Successive governments have sought to keep the pressure on council tax bills to a minimum through some form of 'new burdens doctrine'. This requires all Whitehall departments to justify why new duties, powers, targets and other bureaucratic burdens should be placed on local authorities, as well as how much these policies and initiatives will cost and where the money will come from to pay for them (page 4, para 1.1).

It was argued on behalf of the claimants that they had a legitimate expectation that central government would abide by the NBD. The defendant successfully argued that there was no sufficiently clear and unambiguous promise to generate a legitimate expectation of a refund if cost estimates proved inaccurate. In fact, the NBD made it 'crystal clear' (para 76) that the government would not automatically refund local authorities if the estimate of the cost of a policy turned out to be inaccurate. The NBD guidance document said:

Reviews may conclude that costs turned out to differ from the original new burdens estimate. This ought not to be surprising nor a cause for criticism; nor will there be an automatic assumption that departments must make good under-estimates (or indeed recoup over-estimates) (page 18, para 6.7).

Assisted suicide

- **R (Conway) v Secretary of State for Justice**
  [2017] EWCA Civ 275,
  12 April 2017

On 30 March 2017, by a margin of two to one, a Divisional Court of the High Court refused permission to Mr Conway, a 67-year-old man with a diagnosis of motor neurone disease, to bring judicial review proceedings to apply for a declaration under Human Rights Act 1998 s4(2) that Suicide Act 1961 s2(1), which criminalises acts of assistance to individuals wishing to commit suicide, infringed his rights under articles 8 and 14 of the European Convention on Human Rights ([2017] EWHC 640 (Admin)).

A similar application had been refused by the Supreme Court in *R (Nicklinson and another) v Ministry of Justice and other appeals* [2014] UKSC 38 on the grounds that the law (and the prosecutorial guidance governing when prosecutions should in fact be brought) were matters for parliament, which was due to debate the issues. The Supreme Court held that it would therefore be 'institutionally inappropriate' (paras 116 and 148) for a declaration of incompatibility to be made at that point, although three of the nine judges did not rule out another such application succeeding in the event that parliament did not 'satisfactorily' address (Lord Neuberger at para 118) whether s2 should be relaxed or modified.

In the Divisional Court in *Conway*, the majority held that parliamentary debates held on three private members' bills since the *Nicklinson* judgment meant that it remained institutionally inappropriate for the court to consider granting a declaration.

The Court of Appeal reversed this decision and granted permission, with the result that the judicial review will now be heard by a Divisional Court in July 2017. It distinguished the context of the appeals. In Mr Conway's case, the issue was no longer under active parliamentary consideration. Further, there had been reservations about the quality of the evidence in the *Nicklinson* case; in the instant case, wide-ranging primary and expert evidence was before the court.

1 www.england.nhs.uk/ourwork/part-rel/transformation-fund/bcf-plan/
2 www.publications.parliament.uk/pa/cm201617/cmselect/cmcomloc/170106-Letter-to-Prime-Minister-on-social-care-and-NHS.pdf
3 http://gov.wales/docs/dhss/publications/170410pt45en.pdf
4 The Revised Code of Practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014 (Appointed Day) (Wales) Order 2017 SI No 557 (W 128) (C 50).
5 See also page 34 and June 2017 *Legal Action* 28.
6 A transcript is available at: www.wilsonllp.co.uk/wp-content/uploads/2015/10/2015.08.04-Judgement.pdf

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Housing: recent developments

Nic Madge and Jan Luba QC highlight the latest political and legislative developments, as well as cases on human rights, whether a letting was a tenancy or a licence, the Rent Act 1977, possession, anti-social behaviour, obtaining information, allocation and homelessness.

Nic Madge

Jan Luba QC

Politics and legislation

Homelessness Reduction Act 2017

Although the Homelessness Reduction Act 2017 is unlikely to be brought into force before 2018, local housing authorities are making preparations for its commencement. To help them, housing consultant Mark Prichard has produced a version of the Housing Act (HA) 1996 Pt 7 (Homelessness) incorporating the changes to be made by the 2017 Act. It is available to download at: https://markprichard.co.uk/content/documents/Housing-Act-1996-Part-7-as-amended-by-Homelessness-Reduction-Act-2017_170522_121612.pdf.

Housing and discrimination

On 17 May 2017, the Equality and Human Rights Commission (EHRC) announced that it has started legal action against Fergus Wilson, a private landlord who has allegedly banned Indian and Pakistani people from renting his homes. The EHRC's chief executive, Rebecca Hilsenrath, said: 'We have asked the court if it agrees with us that Mr Wilson's lettings policy contains unlawful criteria and, if so, to issue an injunction.'

Landlord possession proceedings

In the first three months of this year, the number of landlord possession claims (35,188), orders for possession (26,009), warrants of possession (17,936) and repossessions by county court bailiffs (9,370) were down eight per cent, 10 per cent, nine per cent and 15 per cent respectively (compared with the same quarter last year), continuing the annual downward trend seen since April to June 2014: *Mortgage and landlord possession statistics in England and Wales, January to March 2017* (Ministry of Justice, 11 May 2017). The majority (63 per cent (22,012)) of landlord possession claims were social landlord claims, 22 per cent (7,716) were accelerated claims and 16 per cent (5,460) were private landlord claims.

Possession claims

The Civil Procedure Rule Committee (CPRC) is considering whether amendments are required to rules and forms in light of the Court of Appeal judgment in *Cardiff CC v Lee (Flowers)* [2016] EWCA Civ 1034; December 2016/January 2017 *Legal Action* 40. On 28 June 2017, it opened a consultation exercise on proposed changes: *Enforcement of suspended orders – alignment of procedures in the county court and High Court*. Responses should be submitted by 30 August 2017.

Homelessness

On 22 June 2017, the UK government published the latest information on the number of households in England that applied as homeless (or as threatened with homelessness) to a local authority and were offered housing assistance: *Statutory homelessness and prevention and relief, January to March (Q1) 2017: England* (Department for Communities and Local Government (DCLG)), 2017). The figures show that, in that quarter, councils accepted that 14,600 households were owed a main homelessness duty to secure accommodation as a result of being unintentionally homeless and in priority need. That is up one per cent on the previous quarter and down one per cent on the same quarter of last year. The total number of households in temporary accommodation on 31 March 2017 was 77,240, up eight per cent on a year earlier, and up 61 per cent on the low of 48,010 on 31 December 2010.

In Scotland, the government has published its statistics for the full year: *Homelessness in Scotland 2016–2017* (Scottish government, June 2017).

In Wales, the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 SI No 2603 (W 257) have been amended to reflect changes to Appendix FM of the Immigration Rules relating to housing accommodation for asylum-seekers: Allocation of Housing and Homelessness (Eligibility) (Wales) (Amendment) Regulations 2017 SI No 698 (W 164). The changes came into force on 22 June 2017.

Right to buy

The statistics on right to buy sales in England for the final quarter of 2016/17 have been published: *Right to buy sales in England: January to March 2017* (DCLG, 29 June 2017). They show that:

- In that quarter, local authorities across England sold an estimated 2,890 dwellings under the right to buy scheme. This is a decrease of 12 per cent from the 3,276 sold in the same quarter of 2015/16.
- Local authorities in London accounted for 22 per cent of sales. They sold an estimated 622 dwellings. This is a decrease of 28 per cent from the 866 sold in the same quarter of 2015/16.

Subletting social housing

Guidance issued by the director of public prosecutions on 2 July 2017 makes clear that tenants of Grenfell Tower and Grenfell Walk who were subletting their properties on the night of the fire and who have, or do, come forward so they can be confirmed as safe and/or to indicate that others were resident in their flat when the fire took place, should not face prosecution for offences under Prevention of Social Housing Fraud Act 2013 s1.

Human rights

Article 1 of Protocol No 1

- **Zimonin and others v Russia**
  App Nos 59291/13, 14636/14 and 14582/15,
  16 May 2017

A number of flats owned by the City of Moscow were fraudulently sold following the deaths of the tenants. The state authorities reclaimed the flats and the purchasers' titles to the properties were annulled. The purchasers complained to the European Court of Human Rights (ECtHR) under article 1 of Protocol No 1.

The ECtHR saw no reason to depart from its decisions in the similar cases of *Gladysheva v Russia* App No 7097/10, 6 December 2011; February 2012 *Legal Action* 11, *Stolyarova v Russia* App No 15711/13, 29 January 2015; April 2015 *Legal Action* 42, *Medvedev v Russia* App No 75737/13, 13 September 2016; November 2016 *Legal Action* 39, *Kirillova v Russia* App No 50775/13, 13 September 2016 and *Popova v Russia* App No 59391/12, 4 October 2016; December 2016/January 2017 *Legal Action* 38. It noted that the government's submissions remained silent as to why the city authorities did nothing, after the tenants' deaths, to regularise the status of the properties. Nor did the government furnish any explanation as to: when and how the fraud had been discovered; why the authorities had not applied promptly for the transfer of the properties into the city's possession; or why it had condoned their reselling. Each time a flat was sold, it was incumbent on the registration authorities to verify the legitimacy of the transaction.

The court reiterated that the consequences of any mistake made by a state authority must be borne by the state and errors must not be remedied at the expense of the individual concerned. The forfeiture of the titles to the flats and the transfer of the ownership of the flats to the City of Moscow placed a disproportionate and excessive burden on the purchasers. There had therefore been a violation of article 1 of Protocol No 1. The court directed that the state should ensure, by appropriate means, as soon as possible, full restitution of the applicants' title to the flats and the annulment of their eviction orders.

- **Missbach v Poland**
  App No 36300/15,
  2 May 2017

Ms Missbach was the owner of a house that was occupied by a couple and their children under a rent-free contract. She terminated the contract and, in December 2009, a district court ordered the tenants to leave the property. It also granted them the right to be provided with social accommodation by the municipality and suspended the order to leave the property until the municipality had provided them with such housing. However, the tenants stayed in the property and the municipality did not offer them any social accommodation.

In July 2010, Ms Missbach brought a claim for compensation against the tenants and the municipality. She obtained a payment order of approximately €1,750 against the tenants. The municipality was ordered to pay approximately €541 but would be exempted if the other defendants paid the compensation.

Ms Missbach then brought a claim against the tenants and the municipality arguing that the tenants had no right to social housing and that the municipality was no longer obliged to provide it for them as their circumstances had improved. The district court rejected that claim as the social accommodation question had already been determined. Ms Missbach complained to the ECtHR that there had been a breach of article 1 of Protocol No 1.

The court has posed the following questions to the parties: has there been an interference with the applicant's peaceful enjoyment of her possessions? If so, was that interference necessary to control the use of property in accordance with the general interest? In particular, did that interference impose an excessive individual burden on the applicant (*Immobiliare Saffi v Italy* App No 22774/93, 28 July 1999)?

Tenancy or licence?

- **St Andrews Forest Lodges Ltd v Grieve**
  [2017] ScotSC 25,
  [2017] SC DUN 25,
  Sheriffdom of Tayside Central and Fife at Dundee,
  25 April 2017

Mr and Mrs Grieve owned a limited liability partnership that ran a holiday park business. They lived in a lodge on the park. After the partnership went into administration, it was agreed that the park would be sold to St Andrews Forest Lodges Ltd, but the sale was conditional on an application to discharge a planning restriction. As a result, the company agreed to sell the lodge to Mr and Mrs Grieve. Later, St Andrews and Mr and Mrs Grieve entered into a 'standard holiday letting agreement' for the lodge. It was agreed that they would be permitted to occupy the lodge, as a separate dwelling, with exclusive possession, in return for payment of £2,000 per month. Although St Andrews stated that the occupancy of the lodge would have the legal status of a holiday let, Mr and Mrs Grieve did not agree to this; it was their only or principal home.

After referring to both Scottish and English authorities, Sheriff SG Collins QC found that the legal relationship between the parties was that of landlord and tenant. The tenancy was not a holiday let falling within the terms of Housing (Scotland) Act 1988 Sch 4. It was an assured tenancy in terms of s12.

Rent Act 1977

Fair rents

- **Ljepojevic v University of Cambridge Accommodation Service**
  [2017] UKUT 213 (LC),
  25 May 2017

Dr Ljepojevic was a Rent Act-regulated tenant of a flat. His landlord carried out works that it claimed were improvements and then applied to the rent officer to register an increased fair rent. The rent officer decided that the capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 SI No 6 did not apply because of the work carried out by the landlord. (Article 2(7) provides that the cap 'does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house … as a result of repairs or improvements … carried out by the landlord … the rent that is determined in response to an application for registration of a new rent … exceeds by at least 15% the previous rent registered or confirmed'.)

The rent officer registered a new rent of £2,630 per quarter. Dr Ljepojevic was dissatisfied with that decision and appealed to the First-tier Tribunal (FTT).

After inspecting the premises, the FTT found that the open market rent for the flat was £1,100 per month to which it had applied a 15 per cent allowance for scarcity, leaving a fair rent of £935 per month or £2,805 per quarter. It determined that 'the amount of rent attributable to [the] works [carried out by the landlord] was in excess of £188.55 per quarter, 15% of the previous registered rent, and so the exemption did apply'. Dr Ljepojevic appealed, complaining that the FTT had simply asserted that the amount of the rent attributable to the landlord's works was in excess of 15 per cent of the previously registered rent without providing any intelligible explanation for that conclusion.

After referring to *Flannery v Halifax Estate Agencies Limited* [2000] 1 All ER 373 at 377J and *Trustees of the Israel Moss Children's Trust v Bandy* [2015] UKUT 276 (LC), Martin Rodger QC, Deputy Chamber President, stated that the FTT had given no proper explanation for its critical conclusion, which made the difference between a rent increase pegged to RPI since 2006 and an increase of more than 100 per cent. Dr Ljepojevic had raised a number of specific points that were clearly articulated. '[I]t was incumbent on [the FTT] to consider his objections in a systematic way and, if it considered that the points made were persuasive, to explain why. As a minimum the reasons given by any tribunal must engage with and respond to the main arguments presented to it. They must explain to the unsuccessful party why they have been unsuccessful' (para 24). The reasons given by the FTT fell below that standard and it would not have been obvious to Dr Ljepojevic why his contention that there had been no significant improvement to his flat had been rejected. The decision of the FTT was flawed and was set aside. The case was remitted for reconsideration by a differently-constituted tribunal.

Possession claims

Tied accommodation

- **Hertfordshire CC v Davies**
  [2017] EWHC 1488 (QB),
  21 June 2017

Mr Davies was employed by the council in January 2003 as a 'resident caretaker' at a school. His job description stated that 'attendance at evenings and weekends was essential' and that 'presence on site was essential for reasons of security: "the post holder must be residential"'. The letter offering him employment stated: 'As a condition of your employment you will be required for the better performance of your duties to occupy the accommodation provided at [the school bungalow].' He signed a document headed 'Service Occupancy – Tenancy Agreement'. It stated: 'Since your occupation of the dwelling is a condition of your employment with the council, your right to live in the dwelling will end automatically when your employment with the council ends ...' He lived in the bungalow with his family. The rent payable was initially £75.05 per month. In September 2014, after Mr Davies underwent surgery, the job description was revised to provide that: 'This is a residential role with the post holder may be required to live on site in school provided accommodation [sic].'

In June 2015, after a disciplinary hearing, the council dismissed Mr Davies for gross misconduct. On 16 June 2015, the council served a notice to quit, dated 12 June 2015, requiring Mr Davies to give up possession on 10 July 2015. The council issued proceedings for possession on 10 September 2015. The claim was transferred to the High Court because one of the remedies sought in the defendant's counterclaim was a declaration that HA 1985 Sch 1 para 2 was incompatible with his rights conferred by the European Convention on Human Rights (ECHR).

After referring to a number of cases, including *Bruton v London and Quadrant Housing Trust* [2000] 1 AC 406 and *Street v Mountford* [1985] AC 809, Laing J found that, as a matter of fact, Mr Davies' occupation was, at the inception of the agreement, for the better performance of the defendant's duties and that the agreement created a service occupancy, not a lease. Although it was common ground that the notice given by the council did not comply with Protection from Eviction Act 1977 s5, no notice to quit was required to terminate the agreement, as it ended automatically in accordance with its terms when the defendant was dismissed. Section 5(1A) only applies where a notice to quit is the mechanism which is used to bring the arrangement in question to an end.

The decision by the council to enforce the agreement in accordance with its terms was the exercise of a function to which Equality Act (EA) 2010 s149 and Children Act 2004 s11 could apply in theory. However, neither of those duties conferred a private law right on the defendant. That meant, on the authority of *Mohamoud v Kensington and Chelsea RLBC* [2015] EWCA Civ 780; [2015] HLR 38 and *Hackney LBC v Lambourne* (1993) 25 HLR 172, that even if the defendant could have applied for judicial review of the decision to serve the notice to quit, on the grounds that the claimant had not complied with those public law duties, any failure to comply with them would not provide a defence to the claim for possession.

With regards s149, there was 'no convincing evidence that the defendant had the protected characteristic of disability at the date when the notice to quit was served' (para 107). The judge also rejected arguments that service of the notice to quit was unlawful because there was a dispute about the defendant's dismissal and because no regard was paid to the defendant's article 8 rights. There was no incompatibility with the ECHR. The council was entitled to possession.

Equality Act 2010

- **Paragon Community Housing Limited v Neville**[1]
  County Court at Central London,
  7 April 2017

Mr Neville was an assured shorthold tenant. He was disabled within the meaning of EA 2010 s6 because he suffered from an emotionally unstable personality disorder. Possession was sought due to allegations of anti-social behaviour dating back to the commencement of the tenancy. Although Mr Neville initially defended the claim, relying on EA 2010 s15, he made a number of admissions and the parties agreed to list the matter for a short hearing in April 2016. A suspended possession order was made on condition that the defendant complied with the terms of the tenancy agreement.

As a result of further allegations of anti-social behaviour, the landlord applied for a warrant, which was due to be executed in June 2016. Mr Neville disputed the further allegations and applied to suspend the warrant. On the hearing of a preliminary issue, District Judge King ruled that there had been no significant change in Mr Neville's personal position with regard to his disability and that arguments relying on ss15 and 35 could not be entertained. After a two-day hearing, the judge found that the breaches were proved and replaced the suspended order with an outright possession order. Mr Neville appealed.

In allowing the appeal, Recorder Williamson QC held that there was no shortcut when dealing with EA 2010 arguments. A structured approach was required (*Akerman-Livingstone v Aster Communities Ltd* [2015] UKSC 15; [2015] AC 1399; May 2015 *Legal Action* 44) even when a suspended possession order had been made. Sections 15 and 35 apply to enforcement. District Judge King was wrong to close down that argument. The claimants have applied to the Court of Appeal for permission to appeal.

Anti-social behaviour

Committal

- **Bristol City Council v Hill**
  [2017] EW Misc 8 (CC),
  County Court at Bristol,
  19 April 2017

Mr Hill begged for money to support his crack cocaine and heroin habits. In April 2015, Bristol City Council obtained an order forbidding him from begging in Bristol and prohibiting him from entering two smaller parts of the city centre where he had been known habitually to beg. Mr Hill swiftly broke that order and in July 2015 was sent to prison for a period of six weeks for 30 breaches. On his release, Mr Hill broke the order again and, in September 2015, he was sent to prison for a total period of three months for a further 29 breaches. Again, on his release, he broke the order and, in December 2015, was sent to prison for a period of four months, this time for 25 further breaches. Within days of Mr Hill's release, there were seven further breaches but, in March 2016, HHJ Rutherford adjourned sentence to see if Mr Hill would avail himself of the help the council was offering him. However, within two hours of being released on bail, Mr Hill broke the injunction. HHJ Rutherford sentenced Mr Hill to a further term of imprisonment of six months.

On Mr Hill's release in the summer of 2016, he again continued to break the court's order. The council attempted to offer him help, including offers of accommodation, financial help and referrals to support agencies, but he was unwilling to accept these offers and continued breaking the court's order. As a result, District Judge Field sentenced Mr Hill to a further period of six months in prison. He was released from prison in February 2017, but within four days Mr Hill was once again breaking the order. He was seen in the areas from which he had been excluded on 29 occasions on 14 separate days. On four of those occasions he was seen to be begging.

District Judge Watson noted that Mr Hill had refused all offers of help and continued to break the order. As this was now the sixth occasion when Mr Hill had been before the court for multiple breaches of the same order, the court was left with no alternative

but to impose a further prison sentence. For each of the 29 breaches, the judge imposed a sentence of six months' imprisonment, to run concurrently.

- **Birmingham City Council v Fellows** [2017] EW Misc 7 (CC), County Court at Birmingham, 20 April 2017

Mr Fellows breached an order by entering an exclusion zone. There was no aggressive or inappropriate behaviour amounting to an exacerbation of that breach, but there had been 'a large number of occasions' (para 2) upon which Mr Fellows had previously breached the order.

On an application to commit, HHJ Rawlings referred to five previous appearances when Mr Fellows had been sentenced for breaches but noted that there had 'been a gap between breaches [and] a period of compliance for something over a year' (para 3). The defendant had, however, 'deliberately breached the order yet again' (para 3). The judge imposed a sentence of 60 days' imprisonment.

- **Birmingham City Council v Paul, Bhuee and Iqbal** [2017] EWHC 1027 (QB), 27 April 2017

Birmingham City Council applied to commit the three defendants for breach of an injunction forbidding them from 'participating in a street cruise' in Birmingham. There was evidence that, when the road conditions were wet and it was dark, they had driven at speeds in excess of 130 mph. The speed limit varied from 70 mph to 30 mph.

HHJ McKenna, sitting as a High Court judge, stated that on any view their conduct 'was highly irresponsible' and 'a serious breach of the injunction' (para 7). They 'were acting together as part of a group and were clearly intent on deliberately flouting the terms of the injunction' (para 9). However, all three accepted the substance of the allegations made against them at the first available opportunity. None of them had a criminal record. All were remorseful for their actions. The judge imposed sentences of six months' imprisonment, suspended for the balance of the period of the injunction.

Obtaining information

- **Galloway v Information Commissioner** [2017] UKFTT 2016_0254 (GRC), EA/2016/0254 and 0260, 21 April 2017

Mr Galloway requested information about CCTV footage that showed an 'altercation' between him and a visitor to another tenant in the block where he lived. He claimed that the council's response used discriminatory language (not repeated in the transcript) and was not sufficiently accurate in relation to timings. He also asked for copies of the images under Data Protection Act 1998 s35. The council refused those requests, stating, among other things, that it was not authorised to release the images. It upheld its responses in an internal appeal.

Mr Galloway appealed to the Information Commissioner, who rejected his appeal. She did not have jurisdiction to consider the alleged breaches of Equality Act (Sexual Orientation) Regulations 2007 SI No 1263 regs 3(2) and 8 or Communications Act 2003 s127. She stated that the timings given appeared to be satisfactory. With regard to CCTV footage: the images were personal data; the subject had a reasonable expectation that the images would not be disclosed; and disclosure would be unfair.

The FTT (General Regulatory Chamber) Information Rights dismissed second appeals. It was satisfied that the information provided was satisfactory. With regard to the images, they were personal data in that the subject could be identified from them. Although the subject's activities were in public because they were communal areas, they were communal areas of a block at a time when no other people were present. The expectation of privacy was greater than in a crowded street. The images were not and had not been accessible to the public at the relevant date and as such were not in the public domain. Disclosure to Mr Galloway would not be for the prevention of crime. Despite notices referring to the existence of CCTV cameras, disclosure would not be within the expectation of the data subject.

Housing allocation

- **R (C) v Islington LBC** [2017] EWHC 1288 (Admin), 31 May 2017

The claimant fled domestic violence and applied to Islington for accommodation. It decided that she was owed the main housing duty on account of her homelessness (HA 1996 s193) and awarded her 110 points under its housing allocation scheme. The bidding threshold was 120 points. The claimant's application for a further 40 'welfare' points failed. The claimant then discovered that the newest properties available to let were being reserved for long-standing local residents under local letting schemes. She also found that the choice-based letting scheme was a subsidiary route to allocation for homeless persons – most were being made offers as 'direct' lets or under 'supported choice' arrangements. She sought a judicial review on three grounds:

1. the unlawful refusal to award 40 category 3 welfare points under the allocation scheme;
2. the unlawful procedure adopted by the council in its consideration of applications by homeless persons; and
3. the unlawfulness of the local lettings policy.

Jeremy Baker J allowed the claim under the second ground and dismissed the two other challenges. He held that:

1. The scheme contained a discretion to award 'welfare' points if housing or other circumstances 'severely affect' an applicant's welfare. The claimant's application for such points had been properly reviewed and had not been considered to meet the level of 'severe'. Refusal of the additional points had not been unlawful.
2. The scheme was unlawful because it failed to set out the reality of the practice of dealing with homeless applicants. First, the natural inference from the wording of the scheme was that any successful applicant would need 120 points but there was, in practice, a lower threshold of 100 points for direct lets. Second, nothing in the scheme identified the criteria used to decide who would get direct offers despite 37 per cent of homeless applicants being made offers by that route. Third, there was nothing to explain how to apply to be made a direct offer. The judge said: '[N]ot only am I satisfied that the procedure by which the defendant operates the provision of direct offers of social housing … is unlawful, but, in view of the lack of evidence that the claimant's application was considered under this part of the scheme, or, if it was considered, as to the reasons why a direct offer was not made to her, both the original decision made by the defendant and its review were also unlawful' (para 63).
3. The local lettings policy did discriminate against new arrivals in the borough. New arrivals would include victims of domestic violence and they were primarily women. That discrimination engaged both Human Rights Act 1998 Sch 1 article 14 (read with article 8) and the EA 2010. However, under both statutory regimes, such discrimination was the proportionate result of a legitimate policy aim and not unlawful. There had been no breach of the public sector equality duty.

- **R (C) v Islington LBC** [2017] EWHC 1441 (Admin), 21 June 2017

In her claim for judicial review, the claimant had succeeded in obtaining a declaration that the council's practice of making direct offers of accommodation under its housing allocation scheme (otherwise than pursuant to the discretionary power of the director of housing needs and strategy) was unlawful and in breach of its duty under HA 1996 s166A(1) to allocate social housing in accordance with its published allocation scheme. In particular, she had succeeded in obtaining an order quashing the review decision contained in its letter dated 24 November 2016, so that the council will be obliged to reconsider her application for social housing to determine whether to make her a direct offer of accommodation under the housing allocation scheme and, if not, to provide sufficient reasons for its decision (see [2017] EWHC 1288 (Admin) above).

She applied for her costs. The council resisted the claim for costs on the basis that she had failed on two of the three grounds pursued in her judicial review claim. Jeremy Baker J stated that 'considerable resources were devoted to the other two issues upon which the claimant did not succeed, such that although I consider that the claimant is entitled to the majority of her costs, a significant reduction ought to be made from them. Therefore, the order which I propose to make is that the defendant shall pay 60% of the claimant's costs of her claim, to be the subject of detailed assessment if not agreed' (para 12). He also made an order for interim payment of £30,000 on account of those costs.

- **R (Edward) v Greenwich RLBC (No 2)** [2017] EWHC 1113 (Admin), 17 May 2017

Mr Edward applied to Greenwich for an allocation of social housing. By a decision notified in October 2016, the council decided that he was not a qualifying person under its allocation scheme: HA 1996 s160ZA(7). That was because he had two criminal convictions for drug-related offences and a judgment had been entered against him for possession and rent arrears in respect of a previous tenancy. In earlier judicial review proceedings, he had sought to challenge the decision by reference to the particular facts of his case. At an oral hearing, he had been refused permission to apply for judicial review (see *R (Edward) v Greenwich LBC (No 1)* [2016] EWHC 3410 (Admin); March 2017 *Legal Action* 41). Gloster LJ refused permission to appeal.

Mr Edward then brought further judicial

review proceedings arising from the same decision but this time contending that the allocation scheme itself had been unlawful by its inclusion of provisions excluding some applicants for unacceptable behaviour, including those – such as himself – who would otherwise be entitled to a 'reasonable preference'.

Lang J refused a renewed application for permission to seek judicial review. By virtue of s160ZA(7), the council had been 'entitled to adopt in its Housing Allocation Scheme … a qualification criterion which excluded those who have been "guilty of unacceptable behaviour serious enough to make them unsuitable to be a [Greenwich] tenant" and also those with rent arrears' (para 45). Although Mr Edward had mental health and other needs, and so would usually be accorded a statutory reasonable preference for housing, that did not prevent the council from excluding him from the housing register: *Allocation of accommodation: guidance for local housing authorities in England* (2012) para 3.21. The judge certified the application as 'totally without merit' (para 51).

- **R (Edward) v Greenwich RLBC (No 3)**
  [2017] EWHC 1112 (Admin), 17 May 2017

Mr Edward applied for permission to bring committal proceedings against council officers as a result of statements they had made in his judicial review proceedings (relating to his application for social housing): Civil Procedure Rules 1998 r81.18. He alleged that Ms Jo Elliott, the council's senior housing lawyer, knowingly made a false statement of truth in an acknowledgment of service, when she verified the summary grounds of defence, which contained three allegedly false and/or deliberately misleading statements, which were caused to be made by Ms Coral Sewell, the council's housing access and allocations manager.

Lang J dismissed the application, with costs of £3,920 plus VAT. She held that the application to commit for contempt, 'because of the actions of its solicitor and housing allocation manager, is merely another weapon which he is deploying to attack the [council's] refusal to house him. In my view, it is unarguable that they have acted in contempt of court' (para 47). Mr Edward had entirely failed to establish a prima facie case that the statements made were false or deliberately misleading. There was no public interest to be served by granting permission.

Homelessness

Decision-making

- **R (Sambotin) v Brent LBC**
  [2017] EWHC 1190 (Admin), 19 May 2017

The claimant was a Romanian national. He applied for homelessness assistance to Waltham Forest Council. It decided that he was not eligible: HA 1996 s185. Later, he applied to Brent and provided that council with a copy of his decision from Waltham Forest. Brent decided that he was homeless, eligible, in priority need, and had not become homeless intentionally. It decided to give notice (under s198(1)) to Waltham Forest that it believed that the conditions for referral (in s199) were satisfied. Waltham Forest told Brent about the earlier refusal of the claimant's application. Brent decided to 'withdraw' the referral and, in February 2017, issued the claimant with a fresh decision that he was not eligible. It also refused to provide s200 accommodation pending the outcome of the earlier s198 referral.

The claimant sought a judicial review, contending that it had not been open to Brent to make a fresh decision and that, even if it had, the fresh decision contained no reasons explaining why it had been taken. Moreover, there had been an unlawful failure to provide s200 accommodation.

Sir Wyn Williams upheld the claim on all three grounds:

1. Brent accepted that, in the absence of fraud, deception or fundamental mistake of fact, it had no power to make the fresh decision if it had earlier completed its enquiries and made a final decision. It contended that its decision to make a referral had not been a final decision on the extent of its duties. If it had been, it was based on a fundamental mistake of fact. The judge found as a fact that Brent had made all appropriate enquiries and had made, in substance, a final decision that the claimant was owed a s193 duty that either it or another authority had to perform. There had been no fundamental mistake of fact: 'The reality of this case, in my judgment, is that if any mistake was made by the defendant it was a mistake which occurred by reason of a failure on its part to properly apply the eligibility criteria for assistance to the facts disclosed by the claimant' (para 46).
2. As to the failure to give reasons, the judge said: '[I]t seems to me that fairness demands not just that the defendant should provide reasons to justify its second decision (which it did) but also reasons to support its view that it was entitled to make a second decision (which it did not)' (para 48).
3. The judge found that Brent had owed the s200 duty from the date of the referral and would continue to do so until the referral had been resolved.

Homelessness

- **Chatokai v Salford City Council**[2]
  County Court at Manchester, 11 April 2017

Mr Chatokai was the tenant of a social housing flat on the 14th floor of a tower block. He applied to Salford for homelessness assistance on the basis that, on account of his disabilities, it was no longer reasonable to continue to occupy his flat: HA 1996 s175(3). He had a number of significant medical, physical and psychological ailments. These included 'severe motor co-ordination difficulties' that aggravated his mobility difficulties and had led to numerous falls both in his flat and on the staircases when required to access them. He felt trapped and very isolated in his flat on the 14th floor, which interfered with his ability to feel safe in the property. On review, the council upheld a finding that he was not homeless. Mr Chatokai appealed, primarily on the basis that the council's decision had resulted from a failure to apply the public sector equality duty: EA 2010 s149.

HHJ PR Main QC stated that at 'the heart of this appeal' was whether the reviewing officer had assessed the question of reasonableness for the appellant to occupy the premises '*through the prism of his subjectively experienced dysfunction* – so that she could demonstrate, as the "equality duty" required, that she was alive to this new culture to show greater awareness as to the effects of disability on those unfortunate enough to experience it' (para 29; emphasis in original). He found that approach was missing. 'Specifically, there is no discussion on the likely compounding and synergistic effects of the appellant's overlaid protected characteristics nor any attempt to view these matters from the perspective of his disablement. This can only be viewed as a significant vitiating factor. In my judgment, [the] review does not come close to satisfying the requisite legal test in applying the "equality duty"' (para 33). Given his circumstances, Mr Chatokai might reasonably feel significantly anxious and if one then added 'the appellant's chronic pain and his deteriorating physical function (his function having clearly deteriorated since 2012), the resulting package of dysfunction, given the nature of the "equality duty", suggested very strongly, it was reasonable, viewed objectively, to regard the appellant's current accommodation as *entirely* unsuitable' (para 35; emphasis in original). The decision was quashed.

Intentional homelessness

- **Barker v Watford BC**
  County Court at Central London, 11 January 2017

Ms Barker had been a private sector tenant. She was evicted following the making of a possession order with a money judgment for £7,250 arrears of rent. Watford decided that she had become homeless intentionally: HA 1996 s190. Ms Barker contended that the property had become unaffordable after welfare reform changes led to a significant shortfall between her housing benefit and her rent. On review, the council decided that she had failed to renew her application for a discretionary housing payment (DHP) to make good the shortfall. The reviewing officer found that, had she applied for the DHP, she would 'have continued to receive this benefit'.

HHJ John Mitchell allowed an appeal. He said: '[T]he reviewing officer's finding that the property was reasonable, on grounds of affordability, for the appellant to continue to occupy required a finding that DHP would be awarded if she applied. I am satisfied that Mr Marshall Williams' submission that there was no evidence which could properly support such a finding is made out. The evidential gap of whether DHP would have been awarded to the extent which was necessary to make the property affordable was capable of being filled, for example by Mr Perdios asking [the relevant council officer] whether DHP would have been awarded if the appellant had applied for an extension and for how long. He did not do so and the evidential gap remains' (para 40). The reviewing officer's decision was quashed.

1 Claire Wiles, solicitor, GT Stewart, Croydon, and EJ Fitzpatrick, barrister, London.
2 Chetna Parmar, barrister, Cobden House Chambers.

Nic Madge and Jan Luba QC are circuit judges. They would like to hear of relevant housing cases in the higher or lower courts. They are grateful to the colleagues above for providing details of the judgments.