policy document (PSO 4360 para 14) stated that the need to protect the public and to ensure that the decision to deport is not frustrated 'is paramount' when reaching a decision. The secretary of state sought to maintain that the decision was a rational one based on a careful consideration of the various competing factors. However, the court rejected these submissions. It commented that the case 'has all the appearance of the [UKBA's] decision to consider withdrawal of refugee status being the overriding determinative matter to the exclusion of all else' (para 33). In consequence the decision was quashed, although it was noted that the effect of the UKBA's notification of its decision to deport the claimant (subject to his right of appeal) may have a bearing on the reconsideration of the case.

Sentence calculation

■ **R (Webb) v Swindon Crown Court**
(2011) 19 April, unreported, Divisional Court

This case concerned the proper calculation of a sentence imposed on a prisoner who had been made subject to a return to custody order imposed under Powers of Criminal Courts (Sentencing) Act 2000 s116(2). The claimant had been released on licence and committed a burglary. The sentencing judge ordered that the claimant serve the remainder of his sentence in relation to the previous offence, but did not specify a term. Later the sentence imposed for the new offence of burglary was appealed successfully.

The claimant understood that the return to custody order was to run from the date that it was imposed, which resulted in a new prison sentence of 232 days. The prison considered that the order ran from the date that the burglary was committed, which resulted in a sentence of 533 days. The Court of Appeal refused to hear an appeal on the ground that it did not have jurisdiction, and the Criminal Cases Review Commission refused to refer the matter back to the Court of Appeal despite the ambiguity.

The Divisional Court stated that the correct approach was to ascertain what order had actually been made by the sentencing judge, not what his intention had been. In keeping with the general principle requiring ambiguity affecting the liberty of the subject to be construed in favour of the individual, the court found that the sentence should have been read favourably and that the shorter period of 232 days was the correct sentence.

Hamish Arnott, Nancy Collins and Simon Creighton are solicitors with Bhatt Murphy Solicitors, London.

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

Reforming social housing law

The House of Lords completed the committee stage of the Localism Bill on July 2011, just before the summer recess. The topics of the housing-related amendments tabled for debate included:

- tenancy deposits;
- Gypsy and Traveller sites;
- homelessness;
- security of tenure; and
- social housing allocations.

The House of Lords Library produced a useful free review of the bill's provisions as they stood before the committee stage: *Library Note: Localism Bill (HL Bill 71 of 2010–12) LLN 2011/019* (House of Lords, May 2011).[1] The report and third reading stages in the House of Lords have been scheduled for September 2011 and the bill is expected to receive royal assent later in the autumn.

New directions for social housing

New statutory directions are to be issued to the Social Housing Regulator for England by the Secretary of State for Communities and Local Government under Housing and Regeneration Act 2008 s197. These will direct the regulator to set national standards on tenure, mutual exchange, tenant involvement and empowerment, rents and quality of accommodation. They will replace all the directions issued to the regulator by the last government. A consultation paper has been published by the Department for Communities and Local Government (DCLG) containing the new directions in draft: *Implementing social housing reform: directions to the Social Housing Regulator. Consultation* (DCLG, July 2011).[2] The consultation period closes on 29 September 2011.

New inspection arrangements for testing social landlords' performance against the regulator's current national standards have been introduced by the Tenant Services Authority (TSA): *Investigating regulatory concerns: inspecting the TSA standards* (TSA, June 2011).[3] The TSA has also issued statutory guidance on its intended enforcement of the current national standards: *Statutory guidance on the use of enforcement powers under Chapter 7 Housing and Regeneration Act 2008* (TSA, June 2011).[4] The chief executive of the TSA wrote to all social landlords on 23 June 2011 to outline the latest moves towards a replacement regulator in April 2012.[5]

Social housing tenants

The proposed new directions to the Social Housing Regulator (see above) include a revised Tenant Involvement Standard which is intended to give opportunities to tenants, with the agreement of landlords, to be involved in the management of housing repair and maintenance services, and to share in any savings made. The UK government is calling this a Tenant Cashback scheme for social housing tenants in England. An impact assessment of these proposals has been published: *Tenant Cashback scheme: impact assessment* (DCLG, July 2011).[6]

The UK government intends that every social landlord will establish a representative 'tenants' panel'. It has announced a £535,000 package of funding to deliver training to the 1,500 social housing tenants due to sit on these new tenants' panels: Press notice (DCLG, 14 June 2011).[7]

Housing and legal aid

The UK government's response to the submissions received on its consultation paper about legal aid reform deals with housing cases at pp98–100 and 129–132: *Reform of legal aid in England and Wales: the government response* (Ministry of Justice, June 2011).[8]

The Legal Aid, etc Bill, designed to take most housing cases out of scope of the legal aid scheme, received a House of Commons second reading on 29 June 2011. The housing work proposed to remain in scope of the civil legal aid scheme is identified in

Schedule 1 paras 27–32. The bill is now being considered in a House of Commons public bill committee which will resume its deliberations in September 2011. (See pages 4 and 5 of this issue.)

While the bill is going through parliament, the Legal Services Commission (LSC) will implement the detailed income cuts for civil legal aid suppliers in housing law that will come into force on 3 October 2011. This will involve an across-the-board reduction by ten per cent in fees and rates paid for civil legal aid services. The necessary legal basis for the change will be achieved by secondary legislation.

Housing and anti-social behaviour

The Chartered Institute of Housing (CIH) has launched a new management standard for use by social landlords on anti-social behaviour: *Respect: ASB charter for housing* (CIH, June 2011).[9] This new non-statutory code (replacing the old DCLG-produced *Respect Standard for Housing Management*) is intended to improve performance on tackling anti-social behaviour by social landlords. An online sign-up procedure for social landlords has been made available.[10]

The Home Office has begun examining the many hundreds of responses received to its consultation on the tools and powers to tackle anti-social behaviour: *More effective responses to anti-social behaviour* (Home Office, February 2011).[11] Submissions received include those of the Social Housing Law Association (SHLA).[12] Legislation to implement the proposed changes will be brought forward in the 2012/2013 parliamentary session.

Housing and domestic violence

A 12-month pilot scheme for use of Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) began on 30 June 2011 in the areas covered by Greater Manchester, West Mercia and Wiltshire police. The intention is to use the notices and orders to stop alleged perpetrators from contacting victims or returning to their homes for up to 28 days. In effect, they achieve instant exclusion for up to a month. Interim guidance has been published for use by police authorities and magistrates' courts in the pilot areas about how the new scheme will operate: *Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs): sections 24–33 Crime and Security Act 2010. Interim guidance document for police regional pilot schemes: June 2011 – June 2012* (Home Office, June 2011).[13] After the 12-month pilot period, there will be an evaluation against a number of success criteria. The UK government has announced that a decision to roll out the DVPO scheme nationally will only be taken once the evaluation is complete: Press notice, (Home Office, 30 June 2011).[14] The Criminal Defence Service (General) (No 2) (Amendment) Regulations 2011 SI No 1453 provide that for the purposes of legal aid, proceedings relating the DVPNs and DVPOs under the Crime and Security Act 2010 are to be regarded as criminal proceedings. The LSC has issued a briefing note to assist advisers acting for alleged perpetrators: *Domestic violence prevention orders/notices* (LSC, June 2011).[15]

The UK government has published *Domestic violence – assistance for adults without dependent children – final report* (DCLG, June 1011).[16] This study explores the type of assistance provided by local authorities and also other specialist agencies to victims of domestic violence.

Mortgage Rescue Scheme

All purchases by housing associations from defaulting homeowners under the 'old' Mortgage Rescue Scheme (MRS) for England were expected to have been completed by 30 June 2011, but exceptional cases have been given longer completion dates.

A report by the National Audit Office (NAO) found that the government had seriously underestimated the likely take-up of the purchase variant of MRS, under which housing associations buy out borrowers and let the homes back to them. As a result, the MRS had cost almost £93,000 for every rescue completed instead of the projected £34,000 per home: *Department for Communities and Local Government – The Mortgage Rescue Scheme: Report by the Comptroller and Auditor General*, HC 1030 Session 2010–2012 (NAO, May 2011).[17]

Homelessness applications to local authorities in England

The local government ombudsman (LGO) has published a report highlighting the serious mistakes some councils in England make when dealing with people seeking assistance with homelessness: *Homelessness: how councils can ensure justice for homeless people. Focus report: learning the lessons from complaints* (LGO, July 2011).[18] The report notes that the LGO receives more than 300 complaints every year in which people claim to have been denied access to help or interim accommodation for no legitimate reason when homeless.

Housing conditions in the private sector

Dr Stephen Battersby has produced a new study of the extent of the enforcement of the Housing Health and Safety Rating System (contained in the Housing Act (HA) 2004) by local authorities in England: *Are private sector tenants being protected adequately?* (June 2011).[19]

Protection for private rented sector tenants

The property ombudsman (TPO) is introducing new codes of practice for those letting agents and managing agents who participate in the TPO scheme. The new Lettings Code issued by the TPO took effect from 1 August 2011: *Code of Practice for Residential Letting Agents* (TPO, June 2011).[20]

Housing cases in the civil courts

The latest judicial statistics from the Ministry of Justice (MoJ) indicate that county court bailiffs executed 54,000 warrants for possession of property in England and Wales in 2010 – more than 1,000 homes per week: *Judicial and court statistics 2010* (MoJ, June 2011).[21] Although the number of claims for mortgage possession had declined, claims for possession by private landlords had increased 16 per cent compared to 2009.

The Housing Law Practitioners Association (HLPA) has submitted a response to the MoJ consultation paper *Solving disputes in the county courts: creating a simpler, quicker and more proportionate system, focussing on the courts' management of housing cases*.[22]

Housing statistics

A mass of new statistical information on housing was released in England in July 2011 by the DCLG. The relevant publications include:

- *English housing survey: housing stock report 2009*, dealing with the state of the housing stock itself.[23]
- *English housing survey: household report 2009–10*, dealing with the circumstances of occupiers.[24]
- *Public attitudes to housing in England: report based on the results from the British Social Attitudes survey* summarises public opinion across a wide range of housing issues and subjects.[25]
- *English housing survey bulletin: issue 4* provides an overview of the whole batch of new statistics.[26]

Squatting

The UK government is conducting a consultation exercise on proposals for the criminalisation of squatting in residential premises and on other amendments to the

laws relating to trespass to land: *Options for dealing with squatting* (MoJ, July 2011).[27] The consultation closes on 5 October 2011.

Housing tribunals

The Residential Property Tribunal Service (RPTS) became part of HM Courts and Tribunals Service (HMCTS) on 1 July 2011. The RPTS will keep its branding and logo for the first year after the transfer, and, subject to parliamentary approval, will then be absorbed into a new Property, Land and Housing Chamber within HMCTS in spring 2012.

Rights of long leaseholders

The UK government is undertaking a consultation on proposals for updating the property value limits which are used to determine whether certain statutory rights are available to residential long leaseholders: *Updating leasehold value limits: consultation* (DCLG, June 2011).[28] These are leaseholders' rights:

- to remain in properties as assured tenants when leases come to an end (Local Government and Housing Act 1989 Sch 10); and
- to extend the leases or to purchase the freeholds, ie 'enfranchise' (Leasehold Reform Act 1967). The consultation period ends on 12 September 2011.

HUMAN RIGHTS

Article 6

■ Destilacija plc v Bosnia and Herzegovina

App No 11683/08,
17 May 2011

After the death of his grandfather, DN remained in occupation of his grandparents' flat as his home. The company with rights to allocate the flat sought and obtained a possession order from a court and DN was evicted. The Constitutional Court of Bosnia and Herzegovina found a violation of DN's right to respect for his home, quashed the lower court decision and ordered that he be reinstated in the flat. The company was informed of that decision through the housing authorities and complained to the European Court of Human Rights (ECtHR) that there had been an unlawful interference with its rights under article 6 of the European Convention on Human Rights ('the convention') because it had not been a party to the human rights claim in the national courts.

The court rejected the complaint as inadmissible. The company did not own the flat. Although it had a say in the process of the privatisation of the flat, it could not veto that process or gain any pecuniary interest from it. Although it could have let the flat to one of its employees if DN had not been reinstated, that right was not a 'civil right' within the meaning of article 6(1), since any rent would have to be paid to the Republika Srpska Housing Fund. Accordingly, the proceedings before the Constitutional Court were not decisive for the determination of the company's civil rights and obligations. Article 6 did not apply.

Article 8 and article 1 of Protocol No 1

■ Orlič v Croatia

App No 48833/07,
21 June 2011

Mr Orlič was granted a specially protected tenancy of a flat. He and his family lived in the flat from November 1991. In 1996, the state brought a civil claim for possession. In 2000, the municipal court found in the state's favour and ordered him to vacate the flat. It found that the state owned the flat and that Mr Orlič had no legal entitlement to occupy it because the decision to grant the tenancy was null and void, and could not serve as a valid legal basis for acquiring a specially protected tenancy. After unsuccessful appeals, Mr Orlič was evicted in October 2004. He complained that, by ordering and enforcing his eviction, the domestic courts had violated his right to respect for his home under article 8.

Following previous authority, the ECtHR noted that:

- the concept of 'home' within the meaning of article 8 is not limited to those premises which are lawfully occupied or which have been lawfully established;
- whether a property is to be classified as a 'home' is a question of fact and does not depend on the lawfulness of the occupation under domestic law. The court referred to the need for 'the existence of sufficient and continuous links with a specific place';
- the eviction amounted to an interference with his right to respect for his home;
- the national courts' decisions ordering his eviction were in keeping with domestic law. The interference in question pursued the legitimate aim of the economic well-being of the country; and
- the central question was whether or not the interference was proportionate to the aim pursued and thus 'necessary in a democratic society' (para 63). This requirement raises a question of procedure as well as one of substance (*Connors v UK* App No 66746/01).

In this case, the national courts had confined themselves to finding that occupation by Mr Orlič was without legal basis, but made no further analysis about the proportionality of the measure to be applied, namely, his eviction. However, the guarantees of the convention require that interference with an occupant's right to respect for his home be not only based on the law, but also be proportionate under article 8 to the legitimate aim pursued. Consideration should be given to the particular circumstances of the case (para 64). Where national authorities do not give any explanation or put forward any arguments demonstrating that an occupant's eviction is necessary, the state's legitimate interest in being able to control its property comes second to the occupant's right to respect for his or her home. Moreover, where the state has not shown the necessity of the occupant's eviction in order to protect its own property rights, the court places a strong emphasis on the fact that no interests of other private parties are at stake (para 69).

The ECtHR concluded that the national courts did not afford Mr Orlič adequate procedural safeguards. There was, therefore, a violation of article 8. It held that the most appropriate way of repairing the consequences of that violation was to reopen the complained of proceedings.

■ Yevgeniya Vladimirovna Rokhlya v Ukraine

App No 46014/07,
17 May 2011

Ms Rokhlya was the widow of a member of the armed forces. The army rehoused her from military married quarters to a flat. She was later evicted from the flat when it was realised that the rehousing had not been authorised properly. She complained to the ECtHR that there had been an unlawful interference with her right to respect for her home. The government delivered a unilateral declaration which admitted breaches of article 8 and article 1 of Protocol No 1 and agreed to pay €22,000 in compensation.

The court stated that that sum appeared sufficient to enable her to purchase decent accommodation in the town of her residence or in another comparable town in Ukraine. It considered that the proposed settlement would '"put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach" (see *Iatridis v Greece (just satisfaction)* [GC], App no 31107/96, [ss]32, ECHR 2000 XI)'. Against that background, it was no longer justified in continuing the examination of this part of the application (article 37(1)(c)). The court struck the application out of its list of cases.

SECURE TENANTS

Death and succession

■ **Solihull MBC v Hickin**

[2010] EWCA Civ 868,
27 July 2010,
[2010] 1 WLR 2254,
September 2010 Legal Action 36,
[2010] UKSC 0239,
24 March 2011

The Supreme Court granted Ms Hickin permission to appeal on 24 March 2011.

HARASSMENT AND EVICTION

■ **R v Qureshi**

[2011] EWCA Crim,
17 May 2011,
(2011) Times 21 June

Mr Qureshi served notice on two tenants. When the notice expired, his son and five other men visited the property and acted in a threatening manner. He was charged with two counts of harassment contrary to Protection from Eviction Act 1977 s1(3A). Recorder Lucraft found that he had no case to answer. The prosecution appealed.

The Court of Appeal dismissed the appeal. In section 1(3A), the words 'does acts' suggest the requirement of actual participation by the defendant. Accordingly, the recorder was correct to rule that he could not be convicted on the basis of vicarious liability.

RENT ACT 1977

■ **Crown Estate Commissioners v Governors of the Peabody Trust**

[2011] EWHC 1467 (Ch),
10 June 2011

In February 2011, the Crown Estate Commissioners sold the reversionary interest in a number of residential properties to Peabody, a housing association within the meaning of Housing Associations Act 1985 s1 and a not for profit private registered provider of social housing within the meaning of the Housing and Regeneration Act 2008. The occupants were tenants who had been subject to and entitled to protection under the Rent Act 1977. All agreed that those Rent Act tenancies came to an end on transfer of ownership. However, a dispute arose regarding whether they became secure tenants under Housing Act 1985 Part IV and also housing association tenants within the meaning of Rent Act 1977 s86 or assured tenants under the Housing Act (HA) 1988.

After a lengthy tour d'horizon of the relevant legislation from 1977 onwards, Charles Hollander QC, sitting as a deputy judge, found that the words of HA 1988 s38(5)(d) were clear. On the transfer of interest the occupants became assured tenants.

UNPROTECTED TENANTS

Notice to quit

■ **Kinnear v Whittaker**

[2011] EWHC 1479 (QB),
10 June 2011

Mrs Whittaker was the freehold owner and occupier of Marks Tey Hall, Colchester. In 2007, she sold the property to Mr Kinnear, a property developer, for £750,000. She remained in occupation of the house and garden. A tenancy agreement purported to grant her an assured shorthold tenancy for a fixed term of 12 months at a monthly rent of £1. It was later accepted by all parties that a tenancy at such a low rent could not be an assured shorthold tenancy within the meaning of the HA 1988. Mr Kinnear obtained a mortgage on the property, but defaulted on the payments and receivers were appointed. The receivers served two notices to quit on 8 March 2010. The first stated: 'The landlord gives you notice to quit and give vacant possession of the property on the next date being at least four weeks from the service of this notice on which a complete period of your license or your tenancy expires.' The second stated: 'The landlord requires possession of the Property at the end of that period of your tenancy which will end next after the expiration of two months from the service upon you of this notice.' HHJ Lochrane made a possession order. He found that 'one way or another the Defendant … has been served with a valid notice to quit the property, the term of which has comfortably expired by now'. Mrs Whittaker appealed. She argued that that the tenancy, although not an assured shorthold tenancy, was a yearly tenancy at common law; it therefore required at least six months' notice to terminate; such notice was never given; and by a tenant's notice dated 4 May 2011 (two days before the first hearing of the appeal) Mrs Whittaker renewed the tenancy unilaterally.

Bean J found that, after the expiry of the fixed 12-month term, the tenancy became a monthly, not an annual, tenancy (*Alder v Blackman* [1953] 1 QB 146). Accordingly, the first notice to quit was effective to terminate the tenancy on 30 April 2010; however, if not, then the second notice to quit (perhaps more by luck than judgment) was effective to terminate it on 30 April 2011. Although the second notice did not contain the statutory reminder to the tenant of her rights under the Protection from Eviction Act 1977, the first one did. Bean J held that where the two notices are served simultaneously that is sufficient. The notice served by Mrs Whittaker on 4 May 2011 was too late. There was by then no tenancy to renew. Even if both these arguments were wrong and the landlords were required to serve a single notice to quit giving a period of at least six months' notice and containing the statutory warnings, it would be wrong to allow this point to be raised for the first time on appeal. He refused permission to reamend Mrs Whittaker's defence and counterclaim to raise these points.

However, the facts surrounding assurances said to have been given by Mr Kinnear to Mrs Whittaker before sale which she said had created a proprietary estoppel or a constructive trust in her favour were not sufficiently clear for the case to be suitable for summary determination. The claim was 'genuinely disputed on grounds which appear to be substantial' within the meaning of CPR 55.8. Bean J allowed the appeal, set aside the order for possession and remitted the case to the county court.

ANTI-SOCIAL BEHAVIOUR

■ **Clift v Slough BC**

[2010] EWCA Civ 1484,
21 December 2010,
February 2011 Legal Action 44,
[2011] UKSC 0020,
11 April 2011

The Supreme Court has refused Slough permission to appeal.

CHALLENGE TO COMPULSORY PURCHASE ORDER

■ **Greenwood v Bristol City Council**

[2011] EWHC 263 (Admin),
1 February 2011

Ms Greenwood made an application under Acquisition of Land Act 1981 s23 challenging the validity of a compulsory purchase order (CPO). The CPO was made under Housing Act 1985 s17. It related to 23 plots, one of which included a prefabricated bungalow which Ms Greenwood rented as a secure tenant. She argued that there was no evidence to support the Inspector's conclusion that the property did not meet the Decent Homes Standard and that the local authority failed to provide reasons as to why it did not.

Frances Patterson QC, sitting as a Deputy High Court Judge, dismissed the application. Following *Powell v Secretary of State for Communities and Local Government* [2007] EWHC 2051 (Admin), Ms Greenwood had to show that the balance struck by the secretary of state was one which was legally irrational

or perverse or that there was some other error of law, before the court could intervene. The convention does permit interference both with property rights and family rights in line with the law in appropriate cases, in particular, where it is necessary to do so in the public interest. In this case, it was perfectly open to the Inspector to come to the view that the evidence that he heard from the council, absent any other evidence from Ms Greenwood, was sufficient to enable him to conclude that the property failed to meet the appropriate standard.

HOUSING ALLOCATION

■ R (Babakandi) v Westminster City Council

[2011] EWHC 1756 (Admin), 6 July 2011

The claimant, his wife and his two young daughters occupied a small studio flat he rented from the council. He applied for a transfer to a larger property and was placed in Band B of the council's Choice Based Lettings Scheme and awarded over 500 priority points. Three years later, he had not been successful in bidding for any properties. For part of that period, he had been suspended from bidding because of his rent arrears. During another period, a limited number (or 'quota') of overcrowded Band B applicants had been given additional priority and moved to Band A.

He sought judicial review of the council's allocation scheme, contending that:

■ operating a quota scheme was inconsistent with the notion of statutory reasonable preference in relation to all the council's stock (HA 1996 s167(2));

■ there was no reference to the quota in the published scheme itself (HA 1996 s167(1));

■ the scheme was not 'transparent' because the ad hoc operation of quotas meant that applicants could never know when they might actually get an allocation even if they knew what band they were in and what points they had; and

■ the provision in the allocation scheme that tenants in rent arrears would all be suspended from bidding was an unlawfully strict fetter on the discretion to take account of past tenant behaviour (HA 1996 s167(2A)(b)).

Nicol J dismissed the claim. He held that:

■ The reasonable preference requirement did not mean that such preference must be given at all times and in relation to all properties. 'It is sufficient if such preference is given over the course of a reasonable period' (para 22).

■ The quota was dealt with in the council's annual report to which the allocation scheme made reference. It may be cumbersome to have to look at two (or possibly more) documents but it was not unlawful.

■ Confining bidding for specific properties to particular groups did mean that the operation of the Scheme was not as transparent as it might otherwise be, but the council was entitled to decide that this disadvantage was outweighed by the advantage of a more equitable distribution of its scarce accommodation.

■ Although applicants in arrears were normally suspended from bidding, the scheme provided that the Director of Housing could exercise discretion 'in exceptional circumstances' (para 24) to allow applicants with rent arrears to bid or to receive offers. This was a lawful application of HA 1996 s167(2A)(b). Automatic suspension had practical advantages. It took effect swiftly and effectively, and at a time when the arrears were likely to be at a relatively modest level so that there was a better chance of them being paid off. The scheme was not unlawful simply because it did not set criteria for what were exceptional circumstances in which the rule could be waived.

Public Services Ombudsman for Wales

Complaint

■ Isle of Anglesey CC

200902138, 29 June 2011[29]

In early 2000, a private rented sector tenant (Ms A) applied to the council for allocation of social housing. She made a number of contacts with the council over the following years to progress her application and raised issues of overcrowding, disrepair and anti-social behaviour in her current home. Ms A complained to the ombudsman about the length of time she had been waiting to be offered a property and about how the council dealt with her housing application. Although the council had accepted that it owed her the main homelessness housing duty (HA 1996 s193) in November 2004, it had mislaid her file, had not progressed her application for four and a half years and had not moved her to temporary accommodation until June 2009.

The investigation found serious shortcomings in the way that the council dealt with the homelessness and housing applications. The council had failed repeatedly to consider all of the available relevant information in keeping with its allocations policy. This led to Ms A not being offered an available council property in September 2005. The investigation also uncovered serious deficiencies in the council's record-keeping.

The ombudsman found systemic maladministration. He recommended that the council apologise to Ms A and her family for its failings and offer her a redress payment of £1,500. He also made a number of recommendations for further action by the council, including the production of up-to-date written procedures on housing allocations and homelessness and further training for relevant officers.

HOMELESSNESS

Accommodation for homeless households

■ Charles Terence Estates Ltd v Cornwall Council

[2011] EWHC 1683 (QB), 28 June 2011

The company brought a claim against the council for unpaid rent in respect of accommodation it had let to the council for use by homeless persons. The council denied liability under the agreements (which had been made by two previous district councils for the area in which it was the new unitary authority). The agreements were alleged by the council to be invalid and unenforceable because they:

■ had been entered into for the improper purpose of taking advantage of the housing benefit scheme; or

■ were ultra vires; or

■ had been made under mistake of fact or law. A trial was fixed to start on 11 July 2011.

On 13 June 2011, the council applied for permission to rely on expert valuation evidence of the open market rents of the properties that were subject to the agreements.

Coulson J rejected that application because the evidence was not reasonably required to resolve the issues of liability and there was no justification for the delay in making the application. The consequences of refusing the application were outweighed by the likely consequence of allowing it, ie, the adjournment of the trial.

■ McQuillan v Tower Hamlets LBC

Bow County Court, 14 April 2011[30]

The claimant was a vulnerable, single, unemployed young woman in her mid-twenties. In her teens she had been in a violent and abusive relationship with a man. Since 2006 she had been provided with temporary accommodation under the homelessness assistance provisions of HA 1996 Part 7. In 2010, the council made her an offer of the tenancy of a flat under HA 1996 Part 6. It was located about 1.5 miles from the man's home in an area the claimant understood to be frequented by his family and friends. On her

refusal of the offer the council decided, on review, that it had been suitable and reasonable for her to have accepted; accordingly, its duty had ended: HA 1996 s193(7). The reviewing officer had taken account of representations that the offer was unsuitable because of the depression and anxiety the claimant was suffering but, following advice from Dr Keen, had decided that it was suitable.

Recorder Steynor allowed an appeal. Although the reviewing officer had made an objective assessment of the medical evidence – for the purpose of deciding 'suitability' – the issue of whether or not it was reasonable to accept the accommodation (HA 1996 s193(7F)) required a decision on whether or not, subjectively, the claimant's belief that her anxiety and depression about her circumstances were likely to be affected adversely was genuine. Had that approach been taken, the inevitable outcome was a finding that it was not reasonable to expect the claimant to accept the offer. The reviewing officer's decision was varied to one that the section 193 duty had not ended.

Eligibility

■ Amin v Brent LBC

Wandsworth County Court, 7 July 2011[31]

The claimant was a widow with three children and was a Danish Citizen. She applied to Brent for assistance as a homeless person. At the date of her application she was unemployed. The council decided that she was not eligible for homelessness assistance: HA 1996 s185(1). However, between that initial decision and a later review decision made under HA 1996 s202, she obtained part-time work as a customer care assistant working 16 hours a week and earning £92.80 per week.

The review was undertaken by Mr Minos Perdios (see below). Relying on the decision of Social Security Commissioner Rowland in *CH 3314/2005*, he found that the work did not provide enough income to cover what he considered to be 'reasonable living expenses'. He found, therefore, that the employment was not 'effective' and, consequently, that the claimant was not a 'worker' within the meaning of article 39 of the Treaty of Rome.

Allowing an appeal under HA 1996 s204, HHJ Rylance held that it was clear – from the jurisprudence of the European Court of Justice (ECJ) and the decision of the Court of Appeal in *Barry v Southwark LBC* [2009] ICR 437 – that the question of whether work is 'effective' is to be looked at from the point of view of the value of the work to the employer and not to the employee. The formula propounded in *CH 3314/2005* and adopted by Mr Perdios was wrong.

Reviews and second appeals

■ Karaj v Three Rivers DC

[2011] EWCA Civ 768, 13 June 2011

The claimant sought a review of a decision that he was not a homeless person: HA 1996 s175. The review was conducted by Mr Minos Perdios of Housing Reviews Ltd on behalf of the council. The point was taken on an appeal to the county court that Mr Perdios had no legal authority to make a review decision for the council.

HHJ Faber dismissed the appeal. On a renewed application for permission to bring a second appeal, the Court of Appeal was satisfied that an appeal on the point was seriously arguable. However, the claimant also had to meet the additional threshold for a 'second' appeal: CPR 52.13.

Rimer LJ said that:

[the judge's] judgment reflects not only the first judicial consideration of the contracting out point but what it is to date the only consideration of it. In those circumstances to regard what would in form be a second appeal to the Court of Appeal as a true second appeal, appears to me to be unsound. It would in substance be a first appeal (para 6).

Permission to bring a second appeal was therefore granted.

Costs on appeals

■ Brown v Richmond upon Thames LBC

Wandsworth County Court, 10 June 2011[32]

The council decided that the claimant did not have a priority need for homelessness assistance: HA 1996 s189. She sought a review. On 13 October 2010, her solicitors notified the council by fax that her son was in full-time education at a further education college. The council responded the same day indicating that it would need documentary evidence of that fact. On 14 October 2010, the council made a review decision that there was no priority need. On 15 October 2010, the solicitors provided the evidence required and indicated that if the review decision was not withdrawn, an appeal would be lodged. Absent a response, notice of appeal under HA 1996 s204 was filed and served. The review decision was then withdrawn. The claimant sought her costs of the discontinued appeal.

HHJ Knowles held that if the appeal had been pursued to a hearing it would have succeeded, Alternatively, a reading of the papers demonstrated that the council was very likely to lose and the claimant likely to succeed. On either basis the claimant was entitled to her costs.

HOUSING AND CHILDREN

To determine whether or not an applicant is a 'child in need' of accommodation for the purposes of Children Act (CA) 1989 ss17 and 20, a local authority must ascertain his/her age. Challenges to age assessment decisions are made by way of judicial review. If permission is granted, substantive claims are now being transferred from the Administrative Court to the Upper Tribunal for trial. The following decisions, noted briefly, concern recent judgments from the courts:

■ R (AE) v Croydon LBC

CO/3520/2010, 1 July 2011

The claimant arrived in the UK in September 2009. He claimed asylum and gave his age as 14 and his date of birth as 3 September 1995. The council carried out a series of age assessments to determine his actual age and to what accommodation and other services he was entitled. The final assessment concluded that he was two years older than claimed and was born in September 1993. Deputy High Court Judge Frances Patterson QC allowed a judicial review of that assessment and, after a trial, decided that his correct date of birth was 3 September 1994.

■ R (F) v Lambeth LBC

[2011] EWHC 1754 (Admin), 17 June 2011

The claimant arrived in the UK in May 2009. He claimed asylum and gave his age as 14. The council carried out an initial assessment and decided that he was 16. After issue of a claim for judicial review, the council agreed to make a full age assessment to determine his actual age and to what accommodation and other services he was entitled. There was a long delay. Eventually the full assessment confirmed the initial assessment of 16 and decided that he was now 18. On the unusual facts of the case, Sales J rejected an application for permission to seek a judicial review of the new assessment. It had been made after consideration of reports from Dr Birch and Dr Stern (see below) and with input from teachers and social workers who had dealt with the claimant for two years. Applying the test for permission set out in *R (FZ) v Croydon LBC* [2011] EWCA Civ 59, the claim had no realistic prospect of success.

■ R (Y) v Hillingdon LBC

[2011] EWHC 1477 (Admin), 15 June 2011

As a very young girl, the claimant was brought to the UK to work as a domestic helper. Many years later, in 2008, she escaped from domestic servitude and slept rough. She was found and referred by the police to social services. She gave her date of birth as 17 February 1993 and was provided with accommodation under the CA 1989. In April 2009, the council's social workers assessed her as being an adult aged over 19. She sought judicial review of that assessment. The claim was allowed and a declaration granted that her date of birth was the date she had given. In the course of his judgment, Keith J made a number of observations about the conduct of age assessment judicial reviews. He expressed the firm view that there was a burden of proof in such cases and that it is for claimants to show that they are of an age entitling them to the benefits of the CA.

■ R (R) v Croydon LBC

[2011] EWHC 1473 (Admin), 14 June 2011

The claimant arrived in the UK in May 2008 and claimed asylum. He said that he was only 15. The UK Border Agency (UKBA) referred him to the council which assessed his age as over 18 and referred him back to the UKBA, which accommodated him. In October 2008 he sought judicial review of his assessment. The claim was stayed to await the outcome of other test cases on age assessment. In December 2010, the council conducted another age assessment which concluded that he was 'an adult 18+' (para 13). Kenneth Parker J heard evidence, including expert evidence, over two days. The only firm assessment he could make was that the council had been right to decide the claimant was 18 in December 2010. A declaration was granted that he was now 18 years and five months old. The judgment contains an interesting treatment of the evidence of the paediatricians Dr Diana Birch and Dr Colin Stern.

■ TL v Angus Council and Glasgow City Council

[2011] CSOH 98, 7 June 2011

The claimant arrived in the UK as a stowaway and claimed asylum. The UKBA referred him to Angus Council, which in January 2011 assessed his age as over 18. The claimant said that he was only 15 and in March 2011 sought judicial review of his assessment. The claim was scheduled for hearing on 24 June 2011. He sought an interim order requiring Glasgow Council to accommodate him until trial on the basis that he was a child. The Court of Session held that the balance of convenience did not favour such an order. There was no special urgency.

HOUSING AND COMMUNITY CARE

■ R (Tiller) v East Sussex CC

CO/14455/2009, 29 June 2011

The council decided to withdraw 24-hour on-site warden provision from a sheltered housing scheme and to make alternative arrangements for the necessary support to tenants. On a claim for judicial review, the tenants claimed that:

- there had been no proper consultation, because retaining the status quo had not been put forward as an option; and
- the decision was unlawful for failure to have regard to the duty in Disability Discrimination Act 1995 s49A.

Thirlwall J dismissed the claim. The consultation had not been flawed by omitting the status quo when one option proposed was for even more generous provision. Although section 49A had not been mentioned in any of the council's documentation or reports, the duty under that section had in fact been performed: applying *R (Brown) v Secretary of State* [2008] EWHC 3158 (Admin).

1 Available at: www.parliament.uk/documents/lords-library/Library%20Notes/2011/LLN%202011-019%20LocalismBillFP.pdf.
2 Available at: www.communities.gov.uk/documents/housing/pdf/1936126.pdf.
3 Available at: www.tenantservicesauthority.org/upload/pdf/IRC-full.pdf.
4 Available at: www.tenantservicesauthority.org/upload/pdf/Decision_Instrument_6_June_2011.pdf.
5 Available at: www.tenantservicesauthority.org/upload/pdf/CLJ_letter_to_CEO_June_11.pdf.
6 Available at: www.communities.gov.uk/documents/housing/pdf/1936156.pdf.
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8 Available at: www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf.
9 Available at: www.cih.org/respectstandard/respect-asb-charter-for-housing.pdf.
10 Available at: www.cih.org/respectstandard/faq.htm.
11 Available at: www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/asb-consultation-document?view=Binary.
12 Available at: www.shla.org.uk/cmsfiles/file/SHLA%20Consultation%20Question%20Responses%20April%202011.pdf.
13 Available at: Avaiable at: www.homeoffice.gov.uk/publications/crime/DV-protection-orders?view=Binary.
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27 Available at: Available at: www.justice.gov.uk/downloads/consultations/options-dealing-with-squatting.pdf.
28 Available at: www.communities.gov.uk/documents/housing/pdf/1922040.pdf.
29 Available at: www.ombudsman-wales.org.uk/uploads/publications/536.pdf.
30 Stephen Cottler, barrister, London and Esther Williams, TV Edwards, London.
31 Sean Pettit, barrister, London and Tony Owen, TV Edwards, solicitors, London.
32 Beatrice Prevatt, barrister, London and Ronald Daley, Brent Private Tenants' Rights Group, London.

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