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 or lower courts relevant to housing. In addition, comments from readers are warmly welcomed.

POLITICS AND LEGISLATION

National housing strategy

At the October 2011 Conservative party conference, the Prime Minister announced that the UK government will publish a new housing strategy for England later this month. A key feature will be reform of the right to buy in social rented housing, in particular, to encourage more purchases through an increase in discounts. The UK government has published a question and answer factsheet for prospective purchasers about its right to buy proposals.[1]

The latest figures for England, published on 20 September 2011, already reveal a 16 per cent increase in right to buy sales in 2010/11 compared with the previous year. Another 3,400 properties were sold by social landlords to private sector purchasers: *Social housing sales, England, 2010–11* (Department for Communities and Local Government (DCLG), September 2011).[2]

Homelessness

The figures for local authority activity on statutory homelessness in England for the second quarter of 2011 indicate an overall 17 per cent increase, compared with the same quarter last year, in acceptances of the main housing duty: Housing Act (HA) 1996 s193. The number of acceptances based on loss of an assured shorthold tenancy increased from 1,460 to 2,130 compared with the same quarter last year. In 73 per cent of all cases the main duty was ended by the applicant accepting an offer of social housing accommodation: *Statutory homelessness: April to June Quarter 2011 England* (DCLG, Housing statistical release, September 2011).[3]

The broader picture in relation to homelessness in England has been set out fully in *The homelessness monitor: tracking the impacts of policy and economic change in England 2011–2013* (September 2011, Crisis).[4]

A survey of 87 local housing authorities in England by *Inside Housing* magazine has indicated that in the period 2006–2011, they carried out over 30,000 reviews of homelessness decisions (under HA 1996 s202). Of those, 42 per cent led to a revision of the original decision. The percentage of revised decisions was highest (65.7 per cent) in Lambeth LBC.[5]

Private sector rented accommodation

HA 2004 Part 3 provides that a local authority may designate the whole or part of its district as an area in which all private sector landlords must hold a licence. Few councils have designated their entire districts but Newham in east London now proposes to extend mandatory licensing of landlords to all 35,000 privately rented homes in its area. Responses to its consultation on that proposal are sought by 4 December 2011.[6]

Some of the worst housing in the private rented sector is occupied by students who are sharing. The organisations Accommodation for Students (AfS) and Unipol have launched a new code for the accreditation of student accommodation in the private rented sector: (Unipol/AfS, *2011–2014 for shared student housing in the private rented sector*, September 2011).[7]

The Property Ombudsman has published a digest of cases for October 2011 which contains summaries of complaints relating to letting and managing agents.[8]

In a new policy briefing, Shelter has called on the UK government to encourage local authorities and courts to do more to enforce housing laws controlling the activities of amateur and rogue landlords: *Asserting authority: calling time on rogue landlords* (Shelter, September 2011).[9] Research reported in the briefing paper indicates low levels of enforcement activity despite a growth in the number of complaints from private tenants and a disappointing use of sanctions by the courts.

Subletting of social housing

The Audit Commission has suggested previously that about 50,000 social housing properties are unlawfully occupied. However, an analysis of 125,000 housing transactions made by ten social landlords has suggested that the figure for unlawful subletting may be much higher: *Illegal social housing subletting in the UK could be costing £2bn a year* (Experian, September 2011).[10] The authors suggest a minimum of 157,000 cases in the UK.

Possession claims and warrants

The court statistics for England for the second quarter of 2011 show that:

- 31,500 warrants of possession were issued in that period, an increase of two per cent on the equivalent quarter of 2010;
- county court bailiffs made 13,800 repossessions of properties, a six per cent increase on the second quarter of 2010; and
- some 6,200 of the evictions were for mortgage lenders, four per cent more than in the second quarter of 2010: *Court statistics quarterly April to June 2011* (Ministry of Justice, Statistics bulletin, September 2011).[11]

Shared ownership leases

The Leasehold Advisory Service has published a new advice note to provide a brief overview of shared ownership leases for owners/purchasers and property professionals: *Shared ownership leases: what is shared ownership leasehold and how does it work?* (LEASE, September 2011).[12]

Requiring public landowners to sell

Local Government, Planning and Land Act 1980 Part 10 gives individuals the power to request that unoccupied land owned by local authorities (and other public bodies listed in Schedule 16, as amended) is put up for sale and for subsequent use for house building. The request system is also being applied to a wider range of public authorities by agreement between the UK government and those authorities. A new website has been created which includes a new request form and explains how members of the public can use the request system.[13] A new leaflet sets out the process: *The public request to order disposal process: a simple explanation* (DCLG, October 2011).[14]

The UK government has announced that community groups will be able to apply for public funds to bring empty housing back into use. Community and voluntary organisations will be able to bid for part of the £100m available for new housing schemes: DCLG news release, 20 September 2011.[15]

Affordable housing supply

The latest available figures on affordable

housing supply in England show that only 39,170 new units of social rented accommodation were provided in 2010/11: *Affordable housing supply, England, 2010–11* (DCLG, Housing statistical release, October 2011).[16] This figure represents an 18 per cent increase on the previous year.

Safety in housing

New fire safety guidance for purpose-built blocks of flats has been published. The guidance offers information on relevant legislation and practical advice on how the fire safety issues inherent in such buildings can be addressed effectively: *Fire safety in purpose-built blocks of flats* (Local Government Group, July 2011).[17]

The Gas Safety Trust has published the *Carbon monoxide trends report – 1996 to 2010*, which indicates that risks in relation to monoxide poisoning are 50 per cent greater in the private rented sector than in other housing tenures.[18] It recommends that the duty on landlords to inspect gas appliances annually be enlarged to a duty to service them once a year.

Housing in Wales

The First Minister of the Welsh Assembly Government (WAG) has set out a programme for government for the current Assembly term. It outlines Welsh ministers' priorities and includes a separate chapter on housing issues: *Welsh homes*. A separate document sets out the delivery programme on the commitments made.[19]

Gypsies and Travellers in Wales

The WAG has published the first national Gypsy and Traveller framework in the UK: *'Travelling to a better future'. Gypsy and Traveller framework for action and delivery plan* (WAG, 2011).[20] The document sets out how the government will ensure that Gypsy and Traveller communities have fair and equal access to the key priorities of accommodation, health and education.

HUMAN RIGHTS

■ Bah v UK

App No 56328/07,
27 September 2011,
[2011] ECHR 1448

Ms Bah arrived in the UK from Sierra Leone in 2000 as an asylum-seeker. In 2005, she was given indefinite leave to remain. In 2007, her son arrived and was given leave to remain on condition that he did not have recourse to public funds. He was accordingly 'subject to immigration control' within the meaning of the Asylum and Immigration Act 1996. When her son arrived, her private sector landlord informed Ms Bah that they would have to move out of the room that she was renting. She applied to Southwark LBC for assistance, but as her son was subject to immigration control, he was disregarded by the council in determining whether she was in priority need, in keeping with HA 1996 s185(4). As a result, the council decided that she was not in priority need. The decision was confirmed on review. The council helped Ms Bah find a private sector tenancy, although the rent was more expensive than for a social housing tenancy. Eighteen months later she obtained a social housing tenancy of a one-bedroom flat. She and her son were not at any point actually homeless. Ms Bah complained to the European Court of Human Rights (ECtHR) that there had been a violation of article 14, taken in conjunction with article 8, because she was treated differently based on the nationality of her son.

The ECtHR found that there had been no violation. There is no right under article 8 to be provided with housing but where a state decides to provide social benefits, it must do so in a way that is compliant with article 14. As the legislation affected the home and family life of Ms Bah and her son, the facts of the case fell within the ambit of article 8. However, the court decided that the classes of persons eligible for social housing set out in HA 1996 s185 and the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI No 1294 were not arbitrary or discriminatory. There was nothing arbitrary in the denial of priority need to Ms Bah when it would be based solely on the presence in her household of her son, whose leave to enter the UK was granted only a few months earlier and was expressly conditional on his having no recourse to public funds. By bringing her son into the UK in full awareness of the condition attached to his leave to enter, she accepted that condition and effectively agreed not to have recourse to public funds in order to support her son. It was justifiable to differentiate between those who rely for priority need status on a person who is in the UK on the condition that s/he has no recourse to public funds, and those who do not. The legislation pursued a legitimate aim, namely, allocating a scarce resource fairly between different categories of claimants.

■ Balezdrovi v Bulgaria

App No 36772/06,
20 September 2011

In 1984, the mayor of Plovdiv expropriated a house and adjoining land owned by Mrs Balezdrova. The order providing for the expropriation stipulated that she was to receive as compensation a three-room flat in a building which was to be erected by a housing construction co-operative and partly financed by the state. However, the building where the new flat was located was only completed and its use authorised in 2007. Mr and Mrs Balezdrovi complained that as a result of the authorities' inaction, they were not provided with the flat they were entitled to receive in compensation for the expropriated property for an extended period of time, in breach of article 1 of Protocol No 1.

The ECtHR upheld the complaint. Following *Kirilova v Bulgaria* App No 42908/98 and *Lazarov v Bulgaria* App No 21352/02, it held that the fair balance required under article 1 of Protocol No 1 had not been achieved due to the long delays in providing the property, the authorities' passive attitude, and the long period of uncertainty endured by the applicants who, as a result, had to bear a special and excessive burden. It awarded pecuniary damage of €2,000 and non-pecuniary damage of €2,500.

■ Lapin v Russia

App No 16152/03,
20 September 2011

Mr Lapin was an ex-serviceman who was entitled to housing. In January 2004, the Moscow Regional Military Court ordered that: '... the commander of military unit [no 19689] must prepare the relevant documents and make an application to the competent official for the applicant to be put on the priority list of persons in need of housing ... and ... prepare the relevant documents so that [the applicant] could subsequently receive the state housing certificate for acquisition of housing at the place of his choice ...' (para 7). There was delay in enforcing that order. Mr Lapin alleged breaches of article 6 and article 1 of Protocol No 1.

The ECtHR referred to *Burdov v Russia* App No 59498/00, *Petrushko v Russia* App No 36494/02 and *Poznakhirina v Russia* App No 25964/02, cases raising similar issues in which it found violations of article 6 and article 1 of Protocol No 1. It held that by failing for such a substantial period to comply with the enforceable judgment in Mr Lapin's favour, the domestic authorities prevented him from receiving a state housing certificate which he was entitled to receive under the final and binding judgment. There was accordingly a violation of article 6 and article 1 of Protocol No 1. It awarded €2,400 in respect of non-pecuniary damage.

■ Vartic v Moldova

App No 12674/07,
20 September 2011

By a final judgment given in December 2006, the Supreme Court of Justice ordered the Moldovan Ministry of Finance, the Ministry of

Economy and Trade and the Chişinău local authorities to provide Mr Vartic with accommodation. He complained that the authorities' failure to comply with that binding and enforceable judgment violated article 6 and article 1 of Protocol No 1. Other applicants made similar complaints. The delay in compliance ranged from 12 months to 19 months.

The court noted that previously it had found violations of article 6 and article 1 of Protocol No 1 in numerous cases concerning delays in enforcing final judgments (see, for example, *Prodan v Moldova* App No 49806/99 and *Luntre v Moldova* App No 2916/02). There was nothing in the files which would allow it to reach a different conclusion in the present case. Accordingly, the court found that the failure to enforce the judgment within a reasonable time constituted a violation of article 6 and article 1 of Protocol No 1. It awarded Mr Vartic €800 for non-pecuniary damage. Some applicants in related cases received €1,200.

POSSESSION CLAIMS

Tenancy induced by false statement

■ Windsor and District Housing Association v Hewitt [No 2]

[2011] EWCA Civ 1096,
3 August 2011

The Court of Appeal has refused an application by Ms Hewitt for a stay of a possession warrant pending her application for permission to appeal to the Supreme Court (see [2011] EWCA Civ 735; July 2011 *Legal Action* 18).

Enforcement of possession orders

■ Webb v Markos

B1/11/1715,
B1/11/1712,
8 July 2011

The claimant landlord obtained a possession order against the defendant tenant and members of her family. The judge later ordered that a penal notice for non-compliance be served on Ms Markos, but she still failed to comply with the possession order. A committal order was made but suspended to give social services time to respond and to give her a final opportunity to vacate the premises. She did not do so. Ms Markos appealed and sought a further stay of execution. She did not attend the appeal hearing and was not represented.

The Court of Appeal dismissed the appeal. Ms Markos had simply submitted a basic appeal notice with representations based on previous grounds showing an obstinate refusal to accept what had happened. All the necessary procedural steps had been taken. There was no reason to criticise the decision of the judge to make a committal order to enforce a possession order. The order was appropriate in the circumstances.

Warrants for possession

■ Ogunfowokan v Kibichoi

Ilford County Court,
12 September 2011[21]

The claimant landlord brought a claim for possession based on rent arrears against the defendant who was an assured shorthold tenant. On 14 July 2011, he obtained possession on a mandatory ground. The defendant was ordered to leave the property on or before 28 July 2011. On 29 July 2011, the landlord applied to the court for a warrant of eviction which was due to be executed on 13 September 2011. However, the landlord had not been paying his monthly mortgage repayments. As a result, on 21 July 2011 the lender appointed a receiver under Law of Property Act 1925 s109. The tenant started to make payments to the receiver. An application was made on behalf of the tenant to 'dismiss' the warrant of eviction as the landlord had no legal right to request the warrant in the first instance due to the appointment of the receiver.

District Judge Kemp granted the tenant's application and 'dismissed' the warrant. The receiver had legal control over the property as agent on behalf of the lender. The landlord had lost such a right and therefore was not entitled to apply for the warrant of possession.

SERVICE CHARGES: REASONABLENESS

■ Lennon v Ground Rents (Regisport) Ltd

[2011] UKUT 330 (LC),
18 August 2011

Dr Lennon was the tenant of a flat. He disputed the amount of service charges payable in respect of an insurance premium. The landlord issued proceedings in the county court. A district judge ordered the question of the reasonableness of the insurance premium to be transferred to the Leasehold Valuation Tribunal (LVT) (Landlord and Tenant Act 1985 ss19 and 27A(7)). It determined that £350 (of £624.42 claimed originally) was reasonably incurred and payable. The LVT then proceeded to determine other issues between the parties (for example, whether Dr Lennon had overpaid service charges in earlier years and the reasonableness of certain administration fees). Dr Lennon appealed to the Upper Tribunal (Lands Chamber). He contended that the LVT had no jurisdiction to determine these other issues as it was limited by the terms of the transfer order made in the county court.

HHJ Huskinson allowed the appeal. The LVT only had jurisdiction to consider the case due to the county court order. This was limited to the issue of the insurance premium. It followed that the LVT did not have jurisdiction to decide any other issues. If the parties had wanted to enlarge the scope of the case before the LVT to other issues, the appropriate course of action was for a separate application to be made to the LVT.

■ Garside v RFYC Ltd

[2011] UKUT 367 (LC),
15 September 2011

After years of neglect of their estate by their landlords, tenants applied successfully for the appointment of a manager. The manager identified remedial works costing hundreds of thousands of pounds and notified the tenants of the service charges which were necessary to fund the works. The tenants argued that the works should be phased (and the most urgent done first) so that they could avoid the hardship of bearing the costs of the works all in one go.

The Upper Tribunal held that part of deciding whether such charges would be 'reasonably incurred' could include considerations of their affordability and the possibility of phasing to avoid hardship (para 14). However, HHJ Robinson said:

> *It is important to make clear that liability to pay service charges cannot be avoided simply on the grounds of hardship, even if extreme. If repair work is reasonably required at a particular time, carried out at a reasonable cost and to a reasonable standard and the cost of it is recoverable pursuant to the relevant lease then the lessee cannot escape liability to pay by pleading poverty* (para 20).

FREEDOM OF INFORMATION ACT 2000

■ Voyias v Information Commissioner

[2011] UKFTT EA 0007 (GRC),
2 September 2011

Mr Voyias made a Freedom of Information Act (FoIA) request to Camden for details of all empty residential property in the borough not owned by private individuals. The council declined to release the details because it knew of Mr Voyias's written work on squatting and of his membership of the Advisory Service for Squatters. The Information Commissioner upheld the council's refusal and Mr Voyias appealed.

The First-tier Tribunal (General Regulatory Chamber) allowed the appeal. The public interest in disclosure justified the release of the information.

■ **Rowden v Highland Council**
[2011] ScotIC 170_2011,
17 August 2011
Mr Rowden complained to the council about the alleged anti-social activities of named individuals in his area and made a FoIA request for details of the council's records concerning those individuals, including information about legal advice it had commissioned about a possible application for an anti-social behaviour order. The council declined to provide the information.

The Scottish Information Commissioner upheld that decision. To provide the information would interfere with the privilege attaching to legal advice and with rights to the protection of personal data of the named individuals.

HOMELESSNESS

Accommodation for the homeless

■ **Charles Terence Estates Ltd v Cornwall Council**
[2011] EWHC 2542 (QB),
7 October 2011
The council was established in April 2009 as a unitary authority. It absorbed, among others, the liabilities of a district council and a borough council. Those two councils had taken long leases of 30 properties from the claimant company. The properties were used to provide temporary accommodation to the homeless. The councils had supplied loans and grants to the company to help it enter into private sector leasing arrangements in this way. The new unitary council did not wish to be bound by the leases and ceased to pay the rents. The company claimed for unpaid rents and the council counterclaimed for restitution of the rents, grants and loans already paid.

Cranston J dismissed both claims. The leases had no legal effect and were nullities. They had been entered into by both the previous councils in breach of their fiduciary duties to have regard to prevailing market rents. The new unitary council was no longer bound by the leases. The claim to recover rent paid previously and the capital monies advanced at the outset failed because the company had changed its position (to its detriment) on the basis of the void leases.

Priority need

■ **Bah v UK**
For the details of this important case on priority need see 'Human rights' above.

■ **Woldeab v Southwark LBC**
Lambeth County Court,
2 September 2011[22]
Ms Woldeab left her matrimonial home following domestic violence. She made an application to the council for homelessness assistance but it decided that she was not in priority need. On review of that decision, she relied on a GP's letter which stated that she suffered from depression and, if made street homeless, was likely to be less able to fend for herself than an ordinary homeless person. Her solicitors also indicated that a report was awaited from a psychological therapies centre which had been treating her. The council delayed for a further six days before making a review decision that Ms Woldeab was not 'vulnerable': HA 1996 s189(1)(c).

The psychological report was produced after the council's decision had been made. The report included opinion evidence tending to indicate that she might satisfy the vulnerability test. The local authority's medical officer had advised the council that Ms Woldeab's needs were difficult to determine and more evidence was required. It appeared that the medical officer had not been shown the GP's letter and did not know of the awaited report.

HHJ Welchman considered that the council's failure either to make further enquiries of its own or to allow Ms Woldeab further time to obtain the report was outside the range of responses open to a reasonable authority. He quashed the review decision.

HOUSING AND CHILDREN

■ **R (S) v Croydon LBC**
[2011] EWHC 2467 (Admin),
10 August 2011
The claimant was a young man aged 16. He applied for accommodation and the council accepted that he was a 'child in need' for the purposes of Children Act 1989 s17. However, the council did not accept that it owed him the accommodation duty under section 20. Following the issue of a claim for judicial review and a further assessment, the council reconsidered its position and accepted that it owed a section 20 duty. A dispute arose about where and with whom the claimant should live under that duty.

Walker J decided that that issue should not be pursued in the judicial review proceedings but rather under the dispute resolution mechanism provided by the statute. It was sufficient to order that the council must provide safe and suitable accommodation under section 20.

1 Available at: www.communities.gov.uk/documents/housing/pdf/1999503.pdf.
2 Available at: www.communities.gov.uk/documents/statistics/pdf/1990952.pdf.
3 Available at: www.communities.gov.uk/documents/statistics/pdf/1985477.pdf.
4 Available at: www.crisis.org.uk/data/files/publications/TheHomelessnessMonitor.pdf.
5 See Martin Hilditch, 'Turned away', Inside Housing, 23 September 2011, available at: www.insidehousing.co.uk/ care/turned-away/6517948.article.
6 Available at: www.ors.org.uk/online/index.php?sid=75646.
7 Available at: www.unipol.org.uk/Media/PDF/UnipolAfSNationalCode.pdf.
8 Available at: www.tpos.co.uk/case_summaries.htm.
9 Available at: http://england.shelter.org.uk/__data/assets/pdf_file/0009/378873/Shelter_-_Asserting_authority_-_calling_ time_on_rogue _landlords.pdf.
10 Available at: www.experian.co.uk/identity-and-fraud/news-and-events/illegal-social-housing-subletting-in-the-uk-could-be-costing-2bn-a-year.html.
11 Available at: www.justice.gov.uk/ downloads/publications/statistics-and-data/courts-and-sentencing/court-stats-quarterly-q2-2011.pdf.
12 Available at: www.lease-advice.org/documents/Shared_Ownership.pdf.
13 See: www.communities.gov.uk/housing/housingsupply/righttoreclaim/.
14 Available at: www.communities.gov.uk/documents/housing/pdf/1926844.pdf.
15 Available at: www.communities.gov.uk/news/housing/1991767.
16 Available at: www.communities.gov.uk/documents/statistics/pdf/2001577.pdf.
17 Available at: www.local.gov.uk/c/document_library/get_file?uuid=8ad8b1c9-8bca-4929-8635-7e9a1a539802& groupId=10161.
18 Available at: www.gas-safety-trust.org.uk/sites/default/files/resources/gst-trends_report_v5a.pdf.
19 Available at: http://wales.gov.uk/docs/strategies/110929chap6en.pdf and http://wales.gov.uk/docs/strategies/110928annex6en.pdf respectively.
20 Available at: http://wales.gov.uk/docs/dsjlg/publications/equality/110928gypsy travelleren.pdf.
21 Adrian Brazier, solicitor, Edwards Duthie Solicitors.
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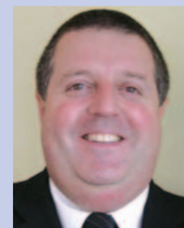

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