Recent developments in housing law

Jan Luba QC and **Nic Madge** continue their monthly series. They would like to hear of any cases in the higher or lower courts relevant to housing. In addition, comments from readers are warmly welcomed.

POLITICS AND LEGISLATION

Housing strategy for England

The housing minister (Grant Shapps MP) has made a written statement to parliament outlining the steps taken towards implementation of the national housing strategy: *Hansard*, HC Written Ministerial Statements col 63WS, 1 February 2012. The strategy was published in November 2011: *Laying the foundations: a housing strategy for England* (Department for Communities and Local Government (DCLG), November 2011).[1] Most of the major policy changes are being achieved by commencement of various provisions in Localism Act (LA) 2011 Part 7. They include the following:

■ **Social housing tenure reform**: LA ss150–153 set the framework for new tenancy strategies and require that the final strategy in every local authority area is to be agreed and published by 15 January 2013. The majority of the four sections were brought into force on 15 January 2012: the Localism Act 2011 (Commencement No 2 and Transitional and Saving Provision) Order (the Commencement No 2 Order) 2012 SI No 57.[2] Local housing authorities in England have now begun drawing up, and consulting on, their new tenancy strategies. The Chartered Institute of Housing (CIH) has published guidance to help social landlords devise those strategies: *How to ... develop your tenancy policy* (CIH, January 2012).[3]

■ **Social housing allocation**: LA ss145–147 will amend the law on allocation of social housing. On 15 January 2012, it became possible for local housing authorities in England to begin drawing up and consulting on new allocation schemes to reflect the changes being made: see the Commencement No 2 Order (above). It is not clear how any local housing authority can practically carry out this exercise. If it begins immediately, it must have regard to the current statutory guidance issued by the secretary of state: Housing Act (HA) 1996 s169. This guidance only refers to the law pre-amendment. Consultation on replacement guidance closed at the end of March 2012. The Local Government Association (LGA) has relaunched its Social Housing Equality Framework designed to ensure that the new local housing allocation schemes meet the requirements of equalities legislation: LGA media release, 16 February 2012.[4]

■ **Regulation of social housing**: LA ss178–179 and Sch 17 create a new social housing regulator for England. On 3 February 2012, the chief executive of the outgoing regulator, the Tenant Services Authority (TSA), wrote to all social housing providers in England updating them on progress towards the establishment of the new regulatory regime.[5] The Homes and Communities Agency Regulation Committee will assume its new responsibilities on 1 April 2012, following abolition of the TSA: see the Localism Act 2011 (Regulation of Social Housing) (Consequential Provisions) Order 2012 SI No 641 and Localism Act 2011 (Commencement No 4 and Transitional, Transitory and Saving Provisions) Order 2012 SI No 628 article 6(d).

The new regulatory standards for social landlords continue to require emphasis on tenant engagement and involvement. To help social landlords meet this regulatory obligation the CIH has published *How to ... prepare for regulatory reform: tenant engagement and scrutiny* (CIH, February 2012).[6] The Hyde Group has published research it commissioned from Heriot Watt University on resident involvement: *Resident involvement in social housing in the UK and Europe* (February 2012).[7]

■ **Finance for council housing**: LA ss167–175 will amend radically the arrangements for council housing finance. On 1 February 2012, the UK government wrote to all local authorities in England to explain the next steps in the transition to self-financing of council housing (following the abolition of the housing revenue account subsidy).[8] The formal determinations made in respect of 2011/12 have been announced.[9] In *Response to the 21 November 2011 consultation on self-financing determinations* (DCLG, February 2012), the government has set out how it will take forward this aspect of the changes made by the LA.[10]

Possession proceedings

The latest statistics on housing possession claims made in the county courts in England and Wales show that while the number of possession claims brought by landlords is increasing (by three per cent comparing the last quarters of 2010 and 2011), the number of claims made by mortgage lenders is stable or falling slightly: *Statistics on mortgage and landlord possession actions in the county courts in England and Wales – fourth quarter 2011* (Ministry of Justice, February 2012).[11] Statistics published by the Council of Mortgage Lenders show that its members recovered possession of 36,200 properties in 2011 for default on first-charge mortgages.[12]

The government has announced that £1m will be distributed to 51 local authorities to commission a court desk scheme for possession days at their local county court where one is not already provided independently or via the Legal Services Commission. Each council will receive £18,500 per court desk in its area: DCLG news release, 9 February 2012.[13]

Tackling empty properties

Empty housing in England is being addressed through a combination of measures, including the following:

■ **New homes bonus**: the government has made *The new homes bonus scheme grant determination 2012/13* in exercise of its powers under Local Government Act 2003 s31.[14] The determination sets out the amount that will be distributed to each local authority in England over the coming financial year to reflect work in creating new homes or bringing empty homes back into use.

■ **Funding for local groups**: local groups are being encouraged to apply for a share of £100m in grant funding designed to enable empty properties to be brought back into use: DCLG news release, 24 January 2012.[15] The deadline for applications is 17 April 2012. The application process is explained in *Bringing empty homes back into use. Application guidance for community and voluntary groups* (DCLG, January 2012).[16]

■ **Funding for local authorities**: councils in England that are intending to bring more than 100 empty homes back into use in their area have been encouraged to apply for part of the £50m matched-funding available from the Clusters of Empty Homes Programme: DCLG news release, 27 February 2012.[17]

Homelessness

The latest figures on rough sleeping in England show that in autumn 2011 the total of rough

sleeping counts and estimates was 2,181 individuals, up by 413 (23 per cent) from the autumn 2010 total: *Rough sleeping statistics England – Autumn 2011 experimental statistics* (DCLG, February 2012).[18]

An £18.5m supplement to the Homelessness Prevention Fund directed specifically at work with single homeless people has been made available to local authorities: DCLG news release, 23 February 2012.[19] The UK government has also given its support to the 'Before You Go' campaign aimed at central and eastern European nationals and alerting them to the dangers of arriving in the UK without support: DCLG news release, 23 February 2012.[20]

The pilot project 'No Second Night Out' (NSNO) aims to ensure that new rough sleepers do not spend a second night on the streets. The organisation NSNO has published an evaluation of the first six months of the project, from 1 April to 30 September 2011.[21]

Building regulations

The UK government has launched a major consultation exercise covering most aspects of the current building regulations (which set standards for the construction and conversion of homes) and of the entire building control process: *2012 consultation on changes to the building regulations in England. Section one – introduction to the consultation package and proposals on Parts A, B, C, K, M and N, access statements, security, Changing Places toilets and regulation 7*.[22] The consultation ends on 27 April 2012.

Sale and rent back arrangements

The Financial Services Authority (FSA) has completed a review of 22 firms authorised to undertake sale and rent back (SRB) arrangements. It found widespread poor practice. Due to the seriousness of the findings, five firms have voluntarily stopped their SRB business. A number of firms have also agreed to review their business, which may lead to further action being taken and one has already been referred to the FSA Enforcement Division. As a result of these findings, the FSA undertook a short consultation on issuing tighter guidance: *Sale and rent back review 2011* (FSA, February 2012).[23]

HUMAN RIGHTS

Article 2

■ Hurst v UK

App No 42577/07,
29 November 2011,
[2011] ECHR 2080

The applicant's son had been a council tenant. Another tenant on the same estate, Mr Reid, was the subject of repeated complaints to the council and the police about his violent and threatening behaviour. The council brought possession proceedings and the applicant's son gave evidence in support of this claim. On the day that a possession order was made, Mr Reid killed the applicant's son. The applicant was advised that she had no remedy in English law for any failure by the council or the police to protect her son and she complained to the European Court of Human Rights (ECtHR). The following questions were posed by the court for the parties:

- Did the relevant public agents know or ought they to have known of the existence of a real and immediate risk to the applicant's son's life and did they fail to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk?
- Was the applicant's right of access to court for the determination of her civil rights disproportionately restricted having regard to the availability to her of any civil remedy in damages against the police and/or the local authority?

Following the exchange of submissions on these questions, the case was resolved.

■ Kolyadenko and others v Russia

App Nos 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, 28 February 2012

A reservoir was built above a city. During heavy rainfall, the authorities released water from the reservoir and a large area was flooded, including the houses where Mr Kolyadenko and others lived. The water in some flats reached a height of between 1.20 and 1.80 metres. The applicants complained to the ECtHR that the authorities had put their lives at risk by releasing the water, without any prior warning, and that there had been a breach of article 2 of the European Convention on Human Rights ('the convention').

The ECtHR noted that article 2 'lays down a positive obligation on states to take appropriate steps to safeguard the lives of those within their jurisdiction' (*Öneryildiz v Turkey* App No 48939/99 para 71 and *Budayeva v Russia* App No 15339/02) and 'covers not only situations where … action or omission on the part of the state led to a death … but also situations where, although an applicant survived, there clearly existed a risk to his or her life' (*Makaratzis v Greece* App No 50385/99 paras 49–55) (para 151). In this case, there was an imminent risk to the lives of those people who were at home at the time of the flooding. The court found that there was a violation of article 2 because the government failed in its positive obligation to protect the relevant applicants' lives. In particular, the authorities disregarded technical and safety requirements, by failing to reflect them in legal acts and regulations and allowing urban development in the area downstream from the reservoir. There was a 'continuous failure, in breach of the relevant regulations, to establish flood zones' (para 173). There was a violation of article 2 in its procedural aspect due to the lack of an adequate judicial response by the authorities to the flooding. The court also found a breach of article 8 and article 1 of Protocol No 1. It awarded pecuniary and non-pecuniary damages.

Article 6

■ Kontsevych v Ukraine

App No 9089/04,
16 February 2012

In 1996, B lent Ms Kontsevych approximately US $4,500 with Ms Kontsevych's four-room apartment as security. She was not able to repay the money. In October 1997, the State Bailiffs' Service held an auction and the apartment was bought by B. In November 1997, Ms Kontsevych and her four adult sons were evicted from the apartment. In July 2002, the Kalush Local Court found that the auction and Ms Kontsevych's eviction had been in breach of the law. It ordered that the Bailiffs' Service should return the apartment to her immediately. Ms Kontsevych also took proceedings for possession against K, who was living in the flat, allegedly as B's tenant. It appears that Ms Kontsevych did not recover possession of the apartment until January 2006, although she herself requested the suspension of the enforcement between November 2003 and October 2005. She alleged breaches of articles 6(1) and 8 and article 1 of Protocol No 1.

The ECtHR noted that it took the Bailiffs' Service three and a half years to enforce the decision made in July 2002 but, in view of Ms Kontsevych's agreement to suspension of enforcement proceedings, decided that it had to consider whether the periods between July 2002 and November 2003 (one year and four months) and between October 2005 and January 2006 (three months) were too lengthy. It found that they were and held that there had been breaches of articles 6(1) and 8 and article 1 of Protocol No 1. The court, on an equitable basis, awarded €8,000 for non-pecuniary damage.

Article 8

■ Hardy and Maile v UK

App No 31965/07,
14 February 2012

Ms Hardy and Mr Maile complained under articles 2 and 8 that the UK authorities had failed in their duties relating to the regulation of hazardous industrial activities because of their failure properly to assess the marine risks of

proposed liquefied natural gas (LNG) operations in the Milford Haven area. They also complained about the lack of information disclosed regarding the risks associated with LNG terminals.

The ECtHR found that there was no violation of the convention. The planning and hazardous substances authorities and the domestic courts had been satisfied with the advice provided by the relevant authorities. It did not appear that there had been any manifest error of appreciation by the national authorities in striking a fair balance between the competing interests in the case. The state had fulfilled its obligation to secure the applicants' right to respect for their private lives and homes.

■ Babenko v Ukraine

App No 68726/10,
4 January 2012,
[2012] ECHR 145

Mr Babenko was a war veteran who had a statutory entitlement to priority for council housing. His attempts to enforce that right in the domestic courts failed and he complained of a breach of his human rights.

The ECtHR ruled the application inadmissible. The applicant had not shown that article 8 was in play by evidence of any homelessness or that his current housing was in a deplorable state. Although the grant of a tenancy might be a 'possession' for the purpose of article 1 of Protocol No 1, the statutory right to priority in allocation of apartments was not a possession protected by this article.

■ R (Leary) v Chief Constable of West Midlands Police

[2012] EWHC 639 (Admin),
17 February 2012,
[2012] All ER (D) 137 (Feb)

The claimant was the sole tenant of a flat. As a result of action by the police and the local council, a magistrates' court granted a premises closure order on the basis that the flat was being used in connection with the supply of Class A drugs. This decision was confirmed by the Crown Court on appeal. The claimant appealed to the High Court on the ground that, by excluding him, the order breached his article 8 right to respect for his home in circumstances where there was no evidence that alternative measures had been pursued short of closure. Alternatively, he claimed that the closure order should be modified to permit him to return, while excluding others.

Blair J dismissed the appeal. It was not a requirement of the premises closure order scheme that less extreme remedies had to be considered and attempted. Nor could an order be modified to exclude visitors from the premises but allow a person to re-enter and occupy his home.

■ Moore v British Waterways Board

[2012] EWHC 182 (Ch),
10 February 2012

The claimant moored several vessels on the Grand Union Canal adjacent to land that he owned. He occupied one or more of the vessels as his home. The board found that the vessels were not being used regularly for navigation and served notices requiring them to be moved (threatening their removal by the board in default). The claimant brought a claim for a declaration that the board had no power to serve the notices on which it relied and that its action infringed his right to respect for his home under article 8.

Hildyard J formed a provisional view that the purported use of the board's draconian powers, without prior warning and in the absence of any identified and real threatened or actual obstruction of safe navigation, with the effect of depriving the claimant of his home, was not proportionate. However, he permitted further argument about that provisional conclusion and about the appropriate relief.

■ R (Broadway Care Centre Ltd) v Caerphilly CBC

[2012] EWHC 37 (Admin),
19 January 2012

The claimant company owned a residential care centre. It sought permission to challenge, by way of judicial review, the council's decision to terminate its contract to provide care for elderly dementia sufferers at that centre. One basis on which it claimed legal standing to bring the claim was that it was seeking to protect the rights of its residents to respect for their homes under article 8.

HHJ Seys Llewellyn QC (sitting as a judge of the High Court) held that it was not possible for the company to show that it was a 'victim' of any alleged infringement of those rights for the purposes of Human Rights Act (HRA) 1998 s7 and so it had no standing to bring a claim for an alleged violation of its residents' rights.

Trespassers

■ City of London v Samede

[2012] EWCA Civ 160,
22 February 2012

Lindblom J made a possession order and granted injunctions in respect of the unlawful occupation of land around St Paul's Cathedral ([2012] EWHC 34 (QB); March 2012 *Legal Action* 22). The occupiers sought permission to appeal, arguing that the orders represented a disproportionate interference with their rights under articles 10 and 11 of the convention.

The Court of Appeal refused permission to appeal. Although articles 10 and 11 were engaged, there was no real prospect of showing that the orders had been made wrongly. The court also gave guidance for the handling of future claims against demonstrators who raise human rights defences. In particular, judges 'should be ready to exercise available case management powers to ensure that hearings in this sort of case do not take up a disproportionate amount of court time' (para 63).

RENT ACT 1977

Rent registration

■ Cavendish Square Investments Ltd v Moule

[2012] EWHC (QBD),
31 January 2012,
LAWTEL

Mr Moule was a Rent Act (RA) protected tenant. His tenancy agreement obliged him to pay 10/24ths of the costs incurred by Cavendish in complying with its covenants under its head lease. Cavendish applied to the rent assessment committee (RAC) to register a fair rent, to include a variable amount under RA 1977 s71(4). The RAC held that there was nothing to register as there were no variable sums payable under the tenancy agreement.

Timothy Dutton QC, sitting as a deputy High Court judge, allowed Cavendish's appeal. It was clear that the sums paid by Mr Moule varied. The question was whether the terms dealing with variation were reasonable. The RAC had not considered this question. It was remitted for reconsideration.

ACCESS

■ Beaufort Park Residents Management Ltd v Sabahipour

[2011] UKUT 436 (LC),
21 November 2011

The terms of a lease required the tenant 'to permit the lessor and its surveyors or agents with or without workmen and others at all reasonable times to enter upon the flat for the purpose of examining the state and condition thereof' (para 15). The tenant reported a leak and the lessor appointed its director (also the company secretary) as its agent to investigate. There was a history of difficulties between the tenant and this director, and the tenant refused access. He was prepared to admit any other agent of the lessor. The lessor applied for a declaration that the tenant was in breach of the lease. A leasehold valuation tribunal declined to make the declaration. HHJ Walden-Smith sitting in the Upper Tribunal allowed the lessor's appeal. The director was the company's agent and the tenant was obliged to give him access for the purposes stated in the lease.

HOUSING ALLOCATION

■ R (McDonagh) v Hackney LBC

[2012] EWHC 373 (Admin), 15 February 2012

In 2008, the council adopted a new allocation policy for pitches on its official Gypsy and Traveller sites. The policy required applicants to reregister every year and to provide documentary evidence of a residential connection with the borough. The claimant, an Irish Traveller, sought a judicial review of the policy claiming that it imposed unrealistic and bureaucratic requirements on a mobile and vulnerable group and was therefore irrational.

Kenneth Parker J dismissed the claim:

... I discern no irrationality in the starting point of Hackney's policy that requires a residential connection with the borough, nor in the requirement that residence must be contemporary, in the sense that the Traveller can show either continuing physical presence, or that the Traveller has retained a c/o address in the borough. It must make sense to afford priority to those who are in fact living in Hackney, or who have lived there and have retained a firm point of contact with Hackney (para 27); ...

Nor, in my view, is it irrational to require that registration on the list must be renewed. Given the small number of pitches and the intense competition for the few pitches that do become available, it is essential that those on the list have a continuing interest and continue to meet the criteria. Without an effective sift of that nature, the list could well become unmanageable and would retain on it those who either had no serious interest in securing a pitch in Hackney, or who had far inferior claims in terms of connection with Hackney (para 29).

■ R (George) v Hammersmith and Fulham LBC

[2012] EWHC 210 (Admin), 2 February 2012

The claimant's mother was a secure tenant. She moved to a residential care home and he applied to the council for the discretionary grant of her tenancy to him. In June 2010, the council rejected the application. In April 2011, the claimant applied again but the council responded in May 2011 that it had decided the application previously. The claimant sought a judicial review.

Roger Henderson QC, sitting as a deputy High Court judge, held that any claim in respect of the June 2010 decision was out of time, but that permission to apply for judicial review should be granted in respect of the May 2011 decision. It was arguable that the refusal to consider the new application on its merits was unlawful because the earlier application had only been rejected for want of particular documentation.

■ R (Moore) v Wandsworth LBC

[2012] EWHC (Admin), 17 January 2012

The claimant's father and mother both died. They had been, in turn, the secure tenants of the family home. The claimant had no statutory right to succeed to the secure tenancy as he would be a second successor: HA 1985 s87. He applied to the council for a discretionary tenancy under section 5 of the council's allocation scheme. This set qualifying criteria and provided that:

Such decisions are taken by the area housing manager and the rehousing manager jointly. Where agreement cannot be reached the matter will be referred to the head of housing management and head of housing services for a final decision.

The claimant's application was refused by the area housing manager on the ground that he did not satisfy the qualifying criteria. He sought a judicial review on the basis that because the decision had been taken by the area manager acting alone it was ultra vires.

Stadlen J allowed a claim for judicial review and quashed the decision. He held that:

- the rehousing manager had not been involved as required by section 5 of the scheme;
- the application had not been handled with procedural fairness; and
- there had been a failure to take account of material considerations.

Local Government Ombudsman

Complaints

■ Havering LBC

10 008 622, 12 January 2012

The complainant bid, under the council's choice-based lettings scheme, for the allocation to her of a house advertised as having three bedrooms and a parlour. Her household comprised herself and three daughters. Two of the daughters were adults and the eldest was severely disabled, requiring a ground-floor bedroom.

The complainant was the highest ranked bidder with a three-bedroom need but was not offered the property because all three bedrooms were on the upper floor. She had intended to convert the ground-floor parlour to a bedroom for her disabled daughter. The property was offered to a family with a four-bedroom need who used the parlour as a bedroom.

The Local Government Ombudsman (LGO) found that the council's allocation scheme was defective in that:

- it did not define the term 'children', which had allowed officers to treat the adult daughters as children for the purposes of the scheme; and
- the scheme defined a three-bedroom plus parlour house as a four-bedroom property, but such properties were actually advertised as having three bedrooms.

In this particular case, the council had also failed to consider its obligations under the Disability Discrimination Act 2005 and the HRA. The LGO's recommendations included a review of the wording of the allocation scheme and £4,000 in compensation.

■ Ealing LBC

10 015 936, 16 February 2012

The complainant, a council tenant, was a permanent wheelchair user. She experienced difficulty entering and leaving the block in which her flat was located. She applied for a transfer. The council was put on notice repeatedly of her difficulties, and the Fire Brigade told the council that she was at risk in the event of fire. The council awarded her a Band B priority for transfer on medical grounds but it did not refer the transfer application to its Social Welfare Panel until September 2011, even though it had identified this as a possibility in May 2009. The complainant then received Band A priority.

The LGO decided that the delay in referring the case to the panel was maladministration and that further maladministration by the council included the following:

- telling a councillor that it had carried out works to the door entry system when that had not been done; and
- failing to consider a suggestion that it modify the front door to the block.

The Ombudsman recommended £2,000 in compensation and a backdating of Band A status to May 2009.

Public Services Ombudsman for Wales

Complaints

■ Wrexham CBC

201002076, 25 January 2012

The complainant was a middle-aged, single, disabled man living with his mother, who was a tenant of the council. He made repeated applications to the council for rehousing on the grounds that his accommodation was unsuitable for his disabilities and was in disrepair.

The Public Services Ombudsman for Wales found extensive maladministration including the following:

- systemic failures in its approach to the rehousing applications;
- failure to follow relevant legislation, statutory guidance and its own policies and

procedures; and
- poor record-keeping.

He recommended a wide-ranging retraining of staff, a review of the council's policies, systems and procedures, an apology and £1,500 in compensation.

■ Carmarthenshire CC
201001198,
22 December 2011
The complainant was a disabled man. The council had allocated him a property in 2008 which it said subsequently could not be adapted to meet his needs, although it had been fully aware of his needs before allocating the property. It advised him to apply for a transfer but he did not wish to move again as his family had become settled. The council carried out no adaptations for over three years until it reassessed the complainant's needs following the complaint to the Ombudsman's office in 2011. It then agreed to carry out all the adaptations requested.

The Ombudsman found maladministration in the allocation process and throughout the request for adaptations at the property. There had been no occupational therapist's (OT's) assessment before allocation, nor was there a full assessment of the need for adaptations by either an OT or social services for over three years after the complainant had moved in. The council did not appear to recognise its statutory social care duties to him, or that his human rights may have been engaged. The Ombudsman made a number of recommendations including an apology and payment of £3,000.

HOMELESSNESS

Homeless

■ Kumaning v Haringey LBC
Central London County Court,
2 December 2011[24]
The claimant applied to the council for homelessness assistance. He had been in the UK for over 15 years. He lived with his son who had been born in the UK in 2009 and who was a British citizen. The council decided that he was not homeless because he owned an eight-bedroom house in Ghana which it would be reasonable for him to occupy: HA 1996 s175. The claimant sought a review on the basis, inter alia, that a move to Ghana would be contrary as follows:
- to the son's best interests; and
- to the family's article 8 convention rights.

The reviewing officer decided that article 8 considerations were irrelevant and confirmed the earlier decision.

HHJ Saggerson allowed an appeal. It was simply unrealistic for the council to suggest that it was not an inevitable implication of its decision that the claimant and his family would have to move to Ghana. Consequently, it had had an obligation as follows:
- to carry out a proportionality analysis of the impact of its decision on the father and son's article 8 rights; and
- to consider whether taking up occupation of the property in Ghana was in the son's best interests, which were to be given primacy, following *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4.

The decision on homelessness was remitted for reconsideration.

Priority need

■ Simpson-Lowe v Croydon LBC
[2012] EWCA Civ 131,
19 January 2012
The claimant had mobility issues following a motorcycle accident. The Department for Work and Pensions (DWP) awarded him disability living allowance at the higher rate on the basis that he was unable or virtually unable to walk. On his application for homelessness assistance, the council decided that although he was homeless he did not have a priority need as he was not vulnerable as a result of his physical disability: HA 1996 s189(1)(c). This decision was confirmed on review and HHJ Baucher dismissed an appeal from it.

The claimant sought permission to bring a second appeal to the Court of Appeal suggesting that the case raised two points of legal importance:
- the correct approach to handling medical advice in the light of conflicting decisions of the Court of Appeal (*Shala v Birmingham City Council* [2007] EWCA Civ 624 and *Wandsworth LBC v Allison* [2008] EWCA Civ 354); and
- the correct approach a council should take to vulnerability when the DWP had made a decision about disability for benefits purposes.

Permission to appeal was refused by Jackson LJ. He held that:
- there was no inconsistency in the earlier Court of Appeal decisions. He said:

> *In* Allison *the Court of Appeal helpfully set out the kind of assistance that a local authority's in-house medical adviser can give. In* Shala*, on the other hand, the Court of Appeal pointed out the limitations which exist if the in-house medical adviser instead of assisting the local authority to understand the medical expert seeks to offer conflicting expert opinion* (para 9); and

- it was settled law that a council could take into account, but was not bound by, relevant DWP decisions on disability issues, applying *Mangion v Lewisham LBC* [2008] EWCA Civ 1642.

Suitability

■ McDermott v Croydon LBC
[2011] EWCA Civ 1696,
13 December 2011
The claimant was a disabled man living with his wife. The council owed him the main housing duty under the homelessness provisions of HA 1996 s193 and made him an offer of a council flat. His physical disability was such that he could not access the kitchen in the offered property. On a review of the suitability of the offer (HA 1996 s202(1)(f)), the council confirmed that the offer was suitable despite the difficulty in accessing the kitchen. An appeal to the county court was dismissed by HHJ Ellis.

Sitting as an additional judge of the Court of Appeal, Mann J refused permission to appeal. He held that the reviewing officer had been entitled to decide that, as the claimant could not have used the kitchen facilities in light of his disabilities, the premises were not unsuitable simply because he could not enter the kitchen.

Accommodation pending appeal

■ Quadir v Tower Hamlets LBC
Central London County Court,
3 March 2011[25]
The claimant was a Swedish national who came to the UK in 2005. In 2007, his wife and youngest son joined him and they lived in private rented accommodation. His two elder sons remained in a flat in Sweden of which his wife was the tenant. When the tenancy of the private rented accommodation in the UK came to an end, he made an application for homelessness assistance. The council decided that he was not homeless because the flat in Sweden was available to him and his family and it was reasonable for them to occupy. This decision was upheld on review and the claimant appealed to the county court: HA 1996 s204.

The claimant asked the council to secure accommodation until the determination of the appeal in exercise of its discretion: HA 1996 s204(4). He said that:
- his son was taking final exams counting towards his GCSEs and, if the family returned to Sweden, he would be disrupted from taking them, which would have a seriously detrimental effect on his education;
- his own job would be in jeopardy as he had no annual leave left and it was unclear whether he would obtain unpaid leave (and if he did, he would have no means of supporting himself).

The council declined to secure accommodation pending appeal. It accepted that the son's education would be affected but said that he could attend school in Sweden. It also said that the issue about the claimant's employment had already been considered in

the review decision. The claimant appealed against the refusal to secure accommodation: HA 1996 s204A.

HHJ Bailey held that the council's decision had not given any specific consideration to the effect on the family of moving to Sweden for a short period pending the main appeal outcome, ie, the decision-maker had not taken into account that the real issue was whether or not accommodation should be provided by the council for this short specific period. He quashed the decision but rejected an application for an order that the council secure accommodation until the determination of the appeal: section 204A(5). He had to be satisfied that a failure to exercise the section 204(4) power would 'substantially prejudice' an ability to pursue the main appeal: section 204A(6). He was satisfied that the claimant could communicate from Sweden with his solicitors by telephone and e-mail. The appeal itself was on a point of law, and the grounds of appeal, skeleton argument and evidence had all been prepared. There was little for the claimant to do except wait for the hearing. Even if there was some prejudice, it did not amount to substantial prejudice.

HOUSING AND CHILDREN

■ R (HA) v Hillingdon LBC

[2012] EWHC 291 (Admin), 17 February 2012

The council provided accommodation for the claimant, an unaccompanied asylum-seeker, under Children Act 1989 s20 on the basis that he was his claimed age of 14. On a later, more detailed assessment, the council decided that he was over 18. It ceased to provide for him and he was accommodated by the UK Border Agency in Birmingham.

The claimant sought a judicial review of the age assessment and, by way of interim relief, an injunction requiring Hillingdon to accommodate him until trial of that issue. Hillingdon claimed that if any authority should accommodate the claimant it should be Birmingham, where he now lived.

Bean J granted permission to claim judicial review of the age assessment and directed the trial of that issue by the Upper Tribunal. Meanwhile, he refused to join Birmingham as a defendant to the claim and ordered Hillingdon to accommodate pending the trial.

HOUSING AND COMMUNITY CARE

■ R (Taylor) v Croydon LBC

[2011] EWHC 3728 (Admin), 16 November 2011

The claimant was a council tenant in a sheltered housing complex. Following a consultation exercise, the council decided to remove the on-site warden service and replace it with an integrated rapid response service (and with arrangements for information kiosks and other new technology-based provision). The claimant sought a judicial review, contending that the decision had been taken in breach of the statutory disability equality duty.

Kenneth Parker J refused permission to bring the claim. The council had considered all the relevant issues and the relevant material and the claim had no reasonable prospect of success.

■ R (DM) v Doncaster MBC

[2011] EWHC 3652 (Admin), 16 December 2011

The claimant's husband was in his eighties and suffered from dementia. Following an incident, he was taken to a police station and then to a care home where he was detained under the Mental Capacity Act (MCA) 2005. The council levied a charge for the accommodation. The claimant sought a judicial review, contending that accommodation under the MCA should be free of charge.

Langstaff J dismissed the claim. The accommodation was provided under the council's duty under National Assistance Act 1948 s21 for which it was obliged to charge. There was no equality or human rights legislation which compelled a contrary result.

■ R (NM) v Islington LBC

[2012] EWHC 414 (Admin), 29 February 2012

The claimant had significant learning disabilities. He was a prisoner serving an indeterminate sentence. As part of considering his possible future release, the Parole Board sought information about his accommodation and care arrangements. He applied to Islington for a community care assessment: National Health Service and Community Care Act 1990 s47. He sought a judicial review when it declined to carry one out.

Sales J dismissed the claim. He held that in a number of situations, such as release from a mental hospital, discharge from other hospitals and release from prison, it may be sufficiently clear that a person is likely in the very near future to be present in the area of a particular council and then, when s/he is, may be in need of community care services, so that the obligation of assessment arises before the person actually arrives in the council's area. However, in this case the connection between the proposed consideration by the Board and the release of the claimant to go to Islington was too conditional and speculative to fall within the narrow class of future provision cases for which an assessment had to be carried out.

1 Available at: www.communities.gov.uk/documents/housing/pdf/2033676.pdf.
2 Available at: www.legislation.gov.uk/uksi/2012/57/contents/made.
3 Available at: www.cih.org/resources/PDF/Policy%20 free%20download%20pdfs/How_to_develop_your_tenancy_policy.pdf.
4 Available at: www.local.gov.uk/web/guest/media-releases/-/journal_content/56/10161/3479257/NEWS-TEMPLATE.
5 Available at: www.tenantservicesauthority.org/upload/pdf/CLJ_letter_to_CEO_January_12.pdf.
6 Available at: www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How_to_prepare_for_regulatory_reform.pdf.
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21 Available at: www.nosecondnightout.org.uk/wp-content/uploads/2012/01/NSNO-6-month-review-Final.pdf.
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23 Available at: www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/guidance/GC12_02.pdf.
24 Javed Nazir, Rahman & Co Solicitors and Alice Hilken, barrister, London.
25 Kathy Meade, solicitor, Tower Hamlets Law Centre® and Liz Davies, barrister, London.

Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. Nic Madge is a circuit judge.