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

National housing policy

On 29 February 2008, the government published its latest statement on housing policy in the form of a summary of responses received to a recent housing green paper: *Homes for the future: more affordable, more sustainable: summary of responses to the housing green paper*, Communities and Local Government (CLG).[1] The summary also sets out what steps the government has taken since the green paper was published, where relevant to the issues raised by the responses. Many of the matters reviewed are embraced by the Housing and Regeneration Bill which will have its Commons third reading shortly.

In February 2008, the government also launched a new national housing and ageing strategy focusing on the work that is being done to improve housing and to make it better suited to meet the needs of older people: *Lifetime homes, lifetime neighbourhoods: a national strategy for housing in an ageing society*, CLG.[2]

The national picture in relation to housing provision is set out in the annual report *Housing statistics 2007*, CLG, February 2008.[3] It reveals that 70 per cent of households are owner-occupiers, 18 per cent are social tenants and 12 per cent are private renters. The proportion of private renters has risen from ten per cent in 2001, while the proportion of social renters has fallen from 20 per cent. The proportion of owner-occupiers has remained stable.

On 5 February 2008, the new housing minister, Caroline Flint MP, gave a speech to the Fabian Society intended to open a controversial debate about the link between social housing and worklessness.[4] The Housing Corporation has published a paper on the same theme: *Housing associations tackling worklessness*, 2007.[5]

The green paper, *The path to citizenship: next steps in reforming the immigration system*, Home Office, February 2008, deals with access to benefits and services, including housing, in chapter 5.[6] The government proposes that the newly created class of 'probationary citizens' will not be entitled to local authority housing. A consultation response form is available online and responses should be made by 14 May 2008.[7]

Possession claims

The latest statistics on possession claims brought by mortgage lenders and landlords cover the fourth quarter of 2007: *Ministry of Justice statistical bulletin*, February 2008.[8] They show that, compared with the same quarter in 2006, the number of mortgage possession claims had increased by 14 per cent and the number of landlord possession claims by five per cent.

On 29 February 2008, the Civil Justice Council issued a draft pre-action protocol for mortgage arrears possession claims.[9] The protocol is intended to ensure that before proceedings are commenced all reasonable steps have been taken to avoid the necessity for litigation. Responses to the draft are sought by 23 May 2008. See also page 21 of this issue.

Private sector housing

The Chartered Institute of Environmental Health (CIEH) has published a new report exploring local authority practice in enforcing the provisions of the Housing Act (HA) 2004 relating to housing conditions: *The CIEH survey of local authority regulatory activity under the Housing Act 2004*, February 2008.[10] The report reviews the level of local authority activity, the number of prosecutions, and issues around licensing in the private sector. It notes that the number of staff available and the number of complaints which local authorities receive from residents are a greater influence on enforcement activity than addressing risks to health and safety in homes.

A new good practice guide for local authorities, Identifying and dealing with unlicensed HMOs, LACORS, January 2008 explains how councils can raise awareness of licensing of houses in multiple occupation and carry out survey work to identify unlicensed properties.11

Disability and housing

In February 2008, the government published *Disabled facilities grant – the package of changes to modernise the programme* outlining its responses to a recent consultation exercise on the future of disabled facilities grants.[12]

Homelessness

A new report, *Survey of needs and provision: services for homeless single people and couples in England*, February 2008, commissioned by the Construction and Property Industry Charity for the Homeless and CLG, contains independent research carried out by Homeless Link and the Resource Information Service into the overall extent of services for the homeless, including hostels, day centres and supported accommodation.[13]

The particular needs of female prisoners facing homelessness on release are reviewed in another new report: *The importance of housing for women prisoners*, Ministry of Justice and the National Offender Management Service.[14] The booklet considers the support available in seeking to maintain and gain housing on discharge from custody.

The latest published homelessness statistics for England cover the last quarter of 2007: *Statistical release: statutory homelessness: 4th quarter 2007, England*, CLG, March 2008.[15] They show that the number of decisions made on applications was six per cent lower than during the same period in 2006 and that the number of acceptances was 12 per cent lower.

Housing and children

On 18 February 2008, the Children and Young Persons Bill completed its committee stage in the House of Lords.[16] The bill amends substantially the key provisions that apply when accommodation is provided for a child under Children Act (CA) 1989 ss17 and 20. The Lords report stage was scheduled for 17 March 2008.

Local authorities and council housing

In February 2008, the Audit Commission published the results of its assessments of housing services provision by all local authorities for 2007: *CPA – the harder test: scores and analysis of performance in single tier and county councils 2007*.[17] Only four local authorities fell below minimum requirements for council housing services (Herefordshire, Liverpool, Rutland and

Slough). The proportion of councils performing below minimum requirements in housing (three per cent) was greater than in any other service assessment area.

Housing and human rights

On 1 February 2008, the Joint Committee on Human Rights published *The work of the committee in 2007 and the state of human rights in the UK,* sixth report of session 2007–08, HL Paper 38, HC 270.[18] An Annex to the report sets out current human rights concerns in the UK and deals with discrimination in housing at paragraphs 12–14.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 1 of Protocol No 1 and Article 2 of Protocol No 4

■ Nagovitsyn v Russia

App No 6859/02,
24 January 2008

In 1986, Mr Nagovitsyn took part in the cleaning-up operation after the accident at the Chernobyl nuclear plant. He was subsequently registered as disabled and became entitled to various social benefits, including housing. He lived in Kirov, but in October 2000, he brought proceedings against the municipality of Moscow, seeking an order that it provide him with a flat in Moscow. In January 2001, the Presnenskiy District Court of Moscow dismissed his claim. In May 2001, the Moscow City Court upheld the district court's decision. He complained that the refusal to provide him with a flat in Moscow constituted a breach of his right to liberty of movement guaranteed by article 2 of Protocol No 4 of the European Convention on Human Rights ('the convention').

In finding that complaint to be manifestly ill-founded, the European Court of Human Rights (ECtHR) noted that Mr Nagovitsyn was not in any way prevented from moving to Moscow or renting or purchasing a flat there. The fact that the domestic courts refused to allocate him free housing in Moscow could not be considered an interference with his rights under article 2 of Protocol No 4.

In November 2001, as a result of other proceedings, the Leninskiy District Court of Kirov ordered the Kirov municipality to provide Mr Nagovitsyn with appropriate housing for a family of three within three months, in accordance with existing housing and sanitary standards. That judgment was not enforced until three years, five months and one week after it had become final and binding.

Following cases such as *Malinovskiy v Russia* App No 41302/02 and *Teteriny v Russia* App No 11931/03, the ECtHR found a breach of article 1 of Protocol No 1 of the convention. Making its assessment on an equitable basis, the ECtHR awarded €2,100 in respect of non-pecuniary damage for 'certain mental distress' caused.

SECURE TENANCIES

Let as a separate dwelling

■ Mansfield DC v Langridge

B5/07/2500,
13 February 2008

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 ([2007] EWHC 3152 (QB); 21 September 2007; February 2008 *Legal Action* 37).

The Court of Appeal allowed a second appeal. The licence agreement gave Mr Langridge exclusive possession of the flat as a separate dwelling in return for the payment of a rent. In those circumstances, the conditions of s79 were satisfied. Accordingly, despite the intentions of both parties, the licence agreement conferred a secure tenancy of the flat.

Rent-free accommodation provided to police officers

■ Holmes v South Yorkshire Police Authority

[2008] EWCA Civ 51,
7 February 2008

PC Holmes lived in rent-free accommodation provided under statutory powers by the police authority. The police authority made a policy decision to divest itself of its remaining police dwellings so that any occupier who did not choose to buy his/her home would be required to vacate it in July 2008. PC Holmes sought a declaration that he was either a secure tenant or entitled in equity to remain in occupation until he retired. Recorder Armitage refused relief on either basis. PC Holmes appealed.

The Court of Appeal dismissed his appeal. HA 1985 Sch 1 para 2(2) provides that a tenancy or licence is not secure if the tenant is a member of a police force and the dwelling-house is provided free of rent and rates in accordance with regulations made under Police Act 1996 s50. The Court of Appeal rejected an argument that the tenancy was not 'free of rent and rates' because PC Holmes had to pay water charges, formerly known as water rates. The abolition of water rates by the Water Industry Act 1991 meant that there was no longer anything for the para 2(2) exemption to bite on, assuming, which was doubted, that 'rates' in para 2(2) included water rates in the first place. It also rejected a further argument that representations made by the police authority created an equitable estoppel against evicting police officers. Although PC Holmes was assured in December 2000 that, if he did not buy his home or move elsewhere, he could continue to live in it until he left the police service or retired, he had done nothing which he would not otherwise have done, and so had not acted to his detriment in reliance on the authority's promise. It is for the party claiming detriment to show that s/he sustained it. PC Holmes would have continued for as long as he could with the undoubted benefit of rent-free accommodation even if the assurance of security had not been given because, financially, he had no other option. He had not suffered any appreciable harm by reason of his reliance on the authority's assurance.

Council employees and the right to buy

■ Wragg v Surrey CC

[2008] EWCA Civ 19,
1 February 2008

Mr Wragg was employed by the council as a countryside ranger, with duties relating to the management and conservation of areas of

common land in Surrey. He lived in a house owned by the council. His contract of employment stated:

It shall be a condition of your service … that you will occupy, on a permanent and full-time basis, a property to be provided by the county council. This property is provided for the better performance of your duties.

He served notice under HA 1985 s122 claiming to exercise the right to buy. The council served a notice under s124 denying that he had a right to buy, relying on the exclusion from secure tenancy status in Sch 1 para 2(1) (premises occupied in connection with employment). He brought a claim in the county court under s181 for the determination of that issue. The claim was decided on the assumption that he was a tenant. After a detailed review of the evidence, including the work carried out by Mr Wragg since 1984, HHJ Reid QC found that Mr Wragg's contract did not fall within the exception in para 2(1). The council appealed.

The Court of Appeal allowed the appeal. Richards LJ stated that:

[para 2(1)] is to be construed as laying down two distinct conditions: first, that 'his contract of employment requires him to occupy the dwelling-house'; secondly, that the requirement is 'for the better performance of his duties'. The first condition looks only to the terms of the contract: the question is simply whether the contract contains such a requirement or not. The second condition, however, raises an issue of fact outside the contract: the question is not whether the contract states that the requirement is for the better performance of his duties, but whether the requirement is in fact for the better performance of his duties … [The second condition] should be construed as including an objective test: 'for' is to be read as 'to enable', the essential question being whether the required occupation of the property is intended to promote, and is reasonably capable of promoting, the better performance of the employee's duties.

The court should look at all the circumstances in deciding whether the required occupation is for the better performance of the employee's duties, including the reasons given for the imposition of the requirement to occupy the property, the considerations taken into account in imposing that requirement, and the factual history in so far as it casts light on whether occupation of the property was or was not reasonably capable of leading to better performance of the employee's duties. In this context, 'better' is a true comparative. The question is whether or not the requirement to occupy the house is for the better performance of the employee's duties as compared with the position if there was no requirement to occupy.

In this case, the contractual requirement to occupy the house provided by the council was imposed under the council's policy. There was no reason to doubt the council's evidence that the policy about tied accommodation was one for which there was a continuing justification. The various considerations taken into account by the council in maintaining and applying its policy were all relevant and valid. There was good reason to consider that the required occupation of a house provided by the council was intended to promote, and was reasonably capable of promoting, the better performance of his duties and thus was for the better performance of his duties. The occupation of the house fell squarely within para 2(1) and Mr Wragg was not entitled to exercise the right to buy.

ANTI-SOCIAL BEHAVIOUR

Possession claims against Gypsies

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

[2007] EWCA Civ 1318,
12 December 2007,
February 2008 Legal Action 38

The Appeal Committee of the House of Lords has refused leave to appeal.

ASSURED TENANTS

Possession claims: alternative accommodation

■ Ward v 1066 Housing Association

(2008) 8 February, QBD

Mr Ward was a secure tenant of a local housing authority. In 1996, he signed a tenancy agreement which provided that possession would only be sought on redevelopment or construction. The freehold of the property was later transferred to the 1066 Housing Association. Mr Ward became an assured tenant and entered into a new tenancy agreement. It contained a clause that any tenant who remained a tenant at the date of the transfer to the housing association would continue to have rights under the first agreement. The housing association sought possession under HA 1988 Sch 2 Ground 9 (suitable alternative accommodation). Mr Ward argued that he required the property because he was an artist. A judge made a possession order, finding that Mr Ward's rights under the first agreement had not been preserved and that as he was not a professional artist, that need could not be taken into consideration when deciding whether the alternative accommodation was suitable. Mr Ward appealed.

Cranston J dismissed the appeal. In all the circumstances, reading the two agreements together produced the construction the judge had come to. The clause in the second agreement was introductory and had not preserved the rights, in relation to the exercise of possession, contained in the first agreement. Furthermore, the judge had been perfectly entitled to find that the tenant's art work was for recreational purposes rather than professional ones. He had balanced the needs correctly.

Possession claims: anti-social behaviour

■ Bedfordshire Pilgrims Housing Association Ltd v Khan

[2007] EWCA Civ 1445,
14 December 2007

Ms Khan was the assured tenant of housing association premises which she occupied with her four children. The housing association alleged that she had breached the terms of her tenancy by verbally harassing and physically assaulting neighbours and by causing or allowing her son, her brother and other relatives or friends to attack residents and their children in the locality. On one occasion the defendant's brother threatened a neighbour with a knife and said he would have her raped. On another occasion one of the defendant's sons broke the nose of a neighbour's son. HHJ Everall QC made an outright order for possession under HA 1988 Sch 2 Grounds 12 and 14 (breach of tenancy agreement) and (tenant or person residing in or visiting the house causing nuisance or annoyance to a person residing or visiting in the locality, or convicted of an indictable offence committed in the locality) respectively. The defendant sought permission to appeal.

The Court of Appeal refused permission to appeal. First, the judge's findings of fact were not perverse. Second, the judge was right to find that Ground 14 includes the tenant or a person residing in the premises encouraging or instigating other persons to do things which cause or are likely to cause any nuisance or annoyance. Third, in relation to reasonableness, Tuckey LJ said:

… weight in the context of a decision about reasonableness is quintessentially a matter for the trial judge who has heard and seen the people involved and is in the best position to decide what the justice of the case demands. Unless it can be shown that in carrying out this exercise the trial judge has misdirected himself or gone plainly wrong, this court will not interfere with his conclusion.

Finally, the judge was 'clearly entitled to take the view that no good would come of postponing the possession order', having regard to the absence of genuine remorse on the defendant's part and her statement that there was nothing wrong with her behaviour.

TOLERATED TRESPASSERS

■ London & Quadrant Housing Trust v Ansell

[2007] EWCA Civ 326,
19 April 2007,
[2007] HLR 37,
June 2007 Legal Action 34
The Appeal Committee of the House of Lords has given leave to appeal.

Tolerated trespassers and succession

■ Austin v Southwark LBC

[2007] EWHC 355 (QB),
29 January 2008
Alan Austin was granted a secure tenancy in 1983. In 1986, as a result of rent arrears, Southwark brought a possession claim. In 1987, a suspended possession order was made, but Alan Austin defaulted and became a tolerated trespasser. His brother, Barry Austin, went to live with him in 2003. Alan Austin later died and Southwark brought a new possession claim against Barry Austin. He made an application under Civil Procedure Rules (CPR) Part 19 to represent the estate of his brother and retrospectively to postpone the date for possession so that he would be entitled to succeed to the tenancy under HA 1985 s87(b).

HHJ Welchman dismissed the application. Following Brent LBC v Knightley (1997) 29 HLR 857, he held that the right to apply for a postponement of an order for possession under HA 1985 s85 is not an interest in land which is capable of being inherited. Any right ceased on the brother's death. Barry Austin appealed, arguing that Knightley predated the Human Rights Act 1998 and was not compliant with the convention, specifically article 1 of Protocol No 1.

Flaux J dismissed the appeal. CPR Part 19.8(1) does not permit a would-be personal representative to bring a claim in his/her own right. In this case, the claim did not survive Alan Austin's death. Article 1 of Protocol No 1 was not breached because the legal rule in *Knightley*, that an interest ceased with death, did not seem to amount to a deprivation of a possession. The purpose of article 1 of Protocol No 1 is to uphold rights, not to create rights. He concluded that the court should not exercise its discretion under CPR Part 19.8 and that HHJ Welchman was not wrong.

PROTECTION FROM EVICTION ACT 1977

■ R v Harris (Prosecution Appeal (No 28 of 2007))

(2008) 13 February, CA
A landlady, Ms Harris, agreed orally to rent out a room. After the tenants had moved in, they signed a written agreement, providing for a term of six months, and a rent of £495 per month. Ms Harris and the tenants acted in accordance with that written agreement. However, Ms Harris served a notice to terminate the tenancy before the date of termination stipulated in the written agreement. The tenants were legally advised that that notice was invalid. When they did not leave, Ms Harris attempted forcibly to enter the tenants' bedroom, removed picture hooks, disconnected the communal washing machine, removed food and other utensils, and locked the kitchen. She was charged with doing an act likely to interfere with the peace or comfort of residential occupiers contrary to Protection from Eviction Act (PfEA) 1977 s1(3A).

At the trial, the judge ruled that the terms of the agreement between Ms Harris and the tenants had been orally agreed and that the written agreement had no force. She held that, by the time of the alleged offence, the tenants had become trespassers, and so were not 'residential occupiers' under the PfEA. She upheld a submission that there was no case to answer. The prosecution appealed against the judge's ruling, under Criminal Justice Act 2003 s58.

The Court of Appeal allowed the appeal. The judge's conclusion was not sustainable in law. The notice to quit had, in law, been of no effect because, under the written agreement, the tenants had been entitled to occupation for a term of six months. Ms Harris and the tenants had acted in accordance with the terms of the written agreement, which was a concluded agreement entered into for mutual consideration. That agreement was a contractual agreement which gave the victims the right to occupy the premises. It superseded the previous oral agreement. As there was no evidence to justify the argument that the agreement had been a sham, and no evidence of a breach by the victims entitling Ms Harris to re-enter the premises under the agreement, it gave the tenants a contractual entitlement to occupation. The tenants had, at the relevant time, occupied the premises as a residence under a contract and so they had been 'residential occupiers'. There was a case to answer and the judge had erred in not so deciding.

LONG LEASES: FORFEITURE

■ Greenwood Reversions Ltd v World Environment Foundation Ltd and Mehra

[2008] EWCA Civ 47,
6 February 2008
Dr Mehra was the long lessee of a residential flat. The lease included a covenant 'not to assign … without the licence in writing of the lessor which shall not be unreasonably withheld'. Dr Mehra accrued arrears of rent and service charges. In 2001, after Greenwood had obtained a money judgment by consent, Dr Mehra assigned his interest in the lease to World Environment Foundation (WEF) Ltd, a charitable company with which he had a close connection. In subsequent proceedings, the judge found that no notice of assignment was given to Greenwood. When it heard of the assignment, Greenwood made it clear that it would not consent to the assignment. The judge held that the consent had not been unreasonably withheld in the light of the arrears. Greenwood placed a stop on demands for rent and other charges in case they might constitute a waiver of forfeiture. Greenwood's solicitors then wrote to Dr Mehra, stating that unless they received payment for all arrears, interest on the judgment debt and some form of security for costs, their client would be left with no alternative other than to take further action against him and his purported purchaser, and 'such proceedings will include a claim for forfeiture of the lease and hence possession of the flat'. They wrote to WEF with a copy of that letter. In 2004, Greenwood gave WEF notice under Law of Property Act 1925 s146 forfeiting the lease. In the proceedings which followed, HHJ Ryland found that the lease had been forfeited and that there had been no waiver of forfeiture. He refused to grant relief from forfeiture. WEF and Dr Mehra appealed.

The Court of Appeal dismissed the appeal. It was clear that Greenwood never intended to waive its right of forfeiture. When the letters were read together, it was clear that no demand for the payment of rent was made of WEF, the tenant under the lease. The letter to WEF merely required an explanation. The demand made of Dr Mehra was for payment of the judgment, interest and costs in respect of the earlier action commenced against him. These were amounts due solely from Dr Mehra. Second, the letters read as a whole were not in any event an unequivocal demand to pay rent. The court assumed that an unqualified demand for future rent operates as a waiver, and that the strict rule applicable to receipt of rent was also applicable to a demand for rent, but did not find it necessary to determine whether *Segal Securities v*

Thoesby [1963] 1 QB 887 and *David Blackstone Limited v Burnetts (West End) Ltd* [1973] 1 WLR 1487 at 1496–8, which held that an unambiguous demand for future rent, made after knowledge of the breach, operated in the same way as the receipt of rent so as to amount to an election to treat the tenancy as continuing and constituting a waiver, were decided correctly.

Finally, the judge had set out carefully the considerations which led him to conclude that this was not a case for relief against forfeiture. The Court of Appeal could not discern any error of principle or misdirection in the judge's approach. He approached the matter on the basis that he was exercising a broad discretion. There was therefore no basis for interfering with the exercise of that discretion.

ADVERSE POSSESSION

■ Ofulue v Bossert

[2008] EWCA Civ 7,
29 January 2008,
(2008) Times 11 February

Mr and Mrs Ofulue were the registered owners of a property. They went to live abroad in 1976. In 1981, Ms Bossert and her father, Mr Bossert, were let into the property by a former tenant. In 1987, Mr and Mrs Ofulue took possession proceedings. Mr Bossert counterclaimed, alleging that he had been offered a 14-year lease in return for completion of extensive repairs. Without prejudice negotiations took place, but agreement was not reached. In August 1996, Mr Bossert died. Mr and Mrs Ofulue failed to pursue the possession claim which was automatically stayed in August 2000. In September 2003, after serving two notices to quit, Mr and Mrs Ofulue began a new possession claim. In her defence, Ms Bossert contended that ownership of the property had passed to her by way of adverse possession. HHJ Levy QC held that she had acquired the property by adverse possession and that Mr and Mrs Ofulues' title had been extinguished. Mr and Mrs Ofulue appealed.

The Court of Appeal dismissed the appeal. Notwithstanding the ECtHR's decision in *Pye v UK* [2007] ECHR 44302/02, the Court of Appeal should still follow the House of Lords' decision in *J A Pye (Oxford) Ltd and others v Graham and another* [2002] UKHL 30; [2003] 1 AC 419. There were no special circumstances justifying departure from that decision. Mr and Ms Bossert's defence in the earlier claim did not prevent them from having the intention required for adverse possession. Following *Pye v Graham*, it is necessary only to show that the person who claims to have acquired property by adverse possession was in possession without the consent of the paper owner and intended to possess. A person who wrongly believes s/he is a tenant can occupy property in such a way that s/he has possession, just as much as a squatter. S/he does not have to show that s/he had an intention to exclude the paper owner. Furthermore, although the defence and counterclaim in the earlier proceedings was an acknowledgment of the landlords' title, it was not an acknowledgement that they were entitled to possession. That pleading did not therefore stop the running of time in the Bosserts' favour for the purpose of the Limitation Act 1980.

HOUSING ALLOCATION

■ R (Ahmad) v Newham LBC

[2008] EWCA Civ 140,
29 February 2008

The Court of Appeal has dismissed Newham's appeal against a declaration made by the Administrative Court that its choice-based housing allocation scheme is unlawful: [2007] EWHC 2332 (Admin); November 2007 *Legal Action* 38. The council had a banded allocation scheme supplemented by a direct letting arrangement.

The Court of Appeal held that:

■ neither element of the council's arrangements (nor the two combined) enabled applicants to have their cumulative housing needs recognised (in accordance with the statutory obligation that they be given a reasonable preference if satisfying one or more of the categories in HA 1996 s167(2)); and

■ the scheme failed to give those in reasonable preference categories priority over transfer applicants not in those categories.

Local Government Ombudsman

Investigation

■ Sheffield Council

06/C/10044,
5 February 2008

The council agreed that certain blocks of flats, previously designated for elderly tenants, could be redesignated for allocation to general needs housing applicants if that proved appropriate after scrutiny of a range of factors. The complainant's block was redesignated and young, disruptive tenants moved in. She complained that they made her very distressed, frightened and upset. The council could not produce evidence that the required pre-designation scrutiny had been undertaken. The Ombudsman found maladministration and recommended payment of compensation.

HOMELESSNESS

Definition of 'homelessness'

■ Harouki v Kensington and Chelsea RLBC

House of Lords,
28 February 2008

The claimant has lodged a petition seeking leave to appeal in this important case concerned with homelessness arising from conditions of overcrowding. For the Court of Appeal's decision see [2007] EWCA Civ 1000; December 2007 *Legal Action* 37.

Priority need

■ Sadiq v Hackney LBC

[2007] EWCA Civ 1507,
11 December 2007

In 2003, Mr Sadiq's home and village in Darfur were attacked and he fled. He arrived in the UK in 2004, claimed asylum and was accommodated by the National Asylum Support Service (NASS). In 2005, he was granted refugee status, the NASS accommodation was withdrawn and he applied to Hackney for homelessness assistance. It decided that he had no priority need for accommodation. His appeal was dismissed. He sought a second appeal relying on the priority need category in HA 1996 s189(1)(d): 'a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster'.

He contended that his present homelessness was 'as a result of' the original emergency that had caused him to lose his home in Sudan. Pill LJ refused permission to appeal. He decided that the judge had been right to hold that the present homelessness was the 'result of' withdrawal of his NASS accommodation.

Intentional homelessness

■ Ali v Haringey LBC

[2008] EWCA Civ 132,
6 February 2008

The council accepted that it owed Mrs Ali the main homelessness duty in HA 1996 s193(2) and provided her with accommodation in a non-secure tenancy. It later made an offer of accommodation under HA 1996 Part 6 which she declined. The council upheld on review a decision that the offer made had been suitable and had been unreasonably refused, releasing the council from its duty: HA 1996 s193(7). The council served notice to quit, obtained a possession order and evicted Mrs Ali.

She made a further application for homelessness assistance after that eviction. The council provided interim accommodation (HA 1996 s188) but decided that she had become homeless intentionally (HA 1996 s191). It provided further temporary

accommodation under its duty under HA 1996 s190. The finding of intentional homelessness was upheld on review and HHJ Riddell dismissed an appeal.

May LJ refused permission to bring a second appeal. The judge had been entitled to reject on the facts a contention that there could not have been intentional homelessness because the non-secure tenancy was in such poor condition it was not reasonable to continue to occupy it. The refusal of the offer had been a deliberate act leading to the loss of that accommodation. The issue of language difficulties had been explored adequately by the judge. The proposed appeal raised no issue of such importance as to justify permission for a second appeal: CPR 52.13.

Duties owed to the homeless

■ Omar v City of Westminster

B5/07/2112,
3 March 2008

The appellant was owed the main homelessness duty: HA 1996 s193(2). His baby had been born prematurely. In a period while he was still taking the baby to hospital for weekly tests, the council offered him long-term accommodation in another borough. The offer was refused on the basis that it was too far from the hospital and from the appellant's support network. The council decided that the offer had discharged its duty.

On a review of that decision, the reviewing officer sought and obtained an updated report from the hospital indicating that, by that date, the baby needed no more than normal care. The officer reviewed the facts as at the date of the review taking the hospital's report into account and upheld the initial decision. An appeal was dismissed.

The Court of Appeal allowed a second appeal. The questions for the reviewing officer under HA 1996 s202 were whether or not the offer had been suitable and whether it had or had not been reasonably refused. That required a review limited to the facts as at the date of the refusal. Although the reviewing officer was entitled to take account of facts as at that date – even if unknown previously to the council – material dealing with what had occurred since then was irrelevant: applying *Mohamed v Hammersmith and Fulham LBC* [2002] 1 AC 547 as explained in *Osseily v Westminster City Council* [2007] EWCA Civ 1108.

■ R (Niypo) v Croydon LBC

CO/288/2008,
3 March 2008

The council decided that the claimant (a single mother with two dependent children) had become homeless intentionally: HA 1996 s191. It also decided that the duty it consequently owed her (under HA 1996 s190(2)) could be met by:

■ providing temporary accommodation for ten days (expiring on 21 December 2007); and
■ giving her advice about crisis loans, registering with estate agents and obtaining access to bed and breakfast (B&B) or other temporary accommodation.

The council later agreed to extend provision of accommodation to 1 January 2008. The claimant sought a judicial review. The council then offered a further extension to 5 March 2008 if the proceedings were withdrawn.

Dobbs J dismissed the claim. She held that although the initial ten days had been unlawfully short, by the date of trial the claimant had had a period that the council was entitled to say had given her a reasonable opportunity to find her own housing: HA 1996 s190(2)(a) and *R (Conville) v Richmond upon Thames LBC* [2006] EWCA Civ 718; [2006] 1 WLR 2008. The claimant had not taken steps in that time to obtain a crisis loan or explore other housing options. The council had been entitled to suggest that she consider B&B accommodation as a means of meeting her immediate housing needs.

HOUSING AND CHILDREN

■ R (M) v Hammersmith and Fulham LBC Appellate Committee

[2008] UKHL 14,
27 February 2008

When aged 17, M was locked out of her parental home by her mother (who was being admitted to hospital for inpatient treatment for cancer). M applied to the council for help with accommodation. She was seen, and dealt with exclusively, by the housing department and was assisted under HA 1996 Part 7 (homelessness). B&B and, later, hostel accommodation was provided under HA 1996 s188. The housing department did not refer her to its social services department or arrange any CA 1989 assessment.

Following a period of custody, she applied to the council for aftercare services on the basis that she had been accommodated by the council before reaching 18 and was thus a 'former relevant child' for CA 1989 purposes. The Administrative Court and the Court of Appeal dismissed her claim for judicial review of the refusal of those services.

The House of Lords rejected her further appeal and, in particular, her claim that she should be treated as though she had been accommodated under CA 1989 s20 (so as to attract the benefit of leaving care provisions). Although the council had not adopted a joint housing/social services protocol for assessment as envisaged by codes of guidance issued to both housing and social services authorities, and had failed to make a referral that should have been made, the result was that M had never been dealt with by social services: she had only been provided with services under HA 1996 s188.

1 Available at: www.communities.gov.uk/documents/housing/pdf/greenpaperresponse.
2 Available at: www.communities.gov.uk/documents/housing/pdf/lifetimehomes.
3 Available at: www.communities.gov.uk/documents/housing/pdf/housingstatistics2007.
4 Available at: www.communities.gov.uk/speeches/housing/fabiansocietyaddress.
5 Available at: www.renewal.net/Documents/RNET/Research/Housingassociationstackling1.pdf.
6 Available at: www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/pathtocitizenship/pathtocitizenship?view=Binary.
7 Available at: www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/pathtocitizenship/.
8 Available at: www.justice.gov.uk/docs/stats-mortgage-land-q4.pdf.
9 Available at: www.civiljusticecouncil.gov.uk/files/mortgage-pre-action-protocol-final290208.pdf.
10 Available at: www.cieh.org/library/Knowledge/Housing/Housing%20survey.pdf.
11 Available at: www.lacors.gov.uk/lacors/upload/17175.pdf.
12 Available at: www.communities.gov.uk/documents/housing/pdf/dfgpackagechange.
13 Available at: www.ris.org.uk/downloads/SNaP_FullReport.pdf.
14 Available at: http://noms.justice.gov.uk/news-publications-events/publications/guidance/women_prisoners_housing?view=Binary.
15 Available at: www.communities.gov.uk/news/corporate/715137.
16 Details of the bill's provisions and parliamentary progress are available at: http://services.parliament.uk/bills/2007-08/childrenandyoungpersonshl.html.
17 Available at: www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=ENGLISH^573^SUBJECT^17^REPORTS-AND-DATA^AC-REPORTS&ProdID=8906AF89-014B-4462-9094-5DE69A5D5C8F&Section ID=sect18#.
18 Available at: www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/38/38.pdf.

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