Housing: recent developments

Nic Madge and Jan Luba QC present the latest legislative developments, plus cases on creation of tenancies, possession claims, long leases, housing allocation, homelessness, children and community care.

Nic Madge

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Politics and legislation

Homelessness

The latest data on work by local housing authorities (LHAs) in England relating to homelessness was published on 30 June 2016: *Statutory homelessness, January to March 2016, and homelessness prevention and relief 2015/16: England* (Department for Communities and Local Government (DCLG)). The figures show that LHAs accepted that a further 14,780 households were owed the main housing duty (Housing Act (HA) 1996 s193) between 1 January and 31 March 2016, up two per cent on the previous quarter and nine per cent on the same quarter last year. The number of households in temporary accommodation on 31 March 2016 was 71,540, up 11 per cent on a year earlier, and up 49 per cent on the low of 48,010 on 31 December 2010. LHAs took action to prevent homelessness for 198,100 households in 2015/16, down from 205,000 in 2014/15.

To help improve the quality of this quarterly data-gathering exercise, new guidance has been issued to LHAs: *P1E quarterly return: households dealt with under the homelessness provisions of the 1996 Housing Act, and homelessness prevention and relief. Return for the second quarter of 2016* (DCLG, July 2016).

Based on the currently available data, the House of Commons Library has produced two helpful briefings:

- *Statutory homelessness in England* (Briefing Paper No 01164, 5 July 2016); and
- *Households in temporary accommodation* (England) (Briefing Paper No 02110, 13 July 2016).

The House of Lords Library has published a similarly useful briefing: *In focus – homelessness* (LIF 2016/0046, 23 August 2016).

The Welsh government has produced its own statistics on homelessness for 2015/16: *Homelessness in Wales, 2015-16* (24 August 2016, SFR 106/2016). During that year, 1,563 households were assessed to be unintentionally homeless, in priority need and qualified for the duty to have accommodation secured for them. Of those, 1,245 households (80 per cent) were positively discharged and accepted an offer of permanent accommodation. At the end of March 2016, there were 1,875 households in temporary accommodation.

On 18 August 2016, the House of Commons Communities and Local Government (CLG) Committee published the report of its inquiry into homelessness: *Homelessness. Third report of session 2016-17* (HC 40). The report's recommendations include that:

- the government should monitor LHAs and identify those not meeting their duties;
- it should also review and reinforce the statutory Code of Guidance to ensure that the levels of service to be provided to the homeless are made clear;
- the secretary of state should write to all local authorities to reiterate their duties when placing families outside their areas; and
- the government must take steps as a matter of urgency to improve data collection on homelessness and implement the recommendations of the UK Statistics Authority.

On the same day, CLG Committee member Bob Blackman MP, Conservative, introduced his Homelessness Reduction Bill, a private members' bill. It includes provisions to intervene earlier to prevent homelessness, provide a robust package of support and assistance to single homeless people, and enforce the homelessness legislation effectively. It had a first reading on 29 June 2016 and is scheduled to receive its second reading in the Commons on 28 October 2016. Until that date, the CLG Committee will be examining the bill and considering whether it will achieve its aim of reducing levels of homelessness. Its inquiry has already taken written and oral evidence.

In its recent report on the UK, the UN Committee on the Rights of the Child found that, during the period of its review, the number of homeless households with dependent children had increased in England and Northern Ireland, as well as the number of homeless families, including those with infants, staying in temporary accommodation in all four jurisdictions: *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (3 June 2016) at para 69(d). It urged the UK government to:

- implement strictly the legal prohibition of prolonged placement of children in temporary accommodation by public authorities in England, Wales and Scotland, and enact similar legislation in Northern Ireland; and
- take necessary measures to reduce homelessness and to guarantee all children stable access to adequate housing, which provides physical safety, adequate space, protection against the threats to health and structural hazards, including cold, damp, heat and pollution, and accessibility for children with disabilities (para 70(e)-(f)).

Housing and disabilities

On 10 August 2016, the House of Commons Women and Equalities Committee launched an inquiry into the accessibility of homes, buildings and public spaces for disabled people, older people and those with mental health issues, and invited the submission of evidence. The inquiry will consider:

- How adequate is the supply of accessible properties (including homes and commercial premises)?
- To what extent is the government taking current and future needs for accessible homes into account in its policies on increasing housing supply?
- How effective are the planning and building regulations systems in ensuring the provision of new accessible/lifetime homes?
- What can be done to increase the accessibility of existing housing stock to support independent living?

The Equality and Human Rights Commission is undertaking a major inquiry into housing for disabled people. The inquiry will aim to understand the barriers to independent living and make recommendations on how to overcome them. It expects the inquiry to be completed by September 2017.

Housing cases in the courts

The Civil Justice Council has published the *Interim report of the Working Group on Property Disputes in the courts and tribunals* (May 2016), making a series of recommendations including easier transfer of housing cases between court and tribunal jurisdictions.

Lord Justice Briggs's *Civil courts structure review: final report* (July 2016) has also been published. His interim report had proposed putting mandatory possession claims and potentially disrepair claims into the proposed new 'online court'. The final

report accepts that possession claims are not suitable for that new court (para 6.95). The report proposes that housing disrepair claims should not be automatically brought within the online court either, but that claimants seeking only damages of less than £25,000 could elect to use it (paras 6.101–6.102) (see also page 7 of this issue).

The statistics on possession claims in the courts in England and Wales were published on 11 August 2016: *Mortgage and landlord possession statistics in England and Wales April to June 2016*. They show that:

- landlord possession claims (34,008) and orders for possession made (28,125) in county courts in April to June 2016 were down six per cent and four per cent respectively, compared with the same quarter in 2015; and
- there was little percentage change in the number of warrants of possession (18,186) and repossessions by county court bailiffs (10,467) on the same quarter last year.

Legal aid for housing

On 30 June 2016, the legal aid statistics for the first quarter of 2016 were published: *Legal aid statistics in England and Wales January to March 2016* (Ministry of Justice Statistics Bulletin). The volume of legally-aided housing cases halved between July to September 2012 and July to September 2013 (in April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 substantially reduced the scope of legal aid for housing issues). In January to March 2016, there was a 17 per cent decrease in the volume of cases granted legal aid compared with the same quarter the previous year.

The Law Society is calling on the government to address urgently the legal aid 'advice deserts' for help on housing issues. It has produced and published an interactive map showing the scale of the problem. Law Society analysis of legal aid statistics has shown that three areas – Surrey, Shropshire and Suffolk – have no housing provider at all. Almost one-third of areas have only one provider (and, in some cases, no providers as above) leading to the following difficulties:

- Families on low incomes cannot afford to travel to see the one provider located miles from where they live. This means they are unable to seek essential legal advice, even in the most extreme cases.
- One firm in a large area may not have capacity to provide advice to all those who need it. People requiring legal aid advice for housing issues often need advice urgently and cannot go onto a waiting list.
- Just one housing legal aid provider in an area can result in a conflict of interest because one law firm cannot represent both a tenant and his/her landlord. A conflict can also arise if the firm has been acting for the landlord on another issue, such as a family matter. This would mean the firm is not able to act for the tenant.

Creation of tenancies

- **Publity AG v Chesterhill Properties Ltd**
  [2016] EWHC 1994 (Ch),
  11 August 2016

A landlord and a prospective tenant were discussing terms for the proposed letting of residential premises in Mayfair. As part of those negotiations, the landlord carried out various works at the property. In December 2014, the prospective tenant paid £52,000 to the landlord. The landlord signed a copy of the proposed tenancy agreement with a term commencement date of 14 January 2015. Later, the tenant changed the term commencement date on the tenancy agreement to 1 February 2015. The change was initialled by the landlord's agent but the tenancy agreement was not completed. At a later date, the tenant printed off a further copy of the tenancy agreement signed by the landlord with the original term commencement date and signed and dated this.

John Male QC (sitting as a deputy High Court judge) held that there was no tenancy agreement. The original offer by the landlord was to let the property from 14 January 2015. The action of the tenant in changing the term commencement date to 1 February 2015 created a counter-offer. As a result, the landlord's original offer to let the property from 14 January 2015 lapsed. The original offer could not be revived by the tenant signing the original tenancy agreement. The parties were not ad idem as to when the tenancy should begin.

Possession claims

Suitable alternative accommodation

- **Hyde Housing Association Limited v Hussain**
  [2016] EWCA Civ 877,
  12 July 2016

Hyde claimed possession against Mrs Hussain on the basis that suitable alternative accommodation was available. Hyde asserted that as only she and one of her adult sons lived in her present flat, a two-bedroom flat would suffice. It was her case that a second son, Hussein, was also living in the flat with them. District Judge Cooper accepted Hussein's evidence that he was genuinely residing in the flat at the relevant time and had a genuine intention to continue to do so. She also held that it was not reasonable to expect Mrs Hussain's two adult sons to share a bedroom in her flat. She dismissed the claim for possession. Hyde sought permission to appeal in order to challenge those findings of fact. Lewison LJ refused permission to appeal on the papers, describing the appeal as 'hopeless' (para 5 of this judgment).

On a renewed application, David Richards LJ agreed, stating: 'There is absolutely no prospect of this court interfering with the findings of fact made by the judge below' (para 5). The judge reached a decision based on the evidence, as she was entitled to do.

Homeless protestors

- **Bristol City Council v Goff**
  County Court at Bristol,
  26 August 2016

Bristol City Council withdrew an application for an injunction to prevent the so-called 'Tent City' group of around 10 homeless people from camping, rough sleeping, or parking caravans etc in any open space in the area covered by Bristol City Council. The council then suggested that the injunction should apply to any open space owned by the council. In an out-of-court settlement, the defendants, who had been camping for months in a park, agreed that they would be evicted from the park in 28 days, and that the injunction would only apply to that one park, not the whole city, for six months.

HHJ Roderick Denyer QC is reported as stating: 'The injunction as sought initially was far too wide. … I take on board fully that the ex-serviceman, for instance, served his time in the armed forces, was badly injured and spent a long time in hospital. I'm pleased it's been able to be resolved. There's a limit to what I can do in this situation. I don't have any magic powers to deal with Bristol's homelessness crisis and I would like to thank all the homeless people and the supporters for coming today. It's an emotional area but I am very, very grateful, and I am pleased that this injunction is now in a much, much more sensible form.'[1]

Setting aside possession orders and oppression

- **Home Group Limited v Emery**[2]
  County Court at Edmonton,
  8 August 2016

Mrs Emery and her husband were joint assured tenants of Home Group Ltd. It appears that her health conditions, including heart disease, spinal problems and osteoarthritis, were a reason for their transfer to the property. The landlord sought possession as a result of rent arrears, relying on HA 1988 Sch 2 Grounds 11 and 12. There were five court hearings, but only Mrs Emery's husband attended. Eventually, in May 2016, when the arrears were £6,859.12, a possession order was made. When bailiffs attended the property on 2 August 2016, Mrs Emery immediately applied to set aside the possession order, stating that the attendance of the bailiffs was the first she had known about the proceedings and that at no stage, pre-issue, had the claimant contacted her individually.

Her husband was characterised as a rogue figure, who had been in and out of prison for fraud, had intercepted post relevant to the tenancy and court proceedings, and unbeknown to Mrs Emery had attended court and made outlandish offers to clear the arrears. She argued that there was oppression because the claimant had failed to comply with the Pre-Action Protocol for Possession Claims by Social Landlords, which at para 2.1 expressly states that where contact is by letter 'the landlord should write separately to each named tenant'. If this had been done, then Mrs Emery would have been aware of the arrears issue and it was likely the claimant would have become aware of the control her husband was exerting.

Applying the Civil Procedure Rules (CPR) 39.3(5) criteria, District Judge Lethem accepted that Mrs Emery had been in the dark up to the bailiffs attending and had acted promptly thereafter. She had reasonable prospects in the possession claim, given her commitment to pay £2,000 immediately and £100 per week towards the arrears. On the issue of oppression, he accepted that the pre-action protocol on rent arrears required contact by letter to be to each named tenant and that this had not been done. Accordingly, bringing possession proceedings on the back of this failure amounted to oppression as an unfair reliance on strict legal rights. The warrant and possession order were set aside. A suspended possession order was substituted on terms of payment of £2,000 and thereafter £100 per week towards the arrears.

Permission to appeal

- **R (Vucinic and Ledderboge-Vucinic) v Central London CC**
  [2016] EWHC 1543 (Admin),
  2 February 2016

In August 1999, Mr and Mrs Brill leased a house they owned to an American company, Lockson Holdings Inc. That

company employed Mr Vucinic. The company fell into financial difficulties and it stopped paying the rent. It also stopped paying Mr Vucinic, who, as a result, was unemployed and dependent on state benefits. Mr and Mrs Brill agreed to allow Mr and Mrs Vucinic and their family to continue living in the premises. In September 2001, Mr and Mrs Brill granted a new lease of the premises to Mr and Mrs Vucinic. The rent was £3,687 per calendar month. However, Mr and Mrs Brill only ever received payments of the housing benefit that the local authority paid on behalf of Mr and Mrs Vucinic. The amount of that housing benefit was very considerably less than the contractual rent. As a result, Mr and Mrs Brill issued a claim for possession and for arrears of rent, relying on HA 1988 Sch 2 Grounds 8, 10 and 11.

In October 2015, Deputy District Judge Wootton made an order for possession and ordered Mr and Mrs Vucinic to pay £167,114 arrears of rent. Mr and Mrs Vucinic gave notice of appeal against that decision. Their application for permission was heard and refused by HHJ Hand QC in December 2015. He also refused an application for a stay of the warrant of possession. He concluded that, even on the most optimistic appraisal of Mr Vucinic's submissions, he could have no defence based on an estoppel because any estoppel was ended by the issuing of the notice claiming possession. Nothing that Mr Vucinic had put before the court could amount to a defence, because Mr Vucinic had not demonstrated anything other than a very long suspension of the Brills' rights under the tenancy agreement. They were always entitled to end that suspension.

In January 2016, Mr and Mrs Vucinic applied for judicial review seeking to challenge HHJ Hand QC's decision. They argued that the documents that they put before the court indicated that they genuinely disputed the claim for possession on grounds which ought to have appeared to the deputy district judge to be substantial (CPR 55.8) and that she should therefore have given directions for a contested hearing at which the oral testimony of both parties could be considered by the court.

Holroyde J dismissed the application for judicial review. He noted that the only potential remedy where a judge has refused permission to appeal is judicial review: 'It is, however, clear on authority that in circumstances such as these, the granting of judicial review will be wholly exceptional' (para 30) (*R (Strickson) v Preston CC* [2007] EWCA Civ 1132). The insuperable difficulty faced by Mr and Mrs Vucinic was that their arguments were heard and considered by the deputy district judge who, on the basis of all the material then before the court, found in favour of Mr and Mrs Brill. In Holroyde J's view, she was entitled to do so: 'The passage of the years may well be unusual but it does not, in itself, mean that Mr and Mrs Brill had in any way abandoned their original agreement or agreed to vary it or agreed to replace it with a different agreement' (para 38).

As regards HHJ Hand QC's refusal of permission: 'Having … identified the hypothetical possibilities, [he] concluded, and in my view correctly, that none of them had any real prospect of success. He was plainly entitled so to conclude. Indeed, in my view, it was the inevitable conclusion. … This case … does not come within or anywhere near within the *Strickson* test' (paras 42 and 43).

Long leases

Breach of covenant

- **Roundlistic Limited v Jones**
  [2016] UKUT 325 (LC),
  18 July 2016

A long lease of a maisonette contained a covenant: 'Not to use the premises hereby demised or permit the same to be used for any purpose whatsoever other than as a single private dwelling house in the occupation of the lessee and his family.' It did not contain any covenant against subletting. In April 2015, the lessees sublet the maisonette on an assured shorthold tenancy to Mr Jackson for a period of 12 months. Mr Jackson went into occupation.

Before the subletting, the lessees expressed the view that the covenant did not prevent them from subletting. The lessor made it clear that it took a different view; that it considered the lessees had been wrongly advised; and that if the subletting proceeded it would seek an order for possession. After the granting of the assured shorthold tenancy, the lessor made an application under Commonhold and Leasehold Reform Act 2002 s168(4) to the First-tier Tribunal (FTT) for a determination that there had been a breach of covenant.

The FTT decided that the covenant did operate to require occupation of the maisonette by the lessees themselves so that they were not entitled to sublet to a third party, but that the lessor was estopped from relying on the covenant and/or had waived it and that, in any event, it was an 'unfair term' within the provisions of the Unfair Terms in Consumer Contracts Regulations 1999 SI No 2083 and consequently was not binding on them.

HHJ Huskinson sitting in the Upper Tribunal allowed the lessor's appeal. After considering *Aaron William M Burchell v Raj Properties Limited* [2013] UKUT 443 (LC), he held that on its proper construction the covenant did preclude the lessees from subletting to a subtenant who would occupy the maisonette. The FTT had erred in finding any estoppel by convention or waiver (see *Republic of India v India Steam Ship Co Limited ('the Indian Endurance and The Indian Grace')* [1998] AC 878). The FTT also erred in finding that the covenant was an unfair contract term and hence unenforceable. He found that there was a breach of covenant on the grant of the assured shorthold tenancy.

Service charges

- **23 Dollis Avenue (1998) Ltd v Vejdani**
  [2016] UKUT 365 (LC),
  16 August 2016

The management company – 23 Dollis Avenue – sought a payment on account, under a lease, from the respondent for major works to a block of flats. The FTT found that the management company had failed to comply with the consultation requirements and limited the amount the management company could charge, in advance of the works being completed, to £250 per leaseholder. The management company appealed.

The Upper Tribunal allowed the appeal. The £250 limit contained in Landlord and Tenant Act 1985 s20 only applied where works had actually been completed and the costs had been incurred. It did not apply to demands in advance. While it was relevant to the question of whether the estimated demand was reasonable, it was not determinative.

- **Sinclair Gardens Investments (Kensington) Ltd v Avon Estates (London) Ltd**
  [2016] UKUT 317 (LC),
  4 August 2016

It was a term of a lease that the lessor was entitled to appoint 'managing agents for the purpose of managing the estate and block and to remunerate them properly for their services' and 'to employ architects surveyors solicitors accountants contractors builders gardeners and any other person firm or company properly required to be employed in connection with or for the purpose of or in relation to the estate and the block or any part thereof and pay them all proper fees charges salaries wages costs expenses and outgoings'. Sinclair Gardens contended that this clause entitled it, as the lessor, to recover its legal costs of proceedings in the FTT from Avon Estates (the lessee). The FTT disagreed and Sinclair Gardens appealed to the Upper Tribunal.

The Upper Tribunal dismissed the appeal. The clause only allowed the lessor to recover the costs of solicitors for the purposes of managing the estate; this did not extend to instructing solicitors in tribunal proceedings.

- **Leaseholders of Foundling Court and O'Donnell Court v Camden LBC**
  [2016] UKUT 366 (LC),
  10 August 2016

Camden was the leasehold owner of parts of the Brunswick Centre. Allied London had been Camden's landlord. The applicants were all long leaseholders of flats within the Brunswick Centre; Camden was their immediate landlord. Camden's lease required it to pay Allied London the cost of carrying out works of repair to flats within the Brunswick Centre and the leaseholders, by the terms of their leases, were required to reimburse Camden for the cost of doing so.

In 2004, Allied London decided to carry out major works to the Brunswick Centre. Allied London consulted Camden, but not the leaseholders. Camden purported to consult the leaseholders but failed to do so properly. The leaseholders subsequently contended that, as they had not been properly consulted, they were not required to pay more than £250 per leaseholder. Both Camden and Allied London argued that neither of them was under an obligation to consult the leaseholders.

Martin Rodger QC, deputy president of the Upper Tribunal, held that Allied London, as the landlord intending to carry out the works, was under an obligation to consult Camden and all the long leaseholders who were obliged to contribute towards the works. Camden had not been required to consult anyone as it was not responsible for carrying out the works.

Housing allocation

- **R (M and A) v Islington LBC**
  Court of Appeal (Civil Division),
  C1/2016/1160,
  22 June 2016

The Court of Appeal has refused the claimants' applications for permission to appeal from the dismissal of their claim for judicial review in this case about the welfare of children and transfer to alternative social housing accommodation: see the Administrative Court decision noted at April 2016 *Legal Action* 42 ([2016] EWHC 332 (Admin); [2016] HLR 19).

Two recent reports from the

Local Government Ombudsman (LGO) illustrate the 'going rate' for compensation in cases where a LHA has been at fault in the administration of its housing allocation scheme and, as a result, an applicant has continued to occupy unsuitable accommodation.

- **Complaint against Thanet DC**
  Local Government Ombudsman
  Complaint No 15 000 234,
  3 August 2016

Mr and Mrs J privately rented a three-bedroom house. They lived with their four teenage children, two of whom had disabilities. They were the full-time carers of the disabled children. In 2013, they renewed their application under the council's housing allocation scheme. They were placed in Band C with a priority date of March 2011. That was an error. The date should have been November 2007.

In November 2014, one of the children turned 16. The council responded in January 2015 by moving the application to Band B. The couple bid for properties but were outbid because suitable properties were on 'local lettings schemes' restricted to working families. As a result of the complaint to the ombudsman, the council conducted a home visit, which confirmed statutory overcrowding amounting to a Category 1 hazard and significant unmet housing needs. The LGO found that:

- although not every overcrowding case justified an early home visit, this one had done, but there had not been a home visit until the LGO became involved;
- the council had wrongly told the couple that only the medical needs of one household member could be considered;
- there had been a failure to recognise the case was a complex one requiring a cross-agency referral;
- the allocation scheme had no mechanism to deal with the cumulative needs of overcrowded households with complex medical needs; and
- there had been a failure to consider the exceptional exercise of discretion to assist the family.

If the council had not been at fault, the couple could have bid for and moved to a suitable property by the end of 2013. The LGO recommended compensation of £8,400 for the period December 2013 to April 2016 during which they had remained in unsuitable accommodation.

- **Complaint against Haringey LBC**
  Local Government Ombudsman
  Complaint No 14 007 116,
  9 August 2016

Mr and Mrs K lived with their child in a third-floor flat with no lift. Mrs K suffered a series of strokes, impairing her mobility. She could not use stairs on her own and needed a wheelchair. The flat had no wheelchair access. She could not use the bath but the flat had no level-access shower. She applied for accommodation under the council's allocation scheme.

Under that scheme, only applicants in Bands A or B were likely to be able to bid successfully. Mrs K was placed in Band B. In July 2015, she submitted further medical evidence. The council failed to assess it until December 2015 and only awarded a Band A ranking, based on it, in March 2016.

The LGO decided that the council should have assessed the new medical evidence and acted on it within eight weeks, ie by September 2015. Had the Band A ranking been awarded then, Mrs K would have bid successfully for a suitable property. As a result of its delay, she had been left housebound in an unsuitable property for six months longer than she should have been. Compensation of £2,100 was recommended.

Homelessness

Priority need

- **Taani v Hackney LBC**
  [2016] EWCA Civ 216,
  25 January 2016

A reviewing officer decided that the applicant did not have a priority need for accommodation because he was not vulnerable: HA 1996 s189(1)(c). A first appeal was dismissed. The applicant sought permission for a second appeal on the basis that the reviewing officer had misdirected himself by use of the term 'fend for yourself' in notifying his decision. Lewison LJ refused permission on the papers, stating that: 'A one-off misapplication of the legal test does not satisfy the test for a second appeal.' The applicant renewed the application on the basis that this was unlikely to be a 'one-off' as the reviewing officer was Mr Minos Perdios who is contracted by a number of LHAs to carry out reviews.

Sales LJ refused the application. He held that: 'There is no particular indication from the [reviewing officer's] letter that this review officer is likely to misdirect himself in other cases' (para 4).

- **Ryan v Westminster City Council**
  [2015] EWCA Civ 1448,
  17 November 2015

The council decided that Mr Ryan did not have a priority need for accommodation because he was not vulnerable: HA 1996 s189(1)(c). The reviewing officer upheld that decision, applying the law as it stood before *Hotak v Southwark LBC* [2015] UKSC 30; [2016] AC 811. Recorder McAllister dismissed an appeal.

Floyd LJ refused a renewed application for permission to bring a second appeal. The reviewing officer had not made either of the two primary errors made in pre-*Hotak* cases (comparing the applicant with the street homeless and restricting the comparison to the street homeless in the council's own area).

Intentional homelessness

- **Cox v Brent LBC**
  [2015] EWCA Civ 1551,
  1 December 2015

Mr Cox was a secure tenant. He was subject to a suspended possession order for rent arrears. A warrant had been stayed on terms but those terms had been breached. A further warrant was issued, which was to be executed on 25 April 2013. On 29 March 2013, a fire spread from the flat below and rendered Mr Cox's home uninhabitable. The council decanted him to temporary alternative accommodation to be provided until either his flat was rendered fit or his tenancy of it was terminated. The warrant was executed on 25 April 2013, the tenancy terminated and the temporary accommodation withdrawn.

A reviewing officer decided that Mr Cox had become homeless intentionally from the flat of which he had held a secure tenancy. In dismissing an appeal, HHJ Bailey decided that a better way of achieving the same result would have been to hold that the temporary accommodation had been lost by the failure to pay rent on the former home. Mr Cox sought permission to bring a second appeal contending that it had not been open to the judge to uphold the decision on an alternative basis. He could only quash, vary or confirm it: HA 1996 s204(3).

Vos LJ refused the application. It had been open to the judge to deal with the matter in either of two ways. First, by construing the reviewing officer's decision as meaning that not only the flat but also the temporary accommodation had been lost by dint of the rent arrears. Alternatively, to have varied it to one finding that Mr Cox had become intentionally homeless from the temporary accommodation. By either route, the effective outcome would have been the same. A second appeal would be an academic exercise.

Discharge of duty

- **Cieicierska v Brent LBC**[3]
  County Court at Central London,
  5 September 2016

The appellant applied for homelessness assistance. Brent accepted that it owed her the main housing duty (HA 1996 s193(2)) and initially provided accommodation in its area. On Friday 22 January 2016, it made a final offer of private rented sector accommodation in Telford (West Midlands). That was an assured shorthold tenancy for a fixed term of two years at a rent within local housing allowance levels. The letter set out the consequences of acceptance or refusal, and that the appellant could accept and request a review of the suitability of the offer. An appointment had been made for her to view the property, sign for the tenancy, and move in on the following Wednesday.

Her solicitors wrote to Brent by email on Tuesday 26 January 2016 stating that she would accept the offer 'under protest' but wished to request a review of its suitability. The solicitors asked that Brent continue to provide accommodation in its district pending the review, rather than require her to travel to Telford. They also said that she was ill and could not travel to Telford on the following day. Brent responded by email that if she did not vacate her accommodation on the following day, it would be 'deemed' that she had refused the offer. On the Wednesday, she did not vacate her accommodation and did not travel to Telford. On the Friday, Brent decided that its duty had come to an end because she had refused a suitable private rented sector offer. The decision was upheld on review. The reviewing officer stated that to accept the property 'under sufferance' held no weight, given that she had failed to attend the viewing originally scheduled for her and had failed to make any alternative arrangement to meet the letting agent.

HHJ Bailey held that the solicitor's letter of 26 January made it abundantly clear that the appellant was accepting the offer, albeit 'under protest' while availing herself of a review. He rejected Brent's submission that the letter could only be construed as an acceptance conditional on Brent continuing to provide interim accommodation in its district. He also rejected Brent's submission that its offer letter had made it clear that it could only be accepted by attending the property and signing for the tenancy. Having considered the offer letter, he found that that was not the only possible interpretation. The decision that the appellant had 'refused' the offer was obviously perverse. The appeal was allowed and the review decision quashed.

Appeals

- **Lounis v Newham LBC**
  [2016] EWHC 1857 (QB),
  22 June 2016

The appellant brought an appeal against a reviewing officer's decision that the council's duty had been discharged by the provision, and refusal, of suitable accommodation: HA 1996 s193. The appeal was filed on 4 March 2015, 33 days beyond the 21-day time limit. Standard directions were given permitting evidence to be filed, but the appellant made no witness statement.

On the date listed for hearing of the appeal, 3 September 2015, the appellant applied for an extension of time: HA 1996 s204(2A). HHJ Lamb QC refused to direct that evidence could be adduced late and dismissed the application as there was no evidence to sustain it.

Sir David Eady dismissed an appeal. He said: '[T]he critical question is whether or not the appellant had discharged the burden of showing that there was a particular reason or a number of reasons for the delay, and that the critical reason was a good reason. The judge decided that there was no evidence before him which would enable him to come to a conclusion on that point' (para 9). The judge had not been wrong to reject the application.

Housing and children

- **R (KS) v Essex CC**
  [2016] EWHC 2145 (Admin),
  7 July 2016

The claimant was a failed asylum-seeker aged 23. He had been in the care of the council when a child. In order to avoid an infringement of his rights under Human Rights Act (HRA) 1998 Sch 1 article 8, the council had provided him with a single bed space in accommodation in Harlow (in its area) and financial support while he completed college studies in Newham: Children Act (CA) 1989 s23CA read with Nationality, Immigration and Asylum Act 2002 Sch 3 para 3. He was also the father of a small child who lived with the mother in Dagenham. Local children's services were concerned about the mother's ability to care for the child. The claimant often cared for his son when the mother could not. The claimant asked Essex to provide him with accommodation for himself and his child. When that was refused, he brought a claim for judicial review. Before the application for permission was determined, he applied for an interim injunction requiring Essex to provide him with accommodation he could occupy with his child and nearer to his college.

Timothy Dutton QC (sitting as a deputy High Court judge) granted the order. He found that matters justifying such an order included: the strong evidence that the claimant took a good deal of the practical responsibility for caring for his son; the evidence of the children's services authority about the poor quality of the mother's care; and the welfare of the child. He said: ' ... I have reached the conclusion that there is compelling reason to grant injunctive relief having balanced all of the various factors against the reluctance of the court to grant mandatory injunctions in these circumstances. I will therefore order that the claimant should be provided with temporary accommodation sufficient for him to have overnight accommodation with his son closer to where he is studying' (para 24).

- **R (C) v Southwark LBC**
  [2016] EWCA Civ 707,
  12 July 2016

The claimant was a Nigerian national who had overstayed her visa and been refused leave to remain. She lived with her three children. The family became homeless and destitute when the children's father, who had maintained the household, was imprisoned. The claimant had no recourse to public funds and was not eligible for the allocation of housing or homelessness assistance (HA 1996 Parts 6 and 7). She sought assistance with accommodation and subsistence under CA 1989 s17.

The council provided temporary accommodation, initially in London and thereafter in Rochdale. It met the accommodation costs and the utility bills. It also made weekly subsistence payments ultimately reaching £216.92 per week (after the father had rejoined the household and a new baby had been born).

A claim for judicial review of the levels of support provided failed. The Court of Appeal dismissed an appeal by the claimant. The level of support was not so low as to amount to an infringement of any rights under HRA 1998 Sch 1 article 8. As to the assertion that the support provided was inadequate or had been unlawfully fixed by reference to other regimes for support of the destitute, Ryder LJ said:

In this case, the nature and extent of the financial support, accommodation and benefits in kind that were provided to or accessed by the family ... were considerably greater than the discrete element of their financial support payments. In any event, the financial support provided exceeded child benefit rates and section 4 IAA 1999 support rates for most ... of the period in question. Furthermore, there were repeated assessments and consequential changes to the level of support provided. Given the quality of the bespoke assessments upon which the local authority's decisions were based and the nature and extent of those decisions ... , there is no sufficient material upon which a court could have concluded that the financial support payments were made by reference to an irrational or inflexible rate (para 27).

- **R (Jalal) v Greenwich RLBC**
  [2016] EWHC 1848 (Admin),
  27 July 2016

The claimant lived with his wife and four dependent children. He had become homeless intentionally. The family were provided with temporary accommodation until 31 January 2016 in performance of the council's duty under HA 1996 s190(2). When that accommodation was to be withdrawn, the claimant applied to the children's services department for further accommodation for the family under CA 1989 s17. The council concluded that the children were not 'in need' because their parents could accommodate them: both parents were in employment; the parents were entitled to housing benefit; the claimant had the wherewithal to secure private rented accommodation if he took reasonable steps to do so; and there was no need for the claimant to live in the council's area (in which private accommodation was expensive), which was simply where he had decided to settle.

John Bowers QC, sitting as a deputy High Court judge, dismissed a claim for judicial review of that decision. There was very little by way of documentary evidence to show that the claimant had been searching for private rented accommodation (a few texts and three emails) but the council had put in evidence to show that there had been suitable properties on the market. The council's decision was not irrational or otherwise unlawful. The council's fallback position (that it would accommodate the children without the parents, should the claimant fail to find accommodation) was lawful and reasonable: *R (G) v Barnet LBC* [2003] UKHL 57; [2004] 2 AC 208. The council had provided accommodation for the family for 10 months in all, which was sufficient to meet any obligations under CA 2004 s11 and HRA 1998 s6.

Housing and community care

- **R (GS) v Camden LBC**[4]
  [2016] EWHC 1762 (Admin),
  27 July 2016

The claimant was a Swiss national with EU Treaty rights. She was disabled and homeless but was not eligible for mainstream welfare benefits, access to social housing or homelessness assistance (HA 1996 Parts 6 and 7). She had been awarded a personal independence payment (PIP) to fund her care needs and applied to the council for accommodation. It decided that she did not have a 'need for care and support' for the purposes of Care Act 2014 ss18–19. Any such need had been met by the PIP award.

Peter Marquand QC, sitting as a deputy High Court judge, dismissed a claim for judicial review of that decision. He held (at paras 28 and 29) that a 'need for accommodation alone' did not fall within the term 'need for care and support': see *R (SG) v Haringey LBC* [2015] EWHC 2579.

However, the claimant's alternative argument was that the council was obliged to exercise its power under Localism Act (LA) 2011 s1 to provide her with accommodation because failure to do so would result in a breach of HRA 1998 Sch 1 articles 3 and 8. The judge held that:

Taking into account the entirety of the claimant's circumstances including her potential social isolation, physical disabilities, pain, mental health condition and the physical difficulties that she encounters it is my judgement that if she were to become homeless then there would be a breach of article 3 (para 75).

It followed that if the claimant became homeless, such treatment of her would be 'inhuman and degrading'. The council had an obligation to avoid that and this elevated its power to assist under LA 2011 s1 to a duty to act. Its decision not to provide accommodation under the 2011 Act (believing it had no power to do so) was wrong and was quashed.

1 Derek McConnell, solicitor, South West Law, Bristol and 'Judge criticises Bristol City Council as Tent City homeless people celebrate victory in banning case', *Bristol Post*, 26 August 2016.

2 Sean Shanmuganathan, solicitor, Tyrer Roxburgh, London and Martin Davis, barrister, 33 Bedford Row, London.

3 Liz Davies, barrister, London and Nathaniel Matthews, solicitor, Hackney Community Law Centre.

4 See also page 36.

Nic Madge and Jan Luba QC 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 1–3 for transcripts or notes of judgments.