Housing: recent developments

The latest policy and legislation developments, and cases on human rights, secure tenants, possession, rents, long leases, contempt, HMOs, housing allocation, homelessness, and housing and children.
Jan Luba QC and Nic Madge provide their monthly round-up.

Jan Luba QC

Nic Madge

Politics and legislation

Housing and Planning Bill

This important UK government bill is now moving through its House of Lords committee stage. The UK parliament web pages for the bill contain not only the links to the debates at each stage but also all the evidence submitted about the bill's provisions and details of the amendments proposed.

Rents in social housing

The Welfare Reform and Work Act 2016 received royal assent on 16 March 2016. Sections 23–33 and Sch 2 make provision for the reduction of social housing rents. They were brought into force on 1 April 2016 by the Welfare Reform and Work Act 2016 (Commencement No 1) Regulations 2016 SI No 394. Special arrangements relating to some social housing rents are made by the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 SI No 390.

Social housing allocation

Current statutory guidance in England encourages local housing authorities to impose qualifying conditions in social housing allocation schemes requiring applicants to have at least two years' residence in an area. In February 2016, the UK government indicated that it would issue amended guidance increasing the recommended minimum period to four years: *The best of both worlds: the United Kingdom's special status in a reformed European Union* (22 February 2016, para 2.107).

Landlord possession claims

The latest available statistics indicate that the profile of types of landlord possession claim has changed over time: *Mortgage and landlord possession statistics quarterly, England and Wales: October to December 2015* (Ministry of Justice, February 2016). In October to December 2015, the majority of landlord possession claims (62 per cent) were brought by social landlords but this proportion has fallen from 83 per cent in 1999. In contrast, a quarter of claims made in October to December 2015 were accelerated claims and this proportion has risen from seven per cent in 1999.

In October to December 2015:

- 36,601 landlord possession claims were recorded in county courts, down four per cent from the same quarter in 2014;
- there were 28,476 orders for possession, down six per cent on the same quarter last year;
- warrants of possession remained stable at 18,644, a decrease of less than one per cent on the same quarter last year; and
- there were 9,775 repossessions by county court bailiffs, down six per cent on the same quarter last year.

Unlawful evictions

The Local Government Association (LGA) has called on the UK government to improve the process for prosecutions for illegal evictions (*Illegal eviction prosecutions show councils are cracking down on rogue landlords*, LGA media release, 29 January 2016). It reports a surge of recent prosecutions by councils but is pressing for the process to be speeded up.

Homelessness

The communities and local government select committee is conducting an inquiry into homelessness. The deadline for written submissions was 8 February 2016. However, late submissions may still be considered. A report will be published shortly. In the meantime, all the evidence submitted has been published on the committee's web pages.

Right to buy

The House of Commons communities and local government select committee's second report of session 2015–16 is entitled *Housing associations and the right to buy* (HC 370, 10 February 2016). The committee remained concerned 'that the government's policies could have a detrimental effect on the provision of accessible and affordable housing across all tenures, particularly affordable rented'.

Rough sleeping

In autumn 2015, 3,569 people in England were sleeping out of doors each night: *Rough sleeping statistics autumn 2015, England* (DCLG, 25 February 2016). The figure is up 825 (30 per cent) from 2,744 in autumn 2014. The number of rough sleepers has increased by 27 per cent in London and 31 per cent in the rest of England in a single year.

Housing in England

Latest results from the English housing survey show that of the estimated 22.5m households in England in 2014-15, 14.3m (64 per cent) were owner-occupiers: *English housing survey headline report 2014–15* (DCLG, 18 February 2016). Also in 2014–15, 19 per cent (4.3m) of households were renting privately, while 17 per cent (3.9m) lived in the social rented sector. There was no change in the size of either sector between 2013–14 and 2014–15.

Housing and anti-social behaviour

Housing Act (HA) 1985 Sch 2A contains a list of the 'serious offences' capable of satisfying the absolute ground for possession for anti-social behaviour in HA 1985 s84 (and in HA 1988 Sch 2 Ground 7A). Housing Act 1985 (Amendment of Schedule 2A) (Serious Offences) (Wales) Order 2016 SI No 173 (W 74) art 2 added offences under Modern Slavery Act 2015 ss1 and 2 to the statutory lists with effect from 16 February 2016 in Wales.

Long leaseholder insurance

House of Commons Library Briefing Paper no SN01821 (4 March 2016) explains long leaseholders' rights in relation to buildings insurance and summarises both a Westminster Hall debate on the issue (October 2014) and the findings of a study carried out by the Competition and Markets Authority.

Housing standards

On 18 January 2016, the Welsh government launched a consultation on housing standards and statutory guidance: *Mandatory quality standards for new, rehabilitated and existing homes – implementation of mandatory quality standards for new, rehabilitated and existing homes under Part 4 of the Housing (Wales) Act 2014 & sections 33A, 33B and 33C of the Housing Act 1996*. The proposals are in two parts and cover two separate but related areas:

- part A proposes making the existing Welsh Housing Quality Standard a mandatory standard for the improvement of existing homes; and
- part B proposes making the Development Quality Requirements a mandatory standard for the design and construction of new and rehabilitated homes built using Welsh government subsidy.

Responses are due by 12 April 2016.

Housing lawyers and legal aid

On 29 February 2016, the Legal Aid Agency published an updated directory of the providers who hold contracts to supply legal aid in housing and other civil legal aid subjects. The list is available on the UK government's publications website.[1]

Housing and human rights

The current UN Special Rapporteur on adequate housing is Canadian lawyer Leilani Farha. Her latest report (A/HRC/31/54) was submitted on 30 December 2015 and considered by the UN Human Rights Council on 3 March 2016. She told the council: 'Widespread homelessness is evidence of the failure of states to protect and ensure the human rights of the most vulnerable populations,' and: 'Homelessness … is a result of state acquiescence to real estate speculation and unregulated markets – a result of treating housing as a commodity rather than as a human right.'

Higher-income social housing tenants

The UK government has published the outcome of its recent consultation about the policy of requiring higher income tenants of social housing to pay market rents from April 2017: *Pay to stay: fairer rents in social housing – consultation response* (DCLG, March 2016). The paper sets out how income thresholds will work and deals with the administrative costs involved.

Human rights

- **Vijatović v Croatia**
  App No 50200/13,
  16 February 2016

In 1961, Vera Vijatović's husband was granted a specially protected tenancy of a flat in Zagreb by the Yugoslav People's Army. She, as his spouse, was also a holder of a specially protected tenancy of the flat. In 1991, parliament enacted the Protected Tenancies (Sale to Occupier) Act, which regulated the sale of socially-owned flats previously let under specially protected tenancies. The time limit for lodging a request to purchase such a flat was set at 60 days. In 1997, the Constitutional Court abrogated the provision stipulating that time limit. Mrs Vijatović's husband died on 15 April 2006. On 7 June 2006, she lodged a request to purchase the flat. The request was denied on the ground that it had been lodged outside the prescribed time limit, which had expired on 31 December 1995. She brought a civil action in the Zagreb Municipal Court seeking a judgment in lieu of a sale contract. She relied on several decisions of the Constitutional Court ruling that there was no time limit. The Municipal Court dismissed the claim on the ground that she had lodged her purchase request out of time. Subsequent appeals were dismissed. In a complaint to the European Court of Human Rights (ECtHR), she alleged that the refusal of her request to purchase the flat amounted to a violation of her right to peaceful enjoyment of her possessions under art 1 of Protocol No 1 to the European Convention on Human Rights (ECHR).

The court found that Mrs Vijatović's claim to purchase the flat had a sufficient basis in national law to qualify as an 'asset' and so was a 'possession' protected by art 1 of Protocol No 1. In order to be compatible with that article, any interference must be in accordance with the law, in the public interest and proportionate to the aim pursued. Croatian courts had reached conflicting conclusions as to whether there was any time limit for lodging requests to purchase state-owned flats. In view of this and the failure of the government to set a new time limit by statute, Mrs Vijatović did not have to comply with any time limit for lodging her request to purchase the flat. Accordingly, the interference with her right to peaceful enjoyment of her possessions was not provided for by law and there was a violation of art 1 of Protocol No 1.

- **Garib v The Netherlands**
  App No 43494/09,
  23 February 2016

In May 2005, Rohiniedevie Garib, a Netherlands national, moved to Rotterdam. She rented a property. Later, the owner asked her and her two young children to vacate it as he wished to renovate it for his own use. He offered her a different property that comprised three rooms and a garden. She considered that this was far more suitable. However, the area where the new accommodation was situated had been designated under the Inner City Problems (Special Measures) Act as an area in which it was not permitted to take up new residence without a housing permit. Although Ms Garib lodged a request for a housing permit with the burgomaster and aldermen of Rotterdam, in 2007 it was refused because she had not been resident in the Rotterdam Metropolitan Region for six years. Her objections and appeals were dismissed. Ms Garib alleged that the restrictions in choosing her place of residence were incompatible with art 2 of Protocol No 4 (liberty of movement and freedom to choose residence).

By a majority, the ECtHR found that there was no violation of art 2 of Protocol No 4. There was 'undoubtedly … a "restriction" on her "freedom to choose her residence"' (para 105). That restriction was 'in accordance with law' and 'justified by the public interest in a democratic society'. The aim was to reverse the decline of impoverished inner-city areas and to improve quality of life generally. There was 'no doubt that this is an aim which it is legitimate for legislatures and city planners to pursue' (para 110). With regards proportionality, the court referred to *Noack and others v Germany* (dec) ECHR 2000-VI and noted that art 8 cannot be construed as conferring a right to live in a particular location. It reiterated the following principles:

- Spheres such as housing may often call for some form of regulation by the state. The margin of appreciation available to the legislature in implementing social and economic policies should be a wide one.
- Where general social and economic policy considerations have arisen in the context of art 8, the scope of the margin of appreciation has depended on the context of the case.
- Whenever discretion capable of interfering with the enjoyment of an ECHR right is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the state has remained within its margin of appreciation.
- It is appropriate, when assessing proportionality, to examine the possibilities of alternative housing that exist.

The court concluded that it could not 'find that the policy decisions taken by the domestic authorities [were] manifestly without reasonable foundation' (para 127). Ms Garib was at no time prevented from taking up residence in areas of Rotterdam not covered by the legislation. The burgomaster and aldermen were under no obligation to accommodate her preferences. The Spanish president of the Third Section and a Swiss judge dissented.

Note: Although the UK has not ratified this protocol, this case contains a useful re-statement of principle in respect of art 8 and art 1 of Protocol No 1.

Secure tenants

Water charges

- **Jones v Southwark LBC**
  [2016] EWHC 457 (Ch),
  4 March 2016

Southwark collected charges for water and sewerage services supplied by Thames Water from many of its tenants, including Kim Jones. The sum that Southwark in turn paid Thames Water was reduced by five per cent to reflect the proportion of properties that were estimated to be empty and by 18 per cent as a commission for collecting the water rates. The 'commission' and 'voids allowance' represented an important source of funding for Southwark. Ms Jones argued that Southwark was a re-seller under the Water Resale Order 2006 (WRO) and that, when determining the maximum charges that Southwark could recover from its tenants, the commission and voids allowance had to be taken into account. She argued that Southwark had accordingly charged more than was permissible under the WRO.

Newey J found that the relationship between Thames Water and Southwark was not one of true agency, but rather involved Southwark buying water and sewerage services from Thames Water and re-selling them to its tenants. The WRO was therefore applicable. The 18 per cent 'commission' and five per cent 'voids allowance' did fall to be taken into account when determining the 'amount payable by the Re-seller [ie Southwark] to the Relevant Undertaker [ie Thames Water]'. Southwark was charging Ms Jones (and other tenants with unmetered water supplies) more than was permissible under the WRO. (Southwark had also argued that by entering into a deed of clarification and amendment with Thames Water in 2013, it had ceased to be a water re-seller. Ms Jones contended that that deed was invalid because Southwark had failed to follow its 'key decision' procedures and to consult its tenants under HA 1985 s105. Newey J adjourned that aspect of the claim as Thames Water, which was not a party to the proceedings, stood to be affected by any ruling.)

Possession claims

Trespassers

- **Dutton v Persons Unknown**
  [2015] EWHC 3988 (Ch),
  6 November 2015

Timothy and Piers Dutton, the freehold owners of farm land, granted a lease to Dart Energy (West England) Limited and IGas Energy PLC. At the time the lease was granted, the farm land had been occupied by a number of individuals styling themselves as the Upton Community Protection Camp. They were protesting about proposals to undertake exploratory drilling with a view to possible fracking for shale gas on the land. Their camp had been on the land since April 2014. They had erected tents and structures on the property and aimed to prevent drilling. In October 2015, the freeholders and

lessees issued a claim for possession, alleging trespass, in the Manchester District Registry. At the hearing, two named people were joined as defendants.

HHJ Hodge QC, sitting as a judge of the High Court, was satisfied that the claimants had proper title to the land and that service had been effected. He rejected the defendants' contention that they had been granted a licence. That was 'incredible'. If that was wrong, it could not be a contractual licence since there was no consideration and it could not have been binding upon the lessees. Following *McDonald v McDonald and another* [2014] EWCA Civ 1049; [2015] 1 Ch 357, he held that ECHR art 8 does not apply to privately owned land, but that even if it were necessary to consider issues of proportionality, the art 8 rights of the protestors must yield to the claimants' rights under art 1 of Protocol No 1. The judge also doubted whether UN Convention on the Rights of the Child art 3(1) was engaged because none of the defendants had a child at the camp. In any event, it seemed to him 'that rather more permanent living accommodation would be in their best interests'. He also rejected defences based on ECHR arts 10 and 11. He was 'satisfied that the balance undoubtedly falls in favour of the claimants' claim to possession' (para 36). He granted a possession order which, in view of the length of time that the defendants had been occupying the land, would be capable of enforcement after 28 days.

Setting aside a possession order

- **Reeves v Kurelic**[2]
  County Court at Bromley, 10 February 2016

In August 2004, the claimant granted the defendant a six-month assured shorthold tenancy. The defendant paid a deposit. The claimant granted a series of subsequent six-month assured shorthold tenancies, the last being granted on 1 September 2012. A statutory periodic assured shorthold tenancy came into existence on 1 March 2013. The claimant retained the deposit throughout, but did not protect it in an authorised scheme or serve the prescribed information until October 2013. In June 2015, the claimant served a HA 1988 s21 notice and on 10 September issued a claim for possession under the accelerated procedure. The defendant did not seek legal advice and did not file a defence, as she assumed she had no defence to the claim. On 21 October 2015, the court granted a possession order on the papers under Civil Procedure Rules 1998 SI No 3132 (CPR) r55.17 and, on 14 January 2016, it issued a warrant for eviction on 12 February.

In late January, the defendant was advised by Shelter that she might have had a defence to the possession claim, on the basis of failure to comply with the tenancy deposit requirements under HA 2004. She had difficulty finding a solicitor but managed to do so and, on 8 February 2016, applied to set aside the possession order of 21 October 2015. The application was heard on 10 February, three-and-a-half months after the date of the possession order and two days before it was due to be executed. The solicitor for the landlord conceded that the s21 notice had not been valid, as failure to protect the deposit in time could not be cured by late protection (HA 2004 s215(1A)). However, the application was resisted on the basis that CPR r55.19(a) provided that any application to set aside a possession order made under r55.17 had to be made within 14 days and the court should not exercise any discretion to hear the application, due to the length of the delay. On behalf of the defendant, it was submitted that the court could:

a) exercise the general power under r3.1(2)(a) to extend the 14-day period under r55.19(a);
b) set aside of its own motion under r55.19(b) now that it was aware of the issue; or
c) set aside using the more general power under r3.1(7) to 'vary or revoke the order', in accordance with the principles set out in *Forcelux Ltd v Binnie* [2009] EWCA Civ 1077; [2010] HLR 20, December 2009 *Legal Action* 16 and *Hackney LBC v Findlay* [2011] EWCA Civ 8; [2011] HLR 15, March 2011 *Legal Action* 26.

District Judge Brooks exercised his power under r55.19(b) to set aside the possession order of his own motion, stating that he would alternatively have extended the time limit under r55.19(a). He commented that, in light of the fact that the s21 notice had not been valid, 'it would not be in accordance with the overriding objective not to do so', notwithstanding the delay.

Enforcement

- **Secretary of State for Defence v Nicholas**
  Claim No HC-2012-000187, 27 January 2016

Helen Nicholas's husband, a squadron leader in the RAF, was granted a licence of a house by Defence Estates. Mrs Nicholas lived with him. The marriage broke down. He moved out. Defence Estates terminated the licence and sought possession. Burton J made a possession order ([2013] EWHC 2945 (Ch); October 2013 *Legal Action* 32). The Court of Appeal dismissed an appeal and refused permission to appeal ([2015] EWCA Civ 53; April 2015 *Legal Action* 42). A petition by Mrs Nicholas to the Supreme Court for permission to appeal was pending. Defence Estates applied for a writ of possession in accordance with CPR r83.13. The secretary of state conceded that such a writ should not be issued without the permission of the court (para 16(2)).

Edward Cousins, sitting as a deputy Chancery master, exercised his discretion to make an order that possession of the property be enforced by a writ of possession. The matter had a long history, with more than seven years having passed since notice to vacate was given. The Court of Appeal had refused the defendant's request for an injunction pending the outcome of her application to the Supreme Court for permission to appeal. The defendant had received notice of the proceedings and had exhausted all remedies open to her. The provisions of CPR r83.13 had been satisfied.

The Supreme Court has since refused permission to appeal.

Rent Act

Rents

- **Appeal by T Hilling & Co Ltd**
  [2016] UKUT 60 (LC), 5 February 2016

Mr Ledger was the tenant of a three-bedroom house in Surrey under a protected occupancy to which the Rent (Agriculture) Act 1976 applied. On his death, Mrs Ledger became the statutory tenant by succession. A rent officer registered a fair rent of £381 a week in accordance with Rent Act (RA) 1977 Pt IV. The First-tier Tribunal (FTT) determined that the rent should be £240.50 a week. The principal reason for the difference between the two rents was that the rent officer had accepted the landlord's case that repairs and improvements had been carried out since the previous registration that resulted in a sufficient increase in the rent to disapply the Rent Acts (Maximum Fair Rent) Order 1999 SI No 6 (RA(MFR) Order). The landlord provided a list of the improvements that it said it had carried out, including: a new boiler; a new kitchen with floor and wall units, worktops and a sink; a new downstairs shower room; seven new radiators; a new front door; cavity insulation; insulated boarding in the utility room; new floors in the kitchen and utility room; the replacement of what was described as 'the tenant's illegal wiring'; new waste and soil pipes; new fascias and soffits; new guttering and downpipes; and work to the roof including the provision of new tiles. The work was said to have cost just over £15,000. Mrs Ledger disputed the list. The FTT considered that the repairs and improvements had had a much less significant effect and registered the rent subject to the statutory cap imposed by the RA(MFR) Order. The landlord appealed.

Martin Rodger QC, deputy president, rejected the landlord's submission that the FTT did not have jurisdiction to consider the issue of the maximum fair rent cap since neither party had referred that issue to it. The jurisdiction of both the rent officer and the appropriate tribunal on applications for the registration of a rent is derived from RA 1977 s67 and Sch 11. The matter, or issue, that is referred to the appropriate tribunal is simply the figure that has been registered as the fair rent, and not the basis on which that figure was arrived at. The grounds on which a landlord or tenant objects to the rent that has been registered by the rent officer are irrelevant to the tribunal's jurisdiction. There is no requirement in Sch 11 for a party who objects to a rent that has been registered to provide any reasons for doing so, and both the rent officer's duty to refer and the tribunal's jurisdiction to consider the matter are wholly engaged by the raising of the objection alone. The requirement to consider and apply the RA(MFR) Order is made clear by Sch 11 para 9B.

He also rejected a second ground of appeal, namely that it was procedurally unfair for the FTT to have determined the matter without first making directions clearly identifying the issues that needed to be addressed. 'While it may be the case that the landlord was taken by surprise in this case by the breadth of the [FTT]'s interest, it ought not to have been' (para 34). With the benefit of hindsight, it might have been better had the landlord's solicitor pressed his application for an adjournment to take instructions, but both parties were aware of the position taken by the other in relation to the improvements. The FTT's usual approach to case management was not inappropriate in this case. It did not involve a procedural irregularity sufficient to require the decision be set aside.

However, he allowed the appeal because the FTT had not given adequate reasons for its conclusions on the rent cap issue. He stated: 'It is axiomatic that the [FTT] was not required to give an elaborate explanation for its own valuation, but it had to provide reasons which were intelligible and dealt with the substantial points which had been raised' (para 39). Without clear findings of fact and an explanation of the FTT's thinking on the rental value of

improvements and repairs, it was not possible to tell whether the tribunal correctly applied RA(MFR) Order art 2(7). Aspects of the FTT's decision were 'obscure'. It did not do enough to resolve the issues between the parties or to explain its own conclusions.

'To the extent that the [FTT] was satisfied that the execution of repairs and the provision of improvements had made a difference to the rental value of the property it ought to have quantified that sum either collectively or in relation to each individual item. If the [FTT]'s view was that an improvement had been carried out, but had had no effect on the rental value of the property, it ought to have explained why it took that view' (para 44).

Long leases

Breach of covenant

- **Raja v Aviram**
  [2016] UKUT 102 (LC),
  23 February 2016

David Aviram was the leaseholder of a flat. He wanted to replace his boiler. This required a new exhaust vent and waste pipe to be installed. The lease provided that he could not cut the external walls without the consent of the freeholder. He made some attempts to contact Farhad Raja, the freeholder, but was unable to do so and, accordingly, went ahead with the works. Mr Raja issued proceedings in the FTT under Commonhold and Leasehold Reform Act (CLRA) 2002 s168(4) for a determination that there had been a breach of covenant. The FTT found that there was no breach of covenant. Mr Raja appealed.

Martin Rodger QC, deputy president, allowed the appeal. Mr Aviram had instructed his contractor to install the new boiler, and even if the contractor was not his agent or employee, but was wholly independent, Mr Aviram was responsible for the consequences of his instructions. If the work had been carried out by an independent contractor in breach of Mr Aviram's instruction about the manner in which the task was to be completed, the FTT might have been justified in finding that there had been no breach of covenant by Mr Aviram (see *Hagee (London) Ltd v Cooperative Insurance Society Ltd* [1992] 1 EGLR 57). However, the only conclusion open to the FTT in this case was that a breach of covenant had been committed by the creation of at least one new hole in the wall of the building without the consent of Mr Raja. The fact that Mr Raja would have consented on being satisfied that the work was to be carried out in a competent fashion did not alter that conclusion. Failure by a landlord to provide a name and address (Landlord and Tenant Act 1987 ss47 and 48) did not mean a tenant may carry out alterations or take other prohibited steps without the need to obtain the landlord's consent. The judge did, however, question the purpose of these proceedings, stating: '[A] modest breach of covenant has been committed … it seems extremely unlikely that this valuable lease will be capable of being forfeited without relief against forfeiture being granted. Whether Mr Raja is entitled to any remedy at all (other than nominal damages) is not a question within the jurisdiction of this tribunal under [CLRA 2002 s168]' (para 26).

Contempt

- **AG for Northern Ireland v Carlin**
  Northern Ireland Court of Appeal,
  17 February 2016, 22 February 2016

Mr Carlin, a serving Police Service of Northern Ireland (PSNI) officer, was the defendant in a long-running possession claim relating to his home. A master made a possession order. He appealed to the Court of Appeal. During the course of the appeal hearing, he produced his PSNI warrant card, attempted to arrest Gillen LJ for 'theft of a home' and misfeasance in public office, and administered the police caution. Security and court staff intervened before he could reach the judge and he was arrested. In subsequent contempt proceedings, he unsuccessfully sought the right to cross-examine Gillen LJ, who, he claimed, was 'unlawfully at large'.

The lord chief justice, Sir Declan Morgan, found that Mr Carlin had acted with 'premeditation and determination' and described him as 'a man driven by self-importance and attention seeking [who had] acted with flagrant illegality by an unreasonable and inexcusable disruption of proceedings'. He stated: 'The court should recognise that those who misbehave are often driven to do so when suddenly overwhelmed by emotion. Where, however, it is necessary to act in order to protect the processes of the court an element of deterrence is a proper consideration.' He sentenced Mr Carlin to three months in prison, but told him that if he sought to apologise, after 28 days the rest of his sentence would be set aside. Later, Mr Carlin applied unsuccessfully for permission to appeal to the Supreme Court. His solicitor stated that he intended to seek permission from the Supreme Court.

- **Equity Housing Group v Wade**
  [2015] EW Misc B40 (CC),
  County Court at Stockport,
  28 October 2015

District Judge Dignan sentenced the son of a tenant to 36 weeks' imprisonment for the sixth breach of an anti-social behaviour injunction that imposed an exclusion area.

- **Bristol City Council v Hill**
  [2015] EW Misc B35,
  Bristol Civil and Family Justice Centre,
  23 September 2015

Deputy District Judge Orme sentenced the defendant to three months' imprisonment for numerous breaches of an injunction that prohibited the defendant from '[s]itting, loitering or approaching people for the purposes of begging anywhere in the City of Bristol'.

- **Stockport MBC v Ogden**
  [2015] EW Misc B39 (CC),
  County Court at Stockport,
  25 September 2015

District Judge Dignan sentenced the defendant to 26 weeks' imprisonment for breaching an injunction that provided that he should not use or threaten violence against his wife, and that he should not enter the road where his wife lived.

- **Mossbank Homes Ltd v Reece**
  [2015] EW Misc B34 (CC),
  County Court at Stockport,
  28 August 2015

District Judge Dignan sentenced the defendant to 26 weeks' imprisonment suspended for the first breach of an anti-social behaviour injunction.

- **Newcastle City Council v Martin**
  County Court at Newcastle,
  10 August 2015

District Judge Morgan sentenced the defendant to three months' imprisonment for breaching an anti-social behaviour injunction containing an exclusion zone.

- **Isos Housing v Burn**
  County Court at Newcastle,
  23 July 2015

The defendant breached an anti-social behaviour injunction. He was made subject to a suspended sentence of six weeks' imprisonment. On a further committal application, District Judge Kramer activated the suspended sentence and imposed a further two-week sentence of imprisonment for the further breach.

- **Hinckley & Bosworth BC v Hardy**
  [2015] EW Misc B46 (CC),
  County Court at Nuneaton,
  18 December 2015

District Judge Emma Kelly made an order committing the defendant to prison for seven days for breach of an injunction preventing him from keeping a dog, but suspended it on terms that he now remove the dog and thereafter comply with the original order.

- **Birmingham City Council v Gill**
  [2016] EW Misc B3 (CC),
  County Court at Birmingham,
  12 February 2016

HHJ Wall imposed a sentence of 14 months and 23 days' imprisonment for a number of breaches of an injunction restraining the defendant from harassing a woman.

- **Gloucester CC v Edwards, Birch and two others**
  [2016] EW Misc B4,
  County Court at Gloucester & Cheltenham,
  3 February 2016

District Judge Hebblethwaite imposed sentences of six weeks' imprisonment suspended for a year for breaches of injunctions restraining the defendants from anti-social behaviour towards neighbours.

- **Birmingham City Council v Thornton**
  [2016] EW Misc B2 (CC),
  County Court at Birmingham,
  2 February 2016

HHJ Worster imposed a sentence of four months' imprisonment suspended for eight months for a series of further breaches committed after the defendant's release from custody, including talking loudly, playing music, laughing and swearing. In suspending the sentence he bore in mind the fact that the defendant had been evicted.

- **Walsall Housing Group v McCabe**
  [2016] EW Misc B1 (CC),
  County Court at Walsall,
  26 January 2016

HHJ Mithani QC imposed a sentence of three months' imprisonment suspended for allowing access to premises to two other people in breach of an injunction.

- **Leeds Federated Housing v Kumar**
  County Court at Leeds,
  4 February 2016

HHJ Gosnell sentenced the defendant to four months' imprisonment for five breaches of an injunction. She had pressed the intercom of other tenants, banged doors, shouted and been noisy.

Houses in multiple occupation (HMOs)

- **Nottingham City Council v Parr**
  [2016] UKUT 71 (LC),
  9 February 2016

Dominic Parr provided accommodation to students in a house in Nottingham with five bedrooms that was modified to provide a sixth attic bedroom. When

granting a new HMO licence (HA 2004 s61(1)), the council imposed a condition prohibiting the use of the attic bedroom for sleeping 'except where it is let in combination with another room within the property in such a way as to provide the occupant with the exclusive use of two rooms'. Mr Parr appealed the condition. The FTT allowed the appeal and deleted the condition. It found that the attic room was suitable for students. It did, though, formulate a specific condition requiring that the attic room be used as sleeping accommodation only 'by a person engaged in full-time education and who resides in the dwelling for a maximum period of 10 calendar months over a period of 1 year'. The council appealed to the Upper Tribunal.

Martin Rodger QC, deputy president, dismissed the appeal. Certain categories of occupier may wish to occupy accommodation in a particular way. Certain types of accommodation may lend themselves to different styles of occupation and it would be surprising if the Act did not reflect that. Section 67 permits licence conditions relating to the 'use and occupation' of the housing concerned, and specifically contemplates that different restrictions may apply to the use and occupation of particular parts of a house. The purpose of all conditions is to ensure that the HMO is suitable for the number of persons permitted to occupy it, and therefore there is nothing unlawful in formulating a condition applicable to a particular mode of occupation by a category of occupiers if the house is suitable for them in greater numbers than it is for a different mode of occupation. There was nothing unlawful in a condition restricting the use of sleeping accommodation in part of an HMO to a person in full-time education, if the decision-maker is satisfied that, looked at as a whole, it is suitable for the number of households specified in the licence.

Housing allocation

- **M and A v Islington LBC**
  [2016] EWHC 332 (Admin),
  25 February 2016

The two claimants were children with disabilities. They lived with their respective parents in unsatisfactory social housing. The parents applied for transfers to alternative council accommodation, but were not awarded sufficient points to make successful bids. The council decided that, although the children had 'urgent safety needs because of risk of injury' in their current homes, risk management measures had been put in place and their priority was not such as to warrant a direct offer of alternative accommodation or an award of further points.

The children sought a judicial review contending that:

- Children Act (CA) 1989 s27 required the housing department of the local authority (which was a unitary authority) to co-operate with requests from its own children's services department; and
- the council had not complied with that duty as the failure to transfer the claimants' parents indicated.

Collins J dismissed the claim. He held that:

- CA 1989 s27 did not strictly apply as between the different departments of a unitary authority: *R (C1 and C2) v Hackney LBC* [2015] EWHC 3670 (Admin);
- that was, however, immaterial because parliament's will, the secretary of state's guidance and judicial observations were all to the effect that the same approach as would otherwise be required by s27 was to be applied in a unitary authority as a matter of public law;
- the arrangements and scheme adopted by the council were lawful; and
- the outcome in relation to the transfer applications made by the two claimants' parents was in neither case irrational.

Homelessness

Applications

- **R (Edwards and others) v Birmingham City Council**
  [2016] EWHC 173 (Admin),
  8 February 2016

In a claim for judicial review, the four claimants alleged systemic failings in Birmingham's handling of applications for homelessness assistance made under HA 1996 Pt 7. They contended that the council had arranged its affairs so as to:

- discourage and divert applications, in denial of the obligations to inquire into applications (ss183–184); and
- avoid provision of interim accommodation while inquiries were being made (s188).

Similar contentions had earlier been successfully made in *R (Kelly and others) v Birmingham City Council* [2009] EWHC 3240 (Admin) and *R (Khazai and others) v Birmingham City Council* [2010] EWHC 2576 (Admin).

The council's case was that a new head of its homeless service had been appointed in August 2010 and that its policies and procedures had been substantially revised and were now lawful.

Hickinbottom J rejected the claims. He held that the court was not a general court of inquiry and declined to deal in the abstract with the legality or otherwise of the council's policy or procedure. As to the four individual claims, failings by the council in respect of them had largely been remedied and/or were not of the scale that would have attracted relief. In the absence of success in those claims, the court declined to embark on an inquiry driven by statistical data or reliance on material relating to the handling of other applications.

Accommodation pending review

- **Abdusemed v Lambeth LBC**
  CO/786/2016,
  19 February 2016

The claimant was an Eritrean refugee. She applied to the council for homelessness assistance. It decided that she did not have a priority need. She sought a review. Pending the outcome of the review, she asked for accommodation to be provided until it was concluded. The council decided not to exercise its discretion (HA 1996 s188(3)) to provide accommodation. The claimant was sleeping on the floor of a hairdressing salon and had to leave during the daytime.

A psychiatrist's report was commissioned. It diagnosed moderately severe to severe post-traumatic stress disorder including distressing memories and depressive symptoms. It stated that her mental state would deteriorate in her current situation of homelessness, that antidepressants were required and that a GP's involvement was necessary, but that no treatment would be effective if she had no proper accommodation. The report was sent to the council with a further request for accommodation, which was refused.

The claimant sought judicial review of that decision and applied for an injunction by way of interim relief. That application was refused. Ouseley J decided that the council had had regard to the approach required by *R v Camden LBC ex p Mohammed* (1998) 30 HLR 315. But for the new material disclosed in the psychiatric report, the proceedings would have been an abuse of the facility for interim relief in judicial review. The only question was whether the decision was lawful in the light of the further material. The situation of the claimant was far from ideal but it did not amount to literal, street homelessness. The council's decision could not be described as plainly unlawful.

Housing and children

- **R (Antwa) v Lambeth LBC**
  CO/1113/2016,
  10 March 2016

The claimant was a Ghanaian citizen. She had limited leave to remain in the UK with a condition that she have no recourse to public funds. She lived with her partner and their three children in private rented accommodation. The landlord obtained possession to redevelop the property. The claimant not only became homeless but claimed that the relationship with her partner had broken down and ended. She was not eligible for homelessness assistance (HA 1996 s185) but sought accommodation for herself and the children from children's services under CA 1989 s17.

A social worker concluded that the alleged break-up of the relationship was a façade and that the father was trying to manipulate the situation to force the council to provide publicly-funded accommodation. Therefore, the children were not 'in need' because the father could support them and there was no obligation on the council to provide accommodation.

The claimant sought a judicial review and applied for the extension of an interim mandatory injunction on the basis that the balance of convenience lay in favour of protecting the interests of the children.

Holman J refused the application. A number of documents tended to support the finding that the father was still part of, and supporting, the family. The council had conscientiously undertaken an investigation and assessment. The court could not be sure that the assessment was wrong or mistaken and therefore could not proceed on the basis that the children were, in fact, 'in need'. The council had already agreed to conduct a fresh assessment by a different social worker.

1. www.gov.uk/government/publications/directory-of-legal-aid-providers

2. Daniel Clarke, barrister, London, and Morrison Spowart Solicitors, London.

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