Housing: recent developments

Nic Madge and Jan Luba QC highlight recent political and legislative developments as well as cases on human rights, possession, assured shorthold tenancies, letting agents, HMOs, anti-social behaviour, long leases, prosecutions, allocation, and homelessness.

Nic Madge

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Politics and legislation

Rent arrears in social housing

A new joint report by two councils and two housing associations (Southwark, Croydon, Family Mosaic and Peabody) reviews the impact of welfare reforms on tenants' rent arrears: *Safe as houses: the impact of universal credit on tenants and their rent payment behaviour* (Smith Institute, October 2017). Participants in the research almost universally experienced financial hardship as a result of claiming, or moving on to, universal credit (UC), particularly as a result of significant delays in payment. There was a pattern of arrears accumulating each week for 11 weeks following a switch to UC. After that, rent arrears began to be paid off, but not in amounts sufficient to clear all arrears accumulated.

A new House of Commons Library briefing paper explains the main differences between assistance with housing costs through the housing benefit regime and under UC, and considers evidence of the impact of claiming housing costs under UC to date: *Housing costs in universal credit* (Briefing Paper no 06547, 23 October 2017).

Private rented and leasehold sectors

On 3 November 2017, new regulation-making powers were brought into force to enable the UK government to tackle rogue landlords: the Housing and Planning Act 2016 (Commencement No 6) Regulations 2017 SI No 1052. The secretary of state can now make regulations to specify:

- the description of an offence that is a banning order offence;
- how local housing authorities are to deal with financial penalties recovered for breach of a banning order; and
- information that must be included in a person's entry in the database of rogue landlords and property agents.

On 18 October 2017, the UK government issued a call for evidence seeking views on whether a new regulatory model is needed for agents in the leasehold sector and what form the regulation of letting and managing agents should take to protect and empower tenants and leaseholders: *Protecting consumers in the letting and managing agent market: call for evidence* (Department for Communities and Local Government (DCLG)). The consultation closed on 29 November 2017.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI No 962 establish a minimum level of energy efficiency for privately-rented property in England and Wales. From April 2018, landlords of privately-rented domestic property must ensure that their properties reach at least an energy performance certificate (EPC) rating of E before granting a new tenancy to new or existing tenants. The requirements will then apply to all private rented properties – even where there has been no change in tenancy arrangements – from 1 April 2020 for domestic properties. On 9 October 2017, the UK government published guidance for landlords on complying with the new standards: *The domestic private rented property minimum standard* (Department for Business, Energy & Industrial Strategy).

On 9 November 2017, a consultation opened on the question of placing a cap or caps on costs recoverable under the costs provisions in leasehold and residential property cases under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI No 1169 and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 SI No 2600: *Consultation on possible changes to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 concerning costs in leasehold cases and residential property cases* (Tribunal Procedure Committee). The deadline for responses is 11.45 pm on 1 February 2018.

An expert working group has provided recommendations on what, if any, legislative requirements for electrical safety should be introduced in the private rented sector: *Electrical safety standards in the private rented sector: working group report* (DCLG, November 2017)

The rate of local housing allowance (LHA) used to calculate housing benefit in the private rented sector is currently frozen, despite rents in England having risen by nearly 11 per cent in the past five years. In a survey of local authorities, of the 76 that responded, 96 per cent were concerned that 'homelessness would increase', and 94 per cent said it would be 'more difficult to meet the requirements' of the new Homelessness Reduction Act 2017, if the freeze on the LHA were not lifted up until 2020: 'Local housing allowance freeze risks "increasing" homelessness for private renters, councils warn' (Local Government Association, 3 November 2017). Nine out of 10 councils said private landlords in their areas were renting fewer homes to low-income households. Ninety-two per cent of responding councils said that lifting the freeze on LHA rates and aligning them better with rents would reduce homelessness.

Letting agents, landlords and tenants

The UK government's draft Tenant Fees Bill was published on 1 November 2017. If passed, the bill – which applies only to England – will:

- cap holding deposits at no more than one week's rent and security deposits at no more than six weeks' rent. The draft bill also sets out the proposed requirements on landlords and agents to return a holding deposit to a tenant;
- create a civil offence with a fine of £5,000 for an initial breach of the ban on letting agent fees and a criminal offence where a person has been fined or convicted of the same offence within the last five years. Civil penalties of up to £30,000 can be issued as an alternative to prosecution;
- require Trading Standards to enforce the ban and to make provision for tenants to be able to recover unlawfully charged fees;
- appoint a lead enforcement authority in the lettings sector; and
- amend the Consumer Rights Act 2015 to specify that the letting agent transparency requirements should apply to property portals such as Rightmove and Zoopla.

Also on 1 November 2017, the UK government launched a consultation seeking views on how membership of mandatory client money protection schemes in England should be designed, implemented and enforced: *Mandatory client money protection schemes for property agents: consultation* (DCLG). The consultation ends at 11.45 pm on 13 December 2017.

Housing in England

Of the estimated 22.8m households in England, 14.3m or 63 per cent were owner-occupiers in 2015/16: *English Housing Survey headline report, 2015–16* (DCLG, November 2017). The

private rented sector accounted for 4.5m households or 20 per cent. The social rented sector accounted for 3.9m households or 17 per cent. There was no change in the size of either sector between 2014/15 and 2015/16.

The foreign-born population has significantly lower ownership rates (42 per cent were home-owners in the second quarter of 2017) than the UK-born (69 per cent): *Migrants and housing in the UK: experiences and impacts* (The Migration Observatory, 3 November 2017). The foreign-born population is almost three times as likely to be in the private rental sector (41 per cent in the second quarter of 2017) compared with the UK-born (15 per cent).

Housing and legal aid

The process of tendering for the 2018 civil contracts (including housing) and for the future housing possession court duty schemes is presently underway. Those seeking to find a current legal aid housing contract holder can consult the Legal Aid Agency's *Directory of legal aid providers*, which was last updated on 26 October 2017.

Legal aid for many tenancy-related disputes in First-tier Tribunals (FTTs) in Scotland became available on 1 December 2017: Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2017 SSI No 310.

Lettings to migrants

On 18 October 2017, the independent chief inspector of borders and immigration (ICIBI) began work on an inspection of the 'right to rent' (RtR), ie, the measures in the Immigration Acts 2014 and 2016 intended to create a 'hostile environment' for individuals in the UK without valid leave to remain by requiring landlords and letting agents to check the immigration status of prospective tenants before entering into tenancy agreements. The inspection will examine planning for the initial introduction of RtR including identification and mitigation of risks and issues, the lessons learned from the pilots, an evaluation of RtR sanctions and the take-up of RtR measures by Home Office enforcement and casework teams, specifically the issuing of civil penalties, pursuit of criminal prosecutions, immigration controls and removals. The consultation closed on 10 November 2017.

Smoke and carbon monoxide alarms

In 2015/16, 89 per cent of households had at least one working smoke alarm, up from 84 per cent in 2008/09: *English Housing Survey headline report, 2015-16* (DCLG, November 2017). About a quarter of homes (28 per cent) had a carbon monoxide alarm. Owner-occupied dwellings (31 per cent) were more likely than private rented (21 per cent) or social rented (28 per cent) dwellings to have a carbon monoxide alarm.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 SI No 1693 require private landlords to install smoke and carbon monoxide alarms in their rental properties. During the parliamentary passage of the regulations, ministers made a commitment to review them in 2017. On 7 November 2017, a consultation was launched to gather evidence on the effectiveness of the regulations to date: *Review of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015: a consultation paper* (DCLG). The consultation ends at 11.45 pm on 9 January 2018.

Social landlords

The Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017 SI No 1102 came into force on 16 November 2017. They reduce the influence that local authorities have over private registered providers of social housing (PRPs). The Office for National Statistics (ONS) had classified PRPs as public bodies, due to public sector influence on the sector. These regulations may enable the ONS to reclassify housing associations to the private sector.

The House of Lords Secondary Legislation Scrutiny Committee drew the regulations to the special attention of the House on the ground that they gave rise to issues of public policy: *Draft Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017. Sixth report of session 2017-19* (HL Paper 23, 12 October 2017).

Buying and selling houses

On 22 October 2017, the UK government launched a consultation seeking suggestions for improvement of the existing home buying and selling process in order to make it cheaper, faster and less stressful: *Improving the home buying and selling process: call for evidence* (DCLG, October 2017). The consultation closes at 11.45 pm on 17 December 2017.

Compensation for home loss

On 1 October 2017, the prescribed amounts for home loss payments under Land Compensation Act 1973 s30(1) were increased in England. The prescribed maximum is now £61,000 and the prescribed minimum is £6,100: Home Loss Payments (Prescribed Amounts) (England) Regulations 2017 SI No 769. In Wales, from 4 December 2017, the maximum is £57,500 and the minimum is £5,750: Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2017 SI No 996 (W 254).

Social housing allocation

On 30 October 2017, the UK government launched a consultation on measures to improve the priority for victims of domestic violence in the allocation of social housing: *Improving access to social housing for victims of domestic abuse* (DCLG, October 2017). The deadline for responses is 11.45 pm on 5 January 2018.

On 28 September 2017, the Department for Communities in Northern Ireland launched a consultation on proposals to improve how social homes are allocated: *Fundamental review of social housing allocations*. The consultation closes on 21 December 2017 at 5 pm.

Housing standards

The Welsh government is consulting on new regulations for determining a dwelling's fitness for human habitation and on the content of accompanying guidance: *Renting Homes (Wales) Act 2016 – fitness for human habitation* (11 October 2017). Responses should be submitted by 12 January 2018.

New housing factsheets

The House of Commons Library has produced revised and updated versions of the following free briefing papers:

- *Use of temporary accommodation in England* (Debate Pack no CDP-2017-0216, 3 November 2017);
- *Households in temporary accommodation (England)* (Briefing Paper no 02110, 23 October 2017);
- *Housing support for ex-offenders (England and Wales)* (Briefing Paper no 02989, 17 October 2017);
- *Statutory homelessness in England* (Briefing Paper no 01164, 9 October 2017); and
- *Gypsies and Travellers* (Briefing Paper no CBP-8083, 28 September 2017).

Human rights

Article 6

- **Fedorenko v Russia**
  App No 522/06,
  12 October 2017
- **Dukhanin v Russia**
  App No 2349/06,
  12 October 2017
- **Zaynetdinov v Russia**
  App No 325/07,
  12 October 2017

The applicants in all these housing-related cases complained of the non-enforcement or delayed enforcement of domestic court decisions and of the lack of any effective remedy in domestic law. They alleged breaches of article 6, article 13 and article 1 of Protocol No 1.

The European Court of Human Rights (ECtHR) reiterated that the execution of a judgment given by any court must be regarded as an integral part of a 'hearing' for the purposes of article 6 and referred to its case law concerning the non-enforcement or delayed enforcement of final domestic judgments (*Hornsby v Greece* App No 18357/91, 19 March 1997). These cases were similar to *Gerasimov v Russia* App No 29920/05, 1 July 2014, where the court found violations of the European Convention on Human Rights (ECHR).

In the present cases, the applicants had 'legitimate expectations' to acquire pecuniary assets, which were sufficiently established to constitute 'possessions' within the meaning of article 1 of Protocol No 1. Having examined all the material submitted to it, the ECtHR did not find any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. The authorities did not deploy all necessary efforts to enforce fully and in due time the decisions in the applicants' favour. There were breaches of article 6 and article 1 of Protocol No 1. The court held that the state should ensure, by appropriate means, within three months, the enforcement of the pending domestic decisions. It also ordered the state to pay various sums.

Article 8

- **Kopeykin v Russia**
  App No 11588/17,
  4 September 2017

Until 1988, Mr Kopeykin lived in a municipal flat provided to him under a social tenancy agreement. In 1988, after his marriage to K, he exchanged his flat for a bigger one and moved into it with K and her daughter. K became the social tenant under the new social

tenancy agreement and Mr Kopeykin and K's daughter were included in the agreement as members of K's family and were registered as living in the flat. In 1999, Mr Kopeykin and K divorced. In 2001, he instituted court proceedings against K seeking acknowledgement of his right to live in the flat. The District Court allowed his claim. In 2004, the bailiffs provided him with a key to the flat.

In 2015, he instituted further court proceedings against K and the municipal authorities, seeking recognition of his right to reside in half of the flat and to oblige the municipal authorities to conclude a social tenancy agreement with him. The court dismissed the claim because Mr Kopeykin did not live in the flat, did not pay rent for it, and had no belongings in it. The court concluded that he had lost his right to use the flat. His appeals to superior courts were dismissed.

Mr Kopeykin complained to the ECtHR under article 8 that there had been a violation of his right to respect for his home. The court has asked the parties the following questions:

1. Has there been an interference with the applicant's right to respect for his home, within the meaning of article 8?
2. If so, was that interference in accordance with the law, did it pursue a legitimate aim and was it necessary in terms of article 8?

- **Caldarar v Poland**
  App No 6142/16,
  8 September 2017

In or about 2009, five Roma families started living on land owned by Wrocław Commune. In 2013 or 2014, they built, without planning permission, five structures made of wood and recycled plastic and fabric. Four of the structures served as houses. The fifth was used for storing power generators and fuel. They had no foundations, were not sturdy, were easily inflammable, posed security risks, and were not connected to the sewage system.

In May 2015, the district inspector of construction supervision issued three administrative decisions ordering Wrocław Commune to demolish the structures on the ground that they had been built without planning permission. In July 2015, Wrocław Commune demolished the dwellings. Immediately after the demolition, the families lived on the street. They later erected a number of structures on another site in the city, without planning permission. They complained that the demolition of their homes was in breach of article 8 in conjunction with article 14.

The ECtHR has asked the parties the following questions:

1. Have the applicants exhausted all effective domestic remedies?
2. Did the applicants have at their disposal an effective domestic remedy for their complaints below, as required by article 13?
3. Was there a breach of article 3 and/or article 8 on account of the demolition of the structures inhabited by the applicants?
4. In particular, as regards article 8, was the demolition of the structures in question in accordance with the law and necessary, and were the applicants able to have the proportionality of the measure reviewed by an independent tribunal?
5. As regards the demolition of the dwellings and the disposal of movable property, was there a violation of article 1 of Protocol No 1?
6. Were the applicants discriminated against on account of their Roma ethnicity in breach of article 14?

Article 1 of Protocol No 1

- **Dzhantayev and Yakubova v Russia**
  App No 25675/15,
  26 September 2017

M was the owner of a three-roomed flat in Grozny, in the Chechen Republic. In March 1996, M's husband sold the flat to A. A's title to the flat was duly registered by the state authorities. M and her family moved from Grozny to the Krasnodar Region, abandoning the flat. In April 1998, they applied for compensation for the loss of the flat resulting from the military conflict in Chechnya. In December 2000, M received the compensation.

In November 2008, the police refused to institute criminal proceedings against M's husband on charges of fraud in respect of the flat as they were time-barred. In March 2010, A sold the flat to Ms Yakubova. The transaction and her title were duly registered by the state authorities. Mr Dzhantayev and Ms Yakubova moved into the flat and resided there. In May 2014, after proceedings involving various parties, a court invalidated the flat purchase agreements between (1) M's husband and A, and (2) Ms Yakubova and A, and recognised that the flat was the property of the Town of Grozny. The court ordered the eviction of Mr Dzhantayev and Ms Yakubova. They complained to the ECtHR that they had been deprived of their property in contravention of article 1 of Protocol No 1.

The ECtHR referred to previous cases where the Russian state or municipal authorities were successful in reclaiming flats from bona fide owners after it had been established that one of the prior transactions had been fraudulent (see *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, *Popova v Russia* App No 59391/12, 4 October 2016; December 2016/January 2017 *Legal Action* 38, *Alentseva v Russia* App No 31788/06, 17 November 2016; February 2017 *Legal Action* 46, *Pchelintseva v Russia* App No 47724/07, 17 November 2016 and *Ponyayeva v Russia* App No 63508/11, 17 November 2016). The specific conditions and procedures under which the state had alienated its assets to private individuals were within its exclusive competence. Defects in those procedures resulting in the loss by the state of its real property should not have been remedied at the expense of bona fide owners. Restitution of property to the state or municipality, in the absence of any compensation paid to the bona fide owner, imposed an individual and excessive burden on the latter and failed to strike a fair balance between the demands of the public interest on the one hand and the individuals' right to the peaceful enjoyment of their possessions on the other.

In the present case, there was no reason to hold otherwise. The court reiterated that mistakes or errors on the part of state authorities should serve to benefit the persons affected. In other words, 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. There was therefore a violation of article 1 of Protocol No 1. The court considered that the most appropriate form of redress would be to restore Ms Yakubova's title to the flat and to annul the eviction order. It also awarded Ms Yakubova €5,000 in respect of non-pecuniary damage.

For a similar decision, see *Khaziyeva v Russia* App No 4877/15, 26 September 2017.

Possession claims

Occupation as only or principal residence

- **Southwark LBC v Ibidun**
  [2017] EWHC 2775 (QB),
  19 October 2017

Southwark claimed possession against Ms Ibidun, a secure tenant, claiming that she had ceased to occupy the property as her only or main home. HHJ John Mitchell concluded on the evidence that she still occupied the property and dismissed the claim.

Moulder J dismissed Southwark's appeal. The judge had heard all the evidence and had been entitled to dismiss the claim for possession and to conclude on the evidence that the tenant still occupied the property in question. The local authority's argument that the judge had misdirected himself in law, as there was sufficient primary evidence to establish that the tenant had ceased to occupy the property as her main home, was nothing more than a disagreement with the judge's findings of fact.

Rent arrears

- **Southwark LBC v JSC**[1]
  County Court at Lambeth,
  14 June 2017

The defendant was a secure tenant. Southwark claimed possession under Housing Act (HA) 1985 Sch 2 Ground 1. The arrears amounted to £2,010.72 when proceedings were issued on 26 January 2017. They had accrued entirely due to the defendant's housing benefit entitlement being reduced due to the imposition of a maximum adult non-dependant deduction in respect of her brother. The housing benefit department alleged that her brother was living with her but JSC disputed this. In November 2016, she had appealed the decision of the housing benefit department to impose the adult non-dependant deduction. She was awaiting a hearing date from the FTT for that appeal.

At the possession hearing, it was argued that the claim should be struck out because Southwark could not demonstrate compliance with the Pre-Action Protocol for Possession Claims by Social Landlords in that: (i) the claim had been issued despite there being an outstanding housing benefit appeal; and (ii) there had been no liaison between the landlord and the housing benefit department.

District Judge Burn struck out the claim and ordered Southwark to pay the defendant's costs. Southwark should not have issued the claim as the housing benefit appeal had been lodged before possession proceedings were issued.

Anti-social behaviour: mandatory ground for possession

- **Hounslow LBC v Harris**
  [2017] EWCA Civ 1476,
  5 October 2017

Mr Harris was a secure tenant.

Hounslow received frequent complaints about noise coming from his flat. There were also complaints about excessive numbers of visitors loitering in the stairwells, smoking, drinking and drug use. Hounslow served a noise abatement notice and then entered into an acceptable behaviour contract with Mr Harris. However, the complaints continued. The police applied to Feltham Magistrates' Court for a three-month closure order under Anti-social Behaviour, Crime and Policing Act (ABCPA) 2014 s80. On 17 November 2015, the court made an order, stating that it was satisfied that:

... a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises ... and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring (ABCPA 2014 s80(5)).

On 23 December 2015, Hounslow served Mr Harris with a notice seeking possession in accordance with HA 1985 s83ZA, stating that possession proceedings might begin after 25 January 2016 and that Mr Harris had a right to request a review of Hounslow's decision to seek a possession order. The notice stated: 'A request for a review must be made in writing ... by Wednesday 30th December 2015.' Hounslow heard nothing from Mr Harris by 30 December but, on 4 January 2016, solicitors acting for him emailed Hounslow's housing department requesting an extension of time to request a review. On 18 January, Hounslow refused the request for an extension. Hounslow issued proceedings on 29 January 2016. On 16 August 2016, Hounslow offered to review its decision, but, after review, confirmed its decision to proceed.

In the possession claim, District Judge Trigg held that there was no valid public law challenge to Hounslow's decision to serve the notice seeking possession. However, once the request for a review had been made, Hounslow ought to have granted an extension of time or (if it had no power to do so) ought to have withdrawn the notice seeking possession and to have served a fresh notice, thus starting the clock again. However, the fact that Hounslow did carry out a review during the pendency of the proceedings cured any procedural defect, with the consequence that Hounslow was entitled to the possession order.

The Court of Appeal dismissed an appeal. It considered whether Hounslow had the power to agree to accept an out of time request for a statutory review; or, to put it another way, to waive compliance with the statutory time limit. Lewison LJ noted that there is no express power in HA 1985 s85ZA to extend either the time within which a request should be made or the time by which a review must be concluded. 'That is a strong contextual indication that the seven day period for triggering a statutory review cannot be extended or waived' (para 17). A request is only 'duly' made if it is made within that seven-day period. A 'tenant who requests a statutory review outside the seven day period laid down by section 85ZA(2) is not entitled to a statutory review and the landlord has no obligation or power to conduct one' (para 22).

The Court of Appeal rejected a submission that if a tenant is out of time in making his/her request, the landlord has an obligation to serve a fresh notice seeking possession if the tenant's failure to make a request in time was outside his/her control.

Writ of possession

- **Brooker and Wilson v St Paul**
  Queen's Bench Division,
  13 October 2017

In June 2014, Ms Brooker and Ms Wilson obtained a possession order against Ms St Paul. She failed to have that order set aside and the claimants recovered possession in 2015. Ms St Paul re-entered the property and another possession order was made in March 2016. She was refused permission to appeal. The parties agreed that Ms St Paul could have until the end of August 2017 either to buy Ms Brooker's and Ms Wilson's interest in the flat or vacate. She did not do either. The claimants' solicitor filed a witness statement in support of an application for a writ of possession in which he stated that they had notified Ms St Paul on 1 August 2017 by post, hand and email of the intention to make the application. He said they did not receive a response. A writ of possession was granted and executed in September 2017. Ms St Paul applied to set aside the writ of possession, arguing that she had not been properly notified of the application for the writ of possession under Civil Procedure Rules 1998 (CPR) r83.13.

HHJ Coe QC refused her application. Ms St Paul had received the letter of 1 August 2017 and had been aware of the proposed application. That was sufficient notice to enable her to apply to the court for any relief to which she might be entitled. The rules provided that sufficient notice was no more than a warning or notification and did not have to include a copy of the application. It did not necessarily require service of a formal notice of the application or have to include the date and time of the application (*Partridge v Gupta* [2017] EWHC 2110 (QB), 15 August 2017; October 2017 *Legal Action* 32). Ms St Paul had known that eviction was on the cards and that a possession order had been made in March 2016. She could have applied for relief. She had actively participated in negotiations and agreements. She had been refused permission to appeal the possession order and had reached the end of the road. She had been fully aware of the proceedings and knew that the next step would be enforcement. All that she was required to know under CPR r83.13 was that enforcement was imminent.

Assured shorthold tenancies

Unlawful eviction and deposits

- **Zeeshan v Mahmood**[2]
  County Court at Manchester,
  27 October 2017

Mr Mahmood granted Mr and Mrs Zeeshan an assured shorthold tenancy on 18 September 2012. They paid a deposit of £500 but it was not protected. On 8 April 2014, after serving a s21 notice and falsely pleading that no deposit had been paid, he obtained a possession order. The next day, with five other men, he attended the property. Initially, Mrs Zeeshan was at home with her three-month-old child. Mr Mahmood was threatening towards her, demanding that she leave. He and his associates then tried to gain access by breaking the lock and banging on the doors with bricks. Mr Zeeshan returned to the property with two older children aged eight and six. Mrs Zeeshan and the children were terrified and upset. Both parties contacted the police, who attended to keep the peace but had no further involvement.

After three to four hours of the threatening behaviour, Mr and Mrs Zeeshan felt they had no option but to leave the property, after collecting just a few belongings. They were assured by Mr Mahmood that they would be able to return to collect their belongings the following day. The first night after the eviction the family were forced to sleep in their car and use the facilities of a nearby KFC. The next 15 nights were spent in overcrowded accommodation with a family member where they shared one small bedroom. They made numerous attempts to recover their belongings without success.

The local authority prosecuted Mr Mahmood. Following a trial on 22 December 2015 at Trafford Magistrates' Court, he was found guilty of unlawful eviction. Mr and Mrs Zeeshan issued a claim for damages. Judgment in default was entered against him.

Recorder Allen QC described Mr and Mrs Zeeshan's experience as dreadful, distressing and humiliating. When determining the level of compensation for failure to protect the deposit, he noted that the defendant had: (i) failed throughout the tenancy to comply with the relevant legislation; (ii) described himself as a property developer who let a number of properties over the last 10–15 years; and (iii) falsely told the court that no deposit had been paid in order to obtain a possession order. The judge awarded the maximum level of compensation and repayment of the deposit (total £2,000).

In relation to the unlawful eviction, he awarded general damages of £250 for the night spent in the car and £200 per night for the subsequent 15 nights spent in overcrowded accommodation (total £3,250). Bearing in mind the considerable humiliation and distress suffered by the family for a period of three to four hours, he awarded aggravated damages of £3,000. He awarded exemplary damages of £3,000 as a punishment and deterrent, and special damages of £25,000 for loss of possessions (trespass to goods). In total, damages were £36,250 plus interest at the rate of two per cent from the date of the eviction. The defendant was ordered to pay the costs on the indemnity basis.

Letting agents

- **Ashley Charles Ltd v Reading BC**
  First-tier Tribunal (General Regulatory Chamber) Professional Regulation,
  PR/2017/0009,
  [2017] UKFTT PR_2017_0009 (GRC),
  25 September 2017

Ashley Charles Ltd was a letting agent. For a period of three weeks, it was not a member of a redress scheme as required by Enterprise and Regulatory Reform Act 2013 s83(1) and the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 SI No 2359. Reading BC, as the relevant enforcement authority, served notice requiring the company to pay a monetary penalty of £5,000 (the maximum). Ashley Charles appealed to the FTT.

Judge Claire Taylor noted that the DCLG guide *Improving the private rented sector and tackling bad practice: a guide for local authorities* (2012), stated that the 'expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement

authority is satisfied that there are extenuating circumstances'. It was clear that Ashley Charles failed to comply with the legislation. There was, therefore, a legal basis for the council to serve a notice of intent. There was no procedural irregularity making the final notice void. However, the fine was unreasonable and highly disproportionate because:

- the company produced accounts showing that it had no funds;
- it had not been able to afford to pay staff and had let them go;
- it was shortly to be wound up having made a loss;
- it was not a member of a scheme for less than three weeks. It responded promptly to the notice of intent and rejoined the scheme extremely quickly; and
- it had no history of poor management or complaint.

At the time of the notice of intent, it was managing properties and was trying to sell its business. Although it still had a presence online, and advertised in its window, it was not receiving business and was not very actively looking for any. Once the notice of intent was served, a director immediately rectified the matter. Further, the judge was not satisfied that the council properly considered whether there were extenuating circumstances. The judge considered that the fine was 'completely disproportionate' and that 'a decision to fine would not be appropriate and that the appellant is not required to pay any amount' (para 31).

Houses in multiple occupation: licensing

- **Nottingham City Council v Parr**
  UKSC 2017/0073

The Supreme Court has granted Nottingham City Council permission to appeal from the Court of Appeal decision ([2017] EWCA Civ 188; May 2017 *Legal Action* 42) that a condition requiring an attic bedroom to be occupied by a full-time student was not unlawful.

- **Woking BC v Johnson**
  [2017] EWHC 2547 (Admin), 10 October 2017

Mrs Johnson owned a two-storey self-contained flat above a restaurant. It was occupied by more than five persons who did not form part of the same household. Woking alleged that it was a house in multiple occupation (HMO) and that she had failed to obtain a licence as required by HA 2004 s55. She was prosecuted under s72.

The magistrates decided that the property did not fall within the description of an HMO in Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 SI No 371 article 3(2), which provides that a property requires licensing if: (a) the HMO or any part of it comprises three storeys or more; (b) it is occupied by five or more persons; and (c) it is occupied by persons living in two or more households. Under article 3(3)(c), where the living accommodation is situated in a part of a building above business premises, each storey comprising the business premises is to be taken into account when calculating whether the HMO or any part of it comprises three storeys or more. The magistrates considered that the property was not an HMO because it comprised only two storeys (*Islington LBC v Unite Group Plc* [2013] EWHC 508 (Admin); May 2013 *Legal Action* 36). Woking appealed.

Sir Ross Cranston, sitting as a judge of the High Court, allowed the appeal. It was the building in which the HMO happened to be found that had to comprise three storeys and not the HMO itself. The correct approach was contained in the explanatory note to the 2006 Order, which stated that commercial premises above or below living accommodation, except where they were located in the basement, would count towards the calculation of storeys, including commercial premises that were not used in connection with, or as an integral part of, the living accommodation (para 7.8). In *Unite Group*, the HMOs were self-contained flats, each with four to six bedrooms with en-suite bathrooms and a communal living room and kitchen. Each flat was on one storey of a purpose-built block. That was a different situation. (See also *Bristol City Council v Digs (Bristol) Ltd* [2014] EWHC 869 (Admin); June 2014 *Legal Action* 36.) The magistrates had been wrong to exclude the restaurant when calculating the number of storeys.

- **Waltham Forest LBC v Reid**
  [2017] UKUT 396 (LC), 12 October 2017

Mr Reid was the freehold owner of a number of properties let to residential tenants. Waltham Forest designated the borough as a selective licensing area under HA 2004. Mr Reid failed to apply for the necessary licences despite two letters sent to him by the council. He was prosecuted for failing to license five of his properties. He pleaded guilty and was fined £10,000 plus costs. On his subsequent application for licences for some of his flats, the council granted licences for one year. Waltham Forest's policy was to have regard to previous convictions for housing offences when considering the length of any licence granted. Part of its rationale in granting one-year licences was that when Mr Reid reapplied the convictions would be 'spent'. He appealed against the length of the licences to the FTT.

The FTT concluded that, once the council was satisfied that the applicant was fit and proper, his recent history of convictions was irrelevant. It allowed Mr Reid's appeal and extended the licences so that each licence expired on 31 March 2020. Waltham Forest appealed to the Upper Tribunal.

HHJ Behrens dismissed the appeal. The council was plainly entitled to consider matters relevant to the question of whether a landlord was a fit and proper person when determining the duration of any licence. However, the extent to which such matters were relevant was fact-sensitive. The judge had 'difficulty … in seeing why the fact that the conviction is not "spent" is relevant to the length of the licence' (para 36). The FTT plainly had regard to the policy of the council. It was entitled to conclude that the convictions were not relevant on the facts of the case. The policy of the council in relation to the grant of licences was perfectly reasonable save for the references to the convictions becoming spent. The FTT made no error of law and reached a conclusion that was open to it on the evidence.

Anti-social behaviour

Contempt of court

- **SC v Governor of HMP Peterborough**[3]
  CO/1858/2017, 19 April 2017 and 20 April 2017

SC had a history of poor mental health. Her former landlord obtained an injunction excluding her from an area in Coventry. She breached the injunction and was arrested. District Judge Sanghera remanded her in custody for three weeks for a mental health assessment. On 5 April 2017, she admitted two breaches of the injunction. The judge sentenced her to six weeks' imprisonment for contempt, but held that the three weeks spent on remand counted as time served towards the sentence. He ordered her immediate discharge. However, the prison authorities did not release SC and she was returned to HMP Peterborough. Referring to amendments made to Criminal Justice Act 2003 s240 by Legal Aid, Sentencing and Punishment of Offenders Act 2012 s108, the offender managers claimed that the judge had no power to make the order and that SC was to remain in prison until 25 April 2017.

On 19 April 2017, May J granted an urgent application for a writ of habeas corpus. She ordered the governor of HMP Peterborough to produce SC at Birmingham Family and Civil Justice Centre before HHJ Worster, sitting as a High Court judge. District Judge Sanghera had intended that SC's discharge should be on 5 April 2017. Although a prison was no longer required to provide for time on remand, a judge still had discretion (*R (James) v HM Prison Birmingham and others* [2015] EWCA Civ 58; [2015] 1 WLR 4210). On 20 April 2017, SC was produced at court and HMP Peterborough did not oppose the application. HHJ Worster ordered her immediate release after 15 days of unlawful detention.

- **Barking and Dagenham LBC v Hillier and Olds**
  County Court at Romford, [2017] EW Misc 25 (Contempt), 12 September 2017

Both defendants breached an injunction by entering an area from which they were excluded. However, the judge was not satisfied that any harassment, alarm or distress was actually caused to any individual or intended by the defendants.

After referring to the Sentencing Guidelines Council's Breach of an Anti-Social Behaviour Order – Definitive Guideline, District Judge Dodsworth stated that this was a case which fell into the bottom category. However, it was an aggravating factor that this was the second occasion on which both defendants had breached the injunction. On the first occasion, District Judge Dodsworth decided that no further punishment beyond the day that they had spent in custody was necessary. Both defendants had a history of disobedience to court orders and the second breach was only some five or six weeks after the previous breach had been dealt with.

In mitigation, both defendants had chaotic lifestyles and issues with alcohol and drugs. Both were vulnerable. The judge held that the custody threshold had been passed. Both had been given opportunities before to mend their ways and to abide by the terms of the injunction and yet continued to breach it. District Judge Dodsworth imposed sentences of '42 days' suspended custody' (para 5).

Long leases

Forfeiture

- **Cheerupmate2 Ltd v Calce**
  [2017] UKUT 377 (TCC), 15 September 2017

Under a long lease, the lessee was

obliged to pay the landlord £2 per year in ground rent, payable half-yearly. The lease gave the landlord the right to forfeit the lease when rent was 'in arrear for the space of two years after the same shall have become due (whether any formal or legal demand thereof shall have been made or not)'. The landlord served a notice on the lessee, which was intended to comply with Commonhold and Leasehold Reform Act (CLRA) 2002 s166, but which contained explanatory notes that had since been changed by parliament, demanding £11 in unpaid ground rent. After the lessee failed to pay that sum, the landlord peaceably re-entered and sought to cancel the lessee's leasehold title. After the lessee had objected to the cancellation, the FTT held that the lease had not been forfeited because the landlord had failed to serve a valid s166 notice, meaning that the rent was not payable. Alternatively, CLRA 2002 s167 prohibited forfeiture where the rent had not been in arrears for a period of three years from the date of the s166 notice. The landlord appealed.

Judge Elizabeth Cooke dismissed the appeal. Although technical defects in notices should not invalidate them where their meaning remains clear (*Lindsey Trading Properties Inc v Dallhold Estates (UK) Pty Ltd* (1995) 70 P & CR 332), in this case, the defect was the use of wording that parliament had specifically decided should not be used. The previous statutory wording was misleading. The s166 notice was invalid as it did not contain the correct explanatory notes and it followed that the rent was not payable. In any event, the FTT had been correct to hold that a landlord could not forfeit a lease until three years had passed since rent had been demanded in a s166 notice (s167(1)).

Service charges: insurance

- **COS Services Ltd v Nicholson**
  [2017] UKUT 382 (LC),
  3 October 2017

COS Services was the freehold owner of a block of flats, let on long leases. Each year, the managing agents took out insurance for the building as part of a 'block policy', through an insurance broker, and claimed the cost of doing so from the lessees as a service charge. Two of the lessees applied to the FTT under Landlord and Tenant Act 1985 s27A to challenge the reasonableness of the premiums. At the hearing, the tenants adduced evidence of materially similar alternative insurance cover, albeit not under a block policy, at a quarter of the price they were being charged. COS Services did not call any evidence to explain why its premium was so much more expensive. The FTT held that the insurance premium was unreasonable.

HHJ Stuart Bridge dismissed the appeal. After referring to *Havenridge v Boston Dyers Ltd* [1994] 2 EGLR 73, CA, *Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* (1997) 29 HLR 444, CA, *Forcelux Ltd v Sweetman* [2001] 2 EGLR 173 and *Waaler v Hounslow LBC* [2017] EWCA Civ 45; [2017] HLR 16, he stated that the fact that a landlord has instructed a broker to take out insurance of a building will not, of itself, mean that the premium charged is reasonable if there are 'like for like' quotations from alternative providers that are significantly cheaper.

[T]he tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against. It will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may, as happened in this case, place before the tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable … in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease (para 48).

In the absence of an explanation as to why the premium was four times more expensive than the quotations obtained by the lessees, the FTT had been entitled to find that the insurance premium charged was excessive. The judge concluded:

It remains a mystery, having heard the evidence adduced by both parties, why there is such a discrepancy between the premiums charged to tenants under the landlord's block policy and the premiums obtainable from other insurers on the open market. It [is] a mystery which the landlord has been wholly unable to explain (para 67).

Prosecutions

Fraud

- **R v Harrison**
  [2017] EWCA Crim 1209,
  27 July 2017

Ms Harrison had no professional qualifications, but 'sought to create for herself a more glamorous, interesting persona' by using a variety of different names, including Onassis and Rothschild, and by claiming to be an economist, a barrister, and to use the title Dr, 'when she was none of those things' (para 4). She obtained a series of tenancies in Northumberland in expensive properties by lying about her financial and other circumstances. None of the tenancies lasted for a particularly long period of time and '[w]ithout exception, the landlords … found themselves having to go to litigation in order to remove her' (para 5). After trial, she was convicted by a jury of eight offences of fraud and two offences of using a false instrument with intent. On those counts, she was sentenced respectively to three years' and 18 months' imprisonment to run consecutively. (She received an additional consecutive sentence for threatening to take revenge.)

Her appeal against sentence was allowed in part. Although the sentences were within the range available to the sentencing judge and were severe, but not manifestly excessive, the false instrument charges were an integral part of her other offending and so it was not appropriate to pass consecutive sentences. Concurrent sentences were substituted.

Housing allocation

- **Mulhare v Cork CC**
  [2017] IEHC 288,
  5 May 2017

Ms Mulhare was a 28-year-old with cerebral palsy. She was fully dependent on her mother, who lived with her, for all aspects of her care. She suffered from severe and persistent respiratory infections for which she was treated at a hospital outpatient clinic and by a GP, both in Cork City, some 43 km from her home. That home was unsuitable. There was no level access to a shower room and no bedroom with a sufficient door opening to enable access by a wheelchair. The house was affected by mould and dampness. Ms Mulhare wanted to be allocated an alternative home within a five-mile radius of the hospital and the GP practice near, or in, Cork City. An application for social housing to Cork City Council was unsuccessful because of an unpaid debt for former tenant rent arrears. An application to the county council for social housing also failed. The county council said it was 'ready, willing and able to immediately carry out the works suggested by the occupational therapist and to address any work necessary to redress damages in the property' but did 'not have any suitable alternative accommodation available … in the city hinterland or elsewhere'.

Baker J dismissed a claim for judicial review of that decision. The county council had adopted a housing allocation scheme. That gave priority to those needing a move on grounds related to disability. There were a very large number of approved applicants on the housing list (7,480) of whom 557 had needs based on physical disability. Having set out the jurisprudence on housing allocation in the Republic of Ireland, Baker J said that 'applicants may not seek judicial review to displace other persons on the housing list or to seek an order directed to the respondent that it treat the application of the applicants as coming within the exceptions in its scheme of priority' (para 50). The county council had reached a lawful decision under its allocation scheme.

A claim under ECHR article 8 also failed. Baker J said:

I reject the argument that any right protected by article 8 has been infringed. Insofar as it is relevant, I consider that the respondent has adequately provided for the article 8 rights of the applicants in agreeing to carry out works of modification and repair, and such provision was made within the competence of the authority to manage its own finances and the allocation of its limited housing resources (para 61).

Homelessness

Accommodation pending decision

- **R (Lindsay) v Watford BC and Hertfordshire CC**
  Administrative Court,
  13 October 2017

Ms Lindsay applied for accommodation following a relationship breakdown. Watford initially declined to provide accommodation pending a decision on the application: HA 1996 s188(1). It declined because a risk assessment by an NHS trust indicated that Ms Lindsay's support and lifestyle needs were such that the accommodation Watford had available would not be suitable. The assessment also stated that Ms Lindsay suffered from depression and severe epilepsy requiring daily medication, had frequent seizures and lashed out violently during seizures, and required a high level of support to prevent the risk of harm to herself and others. It suggested that she had learning difficulties, was at risk of abuse or neglect by others and had suicidal thoughts.

Later, Watford did provide temporary B&B accommodation, pending the outcome of its inquiries. The arrangement ended when Ms Lindsay allegedly assaulted a cleaner and was asked to leave. She sought a judicial

review of the failure to provide her with suitable interim accommodation.

An initial application for interim relief requiring Watford to continue to accommodate her was refused on the basis that it had acted reasonably in deciding that her social care needs (including her accommodation needs) were the county council's responsibility as the adult social services authority. Watford said it had discharged its s188 duty by making a referral to Herts for it to provide accommodation: HA 1996 s206(1)(c). Herts offered to provide four nights' accommodation in a hotel.

Jonathan Swift QC, sitting as a deputy High Court judge, granted an injunction on a renewed application. He held that there was a serious issue to be tried as to whether the B&B accommodation had been suitable. Although Herts had offered a few days' hotel accommodation, there was no evidence before the court of what the position would be after four nights. The two local authorities were expected to ensure that the claimant was not passed from pillar to post. The balance of convenience favoured the granting of an order that accommodation should be provided pending the hearing of the application for judicial review.

Priority need

- **Panayiotou v Waltham Forest LBC; Smith v Haringey LBC** [2017] EWCA Civ 1624, 19 October 2017

In these appeals, two applicants for homelessness assistance had received reviewing officers' decisions that they did not have a priority need for accommodation because they were not vulnerable as a result of one of the factors in HA 1996 s189(1)(c). The reviewing officers had sought to follow and apply the guidance given by Lord Neuberger in *Hotak v Southwark LBC* [2015] UKSC 30; [2016] AC 811; July/August 2015 *Legal Action* 50 at para 53 that 'the approach consistently adopted by the Court of Appeal that "vulnerable" in section 189(1)(c) connotes "significantly more vulnerable than ordinarily vulnerable" as a result of being rendered homeless, is correct'. Appeals from their decisions were dismissed in the county court but second appeals were pursued to seek guidance on the meaning of 'significantly' in this context.

Lewison LJ stated that the definition of 'disability' in the Equality Act (EA) 2010 did not provide a helpful analogy when determining whether the difference between a particular homeless applicant and the notional 'ordinary person who becomes homeless' is such as to amount to the former being 'vulnerable'. After a review of the authorities, Lewison LJ held that:

... the question to be asked is whether, when compared to an ordinary person if made homeless, the applicant, in consequence of a characteristic within section 189(1)(c), would suffer or be at risk of suffering harm or detriment which the ordinary person would not suffer or be at risk of suffering such that the harm or detriment would make a noticeable difference to his ability to deal with the consequences of homelessness. To put it another way, what Lord Neuberger must have meant was that an applicant would be vulnerable if he were at risk of more harm in a significant way. Whether the test is met in relation to any given set of facts is a question of evaluative judgment for the reviewer (para 64).

In the first appeal, the reviewing officer had asked herself whether, as a result of a characteristic within s189(1)(c), Mr Panayiotou would suffer 'more harm' than an ordinary person in consequence of being without accommodation. That was the correct legal test. Mr Panayiotou's appeal was dismissed.

In the second appeal, the reviewing officer had written: 'It may very well be the case that you are more vulnerable than ordinarily vulnerable but I am not satisfied that you are significantly more vulnerable or even [more] vulnerable than ordinarily vulnerable.' That was a misdirection. Allowing Mr Smith's appeal, Lewison LJ stated:

If Mr Perdios concluded, as he said he had, that Mr Smith might well be 'more vulnerable than ordinarily vulnerable' he seems to me to have performed the comparative exercise required by Hotak. *At that point he ought to have concluded that Mr Smith had priority need. In the context of that sentence I am reluctantly driven to the conclusion that Mr Perdios must have interpreted 'significantly' as importing a quantitative threshold or what Mr Vanhegan called 'more harm plus'. I would therefore allow Mr Smith's appeal* (para 70).

The Court of Appeal rejected further grounds of appeal contending that in Mr Smith's case the council had unlawfully delegated the review function to Mr Perdios or had breached EA 2010 s149 in the decision to delegate or in believing that Mr Perdios could lawfully discharge that duty for the council.

Suitable accommodation

- **Complaints against Redbridge LBC** Local Government and Social Care Ombudsman Complaint Nos 16 013 479 and 16 013 509, 27 September 2017

Mrs X and Mr Y were two unrelated applicants for homelessness assistance. Each household contained three young children. The council provided them each with B&B accommodation. The Homelessness (Suitability of Accommodation) (England) Order 2003 SI No 3326 provides that B&B is not suitable as interim or temporary accommodation for families with dependent children. B&B can be used only if there is no alternative and, even then, only for a maximum of six weeks. Neither family was moved from the B&B within six weeks.

In both cases, the ombudsman found maladministration. Mrs X and her children 'clearly experienced considerable inconvenience and discomfort for over seven months longer than the maximum period they should have been in B&B. It was a stressful situation for all of them. Mrs X reports her older children fell behind with their schoolwork, which she says was linked to their unsuitable accommodation. These are all significant injustices' (para 60). Mr Y's family 'did not move to alternative temporary accommodation ... until ... eight months after the council placed the family in the single-room accommodation and six months after the council agreed the accommodation was unsuitable' (para 79). The council was also at fault in Mr Y's case in relation to its handling of 'reports of rodents, inadequate mattresses and mould and for wrongly saying it had offered a private rented property in November 2016' (para 99).

The council accepted that it had been accommodating many families in B&B for longer than the legal maximum of six weeks, that this was undesirable, and that it was committed to having no families in B&B for over six weeks by 31 March 2018 at the latest. The ombudsman responded: 'We welcome this but we would add that having families in B&B longer than six weeks is unlawful, not just undesirable' (para 27).

In response to the ombudsman's recommendations, the council agreed to do the following:

- Apologise in writing to Mrs X and Mr Y for the injustice caused by its faults.
- Pay Mrs X £2,200 (comprising £250 a month for having to live in unsuitable accommodation from May to October 2016, when the family slept in two rooms, plus £300 a month for the three months from October 2016 to January 2017, when the family slept in one room, plus £300 for Mrs X's avoidable distress and her time and trouble pursuing matters).
- Pay Mr Y £2,300 (comprising £300 a month for the six months his family spent in the unsuitable accommodation plus £500 for Mr Y's avoidable distress and his time and trouble pursuing matters). The payment to Mr Y was slightly larger than to Mrs X because the ombudsman considered the injustice from the unsuitability of his accommodation was slightly greater.
- Ensure it moves any other families from unsuitable interim and temporary accommodation, especially B&B, without delay.
- Ensure that, each time it places an applicant with family commitments in B&B accommodation, it gives the applicant written notification that the law says B&B accommodation is unsuitable for families and that it must arrange alternative suitable accommodation within six weeks.
- Give a progress report explaining how effective its measures have been at reducing or avoiding the use of unsuitable interim and temporary accommodation, especially B&B accommodation for families.
- Advise how and when it will continue monitoring the effectiveness of its measures to avoid the use of unsuitable interim and temporary accommodation for families.

On the publication of the complaint investigation report on 19 October 2017, Michael King, the ombudsman, said: 'While I recognise the pressure councils – particularly in London – are under to provide suitable accommodation for large numbers of homeless families, the law is clear on this. Families should not be left in unsuitable accommodation for so long. The fact there are pressures, does not diminish the council's duties, or the impact felt by the families.'[4]

1 Serdar Celebi, solicitor, Cambridge House Law Centre.
2 Amy Tagoe, solicitor, Stephensons, St Helens, and Gary Lewis, barrister, Manchester. This case was first noted on Nearly Legal: https://nearlylegal.co.uk/2017/10/deposits-lies-unlawful-evictions/.
3 Tim Baldwin, barrister, London.
4 www.lgo.org.uk/information-centre/news/2017/oct/councils-reminded-of-their-duty-to-homeless-families-following-ombudsman-investigation.

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 at notes 1–3 above for providing details of the judgments.