme. The possession claim was struck out. Ms Holme counterclaimed for breach of covenant for quiet enjoyment, harassment, housing disrepair and breach of statutory tenancy deposit provisions. The complaints of disrepair concerned water leaking from the bathroom into the property's dining room, and draughts through a hole in an exterior wall and a defective window. The ceiling in the dining room began to perish, and Ms Holme became anxious about her family's safety. A surveyor's report identified many other items of minor disrepair. Ms Holme's complaints met with no response and she threatened to withhold rent. Mr Bitan became difficult and abusive, regularly telephoning and knocking on the door of the property. On several occasions, two large men attended the property and made it clear that Ms Holme would be evicted and made homeless with her children.

Deputy District Judge Buckley made an award of £2,592.94 for a course of conduct of harassment in breach of Protection from Harassment Act 1997 s1. He updated the figure recorded in *Fakhari v Newman* June 2010 *Legal Action* 35 and made a ten per cent uplift (*Simmons v Castle* [2012] EWCA Civ 1288) plus an award of interest. An award of £1,525.38 exemplary damages, including interest was also made. Damages of £5,783.22 were awarded for the disrepair, comprising a diminution of the monthly rent of £550 by 40 per cent over a period of 23½ months, plus an uplift of ten per cent (*Simmons* above) and an award of interest. An order for specific performance was also made. The judge awarded £1,000 for breach of HA 2004 s213(6) (failure to provide information about the tenancy deposit).

### Prosecutions

**■ R v Tymon**

*Highbury Corner Magistrates' Court, 2 October 2014*[15]

Mr Tymon and several others were protesting against the eviction of Mark X by his private landlord. Mark X was a vulnerable man suffering from mental health problems. He was receiving housing benefit and had not been offered any alternative housing. The bailiff was accompanied by a number of police officers, who used force to remove the protesters before Mark X was evicted. Mr Tymon was the only protester charged with intentionally obstructing an enforcement officer engaged to execute a High Court writ under Criminal Law Act (CLA) 1977 s10(A1) and (4). Mr Tymon put the Crown to proof of the legality of the High Court writ and enforcement. He also intended to raise a number of other defences, including reliance on articles 10 and 11 of the convention.

At trial, the Crown finally served the purported High Court writ. However, it became clear that the eviction was actually under a county court warrant for eviction, not a High Court writ. The alternative criminal charge under CLA s10(1) does not apply to intentionally obstructing an officer of a county court engaged in the eviction of a tenant or tenant holding over after the termination of a tenancy. It was argued, successfully, that there was no appropriate criminal charge given that the protest was peaceful throughout. The Crown was forced to offer no evidence. District Judge Newton dismissed the case against Mr Tymon. A defendant's costs order was granted.

## MOBILE HOMES ACT 1983

**■ Telchadder v Wickland Holdings Limited**

*[2014] UKSC 57, 5 November 2014*

Wickland Holdings Limited ran a mobile home park which accommodated approximately 200 mobile homes. About 30 per cent of the residents were aged 70 years or older. Mr Telchadder, who was in his mid-40s, had a learning disability and suffered from anxiety. In June 2006, he was granted a licence to site his mobile home in the park. That licence had express terms, one of which prohibited anti-social behaviour. It also incorporated Mobile Homes Act 1983 Sch 1 para 4, which entitled Wickland to terminate the licence, after the serving of the appropriate notice, should Mr Telchadder breach its terms and fail to cease doing so.

Between July 2006 and April 2008, four complaints were received about Mr Telchadder's conduct. These included the playing of loud music, bothering other residents by approaching them while wearing military combat clothing, camouflage and a mask, and making remarks. He received letters of warning and, in August 2006, a notice to remedy his behaviour. Wickland issued termination proceedings in September 2009 following an incident in July 2009 involving threats by Mr Telchadder to kill three other residents. There were further incidents of anti-social behaviour between October 2009 and April 2011, one of which resulted in a criminal conviction. The county court held that:
- Mr Telchadder had breached the licence by his anti-social behaviour before 15 August 2006;
- the letter he received on that date constituted a valid notice requiring him to remedy such breaches; and
- he failed to remedy them by continuing to behave in an anti-social fashion in 2009 and thereafter.

The Court of Appeal upheld the judge's findings ([2012] EWCA Civ 635).

The Supreme Court unanimously allowed Mr Telchadder's second appeal. Lord Wilson, Lady Hale and Lord Toulson concluded that, in the case of an irremediable breach, the paragraph 4 term does not require service of a notice to remedy it. They held that a breach of a covenant against anti-social behaviour is remediable if the mischief resulting from it can be redressed. In this case, Mr Telchadder redressed the mischief resulting from the breach in July 2006, and thereby complied with the notice to remedy, by not committing a further breach before 15 July 2009. However, a minority of justices (Lord Carnwath and Lord Reed) held that, in the case of a remediable breach of a covenant against anti-social behaviour, compliance with the notice to remedy must continue indefinitely, but that there needs to be a causal or temporal link between the notice to remedy and the subsequent breach, which was absent in the present case.

## LONG LEASES

### Service charges

**■ Francis v Phillips**

*[2014] EWCA Civ 1395, 31 October 2014*

The claimants were all lessees of chalets on a holiday site, let on 999-year leases. They sought declarations concerning their liability for service charges and, in particular, whether works carried out were 'qualifying works', within the meaning of Landlord and Tenant Act 1985 ss20 and 20ZA(2), requiring the landlords either to comply with the prescribed consultation process or obtain a dispensation from so doing. On appeal from HHJ Cotter QC, Sir Andrew Morritt C held that once the limit for contributions had been reached (£250 per tenant), the landlords were obliged to consult the tenants on any service charge items, however small (an 'aggregating approach') ([2012] EWHC 3650 (Ch)). The landlords appealed.

The Court of Appeal allowed the appeal. There were compelling reasons for concluding that the aggregating approach was wrong. It was not sensible and gave rise to serious practical problems. Furthermore, in this case,

HHJ Cotter was entitled to find that the work planned and carried out until 2009 was not all part of a single set of works. It was a question of fact and degree whether the work carried out during that period was all part of one planned single set of works or a series of disparate pieces of work. It was a multi-factorial question, the answer to which should be determined in a common-sense way taking into account all relevant circumstances. Relevant factors in determining what a single set of qualifying works comprises are likely to include the following:

- where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other);
- whether they are the subject of the same contract;
- whether they are to be done at more or less the same time or at different times; and
- whether the items of work are different in character from, or have no connection with, each other.

This was not intended to be an exhaustive list of factors which are likely to be relevant. In this case, HHJ Cotter had reached a conclusion on the facts with which it was impossible for the Court of Appeal to interfere.

**■ Morris v Blackpool BC**

*[2014] EWCA Civ 1384,*
*24 October 2014*

Blackpool owned almost 6,000 residential properties, approximately 5,500 let on secure tenancies and approximately 401 held on long leases at low rent by lessees, which had been enfranchised under the right-to-buy legislation. All were managed by an arms-length management organisation. Service charges demanded of the long lessees included a management charge.

A number of lessees disputed that management charge. The Leasehold Valuation Tribunal found that the terms of the leases did not entitle the council to charge for any discretionary services (ie, services which the council was not obliged to provide, but nonetheless did provide for lessees). The council was only entitled to charge for the execution of its contractual obligations under the lease. The council appealed successfully to the Upper Tribunal (Lands Chamber). Mr Morris appealed.

The Court of Appeal dismissed his appeal. The management costs of the 'discretionary services' did come within the terms provided for in the leases (para 50).

## SALE AND LEASE BACK

**■ Scott v Southern Pacific Mortgages**

*[2014] UKSC 52,*
*22 October 2014*

Homeowners each agreed to sell their homes for less than the market price, on terms that they would be granted long-term tenancies by the purchasers. The purchases were funded with buy-to-let mortgages. The new owners granted the promised tenancies, but some then defaulted on their mortgage repayments. The lenders sought possession.

The Supreme Court held the effect of *Abbey National Building Society v Cann* [1991] AC 56, HL, was that the contract of sale, conveyances and mortgages were to be treated as one indivisible transaction and the nominee purchaser was never in a position to confer any proprietary rights on the homeowners. They acquired no more than personal rights against the purchasers when they agreed to sell their houses on the basis of the promises made that they could remain in occupation, but even if the former homeowners had had equitable rights of a proprietary nature against the purchasers on exchange of contracts, the mortgages took priority over the tenancies. The tenancies had only been granted after the loans and purchases had taken place.

## HOMELESSNESS

### Applications and interim accommodation

***Local Government Ombudsman* Complaints**

**■ Hounslow LBC**

*13 008 825,*
*15 July 2014*

The complainant applied to the council for accommodation in September 2012 when she, her 21-year-old daughter and her 75-year-old mother were threatened with eviction from their home. The council did not reach a decision about the duty that she was owed until 12 months later. The council's senior housing managers explained that the homelessness service was undergoing restructuring and improvement during 2012/13, but accepted that, regardless of that matter and the complexity of the case, the enquiries had taken too long and its decision was avoidably delayed.

Initially, the council decided that the family was not homeless because another property was available to them. Following a review request, the council changed its decision and accepted, in December 2013, that it had a duty to secure accommodation for the family. The Ombudsman found that this delay had caused the family 'a prolonged period of avoidable uncertainty, frustration and anxiety' (para 32).

During this period of delay, the family was left in unsuitable temporary accommodation for 18 months. This caused them 'a prolonged period of avoidable discomfort, inconvenience, loss of privacy and placed considerable stress on their relationships' (para 37).

The council agreed to apologise, to pay compensation of £5,000 and to review its procedures for moving homelessness applicants placed in bed and breakfast (B&B) into more suitable temporary accommodation.

**■ Cambridge City Council**

*13 020 534,*
*24 July 2014*

The complainant applied to the council for homelessness assistance for her family. They were placed in a B&B hotel while enquiries were made: HA 1996 s188. The council stopped providing interim accommodation following an incident between the hotel owner and the complainant's husband, which caused the hotel owner to ask the family to leave. The council provided no alternative accommodation. The Ombudsman said:

*There is case-law which implies that if an applicant loses their interim accommodation because of their own actions the council need not provide alternative interim accommodation. However, this case-law indicates the council can discharge its interim duty when the applicant's behaviour is persistent and there is an unequivocal refusal to observe reasonable requirements in respect of the occupation of the accommodation.*

*[However] the information provided shows the council did not investigate the incident between the hotel owner and [the husband] but simply took the word of the hotel owner. I consider the council was at fault for not properly investigating the incident. While I cannot say what the outcome of any investigation would have been, the hotel owner's own account of the incident indicates it was minor in nature* (paras 14 and 15).

In respect of the council's fault in ending its interim duty to accommodate without carrying out a proper investigation into the incident and without issuing a decision, the Ombudsman:

- recommended that the council provide a written apology to the complainant and payment of £350; and
- asked the council to review its procedures to ensure it is properly meeting its duty to provide interim accommodation.

### Accommodation duties

**■ Nzolameso v City of Westminster**

*[2014] EWCA Civ 1383,*
*22 October 2014*

The appellant applied to the council for homelessness assistance when she became homeless from her private rented home in Westminster. She had lived in the area for some years. Her five children attended schools

and colleges in Westminster. She had a local support group of friends in the council's area able to assist her when her disabilities prevented her from caring for the youngest children. The council accepted that it owed her the main housing duty (HA 1996 s193) and offered her accommodation near Milton Keynes in performance of that duty: HA 1996 s193(5). When it was refused, the council treated its duty as discharged and withdrew the interim accommodation it had been providing in London. On a review, the council decided that the accommodation offered had been suitable and that the refusal of it had brought the duty to an end. HHJ Hornby dismissed an appeal from that decision.

The appellant claimed that the council had been required by HA 1996 s208(1) to accommodate her within its own area, unless it was not reasonably practicable to do so. Furthermore, that paragraph 48 of the Supplementary Code of Guidance, which was issued in 2012, required a placement in the next available district if nothing was available in the council's own area. She contended that there had been no evidence that the reviewing officer had looked at the availability of accommodation in or near Westminster on the date the offer was made.

The Court of Appeal dismissed her appeal. In relation to section 208(1), Moore-Bick LJ said that: 'although the section reflects a desire to ensure that the homeless are accommodated within the local authority area in which they have been living, it recognises by its very terms that authorities cannot always achieve that objective' (para 10). What is reasonably practicable in any given case:

*… is a matter for the housing authority itself to decide, provided its decision is not* Wednesbury *unreasonable. In my view, when considering whether it is reasonably practicable to provide an applicant with suitable accommodation in its own district, a housing authority is entitled to have regard to all the factors that have a bearing on its ability to provide accommodation to that person, including the demands made upon it and the pressures on its resources, whether of a financial or administrative nature* (para 18).

As to the absence of evidence of any enquiries made, the reviewing officer must:

*be taken to have been aware of the resources available to the council and the pressures on them. It is not necessary in a decision letter of this kind for the reviewing officer to describe in detail what those resources and pressures are* (para 21).

In relation to the Supplementary Guidance:

*The guidance produced by the secretary of state is lengthy and detailed. Paragraph 48 of the Supplementary Guidance relates to one aspect of the housing authority's duty under section 208(1) and the reviewing officer cannot be criticised for having failed to make express reference to it. In my view there is no basis for inferring that she did not have it in mind or that she was unaware of the desirability of accommodating Ms Nzolameso as close to Westminster as was reasonably practicable* (para 25).

Ms Nzolameso has applied for legal aid to pursue an appeal to the Supreme Court.

### *Local Government Ombudsman*

**Complaint**

**■ Forest Heath DC**

*13 019 785,*
*17 July 2014*

The council accepted that it owed the complainant the main housing duty: HA 1996 s193. On 3 July 2013, it orally offered a flat as permanent accommodation in discharge of the duty. On 15 July 2013, the complainant viewed the flat, but turned it down as unsuitable for her family and because she could not take her dog. The next day, she submitted a review request challenging the suitability of the offer. On 18 July 2013, she received a letter, dated 15 July 2013, advising her that she would be made an offer of the tenancy of the flat, that it was the final and only offer, and that if she refused it the council would no longer have a duty to provide her with accommodation. Having received the letter, she called the same day to explain that she wanted to withdraw her refusal of the offer but the council told her it was too late to do so; it treated its duty to her as discharged.

The Ombudsman found that, given its delay in sending out the offer letter, the council should have considered reoffering the flat. Compensation of £1,000 was treated as an acceptable settlement of the complaint.

## HOUSING AND CHILDREN

**■ R (Mensah and Bello) v Salford City Council**

*[2014] EWHC 3537 (Admin),*
*28 October 2014*

The claimants were single parents living with their dependent children. On account of their immigration status, they were not eligible for homelessness assistance, social housing or welfare benefits. The council agreed to fund accommodation for them with their children under Children Act (CA) 1989 s17. It also covered utility bills and council tax; in addition, it provided the cash equivalent of what the Home Office paid to destitute asylum-seekers. The claimants sought a judicial review contending that it was unlawful for the council to set the payment level that low.

Lewis J held that the council's policy of providing destitute children and their parents (who cannot, by reason of their immigration status, have recourse to public funds) with accommodation and a basic amount of financial assistance determined by reference to the provision made by the Secretary of State for the Home Department to failed asylum-seekers, with additional support if assessed as necessary, was lawful.

***Comment***: For a successful challenge to the level of CA 1989 s17 payments, see: *R (PO) v Newham LBC* [2014] EWHC 2561 (Admin).

1 Available at: http://community.crisis.org.uk/file/policy---document-upload-or-download/MysteryShopping_Report_FINAL_web.pdf.
2 Available at: www.actionforchildren.org.uk/media/9663599/too-much-too-young-web2.pdf.
3 Available at: www.parliament.uk/briefing-papers/SN01164.pdf and at: www.parliament.uk/briefing-papers/SN02110.pdf respectively.
4 Available at: www.legislation.gov.uk/anaw/2014/7/pdfs/anawen_20140007_en.pdf.
5 Available at: www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice.
6 See: http://news.rla.org.uk/mps-and-peers-to-consider-evictions-legislation/.
7 Available at: www.scotland.gov.uk/Resource/0046/00460022.pdf.
8 Available at: www.parliament.uk/briefing-papers/SN07008.pdf and at: www.parliament.uk/Templates/BriefingPapers/Pages/BPPdfDownload.aspx?bp-id=SN06000 respectively.
9 Available at: www.ombudsman-services.org/downloads/Knowyourrights_FINAL.pdf.
10 Available at: www.ons.gov.uk/ons/dcp171778_381212.pdf.
11 Available at: http://wales.gov.uk/docs/statistics/2014/ 141021-private-sector-rents-2013-en.pdf.
12 Available at: http://rla.org.uk/policyhub/wp-content/uploads/2014/10/Under-35s-Inquiry-Report_Oct14.pdf.
13 Martin Seaman, solicitor, Howells LLP, Hull and Ben McCormack, barrister, Manchester.
14 Mohammed Yasser, solicitor, Keoghs, Altrincham and John Hobson, barrister, Manchester.
15 Thomas Copeland, barrister, London.

**Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. The authors would like to thank the colleagues at notes 13 to 15.**