

of planning control. Where a local authority has been granted planning permission, it is subject to the same enforcement procedures as a private developer.⁴

In addition, HA 1996 s167, which sets out those categories of applicants to whom reasonable preference must be given in the allocation of accommodation (including homeless people) also provides that the scheme may also cater for the allocation of particular housing accommodation to persons of a particular description, whether or not they are within the reasonable preference categories: HA 1996 s167(2E)(b).⁵ Therefore, Gypsies and Travellers can come within that provision as well. In conclusion, provided that the local authority has drafted the allocation scheme accordingly, allocating group housing specifically for Gypsies and Travellers is perfectly acceptable.

- 1 The authors wish to thank Derek Hanway of AMT Travellers Centre, Belfast, for providing this information.
- 2 In addition, a secure tenant has the right to buy his/her property subject to a qualifying period of time. Given the current dire lack of Gypsy and Traveller accommodation throughout the UK, it has been suggested that the government may wish to consider (at least for the time being) adding such accommodation to the list of exceptions to the right to buy contained in HA 1985 Sch 5.
- 3 Available at: www.communities.gov.uk/documents/planningandbuilding/pdf/circulargypsytraveller. For a full discussion of 'Gypsy status' in planning law, see Chris Johnson and Marc Willers, editors, *Gypsy and Traveller Law*, LAG, 2nd edn, 2007, £30.
- 4 See Town and Country Planning General Regulations 1992 SI No 1492 reg 2(1) and *Halsbury's Laws of England*, 4th edn reissue, 2005, vol 46(2), para 892.
- 5 The *Code of guidance for local housing authorities: allocation of accommodation*, ODPM, November 2002 gives essential workers as an example at para 5.26.



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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. Comments from readers are warmly welcomed.

POLITICS AND LEGISLATION

Housing and Regeneration Bill

The Housing and Regeneration Bill had its House of Commons third reading and report stage on 31 March 2008. It has now completed its Commons stages and is in the House of Lords. The latest published version of the bill (HL Bill 47) contains 324 clauses and 14 Schedules.¹ It is accompanied by a new set of Explanatory notes² and Communities and Local Government (CLG) has published a revised edition of its *Housing and Regeneration Bill – impact assessment* (April 2008) reviewing all the provisions.³

As a result of government amendments, the bill now contains provisions (at clause 298 and Schedule 10) modifying the Housing Acts (HA) 1985, 1988 and 1996 to prevent the creation of further 'tolerated trespassers', grant retrospective tenancies to those who are already tolerated trespassers, and enable county courts to discharge possession orders after all arrears have been cleared despite earlier breaches of those orders (see also page 12 of this issue). The amendments were as a result of a consultation exercise summarised in *Summary of responses to the consultation on tolerated trespassers* (CLG, April 2008).⁴

In March 2008, the junior housing minister (Iain Wright MP) wrote to Sir George Young, and all other MPs who had served on the Commons committee scrutinising the bill, to explain the government's intentions in relation to the use of mandatory possession Ground 8 (HA 1988 Sch 2) against assured tenants. These include establishment of a working group of key stakeholders to look specifically at the use of Ground 8 by registered social landlords (RSLs).

Premises closure orders

Part 8 of the very lengthy two-volume Criminal Justice and Immigration Bill (HL Bill 41) contains extensive provisions for a new form of premises closure order.⁵ The bill was

scheduled to complete its House of Lords stages in April 2008.

Anti-social behaviour

The government has stepped up its encouragement to social landlords (particularly RSLs) to share intelligence about anti-social behaviour and criminal behaviour with other members of their local crime and disorder reduction partnerships (CDRPs) by publishing new guidance: *Registered social landlords and crime and disorder reduction partnerships: improving engagement* (CLG, February 2008).⁶ It has also urged local authorities to encourage courts to make more individual support orders, alongside anti-social behaviour orders, in order to help protect local communities from anti-social behaviour committed by young people: Home Office press notice, 5 March 2008.⁷

The government has recently published its own *Youth taskforce action plan* designed to increase the effectiveness of measures to address anti-social behaviour by young people and their families.⁸ The plan commits the government to 'ensure anti-social behaviour is tackled through effective use of enforcement powers': Department for Children, Schools and Families press notice, 18 March 2008.⁹

Homelessness

The housing minister (Caroline Flint MP) has launched a further initiative to improve levels of employment among those entering social housing and to tackle 'worklessness': CLG news release, 20 March 2008.¹⁰ A fund of £70m is to be distributed to 69 projects for homeless people 'to ensure that those getting hostel accommodation are also supported and encouraged to find employment'.

On 28 March 2008, the government published *Statutory homelessness in England: the experiences of families and 16–17 year olds: Homelessness research summary number 7*, 2008 (CLG, March 2008).¹¹ The summary presents the findings of a major survey of homeless families and

16–17 year olds. The survey investigated the characteristics of homeless households, the causes of their homelessness, their experience of living in temporary accommodation, and the impact of the homelessness process on their health, welfare and well-being. The full report, running to a substantial 366 pages, has also been published: *Statutory homelessness in England: the experience of families and 16–17 year olds* (CLG, March 2008).¹²

Housing allocation

On 19 March 2008, the latest figures for waiting lists for social housing in every local housing authority in England were published.¹³ The headline figures are given in an answer to a parliamentary question (*Hansard* HC Written Answers col 1199W, 19 March 2008). They show that the numbers waiting have increased from 1,062,180 in 1996 to 1,674,421 in 2007.

The government has set out its latest thinking on choice-based lettings (CBL) in *Fund for the development of regional and sub-regional choice based lettings schemes: guidance for submitting a proposal* (CLG, March 2008).¹⁴ The purpose of the Regional Choice Fund is to support social landlords who are keen to work together to create sub-regional and/or regional CBL schemes.

The Housing Corporation has announced that a renewed attempt will be made to establish a viable national mobility scheme for social housing tenants: Housing Corporation statement 19/08, 10 March 2008.¹⁵ Consultants have been appointed by the Corporation in conjunction with eight housing associations, the London boroughs and ten participating city councils to conduct a feasibility study into a national mobility scheme.

Meanwhile, private providers are continuing to operate the more modest national mobility schemes for social housing tenants, such as 'Seaside and Country Homes' and 'Lawn' (both managed by Housingmoves) and the exchange scheme 'HomeSwapper'.¹⁶

Housing advice

The Chartered Institute of Housing has published *Modernising housing advice* (March 2008).¹⁷ The report looks at how more people can be helped through housing advice to realise their long-term housing aspirations, whether in the private sector or in affordable housing. The report makes the case for a new approach, suggesting that while individuals' housing options have grown, the majority of housing advice services remain based on a broad welfare model and narrowly focused on people in acute housing need.

The government has published *Expanding choice, addressing need* (CLG, March 2008), which outlines a new approach to the provision of housing advice in England.¹⁸ The 'Enhanced Housing Options Approach' that it advocates takes the principles of choice, empowerment, and excellent customer service as its core values. Advisers using this approach provide customers with personalised housing options advice, working in partnership with supporting services, such as providers of employment and benefits advice, to tackle the causes of housing need. The document also contains details of two Trailblazer programmes, and invites bids from interested local authorities.

Service charges

In the first five years from the grant of a lease to a former secure tenant under the right to buy scheme, the amount of service charges that a tenant can be required to pay is restricted to the figure contained in the estimate issued by the landlord at the time of the grant of the lease, plus an inflation allowance. The Housing (Right to Buy) (Service Charges) (Amendment) (England) Order 2008 SI No 533 amends the Housing (Right to Buy) (Service Charges) Order 1986 SI No 2195 from 6 April 2008 to take account of a change in the arrangement for the publication of the inflation statistics.

Local Housing Allowance

The national roll-out of the Local Housing Allowance (LHA) as the new form of housing benefit assistance for private sector tenants began on 7 April 2008. The Housing Benefit (Local Housing Allowance, Information Sharing and Miscellaneous) Amendment Regulations 2008 SI No 586 and the Rent Officers (Housing Benefit Functions) Amendment Order 2008 SI No 587 made a number of amendments to the housing benefit regulations and rent officers orders in advance of the change.

Low-cost home ownership

In the budget for 2008/2009, the Chancellor announced that from April 2008 two new types of equity loans would be available through the government's shared equity scheme Open Market HomeBuy (OMHB): CLG news release, 12 March 2008.¹⁹ The loans scheme allows buyers to shop around for the best mortgage deals and the new loans are simpler to arrange than previous OMHB products. The schemes are to be launched through the Housing Corporation, which has suggested that the new loans will help thousands of key workers and other first time buyers.²⁰ The Housing Corporation's new guide *Open Market HomeBuy – Getting a foot*

on the property ladder sets out the details. The government has made available £3m by way of cash grants of £1,500 to applicants taking up shared equity loans under the OMHB arrangements: CLG news release, 8 April 2008.²¹

Accommodation for asylum-seekers

The destitution tally: an indication of the extent of destitution among asylum seekers and refugees was published in January 2008 and reveals significant levels of destitution.²² The authors found that more than 40 per cent of asylum-seekers and refugees using their services had no access to any means of support, and were street homeless or staying with friends or acquaintances only temporarily.

Home Information Packs

The Home Information Pack (HIP) arrangements were piloted between November 2006 and April 2007 in eight local authority areas. In March 2008, well after the national roll-out of the HIP scheme, the government published the results of its review of the pilots: CLG news release, 6 March 2008.²³

The Home Information Pack (Amendment) Regulations 2008 SI No 572 came into force on 31 March 2008. The effect of the most important of the amendments is to require that for new homes in England a HIP must include information about the sustainability of the property.

The full national roll-out of the HIP programme was completed on 6 April 2008 when the last of the remaining provisions were brought into force by the Housing Act 2004 (Commencement No 11) (England and Wales) Order 2008 SI No 898.

POSSESSION CLAIMS

Disability discrimination

■ *Floyd v S (Equality and Human Rights Commission, intervening)*

[2008] EWCA Civ 201,
18 March 2008

Mrs Floyd granted Mr S an assured tenancy of a flat in 1996. She brought proceedings based on rent arrears. These resulted in a consent order in 2001, requiring S to pay £4,206 within six months. That payment was not made. In 2003, Mrs Floyd increased the rent and further arrears began to accrue. In 2006, she brought new proceedings, relying on HA 1988 Sch 2 Grounds 8, 10 and 11. S admitted the arrears and filed a defence which stated that the rent payments suspended by him 'for due reason amount to £7,920'. He further pleaded that accrued housing benefit due to him and held by the

local authority was in excess of £8,200. At the possession hearing, a duty adviser representing S admitted the arrears, but requested an adjournment under Civil Procedure Rules (CPR) Part 21 to determine whether the defendant had the capacity to conduct proceedings without a litigation friend. He accepted though that any mental health problems did not provide S with a defence. The district judge refused to adjourn. She made a possession order. HHJ Simpkins dismissed S's appeal. S further appealed to the Court of Appeal, arguing that the district judge had erred in refusing to adjourn, that there were 'exceptional circumstances' justifying an adjournment as the arrears could be cleared by housing benefit, and that the district judge should of her own motion have adjourned to allow investigations about whether there was a defence under the Disability Discrimination Act (DDA) 1995.

The Court of Appeal dismissed the appeal. After considering the test set out in *Masterman-Lister v Brutton & Co* [2002] EWCA Civ 1889, [2003] 1 WLR 1511, the Court of Appeal held that there was insufficient material before the district judge to show that she was wrong in exercising her discretion not to grant an adjournment. All that she had was a concern raised by the duty adviser. There was no evidence, or even circumstantial evidence, that S lacked capacity such as would require him to be made a patient. Indeed, having regard to the defence filed and his involvement in the hearing, all the indications were that S had a very good understanding of the issues and that he was able to participate intelligently in the process. Second, following *North British Housing Association Ltd v Matthews* [2004] EWCA Civ 1736, [2005] 1 WLR 3133, the non-receipt of housing benefit cannot of itself amount to an exceptional circumstance justifying an adjournment of a possession claim brought on a mandatory ground. More fundamentally, no application for an adjournment on this ground was made to the district judge, and it was not suggested that the arrears had arisen because of S's incapacity or disability. The duty adviser did not make so much as a passing reference to the 1995 Act. There was nothing in S's defence to suggest that his decision to hold back the rent was in any way referable to his disabilities. The district judge could not be criticised for not exercising a power which she was not invited to exercise and where there was nothing in the papers before her to suggest that it should be. Giving the judgment of the court, Mummery LJ stated:

No doubt any judge will be alert to see that injustice is not suffered by someone in S's

position but there is a limit to what can sensibly or fairly be expected of a district judge hearing a possession list. It is unrealistic to expect a district judge (or any judge) to be alert to the existence of a theoretical defence which has not been even tentatively advanced by either the defendant or his legal representative and which is not even alluded to in any of the evidence or papers before the court.

Finally he stated:

It is not immediately obvious (a) how the 1995 Act could provide a basis for resisting a claim for possession on a statutory mandatory ground or (b) how a landlord would be unlawfully discriminating against a disabled tenant by taking steps to enforce his statutory right to a possession order for admitted non-payment of rent for 132 weeks. The 1995 Act was enacted to provide remedies for disabled people at the receiving end of unlawful discrimination. It was not aimed at protecting them from lawful litigation or at supplying them with a defence to breach of a civil law obligation. Like other anti-discrimination legislation, the 1995 Act created statutory causes of action for unlawful discrimination in many areas, such as employment, the provision of goods, facilities and services and the disposal or management of premises, but it did not create any special disability defence to the lawful claims of others, such as a landlord's claim for possession of premises for arrears of rent. The legislation is not about disability per se: it is about unlawful acts of discrimination on a prohibited ground, ie, unjustified less favourable treatment for a reason which relates to the disabled person's disability.

It was not arguable in the circumstances of this case that the 1995 Act provided a defence to the claim for possession. A finding that the reason for the proceedings related to the disability of S was 'impossible'. S never suggested that his disability was a reason for the landlord's possession proceedings or that his non-payment of the rent related to a disability from which he suffered. On his own account he suspended payment of rent because of the landlord's attempts to increase the rent.

■ **Croydon LBC v Wright**

(2007) 6 December, HC

Croydon provided Ms Wright with a tenancy under its homelessness functions under HA 1996 Part 7. The tenancy was not secure (HA 1985 Sch 1 para 4). In 2004, a deputy district judge made a 14-day possession order, but Croydon decided not to enforce it.

In August 2007, Croydon decided to enforce the order and obtained a bailiff's appointment for 1 October 2007. The defendant made an application to suspend the warrant but, on September 27, District Judge Fink dismissed that application. Ms Wright sought permission to appeal. HHJ Atkins refused an application to adjourn the application for permission to appeal, refused permission to appeal against District Judge Fink's order, refused an application for an injunction in unissued proceedings to restrain Croydon from enforcing the order and refused permission to appeal his orders. Ms Wright sought to appeal to the High Court against these orders, relying on the provisions of the DDA, saying that her failure to pay rent was attributable to her disability, in particular, that her dyslexia and diabetes meant that she was unable to obtain tax credits.

First, Eady J rejected the council's submission that to grant any of the orders sought was tantamount to postponing the possession order for a period longer than that permitted by HA 1980 s89. Ms Wright was seeking to challenge and restrain the council's attempt to seek possession in accordance with the 2004 order. That was not seeking to postpone the order for possession. Second, Eady J found that it was arguable that the council had decided to proceed to evict Ms Wright because of her rent arrears. Whether or not the arrears were linked to her disability was a matter which needed to be investigated. Dyslexia and diabetes can fall within the statutory notion of disability. Accordingly, Eady J granted permission to appeal against District Judge Fink's order and remitted that appeal to a different circuit judge. A subsequent appeal by Croydon to the Court of Appeal has been adjourned pending the House of Lords' decision in *Lewisham LBC v Malcolm* [2007] EWCA Civ 763; [2008] 2 WLR 369.

Tolerated trespassers

■ **Porter v Shepherds Bush Housing Association**

[2008] EWCA Civ 196,
19 March 2008,

(2008) Times 2 April

Mr Porter was the secure tenant of a flat. He fell into arrears of rent and a suspended possession order was made against him in 1997, when the arrears were £2,338. He did not comply with those terms and his tenancy came to an end. He was allowed to remain in occupation as a tolerated trespasser. In April 2004, when the arrears stood at about £1,400, he issued a claim for damages for disrepair. Shepherds Bush Housing Association, his landlord, defended that claim on the basis that he was a tolerated

trespasser. Before the hearing of that claim, he cleared the arrears. He then made an application to revive his former secure tenancy under HA 1985 s85(2) or, alternatively, to rescind the 1997 order for possession under s85(4). Following *Swindon BC v Aston* [2002] EWCA Civ 1850; [2003] HLR 42, CA and *Marshall v Bradford MDC* [2001] EWCA Civ 594; [2002] HLR 22, CA, District Judge Nicholson dismissed the application. HHJ Simpson dismissed an appeal. Mr Porter appealed further to the Court of Appeal, arguing that:

■ *Marshall and Aston* were not binding because they were inconsistent with the earlier decision of *Payne v Cooper* [1958] 1 QB 174, CA; and that

■ CPR 3.1(2)(a) empowered the court to substitute in the original possession order a provision that the total amount of arrears was to be paid by a later date and to delete the requirement to pay by instalments.

The Court of Appeal dismissed the second appeal. Pill LJ stated that in *Marshall and Aston*, the court had concentrated on the wording of the statute and that the reasoning was 'careful and persuasive'. The Court of Appeal should follow and apply *Marshall and Aston*, rather than *Payne*. Second, after noting that CPR 3.1 bears the heading: 'The court's general powers of management', Pill LJ stated that CPR 3.1(2)(a) did not confer a power to extend time for compliance with the 1997 order. The HA 1985 contained a statutory scheme for the regulation of secure tenancies which included provision for the suspension of possession orders on conditions. CPR 3.1(2)(a) did not permit the court to rewrite a valid order. There was no change of circumstances which permitted the court to rewrite its earlier order. What was proposed on behalf of Mr Porter was very far from a case management measure. Furthermore, there was no inherent jurisdiction in the court to amend the 1997 order retrospectively. The Court of Appeal hoped 'that the legal situation of tenants in Mr Porter's position can be comprehensively reviewed in the near future'. See also page 25 of this issue.

Drugs conviction and reasonableness

■ **Lambeth LBC v Debrah**
[2007] EWCA Civ 1503,
30 October 2007

Lambeth sought possession against the defendant, who was a secure tenant, on the grounds of rent arrears and anti-social behaviour, namely allowing illegal drugs to be sold and consumed on the premises. In particular, in February 2006, the police had executed a search warrant and found drug

paraphernalia on the premises. In April 2007, the defendant gave an undertaking to the county court not to bring drugs on to the premises, or to possess drugs on the premises. That undertaking was not breached. At trial, in August 2007, HHJ Welchman accepted that the defendant had attracted visitors who had been a nuisance at the premises. He did not accept that the defendant was only an occasional drug user, with people coming in very much against his will. The judge made an outright order for possession, saying that 'it would have been grossly unreasonable not to do so'. He said that the defendant had demonstrated a lack of remorse and perhaps insight and that it was a fact that people became addicted to crack cocaine and that they could easily relapse. The defendant sought permission to appeal from the judge's refusal to stay or suspend the execution of his order, submitting that no allegations were made of any events occurring in the flat since April 2007 and that the judge was in error in taking into account HA 1985 s85A.

The Court of Appeal refused the renewed application for permission to appeal. Referring to s85A, Arden LJ said: '... it would be extraordinary if parliament, having said that the court must take certain things into account in deciding whether to make an order for possession, has said that they must be left wholly out of account when considering a stay, because the two matters are undoubtedly connected.' It was for the judge to weigh up the defendant's character and to form a view about the risk of recurrence of the nuisance. There was no suggestion of any breach of the undertaking that he had given; and so the judge had to make an evaluation of the future. That was a matter for him. He was entitled to come to the conclusion that he did. There was no prospect of success on appeal.

Under-occupation and the right to buy

■ **Manchester City Council v Benjamin**
[2008] EWCA Civ 189,
13 March 2008

In 1979, the council let a six-bedroom house on a secure tenancy to the defendant's father and mother. In 2000, after the father had left, the tenancy was transferred into the mother's sole name. The defendant's mother died in 2004. At that time the defendant was the only child still in occupation. The council eventually accepted her entitlement to succeed and she became a secure tenant but, in July 2005, served a notice seeking possession relying on HA 1985 Sch 2 Ground 16 (property more extensive than was reasonably required). In August 2005, the defendant applied to purchase the house

under the right to buy provisions. The council offered her an alternative property with two bedrooms. In October 2005, the council issued a possession claim and the defendant counterclaimed for an order compelling the council to convey the house to her. During the trial it came to light that the house and the alternative accommodation offered were to be the subject of a block transfer to a registered social landlord, Southway Homes. The defendant conceded that the house was more extensive than was reasonably required by her, but denied that the alternative accommodation offered was 'suitable' or that it was reasonable to make a possession order. HHJ Holman concluded that if a possession order was made, it would have the effect of bringing the current tenancy to an end and her tenancy of any alternative accommodation would begin afresh as she would not be able to carry forward the period of occupation of the property to the new tenancy so as to qualify her for the right to buy the new premises. He said that by the time of the transfer to Southway Homes, the defendant would not have acquired the requisite five-year period of occupation to enable her to exercise the right to buy. He described that as 'on any view a very significant detriment' and said that, arguably, of itself it rendered the alternative accommodation unsuitable. He dismissed the claim for possession and ordered the council to convey the freehold of the property to the defendant.

The Court of Appeal allowed the council's appeal. The effect of HA 1985 s121 was to extinguish a secure tenant's right to buy the property in respect of which a possession order was made but not to extinguish a right to buy another property of which the tenant became a secure tenant. Sir Peter Gibson stated that although the right to buy the dwelling-house of which the secure tenant is the tenant cannot be exercised if the tenant is obliged to give up possession of that dwelling-house under a possession order, s121(1) does not purport to deal with the right to buy any other dwelling-house. The right to buy provisions are mandatory and there is nothing in the language of s119 or Sch 4 that expressly requires the qualifying period to be a period during which the secure tenant, either the original tenant or the tenant by succession to a deceased secure tenant, occupied the dwelling-house in respect of which s/he is given the right to buy as his/her only or principal home. He accepted the submission of counsel for the council that Sch 4 para 4 meant that once a secure tenancy of suitable alternative accommodation had been granted, the defendant would enjoy the right to buy in respect of that other property. Accordingly, the

alternative accommodation offered was suitable. With regards to reasonableness, HHJ Holman was plainly wrong in taking into account an irrelevant consideration, namely the transfer to Southway Homes. The council did need the house in order to achieve a better deployment of its housing stock, and the transfer to Southway Homes did not make it unavailable to the council in performing its housing functions. The factors in favour of the council outweighed those in favour of the defendant and made it reasonable to make an order for possession. Agreeing, Sir Robin Auld stated that notwithstanding dicta by Lindsay J in *Kensington & Chelsea RLBC v Hislop* [2003] EWHC 2944 (Ch); [2004] 1 All ER 1036; [2004] HLR 26 and Neuberger LJ in *Basildon DC v Wahlen* [2006] EWCA Civ 326; [2006] 1 WLR 2744; [200] 1 All ER 734; [2008] HLR 34, it may yet fall for decision whether, if a possession order extinguishes a statutory right of the tenant to buy, it is a relevant circumstance on the issue of whether available alternative accommodation is not 'reasonably suitable to the needs of the tenant and his family'. On the issue of suitability, Dyson LJ said that the use of the definite article in the phrase 'give up possession of the dwelling-house' in s121 was significant.

It is in respect of that dwelling-house that the right to buy cannot be exercised. If it had been intended that an order to give up possession should be a bar to the exercise of the right to buy any dwelling-house, then the subsection would have been drafted rather differently. It would have provided that, where a tenant is obliged to give up possession of a dwelling-house in pursuance of an order of the court, the right to buy cannot be exercised in respect of any dwelling-house.

Possession Claims Online

■ Peabody Housing Trust v Rewah

*Lambeth County Court,
5 March 2008*²⁴

Mr Rewah was one of a number of Peabody tenants represented by a duty solicitor in an undefended rent arrears possession list. In all these cases Peabody had issued the claim using PCOL (Possession Claims Online) and the tenants had received a PCOL claim form and particulars of claim from the PCOL head office in Newcastle. The particulars of claim referred to HA 1988 Sch 2 Grounds 10 and 11, but did not incorporate a schedule showing how the alleged arrears had been calculated. The tenants had not received any other information about the calculation of the arrears until the date of hearing when the housing officer handed them printouts of the rent account.

District Judge Worthington held that the

requirements of CPR Practice Direction 55b para 6 had not been met and that it was not sufficient for Peabody to rely instead on the quarterly rent statements sent to all of its tenants in any event. He adjourned all of Peabody's possession claims for 28 days in order for these errors to be put right.

ANTI-SOCIAL BEHAVIOUR

Contempt

■ Longhurst Homes Ltd v Killen

*[2008] EWCA Civ 402,
11 March 2008*

After allegations of aggressive and intimidating behaviour towards his landlord's housing officers, an anti-social behaviour injunction, with an accompanying power of arrest, was made against the defendant. It required him to keep away from the street where his landlord's houses were situated and prevented him from assaulting or abusing anyone. The order was obeyed for a period, but the defendant began frequenting the group of houses from which he was required to keep away. The defendant sent about 40 aggressive and unpleasant text messages to a woman and her boyfriend who lived in the street. Police officers found him at his partner's house in the street. He displayed aggressive and threatening behaviour towards them and was arrested. After adjourning the case, the judge gave the defendant a clear and explicit warning that the injunction remained in force and that any further breaches would result in a substantial sentence. The defendant ignored that warning and, on that afternoon, abused the woman again, referring to her as a 'slag' and telling her he was 'going to get her'. The defendant was sentenced to a total of nine months' imprisonment for contempt. He appealed against the sentence, arguing that it was manifestly excessive.

The Court of Appeal dismissed the appeal. Although no actual violence had been used, the case was one of repeated unpleasant and intimidating behaviour. The judge was entitled to reach the conclusion that an immediate sentence of imprisonment was called for in the face of breaches of the injunction which had been deliberate and repeated. She had clear evidence of the defendant's flagrant disobedience to the warning she had given and to the order that had previously been made. Accordingly, although the overall sentence was stiff, and one which would not have necessarily been imposed by every judge, the judge had not stepped outside the bracket legitimately available to her.

LONG LESSEES

Service charges

■ Auger v Camden LBC

*LRX/81/2007,
Lands Tribunal,
14 March 2008*

Camden applied to the Leasehold Valuation Tribunal (LVT) for an order under Landlord and Tenant Act 1985 s20ZA dispensing with some of the consultation requirements in respect of partnering agreements and framework agreements which it proposed to enter into. These were to be agreements with one or more contractors for the delivery of programmes of capital works to properties subject to long leases over an agreed period of years, generally for five to ten years, and occasionally for longer periods. They were designed to deliver capital programmes at agreed unit costs over the life of the partnering period with an agreed formula for uplifting costs to take into account a degree of cost inflation. At the time of the application, there were no executed or draft partnering agreements or framework agreements. It was not known how many agreements Camden intended to enter into or who would be the contracting parties under any such agreements. The lessees objected on the basis that the application was premature and the partnering agreements were defined with insufficient clarity and detail as regards what was proposed. The LVT accepted Camden's argument that it could not in advance calculate the cost to individual lessees, as the properties had not been surveyed and there was no programme of works in place. The LVT concluded that the grounds for dispensation were made out and reasonable. The lessees appealed.

HHJ Huskinson, sitting in the Lands Tribunal, allowed the appeal. There is jurisdiction for LVTs to make determinations dispensing with the consultation requirements in respect of qualifying works which have not yet been carried out and qualifying long-term agreements which have not yet been entered into. Furthermore, s20ZA clearly confers on the LVT a broad judgment akin to the exercise of a discretion. However, in this case, the LVT erred by failing to take into consideration relevant matters and by misdirecting itself. Among other things, it failed to consider the lack of clarity regarding the nature of the proposed Partnering Agreements. Its order in effect gave Camden 'carte blanche'. Such a vague and open-ended dispensation for future agreements cannot properly be granted under s20ZA. Alternatively, if such a dispensation could be granted, the clearest of reasons would be required explaining why, despite

such uncertainty, it was reasonable to grant such a dispensation. No such reasons were present in the LVT's decision.

HOUSING ALLOCATION

■ R (Yazar) v Southwark LBC

[2008] EWHC 515 (Admin),
19 March 2008²⁵

The claimant, a single parent of disabled children, was the tenant of a fourth floor flat served by an unreliable lift. She first applied to Southwark for a transfer to ground floor accommodation in 1999.

From September 2005, Southwark operated a CBL scheme with four bands, including in Band 1, 'Social Services Nominations (Families)'. The claimant was placed in Band 2 as a result of household medical needs and overcrowding.

In December 2006, a duty social worker wrote to the housing department supporting the claimant's request for inclusion in Band 1. When the claimant asserted that she was entitled to Band 1 status as a result of that letter, the council replied in March 2007 that the allocation scheme required a formal nomination from social services for Band 1 status and that the social worker had only made a request. Formal nomination for Band 1 was refused on the ground that such nominations were reserved for 'significant crisis or life and limb situations'.

In judicial review proceedings, the council acknowledged that the letter contained an inaccurate statement of the criteria but denied that it notified a formal decision.

Simon J held that:

■ Southwark's scheme unlawfully failed to spell out clearly how the social services nominations procedure worked. Its operation was 'unclear to the point of obscurity'.

■ There was no general duty to give reasons when notifying refusal of a social services nomination. But reasons should be given on request.

■ The scheme as a whole was not irrational.

■ R (Faarah) v Southwark LBC

[2008] EWHC 529 (Admin),
19 March 2008²⁶

Before Southwark changed to a CBL scheme (see *Yazar* above), it had a points-based scheme in which the date of registration in a particular medical needs category was important. On the changeover, a new medical needs category (within Band 2) was introduced in virtually identical terms but giving all those on the scheme new (later) registration dates.

The claimant had applied for a transfer in July 2003 and had been awarded medical priority points under the old scheme. In the new scheme she was given an April 2007

registration date for Band 2 based on a new medical assessment.

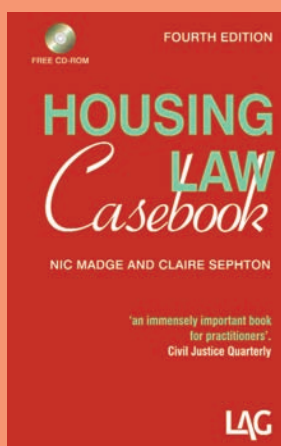
In judicial review proceedings, HHJ Mackie QC (sitting as a deputy High Court judge) held that the council was acting unlawfully in unfairly failing to recognise in its new scheme earlier registration dates under the identical category of its earlier previous scheme. Moreover, the relevant provisions did not form part of its published scheme in breach of HA 1996 s167(8).

- 1 Available at: www.publications.parliament.uk/pa/ld200708/ldbills/047/200708047.pdf.
- 2 Available at: www.publications.parliament.uk/pa/ld200708/ldbills/047/en/2008047en.pdf.
- 3 Available at: www.communities.gov.uk/documents/housing/pdf/housingregenbill.
- 4 Available at: www.communities.gov.uk/documents/housing/pdf/toleratedtrespassersresponse.
- 5 Available at: www.publications.parliament.uk/pa/ld200708/ldbills/041/2008041a.pdf.
- 6 Available at: www.communities.gov.uk/documents/housing/doc/rslicrimedisorderreduction.
- 7 Available at: www.respect.gov.uk/members/news/article.aspx?id=12096.
- 8 Available at: www.everychildmatters.gov.uk/_files/YouthTaskActionPlan.pdf.
- 9 Available at: www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0054.
- 10 Available at: www.communities.gov.uk/news/housing/730143.
- 11 Available at: www.communities.gov.uk/documents/housing/pdf/Homelessnessresearchsummary7.
- 12 Available at: www.communities.gov.uk/documents/housing/pdf/733835.
- 13 Available at: www.communities.gov.uk/documents/housing/xls/144458.
- 14 Available at: www.communities.gov.uk/documents/housing/pdf/guidance.

- 15 Available at: www.housingcorp.gov.uk/server/show/ConWebDoc.13407/changeNav/431.
- 16 See: www.housingmoves.org and www.homeswapper.co.uk, respectively.
- 17 Available at: www.cih.org/policy/ModernisingHousingAdvice.pdf.
- 18 Available at: www.communities.gov.uk/documents/housing/pdf/730558.
- 19 Available at: www.communities.gov.uk/news/housing/720434.
- 20 Housing Corporation statement 21/08, 12 March 2008, available at: www.housingcorp.gov.uk/server/show/ConWebDoc.13433/changeNav/431.
- 21 Available at: www.communities.gov.uk/news/corporate/741228.
- 22 Available at: www.refugeecouncil.org.uk/policy/responses/2008/Destitution.htm.
- 23 Available at: www.communities.gov.uk/news/corporate/713987.
- 24 Gareth Mitchell, Pierce Glynn, solicitors, London.
- 25 Robert Latham, barrister, London.
- 26 Robert Latham, barrister, London.



Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London, and a recorder. He is Legal Aid Barrister of the Year 2007. The authors are grateful to their colleagues at notes 24–26 for transcripts or notes relating to these judgments.



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