Recent developments in housing law

Decline in the take-up of housing legal aid; homelessness on the rise; updated guide to adverse possession; and key decisions over human rights, possession and homelessness claims. Jan Luba QC and Nic Madge provide their monthly round up.

POLITICS AND LEGISLATION

New pre-action protocols

The pre-action protocols governing the three largest categories of housing cases have been revised and reissued and came into effect on 6 April 2015. They are the:

- Pre-Action Protocol for Possession Claims by Social Landlords;
- Pre-Action Protocol for Possession Claims Based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property; and
- Pre-Action Protocol for Housing Disrepair Cases.

The first of these replaces the old Pre-Action Protocol for Possession Claims based on rent arrears and includes important new requirements in claims for possession against occupiers of social housing who do not have security of tenure.

Legal aid for housing cases

The volume of legally aided housing cases halved between April to June 2012 and April to June 2013. In the last quarter of 2014, there was a further 9 per cent decrease compared to the same quarter in the previous year: *Legal Aid Statistics in England & Wales: October to December 2014* (MoJ, March 2015). The decrease was mainly in legal help, which comprises more than 80 per cent of overall housing legal aid volume. Compared to the same quarter last year, the number of housing cases fell from 14,490 to 13,230.

Homelessness

The latest homelessness statistics for England show that 13,650 households were accepted as homeless between 1 October and 31 December 2014, 6 per cent higher than during the same quarter of 2013: *Statutory Homelessness in England: October to December Quarter 2014* (DCLG, March 2015). On 31 December 2014, there were 61,970 households in temporary accommodation, 9 per cent higher than at the same date in 2013.

The statistics also show that 2,040 families with children were in bed and breakfast style accommodation on 31 December 2014. That is an increase of 31 per cent from 1,560 a year earlier. Of these 2,040 households, 780 (38 per cent) had been in bed and breakfast style accommodation for more than the legal maximum of six weeks (60 of which were pending review). This is an increase of 55 per cent since the end of the same quarter last year, when the number was 500.

The new homelessness regime in Wales came into effect on 27 April 2015: Housing (Wales) Act 2014 Part 2 and the Housing (Wales) Act 2014 (Commencement No 3 and Transitory, Transitional and Saving Provisions) Order 2015 SI No 1272. The Housing (Wales) Act 2014 (Consequential Amendments) Regulations 2015 SI No 752 enable local authorities in Wales to contract-out their homelessness functions under the act from the same date.

When a council in England accommodates a homeless person outside its own district, Housing Act (HA) 1996 s208 requires prompt written notice to be given, containing prescribed details. The notice is to be given to the council for the district in which the person is placed. Recent replies to Freedom of Information (FoI) requests suggest that notices are either being given late, or not at all, or are given containing insufficient particulars: 'Thousands of homeless people moved around London without councils informing each other,' the *Independent*, 22 April 2015.

Letting agents and managing agents

The Consumer Rights Act 2015 ss83–88 deal with letting agents' fees. An impact assessment on these measures has been published: *Transparency of Letting Agents Fees* (DCLG, March 2015). Ahead of commencement of the provisions, a new report explains how some letting agents are still exploiting private renters and what this says about consumer protection: *Still let down* (Citizens Advice, March 2015).

The act's broad definition of 'letting agent' includes members of the legal profession acting in a professional capacity on lettings-related work, for example where a landlord instructs a solicitor to draft a tenancy agreement. The Duty of Letting Agents to Publicise Fees etc (Exclusion) (England) Regulations 2015 SI No 951 came into force on 27 May 2015 and excludes legal professionals from the requirement to publicise their fees etc when they engage only in legal activity within the meaning of Legal Services Act 2007 s12.

Part 1 of the Housing (Wales) Act 2014 includes a requirement for most residential landlords, letting agents and managing agents to be registered with, or to obtain a licence from, a designated licensing authority. The Regulation of Private Rented Housing (Designation of Licensing Authority) (Wales) Order 2015 SI No 1026 designates Cardiff Council as the licensing authority for the whole of Wales for these purposes.

In respect of England, the House of Commons Library has published *The regulation of private sector letting and managing agents (England)* (Standard Note: SN/SP/6000, March 2015).

New rules on selective licensing

On 1 April 2015, a new general approval came into force under which local authorities are now required to obtain confirmation from the secretary of state for any selective licensing scheme which would cover more than 20 per cent of their geographical area or would affect more than 20 per cent of privately rented homes in that area: *The Housing Act 2004: licensing of houses in multiple occupation and selective licensing of other residential accommodation (England) general approval 2015* (DCLG, March 2015). Guidance has been issued to local authorities on dealing with the new requirements: *Selective licensing in the private rented sector: A Guide for local authorities* (DCLG, March 2015).

Private renting: energy and safety measures

On 26 March 2015, Energy Act 2011 ss42–53 were brought into force: the Energy Act 2011 (Commencement No 3) Order 2015 SI No 880. These provisions relate to energy efficiency in the private rented sector in England and Wales.

The Association for the Conservation of Energy has published a new research brief, *Chilled to Death: The human cost of cold homes* (ACE, March 2015).

Energy Act 2013 s150 was brought into force on 11 March 2015 to enable regulations to be made to require the provision by landlords of smoke and carbon monoxide alarms: the Energy Act 2013 (Commencement No 2) Order 2015 SI No 614.

Squatting

A report from the campaign group SQUASH suggests that there have been at least 588 arrests, 200 prosecutions and 51 convictions since trespass in residential premises was made a criminal offence by LASPO s144, with 75 per cent of those arrests occurring in London: *Homes, Not Jails* (SQUASH, April 2015).

An updated guide explains the Land Registry's approach to applications based on adverse possession for: (1) first registration of unregistered land; and (2) registration as proprietor of registered land where a squatter was in adverse possession for the requisite limitation period so as to have acquired a right to be registered as proprietor before 13 October 2003: *Practice Guide 5: adverse possession* (Land Registry, March 2015). It also explains the procedures for making such applications and the options available to those served with notice of them. A separate guide deals with adverse possession applications in respect of registered land under the new regime set out in Schedule 6 to the Land Registration Act 2002: *Practice guide 4: adverse possession of registered land* (Land Registry, October 2014).

A new Ombudsman for Housing?

On 25 March 2015, the 2010–15 UK coalition government launched a consultation paper about proposals to absorb the roles of the Housing Ombudsman and the Local Government Ombudsman into the jurisdiction of a new Public Service Ombudsman for England: *A Public Service Ombudsman: A Consultation* (Cabinet Office, March 2015). The proposals are based on the Gordon report: *Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public services ombudsmen* (October 2014, Robert Gordon CB). Any responses should be made by 16 June 2015.

Meanwhile, the Property Ombudsman has published his *Annual Report* for 2014. It shows that significant numbers of complaints about letting agents continue to be received from both tenants and landlords.

HUMAN RIGHTS

Article 6

■ Botezatu v The Republic of Moldova

Application No 17899/08, 14 April 2015

Radu Botezatu was a police officer. In July 2004, the Centru District Court ordered the Chişinău municipality to provide him and his family with social housing. Enforcement proceedings were instituted in May 2005. In August 2011, Botezatu began court proceedings to enforce the judgment and for compensation. In February 2012, the Chişinău Court of Appeal acknowledged a violation of the applicant's rights under the European Convention of Human Rights (the convention) article 6 resulting from the non-enforcement of a final judgment for a period of 78 months, namely from May 2005 to November 2011. It awarded MDL 36,000 (equivalent to €2,270) in respect of non-pecuniary damage and a sum for costs and expenses. The court dismissed his claims for pecuniary damage as unsubstantiated. In August 2012, the municipality issued an occupancy voucher, entitling him to move into a new flat. He complained to the European Court of Human Rights (ECtHR). The government acknowledged that there had been a violation of article 6 and article 1 of Protocol No 1, but argued that the redress awarded by the domestic courts had been sufficient and adequate.

The ECtHR stated that it was clear that Botezatu must have suffered pecuniary damage as a result of his lack of control over his possessions and the denial of the possibility of using and enjoying the social housing granted to him under a final judgment. These losses were sustained as a result of the non-execution of a final judgment for a period of 78 months. The failure of domestic courts to award compensation under this head was, therefore, manifestly unreasonable. Botezatu had not been able to obtain adequate redress in respect of the delayed enforcement of the judgment. The failure to enforce the judgment for a period of 78 months constituted a violation of article 6 and article 1 of Protocol No 1. The court awarded €9,461 for the pecuniary damage sustained. It also awarded €1,300 in respect of non-pecuniary damage.

■ Happi v France

Application No 65829/12, 9 April 2015

Tchokontio Happi lived in 'indecent and insalubrious conditions' and applied for social housing. She obtained a judgment in December 2010 requiring that she be rehoused. Although the state was ordered to pay and did pay fines for the breach, Happi was not rehoused over three-and-a-half years later (even though the French courts had indicated that her case had to be resolved with particular urgency). Although the fine had been enforced and paid, it had no compensatory function and was not paid to the applicant but to a state-run fund.

The ECtHR noted that execution of a judgment is one of the aspects of the right to a fair trial. It held that the failure to enforce the judgment could not be justified by relying on lack of funds or other resources and that there had been a breach of article 6. However, the court held that the right to social housing did not constitute a 'possession' for the purposes of Protocol No 1, article 1. It noted that the judgment provided for Happi's rehousing, not that she be given ownership of a property.

Article 8

■ Jones v Canal and River Trust

[2015] EWHC 534 (QB), 6 March 2015

Matthew Jones was a canal boat owner who lived on his boat which was called 'The Mrs T'. The trust terminated his continuous navigation licence and brought proceedings for declaratory and injunctive relief, claiming that it was entitled to remove the boat from the waterway and to prevent its return. HHJ Denyer QC struck out a defence based on article 8 (right to respect for a home).

McGowan J dismissed an appeal against that order. As a public body which was not a housing authority, the trust could not owe any duty in relation to Jones's housing needs under article 8. Any test to be applied to a local authority housing department would not apply and no proportionality argument, however it was to be determined, could arise. Nevertheless, the judge had considered whether the article 8 point might raise a triable issue. His conclusion was that the trust could not be expected to investigate or deal with the appellant's article 8 rights, as the burden imposed would be too great, and the reasoning of HHJ Denyer QC could not be faulted.

POSSESSION CLAIMS

Reasonableness and suspension

■ City of Lincoln Council v Bird

[2015] EWHC 843 (QB), 26 March 2015

Michael Bird was the secure tenant of a flat. He was 68 years old, had a number of health complaints and was registered on the Sex Offenders Register. Lincoln brought a claim for possession and applied for an anti-social behaviour injunction against Bird on the grounds that he had committed acts of anti-social behaviour. Shortly afterwards, an interim anti-social behaviour injunction was made against Bird. There were no further allegations of nuisance after this injunction had been granted. At the possession trial, Mr Recorder Evans found that Bird had been guilty of using serious abusive and harassing language to his neighbours and council staff. This language included swearing and the use of sexual innuendo in public. The judge found this language to be both threatening and embarrassing to those to whom it was directed. He also found that Bird, after a number of complaints had been made against him, had attended the authority's offices and threatened

to kill one of its officers, for which he had received a caution from the police. Mr Recorder Evans refused to make a possession order on the grounds that the nuisance was ancient history and that since the injunction had been made, Bird had got the message. It was an exceptional case and one in which, when taking into account Bird's own circumstances, it was not reasonable to make a possession order. Lincoln appealed.

Cranston J allowed the appeal. Bird's neighbours had described his behaviour as both threatening and intimidating; the judge had failed to consider this properly when reaching his decision and he had, therefore, failed to consider the impact of Bird's behaviour on his neighbours in accordance with HA 1985 s85A. It was unnecessary to remit the matter to the county court as there was only one rational decision available to the court and that would be to make a possession order. However, as Bird's behaviour had improved from the date of the injunction, it was appropriate to suspend the possession order.

Relief from sanctions

■ Home Group Limited v Matrejek

[2015] EWHC 441 (QB),
23 February 2015

In October 2013, the claimant, a social housing provider with charitable status, began a possession claim against the defendant who was one of its tenants. In April 2014, the claimant failed to attend a directions hearing before HHJ Lochrane. He dismissed the claim with costs. The claimant applied for relief from sanctions pursuant to CPR 3.9. In June 2014, the judge granted relief from sanctions and reinstated the claim. The defendant appealed.

Sweeney J dismissed the appeal. The application for relief was made in good time. Although this was a serious or significant default, albeit one which was not at the top end of the scale, the judge was in the best possible position to assess the nature and effect of the order and entitled to conclude that the claimant did not understand the purpose of the directions hearing. Sweeney J concluded by noting that 'this was the exercise of discretion in the context of a case management decision and that such decisions are not lightly to be interfered with' (para 48).

Mental capacity

■ Evesham and Pershore Housing Association Ltd v Werrett

[2015] EWHC 1060 (QB),
20 April 2015

The association sought possession against the defendant tenant as a result of his anti-social behaviour. A possession order was made subject to conditions. A judge was satisfied that the conditions had been breached. A warrant was issued and the tenant sought to suspend it. An issue then arose as to whether the tenant had the mental capacity to conduct the proceedings. HHJ Harington decided he did. The Official Solicitor provided a further medical report about capacity but the judge refused to disturb his earlier decision.

Nicol J refused permission to appeal. The judge had made no error of jurisdiction or approach. He had not 'either misstated or misunderstood the evidence' (para 35). The judge had not fallen into the error of considering that the statute required total incapacity.

RENT ACT AND ASSURED TENANCIES

■ Swanbrae Ltd v Ryder

[2015] UKUT 69 (LC),
24 February 2015

Janet Ryder occupied residential premises. In 1994, possession proceedings were settled on the basis that she would be granted an assured tenancy. Between 1994 and 2013, notices of increase of rent were given under HA 1988 s14. They were referred on five occasions to rent assessment committees and four times the rent was increased to the market rate. In 2013, the landlord sought a further increase but the First-tier Tribunal (Property Chamber) struck out the application on the grounds that the tenancy was still a regulated tenancy under the Rent Act 1977 and not an assured tenancy. It held that the 1994 tenancy agreement came into being as a result of an agreement, which was caught by Rent Act 1977 s45(1).

Martin Rodger QC, deputy president of the Upper Tribunal, allowed an appeal. There had been no evidence before the First-tier Tribunal that prior to 1994 the relationship of landlord and tenant had existed between the current parties. The tenancy was an assured tenancy and there was jurisdiction to determine a rent under s14.

TENANCY DEPOSITS

■ Okadigbo v Chan

[2014] EWHC 4729 (QB),
23 October 2014

Michael Okadigbo was the assured shorthold tenant of a house. Dr and Mrs Chan claimed possession and arrears of rent. Okadigbo counterclaimed for a penalty payment pursuant to HA 2004 s214(4) for a failure to place the deposit in an appropriate scheme and to provide the prescribed information at the proper time. The tenancy agreement commenced on 1 August 2012. The deposit was required to be protected by 31 August. The deposit was protected on 5 March 2013, and the relevant information was provided on 8 July 2013. Dr and Mrs Chan admitted liability for the breaches and were, therefore, liable for a mandatory penalty payment. HHJ Carr found that Dr and Mrs Chan were not experienced landlords; that it was the first time that they had let out any property; and that they had quite properly put the matter in the hands of professional managing agents who let them down by not complying with the terms of the act. She found the case to be at the lowest end of the scale of culpability for non-compliance and awarded the equivalent of one month's rent, ie £1,520. Ogadigbo appealed.

Males J dismissed the appeal. The judge was entitled to regard the question of culpability as the most relevant factor. She was entitled to find that the culpability fell at the lowest end of the scale for the reasons which she gave. It was not as if the breach was uncorrected and, therefore, although the tenants were lacking the protection for a period of some months, in the end matters were put right. It was impossible to say that that was a wrong exercise of discretion.

■ Owens v Grose

[2015] EWHC 839 (QB),
27 March 2015

The defendants, Steven and Virginia Grose, let a house to the claimants, Stephen and Abigail Owens on a six-month assured tenancy. A deposit of £1,575 was paid. The deposit was safeguarded by the Tenancy Deposit Scheme and subject to a dispute resolution service provided by the Dispute Service Limited using an independent case examiner. The defendants wrote a letter as part of the dispute process in which they were critical of the condition of the property left by the claimants as tenants. The tenants sued for defamation.

Dingemans J held that the letter was protected by qualified privilege and the claimants had no prospect of adducing evidence of malice sufficient to overcome that privilege. The deposit stakeholder had an interest and duty in receiving the material contained in the letter and there was no evidence of malice to defeat the landlord's defence of qualified privilege to the tenants' defamation action. Their claim was dismissed.

LETTING FEES

■ ASA Adjudication on Hamptons Estates Ltd t/a Hamptons International

Complaint ref A15–291100,
22 April 2015

A property listing on Hamptons' website described the letting as '£1,200 per Calendar Month + £216 incl VAT admin fee per property + other fees may apply.' The text '+ £216 incl

VAT admin fee per property + other fees may apply' was hyperlinked to further details about related fees. A user complained to the Advertising Standards Authority (ASA) that the charges were unclear.

The ASA upheld the complaint. It found that there were other non-optional fees that consumers would have to pay if they rented the property. These fees were a referencing charge and a check-in charge, which would be combined with the administrative charge into an all-inclusive fee (at the Bristol branch).

For other branches, the referencing charge was one of two fixed prices depending on whether the consumer was a tenant or a business, and the check-in charge varied depending on the size of the property. The advert was held to be misleading.

LONG LEASES

Service charges

■ Waaler v Hounslow LBC

[2015] UKUT 17 (LC), 26 January 2015 (see April 2015 *Legal Action* 45)
[2015] UKUT 188 (LC), 24 March 2015

The Upper Tribunal has given permission to appeal to the Court of Appeal. It held that the approach to the reasonableness of service charges is different depending upon whether the costs relate to works of repair or works of improvement. The tribunal recognised that the issue is one of significance and importance with a potentially wide impact.

■ Hyslop v 38/41 CHG Residents Company Ltd

[2015] UKUT 46 (LC), 16 February 2015

A landlord applied to a leasehold valuation tribunal (LVT) for a ruling that service charges were recoverable from a tenant. The landlord paid the application fee and its application succeeded. The LVT ordered that the fee be reimbursed by the tenant. The tenant appealed on the basis that the LVT should have considered her income and her eligibility for a fee waiver.

HHJ Robinson, sitting in the Upper Tribunal, held that there was no obligation on the LVT to enquire whether the appellant was in receipt of a qualifying benefit and dismissed the appeal.

■ Islington LBC v Cain

[2015] UKUT 117 (LC), 26 March 2015

Islington brought a claim in the county court for unpaid service charges. The tenant sought to defend the matter by challenging the way his service charge had been apportioned under his lease. The county court ordered that 'the matter be referred to the leasehold valuation tribunal … to determine the reasonableness of the service charges demanded'. The parties subsequently reached an agreement that he would pay 50 per cent of his service charge. The First-tier Tribunal still determined the question of how his service charge was to be apportioned. On an appeal to the Upper Tribunal, Islington contended that the First-tier Tribunal had lacked jurisdiction to determine the matter on two grounds: first, the issue of apportionment had not been transferred to the First-tier Tribunal by the county court and, second, Cain had admitted that he was liable to pay 50 per cent of the service charge.

Martin Rodger QC, deputy president of the Upper Tribunal, allowed the appeal in part. The jurisdiction of the First-tier Tribunal in a case transferred to it from the county court is confined to the question transferred and all issues comprehended within that question. However, that principle ought to be applied in a practical manner, with proper recognition of the expertise of the First-tier Tribunal in relation to residential service charges. When trying to identify which subsidiary issues ought properly to be treated as being included within the scope of the questions transferred, it is not appropriate to be too pedantic, especially where an order transferring proceedings is couched in general terms and where there is no suggestion that the court intended to reserve for itself any particular question. In this case, the question of apportionment under the lease was a necessary prerequisite before the First-tier Tribunal could consider whether the sum payable was reasonable. The First-tier Tribunal, therefore, had jurisdiction to consider the issue. However, Cain had, by agreement, admitted that an amount of the service charge was payable. It followed that the First-tier Tribunal lacked jurisdiction under Landlord and Tenant Act (LTA) 1985 s27A(4) to hear the claim.

■ One Housing Group Ltd v Wright and others

[2015] UKUT 124 (LC), 19 March 2015

A landlord was entitled to appropriate payments to the earliest service charge debts in circumstances where there was no evidence that the tenant had specified that the payments were to be applied to the latter debts; it followed that the service charge arrears, which had been reserved as rent, had not been extinguished by Limitation Act 1980 s19.

■ Pendra Loweth Management Ltd v North

[2015] UKUT 91 (LC), 19 March 2015

In a dispute about whether a demand for estimated service charges was payable, the Upper Tribunal held that:

(1) The obligation under the lease to pay an estimated service charge at the start of the year was not expressed to be conditional on the landlord producing audited accounts even though the lease required the service charge account to be audited at the end of every year.

(2) Where parties agree that one of them is to be trusted to make an estimate which the other is required to pay, subject to an account being taken at a later date, and the estimate is made in good faith, there is little or no scope to challenge the estimate except by relying on LTA 1985 s19. Even then, s19 will only be likely to be of relevance where a deliberately inflated estimate has been submitted in bad faith or an entirely arbitrary figure has been chosen.

(3) LTA 1987 s47 did not apply to service charge demands served by persons other than the landlord, eg a management company. This was because LTA 1987 s60(1) defined 'landlord' as meaning 'the immediate landlord'; there is no statutory extension of the expression 'landlord' to include any person with the right to enforce the payment of a service charge.

(4) In this case, the obligation on the lessee was to pay the various charges to the management company not the landlord. The sanction in s47(2), ie that service charges were not lawfully due, had no application as the sums in issue were not payable to the landlord. The demand for their payment was, therefore, not a 'demand' for the purpose of s47.

Right to manage

■ Triplerose Ltd v 90 Broomfield Road RTM Co Ltd

[2015] EWCA Civ 282, 27 March 2015

The Court of Appeal has decided that a right-to-manage company set up by leaseholders can only acquire the management of one self-contained building. It could not cover all the blocks of flats on an estate.

LICENSING OF HMOs

■ R (East Midlands Property Owners Ltd) v Nottingham City Council

[2015] EWHC 747 (Admin), 20 March 2015

On 17 September 2013, the council's executive board decided, in respect of a number of identified areas within its district, to exercise its powers, given by HA 2004 s56, to designate those areas as subject to 'additional licensing' in relation to houses in multiple occupation (HMOs) specified in the designation. The designation was to come into force on 1 January 2014 and run for up to five years. The claimant sought a judicial review of that decision.

Wilkie J rejected the claim on the basis that it was out of time. In any event, the council had engaged in a lawful consultation.

■ **Urban Lettings (London) Ltd v London Borough of Haringey**

[2015] UKUT 104 (LC), 5 March 2015

The council found an unlicensed HMO in its area and applied to the Residential Property Tribunal for a rent repayment order. The tribunal made an order for repayment of £16,000 in housing benefit that had been paid to Urban Lettings (London) Ltd in respect of the premises. The company appealed, contending that it was not responsible for the HMO.

HHJ Behrens, sitting in the Upper Tribunal, dismissed the appeal. After noting the definition of 'the appropriate person' in HA 2004 s73(10) as 'the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation', he stated that the authorities showed a consistent theme of courts seeking to establish and give effect to the policy of the legislation and to avoid a situation where no one is responsible for the relevant obligations.

HOME LOSS AND COMPENSATION PAYMENTS

■ **R (Mahoney) v Secretary of State for Communities and Local Government**

[2015] EWHC 589 (Admin), 9 March 2015

The claimants lived in caravans. When required to leave them, they would normally have received home loss payments, but Land Compensation Act 1973 s33(2) precluded the making of home loss payments to caravan dwellers, unless no suitable alternative site is available on reasonable terms.

Lindblom J dismissed a claim that this additional requirement was discriminatory and incompatible with article 14, read together with article 8 and article 1 of Protocol No 1.

CRIMINAL PROSECUTIONS

Harassment

■ **Wall v Information Commissioner**

Appeal No EA/2014/0265, 13 April 2015

The applicant made a FoI request to the Ministry of Justice (MoJ) for the names – and other details recorded on court records – of landlords convicted of offences under the HA 2004. The Information Commissioner upheld a decision by the MoJ to withhold the data on the grounds that disclosure would cause 'harm and distress' to those named.

The Information Tribunal allowed an appeal and ordered disclosure. It was 'satisfied that not only was the disclosure of this information in the substantial public interest, but also any reasonably informed data controller with knowledge of the social needs and the impact of such disclosure would so conclude' (para 30).

Planning enforcement

■ **Waltham Forest Council v Lao**

Snaresbrook Crown Court, 30 January 2015

The defendant was a private landlord with 16 properties in the council's area. Without planning permission, he added large roof and garden extensions to seven of his houses and converted every property into flats.

At Snaresbrook Crown Court, he was fined £73,500 (£10,000 for non-compliance with each of the seven enforcement notices, £3,000 in relation to various breaches of houses in multiple occupation regulations – such as fire safety and being unlicensed – and £500 relating to an improvement notice and a failure to disclose ownership). The court made a confiscation order of £217,758.26 (in respect of the profit made in rent from the illegal properties) with six months to pay and 30 months' imprisonment in default. £10,000 costs were added.

Fire and gas safety

■ **R v Sarkari**

Southwark Crown Court, 27 January 2015

The defendant was a private landlord who rented out five flats in a block in London. The Health and Safety Executive discovered that he had carried out illegal gas work at the block on a number of occasions, despite the fact he was not gas safe registered. He pleaded guilty to breaches of the Gas Safety (Installation & Use) Regulations 1998 SI No 2451.

He was sentenced to a suspended sentence order with 12 months' imprisonment suspended for two years, 150 hours' unpaid work, a fine of £10,000 and £9,978 costs.

HOUSING ALLOCATION

■ **Darby (administratrix of the estate of Rabbetts deceased) v Richmond upon Thames LBC**

[2015] EWHC 909 (QB), 1 April 2015

Lee Rabbetts applied to Richmond for social housing. He had a disabling condition causing him to be at risk of death if he picked up any routine infection. He lived with his mother, his sister and her baby and he did not leave the house for risk of picking up such an infection. His GP wrote to the council stating that his health was at risk while he was sharing accommodation with others. A consultant haematologist also wrote, explaining that it would be disastrous if Rabbetts was to pick up an infection at home and that living with a baby in the household was 'very dangerous'. A health visitor wrote, repeating the request for rehousing. The council awarded 50 medical priority points out of a total award of 285 points. Its scheme allowed 200 medical points to be awarded where there was a life-threatening condition. Rabbetts' sister and her baby developed infections. Rabbetts contracted a respiratory problem a few days later and died from influenza. Shortly after his death, the council sent him an offer of accommodation. His mother, as administratrix of his estate, brought a claim for damages for negligent handling of the social housing application. The council applied to strike it out.

HHJ McKenna, sitting as a deputy High Court judge, struck out the claim because the council did not even arguably owe a duty of care. Such a duty would be inconsistent with the statutory scheme of HA 1996 Part 6. Remedies available to those disappointed with the operation of that scheme included internal review, judicial review (with interim relief), complaints procedures and the ombudsman.

HOMELESSNESS

Intentional homelessness

■ **Huzrat v Hounslow LBC**

UKSC 2014/0265, 31 March 2015

The Supreme Court has refused an application by Huzrat for permission to appeal against a decision of the Court of Appeal ([2013] EWCA Civ 1865, 21 November 2013) upholding a reviewing officer's finding that she had become homeless intentionally. The appeal had been intended to focus on the importance of the interests of the children in decision-making relating to homelessness by reference to Children Act 2004 s11.

Out of area accommodation

■ **Nzolameso v City of Westminster**

[2015] UKSC 22, 2 April 2015

The Supreme Court has handed down its reserved reasons for allowing an appeal against Westminster's decision to provide temporary accommodation for Titina Nzolameso and her family in Bletchley near Milton Keynes rather than in its own area. The accommodation was offered in performance of the duty under HA 1996 s193. The council treated the refusal of the offer as discharging that duty. Its decision was upheld by a reviewing officer, the county

court and Court of Appeal.

Giving the unanimous judgment of the court, Lady Hale said that the combined effect of the Act and the statutory guidance was:

... that local authorities have a statutory duty to accommodate within their area so far as this is reasonably practicable. 'Reasonable practicability' imports a stronger duty than simply being reasonable. But if it is not reasonably practicable to accommodate 'in borough', they must generally, and where possible, try to place the household as close as possible to where they were previously living. There will be some cases where this does not apply, for example where there are clear benefits in placing the applicant outside the district, because of domestic violence or to break links with negative influences within the district, and others where the applicant does not mind where she goes or actively wants to move out of the area. The combined effect of the [Homelessness (Suitability of Accommodation) (England) Order 2012, SI No 2601] and the Supplementary Guidance ... was meant to change the legal landscape as it was when previous cases dealing with an 'out of borough' placement policy, such as R (Yumsak) v Enfield London Borough Council *[2002] EWHC 280 (Admin), [2003] HLR 1, and* R (Calgin) v Enfield London Borough Council *[2005] EWHC 1716 (Admin), [2006] HLR 58, were decided* (para 19).

As to the importance of Children Act 2004 s11 in such cases, she said:

The question of whether the accommodation offered is 'suitable' for the applicant and each member of her household clearly requires the local authority to have regard to the need to safeguard and promote the welfare of any children in her household. Its suitability to meet their needs is a key component in its suitability generally. In my view, it is not enough for the decision-maker simply to ask whether any of the children are approaching GCSE or other externally assessed examinations. Disruption to their education and other support networks may be actively harmful to their social and educational development, but the authority also have to have regard to the need to promote, as well as to safeguard, their welfare. The decision maker should identify the principal needs of the children, both individually and collectively, and have regard to the need to safeguard and promote them when making the decision (para 27).

The decision in this case was flawed because:

There is little to suggest that serious consideration was given to the authority's obligations before the decision was taken to offer the property in Bletchley. At that stage, the temporary lettings team knew little more than what was on the homelessness application form. This did not ask any questions aimed at assessing how practicable it would be for the family to move out of the area. Nor were any inquiries made to see whether school places would be available in Bletchley and what the appellant's particular medical conditions required. Those inquiries were only made after the decision had been taken. The review decision is based on the premise that, because of the general shortage of available housing in the borough, the authority could offer accommodation anywhere else, unless the applicant could show that it was necessary for her and her family to remain in Westminster. There was no indication of the accommodation available in Westminster and why that had not been offered to her. There was no indication of the accommodation available near to Westminster, or even in the whole of Greater London, and why that had not been offered to her. There was, indeed, no indication that the reviewing officer had recognised that, if it was not reasonably practicable to offer accommodation in Westminster, there was an obligation to offer it as close by as possible (para 36).

The judgment concludes with five paragraphs of guidance as to how councils should approach the duty to give reasons for placing applicants in accommodation outside their own areas.

Accommodation pending appeal

■ R (Nzolameso) v Westminster City Council

[2015] EWHC 799 (Admin), 26 February 2015

The claimant sought a judicial review of the council's decision not to accommodate her with her children pending her appeal to the Supreme Court (for which she had been granted permission to appeal – see above). She applied for an interim order requiring the council to accommodate her in premises big enough for her to be reunited with her children from whom she had been separated while awaiting the decision of the Court of Appeal.

Phillipa Whipple QC, sitting as a deputy High Court judge, decided that she had a strongly arguable case that her personal circumstances had been unduly minimised or left out of account in the council's assessment of whether to accommodate her in the interim. The case was exceptional and justified the making of the injunction order sought.

HOUSING AND CHILDREN

■ R (Giwa) v Lewisham LBC

CO/1565/2015, 10 April 2015

The claimant, her husband and their three children were all in the UK unlawfully. When they became homeless, they were not eligible for social housing or homelessness assistance under HA 1996 Parts 6 and 7 because of their immigration status. They applied to Lewisham for accommodation. The council decided that it did not need to provide for their housing needs under the Children Act 1989 Part III. It was not satisfied that the household was without resources and it took into account its assessment that their prospects of getting leave to remain in the UK were hopeless. In proceedings for a judicial review of that decision, the claimant made an application for an interim injunction.

HHJ Robinson, sitting as a deputy High Court judge, dismissed the application. She held that mandatory interim relief needed strong prima facie evidence that the council's decision was unlawful. Here, the evidence was that the council had considered the application by looking at the family's immigration status, finances and support network in the UK. The argument that it had not conducted a proper initial assessment was very weak.

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