Housing: recent developments

Jan Luba QC and Nic Madge highlight recent housing news and legislation, as well as cases on human rights, secure tenants, tenancy v licence, assured shorthold tenancies, unlawful eviction, discrimination, anti-social behaviour, long leases, allocation, homelessness and children.

Jan Luba QC

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Housing law news and legislation update

Homelessness

The local government and social care ombudsman has issued another report highlighting the failure of many local housing authorities to avoid the use of bed and breakfast (B&B) accommodation for homeless families: *Still no place like home? Councils' continuing use of unsuitable bed and breakfast accommodation for families* (December 2017). The report offers best practice guidance to help councils meet their responsibilities. It also offers councillors, and scrutiny committee chairs, questions they can ask to ensure they challenge the number of families left in unsuitable accommodation for too long. In 2016/17, the ombudsman received around 450 complaints about homelessness. Of those investigated in detail, fault was found in seven out of 10 cases.

The ombudsman's concerns are borne out by the latest statistics on homelessness in England: *Statutory homelessness and prevention and relief, July to September (Q3) 2017: England* (Department for Communities and Local Government (DCLG), 14 December 2017). They show that on 30 September 2017, the number of households in temporary accommodation was 79,190 (up six per cent from the same date last year) and up 65 per cent from the low of 48,010 on 31 December 2010. Of the 6,400 households in B&B, 2,660 had dependent children or a pregnant household member. Of those 2,660 households, 1,110 had been resident in B&B for more than six weeks. 109 households with children living in B&B were former residents of Grenfell Tower or Grenfell Walk. All those 109 households were living in hotels. Within those 109 households, there were 210 children, all of whom had been living in B&B for more than six weeks.

Launching its latest report on homelessness (*Homeless households. Eleventh report of session 2017-19*, HC 462, 20 December 2017), the House of Commons Public Accounts Committee (PAC) chair, Meg Hillier

MP, said: 'The latest official figures hammer home the shameful state of homelessness in England and the abject failure of the government's approach to addressing the misery suffered by many thousands of families and individuals' ('Government's complacent attitude has failed homeless', PAC news release, 20 December 2017).

In Wales, at the end of September 2017, there were 2,088 households in temporary accommodation: *Data on the number of households applying to local authorities for housing assistance under the Housing Wales Act 2014 and the number of homeless households in temporary accommodation* (Welsh government, 14 December 2017). Private sector accommodation was the main form of temporary accommodation used, accounting for 38 per cent (798 households) of all households in temporary accommodation. There were 216 households in B&B accommodation. Of these, 33 households were families with children.

On 11 December 2017, the chair of the House of Commons Communities and Local Government Committee, Clive Betts MP, wrote to Marcus Jones MP, a junior minister at the then DCLG, asking him to take account, in framing the revised Homelessness Code of Guidance, of the concerns raised by Shelter, Crisis, the Local Government Association and London Councils in their evidence to the committee's inquiry into the Homelessness Reduction Act 2017.

Private rented sector

Corporate private landlords

The mayor of London has launched an online rogue landlord and agent checker for the capital (www.london.gov.uk/rogue-landlord-checker). It currently contains information about private landlords and letting agents who have been prosecuted or fined by the London boroughs of Brent, Camden, Greenwich, Islington, Kingston, Newham, Southwark, Sutton, Waltham Forest and Westminster. The hope is to include all other London councils. The checker also includes information from the London Fire Brigade and the three consumer redress schemes about landlords and agents across the whole of London.

Houses in multiple occupation

The UK government has published the outcome of its recent consultation on extending the mandatory licensing of houses in multiple occupation (HMOs): *Houses in multiple occupation and residential property licensing reforms: government response* (DCLG, December 2017). Currently, national mandatory licensing only applies if properties are three or more storeys. The provisions will be amended by future legislation so that flats and one- and two-storey properties are brought within scope.

Lettings to migrants

The latest statistics on immigration enforcement (*Immigration enforcement data: November 2017*, Border Force, UK Visas and Immigration and Immigration Enforcement, 30 November 2017) show that in the third quarter of 2017, 75 civil penalty notices were issued to landlords for letting to certain migrants in breach of Immigration Act (IA) 2014 ss20–21 (table CP_03: volume and value of right to rent civil penalties). The penalties totalled £40,100.

Housing and legal aid

Over 80 per cent of housing legal aid work volume is made up of legal help cases: *Legal aid statistics quarterly, England and Wales, July to September 2017* (Ministry of Justice (MoJ), 14 December 2017). The volume of legally-aided housing work halved between July to September 2012 and July to September 2013. The trend then fluctuated for around 18 months but, since 2014, it has been falling. In July to September 2017, there was a two per cent increase in housing work starts compared with the same quarter the previous year. However, there were decreases in completed claims (11 per cent) and expenditure (16 per cent). Compared with the same quarter in 2016, housing workload was down by 11,000 cases (nine per cent) and spending by £9m (seven per cent).

Possession claims

HM Courts and Tribunals Service has issued an updated version of form N5B England, *Claim form for possession of a property located in England (accelerated procedure) (assured shorthold tenancy)*. The latest version is marked in the footer as '(08.17)' but was published later in 2017.

The latest statistics from the county court show the number of mortgage possession claims and orders have continued to increase since October to December 2016: *Mortgage and landlord possession statistics: July to September 2017* (MoJ, 9 November 2017). Landlord possession claims, orders for possession, warrants of possession and repossessions by county court bailiffs have decreased, continuing the long-term downward trend seen since April to June 2014, albeit showing a slowdown in the decrease.

Housing and human rights

The Equality and Human Rights Commission (EHRC) is now providing a helpline service for the advice sector, solicitors, trade unions, and ombudsman schemes. Experts at the commission are available via a telephone-based support service: EHRC Adviser Support.[1] The numbers to call are 0161 829 8190 (England), 0141 228 5990 (Scotland) and 029 2044 7790 (Wales) within core office hours.

Long leaseholds

The Law Commission has selected two landlord-and-tenant topics for its next programme of work on law reform: *Thirteenth programme of law reform* (Law Com No 377/HC 640, 14 December 2017). They are:

- *Unfair terms in residential leasehold*: some of the 4.2m leasehold homes in England are held on leases with potentially unfair terms, eg, where ground rents increase exponentially or there are high fixed service charges or fixed fees on assignment. At present, only the original leaseholder can effectively challenge a term under unfair terms law – not a subsequent leaseholder who buys the property. The project will consider whether, each time a lease is assigned, this should be seen as creating a new contract between the landlord and leaseholder. The effect would be that the court could then decide whether these were unfair terms.
- *Residential leasehold extension*: the way a leaseholder can obtain a lease extension or purchase the freehold is extremely technical and costly. Some managing agents also charge high fees. Commonhold, which would avoid many of the difficulties, has failed to gain any traction. As a result, and complementing DCLG's leasehold work, the project will look to simplify the law and improve fairness and transparency in leaseholds.

The House of Commons Library has published a briefing paper considering recent trends in leasehold ownership and ongoing problems associated with the sector: *Leasehold and commonhold reform* (Commons Briefing Paper No CBP-8047, 5 January 2018).

On 21 December 2017, the UK government published the outcome of its consultation on measures to tackle unfair and unreasonable abuses of leasehold in England, in particular the sale of new leasehold houses and onerous ground rents: *Tackling unfair practices in the leasehold market: government response* (DCLG, December 2017). The government's response includes: introducing legislation to prohibit the development of new build leasehold houses; restricting ground rents in newly established leases of houses and flats to a peppercorn (zero financial value); and support for existing leaseholders, such as making buying a freehold or extending a lease easier, faster, fairer and cheaper. On the same day, it published a new information booklet: *Leasehold reform and Help to Buy equity loan* (Homes and Communities Agency, December 2017).

Human rights

Article 6

- **Inderkiny v Russia**
  App No 10535/09,
  12 December 2017

In April 2004, a district court ordered a state company to provide the applicants with a suitable dwelling, while keeping their names on the list of persons awaiting housing. Although the bailiffs' service opened enforcement proceedings in May 2004, the enforcement proceedings were terminated later that year as the company had no available residential accommodation. In October 2007, after reorganisation of the company, the enforcement file was sent to another department of the bailiffs' service to enforce against a new entity, but, in April 2008, the bailiffs again ruled that it was impossible to enforce the judgment as the new debtor had no available accommodation. The enforcement proceedings were terminated.

Several times between 2004 and 2011, the parties applied to the district court to change the mode of enforcement of the judgment. Each time, the court rejected the applications, finding that payment of the amount representing the cost of an apartment would be equal to modifying the original judgment. The judgment remained unenforced. The applicants complained that the non-enforcement and the lack of any effective remedy breached article 6 of the European Convention on Human Rights (ECHR).

The European Court of Human Rights (ECtHR) found that there was a violation of article 6 and article 1 of Protocol No 1. The state was responsible under the ECHR for the debts owed by the company. By failing to comply with the judgment for more than five years, the national authorities prevented the applicants from receiving what they could reasonably have expected to receive. Enforcement

of the domestic judgment remained the most appropriate form of redress for violations of article 6. The ECtHR directed that the state must secure, without further delay, the enforcement of the judgment. It awarded non-pecuniary damage of €2,000 to the applicants jointly.

Article 8 and article 1 of Protocol No 1

- **Panyushkiny v Russia**
  App No 47056/11,
  21 November 2017

Ms Panyushkina left Uzbekistan in 1995. She was granted 'forced migrant' status in Russia and settled in St Petersburg. Her son, Vyacheslav Panyushkin, was born in 1997. In 1998, the Federal Migration Service (FMS) provided Ms Panyushkina with a room in a three-bedroom flat under a social tenancy agreement. In 2009, the FMS ordered Ms Panyushkina to vacate the room as she had not applied in time to extend her status as a forced migrant. Her requests to re-establish her forced migrant status were dismissed. She unsuccessfully challenged this decision in court. In 2011, the FMS brought court proceedings to evict Ms Panyushkina and her son. In their defence, they argued that the room was their only home and that they would have difficulties in finding alternative accommodation.

In May 2012, the court concluded that they had been occupying the room unlawfully as it was strictly designated for those who were legally acknowledged to be forced migrants. An eviction order was made without providing any alternative accommodation. They vacated the room in September 2013. They lived for a year in accommodation provided free by the municipal authority and then in rented accommodation. They were on a waiting list for social housing from 2009. They complained to the ECtHR that there had been a breach of article 8.

The court found that there had been a breach of article 8. The Panyushkiny lived in the room for 14 years and it was their 'home' for the purposes of article 8. The eviction order amounted to an interference with their right to respect for their home. That interference had a legal basis in domestic law and pursued the legitimate aim of protecting the rights of forced migrants in need of housing. The central question was therefore whether the interference was proportionate to the aim pursued and thus 'necessary in a democratic society'. After referring to *Connors v UK* App No 66746/01, 27 May 2004; [2004] HLR 52 and *McCann v UK* App No 19009/04, 13 May 2008; [2008] HLR 40, the court held that the reasoning in *Connors* was not confined to cases involving the eviction of Roma or to cases where the applicant had sought to challenge the law itself. In the present case, the Panyushkiny raised the issue of their right to respect for their home before the domestic courts and presented arguments linked to the proportionality of their eviction. However, the domestic courts did not weigh those interests (protecting the rights of forced migrants) against their right to respect for their home. In the light of the loss of forced migrant status, the courts

> *... automatically attached paramount importance to that aspect and came to the conclusion that the applicants had been occupying the disputed housing unlawfully and had to be evicted without the provision of any alternative accommodation. At no stage of the proceedings did the courts consider the applicants' argument that the flat in question was their only home and that they had difficulties finding alternative accommodation* (para 54).

The national courts thus failed to balance the competing rights or determine the proportionality of the interference with the right to respect for their home. The court awarded €7,500 jointly to Ms Panyushkina and Mr Panyushkin for non-pecuniary damage.

- **Ganeyeva v Russia**
  App No 7839/15,
  3 October 2017

In October 2010, U sold a flat to M. M's title was registered by the state authorities. In February 2011, Z, acting on M's behalf by virtue of a power of attorney, and Ms Ganeyeva signed a contract selling the flat to Ms Ganeyeva. She applied for the registration of the transaction and the transfer of title, paid the money due under the contract and moved into the flat. However, before title was registered, a third party brought a civil action challenging U's sale of the flat to M. As a result, the state registration authorities informed Ms Ganeyeva that her application for registration could not be granted. In August 2013, the district court invalidated M's purchase of the flat and ordered Ms Ganeyeva's eviction. It considered that she had not acquired the title to the flat and had no legal basis for moving into the flat or residing there. Ms Ganeyeva complained to the ECtHR under article 8 and article 1 of Protocol No 1.

The ECtHR dismissed her claim under article 1 of Protocol No 1. At no time did she hold title to the flat. Nor did she submit any evidence suggesting that the authorities had acknowledged that she had a proprietary interest in the flat. The fact that she chose to pay for the flat prior to obtaining the title to it and had been allowed by the seller of the flat to move in was insufficient for the court to conclude that the flat constituted her existing possession. The court discerned nothing in the materials before it to establish that she could legitimately expect her rights in respect of the flat to be recognised by the domestic authorities.

However, the court found a breach of article 8. The margin of appreciation in housing matters is narrower when it comes to the rights guaranteed by article 8 compared with those in article 1 of Protocol No 1 (*Gladysheva v Russia* App No 7097/10, 6 December 2011; February 2012 *Legal Action* 11). The domestic courts made an order for Ms Ganeyeva's eviction 'automatically' once they refused to recognise her title to the flat. They made no further analysis as to the proportionality of the measure.

> *Once the courts established that the applicant had not been the owner of the flat, they gave that aspect paramount importance, without taking into account her housing needs. The national judicial authorities thus failed to provide the applicant with a proper review of the proportionality of her eviction* (para 36).

The court did not discern any causal link between the violation of article 8 and the pecuniary damage alleged, but awarded €7,500 in respect of non-pecuniary damage.

- **Dakus v Ukraine**
  App No 19957/07,
  14 December 2017

In 1996, VD and his parents were living in corporate housing (flat A), which was owned by KT, a state company. They accepted an offer to exchange flat A for larger corporate housing accommodation (flat B), which was owned by the same company. All three signed a written undertaking to vacate flat A when they moved to flat B. In July 1997, Mrs Dakus married VD and joined him, his parents and brother to live in flat A. Mrs Dakus and her son, who was born in 1998, were registered by the local authority as co-tenants of flat A on the grounds that both of them had become members of the original tenants' family. In 1999, KT transferred ownership of flat A to the municipality. Later, Mrs Dakus's husband and parents-in-law moved into flat B and registered their residence at the new address.

In August 2004, VD and Mrs Dakus divorced. In 2005, KT reallocated flat A to the family of R, one of its employees. It lodged a court claim, seeking to evict Mrs Dakus and her son from flat A, arguing that there was no legal basis for them to remain in the property. Eventually, a possession order was made and bailiffs made Mrs Dakus vacate the flat and surrender the keys. Mrs Dakus complained that there was a breach of article 8 because the court judgment ordering her eviction had been devoid of any analysis of her personal situation and the consequences that the eviction would have on her and her minor son.

The ECtHR reiterated that loss of one's home is the most extreme form of interference with the right to respect for one's home. Such state interference constitutes a violation of article 8 unless it pursues one of the legitimate aims enumerated in article 8(2), is 'in accordance with the law', and can be regarded as 'necessary in a democratic society'. Any person at risk of being subject to eviction should, in principle, be able to have the proportionality of the measure in question determined by a court. Where there are arguments concerning the proportionality of the interference, courts should examine them in detail and provide adequate reasons.

Although the possession order in this case was lawful and pursued at least one legitimate aim (the protection of the rights of R and his family), the eviction was ordered without having analysed the proportionality of this measure. Once the court found that the occupation did not comply with the applicable provisions of the Housing Code, it gave that aspect paramount importance, without weighing it up in any way against the arguments that Mrs Dakus and her son had lived in the disputed accommodation for a long time (eight years) and had nowhere to relocate to. The domestic court did not offer any explanation or argument as to the 'necessity' of the eviction. There was accordingly a violation of article 8. The ECtHR awarded €4,500 in respect of non-pecuniary damage.

Secure tenants

Grant of tenancies

- **Haringey LBC v Ahmed and Ahmed**
  [2017] EWCA Civ 1861,
  21 November 2017

In 1988, Mr Ahmed was living with his wife, three children and his mother. He applied to Haringey for housing. On 10 October 1988, after Haringey had made an offer of accommodation, Mr Ahmed signed a pro forma tenancy agreement which stated that it was to be a joint tenancy and listed his wife as the other

joint tenant. His wife did not sign the agreement.

On 19 October 1988, a second pro forma tenancy agreement was signed by the council, Mr Ahmed, and his mother. This again stated that it granted a joint tenancy of the property, this time listing Mr Ahmed and his mother as the joint tenants. On 31 October 1988, the family moved into the property. In 2002, Mr Ahmed left the property. Both he and his mother wrote to the council asking for the tenancy to be transferred into the names of the mother and Mr Ahmed's wife, but this never took place. On 11 September 2003, the mother signed a notice of termination of the second agreement.

On 9 January 2006, a third pro forma tenancy agreement was signed by Mr Ahmed's mother. This stated that it granted a sole tenancy of the property to her. At some point in 2010, Mr Ahmed's mother left the property to live with Mr Ahmed and his new wife. She did not return. In July 2012, the council served a notice to quit. Mr Ahmed's first wife defended the subsequent possession claim. HHJ Jarman QC dismissed the claim ([2016] EWHC 1257 (Ch); July 2016 *Legal Action* 47), finding that Mr Ahmed had signed the first tenancy as his wife's agent and that that tenancy was a joint tenancy which had never been determined. The council appealed.

The Court of Appeal allowed the appeal. There was no proper evidential basis for the judge's conclusion that Mr Ahmed was authorised to act and did act as his wife's agent in entering into the first agreement. In evidence, his wife had stated that: she had had no involvement in finding accommodation for the family; she was unaware that Mr Ahmed had applied to the council; she did not know that the council had offered them a tenancy of the property; she did not know about the appointment to sign the first agreement; and she did not know about the appointment to sign the second agreement. As there was no agency, the first agreement was an agreement with Mr Ahmed as sole tenant. At his request, that tenancy was replaced by letting to him and his mother as joint tenants under the second agreement. That tenancy was determined by the mother's notice of termination. After the departure of Mr Ahmed and his mother, there was no subsisting tenancy and Mr Ahmed's first wife was not a tenant, secure or otherwise. With regard to article 8, there was no arguable error of law in the judge's approach to the issue of proportionality. His conclusion was one that was open to him.

Tenancy or licence?

- **Gilpin v Legg**
  [2017] EWHC 3220 (Ch),
  13 December 2017

The claimants asserted that they had five-yearly, or alternatively annual, periodic tenancies of the plots of land on which they (or their predecessors) had constructed beach huts. The defendant, who owned the land, asserted that the claimants had licences for one year at a time to station their respective huts on the land. He wrote to a number of hut owners on 23 December 2014 serving what was called a notice of termination of their licences, requiring vacant possession by 31 March 2015. On 10 June 2015, his solicitors wrote stating that if the hut owners did not remove their huts, he would instruct contractors to do so. The hut owners sought a declaration that the notices were invalid and a prohibitory injunction to prevent interference with the quiet enjoyment of their use of the huts. In September 2015, without prejudice to the earlier notices, the defendant served notices to quit that were appropriate to determine a tenancy from year to year.

HHJ Paul Matthews, sitting as a judge of the High Court, found that at the time that each hut was placed on its plot, it could have been moved by disassembly and reassembly elsewhere, and, in most cases, also by lifting by crane without the need for disassembly. That remained the position at the time of the trial for most of the huts. After considering *Elitestone Ltd v Morris* [1997] 1 WLR 687, HL and *Mew v Tristmire Ltd* [2011] EWCA Civ 912; [2012] 1 WLR 852, he decided that the huts were chattels because there was either no annexation at all to the land, or only a very slight degree of annexation. He concluded that the claimants each had a periodic tenancy (from year to year) of the plot on which their hut rested. Therefore, the December 2014 notices, giving notice of less than half a year, were of no effect in law, but the September 2015 notices were effective to terminate the tenancies from the end of March 2016.

Assured shorthold tenancies

Section 21 notices

- **Walcott v Jones**
  County Court at Central London,
  15 November 2017

A landlord let property on an oral monthly assured shorthold tenancy commencing on 30 August 2007. The landlord served a Housing Act (HA) 1988 s21 notice on 21 June 2016. The tenant defended a subsequent possession claim, arguing that the notice was invalid because it did not comply with the requirements of s21A and did not provide the information required by s21B. Those provisions were introduced by Deregulation Act 2015 s41 and only applied to tenancies granted on or after 1 October 2015. The defendant argued that on the expiry of the initial term, a new periodic tenancy had been granted. District Judge Slaney struck out the possession claim.

HH John Hand QC, sitting as a deputy circuit judge, allowed an appeal. A deemed re-letting was not the grant of a tenancy within the meaning of s41. The tenancy had been granted before the provisions of s41 came into force. The s21 notice was valid.

Companies Act 2006 s44(2) and Housing Act 1988 s21

Duty advisers are increasingly arguing that HA 1988 s21 notices served by landlords which are limited companies are invalid because they fail to comply with Companies Act 2006 s44(2), which provides that a document, when signed by a company, must be executed either by the company seal or by the signatures of two directors or a director and the secretary. In *Bali v Manaquel Company Limited* County Court at Central London, 15 April 2016; June 2016 *Legal Action* 41, HHJ Hand QC found that a certificate required by Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797 art 2(1)(g)(vii) was a document which had to be executed in accordance with s44(2). There is a strong argument that notices served by company landlords need to be executed in the same way – see *Hilmi & Associates Ltd v 20 Pembridge Villas Freehold Ltd* [2010] EWCA Civ 314; [2010] 1 WLR 2750 (notice served pursuant to Leasehold Reform, Housing and Urban Development Act 1993 s13).

Anti-social behaviour

- **Ahern v Southern Housing Group Limited**
  [2017] EWCA Civ 1934,
  28 November 2017

Mr Ahern was granted a 'starter' or 'probationary' assured shorthold tenancy of a flat commencing in April 2012. He was a very vulnerable alcoholic whose drunken, anti-social and, on occasions, lewd conduct disturbed and greatly upset his neighbours and others. As a result, in July 2013, the landlord served a HA 1988 s21 notice. A possession claim was issued in October 2013. Mr Ahern defended, contending that the notice was void because, in breach of its public law duty, the landlord had not complied with its policy relating to starter tenancies. HHJ Simpkiss found that the landlord had:

- failed to identify and address Mr Ahern's support needs for mental health or alcohol dependence;
- failed to interview him about his support needs or allegations about his behaviour after the probationary period of his tenancy had been extended;
- served the s21 notice and issued the claim without evidence of a serious breach of his tenancy; and
- fettered its discretion because there was no provision to review the proceedings or, alternatively, failed to review the proceedings.

Nevertheless, he made a possession order. Mr Ahern appealed.

The Court of Appeal dismissed the appeal. It turned on the facts. After considering all the relevant materials documenting the history of the landlord's engagement with Mr Ahern throughout the period leading up to the service of the s21 notice, it considered whether the landlord was in material breach of its policies. The Court of Appeal accepted the landlord's argument that it was aware of relevant matters without the need for any further interview. It was clear that Mr Ahern's needs were being met (if not successfully) by the mental health services and alcohol treatment programme. The Court of Appeal asked rhetorically (at para 18(v)): 'What more could the landlord reasonably be expected to do?'

Unlawful eviction

- **Gadzova v Adebambo**[2]
  County Court at Manchester,
  4 May 2017

Ms Gadzova and her husband were joint tenants. In 2010, they and their children were unlawfully evicted by the defendant. As a result of the unlawful eviction, the family were forced to separate. Ms Gadzova and the children returned to Slovakia. In 2012, her husband began a civil claim for damages for unlawful eviction. Ms Gadzova later returned to the UK and applied at the commencement of trial to be added to the claim. That application was refused by the judge. Her husband's claim succeeded and he was awarded £13,800 damages: £5,000 general damages; £5,000 aggravated damages; £2,500 exemplary damages; and £1,300 special damages. In 2016, within the limitation period, Ms Gadzova made her own claim. Judgment on liability was obtained in default of service of a defence. The landlord then applied to set aside the default judgment, arguing

that full compensation for the unlawful eviction had been provided through the 2012 proceedings.

HHJ Stockdale QC accepted Ms Gadzova's submission that bringing a second claim in the circumstances was not an abuse of process. She had tried to be added to the previous claim (albeit very late). She had given no indication that she was not planning to litigate. On quantum, the judge also accepted her submission that while exemplary damages had adequately been dealt with in her husband's case, she was entitled to general, special and aggravated damages in her own right. He awarded £7,500 general damages and £5,500 aggravated damages, taking into account the effect on her children, since they had, after the eviction, lived with her, not her husband. The children were not parties to the tenancy and therefore had not claimed in their own right. He awarded £850 for trespass to goods.

Houses in multiple occupation

Prosecutions

- **R (Gaskin) v Richmond upon Thames LBC**
  [2017] EWHC 3234 (Admin), 11 December 2017

Mr Gaskin was the freehold owner of a HMO. He obtained a licence under HA 2004 Part 2. Shortly before it was due to expire, he applied for renewal. The council's standard renewal application form included a request to 'write the rooms making up each separate letting and list the occupiers in each of those rooms'. Mr Gaskin declined to provide that information, writing the words 'Not relevant' across the box. He also declined to pay the fee of £1,799 for seven units on the basis that he considered it to be unlawfully high. The council responded that the fee was non-negotiable and stated that until the outstanding matters were attended to, Mr Gaskin would not be issued with a licence.

Later, the council served a notice under the Local Government (Miscellaneous Provisions) Act 1976 s16 requiring him to state in writing within 14 days the nature of his interest in the property and 'the name and address of any other person known to you who has an interest in the land or premises, as freeholder, mortgagee, lessee or otherwise, or who receives rent for the land'. Mr Gaskin did not comply with the s16 notice and the council began a prosecution against him for failing to have a licence contrary to HA 2004 s72 and failure to comply with the s16 notice. Mr Gaskin sought judicial review of the council's failure to issue him with a renewed licence and its subsequent decision to prosecute him.

The Divisional Court allowed the challenge to the decision to refuse to grant him a renewed licence on the basis of his failure to provide information about tenants and so granted declaratory relief. However, it dismissed the challenge to the decision to refuse to renew the licence on the basis of the failure to pay the fee. It also dismissed the challenge to the lawfulness of the s16 notice. The court rejected the suggestion that the fee of £257 per unit was disproportionate because the council had to retain funds to meet the budget and overheads of administering and enforcing HMO licensing. If it did not have sufficient reserves, it would not be able to comply with its statutory obligations.

However, the council's insistence on the provision of information about tenants was unlawful. Although there would be nothing wrong with an application form inviting the landlord to give names of tenants, so long as it was made clear that this was voluntary, having regard to HA 2004 s63, it was only those items of information listed in the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012 SI No 2111 which could be made mandatory.

- **Tower Hamlets LBC v Foxtons**[3]
  Bow Magistrates' Court, 4 December 2017

Tower Hamlets served a notice under HA 2004 s235 on Foxtons, managing agents of a HMO, requiring it to provide certificates showing that the gas, electrical and fire alarm installations had been checked; details of who received the rental income from the property; and details of the people living there. Foxtons failed to comply and was prosecuted under HA 2004 s236(1). It pleaded guilty. In mitigation, it told the court that it was previously of good character and prided itself on its reputation as 'one of the county's largest estate agents'. It said it was ashamed and remorseful of the failings.

Foxtons was fined £35,000 and ordered to pay £3,603 in costs. In sentencing, the court took into account the size of the company, its profits and the ease with which it could have provided the information to the council.

Discrimination

- **Equality and Human Rights Commission v Wilson**[4]
  County Court at Maidstone, 8 November 2017

Mr Wilson was the landlord of a large number of properties. He emailed his letting agent setting out a letting policy, which included: 'No coloured people because of the curry smell at the end of the tenancy.' The email came to the attention of the EHRC. It wrote to Mr Wilson asking him to undertake not to continue with the policy, but he refused, stating that it was justified for economic reasons, namely to avoid the cost of getting rid of the smell of curry at the end of the tenancy, and that he meant it to apply to Pakistani and Indian people. The EHRC sought an injunction, alleging direct discrimination on grounds of race contrary to the Equality Act (EA) 2010.

HHJ Polden held that the policy amounted to direct discrimination under EA 2010 s13 and that such a policy was unlawful and had 'no place in our society'. He referred to guidance on direct discrimination in the statutory Code of Practice on EA 2010 Parts 3 and 7 (there being no statutory code specifically on Part 4 (Premises)). As a matter of law, for the purpose of EA 2006 ss24 and 24A, it was not necessary to identify an individual affected. He granted a three-year injunction restraining Mr Wilson from adopting or applying the policy or any other lettings criterion that discriminated on grounds of race. Mr Wilson was ordered to pay costs of £2,500.

Anti-social behaviour

- **Barking and Dagenham LBC v Stokes**
  High Court (Queen's Bench Division), 30 October 2017

The council suffered 83 unauthorised encampments formed by the defendant Travellers within the borough over a two-year period. They included up to 50 caravans and associated vehicles. The council alleged that the encampments caused a serious nuisance to the settled community. Local primary schools had to take protective measures during playtimes. There had been burglaries of business premises and threats of violence and intimidation. Encampments had left behind untreated human excrement and used gas cylinders at a risk to public safety. The court granted an interim injunction on 29 March 2017. Since then, there had only been six unauthorised encampments.

Turner J granted a final injunction with a power of arrest pursuant to Local Government Act 1972 s222, Town and Country Planning Act 1990 s187B and Anti-social Behaviour, Crime and Policing Act 2014 s1. The judge could see no reason not to grant the final injunction as requested.

Long leases

Service charges

- **Westmark (Lettings) Limited v Peddle**
  [2017] UKUT 449 (LC), 22 November 2017

Maintenance costs incurred in relation to a development by a superior landlord were passed on in turn to an intermediate lessee and then to the lessees of individual flats. The First-tier Tribunal (FTT), construing Landlord and Tenant Act (LTA) 1985 s20B(1), which provides that a tenant is not liable to pay so much of the 'relevant costs' included in a service charge as were incurred more than 18 months before a demand for payment of the service charge was served on the tenant, found that there was a single 18-month limit from the date on which the costs were first incurred by the superior landlord. Accordingly, individual lessees were not liable to pay service charges where the costs were incurred more than 18 months before they received demands. The intermediate landlord appealed.

Martin Rodger QC, deputy Chamber president, allowed the appeal. After referring to *OM Property Management Limited v Burr* [2013] EWCA Civ 479; [2013] 1 WLR 3071; June 2013 *Legal Action* 34, he held that where a cost is incurred by a superior landlord in providing services for which a charge is passed down a chain of intermediate landlords before ultimately being paid by the occupational leaseholder, successive 18-month time limits apply to each demand made in the chain.

- **Atherton v M B Freeholds Limited**
  [2017] UKUT 497 (LC), 20 December 2017

From 2015, 27 flats in a small residential estate were doubly insured. The individual leaseholders complied with obligations in their leases to insure their own flats against fire and other usual risks, while the freeholder, M B Freeholds Limited (MBF), arranged insurance against the same risks for the whole estate, including both the structure and common parts of the blocks themselves and of the individual flats. A dispute arose as to whether the freeholder was entitled to recover from the lessees the whole of the cost it incurred in insuring the estate. The FTT dismissed an application under

LTA 1985 s27A by some leaseholders who sought a determination that they were not obliged to contribute to the freeholder's costs of insuring their individual flats. The lessees appealed.

Martin Rodger QC, deputy Chamber president, allowed the appeal. The FTT's decision did not deal sufficiently or at all with the applicants' case that there had been a change in the basis of insurance and that historically only the communal areas had been insured. The FTT's conclusion that the reasonable cost of insuring the common parts and not the individual flats was the same as the cost of insuring the whole structure was counterintuitive. The FTT had reached a conclusion on an issue of fact without considering all of the evidence, or alternatively it failed to give sufficient reasons for its conclusion, or for dismissing the contrary case that was supported by credible evidence. Its conclusion that the common parts could not be insured separately from the flats was not one which was properly open to it. MBF was not entitled to recover the full amount of the sum claimed for insuring the whole building in its sole name. Its only entitlement was to recover, through the service charge, the cost incurred in insuring the common parts. The reasonable cost of insuring the common parts was £1,230. Each appellant was obliged to contribute 1/27 part of that total, being £45.55.

The Upper Tribunal also made an order under LTA 1985 s20C, restricting MBF's entitlement to add the costs of the proceedings to the service charges payable by the appellants.

First-tier Tribunal procedure

- **Hyslop v 38/41 CHG Residents Co Ltd**
  [2017] UKUT 398 (LC),
  23 October 2017

The freeholder applied for a determination that the appellant lessee was obliged to pay the service charge demanded. The lessee did not respond to the application and the FTT decided the application in the freeholder's favour. It asked that the freeholder serve each lessee with its decision. The lessee subsequently applied to set aside the decision on the basis that she had not been made aware of the proceedings or received the decision. The FTT refused to do so.

Martin Rodger QC, deputy Chamber president, allowed an appeal. The FTT was under an obligation to notify every party of its decision.

The proposition that justice requires that the final decision of a court or tribunal must be made available to the parties affected by it is so fundamental that it is difficult to find direct authority for it. It is obvious that the delivery of a decision is an indispensable part of dealing with a case fairly and justly (para 60).

The FTT could not delegate that function to one of the parties. That was not permissible under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI No 1169. Rule 36(2) must be interpreted as requiring that the FTT discharge that obligation itself.

Housing allocation

- **R (J and L) v Hillingdon LBC**
  [2017] EWHC 3411 (Admin),
  21 December 2017

J was the mother of L, her eight-year-old son. He suffered from a range of disabilities including autism, global development delay, learning difficulties, long-standing ataxia and uncontrolled epilepsy. He had a wheelchair and an award of disability living allowance at the higher rate for both care and mobility. His ataxia meant that he was very unsteady and he frequently tripped and fell. He was prone to frequent and severe seizures without warning. His mental age was several years lower than his chronological age.

J was the tenant of a privately rented bungalow. L's wheelchair did not fit through the doors. There had been ongoing disrepair issues, including dampness and mould. The bungalow was situated next to an industrial car park used by commercial vehicles. There was no fence or other protective barrier between the car park and the bungalow. In front of the bungalow was a busy road. There was no safe place for L to transfer between wheelchair and car. As a result of his autism, L had no sense of danger and had run out in front of approaching vehicles on the busy main road.

In September 2015, J applied to the council for an allocation of social housing: HA 1996 Pt 6. She gave details of L's disabilities and also set out the problems with her current accommodation (disrepair, lack of adaptation for L's needs and the dangers associated with the proximity of the busy road). She completed a medical assessment form providing further details of the range of difficulties faced by L arising from his disabilities and the impact of the current accommodation on his medical condition and needs.

The council's housing allocation scheme provided that '[i]f following an assessment it is determined that an applicant has no housing need, they cannot join the housing register' (para 5.1, cited at para 40 of the judgment). In November 2015, the council decided that J and L had 'no identifiable housing need' because they were 'suitably housed' and the bungalow was not overcrowded. That decision was confirmed on review.

J took legal advice and her solicitors made further representations. In April 2017, the council confirmed that it had re-determined J's application but had again assessed J and L as 'having no identified housing need' because they lived in a two-bedroom bungalow, which met their needs for two bedrooms, and they had access to a garden.

In July 2017, a council social worker conducted a Children Act (CA) 1989 assessment and wrote to the housing department that 'in view of these unique … factors, may your department possibly re-open the housing application in respect of [J]' (see para 30). In response, the council wrote that:

Based on the information you submitted on your application, Children and Family [C&F] Support Plan and the further enquiries we have made, you have been assessed as having no identified medical or housing need. This means you have not been awarded medical banding and you have not been registered for social housing (see para 35).

J and L sought judicial review on the ground, among others, that the decision that they had no identified housing needs was unlawful as it was outside the range of reasonable responses in light of the material before the council and that the council had failed to have regard to the need to safeguard and promote the welfare of L as required by CA 2004 s11.

Nicklin J held that the July 2017 decision had been unlawful. He said:

*[It] so comprehensively fails to grasp the nature of the risks to L identified in the C&F assessment and the proposal of how those risks were to be addressed that it is impossible to conclude that there had been **any** discussion of the C&F assessment, still less co-operation, with the social services department. It is difficult to see how the decision letter could have been written in the terms it was if the author had had a discussion with the author of the C&F assessment.*

It appears to me that this letter is wholly superficial and has simply failed to engage adequately (or at all) with the risks to L arising from his housing that had been identified in the C&F assessment (paras 66(v)–67; emphasis in original).

The challenge also succeeded on the s11 point:

Insofar as the decision letter is relied upon as demonstrating compliance with [the] s11 duty actively to promote the welfare of L, it fails completely. It does not even recognise it as a factor in the decision-making. There is no other evidence of consideration of s11 at this stage (para 69).

- **CN v Poole BC**
  [2017] EWCA Civ 2185,
  21 December 2017

CN was a child 'in need' within CA 1989 s17. He had severe physical and learning difficulties. In May 2006, the council allocated his mother social housing let by the Poole Housing Partnership Ltd (PHP). It was claimed that the council had been aware that a family lived nearby who engaged persistently in anti-social behaviour. Over several years, that family and their associates repeatedly subjected CN to significant harassment and abuse. He attempted suicide.

CN and his mother brought a claim for damages against the council based on breach of duties alleged to have arisen under housing legislation. That claim was struck out by Master Eastman as disclosing no reasonable cause of action. He applied *X v Hounslow LBC* [2009] EWCA Civ 286; [2010] HLR 4. There was no appeal from his decision.

CN also brought a claim for breach of a common law duty of care deriving from the council's responsibilities under child protection legislation. That was also struck out but was later restored by Slade J on appeal. She followed and applied *D v East Berkshire Community NHS Trust* [2003] EWCA Civ 1151; [2004] QB 558. The council appealed.

Irwin LJ stated that:

- '[t]he mere fact that a relevant defendant is aware of an individual claimant's personal characteristics or vulnerabilities does not give rise to an assumption of responsibility on the part of the defendant (see *Darby v Richmond-upon-Thames LBC* [2015] EWHC 909 (QB) … and [2017] EWCA Civ 252 …)' (para 32);
- '[w]here rights of review or appeal in relation to official action are conferred by the relevant statutory scheme or by the law generally, the imposition of the duty of care will generally be inconsistent with the statutory scheme' (para 32);
- '[t]he heart of the claim is that this

family were placed in the relevant house, and not moved, despite the prospect and then the actuality of significant harassment' (para 41); but
- '[t]here is no attempt to revive a claim based on the Defendant's functions as a housing authority. That would be bound to fail. There is no prospect of common law liability from such a route, as [*Mitchell v Glasgow City Council* [2009] UKHL 11; [2009] 1 AC 874] must make clear' (para 96).

As to the claim based on a duty of care at common law arising from child protection legislation, he said that it would be 'unjust to extend liability to one agency (the social services department of the local authority) when other agencies (the housing department, the "arms-length" housing provider and the police) are at least as involved and arguably more centrally involved in the relevant problem' (para 97) and that '[t]he claim is in fact a criticism of the housing functions of the local authority, exercised through the agency of PHP, shoe-horned into a claim arising from duties and powers under the Children Act 1989' (para 104). Davis LJ said that '[t]o seek then to re-cast the claim for damages against the local authority by reference to an alleged duty to seek and obtain a care order under the Children Act 1989 seems to me little more than legalistic legerdemain, designed to overcome the insuperable obstacles to formulating a viable claim in attacking the housing authorities in the exercise, (or, rather, non-exercise) of their housing functions' (para 116).

The court unanimously agreed that the decision in *D v East Berkshire* could not stand with subsequent decisions of the Supreme Court and should no longer be followed or applied. The council's appeal was allowed and the claim was struck out.

- **Ansari v Aberdeen City Council** [2017] CSIH 5, 27 January 2017

The claimant was a prisoner serving a life sentence. The defendant council had a statutory responsibility for the allocation of social housing and an obligation to provide housing to people who would otherwise be homeless or threatened with homelessness: Housing (Scotland) Act 1987 Pt II.

By a claim for judicial review, Mr Ansari complained of breach by the council of his *Haney* right under Human Rights Act (HRA) 1998 Sch 1 article 5 by its failure to provide him with opportunities to experience meaningful home leave. (In *R (Haney) v Secretary of State for Justice* [2014] UKSC 66; [2015] AC 1344, the Supreme Court accepted as implicit in the scheme of article 5 that the state was under a duty to provide a reasonable opportunity for a prisoner serving a long term indefinite sentence, including a life sentence, to rehabilitate him/herself and to demonstrate that s/he no longer presented an unacceptable danger to the public.) The claimant's case was that the council's housing responsibilities should be interpreted in such a way as to create an obligation to provide him with accommodation that would enable him to have 'reasonable rehabilitative opportunities' as required by *Haney*. His claim was dismissed by the lord ordinary, who held that the council owed him no such duty.

The Court of Session Extra Division Inner House dismissed an appeal. It said:

We reject the submission ... that the various statutory responsibilities of the [council] should be interpreted in such a way as to create an obligation on [it] to provide reasonable opportunities for rehabilitation as required in Haney. *If and when appropriate it might be open to a prisoner to challenge a failure on the part of a local authority to fulfil its statutory responsibilities but the petitioner has not gone down this route in this judicial review. It is not open to him to attempt to convert a breach of a specific statutory provision into a breach of a* Haney *article 5 ECHR duty. The local authority having no responsibility for the decision to continue the detention of the petitioner, there is no basis for reading into article 5 an implied duty incumbent on it to facilitate his release* (para 29).

On 6 November 2017, the UK Supreme Court (Lady Hale, Lord Reed and Lady Black) refused an application for permission to appeal 'because the application does not raise an arguable point of law which ought to be considered at this time given the extant proceedings against the Scottish ministers' (UKSC 2017/0102).

Homelessness

Notice to withdraw provision of accommodation

- **Complaint against Maidstone BC** Local Government and Social Care Ombudsman Complaint No 16 004 603, 1 November 2017

In March 2015, the complainant applied to the council for homelessness assistance for herself and her family. They were initially placed in B&B and by the end of the month were offered a self-contained flat. The day after the family moved in, they told the council that the flat was unsuitable, the young daughter needed a cot, and neighbours were complaining about noise from the children. The family also complained the landlord was verbally abusive. The landlord complained to the council that the family had 'moved furniture around' and the young child had drawn on the walls. The family were forcibly evicted by the landlord in July 2015. During the eviction process, the landlord put the family's belongings outside and prevented them from accessing parts of the flat – including not allowing the young children to use the lavatory. The family then paid for their own B&B for nearly a week while they asked the council to review its decision that the duty to accommodate them had ended.

Following intervention from Shelter, the council decided the family should have had four weeks' notice to leave the flat. They were given accommodation for four more weeks, but were also given a 'notice to quit' letter giving them a month to leave any temporary accommodation provided to them by the council. The family asked for a review and the council's decision was reversed in September 2015. A few days later the family were found permanent housing.

The ombudsman's investigation found fault with the council for:

- the way it handled the family's homelessness application;
- allowing an unlawful eviction, and not giving the family 28 days' notice to leave the flat;
- not investigating allegations of the landlord's harsh behaviour on the day of eviction; and
- not giving the family the chance to give their side of the story before making a decision.

The ombudsman recommended that the council should apologise and pay:

- £500 for belongings broken or lost during the unlawful eviction;
- £550 for the B&B that the family paid for;
- £370 for their removal and storage costs;
- £750 to reflect some of the cost of takeaway food for the two months the family was in the B&B after the eviction; and
- £2,000 to reflect their avoidable distress.

See also Monidipa Fouzder, 'Law student helps win compensation for homeless family,' *Law Society Gazette*, 4 December 2017.

Reviews and appeals

- **Jobe v Lambeth LBC**[5] County Court at Central London, 7 December 2017

Mr Jobe was the assured shorthold tenant of a one-bedroom property. In February 2016, his wife and son moved to the UK and joined him. In May 2016, the landlord obtained a possession order based on rent arrears of over £27,000. Mr Jobe and his family were evicted. They applied for homelessness assistance and were provided with interim accommodation. On 6 July 2016, Lambeth issued a decision that Mr Jobe was homeless and had a priority need but had become homeless intentionally. On 20 July 2016, he sought a review of that decision. The review should have been completed within 56 days or such longer period as the parties may have agreed in writing. There had been no agreement (in writing or otherwise) to extend the 56-day deadline. Some 45 weeks later, on 31 May 2017, Lambeth issued a 'review decision'. The decision confirmed that Mr Jobe was not owed the main housing duty because he had become homeless intentionally.

He appealed to the county court and filed his own grounds of appeal without legal assistance. He contended that: (1) the delay in notification of the review decision rendered it void; (2) by reason of its default, the council had to accommodate him; (3) the court which heard his possession claim had erred in making a possession order because it did not consider cash payments that he had made towards the rent; and (4) Lambeth had not fully investigated whether the decision to evict him was motivated by a desire to avoid a disrepair claim rather than the level of his rent arrears. With late assistance from solicitors, the first ground was honed to an argument that the decision was invalid (because it was notified beyond the statutory time limit) and therefore the matter should be remitted for a further review.

Recorder Gasztowicz QC dismissed the appeal. As to the first ground, he agreed with Lambeth's primary argument that HA 1996 s204(1) contains an option: an appellant can either choose to appeal the original decision in the absence of notification of a review decision or can opt to challenge the review decision notified outside of the statutory time limits. Since Mr Jobe had chosen to appeal the review decision, albeit that it had been notified late, he had made his election. The decision was not void but had been made valid by that election. The grounds of appeal relating to the possession claim in the county court were entirely unmeritorious.

Comment: From the case note supplied it is unclear how the council determined that the one-bedroom property lost by the rent arrears had been accommodation which it was reasonable for the whole family to continue to occupy: HA 1996 s190(1).

Rough sleepers

- **R (Gureckis) and others v Secretary of State for the Home Department** [2017] EWHC 3298 (Admin), 14 December 2017

The claimants were EEA nationals sleeping rough in the UK. Home Office guidance to immigration officers (*European Economic Area (EEA) administrative removal*, version 3.0, 1 February 2017) set out the circumstances in which rough sleeping would be treated as an abuse of EU Treaty rights, rendering an EEA national liable to removal, if proportionate to do so. The guidance was applied in the claimants' cases. Other 'busy immigration officers implementing the policy on the ground treated rough sleeping as an abuse of [EU] rights in itself' (para 73). A judicial review claim was brought to challenge the legality of the policy.

Lang J allowed the claim. She held that:

... the test for establishing abuse of rights was not met here because there was no proper basis for concluding that, by sleeping rough, a person who otherwise satisfied the conditions for residence, had undermined the purpose/s of the Directive. Accommodation, or the lack thereof, in the host member state had no connection to freedom of movement rights and requirements, and was not a factor taken into account in the Treaties or Directive. It made no difference whether the defendant's policy was to treat rough sleeping ipso facto as an abuse of rights, or only to treat intentional, harmful rough sleeping as an abuse (para 98).

On a discrimination challenge, she held that:

... the defendant could not justify its less favourable treatment of EEA rough sleepers on the grounds that they were suspected of abusing their rights to freedom of movement and residence, in breach of the 2016 regulations. The justification upon which the defendant relied was unlawful (para 113).

She made an order as follows:

The defendant's guidance, 'European Economic Area (EEA) administrative removal'*, version 3.0, published 1 February 2017, is quashed insofar as it treats rough sleeping, whether intentional, harmful or otherwise, as an abuse of Treaty rights* (para 127).

Version 4.0 of the guidance, which removed references to rough sleeping, was published on the day of the judgment.

Housing and children

- **R (HC) v Secretary of State for Work and Pensions and others** [2017] UKSC 73, 15 November 2017

The claimant was an Algerian national. In 2008, she arrived in the UK with leave to enter but overstayed. In 2010, she married a British national on whom she was financially dependent. They had two children before their relationship ended in domestic violence. The claimant was by then entitled to reside in the UK as a *Zambrano* carer (see *Ruiz Zambrano v Office national de l'emploi* Case C-34/09, 8 March 2011; [2012] QB 265). When she sought accommodation from Oldham City Council, it decided that she was not eligible for assistance. The council agreed to provide temporary housing and financial support under CA 1989 s17. By reason of the s17 provision, she had the practical and legal support necessary to protect the children against being obliged to leave the territory of the EU while under her care.

Her claim was that this was not enough and that her children were entitled to enjoy the same benefits and opportunities of growing up in Britain that other British children have. She challenged the legality of the amendment regulations – the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012 SI No 2588, amending the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI No 1294 – introduced in November 2012 and designed to limit the rights of *Zambrano* carers to obtain housing and homelessness assistance. The effect of the amendment had been to add *Zambrano* carers to a list of exclusions from qualifying rights of residence.

The Supreme Court rejected a contention that, as a result of the amending regulations, the claimant had been a victim of discrimination contrary to HRA 1998 Sch 1 article 14 read with article 8, or article 1 of Protocol No 1:

Discrimination on the basis of immigration status is of course a fundamental and accepted part of both EU and national law, but cannot in itself give rise to an issue under article 14. In so far as Mrs HC's differential treatment arises from her status as a third country national, she can have no complaint. So far as concerns her Zambrano *status, that is a creation of European law, and such differences of treatment as there are, as compared to other categories of resident, do no more than reflect the law by which the status is created* (para 31).

The amending regulations were not unlawful. *Zambrano* carers would, by virtue of CA 1989 s17, get such assistance as was necessary to protect their children from being obliged to leave the territory of the EU while under their care. Assistance under that section was a matter for individual local authorities but

... it is clearly desirable that there should be a degree of consistency as between authorities. The legislation allows for the provision of national guidance. Judicial review is available as a backstop, but it is likely to be unsatisfactory for the levels of appropriate support to be left for determination by the individual authorities on a case-by-case basis, subject only to control by the courts by reference to conventional Wednesbury *principles* (para 37)

and

[t]he authority will no doubt take into account that these are British children, born and brought up here, who have the right to remain here all their lives; they cannot therefore be compared with asylum-seeking children or the children of asylum-seeking parents, who may end up with no or only a limited right to remain. They will no doubt also wish to take into account the impact upon the proper development of these children of being denied a level of support equivalent to that of their peers, that is, the other British children around them whose families are dependent on income-related benefits. That level of support is not fixed at a level designed to lift children out of poverty, as officially defined, but at a level much closer to subsistence (para 46).

- **R (U) v Milton Keynes Council** [2017] EWHC 3050 (Admin), 29 November 2017

The claimants were Nigerian children. They arrived in the UK with their mother but overstayed their leave to enter. The mother had no right to work, the family had no recourse to public funds and they were not eligible for housing assistance. Because of their immigration status, it would be unlawful for a private landlord to let to them: IA 2014 ss20–21. The council decided that the claimants were not 'children in need' for the purposes of the CA 1989 because the mother had access to funds from friends and family sufficient to obtain somewhere to live. It declined to reassess and said she could use her funds to obtain hotel accommodation or others could meet her accommodation costs, thus avoiding the prohibition in ss20–21. At trial, it also suggested the alternatives that she could: (1) rent a mobile home (to which the IA 2014 provisions do not apply); or (2) seek special exemption from the Home Office to enable her to rent privately.

UTJ Markus QC, sitting as a High Court judge, quashed the decision. The only realistic option was hotel accommodation. The other scenarios were hypothetical and, without consideration of what was realistically possible in this particular case, they could not excuse the refusal to reassess the claimants' needs. Hotel accommodation might itself fall within ss20–21. Para 108 of the Explanatory Notes to the IA 2014 states: '[F]or example, holiday accommodation will not ordinarily be captured, as for most people it will not provide their only or main home, but if somebody chooses to live in a hotel, the arrangements for that person will be captured.' As a result, it could not be ruled out that occupation of a hotel by this family in this case would amount to occupation contrary to ss20–21 and so would not be permitted. The council 'should have assessed whether it was possible, compatibly with the children's needs, for [the mother] to secure accommodation for the family in the light of the limitations in section 20 of the Immigration Act 2014. Its failure to do so rendered the continuing refusal to reassess unlawful' (para 64).

1 www.equalityhumanrights.com/en/equality-and-human-rights-helpline-advisers.
2 John Stringer, partner, Platt Halpern solicitors, Manchester, and Tom Royston, barrister, Manchester.
3 See: www.towerhamlets.gov.uk/News_events/News/2017/December_2017/Council_puts_tenants_welfare_first_as_Foxtons_is_fined_38000_for_not_providing_safety_information.aspx.
4 This case was first noted on Nearly Legal. See also Patrick Collinson, 'Landlord's ban on "coloured" tenants is unlawful, court rules', *Guardian*, 8 November 2017.
5 Elizabeth England, barrister, London.

Jan Luba QC and Nic Madge 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 2 and 5 above for providing details of the judgments.