

Recent developments in housing law



Nic Madge and Jan Luba QC round up the latest in housing law, including policy changes, new legislation on anti-social behaviour injunctions, measures in the budget to make subletting easier, and important cases on homelessness.

POLITICS AND LEGISLATION

Changes in housing policy

The Minister for Housing and Planning, Brandon Lewis, has given a progress report on the 2010–15 UK coalition government's most recent housing policy initiatives: *Housing update, March 2015* (Department for Communities & Local Government (DCLG), 20 March 2015). Another junior DCLG minister made a written parliamentary statement on the coalition government's record on homelessness over its five years in office (*Hansard*, 26 March 2015, HCWS491) and the secretary of state made a written statement on the coalition government's housing record over the parliament (*Hansard*, 26 March 2015, HCWS498).

The House of Commons Library produced a briefing note collating the public commitments made on housing policy by the Conservatives, Labour, the Liberal Democrats, UKIP and the Green Party ahead of the publication of the parties' 2015 election manifestos: *The Parties' housing policy commitments 2015* (House of Commons Library, Standard Note: SN07142).

The Renting Homes (Wales) Bill is making its way through the Welsh Assembly. This Welsh government bill enacts the radical approach to rented housing tenure suggested by the Law Commission's work on the Renting Homes project. The Communities, Equality and Local Government Committee undertook an inquiry into the general principles of the bill and its consultation exercise closed in March 2015. The bill began stage 1 of its progress through the Assembly at the end of April 2015.

Homelessness

The Local Government Ombudsmen (LGO) have reported that they are receiving fewer complaints about homeless families living in unsuitable bed and breakfast accommodation, but that the problem of families being unlawfully placed in bed and breakfast (B&B) for more than six weeks has not been eradicated: *Ombudsman seeing fewer*

homelessness complaints, but issue not gone away (LGO, 19 March 2015).

Each year, 12,000 young homeless people aged 16 or 17 apply to local housing authorities for assistance with housing. A new report indicates that many do not receive the statutory services with which they can expect to be provided with: *Getting the house in order Keeping homeless older teenagers safe* (Children's Society, March 2015).

The latest official statistics on street homelessness reveal a 37 per cent increase in rough sleeping in London: *Rough Sleeping Statistics England: Autumn 2014* (DCLG, 26 February 2015).

The UK coalition government has announced a £55 million fund to upgrade existing accommodation for the single homeless and to provide new low-rent shared accommodation. £25 million is available for accommodation outside London and £30m in London: *New fund to improve the health of homeless people* (Department of Health, 12 March 2015).

Details of present arrangements to assist rough sleepers and the single homeless in England are gathered in *Support for single homeless people in England: Annual Review 2015* (Homeless Link, March 2015).

A new report on the help available to victims of domestic violence suggests that the current application of homelessness law means many women are trapped in abusive relationships because of their difficulty in accessing alternative housing: *Victims of domestic abuse: struggling for support?* (Citizens Advice, 19 February 2015).

Housing and anti-social behaviour

The injunction provisions of the Anti-social Behaviour, Crime and Policing Act 2014 (ABCPA) Part 1 came into force on 23 March 2015. The intention had been that such cases would be allocated to be heard by district judges in the county courts. But Civil Procedure Rules (CPR) PD 2B para 8.1, which contains the list of the types of injunction application

that district judges have jurisdiction to hear, was not updated in time. The relevant amendment to PD 2B only came into effect on 6 April 2015.

The Legal Aid Agency (LAA) has produced an online training tool explaining the new legal aid rules applicable to those defending injunction applications and applications for committal for breach.¹ The relevant legal aid rules are contained in the Civil and Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015 SI No 325. The Housing Law Practitioners Association (HLLPA) has produced a briefing note explaining the new rules: *Guidance to changes to remuneration for Legal Aid services in Anti-Social Behaviour cases* (HLLPA, April 2015).

Where the injunction is sought against a person under the age of 18, the application must be made in a local youth court. The new rules governing the procedure on such youth court applications are contained in the Magistrates' Courts (Injunctions: Anti-Social Behaviour) Rules 2015 SI No 423.

The Crime and Courts Act (CCA) 2013 s18 makes provision for local youth courts to have a similarly exclusive jurisdiction over under-18s where the application is for a gang-related injunction under Policing and Crime Act 2009 (PACA) s34. The rules in relation to those applications are the Magistrates' Courts (Injunctions: Gang-related Violence) Rules 2015 SI No 421. Section 18 comes into force on 1 June 2015: Crime and Courts Act 2013 (Commencement No 12) Order 2015 SI No 813 art 3.

The conditions governing the grant of gang-related injunctions in both the youth courts and the civil courts are as set out in PACA s34, which will be amended with effect from 1 June 2015 by Serious Crime Act (SCA) 2015 s51 (the Serious Crime Act 2015 (Commencement No 1) Regulations 2015 SI No 820).

The UK coalition government 2010–15 published an annual report on action taken to tackle gang and youth violence: *Ending Gang and Youth Violence Programme: Annual Report 2014/15* (Cm 9043, March 2015).

A new report provides guidance for social landlords on how to address anti-social behaviour that takes the form of racially motivated hate incidents: *How to tackle racially motivated hate incidents* (Chartered Institute of Housing, 18 February 2015).

Private renting

The 2010–15 UK coalition government has published a new guide to hazards and disrepair for prospective private rented sector tenants: *Renting a safe home: A guide for tenants* (DCLG, 13 March 2015).

The Association of Residential Letting Agents (ARLA) has produced a new free guide

specifically for students thinking about renting in the private sector: *The ARLA student guide to renting a house: How to protect yourself and your money* (ARLA, 2015).

The budget statement 2015 (HM Treasury, 18 March 2015) included the following statements relating specifically to the private rented sector:

■ **Model tenancy agreement:** 'The government will amend its model agreement for an assured shorthold tenancy by summer 2015, to provide that tenants in private rented accommodation can request their landlord's permission to sublet or otherwise share space, on a short-term basis.'

■ **Responsibilities of landlords in dealing with requests to sublet and share space:** 'The government will look to clarify and strengthen private residential landlords' legal responsibilities when considering requests from tenants to sublet, and will look to extend these responsibilities to requests from tenants on the sharing of space more generally.'

■ **Subletting and sharing space in private fixed-term and periodic tenancies:** 'The government intends to legislate on preventing the use of clauses in private fixed-term residential tenancy agreements that expressly rule out subletting or otherwise sharing space on a short-term basis, and will consider extending this to statutory periodic tenancies. This will ensure that landlords always have to consider tenants' requests reasonably.'

Letting agents

The House of Commons' Communities and Local Government Select Committee has published a report on proposals to ban letting agents from charging fees to prospective tenants: *Private Rented Sector: the evidence from banning letting agents' fees in Scotland* (HC 964, 20 March 2015). The committee found that evidence from the operation of the existing ban in Scotland was not strong enough to reach a view on the likely effect of any ban in England. The committee called for the new UK government to ensure it bases its policy towards banning agents' fees on evidence of the net impact of a ban on such fees on tenants' costs and the private rented market.

The Property Ombudsman (TPO) has reported that two-thirds of complaints made to him (by landlords and tenants) against letting agents are being upheld: *Thousands of tenants and landlords report disputes to the property ombudsman scheme, following new government legislation for lettings agents* (TPO Press Release, 23 February 2015).

Assured tenancies

The Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 SI No 620 took effect on 6 April 2015.

They introduce new versions of the forms for use in dealing with assured tenancies in relation to rent increases, possession claims and for other purposes.

Increases to housing fines

Legal Aid, Sentencing and Prosecution of Offenders Act (LASPO) 2012 s85 was brought into force on 12 March 2015 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No 11) Order 2015 SI No 504. It removed the upper limit on all current fines and maximum fines of £5,000 (and above) in the magistrates' courts. Heavier financial penalties on landlords convicted by magistrates' courts can now be expected in prosecutions for housing offences. Such offences would include harassment or failure to comply with an improvement notice: *Unlimited fines for serious offences* (Ministry of Justice News Release, 12 March 2015).

Selective licensing

The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 SI No 997 broadens the reasons for which a local council can designate an area as subject to selective licensing of private landlords. It adds four additional sets of factors, any one of which may be satisfied in order to enable selective licensing. These relate to poor property conditions, current or recent experience of large amounts of inward migration, areas that have a high level of deprivation, or areas that have high levels of crime. The explanatory memorandum states that the order 'therefore broadens the criteria by which a local authority can designate an area as subject to selective licensing'.

The Minister for Housing has announced an intention to introduce further new regulations that would require any council in England wanting to make a selective licensing scheme covering more than 20% of its area, or 20% of local privately rented homes, to obtain permission from the Communities Secretary: 'Ending the tenant tax to help tackle rogue landlords' (DCLG news release, 12 March 2015).

The House of Commons Library has produced a briefing note explaining the history and operation of selective licensing schemes: *Selective Licensing of Privately Rented Housing (England & Wales)* (standard note: SN/SP/4634, 17 March 2015).

Social housing allocation

The 2010–15 UK coalition government published its plans to amend the rules on social housing allocation contained in Housing Act (HA) 1996 Pt 6, to encourage greater mobility among council and housing association tenants: *Right to Move: response to consultation* (DCLG, 9 March 2015). The

plans were given effect by publication of new statutory guidance and regulations: (1) *Right to move: statutory guidance on social housing allocations for local housing authorities in England* (DCLG, March 2015); and (2) the Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 SI No 967.

A new free briefing paper from the House of Commons Library reviews the law, facts and issues on social housing allocation: *Allocating social housing (England)* (standard note: SN/SP/6397, 11 March 2015).

Gypsies and Travellers

On 25 February 2015, Housing (Wales) Act 2014 Pt 3 was brought into force: the Housing (Wales) Act 2014 (Commencement No 2) Order 2015 SI No 380 (W 39) (C 21). It makes new arrangements for site provision for gypsies and travellers in Wales.

Shared ownership

The Secretary of State for Communities, Eric Pickles, has announced that the UK government plans to simplify and speed up the process for the re-sale of shared ownership properties, by removing the right of first refusal for housing providers – known as the pre-emption right – where someone has managed to purchase the full 100 per cent share to buy their property outright: *Budget measures will deliver thousands of homes and jobs* (DCLG News Release, 19 March 2015)

HUMAN RIGHTS

Article 8

■ **Sagvolden v Norway**

App No 21682/11,
12 January 2015

In March 2004, Ms Sagvolden acquired an apartment as part owner and resident in a housing co-operative. In her request for approval, she indicated that her household would consist of one person (ie herself). Shortly afterwards, the board of the housing co-operative was made aware that her son, Mr A, had caused serious problems in another housing co-operative where she had previously been a part owner and resident. The board informed her that it contemplated withdrawing its approval of her as a part owner. It asked her to give a written undertaking that Mr A would not move to the apartment. She confirmed that she, not her son, would move in. In May 2006, the housing co-operative's lawyer pointed out that Mr A seemed to have moved into her apartment, in breach of the conditions for the approval of her as part owner. In June 2008, Mr A was convicted of offences of violent assault and frightening and disturbing

behaviour vis à vis neighbours. In April 2009, the lawyer sent Sagvolden a letter ordering her to sell her apartment. In April 2010, the Oslo City Court upheld the housing co-operative's request for an order of compulsory sale. Sagvolden unsuccessfully appealed that order and then complained to the European Court of Human Rights (ECtHR) that there had been a breach of article 8 of the European Convention on Human Rights (the convention).

The ECtHR has asked the parties: did the order compelling the applicant to sell her apartment entail an interference with her rights under paragraph 1 of article 8 of the convention that was not 'necessary' within the meaning of its paragraph 2?

POSSESSION CLAIMS

Damages for eviction pursuant to order

何靜敏 v 陳輝煌
[2014] HKCA 172,
11 April 2014

Ho was the registered owner of premises. Chan became her tenant. Chan did not occupy the premises himself but sublet. In May 2013, Ho applied to the Lands Tribunal for an order for vacant possession. Deputy District Judge Tracy Chan ordered Chan to surrender vacant possession on the basis that there was only a monthly tenancy at common law between the parties, which had been validly terminated by Ho by notice. Chan appealed but, by the time of the hearing of this appeal, Ho had already enforced the order by evicting all Chan's subtenants.

The Hong Kong Court of Appeal allowed the appeal. From the unchallenged facts, it was clear that the parties had entered into the legal relationship of landlord and tenant on the basis of the three-year tenancy, which was renewed in accordance with its terms. However, as Ho had already leased out the premises to other tenants, Chan accepted that the court would be reluctant to order her to redeliver possession of the premises. Instead, he sought compensatory damages against Ho for loss of rent from his subtenants for the period from the eviction of the subtenants until the end of the three-year tenancy. Ho argued that Chan was not entitled to any damages, as the eviction was made lawfully pursuant to the order, which was valid until set aside. Au J stated that although '[i]t is perhaps correct to say that the question of whether a tenant could claim damages caused by the landlord's execution of an order for possession which is subsequently reversed may be debatable in law', in this case it was 'only fair and correct [to order] that Ms Ho should pay damages for her breach of the 3-year renewed tenancy

agreement in taking possession of the premises' (paras 58–59). The case was remitted to the Lands Tribunal for assessment of damages.

Equality Act

■ Akerman-Livingstone v Aster Communities Ltd (formerly Flourish Homes Ltd)

[2015] UKSC 15,
11 March 2015

Akerman-Livingstone had severe prolonged duress stress disorder (PDS). In 2010, he was homeless. Mendip District Council (MDC) agreed that it owed him the main housing duty to secure that housing was available (HA 1996 s193(2)). The council ensured he was given temporary accommodation with what later became Aster Communities Ltd, a housing association. Subsequently, MDC wanted Akerman-Livingstone to choose another property as his permanent accommodation. He could not cope with what was involved. Eventually, MDC informed Akerman-Livingstone that it had discharged its duty and required Aster to take proceedings to evict him from the temporary accommodation. Akerman-Livingstone defended the claim, arguing that the bringing of the proceedings amounted to discrimination against him by reason of his disability, in breach of Equality Act (EA) 2010 s15. HHJ Denyer held that, in the light of Aster's aims in getting back possession of the property to comply with MDC's direction, Akerman-Livingstone did not have a seriously arguable case that Aster had breached the EA 2010. He held that there was no need for a trial and that Aster should have an immediate possession order. Cranston J dismissed Akerman-Livingstone's appeal. He brought a second appeal. The Court of Appeal dismissed that appeal ([2014] EWCA Civ 1081, 30 July 2014; September 2014 Legal Action 46).

The Supreme Court unanimously dismissed a further appeal. However, Lady Hale, Lord Neuberger and Lord Wilson all stated that HHJ Denyer had misdirected himself in adopting the same approach to the defence of disability discrimination as to the alleged breach of article 8 of the convention. A complaint of disability discrimination under EA 2010 s15 in response to a possession claim raises two key questions: (i) whether the eviction is 'because of something arising in consequence of' the complainant's disability; and (ii) whether the landlord can show that the eviction is a proportionate means of achieving a legitimate aim (para 18). A court considering whether an eviction is proportionate under article 8 can assume an order would meet the legitimate aims of vindicating a local authority's property rights and of enabling it to comply with its statutory duties. In virtually every case, there

will be a strong argument for finding that the possession order would be a proportionate means of achieving those aims. However, the substantive right to equal treatment protected by the EA 2010 is different from and extra to the article 8 right. It applies to private as well as public landlords. It prohibits discriminatory treatment and grants additional rights to disabled people to reasonable adjustments to meet their particular needs. It cannot be taken for granted that the aim of vindicating the landlord's property rights will almost invariably make an eviction proportionate. The protection afforded by EA 2010 s35(1)(b) is plainly stronger than that given by article 8 (paras 31, 55–58). The burden will be on the landlord to show that there were no less-drastic means available and that the effect on the occupier was outweighed by the advantages (para 34). Summary disposal may still be appropriate, but not in cases where a claim is genuinely disputed on grounds that appear to be substantial, or where disclosure or expert evidence might be required (paras 36, 60). However, supervening events meant an order for possession was now inevitable.

Introductory tenants

■ Islington LBC v Giama; Islington LBC v Dyer

Central London County Court,
18 December 2014

Giama and Dyer were introductory tenants. Islington sought possession against Giama after incidents of serious nuisance. It sought possession against Dyer after an alleged assault at the property. Neither Giama nor Dyer exercised their right of review under HA 1996 s128 within the prescribed time limits. They raised defences that the s128 notices were defective in that although they contained information as to the right of review under s128(6), they did not contain the information contained in s128(7) directing them to seek legal advice. Islington claimed that other documentation served with the notices contained the information concerning seeking legal advice. District Judge Sterlini held that the notices were valid and ordered possession.

HHJ Baucher allowed the tenants' appeals and set aside the possession orders. The requirement in s128(7) was mandatory. As a matter of construction, the notices did not include the required information.²

Execution of warrants

■ London and Quadrant Housing Association v Watson

Central London County Court,
31 October 2014

Mr Watson was an assured tenant. As a result of rent arrears of some £4,000, a possession

order was made, but its execution was suspended on terms. Following problems with housing benefit, he breached the terms of suspension. A warrant was issued. While he was in the process of applying to suspend the warrant, it was executed. Watson had not received any letter or other notice of the eviction. District Judge Reeves dismissed his application for re-entry, stating that there was no right to be notified of the eviction and this could not amount to oppression.

HHJ Saggerson allowed Watson's appeal. District Judge Reeves was wrong in failing to consider the various circumstances in which oppression could arise and prejudice the defendant. These included the lack of service of notices. Although he was correct that there was no rules-based requirement to serve a notice, District Judge Reeves's approach was flawed because he did not take into account the importance of the N54 notice of eviction form as set out in *St Brice and another v London Borough of Southwark* [2001] EWCA Civ 1138, 17 July 2001; [2002] 1 WLR 1537.³

CRIMINAL PROSECUTIONS

■ **Barnet LBC v Gregory**

Willesden Magistrates' Court,
16 December 2014

In April 2014, the council let a flat to the defendant. Within weeks, he advertised for, and found, a subtenant willing to pay £600 a month. He moved out but continued to claim housing benefit.

On a guilty plea, he was sentenced to eight weeks' imprisonment, suspended for 12 months, required to undertake a 12-month supervision order, ordered to pay £100 towards the council's costs and made liable for an £80 victim surcharge.

■ **Northern Ireland Housing Executive v Campion**

Belfast Magistrates' Court,
12 December 2014

The defendant sublet the house that he rented from the Northern Ireland Housing Executive for £350 a month, but continued to claim another £250 a month in housing benefit towards his own rent. The income enabled him to move into more expensive accommodation in the city.

He was sentenced to three months' imprisonment, suspended for a year.

■ **Ealing LBC v Gill**

Isleworth Crown Court,
5 December 2014

The defendant was a private landlord. Without planning consent, he used his property as five self-contained flats and its garden outbuilding as another flat. The flats could have been used for accommodation for more than 12 people.

An enforcement notice required him to remove all en suite kitchens, internal partitions and the doors being used to separate the flats. An appeal against the notice failed but he still did not comply.

He was conditionally discharged for 18 months and ordered to pay £4,765.57 towards costs and a £15 victim surcharge. The court also made a confiscation order for £66,325 in respect of the rent he had collected. He was given six months to pay with 18 months in prison in default.

■ **Oxford CC v Selita**

Oxford Magistrates' Court,
23 January 2015

The defendant was a private landlord. When his tenant went abroad to visit relatives, all the fixtures and fittings were removed from the property, including the kitchen, the bathroom, all the flooring and most of the internal doors. The house was totally uninhabitable and all the tenant's personal possessions were taken from his locked room and dumped in a leaky garden shed. Many were damaged beyond repair.

The landlord was fined £1,800 for harassment with costs of £1,260, a victim surcharge of £120 and compensation of £3,070.

HOMELESSNESS

Applications

■ **R (XX) v Southwark LBC**

CO 2035/2014,
30 January 2015

The claimant was homeless. He went to the council's offices with his family to seek accommodation. The first time he visited, he was turned away. The second time, he was provided with a single room on the basis that the family could occupy it while he looked for private rented accommodation. It was only after the intervention of solicitors that the council treated him as having made an application for homelessness assistance under HA 1996 Pt 7. Suitable interim accommodation was only provided after a judicial review claim was issued. The claimant contended that the council was undertaking gatekeeping ('a number of unfair policies and practices that unlawfully defer or avoid the making of a homelessness application').

By consent, the Administrative Court ordered extensive changes to the council's 'housing options' arrangements upon the council agreeing 'to cease with immediate effect all of the policies and practices set out in the claimant's detailed grounds of challenge'.⁴

■ **R (MT) v Oxford CC**

[2015] EWHC 795 (Admin),
6 March 2015

The claimant lacked mental capacity to manage his property and financial affairs. He lived in his family home and received care from his father. His father asked him to leave. He applied for homelessness assistance under HA 1996 Pt 7. The council refused to accept an application from the claimant (or from anyone else who lacked capacity to enter into a tenancy and/or manage a tenancy or understand their obligations under the tenancy). It indicated that assistance might be provided under National Assistance Act (NAA) 1948 s21 by the social services authority. The claimant sought a judicial review contending that the council's approach was inconsistent with his right under article 14 of the convention (read with article 8) to freedom from discrimination.

HHJ Sycamore, sitting as a deputy judge of the High Court, dismissed a claim for judicial review. Following and applying *R v Oldham MBC, ex p Garlick* 18 March 1993; [1993] AC 509, he held that an applicant had to be capable of accepting or rejecting accommodation if offered in performance of the HA 1996 Pt VII duties. It was not unlawful discrimination to provide two separate schemes for accommodation for the mentally disabled in need of care and attention (NAA 1948) and the non-disabled (HA 1996). The alleged incompatibility with the claimant's convention rights had not been made out.

Interim accommodation Local Government Ombudsman complaint

■ **Complaint against Harrow LBC**

Complaint No 13 018 894,
11 February 2015

The council placed a homeless family in B&B accommodation for nearly 13 weeks – double the legal limit permitted by the Homelessness (Suitability of Accommodation) (England) Order 2003 SI No 3326. The Local Government Ombudsman found that this was not an isolated case and that the statutory maximum had also been exceeded by the council in other cases. The council had recently addressed the procurement of both self-contained emergency and settled accommodation in its area, but there were still families in B&B accommodation for longer than six weeks.

The Ombudsman recommended that the council pay the complainant £400 in recognition of the distress it caused his family and consider making similar payments to other people who have also suffered injustice as a result of living in B&B accommodation for more than six weeks.

Intentional homelessness**■ Enfield LBC v Najim***[2015] EWCA Civ 319,*

4 March 2015

Najim lost her private sector tenancy because the landlord declined to renew it, recovered possession and re-let. She applied for homelessness assistance. The council decided, on a review, that she had become homeless intentionally (HA 1996 s191) because she had withheld her rent and that had been the cause of the claim for possession against her. Najim said she had withheld rent in order to fund the replacement of a washing machine. A judge quashed the review decision and the council appealed.

The Court of Appeal allowed the council's appeal. The reviewing officer had made no error of law and had been entitled to find that non-renewal of the tenancy was the reasonable result of the failure to make payment of rent when due.

■ Samuels v Birmingham CC*B5/2014/2185,*

27 January 2015

Samuels was a private sector tenant. She had a shortfall of over £150 a month between her housing benefit and her rent. When she lost her accommodation and applied for homelessness assistance, the council decided her accommodation had been affordable and that she had become homeless intentionally (HA 1996 s191). An appeal to the county court was dismissed.

The Court of Appeal has granted permission for a further appeal on three grounds: (1) the council erred in its approach to 'affordability'; (2) the judge had wrongly relied on an email from the reviewing officer – produced at the hearing of the appeal – that, for the first time, set out the number of children that he had included in her family; and (3) inadequate reasons as to how the accommodation was 'affordable' and what expenditure of hers had been excessive (when Samuels was entirely reliant on state benefits). The appeal will be heard on 6 or 7 October 2015.

Appeals**■ Ranza v Northern Ireland Housing Executive***[2015] NIQB 13,*

13 February 2015

The applicant wanted to appeal to the county court about a homelessness decision. Her appeal was lodged three days out of time. She applied for an extension of time. An extension could only be granted if she could establish a 'good reason' for not filing the appeal in time (the same term as found in HA 1996 s204(2A)). Her application was initially refused.

On her appeal against that refusal, Stephens J set out the following non-exhaustive list of

factors that might amount to 'good reason' in this context:

... delays in obtaining legal aid, the applicant having no funds to support any appeal absent legal aid being forthcoming, the applicant's socially disadvantaged position, whether the applicant suffers from alcoholism or drug addiction, whether the applicant is chaotic in her lifestyle, whether [the] applicant needs to obtain and to rely upon advice, whether that advice comes from charitable organisations who in turn would not have the funds available to support any appeal absent legal aid being forthcoming, whether the applicant has no permanent address so that letters cannot be sent and received by the applicant in the ordinary course of the post, whether the applicant has no mobile telephone or whether the applicant has insufficient finances to pay for a 'pay as you go' mobile telephone and whether the applicant has no landline (para 12).

The court held that the applicant's personal circumstances (which led to delays as she attempted to obtain legal advice and to complete legal aid forms), the difficulties she encountered in obtaining legal advice from a charitable organisation, and her need to obtain legal aid were all individually and/or cumulatively good reasons for the late appeal. It followed that the court had a discretion to extend time. The appeal was allowed and the discretion to extend time was exercised because:

The period of delay was three days. There is no suggestion made on behalf of the Executive that this appeal is hopeless. There is no prejudice to the Executive caused by reason of the three-day delay. There would be substantial prejudice to the applicant if she was entitled to accommodation and that accommodation was not provided (para 19).

HOUSING AND CHILDREN**■ R(AM) v Havering LBC and Tower Hamlets LBC***[2015] EWHC 1004 (Admin),*

17 April 2015

The claimant lived with his wife and two young children. Tower Hamlets decided that he had become homeless intentionally (HA 1996 s191). Its housing department notified its children's services department of that decision, as required by HA 1996 s213A. A social worker began an assessment of the household's needs but was instructed to discontinue it when the legal department advised that because Tower Hamlets had placed the family in temporary accommodation

in Havering, any assessment duty lay on that council. Tower Hamlets 'referred' the case to Havering on the afternoon prior to expiry of the temporary accommodation booking. Havering contended that case responsibility lay with Tower Hamlets. Neither council would accept responsibility and the household were locked out of the temporary accommodation and left on the streets.

In a claim for judicial review brought against both councils, Cobb J held that Tower Hamlets had:

- failed to notify Havering of the placement in its borough contrary to HA 1996 s208;
 - wrongly terminated the Children Act (CA) 1989 assessment on which it had embarked;
 - failed to make a timely or effective referral to Havering; and
 - failed to continue the provision of temporary accommodation while its children's services department or Havering's completed the CA 1989 assessment.
- He held that Havering had:
- wrongly decided that the children did not appear to be in need (so that no assessment was necessary); and
 - failed to begin and conclude a CA 1989 assessment.

He made a mandatory order that Havering undertake an assessment and provide accommodation until it be completed. Applications from both councils for permission to appeal were refused.⁵

1 Visit: <https://www.gov.uk/government/news/crime-news-online-training-on-anti-social-behaviour-crime-and-policy-act>

2 Tim Baldwin, barrister, London.

3 Tim Baldwin, barrister, London.

4 Jamie Burton, barrister, London; Lara ten Caten, associate Hansen Palomares, London.

5 Tim Baldwin, barrister, London; Lou Chrisfield, solicitor, Miles & Partners, 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 notes 2–5.