Housing: recent developments

Jan Luba QC and Nic Madge highlight the latest policy and legislative developments and cases on human rights, possession, assured shorthold tenancies, anti-social behaviour, long leases, allocation, and homelessness.

Jan Luba QC

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Politics and legislation

Eligibility for housing

The rules relating to eligibility for allocation of social housing accommodation under Housing Act (HA) 1996 Pt 6 and for homelessness assistance under HA 1996 Pt 7 have been amended by the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2016 SI No 965. The new regulations: (1) reflect the changes made to Appendix FM of the Immigration Rules; (2) remove provisions no longer required (relating to certain categories of asylum-seekers whose claims for asylum were made before 3 April 2000); and (3) make clearer that the class of person described in Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI No 1294 reg 3(e) may be referred to as 'Class E'. The changes came into force on 30 October 2016 and apply to England only. They would seem to operate in relation to any decision taken after 30 October 2016, irrespective of the date of the application for housing assistance.

Homelessness in England

The latest homelessness statistics for England cover the second quarter of the 2016 calendar year: *Statutory homelessness and prevention and relief, April to June 2016: England* (Department for Communities and Local Government (DCLG), 28 September 2016). They show that local housing authorities accepted 15,170 households as being owed the main homelessness duty (HA 1996 s193), an increase of 10 per cent over the same quarter last year. The continuing increase in the number of acceptances since 2010 has largely been a consequence of households having lost their homes as a result of the ending of assured shorthold tenancies. The number of households in temporary accommodation on 30 June 2016 was 73,120, up 52 per cent compared with 31 December 2010. Of those households, 6,520 were in bed and breakfast (B&B) accommodation, 1,140 of which contained dependent children or expected children and had been unlawfully accommodated in B&B for more than six weeks.

The DCLG minister had earlier explained that '[t]he law is clear that [B&B] accommodation should be used to house homeless families only in an emergency, and then for no longer than six weeks' and had set out steps that the UK government is taking to eliminate the 'unacceptable', 'unlawful' and 'damaging' practice of keeping such families in B&B for more than six weeks: *Hansard*, HC Written Answers, 15 September 2016, question no 45358.

Homelessness Reduction Bill

This private members' bill was expected to have its House of Commons second reading debate on 28 October 2016. If passed, it would amend HA 1996 Pt 7 to make provision about measures for reducing homelessness and for connected purposes. The bill received detailed scrutiny in draft: House of Commons Communities and Local Government Committee, *The draft Homelessness Reduction Bill. Fifth report of session 2016–17*, HC 635, 14 October 2016. On 24 October 2016, the UK government announced that it would support its passage (DCLG press release, 'Government to support new legislation to reduce homelessness').

Social housing

Housing and Planning Act 2016 Pt 4 Chapter 3 (ss80–91), which relates to increased rent levels for higher-income tenants of social housing (commonly known as the 'pay to stay' policy), was brought into force on 1 October 2016: Housing and Planning Act 2016 (Commencement No 3) Regulations 2016 SI No 956.

Housing and legal aid

The latest statistics on legal aid cover the second quarter of the 2016 calendar year: *Legal aid statistics in England and Wales April to June 2016* (Ministry of Justice, 29 September 2016). They show that the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) resulted in large reductions in the *civil legal help* workload. The overall trend subsequently levelled out at around one-third of pre-LASPO levels. The number of *civil representation* certificates fell by a smaller proportion, before stabilising at around two-thirds of pre-LASPO levels. The volume of legally-aided housing cases has been falling steadily since 2014 and in April to June 2016 there was an 18 per cent decrease compared with the same quarter the previous year.

Private renting

By 23 November 2016 every private landlord and agent in Wales must be registered with Rent Smart Wales or face prosecution: Housing (Wales) Act 2014 Pt 1. A response to a freedom of information request made by the Residential Landlords Association in September 2016 revealed that only 2,025 licences have been issued to landlords and 211 to agents since the scheme was launched in November 2015.[1] There are an estimated 130,000 private landlords in Wales and around 1,055 agents.

In England, a survey of over 3,250 private tenants by Shelter and YouGov, published in September 2016,[2] uncovered a range of problems with private landlords behaving unlawfully, including committing criminal offences. Reports of landlords entering homes without permission and deposits not being properly protected were among the most common issues. Findings, based on extrapolation of the results, included that: the equivalent of over 64,000 renters reported that a landlord had disconnected their utilities without their consent and almost 50,000 said their belongings had been thrown out of their home and the locks changed; over 600,000 renters have had their home entered by a landlord without permission or notice being given; over 200,000 reported having been abused, threatened or harassed by a landlord; and over 110,000 renters felt they had been treated unfairly due to their race, nationality, gender or sexual orientation.

Housing and support

A new House of Commons Library briefing paper explains the impact of the UK government's policy of requiring rent reductions – and the application of local housing allowance caps – on the supported housing sector: *Paying for supported housing* (Briefing Paper No SN06080, 28 September 2016).

Appeals in housing cases

Appeals brought in the county court, High Court or Court of Appeal on or after 3 October 2016 will be dealt with in accordance with a completely rewritten version of Civil Procedure Rules (CPR) Pt 52 (Appeals). The replacement part is contained in the schedule to the Civil Procedure (Amendment No 3) Rules 2016 SI No 788. Consequential changes have been made to the practice directions (PDs) to Pt 52 and further substantial amendments have been made to PD52C (appeals to the Court of Appeal). Amendments to PD52A have altered routes of appeal both in and from the county court.

Human rights

Article 8

- **Brady and Brady v Wicklow CC**
  [2016] IEHC 371,
  30 June 2016

Mr and Mrs Brady were joint tenants of a council house where they lived with their five children. In 2004, when Mrs Brady was expecting her fourth child, the couple decided to carry out an attic conversion to accommodate their growing family. The tenancy agreement provided that '[t]he Tenant shall not execute any additions, alterations, improvements or other works … without the consent of the Council' (see para 3), but did not require that such consent be in writing. Mrs Brady visited the council offices and asked if the council would finance the extension. She was told that it would not, but it was indicated that they could carry out the conversion from their own finances. The Bradys saved some money and borrowed the balance from a local credit union. Mr Brady, a carpenter by trade, did a lot of the work, aided by two friends, an electrician and a builder who specialised in installing stairs. By the end of 2004, the work was completed. In July 2013, after a brief inspection of the property by the clerk of works, the council wrote complaining about an absence of fire-doors and an inadequate escape route from the attic. It then served a notice to quit, terminating the tenancy.

Mr and Mrs Brady sought an order of certiorari, quashing the decision of the council to terminate their tenancy. Among other grounds, they relied on irrationality, unreasonableness, disproportionality and breach of their rights under the European Convention on Human Rights (ECHR) article 8.

Barrett J stated: 'Having consented to the attic extension, the entirety of the council's case would seem to fall at this very first hurdle' (para 4). The council could not 'blow hot and cold'; it could not 'approbate and then reprobate'; it could not 'have it both ways' (para 4). He found that the council's decision was based on a number of 'fundamental' errors (para 28), including mistaken beliefs that there was an absence of consent and that there were breaches of Building Regulations. The attic room had a rescue/escape window that met applicable requirements and there was no legislative requirement that the fire-doors be upgraded. In addition, the council's actions following the alleged breach of the Bradys' tenancy failed to have any (or any due) regard to the fact that the conversion had occurred nine years previously. Further, the council's actions involved a disproportionate attack on the Bradys' entitlement to respect for their family home under article 8. There was no doubt that their council-owned house, occupied by them as tenants, constituted a 'home' within the meaning of article 8.

Turning to the need for an independent determination of proportionality and *McCann v UK* App No 19009/04, 13 May 2008; (2008) 47 EHRR 40, the judge stated:

> *[I]t seems … self-evident [that] a person should in principle be 'meaningfully' able to have proportionality determined. The court does not consider that it suffices to meet the above-mentioned obligation that the Bradys … have a right to undertake the high-risk route of applying for judicial review in the High Court, provided they are satisfied to expose themselves to the consequent risk of penury that may present in the event that they do not succeed in that application and an order for the regrettably princely costs so often arising in such an application thereafter issues against them. … [T]he review remedy contemplated must be meaningfully available, not simply something that can be afforded by going down the high-risk, high-cost route of High Court proceedings* (paras 44, 46).

He concluded:

> *[T]he council did not at any time address the issue of whether (i) the issuance of the notice to quit, or (ii) its subsequent refusal to revoke the notice to quit, constituted a disproportionate interference with the Bradys' rights under art 8. … [I]n the absence of any such determination, the council has not acted in compliance with art 8* (para 55).

The judge granted an order of certiorari quashing the decision of the council to terminate the tenancy.

Article 1 of Protocol No 1

- **Bologna v Malta**
  App No 46931/12,
  30 August 2016

Mr Bologna inherited a two-storey house from his uncle. In 1976, the property was requisitioned and allocated to PS. In 1987, Mr Bologna learnt that on an unspecified date PS had left the property and given the keys back to the authorities. The property then became occupied by CC, who had no title to it (since it had not been allocated to him by the authorities). Mr Bologna complained to the Housing Authority, which, instead of condemning the illegal occupation, in 1988 issued a new requisition order, assigning the property to CC. Later, CC obtained a development permit to carry out alteration work to the property. The work was carried out without the consent of Mr Bologna. While the requisition order was in force, Mr Bologna was meant to receive an annual rent of 40 Maltese Liras (approximately €93) from the Housing Authority. That was increased to 80 Maltese Liras (approximately €185) in 2010. Those amounts were far below the rental value of the property, but the Housing Authority did not pay anything to Mr Bologna after 2003.

Mr Bologna complained in the local courts that the requisition orders breached his rights under article 1 of Protocol No 1. The local courts awarded limited compensation but refused to annul the latest order, finding that it had been issued lawfully and had pursued a legitimate aim in that CC suffered from a physical disability and so required lodging compatible with his needs to avoid hardship. They also ordered Mr Bologna to pay the costs of all the parties. Mr Bologna complained to the European Court of Human Rights (ECtHR) that the requisition of his property had imposed an excessive burden on him, in violation of article 1 of Protocol No 1 and article 13, in that he had not had an effective remedy, capable of redressing the violation under article 1 of Protocol No 1.

The government admitted that Mr Bologna had suffered a violation of his property rights, but claimed that the violation had not continued after 2010 when the rent increased to €185 annually. However, the ECtHR noted that the rents provided for by law remained in stark contrast to the values of such property, since a court-appointed architect's valuation and the government's own estimate for the annual rent of the property in 2010 was €2,850. The court concluded:

> *Having regard to the meagre amount of rent received by the applicant, which persists to date despite the relevant amendments, the court finds that a disproportionate and excessive burden continues to be imposed on the applicant, who has been ordered to bear most of the social and financial costs of supplying housing accommodation to CC. It follows that the Maltese state has failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property …* (para 57).

There was, accordingly, a breach of article 1 of Protocol No 1.

The court also found a violation of article 13. It stated:

> *… Article 13 guarantees the availability at national level of a remedy to enforce the substance of the convention rights in whatever form they may happen to be secured in the domestic legal order. The effect of article 13 is thus to require the provision of a domestic remedy to deal with the substance of an 'arguable complaint' under the convention and to grant appropriate relief* (para 76).

The court held that, despite the fact that the local courts found in Mr Bologna's favour, he had remained a victim of the violation. That was 'an indication that a remedy might not be effective for the purposes of article 13' (para 82). It concluded that although the Maltese constitutional redress proceedings were 'an effective remedy in theory, they [were] not so in practice, in cases such as the present one' (para 91). There was, therefore, no effective remedy. The court made an award for pecuniary damage under article 41 of €30,000 'in equity'.

Note: For a related case where the ECtHR also found that there had been a violation of article 1 of Protocol No 1, see *Gauci and others v Malta* App No 31454/12, 30 August 2016.

- **Medvedev v Russia**
  App No 75737/13,
  13 September 2016

Prior to privatisation, Sh was the tenant of a flat owned by the City of Moscow under a social housing agreement. Sh died on 17 May 2003. On 25 July 2003, Sh's ex-boyfriend, Un, and an unidentified person impersonating Sh had their marriage registered in the Tambov Region. Un then applied to the local housing office, where he presented his marriage certificate and was registered as residing in Sh's flat as a tenant. On 31 October 2003, the title to the flat was transferred to Un under the privatisation scheme. On 25 December 2003, the privatisation transaction and Un's title to the flat were registered by the Moscow City Committee for Registration of Real Estate Transactions. Later, the prosecutor's office opened a criminal investigation into Un's activities in respect of the flat. In 2005, he was found guilty of fraud and imprisoned. The flat was transferred back to the Department for Housing of the City of Moscow. The District Court ordered the annulment of Un's marriage certificate and the privatisation agreement, and the revocation of his title to the flat.

In 2011, when Un was released from prison, he was still officially registered as the flat's owner, because the city authorities had not yet informed the City Registration Committee of the

court's judgments. On 28 October 2011, he sold the flat to S. On 8 November 2011, the City Registration Committee registered the sale agreement and S's title to the flat. On 22 December 2011, S sold the flat to Mr Medvedev. The sale agreement was registered by the City Registration Committee on 29 December 2011. In 2012, the District Court revoked Mr Medvedev's title and ordered his eviction. His appeals were dismissed. He complained to the ECtHR that there had been a breach of article 1 of Protocol No 1.

In the ECtHR, it was common ground between the parties that the flat constituted the applicant's possession and that the revocation of his title to it amounted to an interference with his rights under article 1 of Protocol No 1. When considering the issue of proportionality, the court noted that the government had failed to give a convincing explanation as to why, contrary to the public interest of catering for the needs of those on the waiting list for social housing, the city authorities chose not to have their title to the flat duly registered and/or to assign the flat to a person in need of social housing back in 2005, when Un's fraudulent actions had been discovered and the domestic judicial authorities had recognised the city's title to the flat. Where 'an issue in the general interest' is at stake, it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency. In 'the circumstances, bringing an action against the applicant, a bona fide purchaser of the flat, some seven years later calls for a justification which has not been furnished' (para 43). Mr Medvedev had been deprived of ownership without compensation or provision of replacement housing from the state. There was accordingly a violation of article 1 of Protocol No 1. The court considered that the question of pecuniary damage was not ready for a decision, but awarded €9,000 in respect of non-pecuniary damage.

Possession claims

Only or principal residence

- **Havering LBC v Dove**[3]
  [2016] EWCA Civ 680,
  4 May 2016

The defendants, who were twin sisters, were secure tenants of a flat. Both spent several days each week with long-term partners who lived elsewhere. The council carried out an investigation and produced a report stating that the property was not normally occupied by either sister. On the basis of the report, housing benefit and council tax benefit were withdrawn from both of them. Havering served a notice to quit and began a possession claim, arguing that the tenancy was no longer secure and relying on rent arrears. HHJ Bailey refused an application for an adjournment to obtain legal aid and made a possession order. He held that the doctrine of issue estoppel determined the question whether the property was their only or principal home, because it was difficult to conceive of a situation where the test for housing benefit would produce a different outcome from the only or principal home test. He also held that: even if he were wrong on the estoppel issue, the property was not in fact the only or principal home of either sister; there was no prospect that they would be able to pay their rental arrears; it was reasonable to make an order for possession; and neither of them could resist the order on the basis of ECHR article 8 in the light of their personal circumstances. The sisters sought permission to appeal.

Permission to appeal was refused on the papers by Floyd LJ, but, on a renewed application, Kitchin LJ granted permission to appeal. He was persuaded that the judge arguably fell into error in failing properly to take into account: the degree of occupation demonstrated; whether the length of absence from the property was sufficient to raise the presumption that the property was no longer the only or principal home; whether the sisters had done enough to rebut that presumption; what inferences should be drawn from the possessions still retained in the property; and what the enduring intention was in respect of returning in the light of the objective facts. The judge, at least arguably, also failed properly to consider one sister's medical condition, which prevented her from attending at least one day of the trial and, perhaps most importantly, prevented her from giving oral evidence. The appeal is listed to float over 14–15 March 2017.

Assured shorthold tenancies

Deposit and disrepair

- **Chaudry v Cooley**[4]
  County Court at Brentford,
  9 June 2016

In June 2013, Ms Chaudry granted Mr Cooley a six-month, fixed-term assured shorthold tenancy (AST) of a room in a house in multiple occupation. Mr Cooley paid a deposit of £300. Further fixed-term ASTs were granted in January 2014 and July 2014. In February 2015, a statutory periodic AST arose under HA 1988 s5. The deposit was retained by the claimant throughout, but never protected in a statutory scheme in accordance with HA 2004 s213. There were various items of disrepair and nuisance at the property, including infestations of rodents and bed bugs, a leak from the shower to the kitchen below, interruptions to the water supply to the shower, and problems with the hob and oven. The claimant took no steps to remedy these issues. In addition, despite there being an agreement that the rent would be inclusive of bills, the claimant failed to top up the gas and electricity meters at the property, leading to interruptions to the supply. In July 2015, the claimant brought a claim for possession on the basis of alleged rent arrears. The defendant counterclaimed for disrepair, nuisance and breach of contract, and for compensation under HA 2004 s214(4) for the claimant's failure to protect the deposit. The claimant's claim was struck out and default judgment entered on the counterclaim. At a hearing to determine quantum on the counterclaim, the defendant argued that he was entitled to an award of compensation under s214(4) in relation to each of the four successive ASTs (the three fixed-term ASTs and the existing statutory periodic AST). This followed from the words of s214(1)–(2A) and (4), the conditions being satisfied in relation to each of the four tenancies taken individually. See also *Kazadi v Martin Brooks Lettings Estate Agents Limited and Faparusi* September 2015 *Legal Action* 51.

District Judge Jenkins accepted the defendant's submissions. He awarded compensation of one times the amount of the deposit for each of the three fixed-term ASTs and three times the deposit for the statutory periodic AST. In addition, he awarded damages at 40 per cent of the average monthly rent in respect of the disrepair and nuisance, and 30 per cent in respect of the interruptions to the supply of electricity and gas, noting the comment of the court in *Shazad v Khan* January 2011 *Legal Action* 20 that the provision of heating and hot water is the basis of living in the 21st century and their absence was wholly unacceptable.

Anti-social behaviour

Equality Act 2010

- **Contour Homes v Smith**
  County Court at Manchester,
  1 April 2016

Contour, a registered social housing provider, granted an assured shorthold 'starter' tenancy to Mr Smith. The date for conversion into a full assured weekly tenancy, in the absence of a HA 1988 s8 or s21 notice, was to be 8 September 2014. Contour then received allegations that Mr Smith 'had exposed himself in public and in the full public gaze had engaged in masturbation outside his address' (para 12). On 11 April 2014, Contour served a s21 notice, requiring Mr Smith to give up possession on 15 June 2014. He appealed against the service of the notice, arguing that it contravened his protection against discrimination under Equality Act (EA) 2010 s15. The panel determining the appeal decided that it was a reasonable and proportionate response. On 11 July 2014, Contour issued a possession claim. Mr Smith defended, claiming the protection of the EA 2010 and his right not to be discriminated against due to a 'protected characteristic', namely his mental health disorder. District Judge Matharu made a possession order without a hearing in accordance with the accelerated possession procedure (CPR 55.16). Mr Smith applied to set aside the possession order, relying not only on the EA 2010, but also ECHR article 8. District Judge Hovington found no basis to set aside the possession order and dismissed the application. He recognised that the provisions of the EA 2010 were engaged on account of the clear diagnosis that Mr Smith suffered from a schizoaffective disorder, which provided a sufficient causal link to the behaviour complained of. He found that Mr Smith had been treated unfavourably, indirectly, as a consequence of his disability but the judge was satisfied that, under s15(2), the treatment of Mr Smith was a 'proportionate means of achieving a legitimate aim'. Mr Smith sought permission to appeal.

HHJ PR Main QC refused permission to appeal. He stated:

> *It surely cannot be disputed that any landlord faced with a tenant acting in the fashion as the appellant acted, in broad daylight in the public gaze with families and children being potentially exposed to such behaviour – it being so far removed from ordinary tenantable behaviour, warranted **immediate** intervention and a requirement that the like, could not tolerably be repeated.*
>
> *The end sought by the landlord in protecting the other tenants from the possible repetition of such behaviour and in managing its own estate, in ensuring that its tenants should abide by proper standards of behaviour, in accordance with its tenancy agreement, was surely a perfectly legitimate aim ...* (paras 36–37, emphasis in original).

The issue was therefore one of proportionality: whether the aim to be achieved was outweighed by the damaging effect on Mr Smith in view

of his vulnerability, and whether there were other measures available to the landlord which reasonably would have achieved its legitimate ends. He noted that Mr Smith was 'an unrepentant and habitual cannabis user' (para 41). The incident when he exposed himself 'did not strictly involve his protected characteristic – it more reflected, when he was stressed, his abuse of alcohol and drugs, which were excluded under the [Equality Act 2010 (Disability) Regulations 2010 SI No 2128]' (para 43). Any injunction 'could only operate *reactively*' and in the meantime, those living nearby 'faced the risk of his aberrant behaviour' (para 44, emphasis in original). District Judge Hovington, in exercising his discretion to refuse the application to set aside the possession order, had made a legitimate decision that could have been reached on the facts. He was entitled to find that the risk of relapse and repeated aberrant behaviour was a very real one and one against which the landlord could not take any realistic measures to prevent, absent a possession order. Service of the s21 notice was rationally connected to that objective. Once the judge found that, legitimately, there were no other lesser means of achieving the objective, he could conclude that the aim to be achieved well outweighed the risks to Mr Smith, given he would remain well supported within the outreach service and he would not be made 'street homeless'.

Contempt

- **United Welsh Housing Association v James**
  County Court at Cardiff,
  [2016] EW Misc B21 (CC),
  12 August 2016

On 27 June 2016, a judge made an injunction under Anti-social Behaviour, Crime and Policing Act 2014 s1 forbidding the defendant from approaching within 100 metres of the claimant's housing offices. On 28 June, the defendant went to the association's premises because she had been having difficulties with her central heating.

On an application to commit, HHJ Bidder QC was satisfied that the defendant was served with the order and that she had breached it by attending at the premises. While it was a very rapid breach which justified a term of imprisonment, it was not necessary to make that an immediate custodial sentence. He imposed a term of seven days' imprisonment but suspended it on condition that the defendant complied with the injunction order until 26 June 2018, or until further order. However, he amended the injunction to allow the defendant to contact the claimant to discuss the terms of her tenancy or the condition of her premises.

Long leases

Service charges

- **Cleve Court (Ealing) Management Limited v Link**
  [2016] EWCA Civ 787,
  22 June 2016

The company was the manager of three blocks of leasehold flats. In 1997, it also became the freehold owner. Dr Link was a tenant of one of the flats under a 125-year lease and a shareholder in the company. In December 2010, the company sued Dr Link for arrears of service charges of £5,137.50. The claim was badly pleaded. First, it asserted a claim for arrears of rent but did not identify any such alleged arrears, nor was any claim for rent pursued. Second, it asserted that the company's right to recover the service charges arose under the lease, when the claim lay, if at all, only under a separate deed of covenant between the company and Dr Link, which the company neither pleaded nor exhibited. The pleading was an inadequate exposition of the company's claim and, in the judgment of Sir Colin Rimer, unless it was first relevantly amended, it deserved to be struck out. However, Dr Link, acting in person, simply pleaded a defence raising a generalised complaint about the lawfulness of the claim, asserting that the company had not complied with any of the pre-conditions of its entitlement to recover the service charges from her. District Judge Willans, at trial, permitted the company to extend its claim to include a claim for service charges up to the date of the trial. No application was made to amend the particulars of claim so as to disclose a reasonable cause of action for the recovery of the claimed service charge arrears. The judge ordered Dr Link to pay the company £9,115.50 by way of debt and interest, and its costs, summarily assessed at £14,905.40. Dr Link appealed. Mr Recorder Lavender QC allowed the appeal. Among other things, the judge had been wrong to reject Dr Link's case that a surplus was being kept after each year of expenditure. It was clear from accounts produced that there was a surplus at all times. Further, it was not permitted under the deed of covenant for the service charge for one year to be based on an estimate of the requirements of future years. He found that none of the service charge demands was lawfully made. The whole claim necessarily failed and was dismissed.

Sir Colin Rimer refused a renewed application for permission to appeal. There was no justification for a second appeal directed at challenging the extent to which the recorder took a different view on the facts from that favoured by the judge. The recorder gave his reasons for doing so. They appeared to be solidly justified. In any event, a challenge to his decision did not raise an important question of principle or practice. There was no other compelling reason for a second appeal (CPR 52.13). Sir Colin Rimer also stated that he was 'unconvinced that the circumstances of this case present a suitable occasion on which the Court of Appeal should engage in some educative guidance to judges as to how to deal with litigants in person. Trials in which one or both parties are in person are, and have been for some time, very common. They are often unsatisfactory but the trial judge has to do the best he can' (para 30).

Housing allocation

- **Complaint against Brent LBC and Ealing LBC**
  Local Government Ombudsman
  Complaint Nos 14 019 234 and
  15 016 582,
  8 August 2016

Ms X was a single woman and a Brent council tenant. She had been the subject of violent abuse by her ex-partner and wanted to move out of Brent to a safer part of London. In August 2014, she asked Brent to assist. It was one of seven councils participating in the West London Domestic Violence Reciprocals Scheme. The scheme enabled councils to refer suitable cases to one another for priority rehousing without applicants needing to apply for assistance under HA 1996 Pt 7 (Homelessness). It took Brent until November 2014 to refer the applicant's case to the scheme co-ordinator. The co-ordinator referred the application to Ealing. The scheme required a decision from the receiving council within five days. Ealing took 11 weeks to make a decision. It declined the referral on the basis that Ms X did not have a 'priority need'. The scheme did not explicitly state that nominees needed to have a priority need. Brent made a further referral to a different borough and that was accepted in March 2015.

The ombudsman found that both councils had badly let down a vulnerable woman. Brent had failed to deal with the application for assistance properly at the outset. It had wasted more than two months in pursuit of an application for a priority management transfer within the council's area when it knew Ms X would not be safe in Brent. It failed to take a victim-centred approach or otherwise deal with Ms X in accordance with its own policies. It delayed too long before making a referral to the scheme. In its turn, Ealing failed the applicant by not determining the referral for 11 weeks and not explaining the delay. The scheme itself was deficient in failing to spell out any requirement that referred applicants have a priority need. Both councils accepted the ombudsman's recommendations that they pay compensation and undertake a review of the scheme.

Homelessness

Eligibility

- **McCarthy v Brent LBC**[5]
  County Court at Central London,
  5 August 2016

Ms McCarthy fled to the UK following domestic violence in the Republic of Ireland. She applied to Brent for homelessness assistance. She was caring for her young children and not working or looking for work. Brent decided she was ineligible for assistance, applying Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI No 1294 reg 6 (Other persons from abroad who are ineligible for housing assistance). That decision was upheld on review and she appealed to the county court.

Recorder Genn allowed the appeal. The council could not rely on reg 6 because Immigration Act 1971 s1(3) provided that arrival into and departure from the UK on a journey from or to the Republic of Ireland was not subject to control under that Act and a person arriving from Ireland did not require leave to enter the UK. Irish nationals do not apply for leave to remain in the UK. Accordingly, Irish nationals had an unfettered right to remain in the UK.

In the alternative, if Irish nationals were subject to immigration control, reg 5 operated to ensure that they were eligible for homelessness assistance. Class C in reg 5 provided that 'a person who is habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland and whose leave to enter or remain in the United Kingdom is not subject to any limitation or condition' was eligible for homelessness assistance. A person habitually resident in Ireland therefore had the right to housing assistance in the UK.

Leave to remain, if granted, was for a limited time and with restrictions. There were no such limits on the rights of Irish nationals to be in the UK.

Priority need

- **SS v Waltham Forest LBC**[6]
  County Court at Central London,
  5 September 2016

The appellant fled her marital home due

to severe domestic violence. That left her with chronic mental and physical health problems. She was provided with supported accommodation in a specialist refuge and then applied for homelessness assistance. The council accepted that she was 'disabled' within the meaning of the EA 2010 and thereby the public sector equality duty (PSED) was engaged: EA 2010 s149. However, the council decided she did not have a priority need because she was not 'vulnerable' when compared to the ordinary homeless person: HA 1996 s189(1)(c).

Recorder Genn allowed an appeal. The council had not lawfully applied the approach to vulnerability from *Hotak v Southwark LBC* [2015] UKSC 30; [2015] HLR 23 and had not completed a composite assessment (as it had not taken into account the risks of harm arising out of withdrawal of specialist support and accommodation that potentially rendered the appellant significantly more vulnerable than an ordinary homeless person of robust health). Further, the council had only considered the protected characteristic of 'disability' in the PSED assessment and had failed to consider the protected characteristic of 'sex', which was directly linked to the domestic violence context. It could not be said that the PSED had been lawfully discharged. The decision was quashed.

Accommodation pending appeal

- **Powell v Southwark LBC**
  [2016] EWCA Civ 991,
  7 July 2016

Ms Powell suffered from severe learning difficulties, anxiety and depression. Her application to Southwark, seeking homelessness assistance, failed. That decision was upheld on review. Ms Powell filed a notice of appeal under HA 1996 s204 and the County Court at Central London fixed the hearing of that appeal for the end of September 2016.

Ms Powell asked Southwark to accommodate her pending the appeal hearing. It declined. She then brought an appeal against that decision (HA 1996 s204A) and, pending the hearing of that appeal, made an application for interim relief in the form of a mandatory order that Southwark accommodate her: HA 1996 s204A(4)(a). HHJ Saggerson refused that application.

On an application to the Court of Appeal for permission to appeal from that refusal, and for interim relief pending the hearing of that appeal, Ms Powell put forward evidence that she was living with her adult daughter in a three-bedroom council flat provided in performance of a homelessness duty owed to that adult daughter, her daughter's children and her daughter's sister. The situation was difficult because Ms Powell was liable to panic, sometimes got nervous and shouted. The children were frightened and found it difficult to understand her behaviour. Ms Powell was still behaving erratically. The children were not speaking to her and she was not answering when they did speak. The conditions in the property were interfering with the adult daughter's ability to get on with her studies. A family meeting had been attempted to try to sort things out, but had resulted in Ms Powell becoming upset and locking herself in a bedroom. She was clearly distressed.

Floyd LJ stated that '[t]he effect of [HA 1996 s204A] is to give to the county court a very limited power of intervention that had previously existed on a judicial review application' (para 11) and asked himself whether 'this is a case where it could ever be justified on the balance of convenience to grant temporary relief at this stage' (para 15). On that question he found that:

- *[T]he current conditions under which the applicant is housed are unsatisfactory. The description of home life given … is not something one would wish on anyone. But I have to bear in mind that she is not homeless. She has a home and she has a family who, despite the difficulties which they encounter with living with her, still love her …*
- *I am unable really to say that it is not likely to continue as a viable modus operandi until the hearing of the appeal in the county court. [Counsel] points out that there is a risk that relations will get so bad that [the adult daughter] will evict her mother. I am not persuaded that that is a sufficient likelihood to justify this court taking the exceptional step of ordering mandatory relief.*
- *The balancing exercise has to take into account the interests of others who are competing for housing stock in the borough in question. There are those who, as the evidence recognises, are street homeless. In those circumstances, it does not seem to me that I would be justified in the present case in ordering the local authority to provide accommodation pending the hearing of an appeal* (paras 16–18).

Accordingly, interim relief pending an appeal to the Court of Appeal was refused. Further, because that court would be unable to hear a second appeal in the s204A appeal until after the main s204 appeal had been heard in the county court, permission to appeal was refused because that sequence of events would render the second appeal academic.

- **SN v Waltham Forest LBC**[7]
  County Court at Central London,
  5 September 2016

The appellant suffered from high blood pressure. She had two young children, one of whom had chronic constipation and daily vomiting. On her application for homelessness assistance, Waltham Forest decided that she had become homeless intentionally. That decision was quashed on an appeal but a fresh review reached the same conclusion. She brought another appeal and asked the council to continue to accommodate her until it was heard: HA 1996 s204(4). In three successive decisions (each one considering further information provided by the appellant), the council refused to accommodate. The appellant brought an appeal under HA 1996 s204A against the latest of those decisions on the ground that the council had not properly considered the third limb of the approach set out in *R v Camden LBC ex p Mohammed* (1997) 30 HLR 315, ie, the personal circumstances of the appellant and the consequences of any refusal to accommodate. The council argued that: (1) the first limb of *Mohammed* (merits of the challenge to the review decision) was the overriding consideration; (2) it had recorded the personal circumstances and considered the medical evidence adequately.

HHJ Hand QC allowed the appeal. He held that:

- There was no hierarchy in the *Mohammed* formula. Personal circumstances were capable of tipping the balance in an appellant's favour regardless of the underlying merits.
- Respondents rarely accept that there are merits in an appeal and therefore the position urged upon him by the council would mean most appellants would fail the *Mohammed* test if the council was right.
- The consequences of a negative decision on accommodation pending appeal had not been properly considered despite the facts having been set out and references made to the evidence.
- The decision-taker had to consider properly what the real effect of a decision on this appellant – with her particular circumstances – would be.

The judge was also satisfied that substantial prejudice to the appellant's ability to pursue her appeal would be caused if accommodation was not provided. He made a mandatory order under s204A(6)(a).

Accommodation charges

- **Quissongo v Glasgow City Council**
  [2016] ScotCS CSOH 135,
  15 September 2016

Ms Quissongo was an EU national with a young child. She did not speak English but came to the UK to seek work. Accommodation she had arranged in the UK ceased to be available and she applied for homelessness assistance. The council provided accommodation under a tenancy agreement at an initial rent of £184.10 per week. Ms Quissongo was not eligible for housing benefit and soon accrued arrears of rent that reached almost £5,000. Just over nine months after entering into the tenancy, she brought a petition against the council arguing that it had set the rent without taking into account her means to pay or its discretion in fixing a reasonable charge (see *R (Yekini) v Southwark LBC* [2014] EWHC 2096 (Admin); September 2014 *Legal Action* 50 for the equivalent position in England).

Lord Boyd dismissed the petition. The tenancy agreement had been explained by an interpreter at the outset. Ms Quissongo knew it contained an obligation to pay rent. That liability had not been disputed for over nine months despite the fact that she had had legal advice and a support worker at a much earlier stage. Nine months into the tenancy, she had signed an agreement to clear the acknowledged arrears. In those circumstances, her unreasonable delay and acquiescence served to defeat the petition.

1. https://news.rla.org.uk/just-3-landlords-rent-smart-wales-licences/
2. http://england.shelter.org.uk/media/press_releases/articles/over_a_million_renters_victim_to_law-breaking_landlords2
3. Jonathan Manning, barrister, London.
4. Osman Gill, solicitor, MTG Solicitors, Hayes and Daniel Clarke, barrister, London.
5. Adrian Berry, barrister, London and Sally Morshead, solicitor, Shelter, London.
6. Tim Baldwin, barrister, London and Chris Callender, solicitor, Steel & Shamash, London.
7. Justine Compton, barrister, London and Tanya Barrett, solicitor, Ty Arian, Swansea.

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 3–7 for transcripts or notes of judgments.