

# Recent developments in housing law



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

## POLITICS AND LEGISLATION

### Housing and Regeneration Bill

The Housing and Regeneration Bill had its House of Lords second reading on 28 April 2008.<sup>1</sup> The bill began its House of Lords committee stage on 13 May 2008. There have been developments in relation to several of the issues covered by the bill:

■ **Housing and human rights** The Joint Parliamentary Select Committee on Human Rights (JCHR) invited the government to accept an amendment that would deem provision of social housing to be a 'public function' for the purposes of the Human Rights Act 1998.<sup>2</sup>

■ **Homelessness** The JCHR also invited the government to take the opportunity provided by the bill to repeal Housing Act (HA) 1996 s185(4), the only provision in housing legislation that has been declared incompatible with the European Convention on Human Rights ('the convention') by a domestic court.<sup>3</sup>

■ **Tolerated trespassers** While there has been a broad welcome for the new provisions on tolerated trespassers (see, for example, 'Tolerated trespassers: the final stage?', May 2008 *Legal Action* 12), concern has been expressed about the failure to deal with the situation where a tenancy has been lost before stock transfer. The explanatory notes to the current version of the bill (HL Bill 47) at para 942 suggest that those who were trespassers at the point of any transfer will not get the benefit of the new replacement tenancies.<sup>4</sup>

■ **Ground 8** Amendments to prohibit the use of HA 1988 Sch 2 Ground 8 by registered social landlords and in other cases where there have been housing benefit problems were not successful in the Commons stages of the bill. It is expected that the issues will be raised again in the Lords.

■ **The new regulator** The bill will create a new social housing sector regulator: Office for Tenants and Social Landlords (OFTENANT). Information about that organisation is

outlined in a letter that Kate Barker, chairperson of the Transition Project Board, sent to all stakeholders on 31 March 2008.<sup>5</sup> In May 2008, Communities and Local Government (CLG) announced that Anthony Mayer will be OFTENANT's first chairperson: CLG news release, 13 May 2008. On 8 May 2008, housing minister Caroline Flint MP sought to give encouragement to Housing Corporation (HC) staff in her conference speech to them in the face of the corporation's demise and replacement by the two new organisations: the Homes and Communities Agency and OFTENANT.<sup>6</sup> The National Housing Federation produces a regular *Housing Bill Bulletin* monitoring the bill's progress from a registered social landlord's perspective.<sup>7</sup>

### Housing allocation

The Equality and Human Rights Commission has published a briefing, *Social housing and migrants*, on the interim results of its inquiry into allocations of social housing under HA 1996 Part 6.<sup>8</sup> It shows that allocations are not made disproportionately to applicants from minority ethnic communities. A letter outlining the research findings was also sent to all housing authorities on 9 April 2008.<sup>9</sup>

A new report, *Choice, lettings and homelessness in the South West* (HC, April 2008) examines the prospects for homeless households in securing accommodation when local housing authorities allocate available stock through choice-based letting (CBL) schemes.<sup>10</sup> The report, written by Michael Jones of the University of Cambridge, suggests that CBL schemes generate a significant proportion of lettings to such households.

### Possession claims

On 9 May 2008, the latest statistics on possession claims made by landlords and mortgage lenders were released.<sup>11</sup> The figures cover the first three months of 2008 and show that:

■ 38,688 mortgage possession claims were

issued on a seasonally adjusted basis, 16 per cent higher than in the first quarter of 2007 and 7 per cent higher than in the fourth quarter of 2007.

■ 27,530 mortgage possession orders were made on a seasonally adjusted basis, 17 per cent higher than in the first quarter of 2007 and 9 per cent higher than in the fourth quarter of 2007.

■ 37,221 landlord possession claims were issued using the standard and accelerated possession procedures on a seasonally adjusted basis, 4 per cent higher than in the first quarter of 2007 and the same as the fourth quarter of 2007.

■ 28,503 landlord possession orders were made through the standard and accelerated possession procedures on a seasonally adjusted basis, 10 per cent higher than in the first quarter of 2007 and 2 per cent higher than in the fourth quarter of 2007.

■ 41 per cent of landlord possession orders made through the standard and accelerated possession procedures were suspended compared with 42 per cent in the first quarter of 2007 and 41 per cent in the fourth quarter of 2007.

Also on 9 May, a new £10 million package of measures to support homeowners who may be facing difficulties with their mortgages was announced by Alistair Darling, Chancellor of the Exchequer and housing minister Caroline Flint.<sup>12</sup> That sum includes an additional £9 million extra funding for face-to-face debt advice provided by advice agencies including citizens advice bureaux.

### Homelessness

The junior housing minister Iain Wright MP has outlined the government's strategy for tackling homelessness among young people.<sup>13</sup> In May 2008, at a National Youth Homelessness Scheme conference, he reported that the number of 16/17 year olds in bed and breakfast had been halved and that a new 'targeted youth support' (TYS) arrangement would ensure better service provision for young people approaching housing authorities.

The government has also announced a new action plan to address the continuing problem of rough sleeping: CLG news release, 8 April 2008. Responses to the outline of the action plan given in the discussion paper *Rough sleeping 10 years on: from the streets to independent living and opportunity* were required by 31 May 2008.<sup>14</sup>

### Housing and anti-social behaviour

Figures published by the government in May 2008, and taken from the latest Crime and Disorder Reduction Partnership returns, show a dramatic increase in the use of 'early

intervention measures' (including warnings and anti-social behaviour contracts) and a substantial reduction in the number of anti-social behaviour orders (ASBOs) granted.<sup>15</sup>

However, for landlords needing to take action, the Home Office has issued a new edition of *A guide to anti-social behaviour tools and powers* (May 2008).<sup>16</sup> Over 70 per cent of all social housing stock in England is now covered by landlords who have signed up to the Respect Standard for Housing Management (*Standard Issue*, edition 4, May 2008).<sup>17</sup> All such landlords receive a copy of the magazine *Standard Issue*, which outlines best practice and new initiatives.

### Home Information Packs

On 8 May 2008, the housing minister Caroline Flint MP made a parliamentary statement about a further deferral (from 1 June 2008 to 31 December 2008) in extending the full Home Information Pack (HIP) provisions to leasehold sales: *Hansard HC Written Ministerial Statement*, cols 37WS-39WS.<sup>18</sup> The statement recognises that more needs to be done to ensure that consumers get real benefits from HIPs. For a summary of the measures announced to help consumers, see: CLG news release, 8 May 2008.<sup>19</sup> The deferral has been formally made by the Home Information Pack (Amendment) (No 2) Regulations 2008 SI No 1266.

### Housing advice

The Legal Services Commission (LSC) has entered into a new specialist support services contract for housing law in England. Shelter is providing the new service for housing lawyers and advisers.<sup>20</sup> In Wales, the equivalent LSC service for housing advice has not been established and is being retendered: LSC press release, 3 April 2008.

### Private renting

The new *Private landlords survey* contains the latest hard data on the situation in the private rented sector and has just been published as part of the *English House Condition survey*. CLG, April 2008.<sup>21</sup>

The new arrangements for safeguarding the deposits of assured shorthold tenants introduced by the HA 2004 have been in force since April 2007 and have protected almost £900 million in deposits: CLG news release, 2 April 2008. The level of disputes being resolved by deposit holders is low. One scheme, **mydeposits**, covering 200,000 deposits has only had to deal with 341 disputes. In the most serious of those, the disputes have been resolved with only 11 per cent resulting in the landlord retaining the full deposit.<sup>22</sup>

The government is commissioning a new review aimed at improving conditions in, and

management of, houses in multiple occupation. The terms of reference have been published.<sup>23</sup> CLG news release, 9 April 2008.

### Council housing performance

In April 2008, new national standards to measure performance by local authorities (the new National Indicator Set) took effect. The government has produced guidance on how these standards will affect performance by councils on housing issues in *Housing and planning: the crucial role of the new local performance framework* (CLG, April 2008).<sup>24</sup>

### Housing grants

On 22 May 2008, significant changes to the housing grants regime took effect:

- the maximum disabled facilities grant was increased from £25,000 to £30,000; and
- the matters for which a grant can be awarded have been enlarged. See the Disabled Facilities Grants (Maximum Amounts and Additional Purposes) (England) Order 2008 SI No 1189.

In addition, numerous amendments have been made to the means-testing rules for house renovation grants. See the Housing Renewal Grants (Amendment) (England) Regulations 2008 SI No 1190.

## LOCAL AUTHORITY TENANCIES

### Suspended possession orders and the right to buy

#### ■ Islington LBC v Honeygan-Green

[2008] EWCA Civ 363,  
22 April 2008,  
(2008) Times April 28

Ms Honeygan-Green was a secure tenant. In May 2000, she made an application to buy the property under the right to buy scheme. That application was accepted by Islington, her landlord. In July 2002, Islington began a possession claim based on arrears of rent. In the meantime, completion of the right to buy application was delayed because another tenant had encroached on Ms Honeygan-Green's garden and a wall had collapsed. She served notices of delay under HA 1985 s153A. In October 2002, Islington obtained a suspended possession order in Form N28. It provided that the order was not to be enforced so long as Ms Honeygan-Green paid current rent and £50 per week. She failed to comply with the order. Islington wrote to Ms Honeygan-Green stating that she had become a tolerated trespasser. Ms Honeygan-Green then applied to set aside the possession order. By July 2003, she had paid all arrears and the possession order was discharged. In 2005, further arrears accrued. Islington again began a possession claim and Ms Honeygan-

Green counterclaimed for a mandatory injunction ordering the council to convey the property to her. HHJ Marr-Johnson granted that order on the discharge of all arrears. Nelson J allowed Islington's appeal (see [2007] EWHC 1270 (QB), 25 May 2007; [2007] 4 All ER 818; July 2007 *Legal Action* 31).

The Court of Appeal allowed Ms Honeygan-Green's further appeal. After referring to *Greenwich LBC v Regan* [1996] 28 HLR 469, CA, Keene LJ said that it was implicit in the speeches in *Burrows v Brent LBC* [1996] 1 WLR 1448, HL, that, while a tenant cannot sue for breach of a landlord's covenant while the tenancy is in the state of limbo, after breach of the terms of a suspended possession order, if and when the secure tenancy revives, its covenants likewise revive and are to be treated as having been in existence during the limbo period. As a result, a tenant can bring an action after such revival for breaches of covenant which had taken place during the limbo period (see *Lambeth LBC v Rogers* [1999] 32 HLR 361, CA). In these circumstances, there is no distinction between a tenant's contractual rights under the tenancy and any statutory rights. The starting point, from both *Regan* and *Rogers*, is that the tenancy is to be 'treated as having continued throughout without interruption' and 'a s85(2)(b) order is fully retrospective in effect'. In conclusion, Keene LJ stated:

... the prohibition contained in [s]121(1) [against exercising the right to buy if there is a possession order] relates only to the taking of a step exercising the right to buy while a possession order meeting the terms of that sub-section is in existence. No step or further step in the Part V process can be taken during that time. But if the secure tenancy is revived by a court order before possession is given up, the accrued steps taken before the limbo period ensued revive with the tenancy, subject to any contrary decision of the court. The tenant does not need to begin the process under Part V again by serving a fresh [s]122 notice (para 41).

Keene LJ recognised that the revival of a secure tenancy, accompanied by the revival of an established price under the right to buy scheme, could give the tenant a substantial and perhaps surprising benefit. He noted that the court has a very broad discretion under s85; it may be that any order reviving the secure tenancy could be made conditional on the tenant not pursuing the existing right to buy claim but starting afresh, if the court regarded that as a necessary and just condition in all the circumstances. Pill LJ however expressed 'a reservation as to

whether the exercise of the tenant's statutory right to buy, clearly an important right, can be defeated by the imposition of a condition under [s]85(3)(b)'.

## Anti-social behaviour

### ■ Leeds City Council v Fawcett

*B2/07/2545,*

*2 May 2008*

From 1996, the defendant, who had a drinking problem, was a Leeds City Council tenant. In 2006, he held a bladed instrument to the throat of a neighbour and kicked at a car parked on the estate. He was arrested, pleaded guilty to both charges, and was sentenced to one year in prison. He was released on licence to live with his sister, but was made subject to an interim ASBO which excluded him from the area where he had lived. After a dispute with his sister, he was returned to prison to serve the remainder of his sentence. On his release, Leeds applied for an ASBO excluding him from the area where he had lived previously. A recorder heard evidence from the defendant, and his partner and former neighbours. He also took account of the defendant's prior conduct and character. The recorder made the ASBO excluding him from the area where he had lived previously. The defendant appealed.

The Court of Appeal dismissed the appeal. General principles discouraged the Court of Appeal from interfering with the decision of a judge, who had heard evidence and made evaluative judgments of fact, unless there was an error of law. In this case, the recorder had addressed all relevant factors and could not be said to have taken into account any irrelevant factors when making his order. There was no basis on which it could be said the recorder had erred.

## Stock transfers

### ■ R (Bath) v North Somerset Council

*[2008] EWHC 630 (Admin),*

*4 April 2008*

After consultation, the council entered into a large-scale voluntary transfer to a registered social landlord. The net usable receipt was £22.9m, but the council then decided to cap at £8m the amount of the receipt that would be used towards affordable housing; the remainder would be spread across other spending priorities, including highways.

Sir Robin Auld dismissed a claim for judicial review by a tenant. The spending proposal described in the consultation documentation, which would have involved all receipts being used for housing purposes, was not a clear and unqualified representation to the tenants that the receipt generated would be invested solely in housing projects. It was inherent in the very nature of

the proposal that its detailed implementation might change. There was no basis for finding that the proposal created a legitimate expectation. Nor had the council failed to have regard to its earlier spending commitments.

## Introductory tenancies

### ■ R (Swindells) v Greenwich LBC

*[2008] EWCA Civ 244,*

*16 January 2008*

The claimant's renewed application for permission to appeal against the refusal of her application for judicial review was dismissed (see [2007] EWHC 2131 (Admin), 4 September 2007; November 2007 *Legal Action* 36). Laws LJ said that the conclusions of Nicholas Blake QC, then sitting as a Deputy High Court Judge, that there had been a fair hearing, a fair consideration of the issues and a sufficiently explained decision of the result of the hearing, were 'obviously justified'.

## Tendering for housing services

### ■ Lettings International Ltd v Newham LBC

*[2007] EWCA Civ 1522,*

*21 December 2007*

The claimant, a property management company, submitted a tender for framework contracts for the management and maintenance of private sector leased properties. Its tender was not successful. The company challenged the council's decision. It argued that the criteria published by the council in the invitation to tender did not reveal the whole of the position in relation to the assessment of tenders and that the marking of the tenders was unfair. An injunction was granted, which restrained the council from entering into any contract or framework agreement. The injunction was discharged but the claimant appealed.

The Court of Appeal allowed the appeal. It held that there was a triable issue and restored the injunction until further order.

## PRIVATE SECTOR

### Deposits

#### ■ Stankova v Glassonbury

*Gloucester County Court,*

*10 March 2008<sup>25</sup>*

Ms Stankova and her daughter became assured shorthold tenants in August 2007. They paid a deposit of £600 to their landlord, Mr Glassonbury, before moving in. However, he failed to comply with the requirements of HA 2004 s213 which provides that the landlord must comply with the 'initial requirements' of an authorised tenancy deposit scheme within 14 days. Those requirements include protecting the deposit

and providing the tenant with information relating to the scheme within 14 days.

In November 2007, Mr Glassonbury served a HA 1988 s21 notice and the tenants moved out in February 2008. Ms Stankova made a claim in the county court against Mr Glassonbury for his failure to notify her within 14 days of how he would deal with the deposit and which scheme he was using.

District Judge Singleton expressed his concern that 'it goes against the grain' to make the order sought, but held that the legislation gave the court no discretion. He ordered Mr Glassonbury to pay £1,800 and a £75 court fee.

## Unlawful eviction

### ■ Addison v Croft

*Preston County Court,*

*17 April 2008<sup>26</sup>*

The claimant was an assured shorthold tenant. His landlady decided to sell the property. She entered the premises, without warning, with an estate agent and a prospective buyer. The claimant's girlfriend objected and a heated argument ensued between her and the landlady. That evening the landlady returned to the property and demanded that the claimant and his girlfriend leave.

Two weeks later the front door was kicked in and four men, including the landlady's former boyfriend, entered the property and threw the claimant and his girlfriend out on to the street. He sustained bruising and scratches. The landlady ignored requests to reinstate the claimant. He obtained a without notice injunction, ordering her to readmit him. She complied with the order, but only after the claimant had slept in his van and with various friends for 20 nights. The landlady failed to attend the final hearing.

HJ Appleton made the following awards: ■ £3,000 general damages for the fright and upset caused by the actual eviction and being deprived of his home and possessions for 20 days;

■ £1,000 aggravated damages because of the manner in which the eviction took place; and

■ £1,000 exemplary damages after applying the recommendations set out in *Aggravated, exemplary and restitutionary damages* (Law Commission 247), 16 December 1997.

### ■ Rubio-Manzano v Ace Lettings and Pedomou

*Clerkenwell and Shoreditch County Court,*

*17 April 2008<sup>27</sup>*

From May 2001, Ms Rubio-Manzano was an assured shorthold tenant of a two-bedroom flat on the upper two floors of a three-storey property. The second defendant was a

director of the first defendant but neither was the landlord nor legal owner of the premises.

Throughout the tenancy there was substantial disrepair:

- the radiator in the hallway leaked causing damp staining to the carpet and fungus growth;
- there was a leak to the bathroom ceiling;
- there was an infestation of mice;
- the banister rail was loose and dangerous;
- the windows were in disrepair and draughty;
- the state of decoration was poor; and
- the oven and grill did not work.

The claimant later relied on a schedule prepared by the council's environmental health department. Despite numerous complaints by the tenants, the defendants failed adequately to do more than simple cosmetic improvements which, in general, deteriorated.

In December 2002, the claimant telephoned the first defendant to complain that the radiator had not been repaired. She informed one of the directors of the company that she would withhold the rent until the radiator was fixed. The second defendant then took the telephone to say that he would evict the tenants if they failed to pay. On 15 January 2003, three men arrived at the property, forced their way inside and demanded that the tenants paid £2,500. When one of the tenants tried to telephone the police, one of the men snatched the telephone out of his hand and ripped the line from the wall. As the three men were leaving, one of them kicked the door, knocking over another tenant and the subsequent collision caused the tenant to suffer a two cm abrasion. The police later attended and advised them to change the locks. The tenants reported the harassment to the tenancy relations officer.

On 30 January 2003, the defendants arranged for a letter to be hand delivered by MAS Debt Collecting Service. This stated that the defendants had authorised whoever delivered the letter to enter the premises and seize the tenants' goods. The notice was served by an associate of the second defendant who had used a fictitious business name and address and claimed to be a certificated bailiff. The claimant was so fearful that she left the premises to stay with a friend, and placed most of her belongings into storage.

On 15 February 2003, the claimant returned to the premises to find that the locks had been changed and some of her possessions moved. The police and tenancy relations officer advised them to break back in to remove their goods. The property was then handed over to the defendants.

On 5 December 2005, the first defendant pleaded guilty to two counts of harassment under Protection from Eviction Act 1977 s1(3A), relating to the incidents in January 2003. HHJ Zeidman QC fined the first defendant £2,000 and £200 as well as costs of £4,200. The judge noted that had the directors been charged individually, they would have faced a custodial sentence.

In the county court, District Judge Sterlini awarded damages of £11,496.69 calculated as follows:

- Disrepair (assessed at 30 per cent of rent for one year): £3,500
- General damages for harassment and aggravated damages: £6,000
- Exemplary damages: £2,000
- Special damages: £840.40
- Set off of one month's rent: £996.66
- Interest: £152.95

### Service charges

#### ■ King v Udlaw Ltd

*LRX/186/2006, Lands Tribunal, 20 March 2008*

The leasehold owners and occupiers of three bungalows on a holiday park near St Austell, Cornwall applied to the Leasehold Valuation Tribunal (LVT) for a determination of their liability to pay service charges to their landlords (Landlord and Tenant Act (LTA) 1985 s27A). All the bungalows comprised a lounge, kitchen and bathroom, and two bedrooms. They possessed all the amenities necessary for residential accommodation. All the leases contained a covenant on the lessee's part 'not to use the bungalow site nor the holiday bungalow for any purpose other than that of a holiday bungalow'. The LVT decided that it had no jurisdiction to deal with the application because the bungalows did not constitute 'dwellings' for the purposes of LTA s18. The lessees appealed to the Lands Tribunal.

George Bartlett QC, President of the Lands Tribunal, dismissed the appeal. There is no reason to give to the word 'dwelling', as it applies to LTA ss18–30, a meaning other than the one it ordinarily bears in legislation giving protection to tenants. It imports a requirement that the dwelling should be occupied as a home, and therefore excludes from the operation of ss18–30 holiday bungalows because their use is restricted to providing holiday accommodation.

#### ■ Karhu v Moat Homes Ltd

*London LVT, 25 March 2008*<sup>28</sup>

The applicant was an assured tenant with a variable service charge. She sought a determination about the reasonableness of service charges under LTA s27A. The LVT was 'severely hampered' by the fact that the

landlord – a housing association – failed to comply with directions or to appear.

The LVT considered each service charge item separately. In the absence of full details of the charges, the tribunal made the decisions that it considered appropriate based on the information provided by the applicant and its own knowledge and experience. The LVT allowed the following:

- common parts utilities charges of £2.32 per week;
- cleaning and security costs of £2.36 per week; and
- heating charges of £7 per week.

However, the tribunal reduced the following:

- agents' fees to £4 per week; and
- 'grand total maintenance' to £3 per week.

In the absence of any explanation, the LVT disallowed 'total overheads' of £2.05 and 'peninsular charges' of £2.54.

## HOMELESSNESS

### Advisory services/applications Public Services Ombudsman for Wales

#### Investigation

#### ■ Cardiff County Council

*200600749, 16 April 2008*

The council operated a 'housing advice' scheme under which those approaching it for social housing or homelessness assistance were seen first by housing advisers but only in some cases referred to assessment staff for HA 1996 Part 7 (homelessness) enquiries to be conducted. Mr F was given notice to leave his rented flat held on an assured shorthold tenancy. He was told that his landlord proposed to undertake extensive renovation works on the building containing his flat. He made six approaches to the council for assistance with alternative accommodation but enquiries were not made, no home visit was undertaken and he was not notified of any decision before a possession order had been obtained. Until then, he was left in occupation with works going on around him. He complained that the council had not dealt properly with his applications for housing assistance.

The Public Services Ombudsman for Wales found that there had been undue delay in addressing Mr F's housing problems and that there had been a failure to carry out enquiries as to his home circumstances which could have led to him being accepted as homeless or threatened with homelessness at an earlier stage. As a person in priority need, he could have been offered temporary accommodation while the council conducted its statutory

enquiries. The ombudsman recommended that the council should apologise to Mr F, pay him £1,500 and introduce improved procedural guidance and training for its staff.

### Definition of homelessness

#### ■ Manchester City Council v Moran; Richards v Ipswich BC

[2008] EWCA Civ 378,  
17 April 2008

The claimants were evicted from women's refuges for misconduct. On their subsequent applications for homelessness assistance, reviewing officers decided that they had become homeless intentionally. On appeal, Manchester's decision was quashed by a recorder, but HHJ Holt upheld the Ipswich decision. On second appeals, the women contended that accommodation in women's refuges did not count as accommodation for the purposes of HA 1996 Part 7 (*R v Ealing LBC ex p Sidhu* (1982) 2 HLR 48) so they could not have become homeless intentionally by their loss of such shelter.

The Court of Appeal dismissed that contention and held that:

■ the decision in *Sidhu* could not be reconciled with the subsequent decisions of the House of Lords in *Puhlhofer v Hillingdon LBC* [1986] AC 484 and *R v Brent LBC ex p Awua* [1996] 1 AC 55 and should not be followed;

■ 'accommodation' in HA 1996 Part 7 had its ordinary meaning in the English language and would include accommodation in a women's refuge;

■ women in refuges would, therefore, only be homeless if it was, or became, no longer 'reasonable ... to continue to occupy' the accommodation (s175(3)); and

■ in applying that test, local authorities should consider the matters of general and particular application set out in the judgment. The court allowed the appeal in the Manchester case and dismissed the appeal in the Ipswich case.

### Priority need

#### ■ Wandsworth LBC v Allison

[2008] EWCA Civ 354,  
15 April 2008

On review, the council decided that Mr Allison, a 57-year-old single man with medical problems, was not vulnerable and therefore did not have a 'priority need' (HA 1996 s189(1)(c)). The reviewing officer had medical advice from those assisting Mr Allison and from NowMedical.

On appeal, a recorder quashed the review decision but the Court of Appeal allowed a second appeal by the council. It held that the decision-making process had required the council's officer to review and weigh the

medical evidence before her, including reports that the council itself had commissioned. She had made no error of law and the judge should not have interfered with her decision.

**Comment:** The judgment contains a useful restatement of the approach to be taken in 'medical evidence' vulnerability cases applying the guidance from *R v Camden LBC ex p Pereira* (1999) 31 HLR 317 and *Osmani v Camden LBC* [2005] 37 HLR 22.

### Intentional homelessness

#### ■ Rodrigues v Barking and Dagenham LBC

[2008] EWCA Civ 271,  
25 February 2008

In 2002, Ms Rodrigues left her accommodation in Portugal and after living peripatetically with friends for 18 months in the UK, in 2004 she applied to the council for homelessness assistance. She claimed to have left her home in Portugal as a result of domestic violence. The council commissioned an enquiry agent who reported that:

■ the only police record of domestic violence alleged by Ms Rodrigues against her partner had been made in 1998; and

■ although the landlord recalled that they used to 'fight and argue' every day, the correct interpretation of those words was that the couple had quarrelled.

On review, the council decided that Ms Rodrigues had become homeless intentionally. HHJ Platt dismissed an appeal against that decision.

The Court of Appeal rejected a renewed application for permission to bring a second appeal. The council's enquiries had been reasonable in the circumstances. The council had not been required to reinstruct the enquiry agent to ask the landlord the specific question of whether or not there had been actual domestic violence. There had been no error of law and the proposed second appeal raised no important point of principle.

### Eligibility

#### ■ Harrow LBC v Ibrahim

[2008] EWCA Civ 386,  
21 April 2008<sup>29</sup>

The claimant was a Somali. She was the wife of an unemployed Danish national and was the carer of their Danish children. The couple had separated. On her application for homelessness assistance, the council decided that she was ineligible for assistance as she was subject to immigration control (HA 1996 s185(2)).

A recorder allowed an appeal against that decision on the basis that the children were EU nationals participating in the UK education system and their mother had the right in EU

law to reside here with them: Regulation (EEC) No 1612/68 and *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-7091. On the council's appeal, the Court of Appeal decided that the result of the application of the EU provisions was not clear. The court adjourned the appeal pending the resolution of questions of EU law which it referred to the European Court of Justice. See also page 17 of this issue.

#### ■ Ehiabor v Kensington and Chelsea RLBC

B2/07/2608,  
9 May 2008

On review, the council decided that Ms Ehiabor was eligible for homelessness assistance (she had indefinite leave to remain in the UK) but that she did not have a priority need because the child who was part of her household was a 'person from abroad' who was subject to immigration control and therefore not eligible (HA 1996 s185(4)). The child had been born in the UK but was not a British citizen and had not been born to one.

HHJ Ryland dismissed an appeal. On a second appeal the Court of Appeal held that:

■ although the child had been born here, he was a 'person from abroad' for the purposes of HA 1996 s185;

■ because he did not have a right of abode he required 'leave to remain' even though he had not entered from outside the UK (Immigration Act 1971 s1(2));

■ because he required such leave he was 'subject to immigration control' (Immigration and Asylum Act 1996 s13(2)); and

■ as a result, he was ineligible (HA 1996 s185(2)) and could not confer priority need on the applicant.

- 1 The latest version of the bill is available at: [www.publications.parliament.uk/pa/ld200708/ldbills/047/08047.i-v.html](http://www.publications.parliament.uk/pa/ld200708/ldbills/047/08047.i-v.html).
- 2 *Legislative scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) other bills*, seventeenth report of session 2007/2008, HL paper 95, HC 501, April 2008, pp15–20, available at: [www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/95/95.pdf](http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/95/95.pdf).
- 3 See note 2 at pp23–24.
- 4 Available at: [www.publications.parliament.uk/pa/ld200708/ldbills/047/en/2008047en.pdf](http://www.publications.parliament.uk/pa/ld200708/ldbills/047/en/2008047en.pdf).
- 5 Available at: [www.housingcorp.gov.uk/server/show/ConWebDoc.13577](http://www.housingcorp.gov.uk/server/show/ConWebDoc.13577).
- 6 The text of the speech is available at: [www.communities.gov.uk/speeches/corporate/housingcorporationstaff](http://www.communities.gov.uk/speeches/corporate/housingcorporationstaff).
- 7 Available at: [www.housing.org.uk/Default.aspx?tabid=318&mid=833&ctl=Details&ArticleID=866](http://www.housing.org.uk/Default.aspx?tabid=318&mid=833&ctl=Details&ArticleID=866).
- 8 Available at: [www.equalityhumanrights.com/Documents/EHRC/Social\\_housing\\_background\\_briefing.doc](http://www.equalityhumanrights.com/Documents/EHRC/Social_housing_background_briefing.doc).
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# Leaseholders and the Decent Homes initiative



**Justin Bates** examines the relatively recent problems faced by many leaseholders who have purchased their flats under the Right to Buy scheme and are now facing enormous service charge demands as a result of major works being carried out to their properties ostensibly under, and as a result of, the Decent Homes scheme.

## Introduction

The Right to Buy scheme was introduced in 1980. As is well known, it enabled persons who had been tenants of local housing authorities for a prescribed period of time to buy the houses or flats that they rented (initially three years, reduced to two years in 1984 and raised to five years in 2005). They were entitled to a discount based on the number of years that they had been tenants. By March 2006, England had seen more than 1.7 million sales under the Right to Buy scheme, with London boroughs accounting for around 286,000 (or 16.8 per cent) of the sales.<sup>1</sup>

This article will briefly describe the nature and scale of the problem before looking at what powers local authorities have to reduce the charges and the particular arguments likely to be available to leaseholders who wish to challenge the sums claimed in the Leasehold Valuation Tribunal (LVT). It does not cover what might be termed more 'general' challenges, such as arguments about whether or not the authority has properly complied with the consultation requirements contained in Landlord and Tenant Act (LTA) 1985 s20.<sup>2</sup>

## The problem

Before the introduction of the Right to Buy scheme, leasehold management was a minor aspect of local authorities' activity.<sup>3</sup> It was characterised by a 'hands-off' approach, with the result both that service charge demands were comparatively low (research commissioned by the House of Commons in 1999 suggested that service charge demands rarely exceeded £7,500 per ten-year cycle) and that it was rare for authorities to carry out large-scale remedial works.<sup>4</sup> In addition, local authorities (often because of historic under-investment) were faced with a backlog of disrepair in flatted accommodation.<sup>5</sup>

To combat the disrepair and associated problems in the social rented sector, the

government adopted the 'Decent Homes' programme – a national strategy for the renewal of local authority housing. By 2010, all local authority housing must:

- not contain any 'category 1' hazards, as identified in the Housing Act (HA) 2004;
- be in a reasonable state of repair;
- have reasonably modern facilities and services, including insulation against external noise and adequately sized and designed common parts;
- provide a reasonable degree of thermal comfort.<sup>6</sup>

While not strictly applicable to leasehold properties, in reality most leaseholders will experience works associated with the Decent Homes programme, if only because they are likely to live in mixed tenure properties (where some of the flats have been retained on secure tenancies) or because, under the terms of their lease, they are responsible for the costs of remedial works to the estate of which their individual flat forms part.

The scale of the works required can be quite considerable. In addition, in practice, authorities are using the Decent Homes programme as a justification for carrying out a number of additional major works schemes.<sup>7</sup>

The scale of the service charge demands is incredible. Eighteen London boroughs have issued or expect to issue service charge demands in excess of £20,000 per leaseholder. At least six of those expect to issue some bills which exceed £50,000. A further two boroughs expect to issue bills in the £20,000 region.<sup>8</sup> One local authority expected some 2,200 leaseholders to be affected, each of whom will likely face average bills of £15,000–£20,000.<sup>9</sup> In another London borough, leaseholders who had purchased their properties under the Right to Buy scheme were faced with service charge demands of almost £40,000.<sup>10</sup> There is less data available in respect of authorities outside London, but there are anecdotal reports of



**Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. He is Legal Aid Barrister of the Year 2007. The authors are grateful to the colleagues at notes 25–29 for transcripts or notes relating to these judgments.**