

Housing law bulletin

Issue 155 - 2nd November 2009



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The Latest Housing Law News

Recent Developments in Housing Law: it is hoped that readers of this Bulletin also subscribe to *Legal Action magazine*, not least to obtain access to the monthly article Recent Developments in Housing Law written by HHJ Nic Madge and Jan Luba QC. Much of the caselaw material used in those articles is subsequently gathered in the *Housing Law Casebook*. Readers anxious to obtain access to the articles published since the last edition of the Casebook was written (in December 2007) can download them from the Housing Legal Resource pages of the Garden Court website by clicking [here](#).

Housing associations as "public authorities": last week the Government re-iterated its view that provision of housing is not a 'public' function. In *The Human Rights Act 1998: definition of 'public authority' Government response to the Joint Committee on Human Rights' ninth report of session 2006-07 Cm 7726* it also said that it will undertake a consultation exercise on the way in which the definition of 'public authority' (in Human Rights Act 1998 section 6) is operating. For a copy of the document, click [here](#).

Complaints in Housing cases (local authorities): on 30 October 2009 the Local Government Ombudsmen published their latest Digest of Cases relating to complaints about English local authorities. The Housing chapter of the Digest has been made available in PDF format (together with the Housing Chapters of the Digests for the last 6 years). For copies, click [here](#).

Complaints in Housing cases (other landlords): in October 2009 the Housing Ombudsman Service published its *Annual Report and Accounts 2009*. That contains a digest of cases covering disrepair, rent arrears and anti-social behavior complaints against a range of social landlords. For copies of the report, click [here](#).

Mortgage Support: on 22 October 2009 the Government published a copy of the Master Guarantee Deed. The Deed contains the guarantee given by the Government to lenders which participate in the Homeowners Mortgage Support Scheme. Borrowers' participation in the Scheme itself is governed by the Scheme Rules and accompanying guidance notes and the Administrative Rules set out how participating lenders should operate the Scheme. For a copy of the Deed, click [here](#).

Housing for Offenders: in October 2009 the Government published *Delivering better housing and employment outcomes for offenders on probation*. The research examined the delivery of suitable settled accommodation for offenders on probation. The study explored good practice in counteracting homelessness and in helping offenders. For a copy, click [here](#).

Rentcharges: on 28 October 2009 Andrew Gwynne MP introduced his Rentcharges (Notification) Bill 2008-09 as Private Members' Bill (under the Ten Minute Rule, SO No 23). The Bill would require rentcharge companies to notify annually residents subject to chief rent of their statutory right to redeem their charge under the Rentcharges Act 1977.

The Latest Housing Case Law

30 October 2009
R(Gardiner) v Haringey LBC

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[2009] EWHC 2699 (Admin), [2009] All ER (D) 301 (Oct)

The council decided that the claimant was not homeless because she had accommodation available to her in Columbia. The claimant sought a review on the basis that the accommodation there was not suitable for her youngest, autistic child. The council's decision was upheld on review in September 2008 (and a subsequent appeal was dismissed). In January 2009 the claimant applied again, submitting more information about her child's circumstances and needs. The council declined to entertain the application because it disclosed no new facts. The High Court quashed that decision. The factual material was new and required the application to be entertained.

28 October 2009

HSE v Helen Jayne Beckett

Grimsby and Cleethorpes Magistrates Court

The defendant was a private landlord. Over a period of 18 months she failed to ensure that a gas fire in a flat she let had been checked for safety. She pleaded guilty to a breach of the Gas Safety (Installation & Use) Regulations 1988 regulation 36(3) and was fined £1000 and ordered to pay £1500 costs. For more details, [click here](#).

23 October 2009

Kings Lynn & West Norfolk Council v Smith and Ingram

[2009] EWHC 2615 (QB)

On finding workmen with earth moving equipment on farmland, and fearing an unauthorised residential development in breach of planning controls, the council obtained an injunction under Town & Country Planning Act 1990 section 187B to prevent such use. In spite of the order, and without planning consent, the defendant Gypsy families moved onto the land and established their homes there. They were fined for contempt but applied to vary the injunction to enable them to stay. The High Court refused the application. The defendants had acted in flagrant disregard of the court's order, there was no realistic prospect of them obtaining planning permission and nothing in their personal circumstances or difficulties with alternative accommodation justified variation of the order. For a copy of the judgment, [click here](#).

22 October 2009

Paulic v Croatia

Application 3572/06, ECtHR

The applicant was a tenant of a flat owned by the Ministry of Defence. It sought an order for possession on the basis that his tenancy had not been properly granted by the Ministry's predecessor-in-title. The court found that he had no legal right to remain and granted a possession order, although it stayed execution given the serious disability of the applicant's son. The European Court of Human Rights upheld his complaint that there had been a breach of the right to respect for a home under Article 8. The domestic courts had only considered whether the Ministry was legally entitled to possession. It had not considered the reasonableness and proportionality of an eviction. For a copy of the judgment, [click here](#).

22 October 2009

Complaint against Vale of Glamorgan Council

Public Services Ombudsman For Wales, Report 2008/01344

The council operated a choice based lettings system based on bands (Gold, Silver, and Bronze). The complainants were council tenants of a three bedroom maisonette where they lived with a teenage child and two adult children. They were told by a housing officer that if the two oldest children left, their transfer application would be moved into the Gold band by virtue of under-occupation. When the eldest children then moved out, the application was re-categorised into the Gold band but only for bidding for flats. The complainants wished to

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bid for a house. They sought a review but the Lettings Panel conducting the review held that they were adequately housed and moved the application to the Bronze category. The Ombudsman found extensive maladministration. The housing officer had given wrong advice, the application had been wrongly re-categorised to Gold, the council had limited the bidding to flats when there was no provision for such limitation in its allocation scheme and the family's circumstances had been misrepresented to the Lettings Panel which had not conducted a fair and proper process. The council agreed to amend its scheme and its application form and the Ombudsman recommended apologies, compensation and staff re-training. Copies of the report are available on request task@ombudsman-wales.org.uk

21 October 2009

Forcelux Ltd v Binnie

[2009] EWCA Civ 1080

The claimant brought a possession claim for unpaid rent and service charges under CPR Part 55. The defendant tenant failed to attend the hearing and a possession order was made and executed. When he found out about the proceedings, the defendant applied to set aside the order. If the hearing had been a "trial", he needed to satisfy the particular conditions of CPR 39.3. If the hearing was not a trial, the court had a wider discretion under CPR 3.1(2)(m) and 3.1(7). The Court of Appeal held that a first hearing in the undefended possession list was not a trial. Accordingly, the broader discretion applied. It set aside the possession order. For a copy of the judgment [click here](#).

20 October 2009

Birmingham CC v Qasim

[2009] EWCA Civ 1080

A clerical officer employed in one of the council's area housing offices improperly manipulated the council's computer system to grant tenancies of more than six separate council properties. The council sought possession against the families who had been granted those tenancies on the basis that they had not been allocated in accordance with its allocation scheme and were therefore void: Housing Act 1996 section 167(8). Its alternative claims under the statutory grounds for possession had failed because there was no evidence that any of the families had given any false information. The judge dismissed the claim and the Court of Appeal dismissed an appeal. The council's powers to grant tenancies lay in the Housing Act 1985 Part 2. Failure to comply with the allocation scheme under the Housing Act 1996 Part 6 did not render the tenancies void. Part 6 is concerned with selection and nomination and not with the grant of tenancies. For a copy of the judgment, [click here](#).

20 October 2009

Harrow LBC v Ibrahim

Case C-310/08, ECJ

The Court of Appeal had referred to the European Court of Justice questions concerning the entitlement (or otherwise) of certain EU nationals and their non-EU national spouses to remain in the UK while their dependent children completed state schooling. The questions arose in relation to entitlement to homelessness assistance. The ECJ conducted an oral hearing on 2 September 2009. An Advocate General has reported to the Court that it is his opinion that the questions should be answered affirmatively i.e. with the effect that the applicant and others in her circumstances would be eligible for accommodation. For a copy of the Opinion, [click here](#).

20 October 2009

Texiera v Lambeth LBC

Case C-480/08, ECJ

The Court of Appeal had referred to the European Court of Justice further questions

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concerning the entitlement (or otherwise) of certain EU nationals to remain in the UK while their dependent children completed state schooling. The questions again arose in relation to entitlement to homelessness assistance. The ECJ conducted an oral hearing on 2 September 2009. A different Advocate General has reported to the Court that it is his opinion that the questions should be answered in the affirmative and along the following lines: (1) Where a child of a Union citizen is in education in a Member State in which that Union citizen is or has been employed as a migrant worker, the parent who is the child's primary carer enjoys a right of residence in the host Member State that is derived from Article 12 of Regulation (EEC) No 1612/68; (2) The right of residence of that parent is not subject to a requirement that that parent should have sufficient resources and comprehensive sickness insurance cover; (3) The right of residence of that parent is not subject to a requirement that that parent should have been employed as a migrant worker in the host Member State when the child first entered education. It is sufficient for the child to have installed itself in the host Member State during the exercise by a parent of rights of residence as a migrant worker in that State; and (4) The right of residence of that parent ends when the child reaches the age of majority, unless the circumstances of the individual case are such that it is appropriate for the child to be looked after personally by that parent beyond. The Advocate General expressed surprise that it had not been argued that the claimant had a right of permanent residence based on her own 5 years lawful residence in the UK. For a copy of the Opinion [click here](#).

15 October 2009

Miller-Foulds v Secretary of State for Justice

[2009] EWCA Civ 1132

The claimant had been the defendant to a mortgage possession claim brought against her by her mortgage lenders, Abbey National. In 1991 an order had been made in those proceedings. Neither the county court nor Abbey could produce a copy. The claimant brought a claim against the minister responsible for civil justice seeking a declaration that the order had not been properly made. The judge was satisfied by secondary evidence that a sealed order had been issued in terms he identified. He held that the current claim had been improperly brought and its pursuit, without joining Abbey as a defendant, had been an abuse of process. The Court of Appeal dismissed a renewed application for permission to appeal. The judge had been right for the reasons he had given.

15 October 2009

Komnatskyy v Ukraine

Application 40753/07, ECtHR

The applicant was a disabled war pensioner in his 80s living in an old and ramshackle rented house with no water supply. As a result of work he had done in relation to the Chernobyl disaster he had a statutory entitlement to council housing. In August 2006 the District Court ordered his local town council to provide him with an apartment. A month later, that order not having been complied with, he applied to enforce it. Three years later it had still not been enforced. The town council explained that it had a long list of applicants to which it was allocating what little housing was available in strict date order. The European Court of Human Rights held that: (1) there had been an infringement of Article 6 by reason of the long delay in enforcing a court order; (2) the right to an apartment had been a "possession"; and (3) the failure to provide it had been a breach of Article 1 Protocol 1. It ordered that the August 2006 decision be complied with within 3 months and awarded 1000 euros in damages. For a copy of the judgment, [click here](#).

14 October 2009

Ali v Birmingham CC

[2009] EWCA Civ, All ER (D) 150 (Oct), B5/09/0334

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The council owed the claimant the main housing duty under the homelessness provisions of Housing Act 1996 Part 7. When he failed to accept an offer of accommodation, made in writing, the council decided that its duty had come to an end. The claimant had a poor command of English and asserted that the obligation that he be "informed" by the council of the consequences of the offer (see sections 193(5) and (7)) - and of his rights to review - required the council to show that the information given to him had been properly understood. The Court of Appeal held that the obligation to "inform" was no greater than the obligation to 'notify' used elsewhere in Part 7. It simply required that the relevant information be conveyed in understandable English in cases where interpretation and translation services had been declined. A translation was not required in every case.

14 October 2008

Complaint against Bury MBC

Local Government Ombudsman, 07C03887

The complainant's household included five children, two of whom had serious disabilities. The Ombudsman found that the Council knew from 1998 that the family would need a home with a ground floor bathroom and bedroom and that, from 2000, this would need to be for two children. In 2002 the family were moved to a four-bedroom house with the intention of building a ground floor extension. The Council did not check that this was feasible or develop a 'fall back' plan even though the architect expressed grave doubts about getting planning permission, and 18 months after the family moved, it was refused. Only from 2004 had the Council pursued the obvious long-term solution, and the family moved into a purpose-built property in the summer of 2006. The ombudsman said that the underlying cause of the delay "was ineffective management that can fairly be described as 'institutionalised indifference' - not only to the boys' needs and their mother's plight, but to the Council's duties and responsibilities." The Ombudsman recommended that the Council:

make a personal apology to Mrs M and her family; make three annual payments of £6,000 each to Mrs M and her older disabled child; create a fund of £5,000 for items and activities chosen by the other children in the family in recognition of the effect on them of the situation; review its procedures for dealing with disabled facilities grants; and review the leadership capacity in the relevant services. For a copy of the investigation report, [click here](#).

14 October 2008

Complaint against Lincolnshire CC and West Lindsey DC

Local Government Ombudsman, 07C01269 and 07/C/09724

The complainant, a single disabled man, complained that both his social services authority and his local council had failed in its response to his request for help in extending his bathroom to make it more wheelchair-accessible. The Ombudsman found that the county council: failed to make comprehensive and accurate assessments that could translate into appropriate recommendations for adaptations; recommended adaptations that could not meet his needs; failed to treat him in accordance with the Good Practice Guide; failed to objectively and impartially review its position and take account of relevant information; made inadequate attempts to resolve his complaint; and delayed in providing an independent occupational therapist. She also found that the district council was slow to identify that it had allocated insufficient funds for disabled facilities grants, and had delayed transferring funds into that budget. She decided that both Councils failed to fulfil their responsibilities in reasonable timescales and communicate effectively with the complainant and each other. She recommended £4500 compensation. For a copy of the investigation report, [click here](#).

12 October 2008

Complaint against Canterbury Council

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Local Government Ombudsman, 08017300

The complainants lived in unsatisfactory accommodation and applied to the council for help with accommodation. When the council eventually treated the request as a homelessness application it provided unsuitable interim accommodation. In his report the Ombudsman said that it appeared that the Council's officers are so focussed on homelessness prevention activity "... that they are failing to spot when applicants are homeless or threatened with homelessness, with all the duties that places on the Council. It would appear, therefore, that the Council is failing to comply with those duties." He added: "The Council's actions give the impression that someone has to be actually homeless before the Council will do what the law requires." The Ombudsman was concerned about officers' failure to recognise that a homelessness application had been made; their reliance on homelessness prevention as an alternative to taking a homelessness application (instead of pursuing the two in tandem); and their implied threat of bed and breakfast accommodation in an apparent attempt to dissuade the couple from making an application. In respect of the maladministration causing injustice he recommended: £1,750 compensation; changes to policy and procedures for dealing with homelessness applicants and medical information provided in support of applications; changes to standard letters; and appropriate training of relevant staff. For a copy of the investigation report, [click here](#).

23 September 2009

R(M) v Watford MBC

[2009] EWHC 2712 (Admin)

The council decided that although the claimant was eligible and had a priority need, she had become homeless intentionally. It provided hostel accommodation in performance of its duty under Housing Act 1996 section 190. The claimant sought a review and the accommodation was continued pending review. The review upheld the finding of intentional homelessness and the claimant appealed to the county court. The council decided to exercise its discretion to accommodate pending the appeal and continued the hostel accommodation. The appeal was delayed awaiting the outcome of an appeal in another case but by September 2009 was expected to be heard within a further 12 to 15 weeks. The claimant asked to be moved immediately to other accommodation on the grounds that while the hostel might have been suitable accommodation for a few weeks it was no longer suitable accommodation. The council declined and the claimant sought judicial review. The High Court refused permission to claim judicial review. There had been no arguable error of law by the council.

Housing Law Articles

Casualty of Law

(Legal aid in housing cases)

J. Marks

[2009] November/December ROOF p40

Extinguishing Fire Risks

R. Brooks

[2009] 16 October Inside Housing p29

(for a copy, [click here](#))

Meaning of "residing with" and succession rights

M. Pawlowski

[2009] 12 Journal of Housing Law 108

A tweak in time

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(Reforming mortgage law)
P. McAuslan
[2009] November/December ROOF p41

Offence taken
(note on *M v Hackney LBC*)
S. Greenwood
[2009] 16 October Inside Housing p29
(for a copy, [click here](#))

The Government response to the Rugg review
C. Hunter
[2009] 12 Journal of Housing Law 97

The burning question
(Homelessness reviews)
S. Povey
[2009] November/December ROOF p42

Housing benefit squeezed
(HB for supported housing)
N. Goode
[2009] 30 October Inside Housing p33
(for a copy, [click here](#))

Housing associations: "sufficient public flavour"
C. Handy and J. Alder
[2009] 12 Journal of Housing Law 101

Opportunity knocks
(tenant use of the Sustainable Communities Act 2007))
J. Peacock
[2009] November/December ROOF p47

Weaver: a step too far
R. Brown and D. Cowan
[2009] 12 Journal of Housing Law 105

Housing Law Consultations

Closing on 26 November 2009

The consultation exercise on proposed changes to the Approved Document for Part J (Combustion appliances and fuel storage systems) of the Building Regulations. For a copy of the consultation paper, [click here](#).

Housing Law Events

17-19 November 2009
Lettings & Homelessness
A CIH Conference.
For the details, [click here](#).

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18 November 2009

Housing Law Update

The HLPAs meeting

For the details, [click here](#).

27 November 2009

Annual Conference

Social Housing Law Association

For the details, [click here](#).

30 November 2009

Crime & Anti-Social Behavior

A NHC Conference in Harrogate

For the details, [click here](#).

2 December 2009

Residential Landlord & Tenant

A Professional Conferences event

For the details, [click here](#).

4 December 2009

Social Housing Management Conference 2009

A Lime Legal event (Manchester).

For the details, [click here](#).

9 December 2009

Social Housing Management Conference 2009

A Lime Legal event (London).

For the details, [click here](#).

15 December 2009

The Housing Law Conference

An HLPAs event

For the details, [click here](#).

16 December 2009

Housing Disrepair

A LAG training day.

For the details, [click here](#).