Recent developments in housing law

Reports on how homelessness hits the young; monitoring of immigration status checks by landlords; and Local Government Ombudsman finds against Croydon and Knowsley councils; plus key court decisions. Round up by Nic Madge and Jan Luba QC.

POLITICS & LEGISLATION

Changes in housing law

TThe Law Commission's proposals for recasting the law on security of tenure for residential tenants were set out nearly a decade ago in *Renting Homes: The Final Report* (Law Com No 297, Cm 6781-I)(2006). In 2013, the Commission updated the original proposals and addressed any possible devolution issues arising from their implementation in Wales: *Renting Homes in Wales* (Law Com No 337, Cm 8578)(2013). On 9 February 2015, the Welsh Government introduced a Renting Homes (Wales) Bill in the Welsh Assembly based on that report. The centrepiece of the bill is the new 'occupation contract'. With a limited number of exceptions, all current tenancies and licences will be replaced with one of two types of occupation contract:

- Secure contract – modelled on the current secure tenancy issued by local authorities.
- Standard contract – modelled on the current assured shorthold tenancy, used mainly in the private rented sector.

The bill's provisions are summarised in its explanatory notes and in the *Homes for Wales Bulletin* (February 2015 issue).

Homelessness

The charity Crisis has published new research, commissioned by Cardiff University, on homelessness among single people and couples without children (*Nations apart? Experiences of single homeless people across Great Britain*, Crisis, December 2014). It shows that nearly 50 per cent of single homeless people first became homeless aged 20 or younger. The median average age was 22.

Another recent research report, based on freedom of information requests made to local authorities, addresses the use of emergency accommodation for young people aged under 16 who run away from home (*Reaching Safe Places: Exploring the journeys of young people who run away from home or care*, Railway Children, December 2014).

Housing and anti-social behaviour

On 12 January 2015, the Secure Tenancies (Absolute Ground for Possession for Antisocial Behaviour) (Review Procedure) (Wales) Regulations 2014 SI No 3278 came into force. They detail the procedure to be followed if the landlord of a secure tenant of a dwelling in Wales gives notice of intention to use the new mandatory ground for possession contained in Housing Act (HA) 1985 s84A and the tenant seeks a review of that decision under HA 1985 s85ZA.

Private renting

Recent develpments relating to the private rented sector include:

- Based on freedom of information requests made to the Ministry of Justice, the *Guardian* newspaper and *Environmental Health News* have jointly published an alphabetical dataset of companies recently convicted of housing-related offences.[1]
- In a parliamentary written answer, the housing minister has provided a table of results of the adjudication, undertaken by the various tenancy deposit protection agencies, of disputes between private landlords and tenants over tenancy deposits (*Tenancy Deposit Schemes: Written Question 216505*, Parliamentary Business, 4 December 2014).
- The initial introduction, on 1 December 2014, in the West Midlands, of the Immigration Act 2014 provisions for immigration status checks on prospective tenants, is being monitored by the Movement Against Xenophobia. It has initiated a coalition which has designed a joint survey to monitor the scheme and to assess the impact on tenants and landlords.
- A discussion paper has been published on reform of security of tenure and rent control in the private rented sector (*The Future of Private Renting: Shaping a fairer market for tenants and taxpayers*, CIVITAS, January 2015).
- The House of Commons Library has published an updated briefing note relating to retaliatory ('revenge') eviction and the evidence on the extent to which it occurs. The note reviews the recent measures to legislate to tackle the problem (*Tenancies (Reform) Bill 2014-15 (retaliatory eviction)*, Standard Note: SN07015, December 2014).
- The findings from a YouGov poll show that around one in 12 private renters (8 per cent) struggle to afford their rent whenever it is due – the equivalent of over 700,000 people (*National Housing Federation Press Release*, 23 December 2014).
- A new report shows that, while private tenants do have statutory rights to a safe home in good repair, they face substantial barriers to having these rights upheld in practice (*Renting uncovered: Evaluating consumer protections in the private rental sector*, Citizens Advice Bureau, January 2015).

Shared ownership

The main bodies concerned with the shared ownership market have published revised guidance, providing mortgage lenders and housing associations with a framework for best practice when handling arrears and repossessions in respect of such properties (*Guidance for handling arrears and possession sales of shared ownership properties*, Council of Mortgage Lenders & others, October 2014).

A new report explores the potential to expand shared ownership (*Shared Ownership: Towards a fourth mainstream tenure – Interim Report*, Orbit HA and Chartered Institute of Housing, February 2015). It makes recommendations about how government, regulators, providers, lenders and investors could all work to deliver more affordable shared ownership homes.

Discretionary housing payments

The latest official statistics on local authorities' use of Discretionary Housing Payment (DHP) funds suggest that the majority of councils were underspending on DHPs (*Use of Discretionary Housing Payments GB: analysis of mid-year returns from local authorities, April to September 2014*, DWP, December 2014).

HUMAN RIGHTS

Articles 8 and 14

■ R (Turley) v Wandsworth LBC

[2014] EWHC 4040 (Admin), 8 December 2014

Doyle was the secure tenant of a flat owned by Wandsworth. He and Turley had four children. Doyle and Turley lived in the flat in a relationship akin to marriage from 1995 until 2010 when the relationship broke down and he left the property. The relationship was rekindled in January 2012 when Doyle returned to the property. However, he died on 17 March 2012. Wandsworth argued that Turley could not

succeed to the tenancy because, inter alia, she had not resided with Doyle at the flat for a period of twelve months immediately prior to his death. Turley contended that this additional requirement, imposed by Housing Act (HA) 1985 s87(b), which would not have applied if she were married or in a civil partnership (or if the tenancy had been granted to Doyle after 1 April 2012), was unlawful as it amounted to unjustified discrimination under articles 8 and 14 of the European Convention on Human Rights (the convention).

Knowles J dismissed Turley's claim for judicial review. The difference in treatment between those who were not married or civil partners but lived together as if they were, was discriminatory. However, the additional requirement was in pursuance of a legitimate aim. It was proportionate because it was a necessary tool in establishing whether the couple were in fact living together in a relationship akin to marriage.

Article 8

■ McDonald v McDonald

UKSC 2014/0234,
9 December 2014

The Supreme Court has granted permission to appeal from the Court of Appeal decision (see [2014] EWCA Civ 1049, 24 July 2014; September 2014 *Legal Action* 44).

Article 1 of Protocol 1

■ Aquilina v Malta

App No 3851/12;
11 December 2014

Aquilina owned a property let to longstanding tenants. They enjoyed statutory security of tenure and paid a protected rent of less than five per cent of their income. Aquilina could not recover possession or increase the rent. He complained that the restrictions had been lifted for new tenancies in 1995; the country had no housing shortage; and less than two per cent of the population sought social housing.

The European Court of Human Rights held that, in the circumstances, the continued application of the security and rent control provisions amounted to a degree of control over the applicant's property such as to amount to an infringement of his human rights under Article 1 of Protocol 1.

ASSURED SHORTHOLD TENANCIES

Deposits

■ Charalambous v Ng

[2014] EWCA Civ 1604;
16 December 2014

In August 2012, Charalambous and Karali were granted an assured shorthold tenancy for a term of one year less a day. They paid a deposit of £1,560. The tenancy was renewed in August 2003 and again in August 2004, in each case for a further period of one year. Under each tenancy agreement, the same deposit was required to be paid. No further money actually changed hands. Instead, the original deposit was carried over and credited against the renewed tenancy. When the last of the tenancies came to an end in August 2005, a statutory periodic tenancy arose under Housing Act (HA) 1988. In October 2012, the landlord, Ng, served notice under s21 requiring possession of the property to be given after 17 December 2012. The deposit paid by Charalambous and Karali was never held under a statutory scheme, as required by HA 2004 ss212 to 214, which came into force on 6 April 2007. The defendants claimed that the s21 notice was accordingly invalid. District Judge Manners held that the notice was valid and made a possession order.

The Court of Appeal allowed the tenants' appeal. Lewison LJ analysed s215. The first condition that 'a tenancy deposit has been paid in connection with a shorthold tenancy' was looking at a past event, not a prospective one. It was satisfied in this case when the tenancy was granted in 2002. Lewison LJ rejected the contention that s215 meant only a deposit paid after 6 April 2007, 'because (quite simply) it does not say so'. The second condition that 'the deposit is not being held in accordance with an authorised scheme' was expressed in the present tense and was 'looking at a current state of affairs'. Although the actual decision in *Vision Enterprises Ltd v Tiensa* [2010] EWCA Civ 1224, [2012] 1 WLR 94 has been reversed by the amendments introduced by the Localism Act 2011, they had not reversed the reasoning in so far as it was based on the use of the present tense. In this case, the deposit paid by Charalambous and Karali was not (and never had been) held in accordance with an authorised scheme. The Court of Appeal also rejected the landlord's contention based upon the presumption against retrospective legislation. In so far as s215(1)(a) precludes the service of s21 notices, it is prospective in operation rather than retrospective. It is only concerned with s21 notices served after it came into force.

Warrant suspension

■ Osuntogun v Vigneswaran

Bromley County Court,
26 November 2014[2]

The defendant was an assured shorthold tenant of the claimant. In August 2014, the claimant issued a claim for possession relying on Housing Act (HA) 1988 Schedule 2 mandatory ground 8 and discretionary grounds 10 and 11. At a hearing on 2 October 2014, which the defendant did not attend, an outright possession order was made, giving judgment in the sum of two months' rent arrears. The defendant received a copy of the order but subsequently lost it. A warrant of eviction was issued and the defendant applied to suspend that warrant. At the hearing of the defendant's application to suspend the warrant, it transpired that the typewritten copy of the possession order held by the claimant stated that it had been made on discretionary grounds, whereas both the typewritten and handwritten copies of the order on the court file and the claimant's note of the hearing all stated that it had been made on a mandatory ground. The claimant argued that the statement, on one copy of the order, that it was made on discretionary grounds was a mistake; the order was clearly made on a mandatory ground; and, therefore, according to HA 1980 s89, the court had no power to suspend the warrant, more than six weeks having elapsed since the date of the order.

Rejecting these submissions and granting the defendant's application to suspend the warrant, District Judge Brooks held that:

1. as set out by Pumfrey J in *Diab v Countrywide Rentals plc*, [2001] All ER (D) 119 (Jul), 10 July 2001, where there is a lack of clarity on the face of the order(s) as to whether a possession order has been made on mandatory or discretionary grounds, it should be assumed that it was made on discretionary grounds and so the court retains the discretion to suspend; and

2. it does not matter whether this lack of clarity arises from a lack of clarity on the face of a single order (as in *Diab*) or as a result of a contradiction between two orders each of which is apparently clear on its face.

LONG LEASES

Service charges

■ Assethold Ltd v Watts

[2014] UKUT 527 (LC);
8 December 2014

Assethold incurred legal expenses in a dispute with the owner of neighbouring land over work to a party wall. It then sought to recover those costs from its lessees through the service charge provisions. The Leasehold Valuation Tribunal (LVT) made a determination under Landlord and Tenant Act 1985 s27A that although Assethold was entitled to the costs of employing a surveyor in connection with the party wall dispute, the terms of the leases did not cover the costs of employing solicitors and counsel in the same dispute. Assethold appealed. Counsel for the lessees asserted that, as a general rule 'service charge provisions are construed restrictively … In the event of ambiguity, the issue is resolved against the

landlord' (para 32). In particular, legal costs are only recoverable as part of a service charge if 'clear and unambiguous language' to that effect is employed in the lease.

Martin Rodger QC, deputy president, allowed the appeal. It is now clear from *Arnold v Britton* [2013] EWCA Civ 902, 22 and *Francis v Philips* [2014] EWCA Civ 1395 that there are no special rules of construction for service charges. Previous decisions which might have suggested that there were ought properly to be understood as examples of the application of universal principles of contractual interpretation. The LVT was wrong to determine that expenditure on legal costs in obtaining the injunction was not capable of forming part of the service charge. Those costs did fall within one of the service charges provisions.

■ Parissis v Blair Court (St John's Wood) Management Limited

[2014] UKUT 0503 (LC);
11 November 2014

Parissis was the lessee of two separate flats, each with obligations to pay service charges. In November 2010, he made two separate applications to the Leasehold Valuation Tribunal (LVT) under Landlord and Tenant Act (LTA) 1985 s27A challenging the service charges claimed for the years 2001, 2002, 2003, 2004 and/or 2005. The LVT decided that the length of time that he had taken to bring the proceedings was unconscionable and that the landlord would be significantly prejudiced by the delay. It also decided that it had no jurisdiction because Parissis was time-barred for periods which were more than six years before his applications. Parissis appealed.

HHJ Huskinson allowed the appeal. By making his applications under s27A, Parissis was not bringing an action to recover arrears of rent and so he was not barred by Limitation Act (LA) 1980 s19. Nor were they actions to recover any sum recoverable by virtue of any enactment. They were, accordingly, not barred by LA 1980 s9. His applications under s27A were not actions founded on simple contract and so LA 1980 s5 did not apply. The LVT was, accordingly, wrong in finding that his applications were time-barred. The matter was remitted to the first-tier tribunal.

HMO LICENSING

■ R (Regas) v LB Enfield

[2014] EWHC 4173 (Admin);
11 December 2014

Regas was the landlord of one property in Enfield. He sought judicial review of a decision which Enfield made pursuant to its statutory powers under Housing Act (HA) 2004 to designate the entire borough for both additional licensing of houses in multiple occupation (HMOs) and selective licensing of private rented sector (PRS) properties for a five-year period. In a claim for judicial review, he argued that Enfield had failed to consult persons likely to be affected as they had not consulted anyone in neighbouring boroughs.

HHJ McKenna, sitting as a High Court judge, found that 'the class of persons likely to be affected by the designation plainly included those residents, businesses, landlords and agents who live or operate in immediately adjoining parts of other local authority areas. … [I]t is plain that these groups were likely to be affected and should have been consulted and no thought was given, as it should have been, to the likely impact on those outside the borough who would be affected but were not protected by the proposals' (para 40). The additional and selective licensing schemes were not lawfully designated, and could not lawfully be implemented, unless and until Enfield conducted a lawful consultation.

INTERIM CHARGING ORDERS

■ Whitfield v Jones-Richards

[2014] EWHC 2878 (Ch);
25 June 2014

In October and November 2011, interim charging orders were made against Whitfield's home in favour of Jones-Richards to secure a judgment debt. The charging orders were made final on 20 March 2012. When proceedings to enforce the charging order were begun in December 2012, the amount secured was £74,667. In June 2013, Deputy District Judge Omoregie made an order for sale. Whitfield sought permission to appeal.

Mark Anderson QC, sitting as a deputy judge of the High Court, refused permission to appeal. It was difficult to see how the deputy district judge could have made a different order from the one that he did make. It was apparent from his judgment, taken as a whole, that he did have in mind his obligation to consider article 8 and the competing interests of the parties, including the fact that this was Whitfield's home. An appeal had no prospect of success.

HEALTH AND SAFETY AT WORK ACT

■ Eze (Ezeugo) v Health and Safety Executive

[2014] EWHC 3474 (Admin);
31 October 2014

Eze's wife became the owner of an office block in Harwich. The couple obtained planning permission to convert it into flats. In 2013, as a result of complaints from residents during the conversion works, the Health and Safety Executive (HSE) sent in inspectors who considered the works were being carried out in a dangerous fashion. Prohibition notices were served under Health and Safety at Work Act (HSWA) 1974 ss2 and 3, but work continued. In June 2014, at Chelmsford Crown Court, Eze was convicted of five offences under the HSWA. He was sentenced to a total of 30 months imprisonment. He appealed to an Employment Tribunal against the notices. It dismissed his appeal. He brought a further appeal to the High Court.

Foskett J found that the tribunal had addressed the question of the validity of the notices on the basis of whether Eze and his wife had each had 'some degree of control' over the works. That was not the basis upon which each notice was formulated (the basis being the "sole control" to be found in ss2 and 3). That was a misdirection. Foskett J dismissed Eze's appeal, because it was plain that he had 'sole control', but allowed the appeal by his wife.

HOUSING ALLOCATION

■ R (Hillsden) v Epping Forest DC

[2015] EWHC 28 (Admin),
7 January 2015

The council's social housing allocation scheme designated certain classes of applicant as non-qualifying if they failed to meet specified residence requirements: HA 1996 s160ZA(7). The applicant fell within such a class but applied for individual consideration on the basis that her circumstances were exceptional. She relied on a provision of the scheme which read:

The council recognises that there may be some exceptional circumstances not covered by the scheme. In such instances, the director of housing will have delegated authority to make decisions, as he considers appropriate.

The council asserted that it had adopted carefully defined and hard-edged qualifying classes and had not included in its scheme any power to depart from them. The provision quoted applied only to those falling within the qualifying classes. The claimant asserted that, if that was right, the scheme was unlawful because: (1) it fettered the council's discretion; and (2) in adopting the scheme the council had failed to have regard to, or explain its departure from, DCLG guidance encouraging councils to retain a discretion to depart from non-qualifying classes in exceptional circumstances.

McCloskey J dismissed a claim for judicial review. He held that: (1) on a true construction of the allocation scheme as a whole, it made

no provision for departure from the qualifying classes; (2) the provisions of HA 1996 Part 6 as amended did not require or empower a council to fix a qualifying class but also retain the ability to grant exemption from it; and (3) the council had either had regard to the code of guidance or had not been required to explain why it had not followed the exhortation it contained.

Local Government Ombudsman

Complaints

■ Croydon LBC

11 September 2014,
Complaint 13 014 246

The complainant had mental health issues. The mental health charity which had been providing him with supported accommodation gave him notice to quit because he had been living in the property for two years. He applied to the council for assistance.

Rather than treat the complainant as having made an application to join its Housing Allocation Scheme, the council referred him to its Support Needs Assessment and Placement (SNAP) team. The SNAP team helps people who need support to be able to live independently and assists them to find suitable accommodation. Two offers of self-contained accommodation were made. Both were rejected. The council said it could not help any further.

The complainant complained that he was only offered two properties. He said that if he had been on the housing register, he would have been given several offers.

The Local Government Ombudsman (LGO) found that the council had failed to provide the complainant with sufficient written information about the way it was helping him. As a result, the complainant had felt he was being treated unfairly.

■ Croydon LBC

3 September 2014,
Complaint 14 002 844

In 2013, the council changed its housing allocation scheme. Under the new scheme, medical priority is only given to those applicants who have been awarded 'high priority medical need' and are included on the council's register.

In April 2014, the complainant wrote to the council to ask it to put her on the housing register due to her medical condition. The council's medical adviser considered the case and did not award medical priority. The council decided not to include the applicant on the register as a medical priority case and rejected an appeal.

The ombudsman was not satisfied that the medical adviser had properly considered the applicant's medical condition and how her housing was affected by it. The form completed by the medical adviser gave no reasons for the decision not to award high medical priority. In the absence of any reasoning it could not be established that the medical adviser had had regard to the specific difficulties that the applicant had said her living accommodation presented in terms of her medical condition. In addition, it was not clear from the medical adviser's form that the medical adviser took into account the medical evidence put in with the application.

In its notice rejecting an appeal, the council did not explain the reason why it did not consider the medical condition was affected by the applicant's accommodation.

The ombudsman said:

Although I would expect the council to take advice from the medical adviser the decision remains the council's decision and it should explain its reasoning for that decision when writing to an applicant. I do not consider it has done that here.

■ Knowsley Metropolitan Borough Council

29 August 2014,
Complaint 14 000 346

The council contracted-out the management of its housing allocation arrangements to a housing association (KHT). The complainant (Miss X) sought medical Priority Band A for her housing application but, following a home visit, only Priority Band B was awarded. The ombudsman identified four faults:

44. First the KHT housing officer who visited Miss X on 30 January did not complete the report form. KHT says the officer already had sufficient information in the housing application and health and welfare assessment forms completed by Miss X. But the form also asked questions about the vulnerability of the applicant and any special circumstances. The Council accepts KHT staff should complete the visit form to help officers make consistent and transparent decisions on priority bands.

45. Secondly, the KHT manager who carried out the Stage One review used criteria to assess Band A medical priority that were different and more rigorous than the criterion in the housing allocations policy. The law says allocations must be made in accordance with the scheme. So it was fault to use more stringent criteria that were not in the scheme to assess the priority of applications.

46. Third, the allocations scheme does not explain the procedures officers follow to seek medical advice or specialist housing assessments for applicants with medical conditions or disabilities. That is a significant omission because the scheme should explain the procedure followed to make decisions.

47. Finally the Stage Two appeal decision letter did not explain the reasons for the Panel's decision. The decision letter simply says Miss X did not meet the criteria for Band A. It gave no further explanation. It was therefore difficult for Miss X and the Ombudsman to understand the Panel's reasoning.

The ombudsman considered that the investigation revealed some serious deficiencies in the way the council's housing allocations scheme is framed and operated. The council agreed to carry out a fundamental review of the policy and its procedures and to revise the housing allocations policy and guidance.

HOMELESSNESS

Applications

Local Government Ombudsman

Complaint

■ Haringey LBC

Complaint No 13 019 000,
10 July 2014

The complainant and her son were living with friends but were asked to leave. In August 2012, she sought accommodation from the council. She was wrongly told that she did not meet the eligibility requirements for being in priority need because her son was a US passport-holder (as well as a British citizen). The council's officer gave her a verbal decision when she should have accepted a homelessness application and given a decision in writing. The complainant was caused significant injustice as she was told to obtain a British passport for her son, which put her to unnecessary trouble and expense and inevitably delayed her homeless application.

In respect of these faults, the council agreed to pay £750 (£500 to reflect the difficulties she had living with her friend in cramped and poor living conditions for five months after it should have accepted a duty to house her, and £250 for her time, trouble and anxiety in trying to sort out her son's citizenship and the effect it had on her homeless application).

Accommodation pending review

■ R (S) v Brent LBC

[2014] EWHC 3742 (Admin),
9 May 2014

The claimant was an Indian national living in the UK. She fled her matrimonial home following severe domestic violence. She applied for asylum and was accommodated by NASS. She was later granted indefinite leave to remain and the NASS accommodation was withdrawn. She stayed temporarily with people she met and then applied to the council for homelessness assistance. It decided that although she was homeless she did not have a priority need because she was not vulnerable:

HA 1996 s189 and Homelessness (Priority Need for Accommodation) (England) Order 2002 SI No 2051 art 6. She applied for a review and sought accommodation pending that review: HA 1996 s188.

The council declined to accommodate pending review and gave its reasons in a letter purporting to comply with the approach required by *R v Camden LBC ex p Mohammed* (1998) 30 HLR 315. The claimant sought a judicial review of that decision and applied, by way of interim relief, for an injunction requiring the council to accommodate her, pending the claim for judicial review.

HHJ Anthony Thornton QC granted the relief sought. The council's decision was arguably wrong in law and, on the facts, this was 'a rare case, where interim relief should be granted for the period up to the decision on the review' (para 38).

Reviews

■ Tachie & others v Welwyn Hatfield BC

[2014] EWCA Civ 1657,
27 November 2014

The three claimants made separate applications to the council for homelessness assistance. On review, it decided that the first two had become homeless intentionally and the third was not in priority need. The claimants appealed to the county court (HA 1996 s204), contending that their homelessness applications and reviews had wrongly been dealt with by an Arms' Length Management Organisation (ALMO) instead of by the council itself. The county court transferred the cases to the High Court. There, Jay J held (see [2013] EWHC 3972 (QB), 13 December 2013, February 2014 *Legal Action* 30) that the contracting-out to the ALMO had initially been invalid because the relevant resolution had been made by the full council rather than by the cabinet of the council which had been authorised to make it. However, the claims failed because the council had later ratified the decision and there were no other legal errors made in the reviewing officers' decisions. The claimants made a renewed application for permission to appeal contending that it was impossible for there to have been ratification of a decision which the full council had no power to make.

Burnett LJ dismissed the application. The council had had the power to delegate its functions and the error made was of form not substance. There was no real prospect of an appeal succeeding on the basis that the ratification was invalid.

HOUSING AND CHILDREN

■ R (C) v Buckinghamshire CC

[2014] EWHC 4072 (Admin),
8 December 2014

The claimant, a boy aged 14, wanted to establish that the council had been accommodating him for the purposes of Children Act (CA) 1989.

He had lived with his mother (and younger brother) in her flat. In 2009, she left the flat and they all moved to live with the maternal grandparents in their house. In March 2010, the mother left the claimant and his brother with the grandparents and returned to live in her flat with her then partner. The council was content for the children to remain with the grandparents but would have intervened had they returned to the mother.

Andrew Thomas QC, sitting as a deputy High Court judge, rejected a claim for judicial review. He held that the factual circumstances had not triggered a duty under CA 1989 s20 and the arrangement for the children to live with their grandparents had been a private one rather than one arranged by or through the council.

■ R (CO) v Surrey CC

[2014] EWHC 3932 (Admin),
8 December 2014

The claimant was a girl aged 10. She had a diagnosis of Asperger's syndrome, severe anxiety, ADHD and oppositional defiant disorder. She claimed that when she went to live with her maternal grandmother in November 2009, the arrangement amounted to the council providing accommodation for her as a 'looked after' child pursuant to CA 1989 s20. The council contended that it was merely exercising its duties under CA 1989 s17 in facilitating a family arrangement which was not the fulfilment of a duty under s20.

Popplewell J allowed a claim for judicial review. He 'reached a clear conclusion that by 5 November 2009 the [council] was not merely on the verge of coming under a s20 duty to accommodate [the claimant] outside the family home, but had done so" (para 45).

■ P (a child)

[2014] EWFC 775,
16 December 2014

A child, a boy aged 5, had been in foster care for over two years. He was ready to rejoin his parents but they had no home in which they could live together. Their local housing authority was Greenwich (RBG). In litigation concerned with the child's welfare, HHJ Carol Atkinson said the evidence suggested that:

… there has been a complete and utter failure of the RBG to meet its responsibilities to provide housing to this family or even allow them to apply as a family such that these parents are prevented from bringing to an end the 2½ years (half of his life) that P has spent as a 'looked after' child. Indeed, the information that I have received suggests that the RBG has acted in bad faith and has sought to engineer a situation in which they would be freed of the obligations I might impose… .

She adjourned the hearing so that a senior RBG housing officer could attend. That produced a council nomination to a housing association and an offer of a tenancy which was accepted. The judge said:

… this family was only ever going to be top of the list when they were recognised as an emergency and it had taken my order that he attend a hearing for them to be so recognised. That is not an acceptable way of working by public authorities in my view.

■ R (J) v Worcestershire CC

[2014] EWCA Civ 1518,
25 November 2014

The claimant was a young disabled child in a family of travelling showmen. The family spent each winter residing in the council's area. The council accepted he was a child in need entitled to services: CA 1989 s17. It provided those services but said that it had no power to continue them once the claimant left its area during the travelling season. As a result, his family would need to secure services in turn from each council through whose area they moved. On a claim for judicial review, Holman J held that the council did have a power to continue the provision of services under s17 for children who had been in, but were now outside, its area. The Court of Appeal dismissed the council's appeal. Nothing in s17 prohibited the continuance of the provision of services to a child of an itinerant household moving across local government boundaries.

1 Visit: www.ehn-online.com/news/article.aspx?id=13364.
2 Birruntha Solicitors; Daniel Clarke, barrister, London.

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