usual defence and shortly afterwards – for reasons that were not explained – BPHA settled that case as well.

I had concluded my *Legal Action* article by wondering how many other housing associations had fallen into the same trap as BPHA. Shortly afterwards, I was instructed by Shelter to raise a similar argument against the Co-operative Development Society (CDS), which manages some 3,300 rented homes in southern England. That claim, too, settled shortly after our defence was filed. And a couple of months ago, Sally Moorhead at Shelter instructed me to defend a rent arrears claim brought by Family Mosaic against its tenant, Penny Hurtado.

Ms Hurtado had fallen into, prima facie, very substantial arrears when doubts over her immigration status led to a temporary (but lengthy) cancellation of her housing benefit. Indeed, Family Mosaic claimed she was the best part of £8,000 in arrears. The claim was brought under Grounds 8, 10 and 11. Para 3 of the claim had pleaded that the current weekly rent was £162.85. The crux of the defence was pleaded as detailed in the box.

Although we had filed and served our defence in advance of the first hearing, Family Mosaic had not instructed either a solicitor or counsel to attend. The rather hapless housing officer who did turn up seemed to ignore the defence, mumbled rather incoherently about s13, and just asked for an outright order. The district judge adjourned the matter generally for 28 days, suggesting that Family Mosaic might want to consider the legal position carefully before going any further.

Sally promptly invited Family Mosaic to settle the case on the basis of setting the rent account to a nil balance and paying our costs in return for Ms Hurtado accepting that the current rent was lawfully due. Shortly before the hearing, Family Mosaic agreed that the claim should be dismissed and it should pay our costs. The quantum of rent lawfully due thus remains unknown.

It would seem unlikely that legal aid would be granted to enable Ms Hurtado to seek a declaration on that issue, given that her occupancy of her home was no longer under any immediate threat. That is perhaps unfortunate, in part because it is not clear how much rent she should currently be paying, but also, more significantly, because Family Mosaic is a very big player in the social rented sector. According to its website: 'We have over 25,000 homes for rent and we serve more than 45,000 people: we're one of the largest housing providers in London, Essex and the Southeast.'[2] Presumably, given the size of its stock, Family Mosaic brings a significant number of rent arrears possession claims against its tenants, many of which may rest on quite incorrect assumptions about the amount of rent lawfully due.

One can readily understand why, in such circumstances, a large landlord would wish to settle the claim or even have it dismissed. If the point taken in the defence was held to be correct by a higher court, the systemic consequences for the landlord's finances could be catastrophic. Far better, one might think, to avoid that risk by hushing up the occasional case that does come to court and meet the defence by discontinuing the claim or settling on mutually acceptable terms, and pressing on with rent arrears claims en masse in the expectation that very few defendants will actually identify and plead the point. BPHA presumably took the view that such actions would be ethically problematic and put a moratorium on rent arrears actions. It will be interesting to see if, following publication of this article, Family Mosaic adopts the same position. Its latest annual report announces (on p5), inter alia, that Family Mosaic has the 'courage to do the right thing'.[3] One wonders what the 'right thing' might be on this particular issue.

1 The provisions of the rent increase mechanism, in HA 1988 s13 – which do allow for 52-week rises – would not apply when there is such a term in the tenancy agreement as the term would amount to a 'provision' for s13 purposes and s13 applies only when there is no such provision in the tenancy agreement (see *Contour Homes Ltd v Rowen* [2007] EWCA Civ 842; [2007] 1 WLR 2982).

2 www.familymosaic.co.uk/about-us/index.html

3 www.familymosaic.co.uk/userfiles/Documents/Annual_reports_and_accounts/FM_Tenant_Annual_Review_2015_web.pdf

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Housing: recent developments

The latest policy and legislation developments, plus cases on human rights, possession claims, contempt, 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 legislation

The Housing and Planning Act 2016 received royal assent on 12 May 2016. It contains a wide range of measures relating to, among others: security of tenure for secure tenants; the right to buy at a discount for housing association tenants; the disposal of vacant high value council housing; and increased rents for better-off tenants in social housing. A discussion of key provisions will appear in July/August 2016 *Legal Action*.

The Immigration Act 2016 also received royal assent on 12 May 2016. It contains further measures designed to ensure residential tenancies are not held by tenants who lack full immigration status. These include new grounds for possession relating to assured and protected tenants (s41) and new offences directed to landlords and agents who allow tenants to remain in possession, even though their immigration status disqualifies them from holding a tenancy (s39). To facilitate recovery of possession in such cases, provision is made for new forms of notice (to be enforced as orders of the High Court) and the Protection from Eviction Act 1977 is amended (s40). These provisions will be brought into force in due course by commencement orders made under s94(1).

The Housing (Amendment) Act (Northern Ireland) 2016 received royal assent on 9 May 2016. It makes provision to enable third parties to share information about the anti-social behaviour of individuals with social landlords and the housing executive. Similar information-sharing arrangements are made in relation to empty property. The Act comes into force on 9 July 2016 (s4).

The Private Housing (Tenancies) (Scotland) Act 2016 received royal assent on 22 April 2016. It makes provision about private rented housing and establishes a new type of tenancy to be known as a 'private residential tenancy'.

On 27 April 2016, Tom Brake, a Liberal Democrat MP, introduced the Landlord and Tenant (Reform) Bill: *Hansard* HC Debates vol 608, col 1467. The bill would make provision: to regulate private sector landlords; to extend tenants' rights, particularly in relation to the sale of occupied rental property; to cap letting agents' fees; and to require the Mayor of London to establish a mandatory licensing scheme in respect of private landlords in Greater London. However, the 2015–16 session of parliament has now ended and this bill will make no further progress.

Homelessness

An independent panel of experts from across the housing and homelessness sector, including lawyers, an academic, local authorities and housing association sector representatives, as well as the staff of homelessness charities, has completed an assessment of the strengths and weaknesses of the current homelessness legislation in England: *The homelessness legislation: an independent review of the legal duties owed to homeless people* (Crisis, April 2016). Its report sets out an alternative legal model – in the form of an amended version of Housing Act (HA) 1996 Pt 7 – to address long-standing weakness in the statutory safety net by introducing a much stronger universal prevention duty for all eligible homeless households, as well as a duty to help secure accommodation for applicants regardless of priority need status and intentional homelessness (see page 3 of this issue).

The House of Commons Select Committee on Communities and Local Government is holding an inquiry into homelessness. The inquiry focuses on the causes of homelessness and the effectiveness of work undertaken to address it. On 18 April 2016, several council officers gave evidence to the inquiry about the ways in which local authorities address homelessness. Witnesses included officers from Birmingham, Bristol, Manchester and Westminster City Councils. The committee will publish a report on the outcome of its inquiry before the summer recess.

Legal aid for housing in the Home Counties

Even in Surrey, a county adjacent to London, it is proving difficult to maintain housing advice services at legal aid rates. On 28 April 2016, the Legal Aid Agency (LAA) had to invite expressions of interest for the delivery of housing and debt services in the Surrey procurement area, where demand was exceeding supply. Although the bid round is primarily aimed at organisations able to meet the requirements of the 2013 Standard Civil Contract in full, the LAA will also consider applications from: (1) organisations which feel unable to meet fully the 'permanent presence' or the 'supervisor' requirements; and (2) providers who do not presently hold a housing and debt contract.

For a review of limited legal aid coverage for housing work in other areas of England see 'Legal aid cuts creating new advice "deserts"' *Law Society Gazette*, 18 April 2016.

Right to buy

On 29 April 2016, the House of Commons Committee of Public Accounts published *Extending the right to buy to housing association tenants. Thirty-eighth report of session 2015–16* (HC 880). The committee concluded that the UK government 'has presented parliament with little information on the potential impacts of the legislation required' and that it is 'not clear how this policy will be funded in practice, or what its financial impacts might be'. It expresses concern that the government's commitment to replace homes sold under the policy on at least a one-for-one basis 'will not ensure that these will be like-for-like replacements' as new homes 'can be a different size and in a different area, and may cost more to rent'.

Welfare reform and social housing

A new research report, *The uneven impact of welfare reform: the financial losses to places and people* (Centre for Regional Economic and Social Research, Sheffield Hallam University, March 2016) has concluded that: the impact of post-2015 welfare reforms on working-age tenants in the social rented sector is particularly hard – on average they can expect to lose almost £1,700pa, compared with £290pa for working-age owner-occupiers; and overall, £6.2bn a year of the financial loss arising from the post-2015 welfare reforms – just under half – is estimated to fall on working-age social sector households.

On 3 May 2016, the UK government published an updated version of its explanatory note for social landlords about rent reductions: *Explanatory note for making a formal application for an exemption to the rent reductions in the Welfare Reform and Work Act 2016* (Homes & Communities Agency, 2016).

Tenancy turnover and voids in social housing

The latest annual statistics on the number of social housing tenancies ending, and the time taken to re-let those properties, are given in *Voids and lettings analysis 2015* (HouseMark, August 2015).

Private rented sector

The draft Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2016 amend the date for the coming into force of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI No 962 Pt 3. That part was due to come into force on 1 October 2016 but will now come into force on 1 April 2017 in relation to non-domestic private rented properties and on 1 October 2017 in relation to domestic private rented properties.

Part 2 of the 2015 regulations came into force on 1 April 2016. Its provisions are explained in *Private rented sector tenants' energy efficiency improvements provisions* (Department of Energy & Climate Change, March 2016).

Human rights

- **Ivanova and Cherkezov v Bulgaria**
  App No 46577/15,
  21 April 2016,
  [2016] ECHR 373

Ms Ivanova inherited part of a plot of land. In 2004–2005, Ms Ivanova and Mr Cherkezov put all their savings into the reconstruction of a dilapidated cabin on the land, converting it into a solid one-storey brick house. They did not apply for a building permit. They then lived in that house. In October 2012, the National Building Control Directorate began proceedings for the demolition of the house because it was illegal as it had been constructed without a building permit. Ms Ivanova did not put forward any arguments or evidence to show otherwise, but sought judicial review of that decision. The Administrative Court dismissed the claim. It held that the decision was lawful. Appeals were dismissed. Ms Ivanova and Mr Cherkezov alleged that the enforcement of an order for demolition would be a breach of their right to respect for their home under art 8 of the European Convention on Human Rights (ECHR) and that they did not have an effective domestic remedy. Ms Ivanova also alleged that the demolition would disproportionately interfere with her possessions under art 1 of Protocol No 1.

The European Court of Human Rights (ECtHR) noted that both applicants had lived in the house for a number of years. It was therefore 'home' for both of them. The demolition order amounted to an interference with their right to respect for that home. The interference was lawful. The demolition order had a clear legal basis. It had been upheld, following fully adversarial proceedings, by two levels of court and there was nothing to suggest that it was not otherwise than 'in accordance with the law'. The court was satisfied that the demolition would pursue a legitimate aim. Even if its only purpose was to ensure the effective implementation of the regulatory requirement that no buildings can be constructed without permit, it could be regarded as seeking to re-establish the rule of law.

The salient issue was whether the demolition was 'necessary in a democratic society'. On this point, the case bore considerable resemblance to cases concerning the eviction of tenants from public housing. The court also considered cases concerning evictions from properties previously owned by applicants but lost as a result of civil proceedings brought by a private person, civil proceedings brought by a public body, or tax enforcement proceedings. It reiterated that the assessment of the necessity of the interference in cases concerning the loss of one's home for the promotion of a public interest involves not only issues of substance but also a question of procedure: whether the decision-making process was such as to afford due respect to the interests protected under art 8. Any person risking the loss of their home, whether or not belonging to a vulnerable group, should in principle be able to have the proportionality of the measure determined by an independent tribunal:

The mere possibility of obtaining judicial review of the administrative decision causing the loss of the home is thus not enough; the person concerned must be able to challenge that decision on the ground that it is disproportionate in view of his or her personal circumstances ... Naturally, if in such proceedings the national courts have regard to all relevant factors and weigh the competing interests in line with the above principles ... the margin of appreciation allowed to those courts will be a wide one, in recognition of the fact that they are better placed than an international court to evaluate local needs and conditions, and the court will be reluctant to gainsay their assessment (para 53).

[T]he balancing exercise under [art 8] ... can normally only be examined

case by case (para 54).

The proceedings conducted in this case did not meet those procedural requirements. The court therefore found that there would be a breach of art 8 if the demolition order were to be enforced without such a review. The finding of the violation was sufficient just satisfaction for any non-pecuniary damage suffered. However, in view of the wide margin of appreciation that the Bulgarian authorities enjoy under art 1 of Protocol No 1 in choosing both the means of enforcement and in ascertaining whether the consequences of enforcement would be justified, the court found that the implementation of the demolition order would not be a breach of art 1 of Protocol No 1.

- **Vasilyeva v Russia**
  App No 10775/09,
  5 April 2016

Ms Vasilyeva bought a house in Kaliningrad. The purchase was concluded on her behalf by an agent, M, who had power of attorney. M was later convicted of fraud. A bank that had been a victim of her fraud argued that she was the beneficial owner of Ms Vasilyeva's house and successfully obtained an order for its seizure to satisfy a debt due to it. Ms Vasilyeva argued that its seizure was a breach of ECHR art 1 of Protocol No 1.

The ECtHR found that there was a breach. There was no proper evidential basis for the Russian court to conclude that M was the beneficial owner. That argument had been expressly rejected in the criminal proceedings. There was no lawful basis for the seizure order. The court awarded €3,000 non-pecuniary damage.

- **Simonyan v Armenia**
  App No 18275/08,
  7 April 2016

Mr Simonyan owned a house jointly with his mother. He brought a possession claim against relatives residing in the house. They counter-claimed seeking to invalidate the ownership certificate and to have their ownership recognised by virtue of acquisitive prescription. A district court dismissed Mr Simonyan's claim and granted the counter-claim. He successfully appealed. The decision of the appeal court became final. The relatives issued a second application for permission to appeal. This was not allowed by domestic law but, despite that, it was successful. Mr Simonyan complained to the ECtHR.

The ECtHR found that there had been an interference with his peaceful enjoyment of possessions, which was not lawful. There was a violation of ECHR art 6 and art 1 of Protocol No 1.

Possession claims

Under-occupation

- **Wandsworth LBC v Matty**[1]
  County Court at Wandsworth,
  25 February 2016

Mr Matty succeeded to his late mother's secure tenancy of a three-bedroom property. At the date of her death, he was 45 and had lived at the property with her since he was 10 years old. After her death, his adult nephew moved into the property to live with him and help look after him. They were under-occupying by one bedroom. Wandsworth brought possession proceedings under HA 1985 Sch 2 Ground 15A (under-occupation).

Mr Matty admitted that the property was more extensive than he reasonably required, but defended the claim on the grounds that it was not reasonable to make an order for possession and that two-bedroom accommodation put forward by Wandsworth as suitable alternative accommodation was not suitable for his needs. He submitted that he was emotionally attached to his existing home and to the area; he had lived at the property for 37 years; and he had supported his mother financially, emotionally and in terms of caring for her since he was around 18. He was agoraphobic, prone to panic attacks and had asthma. His health had deteriorated as a result of losing his mother and the possession proceedings. He relied heavily on his nephew for day-to-day living activities and had only recently been able to walk to GP appointments on his own. He attended the GP's surgery once a week.

Deputy District Judge Rollaston found that it was not reasonable to make an order for possession. She held that it was a very fine balancing act and she did not belittle the huge problem that Wandsworth and other councils have in housing families and other people on the waiting list. She was satisfied that any move from the current property would have a significant and huge impact on the defendant's health. The location of the current property was essential to the defendant's recovery and to his needs as they stood. She found it compelling that he said in evidence that losing the property would feel like losing his mother all over again. She also noted the length of time he had resided at the property and the care that he had provided for his mother.

Deposits

- **Bali v Manaquel Company Limited**[2]
  County Court at Central London,
  15 April 2016

Mr Bali was an assured shorthold tenant. His landlord, Manaquel, took a deposit that it protected. It purportedly served a HA 1988 s21 notice and brought possession proceedings. He defended the claim, asserting that Manaquel had not complied with the requirements of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797. At first instance, a judge found that it had complied and made a possession order. Mr Bali appealed.

HHJ Hand QC rejected the contention that there was a breach of the order because the landlord had not served the Deposit Protection Service (DPS) leaflet for tenants. It had given the tenant a printout of the DPS 'terms and conditions', which included all the information contained in the DPS leaflet. The requirement was to provide 'any information contained in a leaflet', not necessarily the leaflet itself.

However, the landlord had not properly provided a certificate as required by art 2(1)(g)(vii). The certificate given to Mr Bali had Manaquel's name written in manuscript as Manaquel Co. Ltd, and signed 'pp'. Apparently, this was done by the company's solicitor. That did not comply with the requirements of Companies Act 2006 s44(2), which provides: 'A *document is validly executed by a company if it is signed on behalf of the company* – (a) by two authorised signatories, or (b) by a director of the company in the presence of a witness who attests the signature'. HHJ Hand QC held that the prescribed information certificate was a document that required 'execution'. It was a certification of the accuracy of information for a 'formal legal purpose'. Accordingly, the requirement in art 2(1)(g)(vii) had not been met; the prescribed information had not been given in full; and the section 21 notice was not valid. The order was stayed for seven days to allow Manaquel to apply for permission to appeal.

Contempt

- **Birmingham City Council v Travers**
  County Court at Birmingham,
  7 April 2016

The defendant breached a 'gang injunction' made pursuant to Policing and Crime Act 2009 ss34, 35 and 36 for a third time by entering a prohibited area. HHJ McKenna imposed a sentence of 28 days' imprisonment.

Housing allocation

- **R (H) v Ealing LBC**
  [2016] EWHC 841 (Admin),
  18 April 2016

By an amendment to its housing allocation scheme, the council arranged for 20 per cent of all available lettings to be removed from the general pool and to be reserved for applicants who were either in 'working households' or were 'model tenants'. The scheme defined a working household as one in which at least one member of the household worked for a minimum 24 hours per week. Model tenants were defined as secure tenants of the council who were applying to transfer and who had complied with the terms of the tenancy. The 20 per cent quota was not equally applied to each property type (eg 39 per cent of three-bedroom houses went to those in the two defined groups) and contained no provision for flexibility in the definitions of the groups.

The claimants were all in households not meeting either definition. They sought a judicial review of the amended scheme as it applied to their social housing applications. The grounds were that it: (1) indirectly discriminated against women, disabled persons and the elderly within the meaning of Equality Act (EA) 2010 s19(2) and such discrimination was not justified; (2) was in breach of ECHR art 14 because an allocation scheme fell within the ambit of art 8 and the amended scheme discriminated against women, children, disabled persons, the elderly and tenants who did not hold council tenancies; all of these groups had 'status' for the purpose of art 14 and the discrimination was not justified; (3) was adopted and maintained in breach of the council's public sector equality duty (PSED) under EA 2010 s149; and (4) was adopted and maintained in breach of the council's obligations in respect of the welfare of children imposed by Children Act (CA) 2004 s11.

HHJ Waksman QC (sitting as a judge of the High Court) allowed the claim on all four grounds. The amended scheme did discriminate against women, the elderly and the disabled. Although the council had a legitimate aim in encouraging tenants to work and to be well behaved in relation to their tenancy, and the amended scheme was obviously a rational means of achieving that aim, it was not the least intrusive way of doing so. Accordingly, the discrimination – whether approached under the EA 2010 or ECHR art 14 – could not be justified. Art 14 was applicable because housing allocation schemes were within the ambit of art 8.

In the absence of any real enquiry into, and consideration of, the potential discriminatory effects of the amendment, the complaint of breach of the PSED was well founded. As to CA 2004 s11, not all children of all applicants would be adversely affected by the amendment but those with single-parent carers, who could not work, would be. In the absence of any actual consideration of the interests of children in this context, the breach of s11 was also made out.

The amended scheme was, accordingly, unlawful.

Homelessness

Applications

- **Complaint against Croydon LBC**
  Local Government Ombudsman
  Complaint No 14 016 826,
  8 January 2016

A secure council tenant decided that it was no longer reasonable for her to occupy her accommodation. She tried to apply to the council for homelessness assistance. The council's response stated: 'As a secure council tenant with a permanent home you are unable to make a homeless application.' When it later agreed that that was wrong, it indicated that she had to attend the council's offices in person to make an application. She had mobility difficulties and preferred to communicate by telephone.

The Local Government Ombudsman found that the council was at fault. The council has apologised for wrongly advising the applicant that she could not make a homelessness application as she was a secure council tenant. It has agreed to review its staff training and procedures to ensure its officers are aware that council tenants may apply as homeless, and that it can take homelessness applications over the telephone.

Inquiries

- **Complaint against Lambeth LBC**
  Local Government Ombudsman
  Complaint No 14 014 884,
  8 December 2015

Following an incident of domestic violence, the complainant applied to the council for homelessness assistance on 30 May 2014. The council provided interim accommodation (HA 1996 s188) while it made enquiries into the application. A decision on the application (under HA 1996 s184) was not issued until 13 October 2014.

The Local Government Ombudsman found that the council had had sufficient information to determine the application by 11 July 2014. This would have been just outside the 33 working days set out in the Code of Guidance. However, it took the council a further three months to issue a decision. This uncertainty caused distress. The council agreed to pay £150 for the unnecessary three-month delay in issuing a decision.

End of duty

- **Complaint against Bournemouth BC**
  Local Government Ombudsman
  Complaint No 14 020 077,
  16 December 2015

The council owed the complainant (Mr X) the main housing duty (HA 1996 s193), which it performed by providing a succession of private rented sector tenancies. In May 2014, when he was faced with eviction from one of those properties, the council secured alternative accommodation. The complainant did not consider it suitable and refused it. The council decided that its duty had ended (HA 1996 s193(5)) and it withdrew accommodation and storage arrangements.

The Local Government Ombudsman found that the council was at fault for the following reasons: Mr X was not informed in writing of the consequences of refusing or accepting the offer of accommodation made in May 2014; the council did not formally respond to Mr X's reasons for refusing the offer and explain why the council was satisfied the accommodation was suitable for him; the 'discharge of duty' letter did not correctly explain his review rights; an officer wrongly told Mr X he could only request a review if he accepted the offer and moved into the property; and the council did not notify Mr X in writing of its decision to end the storage duty and give reasons for that decision.

The council agreed to withdraw the defective 'discharge of duty' decision and to pay £250 to recognise the uncertainty caused by its poor handling of the case.

Housing and children

- **R (Sediqi) v Bournemouth BC**
  [2016] EWHC 699 (Admin),
  16 February 2016

The claimants were the parents of five children. In July 2015, they were evicted from private rented sector accommodation for rent arrears. The council's housing staff decided that they had become homeless intentionally. The council's children's services staff were satisfied that the children were 'children in need' and provided bed and breakfast accommodation for the family under CA 1989 s17.

In January 2016, the council decided that the claimants had not been doing enough to secure private rented sector accommodation for the family, particularly in lower rental areas such as the North of England. It decided to give two weeks' notice of termination of the B&B arrangement and thereafter to withdraw assistance under s17. The claimants sought judicial review of that decision on grounds that: (a) there had been no proper assessment of the children's needs; (b) in the absence of access by the claimants to a deposit, rent in advance or a guarantor, the decision was irrational; (c) the option of taking the children into care under CA 1989 s20 would fracture the family and breach ECHR art 8 ('respect for family life'); and (d) there had been non-compliance with the accommodation duty in HA 1996 s190.

On an application for interim relief pending consideration of the claim, Blake J granted a without notice seven-day injunction requiring the council to accommodate the family. The council opposed any continuance of the injunction.

Lang J held that the grounds for judicial review raised a 'serious issue to be tried' (para 18) and that the balance of convenience was tipped, by the need to protect the interests of the children, in favour of the claimants. She ordered that the council continue forthwith the provision of accommodation and pay the costs. The question of whether permission for judicial review should be granted was postponed for later consideration.

- **Complaint against Kingston upon Thames RLBC**
  Local Government Ombudsman
  Complaint No 14 016 522,
  7 December 2015

In June 2014, the council received an application for homelessness assistance from a woman with several dependent children. It began enquiries and provided interim accommodation located in another borough (the 'second council'). Under HA 1996 s208, the council should have notified the second council within 14 days of placing the children in its area but it did not do so until September 2014. It decided that the applicant had become homeless intentionally and upheld that decision on review in December 2014. It notified her that it would cease to provide accommodation in January 2015.

Under HA 1996 s213A, it ought to have notified the second council, as the relevant children's services authority, about both the initial and review decisions, but failed to do so. While the council's housing team did notify its own social services department (SPA team) about its intentionally homeless decision on 15 September 2014, the SPA team did not act on the notice, or refer it to the second council.

When the applicant failed to find accommodation for the children by the date the council's accommodation was to end (January 2015), so that the children became at risk of being street homeless, the council again failed to notify the second council. It did not notify the second council about the family's upcoming eviction until 4 February 2015. It failed to explain to the applicant the support that social services could provide under CA 1989 s17, even when it asked her to leave the accommodation and the children became at risk of being street homeless.

The Local Government Ombudsman decided that the council was at fault in failing to refer the case to the second council until just before the date it intended to end the provision of accommodation. That delay caused the applicant and her children the unnecessary distress and uncertainty that they may become street homeless. The council was required to apologise, pay £500 compensation and review its procedures and staff training to ensure: all of its housing and social services officers are aware of the legal obligations to vulnerable children at risk of homelessness and that in no circumstances should children be evicted on to the streets; where children are placed in interim accommodation in another local authority area, the other authority is correctly notified; where the council makes a housing decision, which will potentially lead to a child becoming homeless, the appropriate social services department is promptly notified; where the s17 assessment duty lies with another authority, the council liaises and co-operates with the other authority in a timely way; and officers provide clear advice and signposting to families about s17 duties including: which authority is responsible for doing the assessment; and the nature of support that might be available.

1 Edward Sharp, Hodge Jones & Allen LLP, solicitors, London; Liz Davies, barrister, London.

2 Deirdre Forster, Anthony Gold, solicitors, London. This case was first noted on Nearly Legal.

Jan Luba QC and Nic Madge are circuit judges. They would like to hear of relevant housing cases in the higher or lower courts. The authors are grateful to the colleagues at notes 1 and 2 for transcripts or notes of judgments.