

# Housing law bulletin

## Issue 166 - 1st February 2010



**Garden Court Chambers**  
57 - 60 Lincoln's Inn Fields  
London WC2A 3LJ  
Tel 020 7993 7600  
Fax 020 7993 7700

## The Latest Housing Law News

**Goodbye "secure" and "assured" in social housing?** In the light of the Law Commission's Renting Homes report (2006) there should now be the opportunity for a "review of the legislative framework for tenure law for social housing". For more on that and for other views expressed by the Welsh Assembly Government on a range of housing issues see their Memorandum in support of a draft Sustainable Homes Legislative Competence Order. For a copy [click here](#). The draft Order has been approved by the UK Cabinet and, if passed by the Assembly, will enable devolution of statutory responsibility for homelessness, social housing allocation, security of tenure in social housing, and many other housing matters. For the draft Order itself, [click here](#). The Assembly's Legislative Committee (No.2) has been taking evidence on the need for the Order. For details of its work, [click here](#). The Parliamentary Welsh Affairs Committee is also reviewing the matter. For the details of its review, [click here](#).

**Housing Pre-action Protocols:** there are currently four officially-approved pre-action protocols which relate to Housing cases (disrepair, rent possession, mortgage possession and judicial review). To access the current versions, [click here](#). The Civil Justice Council is conducting a review of the effectiveness of the Housing Pre-action Protocols. It will make further recommendations for reform and offer advice to the Master of the Rolls and the Civil Procedure Rules Committee. It has invited the Law Society bring together stakeholders with relevant experience to consider how well (or otherwise) the housing protocols are operating. Practitioners with views on the subject should quickly communicate them to their representative organisations (HLPAs, SHLAs, Law Society Housing Committee, etc) so that they can be fed-in to the review process.

**Judicial Review in Housing Cases:** the procedures for judicial review in the Administrative Court are set out in Rule 54 of the Civil Procedure Rules and in the Practice Direction to that rule. The Lead Judge of the Administrative Court has established a working party to bring forward proposed amendments to the Rule and Practice Direction for presentation to the Rules Committee. Practitioners wishing to contribute any ideas to the discussions will need to contact the representative from their interest group who is on the Admin Court Users Group. For example, the HLPAs representative is Robert Latham. For his contact details, HLPAs members should [click here](#).

**Choice-based letting:** on 20 January 2010 the Minister for Housing announced that a further nine sub-regional choice based letting (CBL) schemes had successfully bid for a share of the £500,000 start-up funding available to help local housing authorities in England roll-out CBL. For a list of the nine schemes, [click here](#). Policy recommendations for improvement of aspects of CBL and other allocation schemes are contained in Unlocking the potential of social housing. That report is based on a survey of views of residents of Hyde Housing Group in London and the South East. For a copy, [click here](#). For a briefing on the report prepared for tenants in the North West, [click here](#).

**Homelessness:** on 20 January 2010 the Electoral Commission launched an initiative to encourage the homeless living in temporary accommodation to register so that they are able to vote in the forthcoming general election. For the details, [click here](#). The latest statistics for homelessness in Wales were released on 13 January 2010 covering the period July to September 2009. They indicate falling numbers of homelessness acceptances and reductions in the use of temporary accommodation (particularly B&B). For the full details, [click here](#).

**Help to avoid repossession:** on 25 January 2010 the Minister for Housing announced a further

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30 "hotspot" areas would be added to the existing 56 receiving special attention in the drive to get advice to defaulting mortgage borrowers. New advertisements in the local and national press and on local radio in the 86 hotspot areas will encourage use of the repossessions help website at [www.direct.gov.uk/mortgagehelp](http://www.direct.gov.uk/mortgagehelp) and of the National Debtline's free advice line on 0808 808 4000. For a list of all 86 areas, [click here](#). On 26 January 2010 the Financial Services Authority (FSA) set out further proposals to help ensure mortgage borrowers in arrears are treated fairly and, in particular, are not subject to unreasonable further charges and interest when they fall behind with payments. The proposals are open for consultation until 30 April 2010. For a copy of the consultation paper, [click here](#).

**Tenants of mortgage borrowers:** tenants facing eviction caused by their landlord's mortgage default will be helped if the Mortgage Repossessions (Protection of Tenants etc) Bill is passed. It will enable a court to suspend a possession order, or execution of the order, for two months on a tenant's application. The Bill had its second reading in the House of Commons on 29 January 2010. For a copy, [click here](#). Although it is a Private Member's Bill, the Government has announced that it will support the Bill. For a copy of that announcement, [click here](#). The Housing (Scotland) Bill presently before the Scottish Parliament contains a provision which will give Ministers power to order the enlargement of the civil courts' powers to help such tenants. For details of that Bill, [click here](#).

**Private sector renting:** on 27 January 2010 the Government launched a consultation exercise on new draft guidance on the operation of Housing Act 2004, Parts 2, 3 and 4 which are concerned with licensing of Houses in Multiple Occupation (HMOs), selective licensing of areas of private rented housing, and management powers to take over the running of private lets. For a copy of the draft, [click here](#). Responses are sought by 12 March 2010. Research also published in January 2010 describes the implementation of the statutory provisions in Parts 2, 3 and 4 and indicates that by June 2008 over 22,600 applications for HMO licences had been made. For a copy of the research report, [click here](#). Local authorities wishing to introduce additional HMO licensing and selective licensing schemes for privately rented properties under the Housing Act 2004 currently require the approval of the Secretary of State. A new paper seeks views on the introduction of a general consent to enable authorities to introduce such schemes without seeking such approval. For a copy of that paper, [click here](#). The Government has also published a summary of responses to its recent consultation on planning controls relating to HMOs. The large majority of those who responded supported a change to the Use Classes Order, which defines how a property can be legally used, and the introduction of a definition of what constitutes a HMO. For a copy of that summary, [click here](#). The Government has announced an intention to act on the issues raised. For a copy of the announcement, [click here](#). In the same announcement, the Government indicated that detailed work is underway on the creation of the National Landlords Register.

**Regulating council housing:** in January 2010 the Government laid the draft statutory instruments necessary to give the Tenant Services Authority jurisdiction to regulate standards in council housing in England from 1 April 2010. For the draft Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010, [click here](#). For the draft Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010, [click here](#). Measures to create a new social housing regulator for Scotland are set out in the Housing (Scotland) Bill presently before the Scottish Parliament. For details of that Bill, [click here](#).

**Inspecting Strategic Housing Policies:** the Housing Inspectorate at the Audit Commission is responsible for inspecting and assessing local authority housing services. On 18 January 2010 it announced a new yardstick against which every council's strategic housing policy and practice would be assessed. For a copy of the new Strategic Approach to Housing Key Line of

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Inquiry (January 2010), which will be used for inspections from 12 April 2010, [click here](#).

**Housing Resources:** advisers seeking a ready source of statutes, cases and other materials relating to Housing law may find it useful to have access to the resources assembled by Garden Court Chambers. To access these resources, free of charge, [click here](#).

**Low Cost Home Ownership:** on 20 January 2010 the Government published a new guide for local authority landlords who are operating, or are considering operating, the Social Homebuy scheme. The guide aims to provide information on the criteria for, and administration of, the scheme and to address the most frequently asked questions. For a copy, [click here](#). On 26 January 2010 the Government announced a new low cost home ownership scheme enabling members of the armed forces to part-buy their first homes. For a copy of the announcement of the Armed Forces Home Ownership Scheme, [click here](#). The £20m pilot scheme will be run by Swaythling Housing Society but is only available to service personnel with between 4-6 years continuous service who are otherwise unable to afford a suitable home. For the website outlining the new arrangements, [click here](#).

**Decent Housing:** on 21 January 2010 the National Audit Office published a report on the Decent Homes Programme that was designed to ensure that all social sector housing would be of a decent standard by the end of this year. The report indicates that 100% decency will not be achieved until 2018/19 and that 305,000 social sector homes are still non-decent. For a copy of the report, or a summary of it, [click here](#).

## The Latest Housing Case Law

29 January 2010

### **Kalas v Farmer**

[2010] EWCA Civ, B5/2009/0653. Noted on LAWTEL.

The landlord of an assured tenant entered the tenant's home. In his absence, he cleared the premises and sold them with vacant possession. He claimed that he believed that the tenant had moved-out and surrendered the tenancy. The judge rejected that account and awarded damages assessed under Housing Act 1988 sections 27-28. The landlord was also ordered to pay indemnity costs. The Court of Appeal rejected an appeal. The judge had been entitled to make those orders on the evidence.

28 January 2010

### **R(Savage) v Hillingdon LBC**

[2009] EWHC Admin 88, [2010] All ER (D) 198 (Jan)

The claimant applied to the council for homelessness assistance. It decided that she had become homeless intentionally. It provided her with temporary accommodation but declined to help her with a deposit for private sector accommodation or under its Finder's Fee (FF) scheme (by which private landlords received a flat rate fee for taking a homeless household). The High Court held that the council had included a flexible provision in the FF scheme to enable it to help in cases of intentional homelessness where the particular facts justified such help. The council had wrongly failed to consider whether the circumstances of the claimant should, exceptionally, justify her being helped under that scheme.

28 January 2010

### **Lynch v Kirby**

[2010] EWHC QB, CC/2009/PTA/0573

A landlord agreed to let a room to a tenant if he could obtain housing benefit (HB). The tenant moved-in on 20 February 1997 and claimed benefit. HB was awarded some six weeks later

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and backdated to the date of occupation. If the tenancy started before 28 February 1997 it was assured. If later, it was an assured shorthold. The landlord claimed that the making of a tenancy had been conditional upon the award of HB and that had occurred after 28 February 1997. The High Court held that the tenancy had been made on 20 February 1997.

27 January 2010

### **R(Osei) v Newham LBC**

[2010] EWHC Admin [2010] All ER (D) 168 (Jan)

The claimant was a secure tenant in fear of domestic violence. She applied under the council's allocation scheme for an out-of-borough transfer. The council indicated that her application would have higher priority (in accordance with the scheme) if she cleared former tenant arrears that she owed. The High Court dismissed a claim for judicial review of that decision. Although some of the council's documents had suggested that a "no debts" policy was being rigidly applied, the application had in fact been carefully considered under the provisions of the scheme and the decision was adequately reasoned.

21 January 2010

### **Complaint Against Hammersmith & Fulham LBC**

Local Government Ombudsman Report 09 001 262

The complainant left her private rented accommodation following an incident of domestic violence. She was eight months pregnant. On her application for assistance with accommodation, council officers encouraged her to find private rented accommodation. They did not explain that she could make a homelessness application. She was not provided with emergency accommodation when she became homeless. The Ombudsman found maladministration causing injustice. The standard of record-keeping by housing officers was so poor and fell so far below acceptable standards that in itself it amounted to maladministration. The council applied too strict a test when deciding whether it should provide temporary accommodation by insisting she provide proof of homelessness first. The council also failed to follow its own procedures for referring victims of domestic violence to a specialist advocate for support and advice. The liaison and exchange of information between officers was also ineffective. The Ombudsman recommended compensation and a review of systems, procedures and forms. For a copy of the full report, [click here](#).

21 January 2010

### **McHale v Cadogan**

[2010] EWCA Civ 14

Notice was given, on behalf of lessees of three flats in a block of six, seeking to acquire the freehold. The Court of Appeal was asked to resolve two issues of arising from a disputed valuation of the "marriage" value of the leasehold and freehold. One issue was adjourned for later determination. This judgment concerns the effect of one of the flats having been provided for use by a resident caretaker. For the full judgment, [click here](#).

19 January 2010

### **R(FL) v Lambeth LBC**

[2010] EWHC 49 (Admin)

The claimant, aged 17, sought accommodation from the council claiming that she was owed a duty under Children Act 1989 section 20 because she could no longer live in her mother's home. The council accepted that she was a "child in need" but decided that as the mother was ready and willing to accommodate her, no duty was owed under section 20. The High Court dismissed a claim for judicial review of that decision. Whether a child requires accommodation under section 20 is a matter for a value judgment by a council. The council had been entitled to reach the decision it had. For the full judgment, [click here](#).

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18 January 2010

### **R (Bauer-Czarnomski) v Ealing LBC**

[2010] EWHC Admin 130

The council operated a choice based letting scheme with bands. The claimant applied for an allocation but was only placed in Band D (the lowest band). He claimed that, for medical reasons, he should be placed in a higher band and submitted a report from his doctor. The council commissioned medical advice that confirmed the GP's view that an adverse health effect arose in the current accommodation. However, the medical adviser went on to advise about what priority should be afforded and a further medical opinion expressed the view that others were in more unpleasant situations. The council relied upon the reports and confirmed Band D status. The High Court quashed that decision. The council had relied on the advisers' expressions of opinion which went well beyond a true 'medical advice' remit. The claimant should have been in at least Band C if not Band B.

## Housing Law Articles

### **Recent Developments in Housing Law**

The authors of this series of articles in Legal Action magazine have opened a discussion about its future. To read and contribute to that debate, [click here](#).

### **Under Occupation**

(Commentary on DEFRA v Meier)

M. Dowden

[2010] 160 New Law Journal 93

### **A Fine Distinction**

(Commentary on Ali v Birmingham CC)

N. Dobson

[2010] 160 New Law Journal 133

## Housing Law Books

### **Repairs: tenants' rights**

The new edition of Repairs: tenants' rights by Jan Luba QC, Deirdre Forster and Beatrice Prevatt has been published. Price: £45.00. For full details, [click here](#).

### **Housing Allocation and Homelessness - new edition**

The new edition of Housing Allocation and Homelessness: Law and Practice by Jan Luba QC and Liz Davies can now be ordered. Price: £50.00. For full details, [click here](#).

### **Housing Law Handbook - 10% off**

The Housing Law Handbook, edited by Stephen Cottle and written by other members of the Garden Court Housing Team, provides a first port of call for lawyers and advisors dealing with housing. The book covers possession proceedings, homelessness rights, the allocation of social housing, and other routes into housing. To claim your 10% discount, order online and quote promotion code GCTHLH when prompted.

## Housing Law Consultations

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### **[This week] Closing on 4 February 2010**

The Home Office consultation on support arrangements for asylum seekers. For a copy of the consultation paper, [click here](#).

### **[This week] Closing on 5 February 2010**

The TSA consultation on all the new National Standards for Social Housing Management. For copies of the consultation paper, [click here](#).

### **Closing on 15 February 2010**

The Treasury consultation on further measures to protect mortgage borrowers. For the consultation paper, [click here](#).

### **Closing on 22 February 2010**

The DWP consultation exercise on proposals for reform of the Housing Benefit scheme. For a copy of the consultation paper, [click here](#).

### **Closing on 12 March 2010**

The CLG consultation on draft guidance to Parts 2, 3 and 4 of the Housing Act 2004 which explains the definition of a House in Multiple Occupation (HMO) for licensing purposes, the effect of the licensing provisions in Parts 2 and 3 of the Act and the circumstances in which management orders can be made under Part 4. For a copy of the draft, [click here](#).

### **Closing on 12 March 2010**

The CLG consultation on possible general consents for HMO licensing and selective licensing by local authorities. For a copy of the consultation paper, [click here](#).

### **Closing on 24 March 2010**

The CLG consultation on changes to the Code for Sustainable Homes. For a copy of the consultation paper, [click here](#).

### **Closing on 28 March 2010**

The Ministry of Justice consultation on a proposal to require mortgage lenders to obtain a court order or the consent of the borrower before repossessing and selling residential owner-occupied homes. For a copy of the consultation paper, [click here](#).

### **Closing on 30 April 2010**

The FSA consultation on proposals to help ensure that mortgage borrowers in arrears are treated fairly. For a copy of the consultation papers, [click here](#).

## Housing Law Events this Month

**[This week]** 4 February 2010

### **Disrepair: Recent Developments & Good Practice**

A Garden Court evening seminar

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

8 February 2010

### **Proposals for New Housing Legislation**

A half-day consultation event in Belfast.

For the details, contact [etain@housingrights.org.uk](mailto:etain@housingrights.org.uk)

12 February 2010

### **Future Shape of Housing & Mortgage Markets in England**

A lunchtime Oxford Housing seminar

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

22 February 2010

### **Defending Possession Proceedings**

A LAG Training Day in London

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

25 February 2010

### **Public Sector Housing Law**

A Jordans conference in London

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

25 February 2010

### **Public Law and Housing**

A LAG Training Day in London

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