Housing: recent developments

Nic Madge and Jan Luba QC present the latest political and legislative developments, and cases on human rights, public functions, possession, assured shorthold tenants, harassment and unlawful eviction, service charges, enforcement, houseboats, contempt, homelessness, and housing and children.

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Politics and legislation

Homelessness: England

On 23 March 2016, the latest homelessness statistics were published: *Statutory homelessness: October to December quarter 2015* (Department for Communities and Local Government (DCLG)). They show that on 31 December 2015 there were 69,140 households in temporary accommodation, 12 per cent higher than at the same date in 2014. Of the 18,670 accommodated in another local authority district, 17,150 were from London authorities (92 per cent of the England total). This is an increase of 16 per cent from the same date last year. There were 5,110 households living in bed and breakfast (B&B) accommodation (including those in shared 'annex' facilities), an increase of 13 per cent from 31 December 2014. Of those households, 870 with dependent children or expected children had been resident in B&B for more than six weeks.

A poll of leading council housing officers published by the Local Government Association the following day (24 March 2016) showed that 78 per cent predict that current housing reforms will lead to a rise in homelessness: *Housing survey: councils warn of rise in homelessness and waiting lists*. Eighty per cent predict an increased demand for temporary accommodation in their communities, while 81 per cent expect their council housing waiting lists will increase as a result.

On 14 March 2016, the House of Commons Select Committee on Communities and Local Government took oral evidence as part of its enquiry into homelessness. Witnesses included the chair of the Housing Law Practitioners Association.

Homelessness: Scotland

On 5 April 2016, the Scottish government published *Homelessness in Scotland: quarterly update - 1 October to 31 December 2015*. In that quarter, there were 7,615 applications for homelessness assistance (five per cent lower than in the same period in 2014) and as at 31 December there were 10,467 households in temporary accommodation, a two per cent increase compared with the same date in 2014.

Housing allocation and homelessness: Wales

On 24 March 2016, the Welsh government issued a new *Code of guidance for local authorities on the allocation of accommodation and homelessness*. This statutory guidance is given under Housing Act (HA) 1996 Pt 6 (Allocation of housing accommodation) and Housing (Wales) Act 2014 Pt 2 (Homelessness). It replaces the version of the code issued in April 2015. The changes are said (at para 1.46) to include:

- an update on the Renting Homes (Wales) Act 2016;
- advice on the Syrian Resettlement Programme;
- an update on the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015;
- an update in relation to the local authority duties under the Social Services and Well-being (Wales) Act 2014;
- information on the Modern Slavery Act 2015 and further grounds for possession; and
- information on the Well-being of Future Generations (Wales) Act 2015.

Housing notices

The Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) Regulations 2016 SI No 443 came into force on 6 April 2016. They contain new prescribed forms for HA 1988 s8 notices (notice seeking possession) and s13 notices (of rent increase). The regulations have been made in consequence of defects in earlier regulations (Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 SI No 620) and accordingly make corrections to prescribed forms of other statutory housing-related notices.

Enforcement of possession orders

Following complaints that some High Court enforcement officers have been using Form N293A to transfer county court possession orders against tenants for enforcement to the High Court and recent decisions where the misuse of Form N293A has been identified, eg *Birmingham City Council v Mondhlani* [2015] EW Misc B41 (CC), County Court at Birmingham, 6 November 2015; February 2016 *Legal Action* 43 and *Nicholas v Secretary of State for Defence* [2015] EWHC 4064 (Ch); April 2016 *Legal Action* 40, the Senior Master of the Queen's Bench Division of the High Court has taken steps to ensure this practice does not continue.

The Queen's Bench Division Enforcement Section will no longer accept Form N293A for transfer to the High Court for enforcement of a possession order of the county court other than for possession orders against trespassers. The Queen's Bench Masters will not accept applications under County Courts Act (CCA) 1984 s41 for transfer of a county court possession claim for enforcement and such applications must be made under CCA 1984 s42 to a judge of the hearing centre of the county court where the possession order was made, so that judges can satisfy themselves that the appropriate notice has been given under Civil Procedure Rules 1998 SI No 3132 (CPR) r83.13(8).

A redrafted Form N293A places greater emphasis on the restriction of the use of the form to requests for writs of control and writs of possession against trespassers only.

Social housing rents

The Chartered Institute of Housing (CIH) has published a briefing note that provides an outline of the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 SI No 390, which contain detail on the exceptions permitted when implementing the reduction in social housing rents under Welfare Reform and Work Act 2016 s23: *Reduction in social housing rents* (1 April 2016). It is designed to assist housing officers, housing association boards and local authority elected members in understanding the intended operation of the new regulations.

Court fees in housing cases

The Court of Appeal and Upper Tribunal (Lands Chamber) Fees (Amendment) Order 2016 SI No 434 came into force on 18 April 2016. It increased fees in the Civil Division of the Court of Appeal (eg the fee payable on an application for permission to appeal or for an extension of time increased from £235 to £528) and in the Upper Tribunal (where lodging an appeal will now cost £275).

Right to buy

On 24 March 2016, the latest right to buy statistics were published: *Right to buy sales: October to December 2015, England* (DCLG). They show that in that quarter, local authorities sold an estimated 3,250 dwellings under the right to buy scheme. This is a decrease of one per cent from the 3,288 sold in the same quarter of 2014/15.

Housing needs of Travellers

The provisions of the Housing (Wales) Act 2014 concerning the duties of local housing authorities in Wales regarding the accommodation needs of Gypsies and Travellers in their areas were brought into force on 16 March 2016 by the Housing (Wales) Act 2014 (Commencement No 6) Order 2016 SI No 266 (W 99).

In England, the periodical review of housing needs is a statutory requirement on local housing authorities (HA 1985 s8). The statute requires local housing authorities to assess and understand the accommodation needs of people residing in or resorting to their districts. The Housing and Planning Bill proposes a new duty to consider the needs of people residing in or resorting to a district with respect to sites for caravans and the mooring of houseboats as part of that requirement. On 11 March 2016, the UK government published draft guidance on the operation of the proposed new provision: *Review of housing needs for caravans and houseboats: draft guidance* (DCLG).

Human rights

- **Drahoš and others v Slovakia**
  App No 47922/14,
  2 February 2016

The applicants were the owners of buildings containing flats which were subject to a rent control scheme (cf *Bittó and others v Slovakia* App No 30255/09, 28 January 2014; [2014] ECHR 79). They submitted that the rent to which they were entitled was disproportionately low compared with that of similar flats to which the rent-control scheme did not apply. They alleged a violation of art 1 of Protocol No 1 and art 14 of the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECtHR) has asked the following questions:

- Has there been an interference with the applicants' right to peaceful enjoyment of possessions? If so, was that interference necessary to control the use of property in accordance with the general interest and, in particular, has an excessive individual burden been placed on the applicants as a result of the operation of the legal rules governing rent control throughout the period of their ownership of the property in issue?
- Have the applicants suffered discrimination?

Public function

- **R (Macleod) v Governors of Peabody Trust**
  [2016] EWHC 737 (Admin),
  8 April 2016

Mr Macleod was granted a tenancy by the Crown Estate Commissioners (CEC), but became Peabody's tenant when it purchased the property, and a number of others, with funds acquired from a bond issue. The terms of the transfer of the reversion restricted Peabody from letting the property to anyone other than key workers, at no more than 80 per cent of the current market rent. Mr Macleod notified Peabody that he wished to exchange his tenancy with the tenant of a property in Edinburgh. Peabody refused to approve the exchange. Mr Macleod sought a judicial review of that decision and argued that Peabody was amenable to judicial review as a public body.

After referring to *R (Weaver) v London and Quadrant Housing Trust* [2009] EWCA Civ 587; [2010] 1 WLR 363 and noting that the general principles enunciated by Elias LJ in that case 'have to be applied to the facts of each particular case' (para 20), William Davis J held that Peabody was not exercising a public function in relation to Mr Macleod's tenancy because:

- Peabody purchased the properties using funds raised on the open market, not via any public subsidy or grant;
- the properties, although let below the market rent, were not pure social housing. The key workers for whom the properties were reserved included those with a family income of up to £60,000 per annum. The provision of housing to people with such incomes below the market rent did not fall within the definition of low-cost rental accommodation in Housing and Regeneration Act 2008 s69;
- Peabody had no allocation relationship with any local authority;
- rents for the properties transferred from CEC were not subject to the same level of statutory regulation as social housing in general.

In any event, even if Peabody had been performing a public function, there were factors that entitled it to depart from its stated policy. Further, Mr Macleod had not demonstrated that an exercise of the public sector equality duty under Equality Act 2010 s149 would have made any difference to the decision or that it was irrational or otherwise amenable to judicial review.

Possession claims

Introductory tenants

- **Hammersmith and Fulham LBC v Patterson**[1]
  County Court at Willesden,
  16 July 2015

Mr Patterson was granted an introductory tenancy on 11 July 2011. A notice to extend was served on 21 December 2011. In April 2012, there were rent arrears. A HA 1996 s128 notice was served. The council's covering letter stated that there was a right to request a review. Paragraph 4 stated that such a request must be made in writing. Deputy District Judge Burt found that the notice was valid and made an order for possession. On appeal, Mr Patterson argued that the notice imposed extra-statutory restrictions, not in a form required by parliament.

HHJ Karp allowed an appeal. She noted that in *R (Chelfat) v Tower Hamlets LBC* [2006] EWHC 313 (Admin); April 2006 *Legal Action* 32, Sullivan J pointed out that s128 does not require that a request for review shall be in any particular form. She considered that 'introductory tenants are often young and vulnerable. There are many for whom a requirement to communicate in writing would be a considerable disincentive'. The notice did impose an extra-statutory requirement that rendered it invalid. Remarks by Keith J in *Wolverhampton City Council v Shuttleworth* (2012) 27 November, QBD; February 2013 *Legal Action* 34 relied on by the council were obiter.

Assured shorthold tenants

Deposits

- **Jhawer v Vatts**[2]
  County Court at Brentford,
  18 February 2016

In 2006, Mr Jhawer granted Mr Vatts an assured shorthold tenancy. A deposit was paid to Mr Jhawer's agents, who subsequently went out of business. In 2009, Mr Jhawer granted Mr Vatts an assured shorthold tenancy of a different property. Further tenancies were granted in 2012 and 2014. All the tenancy agreements recorded that a deposit had been paid, although Mr Jhawer contended that this was a mistake as a result of the use of a template agreement and that no deposit requirement was intended to be included. In 2015, he served a HA 1988 s21 notice and brought a claim for possession under the accelerated procedure. A possession order was granted at a hearing in Mr Vatts's absence. Mr Vatts applied to set aside the order and strike out the claim, arguing that, in accordance with *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669; September 2013 *Legal Action* 29, the deposit paid in respect of the first property should be deemed subsequently to have been paid in respect of the second property. It was common ground that the deposit had never been protected.

District Judge Willans set aside the possession order and struck out the claim. *Superstrike* applied 'if not directly, then by analogy'. At the end of the first assured shorthold tenancy, Mr Vatts had a right to claim repayment of his deposit from Mr Jhawer, regardless of the fact that the deposit had been paid to an agent who had gone out of business. Any deposit requirement under a new assured shorthold tenancy granted by Mr Jhawer would be fulfilled by set-off of this right to claim repayment (and thus a deposit would have been 'paid', in accordance with *Superstrike*), regardless of whether it was a new tenancy of the same property (as in *Superstrike*) or of a different property. The fact that the deposit was never repaid, together with the written tenancy agreements, demonstrated that there was a deposit requirement under the tenancies of the second property.

Harassment and unlawful eviction

- **Akrigg v Pidgeon**[3]
  County Court at Chippenham and Trowbridge,
  25 September 2015

Mr Akrigg was a young vulnerable adult aged 19 who had been in care from the age of 15 months. In December 2013, he entered into a tenancy with Mr Pidgeon. Rent in advance and a deposit were provided by Wiltshire Council. Mr Pidgeon did not protect the deposit in any scheme until after the expiry of the six-month fixed term of the tenancy, nor did he provide Mr Akrigg with the prescribed information at any time. In October 2014, Mr Pidgeon told Mr Akrigg's former foster carer what good tenants he and his partner were. However, in November 2014, Mr Pidgeon gave a month's notice. He was advised by Wiltshire Council that the notice was invalid and about the tenancy deposit schemes. Mr Pidgeon was rude and angry about the advice. On 6 January 2015, he served a further notice. Wiltshire Council again advised him that the notice was invalid. On 2 March 2015, Mr Pidgeon attended Wiltshire Council and advised them that he was going to change the locks. He was advised that this would amount to an illegal eviction. He twice sought to cancel Mr Akrigg's housing benefit claim on the

untruthful basis that he was moving out of the premises. On 2 April 2015, Mr Akrigg went to stay for the weekend at his partner's parents' house. All his possessions were left in the premises and there was food in the fridge and electricity in the meter. On his return on 6 April 2015, he discovered that the locks had been changed and he was unable to gain access. Mr Pidgeon deliberately misdated documents to make it appear that Mr Akrigg had been out of the premises for a longer period than he had been. On 9 April 2015, Mr Pidgeon returned the key to Mr Akrigg pursuant to a court order. Mr Akrigg claimed general, aggravated and special damages in respect of the unlawful eviction and harassment/ breach of covenant for quiet enjoyment and statutory damages for the failure to comply with the tenancy deposit obligations. Judgment in default for damages to be assessed was entered after the defendant's failure to comply with directions.

Deputy District Judge Horsey assessed damages at £7,165, comprising:

- £500 for general harassment by entering the premises, serving the spurious notices, lying about the condition of the premises and attempting to cancel housing benefit;
- £170 per night for the time away from the premises;
- aggravated damages of £1,500 as Mr Pidgeon had been repeatedly advised by Wiltshire Council about the invalidity of the notices served and lawful means of eviction;
- £1,000 exemplary damages as the defendant sought to recover the premises for his economic benefit and with a callous disregard for the claimant's rights;
- return of the deposit of £425, three times the amount of the deposit, ie £1,275, and a further three times the amount of the deposit when the tenancy became a statutory periodic tenancy.

Service charges

- **Hemmise v Tower Hamlets LBC**
  [2016] UKUT 109 (LC),
  2 March 2016

Philip and Tina Hemmise were lessees of Tower Hamlets. Their lease was for a term of 125 years. The building formed part of an estate. In May 2006, Mr and Mrs Hemmise made an application to the Leasehold Valuation Tribunal (LVT) challenging the reasonableness of the service charge. The LVT decided, among other things, that the lease did not allow Tower Hamlets to recover costs that had arisen from the maintenance of the estate. Tower Hamlets did not appeal against this decision. Tower Hamlets continued, however, to charge Mr and Mrs Hemmise for the cost of maintaining the estate. A different tribunal in 2015 held that it was not bound by the earlier decision and determined that Tower Hamlets could recover the costs of maintaining the estate. Mr and Mrs Hemmise appealed to the Upper Tribunal.

HHJ Behrens dismissed the appeal. The decision of the first tribunal was obviously wrong. The lease clearly entitled Tower Hamlets to recover costs incurred in the maintenance of the estate. However, as the point had already been decided, this gave rise to an issue estoppel and as such a subsequent tribunal or court could only depart from the earlier decision in special circumstances. The second tribunal had, however, been entitled to depart from the earlier decision. The following points gave rise to the necessary special circumstances:

- the first decision was plainly wrong;
- the lease was for 125 years and still had more than 100 years to run;
- it was unclear if the point as to the proper construction of the lease had been taken or considered by the first tribunal;
- the issue of whether the estate charges were payable had not been pleaded; and
- Tower Hamlets did not wish to overturn the substance of the decision, ie what was payable, in 2006.

Enforcement

Warrants

- **Hall (trustee in bankruptcy of the estate of Elias Elia) v Elia**
  High Court (Chancery Division),
  10 March 2016

Proudman J refused an application for a further stay on the execution of an order for possession pending appeal. The first stay application had been dealt with and dismissed at an earlier hearing. The reasoning in *Thevarajah v Riordan and others* [2015] UKSC 78; [2016] 1 WLR 76 applied equally to stay applications as it did to applications for relief from sanctions. Accordingly, in order for an applicant to make repeated applications for a stay of execution, he or she had to demonstrate either a material change of circumstances since the original decision, or that there had been a serious mistake in that decision. In this case, neither existed.

Houseboats

- **Hale v Watt and Port of London Authority**
  Court of Appeal (Civil Division),
  10 March 2016

A judgment creditor issued writs to seize a houseboat to satisfy debts. The houseboat was seized and the debtor applied for an injunction to prevent sale. He argued that it came within the exemption for domestic appliances necessary for satisfying basic domestic needs under Courts Act 2003 Sch 7 para 9(3).

The Court of Appeal rejected that argument. A houseboat amounted to 'goods or chattels' capable of being seized under writs of execution or fieri facias within Courts Act 2003 Sch 7 para 9. A vessel was a chattel and did not change its essential character even if it was occupied as a home. It did not come within the exemption for domestic appliances.

Contempt

- **Birmingham City Council v Christie**
  [2016] EW Misc B9 (CC),
  County Court at Birmingham,
  22 March 2016

HHJ McKenna imposed a sentence of 28 days' and 56 days' imprisonment suspended for the remainder of the period of the injunction for two breaches of a gang injunction, apparently made under the Policing and Crime Act 2009.

Homelessness

Suitable accommodation

- **Poshteh v Kensington and Chelsea RLBC**
  UKSC 2015/0219,
  29 February 2016

An appeal panel has granted Vida Poshteh permission to appeal to the Supreme Court from the dismissal by the Court of Appeal ([2015] EWCA Civ 711; [2015] HLR 36; September 2015 *Legal Action* 54) of her appeal from the dismissal by HHJ Baucher of her appeal against a reviewing officer's decision that accommodation offered to her had been suitable and reasonable to accept. On viewing the property, and in particular a small round window it contained, she had suffered a panic attack as a result of flashbacks to her time in prison in Iran.

In his dissenting judgment, Elias LJ had stated (at para 46): 'The only proper and rational conclusion open to the reviewing officer was that even though the premises were suitable in other respects, it was not reasonable to expect her to live there.'

Refusal of accommodation

- **Rolle v Tower Hamlets LBC**
  [2016] EWCA Civ 229,
  16 February 2016

Ms Rolle was homeless and was owed the main housing duty (HA 1996 s193). Under the council's housing allocation scheme, she was offered the tenancy of a flat in social housing. Despite being warned of the consequences, she refused the offer. The council considered that the offer had been suitable and the refusal had brought its duty to an end (s193(7)). It withdrew the temporary accommodation it had provided. Ms Rolle then applied again for homelessness assistance but the council decided she had become homeless intentionally (s191). That decision was upheld on review and HHJ Mitchell dismissed an appeal.

On a renewed application for permission to bring a second appeal, Ms Rolle argued that an 'important point of principle or practice is raised by the appeal, namely the appropriate test for determining capacity to refuse an offer of accommodation made by a local authority and whether, in particular, it should be governed by the Mental Capacity Act [2005], [or] whether the question is a matter of objective fact or a matter of judgment for the local authority, and what are the factors that should be considered when applying such a test' (para 16). She contended that 'no one with the requisite understanding could have failed to accept the offer before seeking a review of its suitability because there is no real downside in taking that much safer course' (Briggs LJ at para 25).

Briggs LJ refused permission, stating (at para 25): '[T]hat is to confuse the making of an unwise decision with lacking capacity to make the decision in the first place.' He held (at paras 21–22) that: 'The question was not merely whether she had failed in fact to understand those consequences, but whether a failure to understand them was caused by mental incapacity as defined in the Act. This was, it seems to me, plainly a question of fact for the reviewing officer with which an appellate court will not interfere unless either it was vitiated by an error of law … or if the decision was vitiated by some failure of the reviewing officer to make appropriate enquiries.' The case raised no important point of principle and there was no other compelling basis for granting permission for a second appeal.

Appeals

- **Ersus v Redbridge LBC**
  High Court (Queen's Bench Division),
  23 March 2016

The applicant was homeless and had mental health problems. The council accepted that it owed the main housing duty (HA 1996 s193) but provided the applicant with only one room in a hostel for himself, his wife and their two daughters aged 17 and eight. On review, the council decided that, although not ideal, it would suffice as temporary accommodation pending an allocation of longer-term accommodation from its housing allocation scheme. The applicant appealed to the county court (s204).

At the hearing of the appeal, the court was told that the applicant was near the top of the waiting list. The judge adjourned the hearing for four weeks. Shortly afterwards, an offer from the allocation scheme was made and accepted and the main duty ended. The appeal became academic. The judge made no order as to costs.

Supperstone J dismissed an appeal from that costs order. Applying *R (Scott) v Hackney LBC* [2009] EWCA Civ 217 and *M v Croydon LBC* [2012] EWCA Civ 595, the judge had been right to say that, absent a causal link between the bringing of the appeal and the offer of accommodation, it would not be proper to treat the applicant as the 'successful party' for the purposes of the costs application.

Housing and children

- **CN and GN v Poole BC**
  [2016] EWHC 569 (QB),
  16 March 2016

The claimants were two children. One was severely disabled. By their litigation friend, the Official Solicitor, they brought a claim for damages in negligence against the council. They alleged that it had failed to take appropriate and necessary steps to safeguard them from prolonged abuse, anti-social and criminal behaviour perpetrated between May 2006 and December 2011 by members of a family who lived on the same housing estate on which they were housed by the council. The distressing factual background is set out in paras 2.0–3.65 of the *Report into anti-social behaviour* (Trevor Kennett, Home Office, 10 March 2010). See also Hayden and Nardone, *Moving in to social housing and the dynamics of difference. 'Neighbours from hell' with nothing to lose?* [2012] Internet Journal of Criminology. The claimants' family had been constantly subjected to threats, harassment, anti-social and sometimes criminal behaviour. CN had attempted suicide.

Master Eastman could not find 'any foundation in law for the assertion that there is in fact a common law duty in favour of children' and struck out their claims.

Slade J allowed an appeal. She held that the claims 'were wrongly struck out. *X v Bedfordshire* [[1995] 3 All ER 353] does not preclude the child claimants from pursuing such a claim in the circumstances of this case. The claim will be considered on its particular facts to ascertain whether all the elements necessary to establish a cause of action in negligence are present: foreseeability, proximity or assumption of responsibility and that it is fair, just and reasonable to impose liability. Whether a common law duty of care was owed by the council to CN and GN will depend upon a full examination of the facts. This issue is not apt for determination on an application to strike out the claim. Actions can only be struck out under CPR 3.4(2)(a) on the grounds that they disclose no reasonable cause for bringing the claims. The Master erred in so finding in this case' (para 44).

- **A v Enfield LBC**
  [2016] EWHC 567 (Admin),
  16 March 2016

The claimant (A) was a teenage British Muslim girl who had grown up in her family home in Enfield. In February 2014, she travelled to Turkey alone, intending to reach Syria. Her father brought her back. In August 2014, she left the family home again, making allegations that her father had hit and pulled her in the course of an argument. She stayed with her maternal aunt in Enfield for a number of weeks. The maternal aunt struggled to care for her and eventually asked her to leave as she was 'finding it difficult to manage the relationship' between A and her parents. A then stayed with her maternal grandmother, also in Enfield. In September 2014, A travelled to Egypt alone. Fearing that her family may try to follow her to Egypt, A left and travelled to Greece alone. A's aunt and father flew to Greece. The father agreed that A should travel to Bulgaria alone, where she stayed for a further six weeks.

On her return in November 2014 she was detained by counter-terrorism police and questioned by the UK Border Agency. Her parents were at the airport but A refused to return home with them. Her father asked the council to provide her with accommodation of her own, where she would be safe. It initially declined, so A presented herself as 'homeless' to Tower Hamlets council's children's services department. Tower Hamlets provided overnight accommodation and arranged for an assessment by Enfield. Enfield decided that A was not homeless and in need of accommodation under Children Act 1989 because her parents had always been prepared to provide a home for her and were still willing to do so. Enfield took no further action and provided no support.

In November 2015, police detained A at Heathrow. She was trying to leave for Bulgaria with significant sums of money.

In judicial review proceedings, Walker J granted an interim injunction requiring the council to accommodate her. A turned 18 in February 2016, before the claim could be heard. She had not been accommodated by the council for long enough to be treated as 'a former relevant child' but would have qualified as such had the council acknowledged its duties when they first arose.

At trial, Hayden J allowed a claim for judicial review. He held (at para 23) that: 'Enfield appears to have taken a simplistic approach and concluded that as her parents were offering accommodation, ipso facto, she could not be homeless. They compounded this flawed reasoning by extrapolating that as [A] was not homeless she could not be "in need" in the sense contemplated by s17 Children Act 1989. That position is one they hold to in their defence to this application.' As to the relief to be granted, he stated (at para 57) that: '… I consider that the local authority's decision making here is fundamentally flawed and … difficult to justify or defend. I cannot foresee any circumstances where it would be fair to exclude [A] from consideration of the entire range of services that would be open to her under s35 Children (Leaving Care) Act 2000.' He granted declarations that A be treated as a former relevant child.

- **Guberina v Croatia**
  App No 23682/13,
  22 March 2016

The applicant owned a third-floor flat in Zagreb where he lived with his wife and two children. In 2003, the applicant's wife gave birth to their third child. The child was born with multiple physical and mental disabilities.

An expert commission diagnosed the child with incurable cerebral palsy, grave mental retardation and epilepsy. Social services declared him 100 per cent disabled.

The building in which the flat was situated had no lift and did not meet the needs of the disabled child. It was difficult to take him out of the flat to see a doctor, have physiotherapy, go to kindergarten or school, or meet his other social needs.

In 2006, the applicant bought a house able to meet his son's needs and, in October 2008, sold his flat. He argued that the flat did not meet the housing needs of the family since it was becoming impossible to take the child out of the flat from the third floor without a lift, given that he was in a wheelchair.

Croatian law provided for tax exemption where property had been acquired to meet 'housing need' but not if a former home had 'basic infrastructure and satisfies hygiene and technical requirements'. The domestic courts held that the flat met those requirements so that tax was payable.

The applicant complained to the ECtHR that the provision discriminated against his disabled child. It was undisputed between the parties that matters of taxation fall within the scope of art 1 of Protocol No 1, rendering art 14 of the ECHR applicable.

The court found that 'the competent domestic authorities failed to recognise the factual specificity of the applicant's situation with regard to the question of basic infrastructure and technical accommodation requirements meeting the housing needs of his family. The domestic authorities adopted an over-restrictive position with regard to the applicant's particular case, by not taking into account the specific needs of the applicant and his family when applying the condition relating to "basic infrastructure requirements" in their case as opposed to other cases where elements such as the surface area of a flat, or access to electricity, water and other public utilities, could have suggested adequate and sufficient basic infrastructure requirements' (para 86). It held that 'in the absence of the relevant evaluation of all the circumstances of the case by the competent domestic authorities, the court does not find that they provided objective and reasonable justification for their failure to take into account the inequality pertinent to the applicant's situation when making an assessment of his tax obligation' (para 98). It found a violation of art 14 of the ECHR in conjunction with art 1 of Protocol No 1. The applicant was directed to reopen his claim for tax exemption and was awarded €5,000 non-pecuniary damage.

1 Alex Grigg, barrister, London.

2 David Clarke, barrister, London.

3 Paul Shearer, solicitor, Shearer & Co, Chippenham.

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