# **Housing:** recent developments

**New duties on private landlords over smoke and carbon monoxide alarms, a potential cap on social housing rents, and cases including secure tenancies, and housing allocation. Nic Madge and Jan Luba QC provide their monthly round-up.**

**Nic Madge**

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## Politics and legislation

### Housing Bill

This UK government bill was announced in the Queen's speech on 27 May 2015 and is due to be published later in October 2015. It will contain measures to:

- extend the right to buy (at a discount of up to 70%) to housing association tenants;
- require local authorities to dispose of high-value vacant council houses;
- provide the necessary statutory framework to support the delivery of 'starter homes'; and
- require councils to support self-builders registered in their area

It may also take forward government plans to require higher-earning social housing tenants to leave their homes or pay higher rents.

### Welfare Reform and Work Bill

This UK government bill had its Commons second reading on 20 July 2015 and is presently being considered by a public bill committee. It contains provisions to:

- cap or reduce housing association and council house rents;
- replace the mortgage interest element in social security benefits with loans; and
- reduce the total benefit cap to a maximum of £23,000 in London and £20,000 elsewhere (achieved by reducing housing benefit).

### Crown Tenancies Bill

This UK government-backed private members' bill makes provision for currently unprotected Crown tenancies (mainly of properties owned by government departments and quangos) to become assured tenancies for the purposes of the Housing Act (HA) 1988, subject to exceptions. It would modify the assured tenancies regime by, among other things, introducing a new ground for possession. The bill will have its Commons second reading on 6 November 2015 before consideration in committee.

### New rules for possession claims

The provisions for recovery of possession of property occupied by assured shorthold tenants, set out in HA 1988 Pt 1, were significantly modified by Deregulation Act (DA) 2015 ss33–41 with effect from 1 October 2015 (DA 2015 (Commencement No 1 and Transitional and Saving Provisions) Order 2015 SI No 994 art 11).

The changes (which are too extensive to summarise here) initially only apply to new tenancies granted on or after 1 October 2015 (DA 2015 s41(1)). However, from 1 October 2018 they will apply to all assured shorthold tenancies, whenever granted (DA 2015 s41(3)). See further Luba and Compton, 'An end to retaliatory evictions? New measures on repossession by private sector landlords' (2015) 19 L & T Rev 113 and the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646.

### New rules on unfair terms in tenancy agreements

The Consumer Rights Act 2015 has replaced the Unfair Terms in Consumer Contract Regulations 1999 SI No 2083 and other related legislation with wholly new arrangements for controlling unfair standard terms between suppliers and consumers, including tenancy agreements. It applies to contracts entered into on or after 1 October 2015. The enforcement agency is the Competition and Markets Authority (CMA). In late July 2015, it published 'Unfair contract terms guidance: Guidance on the unfair terms provisions in the Consumer Rights Act 2015'. The suite of published CMA guidance replaces that issued by the Office of Fair Trading. However, it does not yet contain separate material about unfair terms in tenancy agreements.

### New safety duties on private landlords

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 SI No 1693 came into effect on 1 October 2015. They impose duties on private landlords of residential premises in respect of provision and maintenance of smoke and carbon monoxide alarms. The requirements are to be enforced by local housing authorities.

In September, the Department for Communities and Local Government issued two guides to the new requirements: 'The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: Explanatory Booklet for Local Authorities' and 'The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: Q&A booklet for the private rented sector – landlords and tenants'.

### Protecting social housing tenants

In 2014–15 the regulator of social housing in England, the Homes and Communities Agency (HCA), issued six notices arising from breaches by social landlords of its consumer standards: *Consumer Regulation Review 2014/15* (September 2015). Such action is only taken where the breach of the standard has caused or may cause 'serious detriment' to a tenant or potential tenants. Four cases were concerned with breaches of annual gas servicing requirements. In the others, the HCA found serious detriment both as a consequence of a structural failure of a building, and a widespread, persistent failure of an emergency repairs service.

### Private renting in Wales

This autumn, the provisions of the Housing (Wales) Act 2014 Pt 1 will be brought into force, imposing new obligations on private landlords letting residential property in Wales.

The Welsh government has published a series of materials outlining the new requirements including 'Update on new legislation for private sector landlords and agents' (July 2015) and 'Frequently asked questions on Rent Smart Wales and the new legislation for private sector landlords and agents' (July 2015)

### Renting Homes (Wales) Bill

This is a Welsh government bill, introduced in the Welsh Assembly, to give effect to Law Commission proposals to simplify and standardise the law relating to landlord and tenant in residential premises. The Communities, Equality and Local Government Committee has completed its examination of the bill and made 37 recommendations for changes. The bill was expected to resume its committee stage in the Assembly (stage 2) on 30 September 2015.

### Homes (Fitness for Human Habitation) Bill

This is a private members' bill introduced by Karen Buck MP. It would amend Landlord and Tenant Act 1985 s8 to require that residential rented accommodation is provided and maintained in a state of 'fitness for human habitation'. It had a first reading on 24 June 2015 and its second reading is timetabled for 16 October 2015.

## Case law

### Secure tenancies

#### Homelessness

- **Wandsworth LBC v Tompkins** [2015] EWCA Civ 846, 31 July 2015

Warren and Joanne Tompkins and their four children were evicted and applied to Wandsworth for accommodation on grounds of homelessness. The council did not accept that it owed them the full housing duty under Housing Act (HA) 1996 s193, but provided temporary bed and breakfast accommodation pursuant to the interim duty (s188). As the council continued its investigations, it wrote offering to accommodate them in another property. The letter stated that the council was 'now able to provide you with alternative temporary accommodation in accordance with its duties under the Housing Act 1996 (Part VII), as amended'. As a result, Mr and Mrs Tompkins signed a tenancy agreement, headed 'Grant of Introductory Tenancy'. Later, the council wrote that the introductory tenancy form had been used in error and that they should have been granted a non-secure tenancy pending the completion of the (HA 1996) s184 inquiries. The council served notice of proceedings (HA 1996 s128) within the 12-month trial period commencing with the grant of the tenancy, but did not issue the claim for possession until one day after the expiry of the 12-month period. As a result, it amended the claim form and the particulars of claim to plead that, by virtue of HA 1996 s124(2) and HA 1985 Sch 1 para 4, the tenancy was incapable at law of taking effect as an introductory tenancy. The council argued that the tenancy was granted in pursuance of its Pt 7 homelessness function, and in particular the interim duty under s188, and so could not have been a secure tenancy unless the notification referred to in para 4 had been given. As the tenancy could not, therefore, have been a secure tenancy, it could not take effect as an introductory tenancy either, and the grant therefore operated to confer on Mr and Mrs Tompkins a non-secure tenancy. The tenants argued that it took effect as an introductory tenancy because the notification required under para 4 was provided by a certificate contained in the tenancy agreement, which stated that the tenancy 'will become' a secure tenancy at the end of the trial period. HHJ Lamb QC held that the tenancy was granted pursuant to the council's homelessness functions and that the certificate did not amount to a notice under para 4 because it did not notify Mr and Mrs Tompkins that the tenancy 'is to be regarded' as a secure tenancy, but stated that the tenancy 'will become' a secure tenancy. He granted a declaration that they held the property under a non-secure tenancy.

The Court of Appeal dismissed Mr and Mrs Tompkins's appeal. It was clear from *Westminster CC v Boraliu* [2007] EWCA Civ 1339, 2 November 2007; [2008] 1 WLR 2408 that the paragraphs of Sch 1 have to be read as mutually exclusive to, and not qualified by, each other. In this case, the certificate in the tenancy agreement, read as a whole and in the context in which it was signed, could not amount to a notification by the council that the tenancy was to be a secure tenancy. The certificate was simply an acknowledgement of the effect of HA 1996 ss124–129. It was not any form of notification by the council, whether for the purposes of para 4 or otherwise. As its title suggested, the purpose of the certificate was to provide a statement by the tenants that they understood the general statutory provisions that governed the grant of an introductory tenancy. It could not be treated as a para 4 notification and did not contain the language that would be necessary for that purpose.

#### Reasonableness

- **Glasgow Housing Association Limited v Lilley** 2015SCGLA54, Sheriffdom of Glasgow and Strathkelvin, 19 June 2015

In 2002, Glasgow City Council let a flat in a tenement building to Robert Lilley under a Scottish secure tenancy agreement. The claimant housing association acquired the council's stock. In 2010, on execution of a search warrant, police officers found three packages containing amphetamines in the flat and a further nine packages in his motor vehicle. The drugs weighed 380.5 g with an estimated street value of £1,430. In October 2011, he pled guilty to drugs offences and was made subject to a community service order with a requirement to undertake 250 hours of unpaid work. In October 2013, police officers executed a further search warrant. In January 2014, Lilley pled guilty to more drugs offences and was sentenced to 14 months' imprisonment. Glasgow did not receive any complaints from neighbouring tenants.

Sheriff Anwar found that the defender had breached clauses in the tenancy agreement not to use the premises for an illegal purpose and not to act in an anti-social manner. The ground for recovery of possession in Housing (Scotland) Act 2001 Sch 2 Pt 1 para 7(1)(b) was proved. Despite psychiatric evidence that the defender had experienced a range of mental health symptoms, including a post-traumatic stress disorder (PTSD), following an accident at work in 1995 that had left him badly burned and permanently disfigured, the sheriff found that it was reasonable to make an order for recovery of possession. The defender's conduct was likely to have a serious detrimental effect on neighbouring residents. It is in the public interest that drug-dealing is dealt with firmly.

### Assured tenancies

#### Annexation to the land

- **Spielplatz Ltd v Pearson and another** [2015] EWCA Civ 804, 28 July 2015

Spielplatz was the freehold owner of a woodland naturist resort near St Albans. In August 1992, John and Maureen Pearson were granted a tenancy of a plot of land in the resort. At the same time, they bought a chalet on the plot from the previous occupants. Spielplatz claimed possession, asserting that there was an unprotected common law tenancy which it had determined by a notice to quit. The Pearsons claimed that the tenancy was an assured tenancy under the HA 1988, which Spielplatz had not determined in accordance with that act, nor had it shown any ground entitling it to possession. The Pearsons' evidence was that, in 2008, they put breeze blocks around the outside of the chalet and rendered it. In 2011, they put on a new roof. In 2012, they refurbished or 'virtually rebuilt' much of the building following a leak into the bathroom. They estimated they had spent about £100,000 on the works. It was impossible to move a building of its size in either one or two pieces. It could only be moved 'by being taken back to its constituent parts'. After considering *Elitestone Ltd v Morris and another* [1997] 1 WLR 687, HHJ Lindsay Davies found the chalet was part and parcel of the plot and so there was an assured tenancy. She dismissed the claim for possession.

The Court of Appeal dismissed Spielplatz's appeal. Given the evidence relating to the construction of the chalet, the judge's finding that the chalet had become part of the land 'was probably the only finding she could properly have made' (para 37). The Court of Appeal also rejected an argument that the Pearsons were bare licensees.

#### Possession claims and discrimination

- **Poplar HARCA v White**[1] Bow County Court, 15 July 2015

The defendant was a single man in his late 20s with a diagnosis of depressive disorder with psychotic symptoms. He had symptoms of severe depression, schizophrenia and borderline psychosis. He had an assured tenancy. The claimant housing association sought possession on the basis of rent arrears (HA 1988 Sch 2 ground 10). The defendant denied that it was reasonable to grant a possession order. He also argued that, in seeking possession, the claimant was discriminating against him contrary to the Equality Act (EA) 2010. The rent arrears had arisen as a result of his disability, which had caused a failure to manage his affairs properly, including his housing benefit. Further, the claimant had failed to follow its own support and inclusion strategy. In particular, it had failed to refer the case to its vulnerability panel and had, in effect, treated the defendant like any other rent arrears case.

After hearing evidence from a consultant psychiatrist, District Judge Dixon dismissed the possession claim and ordered the claimant to pay damages for discrimination of £4,500. He was particularly critical of the claimant's failure to follow its own policy.

#### Rents

- **Irwell Valley Housing Association v O'Grady** [2015] UKUT 310 (LC), 25 June 2015

In 2011, Lee O'Grady was granted an assured tenancy of a flat by Irwell Valley Housing Association. The initial rent was £77.90 a week plus a variable service charge. In August 2013, the housing association served a notice of increase of rent under HA 1988 s13, proposing a rent of £80.31 a week plus a service charge of £6.77. He did not agree to the proposed increase and referred the notice of increase to the First-tier Tribunal (FTT) (Property Chamber) in accordance with s13(4)(a). The FTT determined that the new rent should be £74.23 a week (not including the variable service charge). The housing association appealed.

Martin Rodger QC, deputy president, allowed the appeal, remitting the matter to the FTT for fresh consideration. The FTT had erred in making use of a specific comparable without affording the parties the opportunity to comment on it. The procedure adopted by the FTT had deprived the parties of the opportunity to make any submissions on the evidence. He continued (at para 32):

*Where neither party has made representations or asked for a hearing they may be taken to have consented to the FTT giving its decision without their input.*

*But where there is a hearing, or submissions have been made, the position is different. The FTT will often be aware of relevant evidence before the hearing commences, and if so it should tell the parties and give them the opportunity to comment. What does not seem to me to be permissible in those circumstances (i.e. where the parties have engaged with the process by attending a hearing or making submissions in writing) is for the FTT to undertake further research of its own in order to make good deficiencies in the evidence after the hearing. If it wishes to do that it is necessary that it provide the parties with notice of the fruits of its investigations if they are to form any significant part in its reasoning. The parties must be given the opportunity to comment on the evidence used by the FTT in arriving at its conclusion.*

## Possession claims

### Enforcement

- **Nicholas v Secretary of State for Defence**
  High Court (Chancery Division), 24 August 2015

In May 2005, Defence Estates, acting on behalf of the Secretary of State for Defence, granted Squadron Leader Nicholas a licence of a house. Helen Nicholas, his then wife, moved into the house with him. Some time before April 2008, the marriage broke down and Squadron Leader Nicholas moved out. On 22 May 2008, Defence Estates gave notice requiring Mrs Nicholas to vacate the property by 24 August 2008. In later possession proceedings, Burton J made a possession order ([2013] EWHC 2945 (Ch), 31 July 2013; October 2013 *Legal Action* 32). Mrs Nicholas appealed. The Court of Appeal dismissed her appeal ([2015] EWCA Civ 53, 4 February 2015; April 2015 *Legal Action* 42).

The Court of Appeal ordered Mrs Nicholas to give possession by 31 March 2015 and refused her application for permission to appeal to the Supreme Court. The Supreme Court extended time for applying for permission to 28 days after a final decision was reached on whether public funding should be extended. The Secretary of State for Defence applied (without notice to Mrs Nicholas) to the High Court for permission to enforce the possession order. A deputy master granted permission and the writ was executed. The first Mrs Nicholas knew of the eviction was when she awoke to find the High Court enforcement officers in attendance at her property having changed the locks. She applied to set aside the writ.

Rose J set aside the writ. By CPR 83.13(8), notice of an application for a writ of possession must be given to every occupant. Accordingly, pursuant to CPR 83.13(2), permission should not have been granted. Further, the evidence supporting the application was incomplete. The deputy master had not been told that the Supreme Court had extended time for applying for permission to appeal while a public funding application was pending. That was an abuse of process. Failure to provide notice, so that the occupants do not have the opportunity to apply to the court for any relief, is a sufficient basis upon which to set aside a writ of possession after it has been executed.

### Deposits

- **Lingfield Point No 2 Limited v Hodgson**[2]
  High Court (Queen's Bench Division), Sheffield District Registry, 30 July 2015

The claimant company granted an assured shorthold tenancy on 21 May 2012. The tenants paid a deposit of £375 by cheque. It was received and banked by the landlords but was not deposited or protected under HA 2004 s213. In due course, the landlord sought to end the tenancy. On 28 July 2014, it posted a cheque for £375, seeking to return the deposit. The tenants' solicitors wrote, stating that payment by cheque was not acceptable and returned it. The cheque was never presented and therefore never cashed. On 31 July 2014, the landlord served a HA 1988 s21 notice. It then issued a possession claim. The tenants defended, arguing that the deposit was neither protected nor returned and so, in view of HA 2004 s215, the s21 notice was invalid. HHJ Briggs held that the cheque was an adequate means of returning the deposit and made a possession order. The tenants sought permission to appeal.

McGowan J refused permission to appeal. She stated that the statutory provisions were there to protect tenants and could not be used as a blunt instrument to defeat landlords' interests. By previously paying by cheque, the defendants had indicated implicitly that payment by cheque was acceptable. There was no real prospect of success. The absence of authorities arose not from the fact that this was a novel point but because it was a matter of common sense.

## Anti-social behaviour, harassment and unlawful eviction

- **Autunes v Smith and Right Move Lettings & Property Management Services Limited**[3]
  Croydon County Court, 20 July 2015

On 16 April 2011, Autunes entered into an assured shorthold tenancy agreement with Smith and paid a deposit, which was not protected. The parties subsequently renewed this tenancy until 16 April 2013, but on 16 August 2012, the landlord demanded the tenant sign a new agreement at an increased rent. Autunes developed kidney failure in 2013, for which he had to have dialysis in hospital three times a week. On 16 June 2014, he signed a contract for a further six-month tenancy ending on 15 December 2014. In September 2014, the letting agent and three other men attempted to gain access to the property without notice while Autunes was out. They were unable to enter as his wife had locked the door from the inside. The agent attempted to gain entry six further times in September and October while Autunes's wife was present. In October 2014, possession proceedings were issued in reliance on a HA 1988 s21 notice. It was incorrectly indicated that no deposit had been paid. A defence was filed but possession was nonetheless granted (although later set aside). Police and a bailiff attended the property on 4 December 2014 and evicted Autunes and his wife, who were threatened with arrest when they became distressed and upset. They were unable to obtain emergency accommodation and had to stay in a hotel for four days. An injunction was granted on 8 December 2014, readmitting Autunes to the property, but the keys were not returned to his solicitors until late on Friday 12 December, effectively preventing his return until the following Monday. Rent for December was demanded on the same day that the keys were returned. Autunes claimed damages. The defendants having failed to file a defence and Smith having unsuccessfully applied for relief from sanctions, District Judge Bishop awarded:

- £2,000 for the pre-eviction harassment;
- £3,300 in respect of the 11 days Autunes was kept out of the property, calculated at £300 a day;
- £257 special damages in respect of hotel costs;
- £2,000 aggravated damages;
- £2,000 exemplary damages;
- return of the deposit of £650;
- damages of three times the deposit under HA 2004 s214, namely £1,950; and
- interest of £295.

- **Director of Public Prosecutions v Bulmer**
  [2015] EWHC 2323 (Admin), 31 July 2015

The defendant was an alcoholic with a history of offending and causing significant disturbance to members of the public in York. Between October 1995 and February 2015, she had been sentenced on 320 occasions for 457 offences. She had been made subject to an on-conviction Asbo but had been guilty of 39 breaches of it over a period of less than three years. On a further conviction, the prosecution sought a criminal behaviour order (CBO), the form of order that has replaced the on-conviction Asbo. A district judge declined to make the order and the prosecution appealed.

The Divisional Court's judgment contains considerable guidance on the new CBO, the criteria to be applied and the correct approach for courts to take.

## Licensing of HMOs

- **R (Croydon Property Forum Limited) v Croydon LBC**
  [2015] EWHC 2403 (Admin), 13 August 2015

The council decided to adopt a selective licensing regime for the private rented sector, covering its whole district. Before doing so, it embarked on several rounds of consultation. Publicity included using the council's own website, distributing flyers and posters in libraries, leisure centres and community centres, emailing children's groups, residents' groups and residents' associations, listing the issue every week on an email bulletin to over 38,000 subscribers, posting details on the council's Facebook page, sending regular tweets, placing advertisements in local papers, issuing a press release that was picked up by local newspapers, placing information on the plasma display screens in various places and having it as a standard footer on all emails sent out by the council.

Sir Stephen Silber, sitting as High Court judge, rejected a challenge to the adequacy of the consultation exercise brought by the claimant on behalf of local landlords and property developers. Under HA 2004 s80(9), the council was only obliged to take reasonable steps. That did not mean that it had to take all steps or every step, or even all reasonable steps.

## Long leases

### Costs

- **Chaplair Ltd v Kumari**
  [2015] EWCA Civ 798, 27 July 2015

Kamlesh Kumari was a long lessee. Her lease contained provisions obliging her

'to indemnify the Landlord … against all … costs losses expenses claims and demands arising out of any failure by the Tenant to observe or perform any of its obligations'. Chaplair brought county court proceedings to recover unpaid rent and service charges. That claim was allocated to the small claims track. Chaplair sought to recover the costs of that claim and related proceedings in the leasehold valuation tribunal (LVT). District Judge Watson held that the court could not award more than £200, the amount fixed by CPR 27.14. HHJ Wulwik, after referring to *Gomba Holdings (UK) Ltd v Minories Finance Ltd (No 2)* [1993] Ch 171 and *Church Commissioners v Ibrahim* [1997] EGLR 13, allowed Chaplair's appeal. He held that the limitation of costs on the small claims track did not apply because the costs were not payable under the CPR but under the terms of the lease.

The Court of Appeal dismissed Kumar's subsequent appeal. The judge had applied the correct principle. He had to deal with the landlord's contractual right to costs. It was not suggested that that right was other than to a full indemnity for costs properly incurred. The relevant law was as it was held to be in *Church Commissioners v Ibrahim*.

**Relief from forfeiture**

- **Freifeld and another v West Kensington Court Ltd**
  [2015] EWCA Civ 806,
  30 July 2015

Following breaches of covenant, a landlord of commercial premises forfeited the head lease. The lessees applied to the court for relief from forfeiture. HHJ Gerald found that the breaches were 'conscious and deliberate'. He refused relief.

The Court of Appeal allowed the lessees' appeal and granted relief from forfeiture. It noted that relief can still be granted even though a breach is deliberate. Special circumstances do not have to be shown. The value of the leasehold interest is a relevant consideration. As 'a matter of principle, the exercise of the court's wide discretion should not enable a landlord to take advantage of a breach by which he is not irreparably damaged' (para 43). If a leasehold interest has substantial capital value and the disregard of a prior court order has been due to a mistake as to the effect of a stay, it may be disproportionate and unjust for the lease to be forfeited (*Magnic Ltd v Ul-Hassan and another* [2015] EWCA Civ 224, 18 March 2015). In this case, the judge had failed to consider the question of the windfall the landlord would gain 'as a self-standing consideration … on its own merits'. 'The windfall point [was] about proportionality. The appellants' egregious conduct [was] not relevant to the question of the windfall' (para 47).

**Housing allocation**

- **R (HA) v Ealing LBC**
  [2015] EWHC 2375 (Admin),
  7 August 2015

The claimant fled domestic violence with her children. She felt unsafe remaining in the same district as her former home (in Hounslow) and applied to join Ealing's housing allocation scheme. That council had exercised its powers under HA 1996 s160ZA(7) to identify classes of applicants who did and did not qualify for its scheme. The non-qualifying classes included '[h]ouseholds that have not been resident in the Borough for the last 5 years'. The scheme contained a fall-back provision for exemption from the usual rules in exceptional cases. The claimant had applied online and received a pro forma response indicating that because she did not satisfy the five-year provision, she could not join the register. That decision gave no consideration to her personal circumstances.

Goss J allowed a claim for judicial review, on multiple grounds:

- the claimant was a person within a class entitled to reasonable preference under HA 1996 s166A(3); the setting of criteria that significantly undermined the reasonable preference duty, by entirely excluding from the register many of those entitled to a reasonable preference, rendered the policy unlawful;
- the residency requirement unlawfully discriminated against women who were victims of domestic violence (contrary to both Human Rights Act 1998 Sch 1 art 14 and EA 2010 s29);
- the decision to adopt the allocation scheme and the decision in the particular claimant's case were each taken in breach of the council's obligations under Children Act 2004 s11 to have regard to the best interests and well-being of children; and
- the council had failed to apply or consider applying its own exceptionality provision when taking the decision in the claimant's case.

The scheme was declared unlawful and the decision in the claimant's case was quashed.

- **R v Odulate**
  Kingston Crown Court,
  14 August 2015

Bolarinwa Odulate was a former social housing officer. She applied for social housing to Richmond upon Thames RLBC and was allocated a flat. Her application had failed to disclose that she was already the owner of a property in Southwark. She had bought the Southwark property under the statutory right to buy and was letting it to tenants. She pleaded guilty to two counts of fraud and was sentenced to 30 months' immediate imprisonment.

- **Ealing LBC v Asirifi**
  Uxbridge Magistrates' Court,
  26 June 2015

Evelyn Asirifi applied to the council for housing. She said her home, in private rented accommodation, was overcrowded. Council officers checked her account against information held by the housing departments of other social landlords. Responses disclosed that she held a social housing tenancy in Southwark and she was suspected of illegally subletting it.

On guilty pleas, she was fined a total of £400 for two offences under the Fraud Act 2006 with costs of £378 with a victim surcharge of £20. She was removed from the Ealing housing register and the Southwark property was recovered.

- **Ealing LBC v Qayum**
  Isleworth Crown Court,
  15 June 2015

Ijaz Qayun applied to the council for accommodation. He was provided with council housing and claimed housing benefit to pay the rent. In fact, he had, throughout, owned a property elsewhere and let it to tenants. He pleaded guilty to making a false representation, failing to promptly declare a change in circumstances and failing to disclose information. There were six offences of housing fraud and benefit fraud in all.

He was sentenced to 15 months' imprisonment. Possession of the council property was recovered and a later hearing fixed for a confiscation order application.

- **Hammersmith & Fulham LBC v Smith**
  Hammersmith Magistrates' Court,
  5 May 2015

Susan Smith was a council tenant in receipt of housing benefit. She applied to be admitted to the council's tenancy incentive scheme, which helps tenants buy a home elsewhere by payment of up to £30,000 for giving up their tenancy. On the application form, she inadvertently disclosed her bank balances of £213,574. She later realised her mistake and tried to withdraw her application. Enquiries revealed that she had inherited a house, let it for several years, then sold it and banked the cash. She had continued to claim housing benefit throughout.

Having repaid most of the overpayment, and on guilty pleas, she was sentenced to a 12-month community order (150 hours of unpaid work) with £1,200 costs and a £60 victim surcharge.

**Homelessness**

**Who can apply?**

- **R (SD) v Oxford City Council**
  [2015] EWHC 1871 (Admin),
  28 May 2015

A husband, a wife and their four dependent children became homeless. The wife applied for homelessness assistance and accommodation for them all (HA 1996 Pt 7). The council decided that she had become homeless intentionally. That decision was upheld on review and there was no appeal. The husband then applied for accommodation for them all. The council decided that he had become homeless intentionally. That decision was upheld on review and there was no appeal. The dependent 16-year-old son of the family then applied for accommodation for them all. The council declined to accept the application and the son sought a judicial review of that decision. He contended that he had an independent right to apply and was in priority need by virtue of being aged 16 (Homelessness (Priority Need for Accommodation) (England) Order 2002 SI No 205 (H(PNA)(E) Order) art 3). The rest of the family were people with whom he normally resided and, accordingly, accommodation had to be provided for them all (HA 1996 s176).

Ouseley J refused permission to apply for judicial review. He held: (1) it was not appropriate to deal with the matter by refusal to accept an application 'because in order to decide whether it is an application, the sort of investigations envisaged by the later stages of the Act have to be gone through. There can be 16-year-olds who are dependants, and if an application comes in from a 16-year-old that analysis has to be carried out: is the individual dependent or not? What is his family background? And simply to say "this is not a claim" is to tear the paper up upon its arrival' (para 20); but (2) the claimant could not conceivably be in priority need. H(PNA)(E) Order art 3 was directed to non-dependent children and it was common ground that the claimant was dependent upon his parents. The scheme of statutory provisions for the homeless did not contemplate freestanding duties being owed to dependent children (*R*

*v Oldham BC ex p Garlick* [1993] AC 509 applied).

**Priority need**

- **Hosseini v City of Westminster**[4] 25 June 2015, Central London County Court

The claimant was a 54-year-old man. He fled to the UK after being imprisoned and tortured for a year in Iran. His experiences had left him suffering from severe PTSD, depression and a range of physical health problems. He received disability living allowance. The council accepted, when considered alone, he would be vulnerable (HA 1996 s189(1)(c)). However, it decided, on a review, that he did not have a priority need. It considered that: he received significant care and support from his son, which helped him to cope; such help had continued while he was occupying interim accommodation (HA 1996 s188), although he and his son had not been accommodated together; there was nothing to suggest that this support would cease if he became homeless again; and, therefore, it was reasonable to conclude that support would continue so that he was not vulnerable.

HHJ Bailey allowed an appeal. Having referred to Lord Neuberger's comments in *Hotak v Southwark LBC*; *Kanu v Southwark LBC*; *Johnson v Solihull MBC* [2015] UKSC 30, 13 May 2015; [2015] 2 WLR 1341 (see July/August 2015 *Legal Action* 21 and 50) at para 70(i), he held that the reviewing officer had not been entitled to infer from the fact that support had been provided in the past, that if the claimant were rendered homeless, it would continue at a level sufficient to prevent him being vulnerable. He said his concern was heightened by the comments of Lord Neuberger in *Hotak* at para 78, that the public sector equality duty meant the reviewing officer must 'focus very sharply' on the matters identified in that paragraph. In particular, he expressed 'great surprise' that the review officer had not made any enquiry of the claimant's son, commenting that in many cases 'such enquiry would have been made as a matter of course'.

**Intentional homelessness**

- **Najim v Enfield LBC** Supreme Court, 27 July 2015

The Supreme Court refused the applicant permission to appeal in this intentional homelessness case. The Court of Appeal's judgment concerned the correctness of a reviewing officer's decision under the HA 1996 relating to loss of accommodation for withholding rent ([2015] EWCA Civ 319, 4 March 2015; May 2015 *Legal Action* 46). Permission was refused because: 'The issue turned mainly on the factual evaluation made by the reviewing officer and the Court of Appeal was plainly right about [HA 1996] section 191(2).'

**Main housing duty**

- **Firoozmand v Lambeth LBC** [2015] EWCA Civ 952, 3 September 2015

Javid Firoozmand, the appellant, was a vulnerable homeless man with chronic and acute health conditions. He was a suicide risk and had chronic hypersensitivity pneumonitis; he was noise-intolerant; he could not write in English. When he became homeless from private rented accommodation, the council eventually accepted that it owed him a duty under HA 1996 Pt 7 s193. It sought to comply with its duty by providing a room described as a studio in a hostel pursuant to s193(5). He asserted that, given his medical conditions, it was not suitable because the occupiers of neighbouring rooms were too noisy.

A reviewing officer decided that the accommodation was suitable. That decision was quashed on appeal by HHJ Wulwik. By a further review decision, the council maintained its opinion that the accommodation was suitable as temporary accommodation.

An appeal from that further decision was dismissed by HHJ Mitchell. Ryder LJ granted permission to bring a second appeal on the ground that the reviewing officer and the judge had arguably failed to have regard to the statutory material and guidance in respect of the suitability of the accommodation ([2015] EWCA Civ 890, 3 July 2015). Most particularly, HA 1996 s210(1) required suitability to be determined having regard to HA 1985 Pts 9 and 10 and HA 2004 Pts 1–4. He said (at para 5): 'The question arises whether a local authority is obliged to determine suitability by reference to the duty in section 210(1) and the guidance issued in accordance with the same. On the face of it, the local authority is and if a decision letter makes no reference to the matters set out in parts 1 to 4 of the Act and the guidance issued in pursuance of the same, it will be flawed.'

By the time of the appeal hearing, the issue had narrowed to whether a council was required to carry out an inspection under HA 2004 s3 of all accommodation that was said, on review, to be unsuitable for an applicant by reason of its condition, or at least to consider commissioning such an inspection. The full court dismissed the appeal. The statutory scheme did not require an inspection in every case:

*[I]t is for the authority to decide whether it has sufficient information in order to make a decision subject only to a challenge on grounds of misdirection or irrationality* (para 35).

As to whether an inspection was required in the instant case, Patten LJ said (at para 39):

*The Council would have been entitled to conclude that an inspection and formal hazard assessment was unlikely to provide it with any more information than it already had and that it could properly make a decision on suitability without the need for such an inspection. The chances of this being a category 1 hazard case are remote to non-existent and there are no grounds, in my view, for saying that the Council acted in breach of s210 in proceeding to make its decision on suitability without first undertaking a hazard assessment or that it acted irrationally in so doing.*

**Use of bed and breakfast accommodation**

- **Complaint against Lancashire County Council** Local Government Ombudsman Complaint No 13 020 158, 5 August 2015

A 16-year old (S) was arrested and charged with making threats of violence. He was granted bail subject to a condition that he live at whatever accommodation the council provided for him.

A youth offending team worker told the council's children's services officers that 'he would be concerned if [S] was to be placed in B&B because of his level of violence'. The council's children's services department decided to place S in bed and breakfast accommodation.

The ombudsman said (at para 71) the council 'was not permitted to place S in a bed and breakfast as either a "looked after child" or as a homeless 16 to 17 year old. Placing S in bed and breakfast, even in an emergency, is a breach of the statutory guidance. This is a significant fault concerning a vulnerable young person.'

The council accepted a recommendation that it should 'ensure it does not place homeless 16 and 17 year olds in bed and breakfast accommodation (including the use of unsupported hotels) even in an emergency. If the Council decides to act in breach of the statutory guidance, the decision to do so should continue to be made by the Head of Service. The Head of Service's decision, and the reasons for it, should be recorded on the child's file' (para 84).

**Accommodation pending review**

- **R (Barrett) v Westminster City Council** [2015] EWHC 2515 (Admin), 28 July 2015

The claimant was a 58-year-old single woman sleeping rough. She applied to the council for homelessness assistance. Her application referred to various medical conditions. The council decided that she was not vulnerable (see HA 1996 s189(1)(c)). She applied for a review, submitting additional medical evidence in support. She also applied for accommodation pending the outcome of the review (HA 1996 s188(3)). The council refused to accommodate pending the outcome of the review.

John Bowers QC, sitting as a deputy High Court judge, allowed a claim for judicial review of that refusal. The council had paid lip service to the criteria in *R v Camden LBC ex p Mohammed* (1998) 30 HLR 315 and had not engaged with the updated medical evidence.

**Housing and community care**

- **R (SG) v Haringey LB** [2015] EWHC 2579 (Admin), 4 August 2015

The claimant was a vulnerable and destitute asylum-seeker with care and support needs. The council declined to provide accommodation. It considered that it no longer had a duty to accommodate vulnerable asylum-seekers in the light of the repeal by the Care Act 2014 of National Assistance Act 1948 s 21.

In a claim for judicial review, John Bowers QC, sitting as a deputy High Court judge, declared that the council's decision was unlawful. He held that local authorities continue to have duties to accommodate asylum-seekers whose needs for care and support do not arise solely because of destitution or its anticipated effects.

1 William Flack, solicitor, London, and Jim Shepherd, barrister.

2 Kelly Bushby, solicitor, Darlington Citizens Advice Bureau, and Frances Lawley, Zenith Chambers, Leeds.

3 GT Stewart Solicitors, Croydon, and Matthew Feldman, barrister, London.

4 Daniel Clarke, barrister, London, and Saimi Yasin, Hillingdon Law Centre, London.

Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London, and a recorder. They would like to hear of relevant housing cases in the higher or lower courts.