Housing: recent developments

The latest on government housing policy, plus key decisions regarding possession, long leases, and homelessness, among others. Jan Luba QC and Nic Madge provide their monthly update.

Jan Luba QC

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Politics and legislation

UK government policy on housing

On 7 December 2015, the prime minister made a speech outlining UK government policies to achieve a shift from renting to home ownership. The three main aspects were:

- extending the right to buy (RTB) at a discount to all housing association tenants;
- abolishing council powers to require new-build private housing developments to contain properties for affordable rent (see *Consultation on proposed changes to national planning policy*, Department for Communities and Local Government (DCLG), 8 December 2015); and
- removing certain qualifying conditions for applicants wanting shared ownership homes, which it is estimated could lead 175,000 more people into part-ownership.

Abolition of periodic social housing tenancies

On 10 December 2015, new clauses were added to the Housing and Planning Bill. In future, all secure tenancies would be fixed-term tenancies of between two and five years. The UK government has indicated that it is in discussion with housing associations about the means of securing the parallel change in relation to assured tenancies. Exceptions, to be made by regulations, are likely to provide that current periodic tenants required to move (eg for redevelopment reasons) could be granted periodic tenancies but that voluntary transfer applicants would not be. The bill has now moved from the Commons to the Lords.

Succession rights in social housing

Other provisions added to the Housing and Planning Bill at the Commons Committee stage would introduce changes to succession rights in social housing. Secure tenancies would pass to the tenant's partner on death, whenever the tenancy was granted, but other family members would lose any statutory succession rights, even if they had lived with the tenant for 12 months, whenever the tenancy was granted.

Right to buy in England

On 10 December 2015, the latest official statistics on RTB sales were published: *Right to Buy Sales: July to September 2015, England* (DCLG). They show that RTB sales in England increased from 5,944 in 2012/13 to 11,261 in 2013/14 and were up again, to 12,304, in 2014/15. There were a further 5,720 sales in the first two quarters of the current financial year.

In December 2015, the government launched a voluntary RTB pilot scheme among a small number of housing associations in England. Eligible tenants can now register their interest in taking up this voluntary RTB. There are a limited number of sales under the pilot. Successful applicants will be able to progress up to the point of sale, but will not be able to complete their purchases until the Housing and Planning Bill (see above) becomes law.

The Joseph Rowntree Foundation has published new research which explores the likely impact of the RTB for housing association tenants in need of low-cost rented homes and on housing supply: *Understanding the likely poverty impacts of the extension of Right to Buy to housing association tenants* (Anna Clarke et al, JRF, 21 November 2015).

On 30 December 2015, the House of Commons Library issued Briefing Paper no 07224, which explains the proposals to extend the RTB to assured tenants of housing associations on a voluntary basis.

Homelessness

The latest official statistics on applications for homelessness assistance made to local councils in England cover the summer quarter of 2015: *Statutory Homelessness: July to September Quarter 2015 England* (DCLG, 17 December 2015). Some 14,670 households were accepted by councils in those three months, 4 per cent higher than the same quarter of 2014. On 30 September 2015, there were 68,560 households in temporary accommodation, 13 per cent higher than at the same date in 2014.

In response to the figures, homelessness minister Marcus Jones MP announced 'a radical new package of [financial] measures to help tackle homelessness and ensure there is a strong safety net in place for the most vulnerable people in society'.

A new report from the UK Statistics Authority (*Assessment of compliance with the Code of Practice for Official Statistics*, UKSA Assessment Report 320, 10 December 2015) concludes that the DCLG's homelessness prevention and relief and rough sleeping statistics (*Homelessness Prevention and Relief in England* and *Rough Sleeping in England*) do not currently meet the standard to be accorded National Statistics status.

On 23 November 2015, the House of Commons Library published an updated version of its comparison of the legal duties to tackle homelessness and assist people presenting as homeless in England, Wales, Scotland and Northern Ireland: Briefing Paper no 7201. On 29 December 2015, it published its updated briefing on statutory homelessness in England: Briefing Paper no 01164.

Landlord possession claims

On 12 November 2015, the latest official statistics for county court possession claims were published: *Mortgage and Landlord Possession Statistics Quarterly, England and Wales July to September 2015* (Ministry of Justice). In that period, 38,662 landlord possession claims were issued. Although the bulk were social landlord possession cases, the proportion of such claims has fallen from 83 per cent in 1999 to 61 per cent now. Over the three months covered by the statistics, 11,267 actual repossessions were carried out by county court bailiffs in landlord cases, up 1 per cent on the same period last year.

Human rights

Article 1 of Protocol No 1 and article 6

- **Amirkhanyan v Armenia**
  App No 22343/08,
  3 December 2015

In 1998, Kondranov Amirkhanyan bought a plot of land. In 2004, a third party issued proceedings claiming to be the true owner. Although initially that claim was upheld, Amirkhanyan appealed successfully. Permission to appeal further was refused and the decision became final. Although domestic law did not allow for a second application for permission to appeal, the third party made such an application. That second appeal was successful and the Court of Cassation returned the land to the third party. Amirkhanyan alleged a breach of European Convention on Human Rights art 6 and art 1 of Protocol No 1.

The European Court of Human Rights found that there were breaches of both articles. By admitting another appeal lodged by the same party and

subsequently granting it, the Court of Cassation had overturned a final judgment. In certain circumstances, legal certainty can be disturbed in order to correct a 'fundamental defect' or a 'miscarriage of justice', but the government did not suggest that this had happened in the present case. The Court of Cassation had simply rendered a fresh decision in the case, without having any legal basis for doing so. It had breached the principle of res judicata enshrined in art 6. Further, a final court judgment that recognises a title to property may be regarded as a 'possession' for the purposes of art 1 of Protocol No 1. Quashing such a judgment after it has become final and no longer subject to appeal constitutes an interference with the judgment beneficiary's right to the peaceful enjoyment of that possession. As there was no right under the Armenian civil procedure law to lodge a second appeal on points of law, in granting such an appeal and quashing the final judgment of the Civil Court of Appeal, the Court of Cassation did not act pursuant to 'conditions provided for by law'. The court awarded non-pecuniary damages of €3,000.

Possession claims

Under-occupation

- **Governors of the Peabody Trust v Lawrence**[1]
  County Court at Central London, 24 September 2015

The defendant had lived in a property with her mother, who was the secure tenant, since she was four. Her mother had a long history of depression and mental health problems. The defendant became the main carer for her mother from the age of 10 and, as a result, missed schooling. Later, her mother took her own life in the property. The defendant succeeded to the tenancy. She suffered from her own mental health problems. Following her mother's death, she needed regular care and support through the day and night. She did not have a full-time carer, but relied on the help and support of a large network of family, friends and neighbours. The claimants asserted that the property, which had three bedrooms, was too large for her needs. It claimed possession under Housing Act (HA) 1985 Sch 2 Pt III ground 16. The defendant's case was that it was not reasonable to grant possession and, in any event, suitable alternative accommodation would need two bedrooms, as she required space for her overnight carers to sleep and outside space for her dog, which was a source of support to her.

Recorder Steynor found that a one-bedroom property was not suitable alternative accommodation as the defendant reasonably required two bedrooms. She also required a ground-floor property with a secure area for her dog to be exercised. He further found that, while there was a very substantial demand for family-sized housing in the locality, all the circumstances, in particular the risk of harm to the defendant if moved, outweighed the social benefit of freeing up a three-bedroom house. It was therefore not reasonable to make a possession order. The recorder ordered that the claimants pay the defendant's costs.

Persons unknown

- **Garwood v Bolter**
  [2015] EWHC 3619 (Ch), 18 November 2015

The claimant was a trustee in bankruptcy. The bankrupt owned three properties, let on assured shorthold tenancies. They vested in the trustee, who attempted to recover possession. Despite enquiries, he did not know the names of the tenants as the bankrupt refused to tell him. He issued a claim for possession against persons unknown. That claim was adjourned. The bankrupt then undertook to provide the names of the tenants to the trustee. The trustee served HA 1988 s21 notices but did not issue new proceedings; instead, he restored the existing claims.

HHJ Behrens, sitting as a High Court judge, refused to make possession orders. The claimant should have issued new proceedings. Further, he was not satisfied the tenants had been given proper notice of the case against them.

Enforcement

- **Birmingham City Council v Mondhlani and Mondhlani**[2]
  County Court at Birmingham, 6 November 2015

The defendants were secure tenants. In 2009, a possession order was made when rent arrears were £1,058. Enforcement was stayed on terms as to payment by instalments. The terms were breached and successive applications for warrants resulted in further stays that were again repeatedly breached. The latest stay was granted in September 2014, when the arrears were £1,669. The defendants did not comply with the terms of the stay. The council applied to transfer the proceedings to the High Court so it could utilise the enforcement procedures of that court, which, as a result of a limited number of county court bailiffs in Birmingham, were far quicker. By the date of the hearing of that application, the arrears had reached £2,382.50. The tenants cross-applied for permission to bring a counterclaim for damages for disrepair. District Judge Salmon allowed that application, rendering the application to transfer for enforcement academic. He did, though, examine the principles to be applied and factors that courts should take into account in respect of transfers to the High Court for enforcement. After referring to CPR 30.3(2) and 83.13(2), he described Birmingham's practice in other cases where judges had granted permission to transfer as 'flawed'. He stated that he was 'alarmed by the current practice adopted by solicitors acting for Birmingham City Council in connection with the obtaining of writs of possession at present and the way in which the requirements of CPR 83.13(2) have been side-stepped. Further I have been concerned about the deliberate policy of Birmingham City Council not to inform tenants of their ability to seek to suspend the writ of possession' (para 75). He then set out steps that he would expect to be taken before permission could be given to issue a writ of possession. The judge rejected submissions from counsel for the defendants that transfer should never take place, stating that 'provided a court is satisfied by adequate assurances or conditions to transfer that does not prejudice a tenant then normally the decision will depend on there being sufficient advantages being demonstrated by the applicant for a transfer in a particular case' (para 83).

Costs

- **NJ Rickard Ltd v Holloway**
  Court of Appeal (Civil Division), 3 November 2015

The landlord issued a claim for rent arrears of £6,000, and damages for physical damage to the property in the sum of £20,000. The amount of arrears was not disputed. The tenant counterclaimed for breach of the covenant of quiet enjoyment and disrepair, and argued that his damages should be set off against the arrears. The trial judge dismissed the landlord's claim for damages and awarded the tenant £7,000, which he set off against the arrears and interest of £16,000. In awarding costs, the judge held that the counterclaim had really been a defence and that the landlord had therefore succeeded, as the amount it had been awarded had exceeded the set-off. Accordingly, he ordered that the tenant pay the landlord's costs. The tenant appealed.

The Court of Appeal allowed the appeal. While issue-based costs orders were not to be encouraged, in this case the landlord had sued for substantial damages and had failed on many issues. In contrast, the tenant had substantiated his allegation as to the state of the property and had been entitled to vindicate his claim even if the damages awarded were small. He had won on important detailed points. A fair and balanced approach was to make no order as to costs.

Rents

- **Bacon v Mountview Estates plc**
  [2015] UKUT 588 (LC), 28 October 2015

In 1983, Graham Bacon became a Rent Act protected tenant. In the 1980s and 1990s, he had a series of tenancies with the same landlord. Each time he moved, he handed in the old rent book and received a new one. In early 1993, the landlord offered him a garden basement flat and gave him a new tenancy agreement, signed, dated and in his words: 'You've been a tenant of mine long enough and you are now a statutory regulated tenant. Here is my contract with you as long as you pay the rent.' The landlord died in 2009 and the property was sold. In 2013, the new landlord served a notice of variation proposing a new rent of £350 a week in place of the existing rent of £150 a week. Bacon referred the landlord's notice to the First-Tier Tribunal under HA 1988 s13. It fixed a market rent of £210 a week. Bacon appealed, contending that he was a Rent Act tenant.

HHJ David Hodge QC allowed the appeal and set aside the FTT's determination of a market rent. He accepted Bacon's evidence. Immediately before he was granted his tenancy of the garden basement flat, he was a protected or statutory tenant of another property with the same landlord. He had enjoyed a continuous series of periodic or statutory tenancies of residential properties, with the same landlord, ever since he had first taken a tenancy in or about 1983. It followed that by the operation of HA 1988 s34(1)(b), his tenancy was a regulated tenancy under the RA 1977 and not an assured tenancy under the HA 1988. As a result, the FTT had no jurisdiction to determine a rent under s13. The FTT also erred in law in applying the rules governing a determination of market rent contained in HA 1988 s14. It therefore reached its decision on an incorrect basis of fact due to its ignorance of the true status of the tenancy. That constituted an error of law.

Houses in multiple occupation

- **Thanet District Council v Grant**
  Divisional Court, 29 October 2015

The defendant owned a tenanted property in Thanet. The local authority designated the area as one in which landlords were required to apply for licences under HA 2004. The

defendant was prosecuted for failing to obtain a licence contrary to s95(1). He relied on the defence of reasonable excuse (s95(4)), claiming that the local authority had failed to inform him of the licensing requirement. The magistrates' court held that the local authority had failed to publicise the scheme and that it had failed to discharge the burden of proving beyond reasonable doubt that the landlord did not have a reasonable excuse. He was acquitted.

The Divisional Court allowed the local authority's appeal. The magistrates had wrongly characterised the s85(4) duty as being focused on failing to communicate with an individual landlord. That failure did not give rise to a reasonable excuse under s95(4).

Long leases

Service charges

- **Sinclair Gardens Investments (Kensington) Ltd v Clemo**
  [2015] UKUT 573 (LC),
  3 November 2015

Sinclair Gardens brought a claim in the county court for a money judgment arising from the non-payment of service and administration charges. The claim was transferred to the Leasehold Valuation Tribunal, which decided that the sum claimed was payable. After the proceedings had returned to the county court, the parties agreed a consent order in which the respondent, Charles Clemo, agreed to pay 'the Claimant's costs of the action' in the sum of £811 (para 6). The sum of £811 did not, however, cover Sinclair Gardens' costs before the LVT. Sinclair Gardens subsequently sought to recover those costs as an administration charge. Clemo refused to pay them and argued that the county court had already dealt with the question of costs. The FTT agreed. Sinclair Gardens appealed. The Upper Tribunal dismissed the appeal. In principle, in cases where the county court has transferred the claim to the tribunal, a landlord may recover the costs of proceedings before the tribunal as an administration charge unless the county court has already expressly dealt with that entitlement. In this case, the consent order had, by using the words 'of the action', dealt with the costs in the county court and the tribunal. It followed that Sinclair Gardens could not recover the costs of the tribunal as an administration charge.

- **Fairbairn v Etal Court Maintenance Ltd**
  [2015] UKUT 639 (LC),
  30 November 2015

Etal Court Maintenance Ltd (the company) was the lessee-owned freehold company of Etal Court. Patricia Fairbairn was the leasehold owner of a flat within the estate. Her lease required the lessor 'to do all other acts and things for the proper management administration and maintenance of the blocks of flats as the Lessor in its sole discretion shall think fit' (para 19). It also required her to pay a contribution towards the service charge, which included any expenditure incurred by the lessor in performance of the preceding obligation.

In 2011, another leaseholder (Stevenson) sent the company a letter before claim alleging that it had failed to comply with its repairing obligations under her lease. The company, after taking legal advice, admitted liability. Notwithstanding this admission, Stevenson's solicitors issued proceedings that were later settled and the company was ordered to pay her damages and her costs. The company subsequently sought to recover these costs from the other lessees under the service charge. Fairbairn disputed her liability to pay. The FTT decided that the sums were payable under the service charge. She appealed.

Martin Rodger QC, deputy president of the UT, allowed an appeal. While the company's approach to the litigation had been reasonable, it was not entitled to recover its costs of the litigation under the service charge. Responding to litigation that had arisen as a result of its own failure to manage the block properly could not be classed as proper management or administration of the block.

In principle, the company could recover professional fees for advice relating to what it was obliged to do under the lease as opposed to responding to the consequences of a failure of compliance. The fact that the company was of limited means and owned by all of the lessees was relevant to the background circumstances in which the meaning of the lease had to be considered. However, in this case, it did not justify a radical departure from the natural meaning of relatively standard words.

- **Southwark LBC v Clarke**
  [2015] UKUT 597 (LC),
  6 November 2015

In 2003, Peter Clarke bought the lease of a flat pursuant to the RTB provisions contained in HA 1985. In October 2006, an estimated demand for service charges for major works was sent to him. He never paid the amount demanded. In September 2008, he assigned the lease to his daughter, Victoria Clarke (the respondent). In 2013, Southwark demanded payment for the final sum for the major works. The respondent failed to pay the demand and county court proceedings were issued. The claim was transferred to the FTT. It concluded that, on a true construction of Landlord and Tenant (Covenants) Act 1995 s23(1), in the context of the operation of the assignment of the lease and the interim demand made, the respondent had no liability to pay service charges in respect of the invoice sent to her father in 2006.

Judge Edward Cousins allowed an appeal. Section 23 provides the framework for the transmission of covenants on assignment to the effect that all covenants and obligations between lessor and lessee are enforceable between the landlord and tenant for the time being, and that rights and obligations under covenants should pass on assignment. The service charge machinery involved a two-stage process, namely the interim payment and the final amount. The final account was produced post-assignment. The claim in the county court proceedings was not for the interim sum demanded from the father, but for the final sum due from the daughter as the assignee of the lease. A valid demand for the final sum was served in accordance with the provisions in the lease. The respondent was therefore liable to pay.

Appointment of a manager

- **Queensbridge Investments Ltd v Lodge, Davda, Heskel and Arora**
  [2015] UKUT 635 (LC),
  19 November 2015

A landlord of a building comprising commercial premises and three flats failed to comply with its obligations under the lease. On an application to appoint a manager under Landlord and Tenant Act 1987 s24, the FTT found that 'structural problems were possibly dangerous and could be described as quite alarming' (para 8). The FTT ordered that a manager should be appointed. On appeal, the landlord did not seek to argue that the relevant condition for appointing the manager was not properly established under s24(2) or that the FTT was in error in concluding that it was just and convenient to appoint her. The landlord did, however, argue that the powers conferred were too extensive.

HHJ Huskinson dismissed the appeal. The FTT had been entitled to make findings that there was an absentee landlord (registered in Jersey) that was responsible for serious management failings and had allowed, through breach of covenant, serious (indeed dangerous) disrepair and want of condition to arise. It had been obstructive and reluctant. The FTT had no confidence in the landlord. Although there must be a reasonable relationship of proportionality between the terms of the management order and the aim sought to be realised, it 'cannot be right, if the leases themselves make inadequate provision … that the manager can only be given these inadequate powers under the lease' (para 47). The FTT had been entitled to confer upon the manager the right to manage the commercial unit and to receive the rents from the commercial tenant.

The judge concluded that the FTT had 'imposed terms in the management order which were within the range of reasonable terms which it was permissible for [it] to impose. There [was] a reasonable relationship of proportionality between these terms and the aim properly sought to be realised by the management order. There [was] no error of law in [its] decision' (para 57).

Housing allocation

Allocation schemes

- **R (HA) v Ealing LBC (No 2)**
  Administrative Court,
  16 December 2015

On 7 August 2015, Goss J allowed a claim for judicial review of the council's housing allocation scheme, adopted under HA 1996 Pt 6 ([2015] EWHC 2375 (Admin), 7 August 2015; October 2015 *Legal Action* 41). He held that both the provisions of the allocation scheme relating to 'residence' as a qualifying criterion and the individual decision on the claimant's application were unlawful. The council applied to the Court of Appeal for permission to appeal but did not apply for a stay. The application for permission to appeal has yet to be determined.

The claimant renewed her application for housing accommodation. She asked to be considered under the allocation scheme as an exceptional case or, alternatively, on the basis that the residence conditions of the allocation scheme could not be applied to her. Her applications were refused and she sought judicial review.

Patterson J refused to stay the new judicial review claim pending the application for permission to appeal in the first claim. The council could deal with the interval by adopting an interim scheme pending the outcome of that application. There was no lawful basis for refusing to consider the claimant's latest applications for accommodation. The refusals were quashed. No mandatory order was made to require allocation of accommodation as the assessment of the merits of the application was a matter for the council on the particular facts.

Fraud

- **R v Bundu**
  9 November 2015,
  Woolwich Crown Court

Ibrahim Bundu had been employed by Southwark LBC to deal with applications for homelessness assistance and housing allocation. In 2014, he was sentenced to four years' imprisonment for abusing his position by allocating 23 council properties using forged and fraudulent documentation. On 21 July 2015, at Isleworth Crown Court, he was ordered to pay £100,000 compensation to the council and a confiscation order was made. By November 2015, only £1,600 had been paid and Bundu had not sold a property that he owned in order to meet the liability. He was sentenced to an additional two years' imprisonment for that default.

Homelessness

Applicants with children

- **R (AM) v Havering LBC and Tower Hamlets LBC**
  Court of Appeal (Civil Division),
  17 November 2015

Tower Hamlets decided that the claimant had become homeless intentionally. It withdrew his temporary accommodation, after providing him with an opportunity to find housing for his family: HA 1996 s190(2). As the claimant had dependent children, it notified its children's services department of its decisions as required by HA 1996 s213A. That department began an assessment of the children's needs but discontinued it on appreciating that the temporary accommodation was located in Havering. Havering initially contended that responsibility remained with Tower Hamlets and then that the children did not appear to be 'in need'. Both councils declined to provide further accommodation, which was only secured by obtaining an interim order in judicial review proceedings.

Cobb J decided that both councils had acted unlawfully ([2015] EWHC 1004 (Admin), 17 April 2015; May 2015 *Legal Action* 46). The needs of the children should have been assessed by Havering and accommodation for the family should have been continued by Tower Hamlets until the assessment had been concluded. Havering was ordered to undertake a Children Act (CA) 1989 assessment and provide accommodation in the interim.
Both councils appealed. A stay of the Administrative Court orders was refused. By the date the appeals were heard, the CA 1989 assessment had been completed, notified to the claimant and was subject to a formal complaint. Also, Tower Hamlets had invited Havering to co-operate in drafting a new protocol for application in future such cases.

The Court of Appeal dismissed both appeals because the issues in the case had been rendered academic by subsequent events.

Applications by children

- **Complaint against Doncaster MBC**
  Local Government Ombudsman
  Complaint No 14 018 458,
  1 December 2015

A girl aged 16 lived with her father. When he resumed alcohol and drug abuse after a detoxification programme, she left his home and went to stay with her mother. Later, she applied to the council for homelessness assistance, having been told to leave her mother's home in the middle of the night. After interview, a housing officer was satisfied that she appeared to be homeless, in priority need and unintentionally homeless. Interim accommodation was provided (HA 1996 s188) and the application was referred to the council's children's services department.

Children's services formed the view that she could return to live with her father and declined to make even an initial assessment of her needs under the CA 1989. It said that it would make such assessment if the applicant wanted to be placed in foster care (which she did not). The housing department did not complete enquiries into the homelessness application.

The ombudsman found that the applicant should have been assessed by the children's services department to enable it to decide whether she met the criteria to be accommodated under the CA 1989. Further, after the children's services department had reached a decision that it would not accommodate, the housing department should have completed its consideration of the application for homelessness assistance. The failure of the council to carry out an assessment echoed concerns highlighted in an earlier LGO report about the same council (Complaint No 13 001 144, 3 March 2014; May 2014 *Legal Action* 23) and suggested that issues have not been resolved despite recommendations. The latest complaint resulted in agreement to apologise, to pay £2,000 compensation and to treat the applicant as having been accommodated under CA 1989 s20.

Eligibility

- **R (AK) v Bristol City Council**[3]
  CO/1574/2015,
  16 November 2015

The claimant was a victim of trafficking. As a non-working EEA national awaiting a leave to remain decision, she was not eligible for housing or welfare support and could provide for her most basic needs only by engaging in prostitution.

She claimed that her situation was inhuman, degrading and contrary to the UK's duties under Directive 2011/36/EU (Anti-Trafficking Directive) art 11 and Council of Europe Convention on Action against Trafficking in Human Beings art 12, as well as ECHR art 3 or art 4. She applied to the council for accommodation.

The council refused to provide her with accommodation or with subsistence-level financial support. In April 2015, on a claim for judicial review, she was granted an interim injunction requiring the council to pay her £50 a week and accommodate her pending trial.

On the eve of that trial, the council accepted that, until the claimant could find her own accommodation, it was responsible for providing her with support and assistance.

Priority need

- **Barrett v Westminster City Council**[4]
  County Court at Central London,
  2 October 2015

The appellant was a single woman, aged 58. She was not registered with a GP but received disability living allowance. She said that she suffered from various conditions including an eating disorder (anorexia), severe irritable bowel syndrome, obsessive compulsive disorder, panic attacks, a foot injury and severe exhaustion.

She had been homeless for two years in London, spending her resources on hostels or hotels, making use of night buses and living on the streets. She applied to the council for homelessness assistance. It decided that she was not 'vulnerable': HA 1996 s189(1)(c). She requested a review.

The council declined to secure accommodation pending review. She brought judicial review proceedings, which resulted in an order that the council's decision should be quashed and reconsidered: *R (Barrett) v Westminster CC* [2015] EWHC 2515 (Admin), 4 August 2015; October 2015 *Legal Action* 42.

On review, the council decided that the appellant's conditions could be minimised by use of toilet and laundry facilities at day centres.

The reviewing officer's decision stated that the Supreme Court judgment in *Hotak v Southwark LBC*; *Kanu v Southwark LBC*; *Johnson v Solihull MBC* [2015] UKSC 30, 13 May 2015; July/August 2015 *Legal Action* 50 had been taken into account and the public sector equality duty (PSED; Equality Act 2010 s149) had been considered.

On appeal, Recorder Genn held that the reviewing officer had failed to apply the approach to third-party support identified by Lord Neuberger in *Hotak*. She accepted that the reviewing officer would know about relevant services in the local area, but there was no identification of whether the toilet facilities in day centres would be private or the extent to which laundry facilities were available. It was therefore difficult to assess the extent to which the anxiety and panic attacks and ability to eat and drink would be improved. There was no consideration of the appellant's specific difficulties and frailties as a homeless woman at night.

The judge also held that, even if she were wrong on the other grounds, the manner of engaging with the PSED contained significant errors of law. The appellant had presented with the potential protected characteristic of 'disability'. There was no decision on whether she was a disabled person or not. Since there was no assessment of whether she was disabled, the council could not possibly identify what steps might be required to meet her needs. Had it looked at the cumulative conditions in the context of disability and gender, potentially there might be a different conclusion on the review.

The appeal was allowed and the review decision quashed.

Intentional homelessness

- **Brown v Southwark LBC**[5]
  County Court at Central London,
  10 December 2015

The appellant was a single mother who had suffered from mental health problems from a young age. Her private landlord told her and her son to leave, and they did so. They stayed with friends and relatives before applying to the council for homelessness assistance under HA 1996 Pt 7. The council decided that the appellant was homeless, in priority need, but had become homeless intentionally by leaving the rented home: HA 1996 s191.

The appellant sought a review and submitted medical evidence that referred to her impaired judgement in conditions of stress.

The reviewing officer concluded that: the appellant had not acted 'in good faith' on the basis that she had abandoned her tenancy without arranging alternative accommodation although aware of the legal system in

the UK; and during the relevant period, the appellant was mentally capable of managing her tenancy, including seeking advice.

HHJ Bailey allowed an appeal against that decision. He held that the reviewing officer had failed to make 'adequate' enquiries as to why the appellant had left her accommodation. He found that the assessment of the medical evidence had been flawed. The *Homelessness Code of Guidance for Local Authorities* (DCLG, July 2006) para 11.17(iii) referred to mere 'temporary aberration' of the mind. That was a 'very far cry indeed from incapacity to manage affairs'. Applying *Hotak*, he held that when making decisions, local authorities must keep the PSED in mind and address it in substance, with rigour and an open mind. He concluded that the reviewing officer had noted the mental health issues without focusing sharply enough on whether the appellant was a disabled person.

The review decision was quashed.

- **Magoury v Brent LBC**[6]
  County Court at Mayor's and City of London,
  11 November 2015

The appellant was an assured shorthold tenant in receipt of full housing benefit (HB). In 2012, her HB was reduced, due to the change in the local housing allowance. The landlord agreed to reduce the rent to the lower level of HB. By summer 2013, the appellant had accrued rent arrears of around £2,000. The landlord obtained a possession order, which was executed on 19 September 2013.

On 13 September 2013, the HB department sent a letter informing the appellant that her HB would be cut by £134 a week, because she was subject to the benefit cap.

Following her eviction, the appellant applied for homelessness assistance. The council decided she had become homeless intentionally. The arrears had accrued due to her deliberate act, in that she had failed to pass on the whole of the HB to the landlord.

A review of that decision noted that she had informed the council, in late August or early September 2013, that the landlord had told her that even if she paid off the arrears, it would still repossess because the rent was to be reduced. The council took the reference to reduction in rent as a reference to the imminent benefit cap. The reviewing officer concluded that that was not the reason for the landlord seeking possession. The landlord had told the council that it had evicted her because of persistent failure to pay rent and significant arrears.

On appeal, HHJ Collender QC held that the reviewing officer was bound to go further than she had done in investigating the likely effect of the benefit cap on the ability to pay the rent. The likelihood was that the assured shorthold tenancy would have become unaffordable due to the benefit cap, in any event: see *Haile v Waltham Forest LBC* [2015] UKSC 34, 20 May 2015; July/August 2015 *Legal Action* 50. There had been no investigation by the reviewing officer into whether or not the landlord would have agreed a further reduction in rent. Such an inquiry was essential in order for the council to ascertain whether or not the landlord would have brought the tenancy to an end as a result of the reduction in HB. He allowed the appeal and quashed the review decision.

Suitable accommodation

- **Forsythe-Young v Redbridge LBC**[7]
  County Court at Central London,
  11 November 2015

The council owed the appellant the main housing duty: HA 1996 s193. In performance of that duty, it provided temporary accommodation outside its own district, in Grays (Essex). The appellant sought a review of its suitability. She said that she wished her five-year-old daughter to continue attending her current school. The prospect of changing schools was upsetting the child, as the head of reception at her school had confirmed. The reviewing officer decided that the accommodation was suitable. In his view, the daughter was of an age where moving school was not inconceivable, even though she was settled where she was.

Recorder Hancock QC allowed an appeal. He held that the reviewing officer's decision did not meet the requirements laid down by Baroness Hale in *Nzolameso v Westminster CC* [2015] UKSC 22, 2 April 2015. There was no finding as to the distances it would be necessary to travel in order to continue to go to the child's current school. Nor was there any consideration of the schools that would be available to the child or of which school would be best for her. There was also no consideration of whether there might be other properties, even outside the borough, that would better suit the child's needs. The decision was quashed.

Accommodation pending review

- **R (Omar) v Wandsworth LBC**
  Administrative Court,
  11 November 2015

The claimant was a single woman in part-time work. Her asthmatic condition led to inpatient treatment for an asthma attack and she was taking prescribed medication. On her application for homelessness assistance, the council decided she was not in priority need as she was not 'vulnerable': HA 1996 s189(1)(c). She sought a review and asked for accommodation to be provided pending the review: HA 1996 s188(3). The request for accommodation was refused. She applied for permission to bring a claim for judicial review.

Ouseley J refused an application for an injunction requiring accommodation to be secured pending consideration of that claim. The grounds for obtaining such an injunction had not been made out. The council had addressed itself to the *Mohammed* criteria (*R v Camden LBC ex p Mohammed* (1997) 30 HLR 315) and the challenge to the underlying assessment of 'no vulnerability' was unlikely to succeed.

Housing and community care

- **R (Gitere) v Secretary of State for the Home Department**
  [2015] EWHC 3336 (Admin),
  19 November 2015

The claimant was a destitute asylum-seeker. He was provided with accommodation in Plymouth by the secretary of state. The claimant was asthmatic and complained that: the house was occupied by smokers; and it was too far away from where his severely disabled son lived (with his son's mother) in Yeovil, Somerset.

In December 2013, he brought a claim for judicial review. In August 2015, the secretary of state provided alternative self-contained accommodation in Bristol and agreed to pay reasonable travel costs between Bristol and Yeovil so that the claimant could maintain contact with his son (as well as offering to pay the costs of the claim).

Although the claimant wished to press the claim, David Casement QC, sitting as a deputy High Court judge, dismissed it as it had become academic.

- **R (MG) v Secretary of State for the Home Department**
  [2015] EWHC 3142 (Admin),
  5 November 2015

The claimant was a failed asylum-seeker and Iranian national. He successfully applied to the secretary of state for accommodation and support because he was destitute. Accommodation was provided near Portsmouth. His child (and the child's mother) lived in Canterbury. He asked to be moved nearer to Canterbury or for money to cover the expenses of visiting his child. Both requests were refused.

In a claim for judicial review based on Borders, Citizenship and Immigration Act 2009 s55 (welfare of children) and ECHR art 8 (right to respect for family life), Michael Kent QC, sitting as a deputy High Court judge, held that the decisions of the secretary of state were unlawful.

However, given the real practical difficulties in finding accommodation nearer to Canterbury, only the decision to refuse travel costs between Portsmouth and Canterbury was quashed.

- **North Yorkshire County Council v MAG, GC and a Clinical Commissioning Group**
  [2015] EWCOP 64,
  13 July 2015

The council was responsible for providing care and accommodation to the respondent, a severely disabled man. In 2006, it arranged for a social landlord to provide a ground-floor flat in which he lived and received care. The flat was not suitable for wheelchair use. The respondent could only move around it by pulling himself along the floor and crawling. This caused physical problems to his hands, knees and thighs. He could not have a sleep-in carer because there was only one bedroom.

The council agreed that he had been deprived of his liberty for nine years by these arrangements but applied to the court to approve their continuance and to determine issues about his capacity to enter into a tenancy agreement.

District Judge Glentworth, sitting in the Court of Protection, refused to sanction the deprivation of liberty. The accommodation had not met the respondent's needs since 2006. The council 'must take the steps necessary to ensure that there is no breach' of his rights (para 42).

1 Ruth Camp, solicitor, Philcox Gray, London, and Catherine O'Donnell, barrister, London.

2 For the full judgment see: http://tinyurl.com/z3ubrhr. See also: http://tinyurl.com/j2k4agu.

3 Adam Hundt and Frances Lipman, solicitors, Deighton Pierce Glynn, London and Bristol.

4 Liz Davies, barrister, London, and Chris Callender, solicitor, Steel & Shamash, London.

5 Jamie Burton, barrister, London.

6 Liz Davies, barrister, London, and Will Ford and Rory Matheson, solicitors, Osbornes, London.

7 Kevin Gannon, barrister, London.

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