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

Private rented sector

In *The renters' manifesto: a blueprint for building a new sector in 2015* (Generation Rent, June 2014) the authors make the case for increased security of tenure in the private rented sector, possible controls on rents, better conditions and easier access to legal remedies and dispute resolution.[1]

The UK government has published a guide for tenants and landlords in the private rented sector to help them understand their current rights and responsibilities: *How to rent: the checklist for renting in England* (Department for Communities and Local Government (DCLG), June 2014).[2]

The Local Government Association (LGA) has published research into the experience of local authorities in taking criminal proceedings against rogue private sector landlords: *Prosecuting landlords for poor property conditions* (LGA, June 2014).[3] The research concluded that:

> *The process of prosecuting landlords for renting properties in poor condition is long and complex. Most of the steps involved are laid down by law or are essential to the legal process of proving the case beyond reasonable doubt. In the eight cases studied in-depth, it took between six and 16 months from discovering the poor housing conditions until the court case, the average time for the whole process was 11 months* (p20).

In the light of the report, the LGA has called for tougher fines, more realistic costs orders and a more streamlined prosecution process: *Councils call for fairer and more streamlined system to tackle criminal landlords* (LGA press release, 13 June 2014).[4]

Tenancy terms

The Consumer Rights Bill contains provisions to repeal and replace the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 SI No 2083. At the final stage of its House of Commons passage, on 16 June 2014, it was amended to include provisions to control letting agents' fees. The bill is now being considered in the House of Lords.

With the abolition of the Office of Fair Trading in April 2014, responsibility for enforcement of the law relating to unfair contract terms, including the terms of tenancy agreements, passed to the Competition and Markets Authority (CMA). It has recently published *Guidance for lettings professionals on consumer protection law. Helping you comply with your obligations* (June 2014) to assist both landlords and their agents in understanding relevant legal requirements.[5]

Housing law reform

The Deregulation Bill completed its House of Commons stages on 23 June 2014 and has moved to the House of Lords for further consideration. The bill presently contains four housing-related provisions:

- reduction in the qualifying period for the right to buy for secure tenants;
- abolition of the statutory duty on local authorities to have a housing strategy;
- removal of the planning restrictions on letting accommodation in London to visitors from overseas (Greater London Council (General Powers) Act 1973 s25);
- amendments to the law on tenancy deposits (to deal with the effects of *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669; [2013] 1 WLR 3848, CA).

Anti-social behaviour and housing

Policing and Crime Act (PCA) 2009 Part 4 contains powers for county courts to grant injunctions to prohibit or control gang membership. In the first three years that the provisions were in force, 108 gang injunctions were made. *Review of the operation of injunctions to prevent gang-related violence*, (Home Office, January 2014) found that the statutory definition of a 'gang' was seen by police officers to have some limitations for addressing local gang issues.[6] The UK government has decided that the definition of a 'gang' should be changed to reflect the evolving nature of street gang activity across the country and ensure that gang injunctions can be used to target the right individuals. The necessary changes to PCA 2009 Part 4 are contained in clause 47 of the Serious Crime Bill, which began its committee stage in the House of Lords on 2 July 2014.

The House of Commons Library has issued an updated version of its briefing notes:

- *Anti-social behaviour in social housing* (SN/SP/264, June 2014);[7] and
- *Anti-social neighbours in private housing* (SN/SP/1012, May 2014).[8]

Tenancy fraud

The Chartered Institute of Housing (CIH) has published a new guide: *New approaches in tackling tenancy fraud* (CIH, May 2014).[9]

Improving council housing

The UK government has published a new prospectus outlining how developers can bid for a share of a £150 million loan fund to invest in the radical regeneration of some of the country's most deprived social housing estates: *Estate regeneration programme: prospectus for 2015/16* (DCLG, June 2014).[10] The prospectus seeks bids from private sector builders/developers taking forward schemes which deliver a net increase in the supply of housing, with mixed tenures, over the entire programme of redeveloping existing estates.

Social housing rent arrears

A survey of council landlords and their agents, *Welfare reform survey – 2013/14 quarter 2 and quarter 3 update: summary of responses* (Association of Retained Council Housing, June 2014), has found that:

> *Overall, the number of households in arrears has risen by 5.4 percentage points between the baseline date [April 2013] and the end of December 2013. During that time, households in arrears increased markedly at the end of September (36% of tenants in arrears) before declining slightly in December. Arrears remain above the baseline* (p2).[11]

Recent research on the impact of welfare reforms on housing associations in Scotland has revealed serious risks to tenancy sustainment: *Welfare reform: the impact on homelessness and tenancy sustainment for Scottish housing associations* (Scottish Federation of Housing Associations, June 2014).[12] The author records that:

> *Most respondents noted that discretionary housing payments (DHPs) are serving to mitigate most of the risk for the time being, but*

state that without this safety net many tenancies would be completely unsustainable as there are not enough smaller properties to downsize. Others who rated a much higher level of risk have observed an alarming upsurge in arrears and an increase in terminations and abandonment.

A survey of social landlords in England undertaken by the magazine *Inside Housing* indicated that landlords are taking a more robust approach to legal action in respect of rent arrears, even where they have been caused by welfare reforms: 'Evictions on rise as landlords toughen up' (*Inside Housing*, 13 June 2014).[13]

The House of Commons Library has issued an updated version of its briefing note *The impact of the under-occupation deduction from housing benefit (social rented housing)* (SN/SP/6896, June 2014).[14]

Regulation of social housing

The Homes & Communities Agency (HCA), which regulates social landlords in England, has launched a consultation on revisions to its primary regulatory guide: *Consultation on changes to the regulatory framework* (HCA, May 2014).[15] Responses are invited by 19 August 2014.

In 2012 the social housing provider Cosmopolitan Housing Group faced near insolvency. It was rescued in early 2013 when Sanctuary Housing Group took it over. A new report investigating what happened makes a series of recommendations to the social housing regulator and other social housing providers: *Cosmopolitan Housing Group: lessons learned* (Altair, June 2014).[16]

HUMAN RIGHTS

Article 8

■ Udovičić v Croatia

App No 27310/09,
24 April 2014,
[2014] ECHR 443

Ms Udovičić owned 59 per cent of a building, living in a flat above a commercial unit. A company owned the remainder. In 2002, it started work to convert the commercial unit into a bar and shop. The bar opened in 2005. Ms Udovičić complained to various civil authorities that the works were not in accordance with planning permission and were excessively noisy. She argued that a licence to operate a bar should not have been granted and that the noise insulation measures were inadequate. None of her complaints was finally determined. She complained to the European Court of Human Rights (ECtHR) alleging a violation of article 8.

The complaint was upheld. Under article 8:

The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect for the home are not confined to concrete or physical breaches, such as unauthorised entry …, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home [see *Hatton and others v UK* App No 36022/97] (para 136).

Although the object of article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, this may involve those authorities adopting measures designed to secure respect for private life even in the sphere of relations between individuals. In this case, the first question for decision was whether the nuisance reached the minimum level of severity required for it to amount to an interference with Ms Udovičić's right to respect for her home and private life. The court was satisfied that it did. Second, by allowing the impugned situation to persist for more than ten years without finally settling the issue before the competent domestic authorities, the state had failed to approach the matter with due diligence and give proper consideration to all competing interests. It had failed to discharge its positive obligation to ensure Ms Udovičić's right to respect for her home and her private life. Making its assessment on an equitable basis, the court awarded her €7,500 in compensation for non-pecuniary damage.

POSSESSION CLAIMS

Issue in the High Court

■ Crompton v Woodford Scrap Metal Ltd

[2014] EWHC 1260 (QB),
17 March 2014

Mr Crompton began a claim for possession of a scrap yard in the High Court. He also sought arrears of rent and compensation for damage to fixtures and fittings. Notwithstanding Civil Procedure Rule 55.3 and Practice Direction 55A para 1.1, there was no certificate stating the reasons for bringing the claim in the High Court, although some information was contained in a witness statement.

HHJ Seymour QC, sitting as a judge of the High Court, stated that there was no material which justified the conclusion that there was a substantial risk of public disturbance or serious harm to persons or property. There were no exceptional circumstances. He transferred the claim to Romford County Court and ordered the claimant to pay the defendant's costs, which he summarily assessed in the sum of £7,750.

Suspension of possession orders

■ Croydon LBC v Williams

[2014] EWCA Civ 643,
4 April 2014

Croydon sought possession against Mr and Mrs Williams, principally on the grounds of anti-social behaviour by Mr Williams. It relied not only on an anti-social behaviour order made in September 2011, but also on evidence from witnesses. HHJ Ellis found that Mr Williams had:

- made threats to kill someone who was visiting his mother in the same block;
- verbally abused a caretaker;
- threatened a local resident with serious injury;
- shouted abuse and threats aimed generally at people who lived in the same block;
- played music so loud that it could be heard 150 yards away; and
- verbally abused and threatened a neighbour with three young children.

Counsel for Mr Williams accepted that the basis for a possession order had been made out, but asked the judge to suspend it. HHJ Ellis declined to suspend and made an outright order. He took the view that it was very likely that Mr Williams would resume his former behaviour. Mr Williams sought permission to appeal, challenging 'the judge's findings of fact root and branch' (para 11).

Moore-Bick LJ refused permission to appeal. The appeal did not have any real chance of success. There was no real prospect that the Court of Appeal would overturn the judge's findings of fact. Whether it was appropriate for the judge to make a possession order, and if so whether to suspend it, were essentially matters for him. The Court of Appeal will not interfere with a decision of that kind unless it is quite clear that the judge has gone badly wrong. This was not such a case.

ASSURED SHORTHOLD TENANTS

Deposits

■ Gardner v McCusker

Birmingham County Court,
8 May 2014[17]

Mr and Mrs Gardner let a property to Ms McCusker for a fixed term of six months in November 2009. She paid a deposit of £600, which was protected in the MyDeposits scheme in January 2010. In May 2010, the fixed-term tenancy expired and a statutory

periodic tenancy arose. In March 2013, the landlords served a Housing Act (HA) 1988 s21 notice. In the subsequent possession claim, Ms McCusker argued that:

- at the end of the fixed-term tenancy, a new tenancy arose by operation of law (HA 1988 s5 and *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669);
- in respect of that new tenancy, the deposit which had been paid in connection with the fixed-term tenancy was deemed to have been repaid, but not in respect of the new tenancy (*Superstrike*);
- it followed that there had been a 'receipt' of a deposit by the landlord in May 2010, when that new tenancy arose;
- on receipt, the obligations in HA 2004 s213 arose;
- those obligations included a requirement to serve the prescribed information;
- that had never been done because:
  – none of the various attempts at compliance met the requirements of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797; and
  – even if they did, they all purported to relate to the (now expired) fixed-term tenancy;
- the result of this was that the section 21 notice was invalid and the landlords were liable to pay damages.

Deputy District Judge Davies held that the logic of *Superstrike* was not confined to cases where the fixed-term tenancy came into being before the HA 2004 came into force. The ratio of *Superstrike* was that the statutory periodic tenancy was a new tenancy under which a deposit was deemed to have been paid. That was equally applicable to the present case. It followed that all the requirements in section 213 arose afresh in May 2010, ie, when the statutory periodic tenancy arose. Those requirements included a requirement to serve the prescribed information. That had not been done as each of the attempts to comply was, factually, inadequate. It followed that the prescribed information had not been given in respect of the statutory periodic tenancy and the section 21 notice was defective. He dismissed the possession claim and awarded damages of twice the value of the deposit.

RENT ACT 1977

Succession

■ Northumberland & Durham Property Trust Ltd v Ouaha

[2014] EWCA Civ 571,
7 April 2014

Mr Al-Faisal was a Saudi Arabian national. In 1980, the lease of a flat was assigned to him. On the expiration of the contractual term, he became a statutory tenant under the Rent Act (RA) 1977. In 1987, Mr Al-Faisal and Ms Ouaha went through an Islamic marriage ceremony at a mosque in Baker Street, London. Ms Ouaha was a Moroccan national. They had two children who were born in 1991 and 1994. Mr Al-Faisal died in November 2010. In a possession claim, it was common ground that although there might be questions about the validity of their marriage ceremony in England, it would be accepted as a valid marriage in Morocco and Saudi Arabia. HHJ Baucher decided that as the marriage was not recognised by the Marriage Acts 1949 to 1986, Ms Ouaha was not Mr Al-Faisal's 'surviving spouse' within the meaning of RA Sch 1 para 2(1) and so did not become a statutory tenant after his death. She made a possession order.

The Court of Appeal dismissed an appeal. The term 'the surviving spouse' has rather more formality about it than the term 'a person who was living with the original tenant as his or her wife or husband' in Schedule 1 paragraph 2(2)(a). It does not have a 'flexible meaning' (para 19). HHJ Baucher had been right to determine that Ms Ouaha was not a surviving spouse because there had been no formal marriage ceremony that was valid under English law. The Court of Appeal left open whether the only way in which a person can qualify as 'the surviving spouse' for the purposes of paragraph 2(1) is by showing that s/he underwent a ceremony of marriage valid under the Marriage Acts. It may be that some or all foreign ceremonies of marriage would allow a person to qualify.

TRESPASSERS

Adverse possession

■ Best v Chief Land Registrar

[2014] EWHC 1370 (Admin),
7 May 2014

The registered freehold owner of a house died some time before 1997. The house was vandalised. In 1997, Mr Best entered the property and did work to it. He repaired the roof and took other steps to make it wind and watertight. Later, he replaced ceilings, skirting boards and electric and heating fitments. He also plastered and painted walls. In November 2012, he applied to register title to the property on the basis that he had been in adverse possession 'for the period of ten years ending on the date of the application', as required by Land Registration Act (LRA) 2002 Sch 6 para 1.

The Chief Land Registrar, through an officer, notified Mr Best that he was going to cancel his application, because he judged that Legal Aid, Sentencing and Punishment of Offenders Act 2012 s144, which criminalised trespass by 'living in' residential buildings, prevented him from relying on any period of adverse possession which involved a criminal offence to establish the basis for an application for registration as the proprietor. Mr Best sought judicial review.

Ouseley J accepted, as a starting point, the principle that rights should not be derived from criminal acts: 'There is … a general and fundamental principle of public policy that a person should not be entitled to take advantage of his own criminal acts to create rights to which a court should then give effect' (para 44). However, that 'principle of public policy may yield to competing public policy interests, the greater advancement of which are imputed to parliament's intention in any specific statute' (para 45). The LRA 'provided a comprehensive and carefully balanced statutory answer to the problem of adverse possession' (para 52). Although there was no evidence that parliament ever actually considered the issue of adverse possession, Ouseley J concluded that parliament had made the correct assumption that adverse possession could be founded effectively on acts of criminal trespass. The mere fact that the adverse possession was based on criminal trespass did not and should not preclude a successful claim to adverse possession. He quashed the Chief Land Registrar's decision.

HOUSING ALLOCATION

Local Government Ombudsman

Complaint

■ Walsall MBC

11 022 479,
12 March 2014

The complainant (Mr X) was a severely disabled man requiring assistance with all his personal care needs. He lived independently, with care provided by a friend. He needed alternative accommodation as he was at risk of financial exploitation if he remained where he was and his friend could not care for him there.

Council officers met him to discuss his housing needs. They referred his application to the social landlord that administered the council's allocation scheme but he did not attract high priority. A homelessness application was not pursued. The only option presented was a place in an extra care housing scheme, which the complainant reluctantly accepted.

The Local Government Ombudsman found the council at fault. She said:

I accept the council considered alternatives to extra care housing for Mr X. But it did so without reference to its housing allocation policy. The council itself had responsibility for

ensuring questions about Mr X's priority were answered even though it delegates that responsibility to a social landlord. It also had a duty to consider if Mr X was homeless and owed him a duty of re-housing. The records suggest its social care staff did not understand the council's responsibilities in these areas and were let down by the replies they received to enquiries. I am therefore not satisfied the council adequately considered alternative housing options for Mr X before pursuing the option of extra care housing (para 34).

She recommended that the council offer a review of Mr X's housing needs (if he wanted one). If Mr X wanted to move, the council should identify and secure suitable alternative housing for him as soon as practicable.

■ R (Alansi) v Newham LBC

[2014] EWCA Civ 786,
12 May 2014

The claimant applied to Newham for homelessness assistance: HA 1996 Part 7. It accepted that she was owed the main housing duty (section 193) and she was provided with temporary accommodation. The claimant registered on the council's housing allocation scheme for social housing accommodation: HA 1996 Part 6. She was one of about 400 homeless applicants who were each told that if they took a qualifying offer of an assured shorthold tenancy in the private rented sector they would still retain their priority status under the council's housing allocation scheme. The claimant and the other applicants acted on those assurances, left their temporary council accommodation and took private rented sector tenancies.

The council later changed its allocation scheme. The change removed priority status from the group of 400, subject only to an individual right to a review of their ranking on the allocation scheme. The claimant brought a claim for judicial review, contending that she had a legitimate expectation that the council would honour the commitment it had made.

Stuart Smith J dismissed the claim. He held that although the claimant had enjoyed a legitimate expectation that she would retain priority status, and had relied on the council's promise to her detriment, the council had not acted unlawfully in changing its policy given the demands on it to shape its allocation scheme in order to meet competing priorities for a limited stock of social housing.

On a renewed application for permission to appeal, the claimant argued that the judge had erred in not accepting an assertion that the councillors responsible for changing the policy had either not known of the assurances or had failed to take into account that the council would be abandoning its assurances. Fulford LJ dismissed the application as the proposed appeal was 'unarguable' (para 10). Material that had been before the council's cabinet, or available to it, had referred to the fact that existing cases with 'retained discretionary reasonable preference priority' would be reassessed under the proposed new allocation scheme (para 8).

■ A2Dominion Housing Group Ltd v Hammersmith and Fulham LBC
■ Notting Hill Housing Trust v Kensington and Chelsea RLBC and Ealing LBC

Valuation Tribunal for England,
27 May 2014

The housing associations owned housing accommodation that had been empty for less than six months since the last tenants vacated. They sought a Class B exemption from council tax, which is available where (among other conditions) the accommodation 'was last occupied in furtherance of the objects of the charity'. The associations were able to produce their standard tenancy agreements indicating the terms on which the properties had been most recently let. The councils refused exemption on the basis that the agreements supplied failed to recite the charitable nature of the specific lettings in accordance with the objects of the associations.

The Tribunal President (Professor Graham Zellick QC) upheld appeals by the associations and ordered that exemptions be allowed. He said that the councils had based their decisions:

… on a single factor that at best is marginal and in all probability is entirely irrelevant. There is no justification of which I am aware for the view that the tenancy agreement should recite the charitable nature or grounds of the tenancy (para 21).

■ Ogunseye v Newham LBC

[2014] UKUT 0232 (LC),
28 May 2014

The claimant had been the secure tenant of a two-bedroom flat in a tower block. The council scheduled the block for demolition and agreed to decant the tenants. The claimant successfully obtained a transfer to a three-bedroom property. She was made a home loss payment in the prescribed sum (£4,700) and sought a disturbance payment in respect of her reasonable expenses of moving: Land Compensation Act 1973 s38(1)(a). Her claim was for expenses in respect of floor covering, carpets, curtains, beds, a sofa, a washing machine, etc, and totalled over £6,000. The council made a standard payment of £200.

The Upper Tribunal (Lands Chamber) reviewed each element of the claimant's claim in turn and awarded £2,207.30 with no order for costs. It said:

Claimants are quite entitled to apply to the tribunal to determine compensation under circumstances such as these. They should not be discouraged from doing so, nor from representing themselves. However, they should ensure that the basis of the claim is supported by credible evidence if it is to succeed. It is inappropriate to simply claim anything and everything with a hope of at least some of it succeeding, as seemed to be the case here. I would remind claimants that under the tribunal's simplified procedure costs can be awarded against a party for unreasonable conduct (para 55).

HOMELESSNESS

Homeless

■ Temur v Hackney LBC

[2014] EWCA Civ 877,
26 June 2014

Mrs Temur left her matrimonial home but was unable to take her child with her. In March 2012 she rented a small bed-sitting room in a house on an assured shorthold tenancy. Bathroom and toilet facilities were shared with other residents. In July 2012 she obtained a residence order and her child, aged three, began to live with her. On her application for homelessness assistance under HA 1996 Part 7, a reviewing officer decided that she was not homeless because she had accommodation that it was reasonable for her to continue to occupy: section 175(3). HHJ Birtles dismissed an appeal from that decision.

On a second appeal, Mrs Temur asserted that the reviewing officer had:

■ failed to apply the suitability standards in HA 1996 s210, most particularly by failing to determine whether the overcrowding in the room was a category 1 hazard for HA 2004 Part 1 purposes; and

■ only considered the immediate or short term position rather than looking to the future as required by *Birmingham City Council v Ali* [2009] UKHL 36; [2009] 1 WLR 1506, HL.

The Court of Appeal dismissed the appeal. The issues of whether it was reasonable to continue to occupy a property and whether it was suitable were dealt with separately and distinctly in Part 7. The reviewing officer had not been required to make a hazards assessment or apply the suitability criteria in section 210. On a fair reading of the reviewing officer's decision, he had addressed the issue of whether it was reasonable to continue to occupy the room, he had considered the future and he had reached a decision open to him.

Eligibility

■ Hines v Lambeth LBC

[2014] EWCA Civ 660,
20 May 2014

The claimant, a Jamaican national, applied to the council for homelessness assistance. She was the primary carer for her young son (aged five) who was a UK-born British citizen. The child's father, who had his own accommodation, had an EU right to permanent residence in the UK. The council decided that the claimant was a person 'subject to immigration control' and therefore not eligible for assistance: HA 1996 s185(2). That decision was upheld on review and HHJ John Mitchell dismissed an appeal.

The claimant asserted that she was not subject to immigration control because she had the benefit of the derivative right of residence for primary carers of British citizens conferred by Immigration (European Economic Area) Regulations 2006 SI No 1003 reg 15A(4A). That applies where:

- a British citizen has a primary carer (P);
- that British citizen is residing in the UK; and
- the British citizen would be unable to reside in the UK or in another EEA state if P were required to leave the UK.

The central issue was whether, if the claimant had to leave the UK, her son would be unable to remain here without her.

The Court of Appeal dismissed the appeal. The reviewing officer had been entitled to conclude that the son could remain in the UK with his father. The 'best interests of the child' (remaining with the mother who had raised him) could not trump the simple statutory test of whether the child was 'unable' to remain in the UK.

Comment: Following recent amendments, a person who did satisfy the conditions in reg 15A(4A) would not be eligible for homelessness assistance if that was the person's only basis for residing in the UK: Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI No 1294 reg 6(1)(b)(iii).

Priority need

■ Hotak v Southwark LBC

UKSC 2013/0234,
7 April 2014

The Supreme Court has granted Mr Hotak permission to appeal from the Court of Appeal's judgment ([2013] EWCA Civ 515) that in determining whether an applicant would be 'vulnerable' if street homeless, a council can take into account the possibility that s/he may be provided with continued support from his/her current carer.

■ Qoraishi v City of Westminster

Central London County Court,
10 June 2014[18]

Mr Qoraishi was a refugee from Iran. His application to the council for homelessness assistance identified that he had mental health problems, including depression and acute anxiety, and that he suffered from physical health problems including osteoarthritis in the knee and back as well as cardio-pulmonary obstructive disorder. The council decided that he was not 'vulnerable': HA 1996 s189(1)(c).

In an application for a review, Mr Qoraishi relied on medical reports from his treating GP, a consultant psychologist, his treating psychologist and a series of other reports. These identified that: his mental health would deteriorate if he was rendered street homeless; he would likely disengage with current services and not access other services; his mental health exhibited aspects of post-traumatic stress disorder; and he would manifest serious mental health problems when street homeless. The reports indicated that social isolation and his background of abuse, combined with a deterioration in his physical health, would likely render him vulnerable. Westminster relied on medical evidence from Dr Wilson of NowMedical suggesting that Mr Qoraishi was not 'vulnerable' and it upheld the original decision.

HHJ Hornby allowed an appeal and quashed the review decision. The reviewing officer had failed to take into account the medical evidence as to the likely deterioration in Mr Qoraishi's mental health if rendered street homeless. Furthermore, Dr Wilson's advice had not really dealt with this issue. The decision was inadequately reasoned as it had focused on Mr Qoraishi's ability to cope when housed rather than when homeless and had failed to provide an explanation for rejecting the medical evidence relied on by Mr Qoraishi.

Intentional homelessness

■ Haile v Waltham Forest LBC

[2014] EWCA Civ 792,
13 June 2014

The claimant was the assured shorthold tenant of a room in a hostel for single people. The tenancy conditions prohibited occupation of a room by more than one person. In June 2011 the claimant became pregnant and in October 2011 she moved out, gave up her tenancy and went to live with a friend. When the friend later asked her to leave, the claimant applied for homelessness assistance. She was provided with interim accommodation (HA 1996 s188) and in February 2012 gave birth to her daughter. In August 2012 the council decided that she had become homeless intentionally by giving up her tenancy: section 191(1). That decision was upheld on review. HHJ Birtles dismissed an appeal.

On a second appeal, the claimant asserted that the correct date to assess intentional homelessness was the date of the council's decision, not the earlier date of departure from the last settled accommodation. By the later date the claimant could not reasonably have occupied her former room as she had a child. She sought to distinguish *Din v Wandsworth LBC* [1983] AC 657 as having been decided before any question of reasonable continued occupation had been included in the definition of homelessness (now section 175(3)).

The Court of Appeal dismissed the appeal. Jackson LJ said that the decision of the majority in *Din* was still binding and that:

> *Section 190(1) of the 1996 Act uses the phrases 'is homeless', 'is eligible for assistance' and 'became homeless intentionally'. Sections 192(1) and 193(1) use similar phrases. The deliberate switch from the present to the past tense indicates that the council must investigate the historic cause of the applicant's homelessness, but consider all other issues by reference to the present state of affairs* (judge's emphasis, para 63).

■ Norris v City of Westminster

[2014] EWCA Civ 769,
2 May 2014

The claimant was an assured shorthold tenant. Her landlady served a HA 1988 s21 notice and obtained possession. The claimant applied to the council for homelessness assistance. On enquiry, the landlady and the managing agents explained that possession had been sought by reason of the claimant's anti-social behaviour and in particular noise nuisance. This explanation was corroborated by noise nuisance reports received by the council's environmental health department. The claimant said that the landlady had really sought possession so that she could re-let the flat at a higher rent to a tenant who was not dependent on housing benefit (as had, in fact, later happened). The council decided that the claimant had become homeless intentionally. That decision was upheld on review and HHJ Birtles dismissed an appeal.

Fulford LJ rejected a renewed application for permission to appeal. The issues before the reviewing officer and the judge had primarily been issues of fact. The question had been whether the reviewing officer had evaluated and addressed the facts lawfully and reached a justifiable decision. That gave rise to no important issue of principle or practice justifying permission for a second appeal.

■ Sharif v Hounslow LBC

[2014] EWCA Civ 545,
14 April 2014

The claimant was an assured shorthold tenant. Her landlord obtained possession. The claimant

applied to the council for homelessness assistance. On enquiry, the landlord said that the claimant had asked to be evicted so that she could move to a different area. The claimant said that she had been evicted because she had complained to the landlord about the property. The landlord's account was checked with him by telephone interview and in writing. The council accepted the landlord's version of events and decided that the claimant had become homeless intentionally. That decision was upheld on review and an appeal to the county court was dismissed.

Sir Stanley Burnton rejected a renewed application for permission to appeal. It had been a matter for the reviewing officer to assess the credibility of the claimant and the veracity of the landlord's account. 'One has to remember that the reviewing officer is an administrator rather than a tribunal' (para 4). There was no arguable case that the officer needed to go further with his enquiries before reaching a decision.

Suitability

■ Walsh v Haringey LBC

Clerkenwell & Shoreditch County Court, 31 March 2014[19]

The claimant had a disability that required the assistance of a carer. Her care was shared by two of her friends. On an application for homelessness assistance the council accepted that it owed the claimant the main housing duty. The claimant applied for an allocation of social housing and sought a second bedroom so that her carer could stay overnight. The council's allocation scheme provided that:

If an applicant states that they need an extra room for a carer, the council will carry out an assessment of the applicant's needs and decide whether or not an extra room is required … The council's adult social care service should be able to provide evidence of the need for a 'live in' carer and confirmation (where appropriate) that, if the support was not provided, the applicant would qualify for funding for a 'live in' carer. Where the council is satisfied that there is a need for a live-in carer who is not cohabiting with another member of the household, the household will be entitled to an additional bedroom. To qualify for an additional bedroom for a carer, the applicant must demonstrate that this care is provided by someone who would not otherwise live with the applicant …

The claimant's GP wrote in support of an allocation of a two-bedroom property. The council made a HA 1996 Part 6 offer of a one-bedroom unit. The claimant accepted the offer but applied for a review on the basis that the accommodation was not 'suitable'. The reviewing officer decided that it was suitable.

The claimant brought an appeal on three grounds:

- the reviewing officer had failed to consider properly the allocations policy; or
- the officer had failed to give reasons for departing from the policy; and
- the officer had failed to take into account the GP's letter.

HHJ Lochrane allowed the appeal and quashed the review decision. On the first two grounds, he found that such a clear departure from a published policy required the reviewing officer to engage properly with that policy in the decision letter and to give reasons for departing from it – simply listing the policy as a factor taken into account was not sufficient. In relation to the third ground, he found that the reviewing officer had failed to consider the GP's opinion (although, on the facts, that ground alone would not have been decisive).

Reviews

■ Temur v Hackney LBC

[2014] EWCA Civ 877, 26 June 2014

Mrs Temur applied to the council for homelessness assistance. It initially decided that she was homeless but did not have a priority need. Mrs Temur applied for a review of that decision. Before the review was concluded, she obtained a private sector tenancy (see above). The reviewing officer decided that she was not homeless. HHJ Birtles dismissed an appeal from that decision. On a second appeal, Mrs Temur asserted that the reviewing officer had not been entitled to reverse a decision already made in her favour (that she was homeless) but ought to have confined himself to reviewing the issue decided against her (priority need).

The Court of Appeal dismissed the appeal. The question posed by HA 1996 s184 was 'what duty' the council owed the applicant (if any)? It was the whole of that decision that fell for reconsideration on a review. The reviewing officer was concerned with the facts as they stood at the date of the review decision (except when addressing the historic question of whether an applicant had become homeless intentionally). He was not prevented from reaching different conclusions on issues earlier decided in an applicant's favour.

1 Available at: www.generationrent.org/manifesto_launch.
2 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/320055/How_to_Rent-_The_Checklist_for_Renting_in_England_FINAL_V4_Links.pdf.
3 Available at: www.local.gov.uk/housing/-/journal_content/56/10180/6271002/ARTICLE.
4 Available at: www.local.gov.uk/web/guest/media-releases/-/journal_content/56/10180/6275704/NEWS.
5 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/319820/Lettings_guidance_CMA31.PDF.
6 Available at: www.gov.uk/government/publications/review-of-the-operation-of-injunctions-to-prevent-gang-related-violence.
7 Available at: http://t.co/5MU00AHp3R.
8 Available at: www.parliament.uk/briefing-papers/SN01012.pdf.
9 Available at: http://t.co/npqUh0f2le.
10 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/320196/140613_Estate_Regeneration_Prospectus.pdf.
11 Available at: www.insidehousing.co.uk/journals/2014/06/03/v/d/b/bedrom-tax---ALMOs.pdf.
12 Available at: www.sfha.co.uk/sfha/news/sfha-homelessness-in-scotland-set-to-increase-as-result-of-welfare-reform.
13 Available at: www.insidehousing.co.uk/finance/evictions-on-rise-as-landlords-toughen-up/7004143.article.
14 Available at: www.parliament.uk/briefing-papers/SN06896.pdf.
15 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/313834/Consultation_document_on_changes_to_the_reg_fwk_full.pdf.
16 Available at: www.insidehousing.co.uk/journals/2014/06/16/s/d/h/cosmo.pdf.
17 Justin Bates, barrister, London.
18 Tim Baldwin, barrister, London and Jayesh Kunwardia, Hodge Jones & Allen, solicitors, London.
19 John Beckley, barrister, London and Lou Crisfield, Miles and Partners, solicitors, London.

Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. The authors are grateful to the colleagues at notes 17 to 19 for transcripts or notes of judgments.