Recent developments in housing law

Plummeting take-up of housing legal aid, new guidance for local authorities in relation to homeless domestic violence victims, and important decisions over human rights and possession claims. Jan Luba QC and Nic Madge give their regular round up

POLITICS AND LEGISLATION

Housing cases and legal aid

Take-up of legal aid for housing cases is running seriously below projections in the current financial year, despite the best efforts of this journal ('Sorting myths from facts over housing cases', November 2014 *Legal Action* 7) and the wider profession to publicise what remains available. Figures obtained for each of the 134 Legal Aid Agency (LAA) procurement areas reveal significant numbers of unused matter starts in housing cases and lower than expected take-up of representation certificates for housing litigation (*Get the data: Legal aid housing,* Bureau of Investigative Journalism, November 2014). Part of the shortfall may be accounted for by legal aid providers withdrawing from housing work or finding it non-viable financially (*Legal aid housing deserts appearing as providers pull out*, Bureau of Investigative Journalism, November 2014).

Homelessness

The Secretary of State for Communities and Local Government has used his powers under Housing Act (HA) 1996 s182 to issue a supplementary code of guidance on homelessness for local housing authorities in England (*Supplementary guidance on domestic abuse and homelessness*, DCLG, November 2014). The guidance supplements the main Homelessness Code of Guidance (issued in July 2006) and is specifically concerned with applications relating to domestic violence and other domestic abuse.

The latest official statistics on homelessness in England show that of the 27,970 applications for assistance made to local councils under HA 1996 Part 7, between 1 July and 30 September 2014, 50 per cent of applicants were found to be owed the main housing duty under s193 (*Statutory Homelessness: July to September Quarter 2014 England*, DCLG, December 2014). These successful applications brought the number of households in temporary accommodation, as at 30 September 2014, to 60,940, 6 per cent higher than at the same date in 2013.

The statistics for Wales for the same period show that applications from those owed the main housing duty rose by 9 per cent to 1,365, compared with the same quarter of the previous year, and that at the end of September 2014 there were 2,300 households in temporary accommodation (*Homelessness, July to September 2014*, Welsh Government, December 2014).

Later this year, a new statutory homelessness regime for Wales will be brought into effect by commencement of the relevant provisions of the Housing (Wales) Act 2014. The emphasis of the new act is on homelessness prevention. Based on work with all 22 councils in Wales, the Welsh Local Government Association (WLGA) has produced a new report, *Preparing to Prevent – How prepared are local authorities for the homelessness changes?* (WLGA, November 2014).

Another new report suggests that failure by councils in England to comply with their legal duties to protect homeless teenagers is leaving them at risk from abuse (*The Door is Closed: A report on children who are homeless because they are failed by the system which is supposed to protect them*, Coram Voice, December 2014).

The latest report on youth homelessness from the organisation Homeless Link calls for more action to address the high number of under-25s becoming homeless (*Young and homeless 2014*, November 2014).

Retaliatory eviction

Between July to September 2014, Citizens Advice experienced a 15 per cent increase (over the same quarter last year) in the number of instances where people were harassed or illegally evicted by private landlords (*Advice trends: Quarterly client statistics of the Citizens Advice service in England and Wales*, 2014/2015 Quarter 2, 2014).

On 28 November 2014, a private members bill designed to address retaliatory evictions of tenants by private landlords, the Tenancies (Reform) Bill, was talked-out in the House of Commons, despite having government support. The background to the legislative changes it sought to make is given in *Retaliatory Eviction in England* (House of Commons Library Briefing Note, SN07015 November 2014).

The core terms of the Bill have been replicated in a proposed amendment to the Deregulation Bill, which will complete its parliamentary process early this year.

The All Party Parliamentary Group for the Private Rented Sector recommended that, if the amendment is passed, its effects are kept under continued review to ensure that landlords are not put off from investing in new homes to rent (*Tackling retaliatory evictions: report and oral evidence*, December 2014).

Evictions following landlord possession claims

The latest official statistics for possession claims brought by landlords show that the number of such claims has been increasing since 2010 (*Mortgage and Landlord Possession Statistics Quarterly, England and Wales, July to September 2014*, MoJ, November 2014). In the three months examined, 11,100 bailiff evictions were carried out for landlords who had obtained possession orders.

Local authorities report that, in 2013–14, court bailiffs carried out 6,870 evictions from their properties, an increase of 12 per cent compared with 2012–13 (*Local authority housing statistics: year ending March 2014*, DCLG, 11 December 2014). The increase was driven by a 19 per cent rise in evictions for rent arrears over the same period.

Social housing allocation

The latest official statistics on social housing allocation in England show that, while the 270,659 lettings by housing associations in 2013/14 were more than double those made by councils (126,238), there was a small increase in the number of local authority lettings, representing a reversal of the long-term trend (*Social Housing Lettings: April 2013 to March 2014, England*, DCLG, December 2014). The proportion of social lettings to UK nationals remained unchanged from 2012/13: 91 per cent for general needs and 94 per cent for supported housing.

It seems clear that UK-born and foreign-born individuals have similar levels of participation in social housing and that allocation of social housing is driven by characteristics other than migration and nationality (*Migrants and Housing in the UK: Experiences and Impacts*, Migration Observatory, University of Oxford, October 2014).

Very little data or research has thus far been published on the use being made by local

housing authorities of the powers under HA 1996 s160ZA(7) to set 'qualifying classes' of applicants for social housing allocation schemes. A new report considers the position in detail in seven local authority areas in East Anglia (*Changes to allocations policies: The future for housing associations in the East*, East 7, September 2014).

Another new report, concerned with social housing lettings to the disabled, found that 84 per cent of councils have no information about wheelchair accessible housing in their areas (*No place like home: 5 million reasons to make housing disabled-friendly*, Leonard Cheshire Disability, December 2014), The study suggests as many as 300,000 disabled people are on housing waiting lists and living in severe discomfort for want of suitable alternative accommodation.

Long leaseholds and service charges

The Competition and Markets Authority (CMA) has published the findings and recommendations from its study into the residential property management services sector in England and Wales (*Residential property management services – A market study*, CMA, December 2014). It recommends: (1) changes to legislation on rights of consultation relating to major works; and (2) supplementing the existing right to manage legislation to enable leaseholders, where there is a majority in favour, to require the landlord to re-tender the property management of their block.

An explanation of the assistance available to long leaseholders of social landlords in paying for major works is given in *Leaseholders in social housing: paying for major works (England)* (Standard Note: SN/SP/4553, November 2014).

HUMAN RIGHTS

Possession claims

■ Sims v Dacorum BC

[2014] UKSC 63,
12 November 2014

Dacorum let a house to Sims and his wife as joint tenants. Initially, the tenancy was an introductory tenancy, but it became a secure tenancy. It was a term of the tenancy that either party could terminate it by giving one month's notice to quit (clause 100) and that, in such circumstances, Dacorum would decide whether the remaining tenant would be allowed to remain in the property, or be provided with alternative accommodation (clause 101). On the breakup of their marriage, Sims' wife left the property with their two youngest children and moved into a women's refuge as she had been the victim of domestic violence from Sims. She then validly terminated the joint tenancy by notice to quit served on the council. There was, accordingly, no longer any tenancy in legal existence under which Sims could claim the right to occupy the property as a secure tenant, jointly, solely, or in any other recognised legal capacity (*Hammersmith and Fulham LBC v Monk* [1991] UKHL 6; [1992] 1 AC 478). Dacorum sought possession. Deputy District Judge Wood made a possession order. Sims' appeal to the Court of Appeal was refused and he appealed to the Supreme Court.

The Supreme Court dismissed the appeal. Sims had been deprived of his tenancy in accordance with its terms. In such circumstances, any argument that the deprivation of his tenancy amounted to a breach of article 1 of Protocol No 1 was difficult to sustain unless he could show that Dacorum had operated clause 101 unfairly or irrationally, which was also unsustainable: the tenancy had ended because of Sims' perpetrating domestic violence. Sims' wife had not been pressurised into serving the notice to quit. The property was larger than Sims reasonably required and the district judge had considered the proportionality of Sims' eviction. Nor, for the same reasons, had there been a breach of article 8. The only decision available to the judge was that his eviction was proportionate.

■ Lawal v Circle 33 Housing Trust

[2014] EWCA Civ 1514,
24 November 2014

In 1974, Lawal and his wife were granted a joint tenancy of a four-bedroom property by the Holloway Tenant Co-operative. The tenancy became a secure tenancy under Housing Act (HA) 1985. In 2005, the freehold was sold to Circle 33. Lawal's six children were raised in the property. From 1981, Lawal spent most of his time in Nigeria, finding and exploiting business opportunities there. Whenever he returned to the UK, Lawal lived at the property. Lawal's wife died in 2002. In the years following her death, Lawal spent even less time in the UK. One daughter spent significant amounts of time at the property, while living elsewhere, and then returned to live at the property in 2010. Lawal and his daughter were the only persons living there. After serving a notice to quit, Circle 33 began a possession claim, arguing, inter alia, that Lawal was not occupying the property as his 'only or principal home' for the purposes of HA 1985 ss 79(1) and 81 and so had lost his status as a secure tenant. HHJ May concluded that the property was not Lawal's only or principal home and had not been for some considerable time. He had, therefore, ceased to satisfy the tenant condition in ss79 and 81. She made a possession order. In closing submissions, Lawal and his daughter, for the first time, advanced a defence under article 8, but HHJ May did not make any reference to that defence in her judgment. Lawal and his daughter sought permission to appeal. That was refused, but they then applied to set aside the possession order under CPR 3.1(7). HHJ John Mitchell dismissed that application because there had been no change in circumstance. He also refused to stay or suspend the warrant on article 8 grounds. Lawal and his daughter appealed against HHJ Mitchell's order and applied to re-open the appeal from HHJ May's order pursuant to CPR 52.17.

The Court of Appeal dismissed their appeal and application. In relation to CPR 52.17, the Chancellor stated;

(i) the same approach applies whether the application is to re-open a refusal of permission to appeal or to re-open a final judgment reached after full argument;

(ii) CPR 52.17(1) sets out the essential pre-requisites for invoking the jurisdiction to re-open an appeal or a refusal of permission to appeal;

(iii) the jurisdiction under CPR 52.17 can only be invoked where it is demonstrated that the integrity of the earlier litigation process has been critically undermined. The broad principle is that, for an appeal to be re-opened, the injustice that would be perpetrated if the appeal is not reopened must be so grave as to overbear the pressing claim of finality in litigation; and

(iv) the fact that a wrong result was reached earlier, or that there is fresh evidence, or that the amounts in issue are very large, or that the point in issue is very important to one or more of the parties or is of general importance, is not of itself sufficient to displace the fundamental public importance of the need for finality.

In this case, the pre-conditions specified in CPR 52.17(1) were not satisfied. Lawal's article 8 argument had been considered on its merits by HHJ Mitchell and dismissed. The Chancellor continued:

Circle 33 is a social landlord. It is a non-profit organisation whose object is to provide low cost housing for people of modest means who might not be able to afford to rent in the private sector. It is a public authority for the purposes of the Human Rights Act 1998. The claimant in [Manchester City Council v Pinnock *[2010] UKSC 45, [2011] 2 AC 104] was a local housing authority but the Supreme Court stated expressly in* Pinnock *(at para [3]) that its judgment applied equally to other social landlords to the extent that they are public authorities under the HRA 1998* (para 73).

After referring to *R (Weaver) v London &*

Quadrant Housing Trust [2009] EWCA Civ 587, [2010] 1 WLR 363, he stated:

I do not accept that Judge Mitchell was wrong … to follow the statements in Pinnock *and [*Hounslow LBC v Powell *[2011] UKSC 8; [2011] 2 AC 186] that the same principles as to article 8 proportionality apply to both local authorities and other social landlords.*

… [E]ven in the absence of direct evidence, Judge Mitchell was entitled to take judicial notice that there is a great need for social housing in inner London and that Circle 33 is likely to make its properties available to those for whom the local housing authorities owe a duty under the Housing Act 1996. Judge Mitchell was, therefore, correct to start with the strong presumption that granting possession of the Property to Circle 33 would not be pursuant to an illegitimate aim or disproportionate for the purposes of article 8. … Judge Mitchell was entitled to find, having regard to those matters and all the evidence, that an order for possession of the Property and the eviction of the appellants were for a legitimate aim and a proportionate means of achieving it. The evidential burden was, therefore, on the appellants to show that their eviction would be disproportionate. Judge Mitchell was plainly right to conclude that they did not discharge that evidential burden (paras 76 to 81).

Deprivation of property

■ Klibavičienė v Lithuania

App No 34911/06,
21 October 2014

In 2000, Klibavičienė bought a plot of land from the state. She had previously acquired from a private owner the remains of a burned-down house which stood on that land. She intended to renovate the house. In 2002, the public prosecutor applied to court to annul the sale of the land. In 2005, the Vilnius Regional Court allowed the prosecutor's claim because the sale had breached a government resolution and the law on territorial planning. The land was returned to the state and Klibavičienė received back the money she had paid for it. She was still the owner of the remains of the house, but its use or renovation was uncertain, since she had no right to use the land on which it stood. She complained to the ECtHR that the annulment was a violation of her rights under article 1 of Protocol No 1 and that repayment of the purchase price was inadequate compensation.

The ECtHR noted that it was not disputed that there has been a 'deprivation of possessions'. The decision of the court to annul the purchase contract was prescribed by law and so was in accordance with the law, as required by article 1 of Protocol No 1. The measures complained of were designed to correct the authorities' mistakes and to defend the interests of former owners by restoring their ownership rights to plots of land. The deprivation, therefore, pursued a legitimate aim. However, any interference with property must, in addition to being lawful and pursuing a legitimate aim, also satisfy the requirement of proportionality. A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The risk of any mistake made by a state authority must be borne by the state itself and errors must not be remedied at the expense of the individuals concerned. Klibavičienė had acquired the property in good faith. She had a legitimate expectation that she would be able to use it for residential purposes. In total, it took almost six years for the domestic authorities to correct their own mistake and return the situation to the status quo. That inevitably caused inconvenience to her. In those circumstances, the court found that the reimbursement of the price of the property only partially redressed the violation of her rights. The conditions under which Klibavičienė had her title removed imposed an individual and excessive burden on her. The authorities had failed to strike a fair balance between the demands of the public interest on the one hand and her right to the peaceful enjoyment of her possessions on the other. There was accordingly a violation of article 1 of Protocol No 1. It awarded 3,000 euros in respect of non-pecuniary damage.

Comment See also *Paplauskienė v Lithuania* App No 31102/06, 14 October 2014, a similar case in which 4,500 euros were awarded in respect of non-pecuniary damage.

POSSESSION CLAIMS

Secure tenancies – reasonableness

■ Greenwich LBC v Tuitt

[2014] EWCA Civ 1669,
25 November 2014

Tuitt was a secure tenant of a flat. She lived there with her partner and her son. Her son was alleged to be part of a group of youths who acted in an anti-social manner on the estate. He signed an acceptable behaviour agreement with Greenwich. He broke that agreement on various occasions in 2012, including an occasion when he was part of a group who dropped planks of wood from a tower block. As a result, a caretaker was seriously injured. Her son was convicted of assault occasioning actual bodily harm. Greenwich issued possession proceedings, relying on HA 1985 Sch 2, ground 2. Before trial, the son was convicted of a further offence of criminal damage. The trial judge found that ground 2 was made out and made a possession order. Although he recognised that Tuitt was not herself responsible for the behaviour, he concluded that the seriousness of the behaviour and the risk of further harm justified an outright order. Tuitt appealed.

The Court of Appeal dismissed the appeal. The judge had taken a fair and complete view of the facts and had properly considered the lack of personal fault on the part of the tenant. His refusal to suspend the order was open to him on the facts.

Procedure

■ Cutler v Barnet LBC

[2014] EWHC 4445 (QB),
31 October 2014

Cutler was a secure tenant. Barnet claimed possession, alleging that Cutler had ceased to occupy the property as her only or principal home. She did not comply with a disclosure order. Barnet applied for summary judgment and an order to strike out her defence. A judge made an order that unless she provided the required disclosure within 14 days she would be debarred from defending the claim. Subsequently, the judge found that her disclosure had been incomplete. Cutler made an oral application for relief from sanctions, but the judge found that any such application had to be filed formally under CPR Pt 23, which had not been done, and so he had no power to consider it and no discretion to grant relief. Cutler was debarred from defending the claim. Cutler appealed.

Supperstone J allowed the appeal. Neither CPR 3.8 nor CPR 3.9 required an application to be made in writing. The judge had the power to determine such an application and he could have granted it if he considered that it was appropriate to do so. Further, the judge should have balanced CPR 3.9 factors with proportionality and the CPR's overriding objective. In failing to do that, debarring Cutler from defending the possession claim had breached article 6.

RIGHT TO BUY

■ Kirby v Davis Wood Solicitors

[2014] EWHC 4051 (Ch),
7 October 2014

A number of tenants purchased the freehold of their homes in February 2006. In February 2012, they issued claims against their solicitors alleging professional negligence. They did not, however, serve the claims. Instead, the parties agreed various extensions of time for service, the final deadline being in July 2013. In May 2013, a draft practice direction was

published. It made proposals for the management of all right-to-buy claims. It suggested that any right-to-buy claim commenced before the issue of the practice direction should be transferred to the High Court, and then automatically stayed pending the outcome of test cases. The claimants wrote to the county court enclosing the draft practice direction and indicating erroneously that it had been approved by the Master of the Rolls. As a result, the claims were transferred to the High Court. The practice direction in fact came into force in November 2013 in substantially the same terms as those proposed in draft. The defendants argued that the claims should be struck out because they had not been served by the agreed deadlines for service. The claimants argued that they had been validly stayed before the expiry of those deadlines upon the transfer of their claims from the county court to the High Court.

Morgan J struck out the claims. The letter sent to the county court did not amount to an application for a stay and for an extension of time. Whether or not an application for a stay could ever be considered to be an implied application for an extension of time, it could not realistically be said from looking at the claimants' letters.

RENT ACT 1977

Fair rents

■ Re Fisher

[2014] UKUT 402 (LC), 10 September 2014

From about 1982, Fisher was a Rent Act (RA) tenant of a flat. In May 2011, the rent officer determined a fair rent under RA 1977 s70 of £5,212.50 per annum. The Rent Register also recorded fuel charges of £852.50 as sums which were attributable to services, and the uncapped rent was assessed at £10,670. In February 2013, the landlord applied to the rent officer for registration of a new fair rent of £19,500 a year. One of the reasons was that major improvements had been carried out since the previous registration. In April 2013, the rent officer registered a fair rent of £5,748 a year. No sum was recorded for services, because, by that date, there were none. Instead of hot water and heating being provided by the landlord from adjoining premises and paid for by the landlord, Fisher now had a self-contained central heating and hot water system in his flat for which he had to pay the costs. It was noted on the register that the uncapped rent would have been £12,922 a year. Fisher objected to the new fair rent and referred the matter to the First-tier Tribunal Property Chamber (Residential Property). It upheld the decision of the rent officer but, applying a retail price index uplift, registered a new fair rent of £5,801.50 from July 2013. Fisher appealed to the Upper Tribunal (Lands Chamber). Fisher argued that the fuel costs should have been deducted from the 'existing registered rent' of £5,212.50 a year, producing a figure of £4,350 a year, and that was the figure to which the retail price index uplift should have been applied. That would have resulted in a new fair rent of £4,841.50 rather than the £5,801.50 a yeare.

HHJ Gerald dismissed the appeal. He referred to the capping provisions of the Rent Act (Maximum Fair Rent) Order 1999 SI No 6 and, in particular, art 2(5) which provides that: 'In applying this article no account shall be taken of any variable sum to be included in the registered rent in accordance with section 71(4) of the 1977 Act.' The fuel charges were not a variable sum. The rental charge merely included the provision of hot water and heating without those costs being separately identified and recoverable and variable within any service charge provision or the terms of the lease or tenancy. Fisher's arguments were based on a misunderstanding of s71(4). In order for that section to apply and for the 'variable' costs of 'services' provided by the landlord to be excluded from the maximum fair rent calculation pursuant to art 2(5), it was the 'sums payable by the tenant to the landlord' which must vary according to 'the cost from time to time of … any services provided by the landlord,' rather than the actual provision of services themselves. The fact that the services were discontinued was not, for these purposes, material (para 14).

UNLAWFUL EVICTION AND HARASSMENT

Damages

■ Loveridge v Lambeth LBC

[2014] UKSC 65, 3 December 2014

Loveridge was a secure tenant of a one-bedroom flat. The tenancy agreement included a term that he would notify Lambeth if he was absent from the property for more than eight weeks. In July 2009, he left for a lengthy visit to Ghana. He did not return until December 2009. He did not inform Lambeth of his absence. In September 2009, Lambeth forced entry. The council cleared out his possessions and re-let the flat. Loveridge brought a claim for unlawful eviction and wrongful disposal of his possessions. He argued that, rather than common law damages, he was entitled to statutory damages under HA 1988 s28, in the sum of £90,500. Lambeth contended that his statutory damages were nil and that he was only entitled to common law damages. The valuation evidence for Lambeth proceeded on the basis that the notional open market sale would result in the occupier becoming an assured tenant and that would have no impact on the price that a private purchaser would pay. This was not disputed by Loveridge's valuer, but he assumed that the purchaser should be deemed to take the building subject to an ongoing secure tenancy. HHJ Blunsdon found for Loveridge. Lambeth appealed successfully to the Court of Appeal ([2013] EWCA Civ 494; July 2013 *Legal Action* 22).

The Supreme Court unanimously allowed Loveridge's further appeal. The words of s27 are wide enough to cover local authority landlords. Section 28(1) requires the court to make two valuations of the landlord's interest. Valuation (a) is based on the assumption that the tenant continues to have the same right to occupy the premises, and the landlord continues to be subject to the same restrictions on recovering possession, as before the eviction occurred. Valuation (b) is based on the assumption that the tenant's right to occupy and the restrictions on recovering possession have ceased. The issue in this case was whether the valuation of both the upstairs and downstairs flats (for valuation (a)) and of the upstairs flat (for valuation (b)) should be conducted on the assumption that they were subject to secure tenancies or to assured tenancies. Prior to eviction, Loveridge's right to occupy the downstairs flat was that of a secure tenant. The notional exercise required by s28(3)(a) did not extend to making adjustments to the nature of the tenants' rights that were consequent upon sale. Such adjustments are barred by s28(1)(a) which stipulates that the 'same right' continues. The likely effect upon a secure tenancy of a sale to a private landlord should not, therefore, be taken into account (para 28).

■ Barrett v Two Angels Limited

Bow County Court, 30 October 2014[1]

Barrett was a vulnerable 25-year old with diagnosis of post-traumatic stress disorder, depression and anxiety stemming from childhood trauma. In January 2013, following a period of street homelessness, he was referred to and accommodated by Two Angels, an organisation which provides supported living services for young adults with learning disabilities. He was granted an assured shorthold tenancy. Relations between Barrett and Two Angels' staff deteriorated over his time at the property. He felt under pressure in relation to rent payments and reacted badly to this. He felt that his mental health was deteriorating in consequence and, on one occasion, this resulted in him calling the police and an ambulance as he was concerned that he was becoming a danger to himself and

others. A probation agreement was signed by him in February 2013, agreeing that he would abide by the rules of the unit or face eviction. Relations did not improve and, on 7 May 2013, he was given a notice of eviction and asked to leave the accommodation immediately. He spent around three nights sleeping in the waiting room at Whipps Cross hospital, before his brother found him a temporary room in a property being refurbished by a friend. He stayed there for around three weeks. This was stop-gap accommodation, with no furniture, carpets or heating. He found stable accommodation on 29 May 2013. He claimed damages for unlawful eviction.

District Judge Rollason awarded damages of £8,805 consisting of general damages of £285 per night for the three nights at Whipps Cross hospital, £250 per night for the 19 nights in substandard unfurnished, unheated accommodation and £3,200 in aggravated damages. He was awarded an additional 10 per cent uplift of £880.50 pursuant to CPR 36.14(3)(d) as he had obtained a judgment which was significantly more advantageous than a Part 36 offer which had been made some 12 months previously.

■ Sokoli v Zahid

Brentford County Court,
1 September 2014[2]

Zahid let property to Sokoli on an assured shorthold tenancy. She later began a possession claim. At the initial hearing, in April 2013, a district judge was not satisfied that the landlord was entitled to a possession order and adjourned the claim. Sokoli did not receive notice of the adjourned hearing and did not attend. Although the landlord and her agent attended, District Judge Willams found that the deposit was not protected and that no valid HA 1988 s21 notice had been served. The claim was dismissed. However, Zahid then forged a possession order and attached it to the front door. She then used the 'order' to enforce an illegal eviction with the assistance of the police who were fooled by the fake document and threatened Sokoli with arrest if he did not leave. Sokoli spent 64 nights sleeping in his mother's spare room. Although Sokoli obtained an injunction to be re-admitted and for the return of his belongings, Zahid did not comply.

In a claim for damages, District Judge Willans awarded £17,640 comprising;

- General damages £8,640.
- Exemplary damages £2,000.
- Aggravated damages £1,500.
- Special damages £2,500.
- Return of deposit £750
- Three times the deposit for failing to protect the deposit £2,250.

PLANNING BREACHES

Prosecutions and Proceeds of Crime Act

■ Hussain v Crown (Brent LBC)

[2014] EWCA Crim 2344,
19 November 2014

Hussain owned a property which was let as residential accommodation to people in receipt of housing benefit. The rental income was paid to Tusculum Investments NV. Hussain was a director and part owner of that company. The lettings were both contrary to the planning permission for the property and in breach of a planning enforcement notice. Brent prosecuted Hussain for those planning breaches. He was found guilty and committed to the Crown Court for sentence. HHJ Mole QC imposed a fine of £20,000 for the planning breaches and made a confiscation order under the Proceeds of Crime Act 2002 in the sum of £494,314.30, being a proportion of the rental income received. Hussain appealed to the Court of Appeal.

The Court of Appeal dismissed the appeal. It rejected his contention that he had not personally obtained the rental income. The company was his agent. It also rejected his argument that the income did not arise as a result of his criminal conduct. There was a clear link between the rents received and the breach of planning permission. Sir Colin Mackay stated:

If the appellant had obeyed the enforcement notice … the lettings would not have been allowed to continue, no new lettings would have been allowed, and therefore but for his criminal conduct in ignoring the notice the rents in the relevant period covered by the charge would not have come into his hands or within his disposition or control as they did (para 21).

Further, the confiscation order and the fine were not disproportionate.

LONG LEASES

Service charges

■ Anchor Trust v Corbett

[2014] UKUT 510 (LC),
19 November 2014

Anchor Trust was the freehold owner of a retirement development containing 28 flats. Corbett was a tenant. Anchor carried out major works to upgrade the fire alarms, at a total cost of over £57,000. It sought to recover these costs as service charges, requiring payments of £8.85 a month over 15 years. Corbett disputed liability by issuing proceedings in the Leasehold Valuation Tribunal (LVT). It accepted that the trust had a contractual right to recover the costs and that the works were reasonable, but found that nothing was payable because there was an implied term that all expenditure had to be fair and reasonable. The payments of £8.85 a month were around 2 per cent of the pension entitlement of a single person. It was not fair and reasonable to expect Corbett to pay this.

HHJ Huskinson sitting in the Upper Tribunal (Lands Chamber) allowed the landlord's appeal. It was not necessary to imply such a term to give the contract business efficacy. The LVT had effectively re-written the agreement.

HOUSING ALLOCATION

■ R (Jakimaviciute) v Hammersmith & Fulham LBC

[2014] EWCA Civ 1438,
6 November 2014

The council's social housing allocation scheme designated certain classes of applicant as non-qualifying (HA 1996 s160ZA(7)). It included a class comprising homeless applicants whom the council had provided with suitable temporary accommodation under its homelessness functions (HA 1996 Part 7) and described in these terms:

Homeless applicants placed in long term suitable temporary accommodation under the main homelessness duty, unless the property does not meet the needs of the household or is about to be ended through no fault of the applicant.

The claimant was owed the main housing duty (HA 1996 s193) and, thereby, would normally have been entitled to a statutory 'reasonable preference' in any allocation scheme (HA 1996 s166A(3)) but the council notified her that, in common with 87 per cent of its other homeless applicants, she did not qualify for its scheme at all, by operation of the above non-qualifying class.

She brought a claim for judicial review contending that it was unlawful to exclude from an allocation scheme a class of person who would otherwise be entitled to a reasonable preference.

D Gill, sitting as a deputy judge of the High Court, refused permission to apply for judicial review on the basis that the claim was unarguable (see [2013] EWHC 4372 (Admin), 20 December 2013; March 2014 *Legal Action* 23).

The Court of Appeal granted permission to appeal, retained the judicial review to determine for itself, and allowed the claim. It rejected the council's argument that the reasonable preference requirement only applied to those whom the council had designated as qualifying under its scheme.

It held that the non-qualifying class was unlawful because it prevented the scheme from giving the required reasonable preference to all those owed the homelessness duty and, for most of those covered by the category, disqualified them from any consideration at all.

The court confirmed that it is permissible to adopt a rule excluding individual applicants by reference to factors of general application, such as lack of local connection or being in rent arrears, yet not permissible to cut down the statutory reasonable preference categories in the way that the council's non-qualifying class had attempted to do.

HOMELESSNESS

Interim accommodation

■ R (ZH & CN) v Newham LBC and Lewisham LBC

[2014] UKSC 62,
12 November 2014

The claimants had applied to their respective councils for homelessness assistance. They were provided with interim accommodation, pending enquiries, under HA 1996 s188. The housing was owned by private landlords but the councils made the accommodation available to the claimants on short-term, night-by-night, licences.

At the conclusion of enquiries, neither claimant was owed the main housing duty (HA 1996 s193). The council terminated their licences. The claimants contended that: (1) the Protection from Eviction Act 1977 meant they could only be evicted by proceedings for possession orders; and/or (2) for the claimants to be evicted without judicial consideration would amount to an infringement of their right to respect for their homes under article 8.

By a majority (5:2), the Supreme Court decided that no possession orders were required because the interim accommodation was not protected by the 1977 Act. That is because such accommodation is not provided 'as a dwelling': s3(1). There was no infringement of article 8 because a claimant could raise the proportionality of their eviction in a claim for judicial review in the county court hearing of an appeal under Housing Act 1996 s204.

Intentional homelessness

■ Viackiene v Tower Hamlets LBC

UKSC 2014/0049,
30 October 2014

The council decided that Viackiene had become homeless intentionally. Her co-tenant had failed to pay his rent and Viackiene had declined the landlord's offer to help her find a co-tenant who would pay. The Court of Appeal dismissed her second appeal against the council's finding: see [2013] EWCA Civ 1764, 11 December 2013; February 2014 *Legal Action* 31.

An appeal panel of Supreme Court justices refused permission to appeal to that court because: 'The decision turned ultimately on the facts as found by the officers and raises no arguable point of law.'

HOUSING & CHILDREN

■ R (C1 and C2) v Hackney LBC

[2014] EWHC 3670 (Admin),
7 November 2014

The claimants were two young children living with their mother in her overcrowded one bedroom housing association flat. The boy was autistic and the girl had severe behavioural problems. Their mother applied for a transfer to alternative accommodation but the association had closed its housing register to new transfer applicants.

An assessment by the council's children's services department, conducted under the Children Act (CA) 1989, indicated that the children needed suitable accommodation. That department wrote to the council's housing department requesting its assistance in providing or arranging such housing.

The children later sought judicial review, contending that the housing department had unlawfully failed to respond to the request, contrary to the duty in CA 1989 s27.

Turner J dismissed the claim. Section 27 did not apply to requests made by one department to another within a single unitary authority. Accordingly, the basis of the judicial review claim fell away.

■ R (GE) v Bedford BC

[2014] EWCA Civ 1490,
20 November 2014

The claimant was an asylum seeker. She was detained by the UKBA on entry to the UK in 2011. She brought a judicial review claim contending that she was under 18 and that the council should provide her with accommodation and assistance as a 'child in need'.

Thirlwall J ordered her release but only into National Asylum Support Service (NASS) accommodation, where she later remained beyond what she asserted was her 18th birthday. She sought to challenge the council's age assessment, which found that she was not a child and, if that succeeded, to establish that she was a 'former relevant child' owed duties under CA 1989, even though she had been accommodated by NASS and not by the council while a child.

GMG Ockleton, sitting as a Deputy High Court Judge, dismissed that claim.

The Court of Appeal allowed an appeal. It was at least possible that the claimant had been a child. The judicial review of the age assessment would have to be considered on its merits. If that showed that she ought to have been accommodated under CA 1989 s20, with the consequence that the council would have owed her duties beyond her 18th birthday as a 'former relevant child', the council would have to consider whether – as a matter of discretion – it should provide her with the same services that she would have been entitled to receive had she been correctly age-assessed at the outset.

■ R (C, T, M & U) v Southwark LBC

[2014] EWHC 3983 (Admin),
28 November 2014

A mother and her three young children were homeless. The mother was not eligible for homelessness assistance or social housing by virtue of her immigration status. The council's children's services department found them one room in B&B accommodation and provided subsistence payments. They were later moved to other accommodation (in another London borough) and the council eventually found them long-term accommodation in Rochdale. They sought judicial review of the council's performance of its duties under CA 1989 s17 and contended that the poor quality of the accommodation made available had infringed their article 8 rights.

Bobbie Cheema QC, sitting as a Deputy High Court Judge dismissed the claim. Although the accommodation had not been ideal, and the level of subsistence payments had changed frequently, the council had not acted unlawfully. The 'family life' of the household had been maintained and article 8 had not been breached.

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2 Brian McKenna, solicitor, Hounslow.

Jan Luba QC is a barrister at Garden Court Chambers, London; Nic Madge is a circuit judge. They would like to hear of relevant housing cases in the higher or lower courts. The authors would like to thank the colleagues at notes 1 and 2.