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 law reform

The Localism Act (LA) 2011 received royal assent on 15 November 2011. Part 7 of the Act is entitled 'Housing' and contains provisions dealing with:

- homelessness;
- social housing allocation;
- security of tenure in social housing;
- succession rights in social housing;
- tenancy deposits;
- a new housing ombudsman;
- a new regulator for social housing; and
- other miscellaneous housing law topics.

The LA will be brought into force by commencement orders. A series of articles in *Legal Action*, covering the housing changes made by the Act, begins this month with 'homelessness' (see page 21 of this issue).

National housing policy

On 21 November 2011 the UK coalition government published its new national housing strategy: *Laying the foundations: a housing strategy for England* (Department for Communities and Local Government (DCLG), November 2011).[1] The strategy covers house building, house purchase, private renting and social housing. In respect of the latter, it contains proposals on the right to buy, social housing allocation, an income cap for current tenants and more action on unlawful subletting.

A report produced jointly by the National Housing Federation, Shelter and the Chartered Institute of Housing sets out what previously the UK coalition government has said that it would do to tackle the housing crisis and assesses to what extent the stated objectives have been met: *The housing report* (edition 1, October 2011).[2] The report uses official data to establish what has been achieved and where more attention and greater effort is required.

Mortgage default

The Council of Mortgage Lenders (CML) has published new guidance for its members on the recovery of arrears and the making of claims for possession: *Industry guidance on arrears & possessions to help firms comply with MCOB 13 and TCF principles* (CML, October 2011).[3] Advisers may find it useful to refer to the guidance when representing borrowers.

The House of Commons Library has published a new free briefing note on *Mortgage repossession: rights of tenants* (October 2011).[4]

Private rented sector

DCLG has published the *Private landlords survey 2010* (DCLG, October 2011).[5] This is a national survey of landlords and managing agents owning or managing privately rented properties in England. The survey indicates that most landlords have very few properties and letting is not their main activity: 78 per cent of all landlords only owned a single dwelling for rent.

A new report suggests that if the private rental market is to provide an attractive alternative to home ownership in the UK, a full range of security of tenancy arrangements must be available: *Towards a sustainable private rented sector* (LSE, October 2011).[6] The report compares the UK private rental market with such markets in 15 other industrialised nations. The researchers found that security of tenure is a key factor in countries, such as Germany, where private renting is seen as a practical choice, even for middle-income families.

Mutual exchanges in social housing

The UK coalition government has launched HomeSwap Direct as the new national web-based mutual exchange scheme for social housing tenants: DCLG news release, 27 October 2011.[7] It brings together four current internet-based providers of mutual exchange services: HomeSwapper, House Exchange, Abritas and LHS (Locata). The intention is that secure tenants will be more readily able to exercise their statutory right to exchange (Housing Act (HA) 1985 s92) and that assured tenants in social housing will find it easier to exercise their contractual rights to exchange their tenancies with others.

From April 2012, new standards will be imposed by the social housing regulator to require all social landlords to facilitate access to the HomeSwap Direct scheme by their tenants.

Squatting

The UK government has published its conclusions on reform of the law relating to squatting, following the recent consultation exercise: *Options for dealing with squatting. Response to consultation CP12/2011* (Ministry of Justice (MoJ), October 2011).[8] The government has decided to make living in residential premises, by a person who entered as a trespasser, a criminal offence. Provisions to that effect have been inserted by amendment into the Legal Aid, Sentencing and Punishment of Offenders Bill ('the Legal Aid Bill') which is now under consideration in the House of Lords. An impact assessment on the new offence suggests that there might be between 200 and 2,100 criminal squatting cases in residential property across England and Wales: *Options for dealing with squatting – equality impact assessment* (MoJ, October 2011).[9] There is a helpful House of Commons Library briefing note outlining the current law: *Squatting in residential premises* (October 2011).[10]

Legal aid for housing cases

Amendments have been made to the Legal Aid Bill to extend slightly the range of housing cases for which civil legal aid will continue to be available in future. They retain legal aid for disrepair counterclaims to possession proceedings, even where the counterclaim relates only to damage to property (or relies on tort rather than contract). They will also permit freestanding disrepair claims to be based on breach of statutory duty. The amendments retain legal aid for unlawful eviction cases even where the evicted person was not a tenant. The legal aid minister said that the amendments helped give effect to the government's 'intention to prioritise funding on housing cases where the individual is at immediate risk of homelessness, or where there are disrepairs to the home that seriously threaten the health of the individual or their family': *Hansard* HC Debates col 378, 6 September 2011.[11]

The House of Lords has debated a motion to annul the Community Legal Service (Funding) (Amendment No 2) Order 2011 SI No 2066 which introduced a ten per cent reduction in fees payable to advisers and lawyers for new civil legal aid housing cases which started after 3 October 2011: *Hansard*

HL Debates col 831, 26 October 2011. After debate, the motion was withdrawn.[12]

The Legal Services Commission (LSC) has explained its current approach to taking housing costs into account in applying the means test for legal aid entitlement and has also set out the evidence it needs to assist decision-making in individual cases: *Financial eligibility: housing costs evidence* (LSC, 13 October 2011).[13]

Housing and anti-social behaviour

The latest statistics on the number and type of anti-social behaviour orders (ASBOs) made by courts in England and Wales indicate that more than 20,000 ASBOs have been made since the orders first became available in 1999: *Statistical notice: anti-social behaviour order (ASBO) statistics England and Wales 2010* (MoJ, October 2011).[14]

There is a new free journal for those working on anti-social behaviour issues in England and Wales: *ASB Connect* (Issue 1, Home Office, October 2011).

HUMAN RIGHTS

Article 8: environmental pollution

■ Deés v Hungary

App No 2345/06,
9 November 2010

In 1997, a toll was introduced on a privately owned motorway. As a result, many trucks chose an alternative route along the street on which Mr Deés lived. The authorities took various measures to counter this situation, including building three bypass roads, introducing a 40 km/h speed limit at night, introducing traffic lights and prohibiting access to vehicles of over six tons. The government claimed that such measures were enforced by the increased presence of the police. Mr Deés said no effective enforcement was in place. Mr Deés obtained a report stating that damage was caused to the walls of his house by vibration caused by the heavy traffic. He also alleged that because of increased noise and pollution due to exhaust fumes, his home became almost uninhabitable. A claim which he brought for compensation was dismissed by the local courts. Mr Deés claimed that there was a violation of article 8.

The European Court of Human Rights (ECtHR) stated that article 8 protected not just the actual physical area of a home, but also 'the quiet enjoyment of that area within reasonable limits' (para 21). Breaches of article 8:

... are not confined to concrete breaches, such as unauthorised entry ... but may also include those that are diffuse, such as noise, emissions, smells or other similar forms of interference. ... [A]lthough the object of article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it may involve the authorities adopting measures designed to secure respect for private life and home even in the sphere of the relations of individuals between themselves (para 21).

In this case the state was called on to balance the interests of road users and those of the inhabitants of the surrounding areas. The measures which were taken by the authorities proved consistently to be insufficient, as a result of which Mr Deés was exposed to excessive noise disturbance over a substantial period of time. This created a disproportionate individual burden for him. There was a direct and serious nuisance which affected Mr Deés's street and prevented him from enjoying his home. There was accordingly a violation of article 8. There was also a breach of article 6(1) because the domestic proceedings lasted almost six years and nine months. The ECtHR awarded a total of €6,000 in respect of non-pecuniary damage for those breaches.

NON-SECURE TENANCIES

Term certain

■ Mexfield Housing Co-operative Limited v Berrisford

[2011] UKSC 52,
9 November 2011

In 1993, Mexfield Housing Co-operative granted Ms Berrisford a tenancy 'from month to month until determined as provided in this agreement'. The agreement provided that the tenancy could be terminated by Ms Berrisford giving notice, but (in clause 6) only by Mexfield in limited circumstances (for example, arrears of rent or breach of obligations). On 11 February 2008, after Ms Berrisford had fallen into arrears through no fault of her own, Mexfield served a notice to quit terminating the tenancy on 17 March 2008. Ms Berrisford soon paid the arrears but, notwithstanding this, Mexfield began a possession claim. Mexfield did not rely on clause 6 entitling it to terminate the tenancy in limited circumstances. Its primary submission was that the tenancy fell outside the provisions of the HA 1988 because it was registered under the Industrial and Provident Societies Act 1965 and was a fully mutual housing association within the meaning of HA 1985 s5(2) and Housing Associations Act 1985 s1(2) and so it could not be an assured tenancy (HA 1988 Sch 1 para 12(1)(h)). It applied for summary judgment. HHJ Mitchell dismissed that application. Mexfield appealed.

Peter Smith J allowed the appeal and made a possession order ([2009] EWHC 2392 (Ch); December 2009 *Legal Action* 15). Ms Berrisford appealed to the Court of Appeal. On appeal, Mexfield claimed that the contractual limitation on giving notice to quit rendered the entire agreement void as being for an uncertain term (*Prudential Assurance Company Ltd v London Residuary Body* [1992] 2 AC 386, HL). The Court of Appeal, by a majority, dismissed the appeal: [2010] EWCA Civ 811. In view of the decision in *Prudential*, the agreement was incapable of taking effect as a lease. The maximum term of the lease was uncertain and, therefore, void. Ms Berrisford appealed to the Supreme Court.

The Supreme Court allowed her appeal. Lord Neuberger stated:

(i) An agreement for a term, whose maximum duration can be identified from the inception can give rise to a valid tenancy; (ii) an agreement which gives rise to a periodic arrangement determinable by either party can also give rise to a valid tenancy; (iii) an agreement could not give rise to a tenancy as a matter of law if it was for a term whose maximum duration was uncertain at the inception; (iv) (a) a fetter on a right to serve notice to determine a periodic tenancy was ineffective if the fetter is to endure for an uncertain period, but (b) a fetter for a specified period could be valid (para 33).

However, if the agreement had been entered into before 1 January 1926 when Law of Property Act (LPA) 1925 came into force, it would have been treated by the court as being the grant of a tenancy to Ms Berrisford for her life. In view of this, the effect of LPA s149(6) was that the agreement was now to be treated as a term of 90 years determinable on the death of Ms Berrisford. As Ms Berrisford was still alive, she had not herself served notice and Mexfield was not relying on clause 6, she retained her tenancy and Mexfield was not entitled to possession.

Possession claims

■ Westminster City Council v Holmes

[2011] EWHC 2857 (QB),
3 November 2011

Mr Holmes was in his early fifties and had a history of mental health problems. In March 2005, Westminster granted him a non-secure tenancy as a result of its duties under HA 1996 s193. In August 2009, after serving a notice to quit, Westminster began a possession claim. In February 2010, Mr

Holmes's solicitors wrote to the council asking it to withdraw the claim. Two days later, there was an incident at the premises when two housing officers visited Mr Holmes and, on their account, were assaulted by him. Mr Holmes filed a defence to the possession claim. The council applied for possession on a summary basis. At a hearing in November 2010, Recorder Widdup announced that he would 'grasp the nettle today', struck out Mr Holmes's defence and made a possession order on a summary basis (para 34). Mr Holmes appealed.

Eady J dismissed the appeal. After referring to *Manchester City Council v Pinnock* [2010] UKSC 45 and *Hounslow LBC v Powell* [2011] UKSC 8, he stated that the recorder's approach 'would appear to be in accordance with the public policy requirements, under [Civil Procedure Rules] Part 55, to the effect that there should be a summary determination wherever possible' (para 34). He continued:

What matters … is whether or not the council had reasonable grounds to believe that he had behaved in the way described by its officers. In order to base a possession order on a tenant's conduct, it is not necessary to go through a trial process to establish criminal guilt, or even to prove a civil wrong on a balance of probabilities. Conduct may be legitimately regarded as unacceptable, on the part of a tenant, without necessarily passing either of those tests (para 37).

The recorder was fully entitled to come to the conclusion that there was no need to reject a standard summary procedure and to adopt a trial process involving a determination of whether or not Mr Holmes had committed either a criminal or civil assault. The recorder was also entitled to conclude that he was 'unable to identify any cogent evidence to show that there has been any breach of [the council's] policies' (para 46). He did consider the Disability Discrimination Act 1995 and came to the conclusion that there was no cogent evidence to demonstrate a breach of statutory duty.

SECURE TENANCIES

Obligation to pay water charges

■ Rochdale BC v Dixon

[2011] EWCA Civ 1173, 20 October 2011

Mr Dixon was a tenant of Rochdale. Rochdale entered into an agreement with United Utilities to collect water charges on its behalf from council tenants, under the Water Consolidation (Consequential Provisions) Act 1991. It also purported to vary Mr Dixon's tenancy agreement to include an obligation to pay those water charges to Rochdale. Mr Dixon withheld the water charges. Rochdale claimed possession under HA 1985 Sch 2 Ground 1 (an obligation of the tenancy has been broken or not performed). HHJ Platts made a suspended possession order. Mr Dixon appealed.

The Court of Appeal dismissed the appeal. The agreement with United Utilities was not ultra vires. The variation of the tenancy agreement was effective even though Rochdale's preliminary notice did not spell out that breach of the proposed variation could lead to eviction for non-payment of the water charges. Rix LJ stated that there was 'substantial compliance' with HA 1985 s103(b). There was a 'general understanding' that non-payment could lead to eviction (para 58). The variation did not breach the Unfair Terms in Consumer Contracts Regulations 1999 SI No 2083. No significant imbalance was created by the insertion of the varied term, and there was nothing contrary to the requirement of good faith. Finally, there was no error in the judge's exercise of his discretion to make a suspended possession order.

ASSURED AND ASSURED SHORTHOLD TENANCIES

Conversion into assured tenancy

■ Saxon Weald Homes Ltd v Chadwick

[2011] EWCA Civ 1202, 26 October 2011

On 11 August 2008, Saxon Weald, a registered charity, granted Mr Chadwick a 'probationary tenancy'. The tenancy agreement stated that for the first 12 months it would be a periodic assured shorthold tenancy, but that at the end of 12 months, if the landlord had not taken steps to terminate the tenancy, it would convert automatically into an assured periodic tenancy. It also stated that if the tenancy converted to an assured tenancy, the landlord would send a letter confirming the change in status. Soon after the tenancy began, there were allegations of anti-social behaviour. On 5 August 2009, solicitors sent Mr Chadwick a notice requiring possession under HA 1988 s21(4)(a) and a notice seeking possession, indicating that the landlord intended to seek possession on HA 1988 Sch 2 Grounds 12 and 14. However, Saxon Weald mistakenly sent a letter on 11 August 2009 stating that 'following the successful completion of your one year starter tenancy, you are now an assured tenant'. As a result, Mr Chadwick claimed that his tenancy had ceased to be an assured shorthold tenancy and had become an assured tenancy.

In a subsequent possession claim, a deputy district judge rejected that contention and made a possession order on the basis that Mr Chadwick was still an assured shorthold tenant. HHJ Simpkiss allowed Mr Chadwick's appeal. He found that the letter of 11 August 2009 was a notice for the purpose of HA 1988 Sch 2A para 2 which was 'quite plain on its face' (para 13).

The Court of Appeal dismissed Saxon Weald's appeal. The letter, 'naturally and objectively read, clearly [was] a notice' causing the assured shorthold tenancy to become an assured tenancy (para 19). A tenant might well think that the landlord had simply changed its mind from its previous indicated intention. Unlike *Mannai Investment Co Limited v Eagle Star Life Assurance Co Limited* [1997] AC 749, there was no identifiable internal ambiguity within the notice itself. The mistake was not in the wording: the mistake was in the fact that the letter was sent at all.

Section 21 notices

■ Hyde Housing Association v Wannop

Southampton County Court, 29 June 2011[15]

Mr Wannop was granted 'a starter tenancy' in August 2010. It took effect as an assured shorthold tenancy. By November 2010, there had been a number of allegations of anti-social behaviour. On 10 January 2011, the landlord served a notice under HA 1988 s21(4) which stated that it would expire: 'On 13th March 2011 or the day on which a complete period of your tenancy expires next after the end of two months from the service of this notice.' A possession claim was issued on 2 June 2011. Although a possession order was made, Mr Wannop argued at a second hearing that in view of the judgment of Dyson LJ in *Notting Hill Housing Trust v Roomus* [2006] EWCA Civ 407, the phrase 'on 13th March …' rendered the section 21(4) notice invalid.

Deputy District Judge Bloom-Davis accepted that the notice specifying that possession was required 'on 13th March 2011' did not comply with the requirements of section 21(4) and found the notice to be invalid. As Dyson LJ said in *Notting Hill Housing Trust*:

The phrase 'at the end of the period of your tenancy' clearly does not mean the same as 'on the last day of the period of your tenancy'. The period of the tenancy does not come to an end until midnight on the last day of that period (para 13).

The judge set aside the possession order and dismissed the claim with costs.

No rent payable

■ Dimopoulos v Valakis

[2011] EWHC (QB), 20 October 2011

The claimant owned a house in which he permitted the defendant to live. The claimant decided to sell the house and told the defendant to leave. The defendant claimed that he had reached an agreement under which, if he refurbished the house (which he had done), the claimant would allow him to remain. The defence was struck out.

The High Court dismissed an appeal. Even if the matters pleaded in the defence were true, they could not support the defendant's case that he was an assured tenant as there was no rent payable and no term of the tenancy.

POSSESSION CLAIMS

Mixed business and residential user

■ Sajjid v Rajan

[2011] EWCA Civ 1180, 24 August 2011

The claimant was landlord and the defendant was tenant under a 15-year lease of a corner shop. The defendant ran the shop and lived in the accommodation above it. The shop business failed and it closed. The defendant continued living there. When the lease expired, the landlord sought possession. The court granted a possession order. The business had ceased, so that no security of tenure was available under Landlord and Tenant Act 1954 Part II. Nor was there any residential security of tenure because the premises had not been 'let as a dwelling' (para 6).

The Court of Appeal refused an application for permission to appeal. There was no arguable basis for suggesting that a possession order should not have been made.

Judicial review of possession order

■ R (Jakpa) v Willesden County Court

[2011] EWHC 2654 (Admin), 19 August 2011

In 2003, Ducane Housing Association let a house to Mr Jakpa who was then engaged in academic studies at Imperial College London. Mr Jakpa signed a notice of a non-protected, non-assured student tenancy, which explained that the tenancy was made under the Assured and Protected Tenancies (Lettings to Students) Regulations 1998 SI No 1967. Mr Jakpa ceased to be a full-time student. On 17 June 2010, the housing association commenced possession proceedings. District Judge Dabezies expressly found that the lease was a student letting, that there had been a valid notice to quit, and that, therefore, a possession order was mandatory. He made a possession order. Mr Jakpa applied for permission to appeal. HHJ McDowell refused permission to appeal. Mr Jakpa sought permission to apply for judicial review of that decision.

Hickinbottom J refused a renewed application. The district judge had made a factual finding which he was entitled to make. On the evidence before him, it was a finding that was inevitable. There was no error of law. There was no procedural unfairness. Although the Administrative Court 'has a supervisory jurisdiction over the county court, it allows a remedy only in very limited circumstances, for example, when the county court has acted without jurisdiction or the proceedings have been conducted to deny a party a fair hearing' (*Sivasubramaniam v Wandsworth County Court* [2002] EWCA Civ 1738) (para 9). In this case, the proceedings before the district judge and the possession proceedings as a whole were conducted within jurisdiction and with patent procedural propriety. The claim for permission to apply for judicial review was unarguable. The application was totally without merit.

Warrants for possession

■ R (Markos) v Southend County Court

[2011] EWHC 2726 (Admin), 17 October 2011

Mrs Markos was the defendant in proceedings for possession of a house. A possession order was made. A warrant was issued to be enforced on 30 November 2010. She sought permission to appeal against the possession order and, on 19 November 2010, pending the determination of that application, the High Court stayed enforcement of the order. On 30 November 2010, an officer of the county court forced entry to the property in execution of the warrant and only withdrew when shown the High Court order for a stay. The High Court later refused permission to appeal against the possession order and the stay was discharged. Mrs Markos sought a judicial review of the actions of the county court's enforcement officer.

Permission to apply for judicial review was refused. In the light of disposal of the main appeal, any claim would be academic and, in any event, had been brought long out of time.

HOMELESSNESS

Applications and interim accommodation

Local Government Ombudsman

■ Complaint against Hounslow LBC

10 019 388, 5 October 2011[16]

The complainant and her children left their family home because of alleged domestic violence. She applied to the council for homelessness assistance under HA 1996 Part 7. It did not offer interim accommodation under HA 1996 s188 but concluded immediately that she was not homeless because it was reasonable for her to return home: HA 1996 s175.

After a review request from solicitors, the council said that it would reverse the 'not homeless' decision but it provided no interim accommodation pending the review outcome or the making of a fresh decision. No review decision, or fresh decision on the homelessness application, was ever made or notified.

The ombudsman found that the council had:

- wrongly failed to offer temporary accommodation following the positive response to the review request; and
- wrongly failed to reach a fresh decision on the homelessness application.

The complainant had also sought help in finding her own private rented sector accommodation with the benefit of the council's rent deposit scheme. The council had then failed to operate the scheme effectively in her case. The ombudsman recommended that the council:

- pay the complainant the amount it would have paid her landlord under the rent deposit scheme had it dealt with her application properly;
- pay her £500 compensation; and
- review its procedures.

Definition of 'homeless'

■ Abdullah v Westminster City Council

[2011] EWCA Civ 1171, 19 October 2011

Mrs Abdullah, her husband and their adult son lived together in a council house with her mother. The husband and mother were the joint secure tenants. Mrs Abdullah sought homelessness assistance under HA 1996 Part 7 when her mother asked her to leave. The council's reviewing officer decided that she was not homeless because she had a right to remain in occupation and it was reasonable for her to continue to occupy: HA 1996 s175. Recorder Clark dismissed an appeal against that decision.

The Court of Appeal dismissed a further

appeal. The property was plainly the matrimonial home in respect of which Mrs Abdullah enjoyed rights of occupation capable of protection in family law: Family Law Act 1996 s30. There had been no error of law in the decision that she had accommodation available to her which it was reasonable for her to continue to occupy.

Review procedure

■ Mitu v Camden LBC

[2011] EWCA Civ 1249, 1 November 2011

Mr Mitu applied to Camden for homelessness assistance under HA 1996 Part 7. The council decided that he had become homeless intentionally and that he did not have a priority need for accommodation. Accordingly, the only duty owed was the duty to provide him with advice and assistance under HA 1996 s190(3). He sought a review. The reviewing officer decided that Mr Mitu was not intentionally homeless, but confirmed the original decision that he did not have a priority need for accommodation. Accordingly, the duty owed to him was the different duty to provide advice and assistance under HA 1996 s192(2). This duty triggered a discretionary power to accommodate which the reviewing officer declined to exercise: HA 1996 s192(3).

Mr Mitu appealed to the county court on the ground that the reviewing officer had identified a 'deficiency' in the original decision, and therefore should have followed the procedure in the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 SI No 71 reg 8(2). This requires a 'minded to' notice and an opportunity to make oral representations. HHJ Baucher dismissed the appeal.

The Court of Appeal allowed a second appeal. The reviewing officer had found that the original decision was deficient in that it had concluded that Mr Mitu had become homeless intentionally. This was a material error because correcting it gave rise to a different duty and triggered a discretionary power to accommodate. The requirements of regulation 8(2) should have been applied but were not.

Injunctions in judicial review

■ R (Konodyba) v Kensington and Chelsea RLBC

[2011] EWHC 2653 (Admin), 11 October 2011

The claimant sought permission to apply for judicial review of decisions of the council:

■ not to accept a second application from her under HA 1996 Part 7 (homelessness) while an earlier application was still subject to an appeal; and

■ not to provide her with temporary accommodation pending the determination of her homelessness application.

Before that application for permission could be considered, she sought and was granted an interim injunction requiring the council to accommodate her pending determination of the permission application.

The council applied successfully to set aside the injunction. HHJ Robinson held that the claimant had been guilty of serious non-disclosure in seeking the injunction. She appeared to have been occupying private rented accommodation under a different name, had not explained her connection with that property, and had not given an account to the court about where she had in fact been living immediately before the grant of the injunction. Her claim for an injunction and her resistance to the council's application to discharge it had amounted to 'gross abuse' of the court's discretion to make an interim order on an application for judicial review (para 60).

HOUSING AND CHILDREN

■ R (VC) v Newcastle City Council

■ R (K) v Newcastle City Council

[2011] EWHC 2673 (Admin), 24 October 2011

The claimant, K, applied for asylum and was accommodated by the National Asylum Support Service (NASS). Her claim for asylum failed, an appeal was rejected and her NASS accommodation was withdrawn. She later had two children. The council was satisfied that they were 'children in need' and it provided support under Children Act (CA) 1989 s17. Later it decided that the claimant should apply for support from the government under Immigration and Asylum Act 1999 s4 and proposed to withdraw its own support.

In proceedings for judicial review, that decision was quashed. A Divisional Court held that while it was possible theoretically that the assessed needs of a child might be capable of being met under section 4, it was much more likely that adequate provision for such needs would only be met by continued CA 1989 support. The judgment given by Munby LJ provides a comprehensive review of the interface between the CA 1989 and the statutory schemes of support for asylum-seekers.

■ R (B) v Nottingham City Council

[2011] EWHC 2933 (Admin), 20 October 2011

The claimant was aged 16 and pregnant. Her mother was not prepared to accommodate both her and the expected baby. The claimant sought assistance with accommodation and was provided with a place in a specialist unit for pregnant teenagers under the homelessness duty in HA 1996 s193. She sought judicial review of decisions by the council's social services department not to treat her as a 'child' to whom it owed duties under CA 1989 ss17–20. Her claim was dismissed.

Singh J held that the council had been entitled to find that she was not a 'child in need' and that she had suitable accommodation in the unit.

1 Avaiable at: www.communities.gov.uk/documents/housing/pdf/2033676.pdf.
2 Available at: www.housing.org.uk/idoc.ashx?docid =62b130f9-2df1-4128-831a-eed153828fb9& version=-1.
3 Available at: www.cml.org.uk/cml/filegrab/final-industry-guidance-october-2011.pdf?ref=8004.
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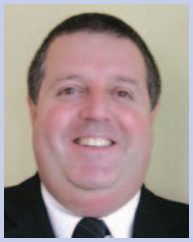
10 Available at: www.parliament.uk/briefing-papers/SN00355.pdf.
11 See: www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/110906/pm/110906s01.htm.
12 See: www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111026-0002.htm#11102671000154.
13 Available at: www.legalservices.gov.uk/civil/cls_news_13136.asp?page=1.
14 Available at: www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/asbo-stats-england-wales-2010/.
15 James Hurford, solicitor, Swain and Co, Southampton and Andrew Lane, barrister, London.
16 See: www.lgo.org.uk/GetAsset.aspx?id=fAAxADQANwAzAHwAfABUAHIAdQBlAHwAfAAwAHwA0.



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