important that the courts intervene.

In other areas of social welfare law, review-type decisions are usually made by independent tribunals. For example, if an asylum-seeker is denied housing support by the NASS, s/he can apply to an independent, judicial adjudicator – the Asylum Support Adjudicator. There is no rational reason why most homeless persons are denied a fact- and merit-based impartial determination of their claim. Such treatment is inconsistent with most other areas of social welfare law, which have spawned a myriad of adjudicators and tribunals.

In the absence of a scheme that provides a semblance of impartial determination, it is all the more important that the courts intervene when decisions are less than fair-minded. The concluding words of the judgment in *Shala* ring loud and clear:

… this is an area of law which impinges directly on two important and in part conflicting interests. One is the need of local housing authorities to husband their resources and to ensure that only those genuinely entitled are treated as in priority need. The other is the catastrophic consequences of a failure to house someone whose vulnerability will make them unable to cope with homelessness – a legal test which itself makes the dubious assumption that homelessness is something fit people can always cope with. Only a properly approached and fair-minded decision can hold these interests in balance (para 24).

CLARIFICATION

In 'Homeless people and vulnerability under the HA 1996', December 2007 *Legal Action* 25, it was suggested that some applicants might benefit by making an application to a Welsh housing authority with which they do not have a local connection with a view to being assessed for priority need under the relevant Welsh provisions: the Homeless Persons (Priority Need) (Wales) Order 2001 WSI No 607, and then referred back to an English authority with which they do have such a connection. In general, this appears to be a viable mechanism by which a homeless person in England may access the more liberal Welsh provisions.

However, readers should note that this route is not open to those who seek to assert that they are in priority need as 'former prisoners'. Regulation 7 of the Welsh Order only renders former prisoners in priority need if they have a local connection with the housing authority to which they have applied.

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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. Comments from readers are warmly welcomed.

POLITICS AND LEGISLATION

Government housing policy

In a House of Commons written statement delivered on 12 December 2007, housing minister Yvette Cooper MP highlighted a range of central government housing policy initiatives going beyond those set out in the current Housing and Regeneration Bill (see below).[1] These policy announcements included:

- an independent comprehensive review of renting in the private sector;
- publication of an action plan (backed by funding of £15m over three years) to tackle overcrowding in 38 pathfinder local authority areas (including all London boroughs): see also *Tackling overcrowding in England: an action plan*, which was published on the same day;[2]
- consulting on new 'reasonable preference' categories for social housing allocation schemes to cover under-occupying tenants and tenants who need to move to find employment;
- new central government funds to enable every local authority to be part of a sub-regional choice-based lettings scheme by 2010; and
- a 2008 Housing Transfer Programme of housing stock disposals by local housing authorities (a letter sent to local authorities on 12 December 2007 invited applications by 31 March 2008).[3]

Further detail of the measures announced is in Communities and Local Government (CLG) news release 243/07, 12 December 2007.[4] The housing context in which they will be delivered is detailed graphically in the *Survey of English housing preliminary results: 2006/07*, Housing statistics summary 27/2007, CLG, December 2007.[5]

Housing and Regeneration Bill

The House of Commons Public Bill Committee held an evidence session on 13 December 2007 to consider the detail of this legislation. The housing minister's evidence confirmed that neither overcrowding nor the private rented sector would be addressed in the bill or in further government amendments to it. Ms Cooper also confirmed that there were no immediate plans for a national housing mobility scheme. The government is to bring forward an amendment to the controversial clause 68(c) of the bill, which appears to define social housing as accommodation solely for those who are unable to afford market rents, and will consider the representations of the Local Government Association for amendments to the bill to extend the role of Oftenant to the council sector from the outset.

Two reports on the results of consultation exercises have explained detailed government thinking on two parts of the Housing and Regeneration Bill:

- *Clarifying the right to buy rules: summary of consultation responses* (CLG, January 2008) explains the reasoning behind the further right to buy changes contained in the bill; [6] and
- *Delivering housing and regeneration: Communities England and the future of social housing regulation – consultation: summary of responses* (CLG, January 2008) gives more detail on the arrangements for the roles of regulators and ombudsmen proposed in the bill.[7]

Homelessness

The government has announced a new three-year financial settlement of at least £150m for local authority work on preventing and tackling homelessness: CLG news release, 5 December 2007.

On 10 December 2007, the homelessness figures for the third quarter of 2007 (England) were published. They indicate significant falls in:

- the number of homelessness applications received and decided;
- the number of acceptances; and
- the number of households in temporary accommodation: *Statutory homelessness: 3rd quarter 2007, England* (CLG, December 2007).[8]

Some explanation of the impact of

homelessness prevention initiatives on the statutory homelessness figures is given in *Evaluating homelessness prevention* (CLG, December 2007), which contains the results of extensive research commissioned in 2004 that reviewed homelessness services in ten local authority areas.[9]

Social housing allocation

On 19 December 2007, School of Law, University of Bristol announced the results of its research project designed to look at the ways in which local authorities and registered social landlords (RSLs) resolve the tensions that arise through 'problematic nominations' under Housing Act (HA) 1996 Part 6.[10] The project defined problematic nominations as housing nominations, by authorities to RSLs, of those households whose behaviour and/or lifestyle might be thought to pose problems for the landlord. It found that the problems are most significant in stock transfer areas and that recent initiatives, such as choice-based lettings and common housing registers, have not resolved them.

Housing tribunals

In Transforming tribunals: implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007 (Tribunals Service, November 2007), the government invites views about future arrangements for tribunals that handle housing cases.[11] Chapter 12 (Land, property and housing) poses two specific questions on housing tribunals for consultees:

- Question 29. 'Do you agree that ... [a two-tier structure of First-tier and Upper-tier within the Tribunals Service] is the right long-term vision for tribunals dealing with land, property and housing? If not, do you have an alternative?'; and
- Question 30. 'Do you agree that the jurisdictions of the [Residential Property Tribunal Service] and the Adjudicator to the Land Registry should be transferred to the First-tier Tribunal and their administration to the Tribunals Service?'

The deadline for responses to the consultation is 22 February 2008.

The Law Commission has announced that it expects to produce its report on whether a specialist tribunal should be established to resolve housing disputes in 'spring 2008': *Law Commission Newsletter winter 2007–08*.[12]

Discrimination

The Housing Corporation (HC) has issued a good practice note to assist housing associations to eliminate discrimination in the provision of their services: *Equality and diversity* (HC, November 2007).[13]

Home information packs

The full, national roll out of the requirement for home information packs (HIPs) to be produced on house and flat sales took place on 14 December 2007: Progress Issue 27, 14 December 2007.[14]

The House of Commons Communities and Local Government Committee's report: *Communities and Local Government: departmental annual report 2007*, published in January 2008, was heavily critical of the government's handling of the introduction of HIPs.[15] Dr Phyllis Starkey MP, the CLG committee's chairperson, said: 'The long and tortuous process of introducing [HIPs] signals a failure of delivery on CLG's part. It is clear the reasons for this lie in poor preparation and then a retreat by the department's ministerial team.'

Private rented sector

Details of the independent review of the private rented sector in England (see above) are likely to be announced early in 2008.

In October 2007, the Legal Services Commission released the findings of a survey of 528 private sector tenants that was conducted in July 2007.[16] Key findings from the survey include:

- 85 per cent of renters in the UK have never received professional advice even though 21 per cent of renters admit to having had a problem with a landlord;
- When asked to name their rights, just three per cent of tenants mentioned that the landlord is only entitled to keep their deposit if the landlord can prove that the property has been mistreated;
- Only 20 per cent of renters highlighted that a landlord must serve notice on a tenant if the landlord wishes him/her to leave;
- 86 per cent did not mention that landlords must keep the building in good condition, maintaining gas, electricity, water and heating equipment;
- A landlord's failure to do maintenance and repair work was found to be the most common cause of disputes; this was cited by 56 per cent of renters; and
- 24 per cent of those who reported having fallen out with a landlord attributed the dispute to rent or deposits.

Gypsies and Travellers

On 11 December 2007, the Independent Task Group on Site Provision and Enforcement for Gypsies and Travellers published its final report: *The road ahead* (CLG, December 2007).[17] The task group's recommendations include:

- CLG should monitor the pace of delivery by local planning authorities;
- Ministers should meet Gypsies and Travellers to discuss their concerns about the different definitions used for Gypsies and Travellers for planning and housing purposes;
- The government should proceed with the proposal in the planning white paper to reduce the time limit for planning appeals when the same development is the subject of an enforcement notice;
- CLG should ensure that guidance on tackling anti-social behaviour is completed at the earliest opportunity;
- The government should maintain the level of funding provided between 2006 and 2008 for the Gypsy and Traveller site grant in real terms, throughout the Comprehensive Spending Review period;
- The government should report annually to parliament on progress on Gypsy and Traveller issues;
- Local authorities should urgently consider the scope for emergency stopping places within their areas that can provide an alternative location for Gypsies and Travellers on unauthorised sites in dangerous or damaging locations; and
- In considering whether new public provision should be provided through new sites or extensions to existing sites, local authorities should take into account guidance on the appropriate size of sites.

Also on 11 December 2007, a government statement set out the steps to be taken in progressing the task group's recommendations and announced a further £97m in funding to help local councils meet the housing needs of Gypsy and Traveller families.[18]

SECURE TENANCIES

'Let as a separate dwelling'

■ Mansfield DC v Langridge

[2007] EWHC 3152 (QB), 21 September 2007

Mr Langridge was the secure tenant of a house. After allegations of nuisance, Mansfield issued a possession claim, but the proceedings were stayed when Mr Langridge received life-threatening injuries from a serious assault. When he left hospital, he moved into a hostel and his mother gave up the keys of the house to Mansfield to enable the council to clean it up.

After Mr Langridge issued a claim for an injunction for the return of the keys, Mansfield made a flat, which was supported accommodation, available to him on licence until the resolution of the possession proceedings. Mr Langridge signed an agreement to occupy the flat on a temporary basis as a licensee. The agreement provided that it did not create a secure tenancy. In a letter, it was stated that the agreement was

purely for the purpose of providing temporary accommodation pending trial of the possession proceedings.

Subsequently, Mansfield obtained a possession order in respect of the house. The council then served notice to quit before issuing proceedings for possession of the flat. HHJ O'Rorke found that it had been the parties' mutual intention that the agreement should be limited in time until the conclusion of the earlier possession claim and that nothing had altered that mutual intention or the nature of the licence. The flat was not a separate dwelling (HA 1985 s79(3)). He made an order for possession. Mr Langridge appealed.

Calvert-Smith J dismissed the appeal. Mr Langridge occupied the flat as a sole residence and the intention of both parties had been to limit the occupation to the duration of the proceedings. Following *Tyler v Kensington and Chelsea RLBC* (1991) 23 HLR 380, CA, the flat was not a separate dwelling and the right to occupy ceased when the possession claim for the house was completed.

Succession

■ Southwark LBC v Anderson[19]

Ms Anderson was a 60-year-old woman who lived with her partner. He had been the sole tenant of the premises. In August 2000, a suspended possession order was made on the basis of rent arrears. There was an immediate breach of the terms of the order and he became a tolerated trespasser. After his death, Ms Anderson sought to succeed to the tenancy. However, Southwark brought possession proceedings against her on the basis that she was an unauthorised occupier. There were also arrears of rent in the region of £7,000. Ms Anderson applied to be appointed as representative of the estate in the possession proceedings brought against the original tenant. She argued that the right to make an application under HA 1985 s85 constituted a 'possession' under article 1 of Protocol No 1 of the European Convention on Human Rights ('the convention') and as a 'possession' the right was vested in the late defendant's estate.

Before the hearing of Ms Anderson's application, Southwark conceded and withdrew the possession proceedings. The council consented to a declaration that Ms Anderson had succeeded to the tenancy from the date of the (former) tenant's death.

Disability Discrimination Act 1995

■ Lewisham LBC v Malcolm

[2007] EWCA Civ 763,
25 July 2007,
September 2007 Legal Action 15

On 4 December 2007, the House of Lords granted Lewisham leave to appeal.

■ Croydon LBC v Wright

High Court (QBD),
6 December 2007

Ms Wright was a non-secure tenant of Croydon. She was dyslexic and suffered from diabetes. As a result of rent arrears, Croydon obtained a possession order. Ms Wright managed to reduce the arrears, but they increased again when she was admitted into hospital, and when her tax credit was stopped. Her tax credit ceased because she failed to return an annual renewal form. She argued that she had not understood the form as a result of her disabilities. Croydon sought to execute the order. Ms Wright applied to suspend execution and sought an adjournment; that application was refused by a district judge. A circuit judge dismissed her appeal.

Eady J allowed a second appeal. The judge had erred in law in refusing the application to adjourn. There was a prima facie case that the eviction was related to Ms Wright's disabilities, namely her dyslexia and diabetes, and was contrary to the Disability Discrimination Act (DDA) 1995. There was also some evidence that her disabilities had been linked to her failure to complete the form. Accordingly, the application was remitted to a different judge.

ANTI-SOCIAL BEHAVIOUR

Possession claims against Gypsies

■ Smith (On Behalf of the Gypsy Council) v Buckland

[2007] EWCA Civ 1318,
12 December 2007

The claimant managed a Gypsy caravan site which was owned by Neath Port Talbot County Borough Council. Ms Buckland lived in a caravan on the site from 1999. After allegations of nuisance, the Gypsy Council terminated her licence. In the subsequent possession claim, it was agreed that the claimant was in the same position as a local authority.

HHJ Bidder QC found that it was not seriously arguable either that:

■ the Caravan Sites Act (CSA) 1968 was incompatible with article 8 of the convention; or

■ the decision to seek possession was amenable to judicial review so as to afford a public law defence of the kind that was recognised in *Wandsworth LBC v Winder* [1985] AC 461, HL.

HHJ Bidder QC found that Ms Buckland's son had been guilty of misconduct, but rejected the allegations against Ms Buckland. As a result, he made an order for possession. However, in accordance with CSA s4 (as amended), the judge suspended the order for four months on condition that Ms Buckland complied with an undertaking given to the court that her son would leave the site and that she discharge the arrears of water charges at the rate of £5 per week. Ms Buckland appealed.

Her appeal was dismissed. Dyson LJ recognised that it is now established law that a defendant has the right to contend in his/her defence that the decision of a public authority to recover possession was one which no reasonable person could consider justifiable. However, the legislative and procedural framework is fundamental to any consideration of whether an authority was acting in a manner in which no reasonable authority could have acted.

After considering HA 2004 s211(1), he noted that *Connors v UK* (2004) 40 EHRR 189 involved a misuse of position in that the authority used its power to evict summarily by unilateral decision, bypassing any procedures for scrutinising the factual basis on which it had made its decision. The lack of procedural safeguards is the predominant reason for the decision in *Connors*. Since the amendment to CSA s4, it is no longer possible for a local authority to use its power to evict summarily by unilateral decision, bypassing any procedures for scrutinising the factual basis on which it had made its decision, because the occupier can apply to the court for a suspension of the possession order.

A local authority can obtain a possession order, but it cannot recover possession if an application is made to suspend enforcement unless the court considers that it is not appropriate to exercise its discretion to suspend enforcement having regard to all the circumstances, including, in particular, those set out in CSA s4(4)(a) to (c). By issuing proceedings, local authorities submit to the jurisdiction of the court, which has power to investigate all the circumstances of the case, including complaints about occupants' behaviour. Since the amendment to the CSA by HA 2004 s211(1), both Dyson and Wall LJJ found it difficult to conceive of a case in which a public law defence would succeed. 'It will only be in a truly exceptional case that it will even be seriously arguable that such a defence will succeed.'

Assured tenancies: reasonableness

■ Accent Peerless Ltd (formerly Surrey Heath Housing Association Ltd) v Kingsdon

[2007] EWCA Civ 1314,
12 December 2007

Ms Kingsdon and her daughter were assured tenants. Both suffered from a mental disability.

The main symptoms were hypersensitivity to noise, a propensity to exaggerate the effect of noise, agoraphobic tendencies, a tendency to misunderstand and chronic complaining, in particular, about the way in which their neighbours were carrying out DIY works. Between November 2001 and September 2005, the Kingsdons made 36 complaints to the local council's environmental health department and, between September 2001 and November 2001, they made 90 complaints to their landlord. They also procured the sending of unwanted mail shots and other advertising material to their neighbours. The Kingsdons' landlord sought possession. It alleged that there was conduct causing or likely to cause a nuisance or annoyance to adjoining occupiers. The Kingsdons' condition meant that they could not attend court to give evidence. HHJ Milligan found that their behaviour caused, in addition to anxiety and distress, strong feelings of humiliation and made an immediate possession order. The Kingsdons appealed. They argued that the trial judge did not take proper account of pre-trial abatement of the nuisance.

The Court of Appeal dismissed the appeal. In considering the issue of reasonableness, the likelihood of continuation of nuisance is obviously significant. The greater the likelihood of continuation, the more reasonable a possession order is likely to be. In this case, it was plain from the judgment that the judge asked himself the right question, namely whether or not it was reasonable to make a possession order. He considered some of the psychiatric evidence. He noted that the conduct of the defendants was the result of their mental illness, and equally noted the effect on the neighbours. He had abatement in mind, but considered that it did nothing to mitigate the effect on the neighbours.

The decision on reasonableness was one that fell into the category of decisions with which the Court of Appeal would not interfere in the absence of a manifest error of principle, a failure to take a relevant consideration into account or the taking into account of an irrelevant consideration. The Court of Appeal detected no error of principle and found that all relevant factors were carefully considered.

Public Services Ombudsman for Wales

Investigation

■ Conwy CBC

200601392/200700123 and 200600912, 22 November 2007

Two occupants of a mixed-tenure estate complained that the council failed to deal adequately with complaints of anti-social behaviour, including noise nuisance, since 2001 and 2002 respectively. The Ombudsman for Wales found that there had been maladministration. After referring to an earlier complaint relating to the same council, he identified new areas of concern and expressed doubts about whether lessons had been fully learned from his earlier report.

The Ombudsman found that the council had failed to comply with the requirements of its new anti-social behaviour procedures and that there had been maladministration in a number of areas, including an absence of inter-agency working on the case. He found that if information held by the relevant staff had been shared and that if there had been regular inter-agency reviews of the case, there could have been much earlier resolution of the nuisance suffered by the complainants and other residents. Furthermore, it was conceded by the council that there had been no consideration of the complainants' article 8 convention rights. The council had failed to deal appropriately with direct requests for assistance for support for one complainant's children.

The Ombudsman recommended that the council should provide evidence, within three months, of protocols for the provision of support to witnesses involved in court proceedings, improved working with the police, communication within the social services department and communication between departments. He further recommended payment of compensation to one complainant and his family of £2,750 per annum for the period between January 2003 and January 2007 and of £500 for the lesser, though not insignificant nuisance, to which the other complainant was subjected.

SURRENDER AND REGRANT

■ André v Robinson

[2007] EWCA Civ 1449, 14 December 2007

Ms Robinson and two others jointly rented a first-floor flat in a converted house in North London. It had one large and one small bedroom. The tenancy was a protected tenancy under the Rent Act 1977. The other two joint tenants left. Ms Robinson remained and moved into the large bedroom under a new agreement, and with a lower rent. After a while, Ms Robinson and the landlord agreed that the small room would be let to others. Two others occupied the room in succession, each paying the rent directly to the landlord. The landlord brought an action seeking possession of the small bedroom, contending that it did not form part of Ms Robinson's tenancy. HHJ Pearl ruled that Ms Robinson held a statutory tenancy of the entire flat. The agreement whereby the rent was paid by the two successive occupiers to the landlord directly was simply a good faith agreement, not evidence that the defendant was only entitled to the large room. The landlord appealed.

The Court of Appeal dismissed the appeal. The facts did not support the landlord's argument that there had been a surrender by Ms Robinson of the whole flat, followed by a grant of only part. There would have had to have been an unambiguous act, or series of acts, by which he had given up possession and the landlord (or his predecessor) had entered into a separate letting arrangement; this was untenable on the facts found by the judge.

LONG LEASES

Service charges

■ Fernandez v Shanterton Second Management Co Ltd

LRX/153/2006, Lands Tribunal, 13 November 2007

Mr Fernandez was a long lessee. All the lessees of the building informally varied the terms of their leases and agreed to pay their service charges in advance by monthly standing order. Mr Fernandez later realised that the monthly payments were at variance with the provisions of the lease and stopped his standing order. Shanterton, the management company, issued a statutory demand, and then proceedings. However, when its accounts were audited, they showed a credit due to Mr Fernandez. The Leasehold Valuation Tribunal (LVT) allowed Shanterton's claim for legal costs of the proceedings. Before the Lands Tribunal (LT), Mr Fernandez submitted that the costs were unreasonably incurred as his account had been in credit. Shanterton contended that it had incurred the costs in the light of legal advice, later found to be erroneous.

N J Rose, sitting in the LT, allowed Mr Fernandez's appeal in relation to the costs of the proceedings against him. If Shanterton had sought advice at a much earlier stage, it would have been apparent that the credits exceeded the service charges, and equally clear that service of the statutory demand and of the proceedings was unjustified.

■ Ashley Gardens Freeholds Ltd v Cole

LRX/130/2006, Lands Tribunal, 7 November 2007

A clause in a long lease entitled the landlord to include in service charges the cost of works 'necessary or advisable for the proper maintenance safety and administration of the buildings'. It referred to the landlord's

'absolute discretion' in deciding what works to carry out. A lessee argued that the landlord was not entitled to include, in the service charges, the cost of preparatory works to windows before external decoration of the windows. The LVT accepted the lessee's submissions.

HHJ Reid QC, sitting in the LT, allowed the landlord's appeal. The clause did permit the landlord to do works, including repair works. The discretion was, as the lease indicated, absolute, but there were adequate safeguards for the tenants against misuse in Landlord and Tenant Act 1985.

HOUSING ALLOCATION

■ R (Dixon) v Wandsworth LBC

[2007] EWHC 3075 (Admin), 20 December 2007

The claimant and his sister were joint tenants of a Wandsworth council house. The sister left the house and gave notice to quit ending the tenancy. The claimant applied to the council for the allocation of a sole tenancy. Before an offer was made, police executing a search warrant found the claimant in possession of a class A drug at the premises. The following month, a further search warrant was executed and the claimant was found in possession of a small quantity of cannabis. He pleaded guilty to the first offence and was cautioned for the second one. Wandsworth decided that he was no longer eligible for an allocation of council housing because his unacceptable behaviour made him unsuitable to be a council tenant: HA 1996 s160A(7); that decision was upheld on an internal review.

Michael Supperstone QC (sitting as a Deputy High Court Judge) dismissed a claim for judicial review of that decision. The reviewing officer had been entitled to decide that not only would a ground for possession have been made out – had the claimant been a secure tenant – but that a judge would have granted an outright possession order: HA 1996 s160A(8)(a). The officer applied the right tests, had taken relevant factors into account and had not reached an unreasonable conclusion. Article 8 of the convention added nothing to the claim because what would cause the loss of the claimant's home was not the reviewing officer's decision, but rather the giving of notice to quit by the sister.

HOMELESSNESS

Reasonable to occupy

■ Waltham Forest LBC v Maloba

[2007] EWCA Civ 1281, 4 December 2007, (2008) Times 16 January

Mr Maloba arrived in the UK in 1989 and settled here. His partner and child occupied an annex to the Maloba family home in Uganda (which Mr Maloba and his siblings had jointly inherited from their father). In 2004 they left that accommodation to join him in the UK. After a few months in privately rented accommodation, Mr Maloba applied for homelessness assistance under HA 1996 Part VII.

Waltham Forest decided that Mr Maloba was not homeless because he had accommodation at the family home in Uganda in which he could live with his partner and child. No question of whether or not it was reasonable to continue to occupy the accommodation arose as Mr Maloba was not occupying it. In any event, the reasonableness of occupation of accommodation for the purposes of HA 1996 s175(3) related only to size, structure and amenities and not to such broad issues as whether it would be reasonable for the family to go to another country to live. Mr Maloba applied for a review on the basis that he lived in England not Uganda. The reviewing officer upheld the original decision but HHJ Hornby allowed an appeal and quashed the council's decision.

The Court of Appeal dismissed a further appeal by the council. On a true construction, the 'reasonable to … occupy' requirement in HA 1996 s175(3) applied both to accommodation the applicant had occupied (or was occupying) and to accommodation available to be occupied. (The view to the contrary expressed (obiter) by the majority of the court in *Nipa Begum v Tower Hamlets LBC* [2000] 1 WLR 306 was not followed.) Applying that construction, there was no warrant for the narrow approach to the meaning of 'reasonable to … occupy' that the council had taken. The reviewing officer's approach had been over restrictive and the decision had been rightly quashed.

Priority need

■ Dostenko v Westminster City Council

[2007] EWCA Civ 1325, 12 December 2007

Westminster decided that Mr Dostenko, a single man, was not vulnerable and thus was not in priority need: HA 1996 s189(1)(c). It required him to leave a hostel that it had provided as interim accommodation (under HA 1996 s188). He applied for a review of the priority need decision, which took two months to complete and, meanwhile, he was street homeless.

The original decision was upheld on review. The reviewing officer had not been aware that Mr Dostenko had actually been street homeless. He appealed on the grounds that the reviewing officer had failed to enquire into, and take account of, his actual experience in dealing with sleeping rough over those two months. HHJ Ryland dismissed that appeal.

The Court of Appeal dismissed an application for permission to appeal. It held:

- there was a duty on a reviewing officer to make the necessary enquiries into an application being reviewed;
- the scope of that duty will vary in the light of the circumstances of each case; and
- on a challenge, the test applied by a court will be whether no reasonable council would have refrained from making the further enquiries under consideration.

In the instant case:

- Mr Dostenko had had solicitors who had not made representations about his street homelessness or the effect of it on him; and
- Mr Dostenko had been in touch with the council directly but had not raised those matters.

In those circumstances, the reviewing officer had been under no duty to make further enquiries.

May LJ observed that, by the date of the hearing in the Court of Appeal, Mr Dostenko had been street homeless for eight months; had his ability to cope deteriorated significantly during that period, he may have been better advised to have made a fresh homelessness application rather than to have awaited the hearing.

Intentional homelessness

■ Bolah v Croydon LBC

Central London County Court, 30 August 2007[20]

Ms Bolah applied to Wandsworth for homelessness assistance under HA 1996 Part VII. The council accepted that she was owed the main homelessness duty: HA 1996 s193. She was provided with accommodation in a housing association leased property. When the association's lease was coming to an end, the association sought possession. Ms Bolah decided to withdraw her application to Wandsworth and applied to Croydon for homelessness assistance. On review, Croydon decided that because Wandsworth would have continued to provide accommodation under s193 – had the application made to it not been withdrawn – Ms Bolah had become homelessness intentionally: HA 1996 s191.

HHJ Serota allowed an appeal and varied the decision to one that Ms Bolah had not become homeless intentionally. The loss of her last accommodation had not been the result of any act of hers, but rather the result of expiry of the association's lease. It was irrelevant that, had she not withdrawn her application, Wandsworth would have secured some alternative accommodation for her.

■ Quaid v Westminster City Council

Central London County Court,
16 October 2007[21]

In 2004 and 2005, while Mr Quaid was street homeless, he committed criminal offences. In May 2005, he found a place in a Salvation Army hostel where he lived until April 2006, when he was sentenced to 18 months' imprisonment for the earlier offences. On release, he applied to Westminster for homelessness assistance: HA 1996 Part VII. On review, the council decided that at the time he committed the offences, it would have been reasonable to conclude that a likely consequence would be imprisonment and the loss of any accommodation he had acquired by the date of sentence.

HHJ Faber allowed an appeal and varied the decision to one that Mr Quaid had not become homeless intentionally. He had not been occupying the Salvation Army hostel when the offences were committed. The judge held that, applying *R v Hounslow LBC ex p R* (1997) 29 HLR 939, the HA 1996 and the Code of Guidance (at para 11.14) were concerned with the accommodation that an applicant had occupied at the date of offending, and not with the loss of accommodation subsequently acquired.

■ Black v Wandsworth LBC

Lambeth County Court,
2 March 2007[22]

Mr Black was a housing association tenant. When he fell into arrears of rent the association obtained a possession order suspended on terms. He was imprisoned for criminal offences, failed to comply with the terms of the suspended possession order, and was evicted while in custody. On release, in January 2004, he went to live with a friend. In May 2006, their relationship broke down and he was asked to leave. He applied to Wandsworth for homelessness assistance. The council decided that he had become intentionally homeless from the housing association property which was his last settled home. Mr Black sought a review but the original decision was upheld.

On appeal, he contended that his friend's home had been his last settled accommodation or, alternatively, that the breakdown of the relationship with his friend was a supervening event that had broken the chain of causation from the earlier loss of the housing association home. The council, relying on *Cramp v Hastings BC; Phillips v Camden LBC* [2005] HLR 48 and *Bellouti v Wandsworth LBC* [2005] HLR 46, claimed that Mr Black's failure to raise these points on review prevented him from raising them on appeal.

HHJ Gibson allowed the appeal and quashed the council's decision.

He held that:

■ the reviewing officer had been obliged to consider the question of whether the accommodation with the friend was 'settled'; and likewise,

■ the issue of whether the relationship breakdown, rather than the loss of the housing association home, had caused the present homelessness.

These were matters that arose for decision on the ascertained facts. Mr Black was not required expressly to raise them in the review. *Cramp* and *Bellouti* were distinguishable as cases in which it was said that the reviewing officer should have made additional factual enquiries. No such enquiries were necessary in the instant case.

■ Green and another v Croydon LBC

[2007] EWCA Civ 1367,
19 December 2007

The claimants had taken an assured shorthold tenancy at a rent of £650pm. The landlord later required a rent of £700pm which the tenants paid initially. Arrears accrued and the landlord obtained possession under HA 1988 Sch 2 Ground 8 (arrears of rent) following a hearing that the tenants attended but at which they were not represented. The judgment was based on the rent being £700 (the validity of the increase not having been raised).

On their homelessness application, the council decided on review that the couple had become homeless intentionally: HA 1996 s191. They appealed on the grounds that the reviewing officer had failed to investigate properly their case that the rent had not been raised lawfully and that, based on £650pm, they were not in arrears. A Recorder dismissed that appeal and the Court of Appeal dismissed a second appeal.

The court held that, although the issue of the lawful rent had been raised on review, the reviewing officer had not been obliged to go behind the judge's decision in the possession claim where there was no case for saying that the decision had been clearly wrong. The court declined to hold that a reviewing officer could 'never' go behind what a court had decided in a possession claim when considering intentional homelessness.

Appeals

■ Waltham Forest LBC v Maloba

[2007] EWCA Civ 1281,
4 December 2007,
(2008) Times 16 January

Having succeeded in a HA 1996 s204 appeal in the county court (see above), Mr Maloba was awarded two-thirds of his costs. The council sought a stay of that order, which was refused. On appeal, the council contended that any order for costs against an authority in a homelessness appeal should be stayed until the final resolution of a homelessness application. This would guard against the possibility of the council being unable to recover its costs in any later unsuccessful appeal by a publicly-funded applicant against a further review decision in the same case. If the first costs were stayed, a council could set off its own costs in the second appeal.

Given the important implications of that point, the Law Society was given leave to intervene and evidence was filed by the Bar Council. Both opposed the invitation to establish a general rule. The Court of Appeal held that, while a court had power to grant such a stay on costs, there should not be a general practice that stays should be granted in this class of case.

COMMUNITY CARE AND HOUSING

■ R (Pajaziti) v Lewisham LBC

[2007] EWCA Civ 1351,
18 December 2007

The claimants were failed asylum-seekers. They had been offered accommodation by the National Asylum Support Service but declined to travel to dispersal areas. The claimants applied to Lewisham for assistance under National Assistance Act 1948 s21 on the basis that their medical needs were such that they needed 'care and attention'. Furthermore, although s21(1A) usually debarred such applications, their need for assistance arose not 'solely' from the fact that they were destitute but also from their health needs. Lewisham decided that the claimants were simply destitute and that any medical needs they had could be satisfied by access to primary care services even if they were homeless. Newman J dismissed a claim for judicial review.

The Court of Appeal allowed an appeal and quashed Lewisham's decision. The council had posed for itself, but had failed to answer, the question whether or not the applicants need for shelter was made more acute by the depressive disorders they suffered from; if it was, their needs would not arise 'solely' from their destitution.

■ **R (Chavda) v Harrow LBC**

[2007] EWHC 3064 (Admin), 20 December 2007

Harrow decided to restrict adult community care services to only those applicants with critical needs. In judicial review proceedings, HHJ Mackie QC (sitting as a High Court Judge) quashed that decision because neither the report to the council meeting (which included an equality impact assessment) nor the record of its decision indicated that regard had been had to the council's general disability equality duty (DED) set out in DDA 1995 s49A. The judge held that those omissions were all the more ' ... striking given the requirements of the DED for a proactive approach' (para 36), and continued:

There is no evidence that this legal duty and its implications were drawn to the attention of the decision-takers who should have been informed not just of the disabled as an issue but of the particular obligations which the law imposes. It was not enough to refer obliquely in the attached summary to 'potential conflict with the DDA' - this would not give a busy councillor any idea of the serious duties imposed upon the council by the Act. The council could not weigh matters properly in the balance without being aware of what its duties were (para 40).

1 *Hansard*, Written Ministerial Statement col 35WS–37WS, 12 December 2007.
2 Available at: www.communities.gov.uk/documents/housing/pdf/10.pdf.
3 Available at: www.communities.gov.uk/documents/housing/pdf/progdisposal08letter.
4 Available at: www.communities.gov.uk/news/corporate/601423.
5 Available at: www.communities.gov.uk/documents/housing/pdf/sehpreliminaryresults0607.
6 Available at: www.communities.gov.uk/documents/housing/pdf/rightobuyrules.
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8 Available at: www.communities.gov.uk/documents/housing/pdf/583840.
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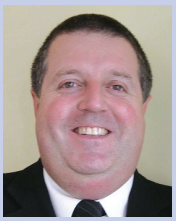
10 Available at: www.bris.ac.uk/law/research/centres-themes/nominations/draftreport.pdf.
11 Available at: www.tribunals.gov.uk/Documents/Transforming%20Tribunals.pdf.
12 Available at: www.lawcom.gov.uk/docs/newsletter_winter_2007.pdf.
13 Available at: www.housingcorp.gov.uk/upload/pdf/GPN_8_Equality_and_diversity_20071130140340.pdf.
14 Available at: www.home-information.info/20071214/index.cfm.
15 Available at: www.publications.parliament.uk/pa/cm200708/cmselect/cmcomloc/170/170.pdf.
16 Available at: www.legalservices.gov.uk/aboutus/press_releases_6943.asp?page=2.
17 Available at: www.communities.gov.uk/documents/housing/pdf/roadahead.pdf.
18 Available at: www.communities.gov.uk/news/housing/593434.
19 Charlotte Collins, solicitor, Anthony Gold, London, and Desmond Rutledge, barrister, London.
20 Toby Vanhegan, barrister, London.
21 William Geldart, barrister, London, and Caroline Denley, Mary Ward Legal Centre, London.
22 Zia Nabi, barrister, London.



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