beyond those set out on the summons. Although claiming an additional £20 which was not included on the summons, no basis was given in law for claiming this sum. However, the principle that a council is not empowered to impose further costs generated of its own volition is established in the following decision.

■ **Thurrock Council**
09 006 694,
3 February 2010
Here the council served a statutory demand for arrears of £1,316.57 and a further £400 for administrative costs for settling the debt. The complainant disputed the £400 fee. After a complaint failed to resolve the issue, an investigation took place by the Ombudsman who ruled that the council had no power to charge a £400 fee since neither the Insolvency Rules nor any other legislation permitted recovery of fees for a statutory demand or an arrangement unless a bankruptcy order was made. The Ombudsman found maladministration.

The council accepted that it was not entitled to charge the fee and ceased doing so in similar cases. In respect of the complainant, it refunded the £400, restored the right to pay in instalments, waiving an additional £42.50 in bailiff fees incurred and making a £40 goodwill payment in compensation.

1 Available at: www.valuationtribunal.gov.uk/Libraries/Publications/Practice_Statement_-_A1_Extension_of_times.sflb.ashx.
2 Available at: www.valuationtribunal.gov.uk/Libraries/Publications/Practice_Statement_-_C1_reviewing_and_setting_aside_decisions.sflb.ashx.
3 Available at: www.valuationtribunal.gov.uk/Libraries/Publications/Practice_Statement_-_C2_Applications_for_reinstatement_following_striking_out_and_withdrawal_and_lifting_of_a_bar.sflb.ashx.

Alan Murdie is a barrister, who co-founded the Poll Tax Legal Group in 1990. He has been involved with many test cases concerning the community charge and has wide experience of liability order applications in the magistrates' courts. He is co-author, with Ian Wise, of *Enforcement of Local Taxation: an adviser's guide to non-payment of council tax and the poll tax*, LAG, 2000, £12.50. The author may be contacted at Zacchaeus 2000 Trust, 34 Grosvenor Gardens, London, SW1W 0DH.

Recent developments in housing law

Jan Luba QC and **Nic Madge** continue their monthly series. They would like to hear of any cases in the higher or lower courts relevant to housing. In addition, comments from readers are warmly welcomed.

POLITICS AND LEGISLATION

Housing provisions in the Localism Bill

In March 2011, the House of Commons Public Bill Committee completed its scrutiny of the housing provisions in Part 6 of the Localism Bill. The housing aspects were discussed in detail on 1, 3 and 8 March. The UK parliament website provides access to all written memoranda received by the committee in response to its call for evidence as well as the *Hansard* records of the committee's debates.[1] Impact assessments are also now available on all of the main housing provisions, covering homelessness, housing allocation, security of tenure, social housing regulation and housing ombudsmen.[2] Just before the Public Bill Committee reached its consideration of the housing provisions, the UK coalition government published a summary of the responses to its consultation paper, *Local decisions: a fairer future for social housing*.[3] The ministerial statement accompanying publication of the summary indicated that the government would press ahead with the housing proposals in the bill.[4] The bill's report stage in the House of Commons will take place later in spring 2011. See also page 5 of this issue.

Statutory housing duties

The Department for Communities and Local Government (DCLG) has identified over 218 statutory duties imposed on local authorities by legislation within its policy area, which includes housing. The scope of the duties and the extent to which they can be revised or abolished is the subject of an informal consultation exercise closing on 25 April 2011: see *Review of statutory duties placed on local government* (DCLG, March 2011).[5] See also page 4 of this issue.

Affordable rent tenancies

Details of these new forms of social housing tenancy, which will start to be granted by social landlords later this year, were included in the UK coalition government's Affordable Homes Programme 2011–2015. The material relating to allocation, tenure and rent levels for the new tenancies is set out in chapter 3 of *2011–15 Affordable Homes Programme – framework* (DCLG and Homes & Communities Agency (HCA), February 2011).[6] To facilitate the building of more homes for rent under this new form of tenancy, the government is undertaking a consultation on a technical revision to annex B of *Planning policy statement 3* to make clear that affordable rent tenure falls within the definition of affordable housing for planning purposes: *Planning policy statement 3: planning for housing. Technical change to annex B, affordable housing definition. Consultation* (DCLG, February 2011).[7] The consultation closes on 11 April 2011.

Mortgage regulation and mortgage default

The UK coalition government has announced that it intends:

■ to transfer the regulation of new and existing second charge residential mortgages from the Office of Fair Trading to the Financial Services Authority (FSA);
■ to ensure consumer protections are maintained when a portfolio of mortgages is sold by a mortgage lender to an unregulated firm; and
■ to extend the current regulation of the sale and rent back market to all providers: HM Treasury news release, 06/11, 26 January 2011.[8]

The FSA has been asked to begin work on these measures immediately, ahead of new regulations to be published later in the year.

The latest batch of court statistics on mortgage repossession covers the last quarter of 2010: *Statistics on mortgage and landlord possession actions in the county courts in England and Wales – fourth quarter 2010* (Ministry of Justice (MoJ), 10 February 2011).[9] Figures for repossessions by

members of the Council of Mortgage Lenders (CML) were also updated in February 2011: CML news release, 10 February 2011.[10] The UK coalition government's perspective on all these figures was given in a ministerial statement: DCLG news release, 10 February 2011.[11]

Modelling and forecasting with county court data: regional mortgage possession claims and orders in England and Wales. Summary (Professor John Muellbauer and Dr Janine Aron, DCLG, March 2011) is a study of the determinants of mortgage possession orders.[12] It contains a forecast of the mortgage possession orders likely to be made for England and Wales from 2011 to 2015. It notes that the events of 2006 to 2008 increased the proportion of households with overstretched budgets and over-extended debt relative to their assets. The study found that the most important determinant of court claims and orders was debt to income ratio.

The changes made to Mortgage Rescue Scheme (MRS) arrangements for England for 2011/2012 are explained in a *Delivery partner briefing* issued by the Mortgage Rescue Team at DCLG, jointly with the HCA. A companion leaflet, *Update for households interested in mortgage rescue*, explains the changes for members of the public. The primary change is that those helped to avoid repossession of their homes under the scheme will be offered a maximum of 90 per cent of open market value instead of the present 97 per cent. Neither document has been published in print form but both are available on the free MRS 'Communities of practice for public service' online forum.[13] The latest statistics on the number of households helped through the MRS in England were issued in February 2011: *Mortgage Rescue Scheme monitoring statistics – December quarter 2010* (DCLG, February 2011).[14]

Housing and anti-social behaviour

The current consultation on the reform of tools and powers to address anti-social behaviour closes on 3 May 2011: *More effective responses to anti-social behaviour* (Home Office, February 2011).[15] Those responding have been invited to supply material to assist in preparation of impact assessments and equality impact assessments on the proposed changes.[16]

The latest statistics on anti-social behaviour orders (ASBOs) show that the number of orders granted each year has been falling since 2005 and only 1,671 were made in 2009: *Statistical notice: anti-social behaviour order (ASBO) statistics. England and Wales 2009* (Home Office, January 2011).[17] About 56 per cent of orders are breached and the average number of breaches per ASBO is 4.4.

Specialist advice on ASBOs and on deploying other tools and powers to tackle anti-social behaviour remains available from the Home Office's ASB ActionLine on: 0870 220 2000 or at: ActionLine@bss.org.

Eligibility for housing

The Accession (Immigration and Worker Registration) (Revocation, Savings and Consequential Provisions) Regulations 2011 SI No 544 end the Worker Registration Scheme for A8 European Union nationals. From 1 May 2011, A8 nationals will be free to take employment in the UK, and enjoy a right to reside on that basis, without being subject to the existing requirement to register their employment. Procedures for establishing the eligibility of such nationals for homelessness assistance and social housing will need to be adjusted accordingly.

Homelessness statistics

The latest statistics on the outcomes of homelessness applications to local authorities in England show that the number of applicants accepted as owed a main homelessness duty during October to December 2010 was 15 per cent higher than in the same quarter last year: *Statutory homelessness: December quarter 2010 England* (DCLG, March 2011).[18]

The latest statistics on rough sleeping indicate that over 1,700 people were sleeping on the streets in England alone in autumn 2010: *Rough sleeping statistics England – autumn 2010. Experimental statistics* (DCLG, February 2011).[19]

The UK coalition government has announced that it will provide £81.5m in grants to the main national homelessness advice services and charities helping rough sleepers. Those grants are additional to the £81.5m in annual homelessness grants that is to be distributed to local authorities: DCLG news release, 17 February 2011.[20]

Bankruptcy and housing

The practice of trustees in bankruptcy seeking to sell the family homes of people made bankrupt changed on 1 January 2011. The Official Receiver, as trustee of the bankrupt's estate, will no longer dispose of a bankrupt's interest in a family home until two years and three months after the bankruptcy order is made, unless an offer is received which it is in the creditors' interests to accept: *Changes to the way in which the family home is dealt with* (Official Receiver, December 2010).[21]

Housing allocation

The UK coalition government has published three independent research reports commissioned by the previous administration. They are:

- *Choice-based lettings, potentially disadvantaged groups and accessible housing registers: a positive practice guide* (DCLG, February 2011).[22] The guide provides advice on how to set up and operate choice-based lettings (CBL) schemes to ensure that social housing applicants are not disadvantaged by the proactive nature of CBL.
- *Choice-based lettings, potentially disadvantaged groups and accessible housing registers: a summary guide to positive practice* (DCLG, February 2011).[23] This is a shorter, standalone summary of the above report.
- *Costs and effectiveness of accessible housing registers in a choice-based lettings context* (DCLG, February 2011).[24] This report examines the cost and effectiveness of accessible housing registers in a CBL context.

Private rented sector housing conditions

The quality of housing is poorest in the private rented sector. A new briefing from the Parliamentary Office of Science & Technology examines the impact of poor housing on health and the implications for housing policy: *Housing and health* (Postnote, number 371, January 2011).[25]

The Chartered Institute of Environmental Health (CIEH) has launched a new database designed to give environmental health practitioners access to an unparalleled number of resources on private sector housing. For a description of the resources now available to CIEH members, see CIEH news release, 2 February 2011.[26]

Housing law reform

The *Report on the implementation of Law Commission proposals* (MoJ, January 2011) explains why many of the Law Commission's main proposals on housing law reform are not being taken forward by the UK coalition government.[27] The commission's major report, *Renting homes*, is dismissed in a footnote.

Under-occupied council housing

The 50 councils managing the largest number of social rented homes will each get a share of a new £13m fund to make it easier for those tenants wanting to move from larger, family homes to smaller, more manageable homes to do so: DCLG news release, 20 January 2011.[28] The funding is backed by a dedicated new national action team based at the Chartered Institute of

Housing, available to offer practical support and advice to those councils looking to help tenants who want to move.

Tied accommodation

Rules about the national minimum wage (NMW) allow employers that provide accommodation to count it as a benefit in kind towards payment of the NMW, up to a specified limit. Some higher education institutions and further education colleges provide accommodation to students and employ them part-time. The UK coalition government is undertaking a consultation on whether, and if so how and in what circumstances, such bodies should be excluded from the accommodation offset rules: *National minimum wage: employed students and the accommodation offset. A consultation* (Department for Business, Innovation & Skills, January 2011).[29] The deadline for responses is 12 April 2011.

Housing for young ex-offenders

No fixed abode: the housing struggle for young people leaving custody in England (Barnardo's, February 2011) indicates that children as young as 13 are being released from custody into unsuitable and unsafe housing, leaving them vulnerable to reoffending.[30] It calls for a cross-government action plan to ensure that suitable accommodation for young people leaving custody becomes an issue of urgent priority.

Regulating social landlords

The Tenant Services Authority (TSA) is undertaking a consultation on draft guidance about how it might use four of its statutory enforcement powers: *Guidance on the use of powers under the Housing and Regeneration Act 2008. A statutory consultation* (TSA, February 2011).[31] The four powers relate:

- to a management tender;
- to a management transfer;
- to the appointment of an adviser to a local authority provider; and
- to the censure of a local authority employee or agent during or following an inquiry.

These four powers were not consulted on during the 2009/10 consultation round. Responses should be submitted by 4 May 2011.

Security of tenure for Gypsies and Travellers

Housing and Regeneration Act (H&RA) 2008 s318 amends Mobile Homes Act 1983 s5(1) so as to bring local authority caravan sites providing accommodation for Gypsies and Travellers within the definition of 'protected sites' for the purposes of the 1983 Act. It is to be brought into force with effect from 30 April 2011. At the time of going to press, the Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) Order 2011 was still in draft form.

PUBLIC SECTOR

Possession claims and article 8

■ Hounslow LBC v Powell; Leeds City Council v Hall; Birmingham City Council v Frisby

[2011] UKSC 8,
23 February 2011,
(2011) Times 1 March,
[2011] 2 WLR 287

Following *Manchester City Council v Pinnock* [2010] UKSC 45; [2010] 3 WLR 1441; December 2010 *Legal Action* 34, the Supreme Court considered whether and to what extent introductory tenants and licensees occupying premises provided under the homelessness regime in Housing Act (HA) 1996 Part 7 can rely on article 8 of the European Convention on Human Rights as a defence to a possession claim. Lords Hope and Phillips delivered concurring speeches, with which the other five Supreme Court justices agreed.

Lord Hope noted that in *Pinnock* the Supreme Court held that article 8 requires courts asked to make possession orders under HA 1996 s143D(2) against demoted tenants to have the power to consider whether the order would be necessary in a democratic society. He held that 'this proposition applies to all cases where a local authority seeks possession in respect of a property that constitutes a person's home for the purposes of article 8' (para 3). 'There is a sufficient similarity between section 127(2) and section 143D(2) to apply the reasoning in *Pinnock* to introductory tenancies also' (para 56). Lord Phillips could 'see no principled basis for distinguishing between the two' (para 79). However, the obligation to consider proportionality only arises if the property constitutes the occupant's home – the individual has to show sufficient and continuing links with a place to show that it is his/her home for the purposes of article 8, but '[i]n most cases it can be taken for granted that a claim by a person who is in lawful occupation to remain in possession will attract the protection of article 8' (Lord Hope at para 33). However:

> *The court will only have to consider whether the making of a possession order is proportionate if the issue has been raised by the occupier and it has crossed the high threshold of being seriously arguable. The question will then be whether making an order for the occupier's eviction is a proportionate means of achieving a legitimate aim* (para 33).

A 'court should initially consider [that question] summarily and if it is satisfied that, even if the facts relied on are made out, the point would not succeed, it should be dismissed' (para 34 and Lord Phillips at para 92). '[T]he threshold for raising an arguable case on proportionality [is] a high one which would succeed in only a small proportion of cases' (para 35 and Lord Phillips at para 92). '[T]here will be no need, in the overwhelming majority of cases, for the local authority to explain and justify its reasons for seeking a possession order' (para 37 and Lord Phillips at para 88).

These conclusions apply equally to introductory tenancies and licensees under Part 7. Although there is no express provision in Part 7 which empowers a court to refuse to grant a possession order, 'there is nothing in Part VII … which either expressly or by necessary implication *prevents* the court from refusing to make an order for possession if it considers it would not be proportionate to do so' (court's emphasis, para 39). Lord Phillips stated that: '[c]ompatibility [with article 8] can be achieved in the case of [both HA 1996 s127(2) and s143D(2)] by implying the phrase "provided that article 8 is not infringed"' (para 98). In relation to introductory tenancies, Lord Hope stated that the 'court's powers of review can, in an appropriate case, extend to reconsidering for itself the facts found by a local authority, or indeed to considering the facts which have arisen since the issue of proceedings, by hearing evidence and forming its own view' (para 53).

The court also considered HA 1980 s89 which provides that in some cases the date for the giving up of possession shall not in any event be postponed to a date later than six weeks after the making of the order. Notwithstanding what was said in *Pinnock*, the court stated that no evidence had been put before it to show that in practice the maximum period of six weeks was insufficient to meet the needs of cases of exceptional hardship. '[A]ny reading down of the section to enable the court to postpone the execution of an order for possession of a dwelling-house which was not let on a secure tenancy for a longer period than the statutory maximum would go well beyond what [Human Rights Act 1998] section 3(1) … permits' (para 62).

However, section 89 does not:

> *… take away from the court its ordinary powers of case management. It would be perfectly proper for it, for example, to defer*

making the order for possession pending an appeal or to enable proceedings to be brought in the administrative court which might result in a finding that it was not lawful for a possession order to be made (para 63).

The court declined to deal with procedural aspects, stating that matters of this kind were 'more appropriate for a practice direction' (para 49 and Lord Phillips at para 118). However, Lord Phillips did say:

I do not believe that the Strasbourg Court would tolerate a regime under which a person can be deprived of his home by a public authority without being told the reason for this. Nor would I, for it is fundamentally unfair …

I do not suggest that there is any burden on a local authority, in the first instance, to justify to the court its application for a possession order or to plead the reason for seeking this. What I do suggest is that the tenant must be informed of the reason for the authority's action so that he can, if so minded, attempt to raise a proportionality challenge (paras 115 and 116).

■ Manchester City Council v Pinnock (No 2)

[2011] UKSC 6,
9 February 2011,
[2011] 2 WLR 220

Following the decision of the Supreme Court in *Pinnock*, Manchester wanted to enforce the possession order originally made in the county court. However, Mr Pinnock argued that after the date specified in the order for the giving up of possession, he had become a tolerated trespasser and that as a result of the abolition of the status of tolerated trespasser by H&RA s299 and Sch 11, he enjoyed a new tenancy with the same terms as the original tenancy. Manchester argued that the correct approach was to vary the original possession order made by the county court judge, and insert a new date for possession. Mr Pinnock argued that HA 1980 s89(1) prohibited the court from making an order for possession more than six weeks after 22 December 2008 (ie, when the county court judge had first made a possession order).

The Supreme Court held that rule 29 of the Supreme Court Rules 2009 SI No 1603, which provides that, in relation to an appeal, the Supreme Court has all the powers of the court below and may, inter alia, affirm, set aside or vary any order or judgment made or given by that court, was sufficiently broad to allow the court to set aside the possession order made in the county court and to grant a new order for possession. The new order would take effect on 10 March 2011.

Anti-social behaviour

■ Westlea Housing Association v Price

Swindon County Court,
20 and 21 January 2011[32]

Ms Price was a former street worker and recovering heroin addict. In 2007, she was granted an assured tenancy of a flat. In 2010, her landlords began a possession claim relying on HA 1988 Sch 2, Ground 14 (anti-social behaviour). There were 39 allegations about noise, loud music, fighting, late night parties, the use of cannabis and the attendance of police officers at her address. In her defence, Ms Price acknowledged her failings, admitted many of the allegations and promised to improve her behaviour.

District Judge Cronin found proved 17 incidents of noise or music emanating from the property, two of which also involved cannabis, four relating to arguments (probably all domestic violence) and one of nuisance. She noted that there had been a change since November 2010 when Ms Price's violent boyfriend was arrested for assaulting her and imprisoned. She concluded that:

… much of what gives rise to these proceedings has been associated with events in which Miss Price was the victim of domestic violence and I accept that she has problems with alcohol and depression and may have poor social functioning … [The] housing association appears to have given her very little support or guidance despite knowing enough of her background to have been able to recognise that some intervention or social work referral would have been appropriate.

She found that it would not be reasonable to make any form of possession order and that it would not be right to make a demotion order. It appears that she dismissed the possession claim with no order about costs.

Suitable alternative accommodation

■ Watford Community Housing Trust v Personal Representatives of Elizabeth Chalmers

Watford County Court,
14 January 2011[33]

In 1967, Watford BC let a four-bedroom, semi-detached house to William Chalmers. In 1980, by operation of law, he became a secure tenant. In 1996, he died. His wife, Elizabeth Chalmers, automatically succeeded to the secure tenancy under HA 1985 s87. In 2004, she died and there could be no further succession. However, her granddaughter, as executor of the will, remained in the premises paying rent to the local authority.

In 2007, Watford Community Housing Trust became the landlord of the property as a result of a large-scale, voluntary transfer of Watford BC's entire housing stock. It was accepted that, as an occupying personal representative of the former secure tenant, the granddaughter had become the assured tenant of the premises. In January 2009, the housing trust brought a claim for possession, relying on HA 1988 Sch 2, Ground 9 (suitable alternative accommodation). Its motivation was under-occupation and the need for larger family homes in the borough. It was agreed that the granddaughter had resided in the premises from her birth in 1968 and that she suffered from depression and panic attacks. The trust made offers of five other premises which it claimed were suitable alternative accommodation. The granddaughter refused to view any of them. She defended the claim by arguing that she did not want to leave her home of 43 years and none of the properties offered was suitable alternative accommodation.

District Judge Gill dismissed the claim for possession. In relation to the mandatory factors contained in Part III of Schedule 2, he held as follows:

- ■ Proximity to work was fulfilled since the tenant, when she worked, did so normally in central London and the move would only involve her having an extra 100 yards or so to the nearest station.
- ■ In respect of means, the alternative accommodation was cheaper.
- ■ As to the extent, the final property offered was a good and spacious flat. However, it did not have a garden. The green space around the block was not remotely suitable as a replacement for her garden where she could relax and tend to her flowers, plants and where her cats could roam.
- ■ As to the character or environment, the alternative accommodation and her current home were 'chalk and cheese'. The alternative property was on an estate which had been the subject of adverse press reports over the past decade, whereas her current home was in a quiet and secluded corner next to a large park. She had a front and back garden.

After carrying out a balancing exercise he found that the alternative property was not suitable and so he did not need to consider whether it was reasonable to make a possession order. He dismissed the claim.

PRIVATE SECTOR

Tenancy deposits

■ Shepley v Yassen

Tameside County Court,
13 January 2011[34]

In November 2007, the tenant was granted a 12-month assured shorthold tenancy. It was renewed for a further 12 months on expiry, and then continued on a periodic basis until February 2010 when the tenant vacated the premises and the tenancy came to an end. The tenant was informed that most of her deposit would be retained and after taking advice sent a letter before action in early April 2010 for a failure to protect the deposit. No response was received. Some three months after the issue of court proceedings, the deposit was finally protected. However, none of the prescribed information was ever served on the tenant.

District Judge Stockton found that the deposit had not been protected at the time the tenancy ended. He followed the same line of reasoning as District Judge Godwin in *Woods v Harrington Haverfordwest County Court*; August 2009 *Legal Action* 35 and held that protection after the end of the tenancy was not acceptable. He distinguished *Draycott v Hannells Letting Limited* [2010] EWHC 217 (QB); [2010] L&TR 12 and *Tiensia v Vision Enterprises Ltd (t/a Universal Estates)* [2010] EWCA Civ 1224, on the basis that they were concerned with deposits that had been protected late but were still placed into schemes before the tenancy ended.

Readers should note that decisions in appeals with similar facts are pending in the High Court (*Potts v Densley* due to be heard the week commencing 7 February 2011) and the Court of Appeal (*Hashemi v Gladehurst* listed for hearing in late March).

Landlord and Tenant Act 1987 s48

■ Zafar v Goddard

Bristol County Court,
15 December 2010[35]

Shortly after entering into an assured shorthold tenancy, Mr Goddard left the property with several months of the minimum period still to run. Mrs Zafar, the landlord, sued for unpaid rent up until the expiry of the tenancy. Mr Goddard defended the claim, arguing that he had never been served with a notice complying with Landlord and Tenant Act (LTA) 1987 s48. He also counterclaimed for breach of repairing obligations. The district judge who heard the claim found as a fact that no valid section 48 notice had been given and so no rent was due. He also dismissed the counterclaim for lack of notice of disrepair. After those proceedings had concluded, Mrs Zafar then served a section 48 notice and began a new claim for the unpaid rent. Mr Goddard argued that no section 48 notice could be served after the tenancy had come to an end because section 48 required notice to be served on a tenant and that once the tenancy had come to an end he was no longer a tenant.

Deputy District Judge Batstone considered the Court of Appeal decisions in *Dallhold v Lindsey* [1994] 1 EGLR 93 and *Rogan v Woodfield* [1995] 1 EGLR 72, but noted that they did not address the specific question before him. He held that the wording of section 48 was plain. It relates to 'landlord' and 'tenant'. It is in keeping with the policy of the LTA 1987, which indicates that notice must be served during the course of the tenancy. He dismissed the claim.

Long leases

Service charges: consultation

■ Daejan Investments Ltd v Benson

[2011] EWCA Civ 38,
28 January 2011

Daejan was the freehold owner of a building containing seven flats. In 2005, major works (costing around £400,000) were required. The Leasehold Valuation Tribunal (LVT) found that there had been a failure to consult the lessees in keeping with LTA 1985 ss20 and 20ZA(1), and the Service Charges (Consultation Requirements) (England) Regulations 2003 SI No 1987. Daejan then applied to dispense with that requirement. The LVT refused that application. Daejan appealed first to the Lands Tribunal and then to the Court of Appeal.

Both dismissed Daejan's appeal. The Court of Appeal held that the financial consequences to the landlord of granting or refusing dispensation were irrelevant to the decision about whether or not to grant dispensation. The nature of the landlord could be a relevant consideration (for example, where the landlord was a lessee-owned or controlled company), but it was not a relevant factor in the present case. There was no suggestion that the LVT had applied a more rigorous standard than was provided for in statute simply because the appellant was a commercial company. Where there had been prejudice to the lessees, this was a factor of the utmost importance. In this case, the LVT had been right to treat the curtailment of the consultation process as a serious failing that had caused prejudice to them. The Court of Appeal suggested that dispensation would be appropriate for cases involving emergency works, where there is only one specialist contractor which could carry out the proposed works, or where there was a minor breach of the consultation regulations which caused no prejudice.

HOUSING ALLOCATION

Public Services Ombudsman for Wales

Complaint

■ Blaenau Gwent CBC

09016302,
24 January 2011

The complainant, a tenant of the council, applied for a transfer in 2004 on the ground that her accommodation was overcrowded. She complained that the council had failed to deal with her application properly. On investigation, the Ombudsman found that the council:

■ for the period from January 2003 to May 2006 had failed to have a lawful allocation scheme;
■ had failed to visit the accommodation to assess overcrowding;
■ in making its paper assessment of the overcrowding, had considered only one of the two overcrowding standards in HA 1985 s326 and had failed to conduct an overcrowding assessment under the Housing Health and Safety Rating System introduced by the HA 2004;
■ had failed to record receipt of and reply promptly to correspondence; and
■ had failed to consider whether the accommodation might no longer be 'reasonable ... to continue to occupy': HA 1996 s175.

The Ombudsman recommended an apology, compensation, staff training and a proper assessment of the complainant's application.

HOMELESSNESS

Applications

Local Government Ombudsman

Complaints

■ Richmond upon Thames LBC

10 009 069,
10 February 2011

The complainant ('Miss Browning') was a single pregnant woman who had been excluded from her parental home. When she sought help with obtaining accommodation from the council, by visiting its offices, she was told by a housing options officer to apply to a different council (Wandsworth LBC). She followed that advice, applied to Wandsworth LBC and it accepted that the main housing duty was owed to her: HA 1996 s193. She complained that the 'advice' given by the council's officer had been inappropriate and that Richmond itself should have treated her as having made a homelessness application because she had asked it for help in obtaining accommodation and had given

Richmond's officer reason to believe that she may have been homeless (or threatened with homelessness): HA 1996 s183.

In response to the Ombudsman's investigation, the council accepted that such advice should never have been given by its officer. The Ombudsman said:

> *... the council should have accepted that this visit triggered its duty to take a homelessness application and make enquiries. It was wrong for the council to evade its duty by telling her to apply to Wandsworth instead. I have concluded that the council should have taken an application and that it was wrong to turn Miss Browning away. Because no application was taken, no enquiries were made and no interim accommodation was offered. Nor was Miss Browning offered any other advice or assistance. The notes recording Miss Browning's visit to the Housing Options Service are poor. The handling of this case was careless, and there seems to have been a deliberate attempt to prevent access to housing assistance* (para 37).

The council agreed to pay up to £500 removal expenses under a reciprocal transfer arrangement to move the complainant back from Wandsworth to Richmond. It also agreed to pay a further £500 in compensation.

■ Islington LBC

10 013 025,
24 February 2011[36]

The complainant, her partner and her child were staying with friends who asked them to leave by 25 March 2010. On telephoning the council's Housing Advice Centre (HAC) on 19 March, she was told that no appointments were available until 29 March. On that date she was interviewed by two housing options staff. She sought assistance with accommodation but was told that no temporary accommodation could be made available. She was asked to sign a Private Sector Opportunities Scheme application form on which the council officers recorded that she was eligible for assistance, homeless and had a priority need. She was not treated as having made an application under HA 1996 Part 7 (homelessness) and had to find her own temporary accommodation, staying with other friends. On 8 April 2010, having taken advice from Shelter, she returned to the HAC. A homelessness application was then taken and she was provided with interim accommodation pending a decision on the application: HA 1996 s188.

The Ombudsman's investigator found that the trigger for a homelessness application, that the council had reason to believe that the applicant may be homeless (s183), was satisfied at the interview on 29 March. Furthermore, as the council also had reason to believe that the complainant may be in priority need and eligible for assistance on 29 March, the trigger for provision of interim accommodation had also been met on that date. A local settlement of £500 compensation for hardship suffered between 29 March and 8 April 2010 was accepted. The Ombudsman's investigator recorded: 'I also asked the council to ensure that frontline officers in the HAC who deal with people who are homeless understand that, when the statutory criteria are met, a Part 7 homelessness application should be taken and investigated in tandem with exploring other housing options.'

Definition of homelessness

■ Hemans v Windsor and Maidenhead RBC

B5/10/1922,
2 March 2011

A married couple and their child lived in Ministry of Defence (MoD) accommodation provided to the husband as a serviceman. He was later discharged from the Army and the MoD gave notice to quit. The wife fled the accommodation with the child and social services helped her find a two-bedroom property let on an assured shorthold tenancy. After she had lived there for some time, the couple reconciled and wished to be reunited. They applied to the council for accommodation. It decided that they were not 'homeless' because they could live in the wife's accommodation.

On appeal, a county court judge found that the accommodation was not available for the husband and that he was homeless: HA 1996 s175. The council appealed. The wife cross-appealed on the ground that it was not reasonable to continue to occupy the accommodation (s175(3)) as it had been provided only as temporary accommodation in a crisis and she needed to return to her job in the council's area.

The Court of Appeal allowed the appeal and the cross-appeal. The judge had erred in holding, on the facts, that the husband could not occupy the wife's property. However, the reviewing officer had not dealt adequately with the question of whether or not it would be reasonable for the wife to remain in occupation of the property.

Suitability of accommodation

■ Thompson v Mendip DC

Taunton County Court,
3 December 2010[37]

Ms Thompson, aged 42, had been a Traveller for more than 20 years, living 'on the road' and in adapted vehicles. In early 2008, she moved on to council land without authority. She was served with a removal direction, but remained in occupation. She applied for homelessness assistance and, in April 2009, the council accepted that it owed the main housing duty: HA 1996 s193(2). In December 2009, it offered conventional housing as temporary accommodation in performance of that duty. Ms Thompson sought a review, contending that such accommodation was unsuitable. On review, the council decided that the accommodation was suitable.

HHJ Bromilow allowed an appeal and quashed the reviewing officer's decision. He held that:

- ■ in the face of medical evidence that a move to conventional accommodation would worsen Ms Thompson's mild to moderate severity depressive illness, the conclusion that the offer was 'suitable' was unreasonable in the *Wednesbury* sense;
- ■ the reviewing officer had failed to make reasonable enquiries into the availability of suitable sites for a Traveller or had ignored available information; and
- ■ the decision on review had been based on a misdirection of law about the impact of *Codona v Mid-Bedfordshire DC* [2004] EWCA Civ 925; [2005] LGR 241. That judgment dealt with urgent situations in which conventional accommodation might be suitable for a Traveller. There were no circumstances of urgency in the making of the offer in the present case.

Release from the main housing duty

■ Nzamy v Brent LBC

[2011] EWCA Civ 283,
26 January 2011

The council owed Mr Nzamy the main housing duty (HA 1996 s193(2)) and had secured temporary accommodation for him. In 2008, he told the council that his wife was in fear of violence at the accommodation and asked to be transferred. It offered alternative temporary accommodation, which he refused. He was then told that if he did not sign a tenancy agreement for the refused accommodation the council would be released from its duty: s193(5). Mr Nzamy sought a review explaining why he had refused the offer, that the circumstances at his present accommodation had improved, and that he wished to stay there until permanent accommodation could be provided. A reviewing officer upheld a decision that the offered accommodation had been suitable. HHJ Higgins dismissed an appeal on the basis that the council had lawfully discharged its duty.

The Court of Appeal allowed a second appeal. Mr Nzamy's letter seeking a review had set the agenda of issues that the reviewing officer had to address. The letter

had to be read in a broad, commonsense way. It was difficult to construe the request to stay in his current accommodation as anything other than a request for a review of the council's prospective decision to discharge its duty, which review had never been carried out. The fact that a final decision on discharge had not been notified until after Mr Nzamy had requested the review was not material, given that such a discharge decision was itself reviewable. The council still needed to undertake a review of the discharge decision.

HOUSING AND CHILDREN

■ R (R O) v East Riding of Yorkshire Council

[2011] EWCA Civ 196,
2 March 2011

The claimant was a boy aged 13 with severe autism. The council was both the local education authority and the children's services authority for his area. The council decided that his needs would best be met by the provision of a full-time placement at a specialist residential school. It took the view that from the date of his placement he ceased to be a looked after child for the purposes of the care and accommodation duties imposed by the Children Act (CA) 1989. Cranston J upheld that decision on the basis that the accommodation at the residential school was provided under duties under the Education Act 1996 rather than the CA 1989.

The Court of Appeal allowed an appeal. It held that the council's view had been mistaken: it 'was, on the acknowledged facts, an erroneous, impossible, irrational and unlawful view' (para 125). The claimant remained a looked after child and would also in due course be covered by the care-leaver provisions of the CA 1989.

■ R (FZ) v Croydon LBC

[2011] EWCA Civ 59,
1 February 2011

The claimant was an unaccompanied asylum-seeking child. The council accepted that it had a duty to accommodate him under CA 1989 s20, but following an age assessment process it decided that he was 17 rather than his claimed age of 15. That decision was upheld on a review. The claimant sought a judicial review but deputy High Court judge James Dingemans QC refused permission to bring the claim.

The Court of Appeal allowed an appeal and granted permission to seek judicial review. Its judgment sets out the proper approach to be taken:

■ by councils, when conducting age assessments for CA 1989 purposes; and
■ by courts, in considering applications for permission to seek judicial review.

1 Visit: http://services.parliament.uk/bills/2010-11/localism.html.
2 Visit: www.communities.gov.uk/localgovernment/decentralisation/localismbill/.
3 Available at: www.communities.gov.uk/publications/housing/localdecisionsresponse.
4 Available at: www.communities.gov.uk/statements/housing/localdecisionssocialhousing.
5 Available at: www.communities.gov.uk/localgovernment/decentralisation/tacklingburdens/reviewstatutoryduties/.
6 Available at: www.homesandcommunities.co.uk/public/documents/Affordable-Homes-Framework.pdf.
7 Available at: www.communities.gov.uk/publications/planningandbuilding/pps3annexconsultation.
8 Available at: www.hm-treasury.gov.uk/press_06_11.htm.
9 Available at: www.justice.gov.uk/publications/docs/mortgage-landlord-possession-stats-q4-10.pdf.
10 Available at: www.cml.org.uk/cml/media/press/2836.
11 Available at: www.communities.gov.uk/news/corporate/1840148.
12 Available at: www.communities.gov.uk/documents/corporate/pdf/1854950.pdf.
13 Visit: www.communities.idea.gov.uk/reg/sp.do.
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29 Available at: www.bis.gov.uk/assets/biscore/employment-matters/docs/n/11-509-national-minimum-wage-accommodation-offset-consultation.pdf.
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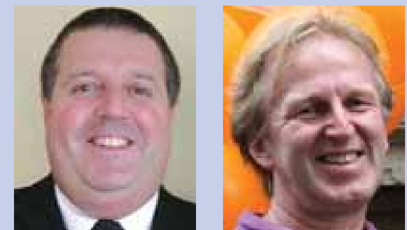
31 Available at: www.tenantservicesauthority.org/server/show/ConWebDoc.21090.
32 Paul Shearer, solicitor, Chippenham.
33 Mandeep Gill, solicitor, ARKrights, Watford and Samuel Waritay, barrister, London.
34 Andrew Mills at Shelter and nearlylegal at: http://nearlylegal.co.uk/blog/.
35 University of Bristol Law Clinic and Robert Brown, barrister, London. See: www.bristollawclinic.co.uk/index_files/news.htm.
36 Sadikur Rahman, Burke Niazi, solicitors, London.
37 David Watkinson, barrister, London and Sharon Baxter, solicitor, Community Law Partnership, Birmingham.



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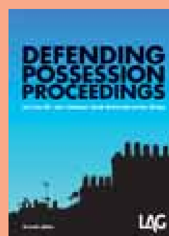

Update available online

Following the Supreme Court's judgment in *Hounslow LBC v Powell; Leeds City Council v Hall; Frisby v Birmingham City Council* [2011] UKSC 8, 23 February 2011 (the cases selected to go to the Supreme Court following *Salford City Council v Mullen* [2010] EWCA Civ 336), Jan Luba QC, Derek McConnell, John Gallagher and Nic Madge, the authors of *Defending Possession Proceedings*, have written an update to the book's chapters on public law and human rights defences.

Defending Possession Proceedings, 7th edition, LAG, £55

■ Download the update in PDF format free of charge at: www.lag.org.uk.

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