Housing: recent developments

Legislative updates and key cases on human rights, possession, housing benefit, long leases, contempt and homelessness: Nic Madge and Jan Luba QC provide their monthly round-up.

Nic Madge

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Politics and legislation

Housing and Planning Bill

This important government bill had its House of Commons second reading on 2 November 2015. It is now being considered in detail by a Public Bill Committee. An official *Housing and Planning Bill 2015/16 Impact Assessment* has been published (19 October 2015). A useful introduction to the bill, and the policy background to it, is provided by the House of Commons Library Briefing Paper for Second Reading (22 October 2015).

Local Government Finance (Tenure Information) Bill

This private members' bill would amend the Local Government Finance Act 1992 to make provision for local councils to collect information about housing tenure and the details of private landlords. It will have its House of Commons second reading on 22 January 2016.

Crown Tenancies Bill

This is a government-backed private members' bill which would provide that Crown tenancies (mainly of properties owned by government departments) can be assured tenancies for the purposes of the Housing Act 1988, subject to certain exceptions. It would modify the assured tenancy regime in relation to certain Crown tenancies (including by provision of a new ground for possession). It is scheduled to have its House of Commons second reading on 22 January 2016. A useful introduction to the bill, and the policy background to it, is provided by the House of Commons Library Briefing Paper for Second Reading (8 September 2015).

Housing, equality and human rights

The Equality and Human Rights Commission has published its statutory five-yearly report on equality and human rights progress in England, Scotland and Wales, *Is Britain Fairer? The state of equality and human rights 2015* (October 2015). The report is accompanied by a specific evidence paper dealing with 'adequate housing', *Domain F: Standard of living* (October 2015).

Right to buy

The House of Commons Select Committee on Communities and Local Government has published a new research paper on the right to buy, *The Impact of the Existing Right to Buy and the Implications for the Proposed Extension of Right to Buy to Housing Associations* (October 2015). The researchers found that 1.8m homes in England were bought under the right to buy between 1980/81 and 2013/14. The number of dwellings owned by local authorities in England fell from 5.1m in 1980 to 1.7m in 2014. The total capital receipts from right to buy sales up to 2010/11 amounted to around £45bn.

On 19 October 2015, the prescribed form for exercising the right to buy in Wales was amended: the Housing (Right to Buy) (Prescribed Forms) (Wales) (Amendment) Regulations 2015 SI No 1795.

Private sector rents

The latest published figures show that rents paid by private tenants in Great Britain rose by 2.7 per cent in the 12 months to September 2015: *Index of Private Housing Rental Prices, July to September 2015* (ONS, 29 October 2015). Rents increased by 2.8 per cent in England, 1.6 per cent in Scotland and 0.5 per cent in Wales. They increased in all the English regions over the year to September 2015, with rents increasing most in London (4.1 per cent).

Private renting in Wales

Key provisions of Housing (Wales) Act 2014 Pt 1, relating to private landlords and letting agents, were brought into force on 23 November 2015: Housing (Wales) Act 2014 (Commencement No 4) Order 2015 SI No 1826. Landlords who now need to register with the licensing authority for Wales (Cardiff Council), and landlords and agents who need to become licensed, can now register and apply for a licence. They have 12 months in which to do so, after which penal sanctions take effect for non-compliance.

Case law

Human rights

Article 1 of Protocol No 1

- **Vrountou v Cyprus** App No 33631/06, 13 October 2015,

In 1974, the Council of Ministers of the Republic of Cyprus approved the introduction of a scheme of aid for displaced people and war victims whose permanent homes were in the areas occupied by the Turkish armed forces. Under the scheme, displaced people were entitled to refugee cards. The holders of such cards were eligible for a range of benefits including housing assistance. A circular provided that non-displaced women whose husbands were displaced could be registered on the refugee cards of their husbands, and children whose fathers were displaced could be registered on the refugee cards of their fathers. No provision was made for the children of displaced women to be registered on the refugee cards of their mothers. Maria Vrountou's mother was the holder of a refugee card. In 2002, Maria Vrountou married and began looking for a house. She wanted housing assistance and applied to the Ministry of the Interior for a refugee card. The request was rejected on the basis that she was not a displaced person because, while her mother was a displaced person, her father was not. She complained to the European Court of Human Rights, alleging that the failure to grant her a refugee card, thus denying her the range of benefits, including housing assistance, to which the holder of such card was entitled, amounted to discrimination on grounds of sex and was thus in violation of European Convention on Human Rights art 14 when taken in conjunction with art 1 of Protocol No 1.

The court found that housing assistance was clearly a 'benefit' for the purposes of art 1 of Protocol No 1. It also noted that, in any case concerning a complaint based on art 14, the four questions which the court must consider are:

- whether the facts of the case fall within the ambit of the substantive article;
- whether there has been a difference in treatment between the applicant and others;
- whether that difference in treatment has been on the basis of one of the protected grounds set out in art 14; and
- whether there was a reasonable and objective justification for that difference in treatment; if there was not, the difference in treatment will be discriminatory and in violation of art 14.

It found that the children of displaced men and the children of displaced women had similar needs and were therefore in an entirely analogous situation. However, in being entitled to a refugee card (and so housing assistance), the children of displaced men clearly enjoyed preferential treatment over the children of

displaced women. A difference in treatment was therefore established. It could not be justified simply by reference to the need to prioritise resources in the immediate aftermath of the 1974 invasion.

The ECtHR stated (at para 75):

The advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference in treatment could be regarded as compatible with the Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex.

Very weighty reasons would have been required to justify the long-lasting difference in treatment that had been shown in this case. None had been shown to exist. There was, accordingly, no objective and reasonable justification for this difference in treatment. The difference in treatment between the children of displaced women and the children of displaced men was therefore discriminatory and so there was a violation of art 14 taken in conjunction with art 1 of Protocol No 1. The court awarded the applicant €21,500 in respect of pecuniary damage and €4,000 in respect of non-pecuniary damage.

Article 6

- **Ali v United Kingdom**
  Application No 40378/10,
  20 October 2015

Fazia Ali was homeless. She was owed the main housing duty by Birmingham City Council: HA 1996 s193(2). A dispute arose as to whether she had received a letter from the council offering her accommodation in discharge of the duty. The council treated her as having received the letter. It decided that it owed no further duty. A reviewing officer was satisfied that the letter had been sent and that there was no reason why she would not have received it. On an appeal to the county court, the judge declined to hear evidence about whether the letter had been received, holding that the question was one of fact (not law). The Court of Appeal ([2002] EWCA Civ 1228, 7 November 2008; [2009] HLR 23) and Supreme Court ([2010] UKSC 8, 17 February 2010; [2010] HLR 22) dismissed appeals from that decision. Both courts followed and applied the House of Lords decision in *Begum v Tower Hamlets LBC* [2003] UKHL 5, 13 February 2003, which had held that a 'judicial review' of a reviewing officer's decision (that a claimant had been unreasonable in rejecting the accommodation offered to her) provided 'sufficiency of review' for the purposes of ECHR art 6(1).

Ali complained to the ECtHR that there had been an infringement of her right under art 6 and submitted that her case could be distinguished from *Begum* because it concerned the simple question of a finding of primary fact rather than an evaluative judgement, such as a qualitative assessment of 'suitability'.

The ECtHR held:

- The right to housing assistance under HA 1996 Pt 7 was a 'civil right' for the purposes of art 6. 'In this regard, the Court agrees with Hale LJ in *Adan v. Newham London Borough Council* [[2001] EWCA Civ 1916, 14 December 2001; [2002] HLR 28], in which she opined that the right to accommodation under section 193 "is more akin to a claim for social security benefits than it is a claim for social or other services, where the authorities have a greater degree of discretion and resource considerations may also be relevant"' (para 59). Any determination about such a civil right was required to satisfy the requirements of art 6, ie a right to a fair hearing before an independent and impartial tribunal.
- However, the legislative scheme, by virtue of which a homeless person derived her 'civil right' to be provided with accommodation, afforded her the opportunity of a fact-based review and then an appeal to the courts on a point of law: HA 1996 s204. That was adequate protection as regards the judicial determination of that civil right. The court said 'the decision by the Council that it had discharged its duty to her under Part VII of the 1996 Act was subject to judicial scrutiny of sufficient scope to satisfy the requirements of Article 6(1)' (para 87).

- **Lázár v Hungary**
  App No 44319/11,
  1 October 2015

The applicants brought a claim for damages against a housing co-operative and two individuals in respect of ownership rights to real property on 15 October 2002. Although the claim initially succeeded, it was finally dismissed by the Budapest Court of Appeal on 30 November 2010, over eight years later.

The ECtHR held that the delay amounted to a breach of the right to a fair trial in art 6 and awarded the applicants jointly €3,200 in respect of non-pecuniary damage and €1,000 costs.

Article 8

- **Khalikova v Azerbaijan**
  App No 42883/11,
  22 October 2015,

Nuriya Khalikova owned a flat in a block. The local council declared that a park would be established in the area by the removal of residential and non-residential buildings. Council officers told residents to leave, sell their properties and receive compensation. Khalikova declined the offer and stayed in her flat. On 19 November 2010, the building was surrounded by council employees and police officers. They ordered her to open the door. She refused to do so, saying that there was no court order for her eviction. Following that refusal, they broke down the door and entered the flat. She asked them to leave her flat immediately but they refused to do so. The flat was wrecked and a few days later the block was demolished.

The ECtHR held that there had been a serious breach of Khalikova's right to respect for her home (art 8). It said that 'there was no legal basis for the police intervention of 19 November 2010 and that the applicant's forced eviction from her flat was not based on a court decision or any other legal precept. In this connection, the Court considers it necessary to emphasise that the practice of forcibly evicting an individual from his or her home by the police force without any legal basis is not compatible with the rule of law in a democratic society respecting the fundamental rights and freedoms guaranteed under the Convention' (para 128). It awarded €15,000 for her non-monetary loss.

- **River Clyde Homes Ltd v Woods**
  Sheriff Court of North Strathclyde,
  September 2015

A registered social landlord raised an action for recovery of possession against a tenant under a short Scottish secure tenancy, relying on a mandatory ground for possession under the Housing (Scotland) Act 2001. It averred that the tenant had allowed a third party to reside with her in the property contrary to assurances given at the outset of the tenancy and that she had pled guilty to an offence amounting to anti-social behaviour in breach of the tenancy agreement. The tenant opposed the action on the ground that eviction would be disproportionate and an unnecessary interference with her rights under art 8(2). The landlord submitted that the tenant had not overcome the threshold of advancing a seriously arguable defence. At an earlier hearing (15 April 2015; 2015 Hous LR 33, September 2015 *Legal Action* 49) Sheriff CG McKay held that the absence of any ability to challenge the veracity, or at least the presumed implication, of the conduct averred by the pursuers as the reasons for their notice to quit under Scottish legislation significantly lowered the threshold for the tenant to introduce the issue of proportionality as a defence. She was entitled to lead evidence to challenge the reasons for the notice to quit.

At trial, the sheriff noted that the only basis upon which the defender challenged her landlord's right to recover possession was that it was disproportionate for her to be evicted from her home in all the circumstances. She would have been entitled to advance difficulties with her mental health as a factor to be taken into account, but she did not do so. The sheriff did take into account her admitted problem of alcohol abuse, her vulnerability to domestic abuse and attempts at suicide on three occasions. However, he found that 'considering the low threshold landlords are required to overcome in having their approach seen as proportionate – including being under no obligation to prove anything unless challenged – there were sufficient circumstances, **at the time** (my emphasis) they issued notice to quit to justify that approach' (para 37). After referring to *Main v Scottish Ministers* [2015] CSIH 41, 22 May 2015 and *Southend-on-Sea BC v Armour* [2012] EWHC 3361 (QB), 18 October 2012; [2014] HLR 23, he then considered what circumstances there were that might, at the time of trial, suggest the remedy was disproportionate to the pursuers' achievement of their legitimate objectives. He noted that there had been no further complaints; she had been rehoused due to domestic abuse; she was vulnerable; she had brought her alcohol addiction under control; and eviction would significantly exacerbate her vulnerability. He concluded that, in all the circumstances, it would be disproportionate to grant the remedy sought and so dismissed the action.

Possession claims

Abuse of process

- **St Hilaire v Katzenberg**[1]
  Central London County Court,
  25 June 2015

St Hilaire was a monthly assured tenant. The agreement included a provision for increases in rent. Katzenberg purported to increase the rent by serving a HA 1988 s13 notice. Then Katzenberg relied on rent arrears calculated on the basis of the monthly rent as set out in the s13 notice to bring a claim for possession. At the first possession hearing, the claim for possession was dismissed on the basis that the s13 procedure for increasing rent did not apply to the tenancy agreement (*Contour Homes Ltd v Rowen* [2007] EWCA Civ 842, 26

June 2007) and so St Hilaire was not in arrears as claimed. Katzenberg did not appeal the decision but instead decided to reissue proceedings a month later on the same basis at the same court. When the second claim was listed for a first possession hearing, the matter went before a different (deputy) district judge, who made an order for possession under HA 1988 Sch 2 ground 8. St Hilaire appealed. While he was waiting for the court to grant interim relief, there were significant delays due to files being lost by the court. Katzenberg applied to the High Court for a writ of possession as she required vacant possession to sell the property to a third party. The writ was executed and St Hilaire was evicted.

On appeal, Recorder Bowers QC granted a declaration that the repossession of the property pursuant to the writ of possession was an abuse of process. As the district judge had found in the first possession claim that the rent did not fall to be increased under s13(1)(b), the second possession claim on the same ground was an abuse of process. Although the defence did not directly address the issue of res judicata, it was incumbent on Katzenberg and/or her representatives to inform the court that there had been a previous possession claim on the same basis.

Anti-social behaviour

- **Goode v Paradigm Housing**[2]
  Oxford County Court,
  14 August 2015

Goode was an assured tenant. In January 2015, Thames Valley Police issued a closure notice pursuant to Anti-social Behaviour, Crime and Policing Act 2014 s76. It was effective for a period of 48 hours. On 8 January 2015, the closure notice was extended pending a hearing at High Wycombe Magistrates' Court on 21 January 2015. At the hearing on 21 January 2015, the police obtained a closure order for a period of three months. They did not seek to extend the closure order at its expiry as they were entitled to do. On 20 March 2015, Goode's landlord, Paradigm, served a notice of seeking possession on the basis of HA 1988 Sch 2 grounds 12 and 14 (discretionary grounds) and ground 7A (the new mandatory ground). A claim for possession was issued in April 2015 and a hearing date given for 3 June 2015. Goode attended the hearing with a duty adviser and requested an adjournment so she could secure legal representation. District Judge Thorpe refused the adjournment on the basis that mandatory ground 7A was made out and ordered outright possession. Goode served a notice of appeal on the basis that the failure to grant the adjournment constituted a breach of her art 6 rights. Further, ground 7A is expressly made subject to any available defence based on a tenant's rights under the ECHR. The notice asserted that she had a potential defence because her conduct had improved both before and after the closure order had been made (*Southend-on-Sea BC v Armour* [2012] EWHC 3361 (QB), 18 October 2012; [2014] HLR 23). It was also claimed that Paradigm had not offered her a review of the decision to seek possession contrary to Home Office guidance (*Anti-Social Behaviour, Crime and Policing Act 2014: Reform of ASB powers, Statutory guidance for frontline professionals*, July 2014, p62).

HHJ Harris granted permission to appeal. Later, the claim was settled, with Paradigm agreeing to a consent order varying the possession order to a suspended order on terms.

Deposits

- **Chalmiston Properties Limited v Boudia**[3]
  Barnet County Court,
  27 October 2015

The defendant was an assured shorthold tenant. The landlord served a HA 1988 s21 notice on 12 February 2015. The landlord sent a request for release of the deposit to the Deposit Protection Service on 10 February 2015. Documentation from the DPS stated that the deposit would be released within two working days. In response, the DPS confirmed to the landlord that the deposit was paid to the tenant by direct credit on 12 February 2015. The deposit was not deposited into the tenant's bank account until 16 February 2015. The tenant argued that HA 2004 s215(2) applied and so the notice was defective.

District Judge Marin stated that the legislation was clear and that the deposit had to be returned. As it was not returned until after service of the notice, it was invalid. The claim for possession was dismissed.

Housing benefit and third-party debt orders

- **Ferrera v Hardy**
  [2015] EWCA Civ 1202,
  7 October 2015

A landlord's agent let and managed property on behalf of a landlord. He received housing benefit from the local authority. One of his creditors obtained a third-party debt order against the local authority. HHJ Hodge QC, sitting as a judge of the High Court, set aside the third-party debt order ([2013] EWHC 4164 (Ch), 2 October 2013). It would be wrong to treat the money as belonging to the agent rather than the landlord. The money was effectively the subject of a trust relationship between the agent and the landlord.

An appeal was dismissed. Housing benefit payments received by the agent were to be treated as the tenants' money, which was being used to discharge the obligation to pay rent. There was no debt owed by the local authority to the agent.

Long leases

Service charges

- **Cain v Islington LBC (No 2)**
  [2015] UKUT 542 (LC),
  25 September 2015

Relying on Landlord and Tenant Act 1985 s27A, Peter Cain contended that a number of service charge demands, dating back over 12 years, were not payable because the costs had not been reasonably incurred. However, at the time they had been demanded, he had paid all such charges without any qualification or protest. The First-tier Tribunal held that it could be inferred that Cain had, by paying such charges without qualification over a long period of time, admitted that the charges were payable or, alternatively, that he was prevented from challenging service charges that had been demanded more than six years before his application to the tribunal.

HHJ Gerald, sitting in the Upper Tribunal, dismissed an appeal. The FTT had been right to infer or imply from the tenant's behaviour that he had agreed or admitted that the service charges were payable. The tribunal was not required to identify a particular date upon which the agreement or admission of a particular service charge was, or should be treated as, having been made. The FTT had been wrong, however, to hold that the challenge by Cain was barred by Limitation Act 1980 s8 or s19 (actions on a specialty or for the recovery of rent). An application to the tribunal to determine whether a service charge was payable was not an action on a specialty within the meaning of LA 1980 s8 and so no provisions of that act applied to prevent an application being made. Likewise, the council could not rely on the doctrine of laches as an application to the tribunal under LTA 1985 s27A is not an application for equitable relief and the doctrine of laches only applies to applications for equitable relief when no limitation period is prescribed by statute.

Homelessness

Applications and interim accommodation

- **Serious case review in respect of 'John'**
  Warwickshire Safeguarding Children Board,
  13 October 2015

John's parents were granted a social housing tenancy in May 2012. They moved in with their young daughter. Within two months, they had fallen into rent arrears and issues arose about the state of the home. In September 2012, the social landlord made an application for possession. A possession order was granted. An eviction warrant was later suspended on a number of occasions.

John was born prematurely on 23 June 2013. Social care agencies became involved and agreed to undertake an initial 'child in need' assessment in July 2013. A further possession warrant was issued and an application to stay it was refused.

On 29 August 2013, the local council advised the parents that they would be likely to be found intentionally homeless if evicted and that only B&B accommodation would be offered if they actually became homeless. They were advised to ask relatives for accommodation or seek a private tenancy.

The family were evicted by bailiffs on 1 September 2013. They moved into the paternal grandparents' home. John died the following day. He was only 10 weeks old.

The serious case review found:

- this case highlighted 'the complexities of the interface between the various aspects of housing, the housing provider, the Local Housing Authority's … homeless prevention unit and social care and the legal process, when managing a family who are facing the very real prospect of being evicted from their home' (para 6.2.9); and
- the lack of understanding by professionals across all agencies in Warwickshire – of both the impact of eviction on a family and the eviction process – increased the chance that children in these circumstances will be left vulnerable.

- **Complaint against Hounslow LBC**
  Local Government Ombudsman
  Complaint No 13 014 921,
  23 September 2015

The complainant was a vulnerable homeless woman who had fled domestic abuse. The council decided that she was homeless but did not have a priority need. The decision on priority need was reversed on review: HA 1996 s202. The complaint to the ombudsman was about the way that the council had dealt with the application for homelessness assistance. The ombudsman found that the council had:

- failed to provide the complainant with accommodation while it made enquiries: HA 1996 s188;
- taken too long to review its decision

that the complainant was not in priority need (overall, it took the council 62 weeks to reach a final decision about the application for assistance);
- failed to follow the correct process for carrying out the review (ie once the reviewing officer found the complainant was in priority need, he should have gone on to decide what duty the council owed, particularly whether she was unintentionally homeless, instead of returning the application to the original decision-maker to address that and other issues); and
- failed to respond to the applicant's complaints.

The ombudsman recommended payment of £1,450 compensation and a range of other remedial measures.

Eligibility

- **R (F) v Barking and Dagenham LBC** [2015] EWHC 2838 (Admin), 8 October 2015

The claimant was homeless. She had no leave to remain in the UK, no right to any recourse to public funds and no 'live' application for leave to remain in the UK. As a result, she was not eligible for assistance with homelessness under HA 1996 Pt 7 and was ineligible for social housing under HA 1996 Pt 6.

She was the mother of a child (J) who was living with the child's father. Because she had no accommodation, the claimant had nowhere that the child could stay with her.

In a claim for judicial review based on an alleged breach of ECHR art 8, she sought an order to compel her local council to provide her with accommodation where the child could stay, so that the Family Court would be able to make a shared residence order in proceedings she had brought against the father.

Bobbie Cheema-Grubb QC, sitting as a deputy High Court judge, held that there was 'a difficult but logically and legally arguable route by which the Claimant may be able to bring herself within the grace of the local authority by way of reliance on J's Article 8 ECHR rights' (para 25), but adjourned the claim to be heard by a judge of the High Court (Family Division) concurrently with the application for shared residence.

- **S v Lewisham LBC**[4] Central London County Court, 12 October 2015

S was a Jamaican national. She had two children aged 4 and 11. In August 2014, she was granted limited leave to remain in the UK under Immigration Rules Appendix FM para D-LTRPT 1.2. That was on the basis that the eldest of her two children had been in the UK for over seven years and that it was not reasonable to expect that child to go. Leave was granted for an initial 30 months and was subject to a 'no recourse to public funds' (NRPF) requirement. The Home Office later agreed to lift the NRPF restriction, and S applied to Lewisham for homelessness assistance. It decided that S was not eligible for assistance: HA 1996 s185 and Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 No 1294 reg 5. She did not fall within class B or C of reg 5 because her leave was time-limited and had been granted under the Immigration Rules and not outside them. The decision was upheld on review.

S argued on appeal that when the 2006 regulations were made, a person in her position would have been granted indefinite leave to remain outside of the Immigration Rules pursuant to the Home Office Policy DP 5/96. She would then have been eligible under class B or C. A literal interpretation of the 2006 regulations would render her ineligible because leave to remain is now granted within the Immigration Rules rather than outside them. The court was entitled to adopt a purposive approach to the 2006 regulations (see *Jones v Wrotham Park Settled Estates* [1980] AC 74, HL) so that a person in S's situation should be regarded as eligible for assistance.

Recorder Pulman QC dismissed the appeal. The statutory scheme plainly envisaged that the Immigration Rules would change from time to time. The interpretation contended for by the appellant crossed the line between interpretation and legislation.

Priority need

- **HB v Haringey LBC**[5] Mayor's and City of London Court, 17 September 2015

The appellant was a single man, aged 45, from Algeria. He had been the victim of torture. He suffered from chronic post-traumatic distress disorder and recurrent depressive disorder. He was described by a consultant psychiatrist as chronically disabled by virtue of his mental and physical disorders. His application to the council for homelessness assistance was made before the Supreme Court decision in *Hotak v Southwark LBC; Kanu v Southwark LBC; Johnson v Solihull MBC* [2015] UKSC 30, 13 May 2015 had been handed down.

The council indicated that it was minded to find that he was not vulnerable, applying the *Pereira* test: HA 1996 s189(1)(c). Detailed representations were made in response, which drew attention to the *Hotak* decision. The reviewing officer's final decision stated: 'I am satisfied that your circumstances are not sufficiently serious for me to conclude that you are vulnerable. This is because I am not satisfied that when homeless you are significantly more vulnerable than an ordinarily vulnerable [sic].'

HHJ Lamb QC held that it was impossible to discern from the reviewing officer's decision:

- how he defined 'vulnerability';
- what, if any, attributes of vulnerability he had ascribed to the ordinary comparator;
- how he defined the word 'significantly', ie where on a spectrum of meaning between 'noticeable' and 'substantial' he had placed 'significantly';
- whether he considered the appellant to be more or less vulnerable than the ordinary comparator;
- whether he considered the appellant to be invulnerable or without vulnerability; and
- if he considered the appellant to be more vulnerable than the ordinary comparator, whether and to what extent and why the difference was insignificant.

He allowed the appeal and quashed the review decision.

Intentional homelessness

- **Samuels v Birmingham City Council** [2015] EWCA Civ 1051, 27 October 2015

Terryann Samuels was an assured shorthold tenant. Her rent was £700 a month. She received housing benefit of £548.51 a month, leaving a shortfall of £151.49 a month. She fell into rent arrears, as a result of which she was given notice to leave.

When she applied for homelessness assistance, the council decided on review that she had become homeless intentionally: HA 1996 s191. It considered that it had been reasonable for her to continue to occupy the property. It had been 'affordable'. The loss of it was the result of her deliberate act in failing to pay the shortfall from her other available income.

Samuels appealed on the basis that the reviewing officer had wrongly taken account of her child benefit and child tax credits as being available to meet the shortfall.

Just before the appeal hearing, it was suggested that the reviewing officer may have wrongly understood the family to have comprised two rather than four children. In an email, the reviewing officer explained that he had (correctly) treated the family as including four children.

HHJ Worster allowed the email into evidence and dismissed her appeal. The Court of Appeal dismissed a second appeal.

It held:

- The reviewing officer had not erred in taking account of other benefits and tax credits that Samuels was receiving when determining whether she could afford the rent. The Homelessness (Suitability of Accommodation) Order 1996 SI No 3204 'and the Code of Guidance … make clear that in determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, account should be taken of whether the accommodation is affordable and, in particular, of all forms of income (including social security benefits of all kinds) and of relevant expenses (including rent and other reasonable living expenses)' (para 25).
- There was 'no need for the review decision to refer expressly to paragraph 17.40 of the [code of] guidance in relation to the issue of affordability. It was sufficient if the substantive consideration given to the issue showed that due regard had been had to the paragraph' (para 35).
- As to the email, 'the judge was plainly correct to hold that [it] fell on the permissible side of the dividing line and to take it into account. This was a simple case of clarification or elucidation of the reasons given in the review decision, not a case of fundamental alteration or contradiction of those reasons or the plugging of a gap in the reasons' (para 45).
- The reviewing officer's decision letter had provided 'a more than adequate expression of the reasons for the decision' (para 59).

1 Jean Pierre Jacob, solicitor, Graceland Solicitors, London, and Alexander Swain, barrister, London.

2 Saima Yasin, solicitor, Hillingdon Law Centre, and Jim Shepherd, barrister, London.

3 Bahareh Amani-Kholsari, solicitor, SSP Law, London.

4 Connor Johnston, barrister, London, and Katie Brown, solicitor, TV Edwards, London.

5 Liz Davies, barrister, London, and Serdar Celebi, Foster & Foster, London.

Nic Madge and Jan Luba are circuit judges. They would like to hear of relevant housing cases in the higher or lower courts.