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

Homelessness and locality

Housing Act (HA) 1996 s208(1) prevents a local housing authority from using accommodation outside its own district to perform any of its Part 7 (Homelessness) functions, unless the provision of in-district accommodation is not reasonably practicable. Even if that proviso applies, any out-of-district accommodation must be 'suitable': HA 1996 s206. The secretary of state has exercised his powers under section 210(2) to add 'location' as an aspect of suitability which a local housing authority in England must take into account: the Homelessness (Suitability of Accommodation) (England) Order 2012 SI No 2601.[1] Article 2 requires that the local housing authority must specifically consider:

(a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;

(b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household;

(c) the proximity and accessibility of the accommodation to medical facilities and other support which – (i) are currently used by or provided to the person or members of the person's household; and (ii) are essential to the well-being of the person or members of the person's household; and

(d) the proximity and accessibility of the accommodation to local services, amenities and transport.

The criteria in articles 2(b)–(d) also apply to determining the suitability (or otherwise) of in-district accommodation.

The content of the Order was finalised after a consultation exercise. In its response to the results of the consultation, the government said that it:

... has made it clear that it is neither acceptable nor fair for local authorities to place households many miles away from their previous home where it is avoidable. Given the vulnerability of this group it is essential that local authorities take into account the potential disruption such a move could have on the household. This Order will strengthen existing legislation in that it states the specific matters local authorities must take into account when considering the suitability of accommodation (p11): *Homelessness (Suitability of Accommodation) (England) Order 2012 – Government's response to consultation* (Department for Communities and Local Government (DCLG), November 2012).[2]

New supplementary statutory guidance for authorities in England, issued under HA 1996 s182, addresses the issue of location as an aspect of suitability and advises on the application of the new Order: *Supplementary guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012* (DCLG, November 2012).[3]

Housing and eligibility

In *Zambrano v Office national de l'emploi (ONEM)* C-34/09, 30 September 2010, the European Court of Justice held that some non-EU nationals have the right to reside in the UK while their children who are EU nationals are being educated here (see *Pryce v Southwark LBC* below). This right has now been recognised in domestic immigration law: the Immigration (European Economic Area) (Amendment) (No 2) Regulations 2012 SI No 2560.[4]

However, with effect from 8 November 2012, the new Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012 SI No 2588 add the people who enjoy that particular right of residence to the categories who are ineligible for an allocation of housing accommodation or homelessness assistance in England: reg 2. That is achieved by amending the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 regs 4 and 6. The change does not have effect in relation to an application for an allocation of housing accommodation or homelessness assistance which was made before 8 November 2012: reg 3. A letter has been sent to each local housing authority in England explaining the change.[5]

Social housing fraud

The Prevention of Social Housing Fraud Bill has completed all its stages in the House of Commons, where it received all-party support. The bill passed through its Committee Stage scrutiny in a single day (24 October 2012). Its scope was enlarged significantly by government amendments designed to enhance local authority powers to obtain and use personal information data to detect and investigate a wide range of social housing fraud.

In addition to introducing new criminal offences relating to subletting, the bill will add HA 1988 s15A in respect of the effects of subletting an assured tenancy. A helpful briefing note on the background to the bill and its provisions has been published: *The Prevention of Social Housing Fraud Bill* [Bill 16 of 2012–13] SN/SP/6378 (House of Commons Library, November 2012).[6] Advisers minded to suggest amendments must expect the bill to make swift progress in the House of Lords.

The latest report on activity to tackle fraud against local authorities records that housing tenancy fraud, including unlawful subletting, is costing £900 million per year: *Protecting the public purse: Fighting fraud against local government* (Audit Commission, November 2012).[7] This is the most significant area of loss to fraud in local government, but councils recovered nearly 1,800 homes last year with a total replacement value of nearly £264 million.

Private rented sector

The House of Commons Select Committee on Communities and Local Government has launched an inquiry into the private rented sector.[8] The committee has invited written submissions by 17 January 2013 from interested parties covering the quality and regulation of private rented housing, and levels of rent within the sector.

Empty homes

With effect from 15 November 2012, the Housing (Empty Dwelling Management Orders) (Prescribed Period of Time and Additional Prescribed Requirements) (England) (Amendment) Order 2012 SI No 2625 has changed the conditions local authorities must satisfy to make successful applications to residential property tribunals in respect of

empty properties. Article 2 amends HA 1996 s134(2)(a) to prescribe at least two years as the period a house must remain wholly unoccupied before an interim empty dwelling management order can be sought (in substitution for the period of at least six months). Article 3 prescribes additional requirements to be met before a residential property tribunal can authorise the interim empty dwelling management order.

Housing Ombudsman

The Housing Ombudsman has published a draft of the new scheme that will govern complaints made about social housing management, in respect of all types of social landlords (especially councils and housing associations), from April 2013: *Housing Ombudsman Scheme* (October 2012).[9] The draft scheme is accompanied by a consultation paper: *Consultation on the Housing Ombudsman scheme*.[10] Any responses should be made by 15 December 2012.

Mobile home sites

The Mobile Homes Bill has been introduced in the House of Commons and is passing through the legislative process. The bill is backed by the UK government and is intended to implement many of the proposals contained in the DCLG consultation paper *A better deal for mobile home owners* (April 2012) and recommendations made by the House of Commons Communities and Local Government Select Committee in its report *Park Homes* (June 2012). A useful summary of the measures in the bill has been published: *Mobile Homes Bill*: Bill No 12 of Session 2012–13 SN/SP/6438 (House of Commons Library, October 2012).[11]

HUMAN RIGHTS

Article 6

■ Pelipenko v Russia

App No 69037/10,
2 October 2012,
[2012] ECHR 1779

In 1989, Ms Pelipenko and her son were given housing rights to two rooms in a former administrative building in a state-owned seaside health resort. The resort was transformed into a private joint-stock company, 'Golden Beach Resort' ('the company'). The company issued a possession claim but the Anapa Town Court ordered 'the company … at its next general meeting of shareholders, to determine the issue of purchasing a flat for the applicants in accordance with the requirements of the Russian Housing Code in order to resettle them from the premises they had occupied in the resort' (para 8). The court issued a writ of execution, but the bailiffs did not enforce it. The court then amended its judgment to order the company to purchase 'before 1 January 2005, a two-room flat in the town of Anapa. In the event of its failure to comply with the judgment, the company was to pay the applicants 1,168,800 Russian roubles' (para 12). In 2010, the bailiffs closed the enforcement proceedings because the company had been declared bankrupt in March 2009. Ms Pelipenko then lodged an action against the Anapa Town Bailiffs Service, complaining that they had failed to enforce the final judgment. The court accepted her complaint and declared the bailiffs' inactivity to be unlawful. In 2009, a third party lodged an action seeking annulment of Ms Pelipenko's registration as a resident in the premises and her eviction. The court found that Ms Pelipenko's registration had become unlawful and should have been annulled. Ms Pelipenko was evicted. The Supreme Court of the Russian Federation allowed Ms Pelipenko's appeal, but the third party then destroyed the building. She removed the roof, the windows and disconnected the services. Ms Pelipenko complained to the European Court of Human Rights (ECtHR) that there had been a breach of article 6.

The ECtHR stated that its task was to determine whether the measures taken by the bailiffs 'were adequate and sufficient'. It noted that 'the bailiffs remained passive most of the time' (para 53). The court decided that the bailiffs did not employ adequate efforts to secure the execution of the judgment. It found that 'by refraining for years from taking adequate and effective measures required to secure compliance with the enforceable judicial decision, the national authorities deprived the provisions of article 6(1) of the Convention of all useful effect' (para 56). There was accordingly a breach of article 6. It also found a breach of article 8 but decided that the claim for compensation was not ready for decision.

Article 8

■ Thurrock BC v West

[2012] EWCA Civ 1435,
8 November 2012

In 1967, Thurrock granted a weekly joint tenancy to George and Violet West. They were Aaron West's grandparents. In 2007, Aaron West, his son and his partner moved in to live with his grandparents. George West died in 2008. The tenancy automatically vested in Violet West as successor under the provisions of the HA 1985 ss87 and 89(2). She died in 2010. As she was a successor, section 87 precluded any further right of succession. Accordingly, the weekly tenancy vested in Violet's estate. It was terminated in October 2011 by notice to quit served on the Public Trustee. In November 2011, the council issued a claim for possession on the ground that Aaron West had never been a tenant or sub-tenant and had no right to statutory succession. He defended the claim, arguing that, since he, his partner and his son had lived in the property and paid rent for four years, an order for possession would be disproportionate and so an infringement of his right to respect for his home under article 8. The case was assigned to the multi-track. District Judge Hodges dismissed the claim. Thurrock appealed.

The Court of Appeal allowed the appeal. The threshold for establishing an arguable case that a local authority is acting disproportionately and so in breach of article 8 is a high one which will be met in only a small proportion of cases. The reason for that lies in the public policy and public benefit inherent in the functions of the housing authority in dealing with its housing stock, a precious and limited public resource. Local authorities, like other social landlords, hold their housing stock for the benefit of the whole community and they are best equipped, certainly better equipped than the courts, to make management decisions about the way such stock should be administered. Unless there is some good reason not to do so, courts must, at the earliest opportunity, summarily consider whether an article 8 defence, as pleaded, and on the assumption that the pleaded facts relied upon are correct, reaches that threshold. It was quite clear that the article 8 defence in this case did not even reach the threshold of being reasonably arguable. It should have been struck out summarily at the earliest opportunity. There was nothing exceptional about the housing needs of a couple who had limited financial means and were the parents of a young child. The case should not have been assigned to the multi-track.

■ Stokes v UK

App No 65819/10,
18 October 2012,
[2012] ECHR 1862

Ms Stokes was an Irish Traveller. In 2007 she moved with her children into an empty mobile home on a pitch in a Brent Council Traveller site. The council refused to grant her a licence to occupy the pitch and brought possession proceedings. She sought to defend the claim by relying on her article 8 rights, but a judge found that the claim was not seriously arguable and made a possession order on a summary basis. Ms Stokes said that she was entitled to disclosure of the documents outlining the council's reasons for seeking possession so that she could know how to frame her defence. The High Court rejected an appeal against the possession order. The Court of Appeal refused permission for a second appeal, and the

applicant left the site. She complained to the ECtHR.

The court has posed the following questions for the parties:

■ Did Ms Stokes's residence engage article 8(1)? In particular, did her mobile home constitute a 'home' for the purposes of that provision?

■ Has there been a breach of the procedural aspect of article 8?

■ Did the absence of any domestic law obligation on the public authority landlords to give a detailed statement of reasons in connection with possession proceedings brought against a trespasser violate Ms Stokes's rights under articles 6 and/or 8 of the convention?

■ Southend-on-Sea BC v Armour

(2012) 18 October, QBD

Mr Armour was an introductory tenant. Southend alleged that he had verbally abused a neighbour, a contractor and a member of its staff. They also claimed that he had switched on the electricity while the contractors were working and that a workman suffered an electric shock. A possession claim was issued, but the trial was delayed for over 11 months. In the meantime, Mr Armour was found to have Asperger's syndrome and to be suffering from depression. He did not have capacity to defend the claim and a litigation friend was appointed. There were no further incidents before trial and Mr Armour had the support of a number of agencies and family members. Recorder Davies found that it had been proportionate and lawful to seek a possession order but that it would now be disproportionate to grant a possession order, having regard to the absence of complaints since the claim was issued and the effect that eviction would have on Mr Armour and his 14-year-old daughter. Southend appealed.

Cranston J dismissed the appeal. Each case had to be considered on its own facts. Proportionality has to be decided as at the date of the hearing. Subsequent behaviour, even good behaviour, could be a relevant consideration when studying proportionality. The recorder was entitled to examine the absence of recent complaints. There was no error in her approach.

■ South Lanarkshire Council v McKenna

[2012] ScotCS CSIH 78, 10 October 2012

Ms McKenna was a secure tenant. As a result of her anti-social behaviour, the tenancy was demoted to a short Scottish secure tenancy. The council later gave statutory notice to end that tenancy and sought possession. The statutory scheme required that the court hearing the claim for possession 'must make an order' if the requisite notice had been served. The statute did not require the landlord to give reasons for seeking possession in the notice or in the claim.

The Court of Session held that in order to be compatible with article 8 the statute had to be read (1) as enabling the court to consider the proportionality of any eviction and (2) as requiring reasons to be given. The court said this about reasons:

We are of the opinion that such an obligation can, and should, be read into the Scottish legislation, simply as an aspect of procedural fairness which underlies all questions in relation to the vindication of human rights. We would stress, however, that only if the application is being sought to be challenged on the basis of proportionality would the authority need to give reasons beyond what is said, as a matter of course in the statutory notice and then, only, if their decision was based on reasons which go beyond what is stated in the statutory notice (para 12).

■ Ivanova v Ukraine

App No 74113/10, [2012] ECHR 1733, 24 September 2012

Ms Ivanova was a civil servant allocated a room in a building let to public officials. The local municipal company began renovation works and sought a possession order requiring her to leave. A court granted possession on the basis that she would have to leave permanently because of the nature of the works and would be granted other housing. On appeal, the order was modified so that she would only need to leave temporarily. Ms Ivanova established that the company had no valid permit to undertake the development but, despite court orders for suspension of the works, they continued around her. She complained of an infringement of her right to respect for her home.

The ECtHR posed this question for the parties: has there been a violation of the applicant's right to respect for her home, contrary to article 8 of the convention? In particular, regard being had to the fact that the issue of the applicant's relocation and its temporary or permanent character had not been decided before the deployment of the reconstruction works, have these works been carried out in accordance with the law and, if so, did the applicant suffer an individual and excessive burden in connection with the works at issue?

■ Cazacliu v Romania

App No 63945/09, 17 September 2012

Mr Cazacliu and 75 other nationals of Roma origin were living in an abandoned building. They included women, children, elderly and disabled people. The owner obtained a possession order and all were evicted. The local council relocated some in an abandoned army barracks on an industrial site and others, initially with no place to stay, were relocated to a site which was a former rubbish tip. None was granted proper social housing. They complained to the ECtHR, which has posed several questions for the parties, including: was there a violation of article 3 and/or of article 8 of the convention on account of the applicants' living conditions in the accommodation provided by the authorities as social housing?

Article 1 of Protocol No 1

■ Tunyan v Armenia

App No 22812/05, [2012] ECHR 1799, 9 October 2012

Ms Tunyan owned a flat in Yerevan. In 2002, the government adopted a decree approving the expropriation of land, including the flat, so that construction projects could be carried out. Ms Tunyan was evicted. She claimed that there was a violation of article 1 of Protocol No 1.

The ECtHR found that the deprivation of property and the termination of the right of use were not carried out in compliance with 'conditions provided for by law' (para 38). There was accordingly a violation of article 1 of Protocol No 1. It awarded pecuniary damage of €30,000 and non-pecuniary damage of €1,500 for each applicant.

POSSESSION CLAIMS

Assured tenancies

■ Liverpool Mutual Homes v Nugent

[2012] EWCA Civ 1245, 9 August 2012

Mr Nugent was an assured tenant. Liverpool Mutual sought possession on the ground that there had been a breach of the terms of the tenancy. It relied on HA 1988 Sch 2 Grounds 12, 13 and 14. It alleged that Mr Nugent did not keep the property in a clean condition; allowed it to fall into disrepair; and that there were various acts of nuisance. HHJ Bird made an outright possession order. He found that Mr Nugent had failed to co-operate with the landlord about the repairs and had shouted obscenities at children and neighbours. Mr Nugent sought permission to appeal, disputing the judge's findings and claiming that he had not dealt with all the medical evidence.

Mummery LJ refused a renewed application for permission to appeal. The appeal did not have a real prospect of success. There was evidence on which the judge could make findings against the defendant. He was entitled to find that the ground for possession had been

made out and that it was reasonable to make the order.

ASSURED SHORTHOLD TENANCIES

Deposits

■ Ayannuga v Swindells

B5/12/0804,
6 November 2012

Mr Ayannuga was an assured shorthold tenant. In accordance with the tenancy agreement, he paid a deposit of £950. It was held by the administrator of an authorised custodial scheme. Mr Swindells, the landlord, claimed possession based on rent arrears. Mr Ayannuga counterclaimed, denying any arrears and seeking repayment of the deposit. He alleged that the landlord had breached HA 2004 s213(5) and (6) by failing to provide him with information about the tenancy deposit scheme as prescribed by the Housing (Tenancy Deposits) (Prescribed Information) Order ('the Prescribed Information Order') 2007 SI No 797. During the hearing, the landlord provided additional information concerning the deposit scheme. The judge dismissed the counterclaim, deciding that the landlord had substantially complied with the section 213 obligations. He held that the information in the tenancy agreement and the additional information had substantially the same effect as the information prescribed by the Order. Mr Ayannuga appealed.

The Court of Appeal allowed the appeal. The judge had reached a decision which fell outside the proper exercise of judicial judgment and evaluation. Although the tenancy agreement and additional information addressed the procedure in the event that the tenancy agreement ended and a deposit had to be returned, the provisions of the tenancy agreement did not address the procedural provisions of the deposit scheme itself. Articles 2(1)(e) and 2(1)(f) of the Prescribed Information Order were not to be regarded as mere matters of procedure or of subsidiary importance. They were of real importance to a tenant as they defined the circumstances in which a tenant could recover his/her deposit and the means by which disputes regarding deposits could be resolved, including resolution without recourse to litigation. The court granted a declaration that Mr Ayannuga was entitled to repayment of the deposit within 14 days and ordered the landlord to pay a sum equal to three times the amount of the deposit within 14 days.

LONG LEASES

Service charges

■ Crosspite Ltd v Sacheev

[2012] UKUT 321 (LC),
25 September 2012

Landlords found that tenants had underlet the whole of the demised premises in breach of the terms of their lease. They required an application for retrospective consent to underlet and demanded payment of their standard £165 charge to cover their costs of consenting to underletting. The tenants applied to the Leasehold Valuation Tribunal (LVT) seeking a determination that the £165 charge was unreasonable under Commonhold and Leasehold Reform Act (CLRA) 2002 Sch 11 para 1. The LVT decided that the landlord was not entitled to charge for its costs of consenting to underletting and in any event £165 was unreasonable.

HHJ Gerald allowed the appeal. The LVT had no jurisdiction to consider an issue which had not been raised (Sch 11 para 5(4)(a)). Furthermore, there was no evidential basis on which it could conclude that the sum of £165 was unreasonable.

■ Birmingham City Council v Keddie and Hill

[2012] UKUT 323 (LC),
25 September 2012

Birmingham undertook window replacement and balcony works to a flat as part of a programme of major works to the block. Mr Keddie and Mr Hill then bought the flat. They had no knowledge of the condition of the old windows which had been replaced. Birmingham sought to recover £5,909.57 as the costs of the works via the service charge. Mr Keddie and Mr Hill applied to the LVT for a determination that the amount claimed was not reasonable under Landlord and Tenant Act 1985 ss27A and 19(1). The LVT found that Birmingham did not act reasonably in concluding that the window replacement works should be carried out. Accordingly, it found that the cost of the window replacement was not reasonably incurred. Birmingham appealed on the basis that the LVT had breached natural justice by reaching a decision on grounds not raised in the application without giving it an opportunity to make submissions, and that in any event the decision was perverse, as there was no evidence before it about the condition of the old windows which were replaced.

HHJ Gerald allowed the appeal. Mr Keddie said that he was surprised that the LVT had made the decision it did because only the standard of work was being challenged, not that the old windows needed to be replaced. As far as he was concerned, the LVT had misconstrued his argument which only related to the standard of work. He felt that the LVT by its decision had put Mr Hill and him in an 'unfair position' (para 10). The parties then agreed a sum that was recoverable. HHJ Gerald said:

It is regrettable that it appears to be a developing practice within some leasehold valuation tribunals to take it upon itself to identify issues which are of no concern to the parties and then reach a decision on issues they have not been asked to which then results in an appeal and all the waste of time and money and attendant general aggravation (para 13).

It is not the function of the LVT to resolve issues which it has not been asked to resolve, in respect of which it will have no jurisdiction. Neither is it its function to embark upon its own inquisitorial process and identify issues for resolution which neither party has asked it to resolve … To do so would be inimical to the party-and-party nature of applications to the LVT and would greatly increase the costs (frequently recoverable from the tenant through the service charge) and difficulties attendant to service charge disputes which by their nature are frequently fractious, involving relatively small sums within a complex matrix of divers items of expenditure (para 17).

In those rare cases where an LVT does feel compelled of its own volition to raise an issue not raised by the application or the parties, it must as a matter of natural justice first give both parties an opportunity of making submission and if appropriate adducing further evidence in respect of the new issue before reaching its decision. Failure to do so is not only unfair, but may give the unfortunate impression that the LVT has descended into the fray and adopted a partisan position which may well serve to undermine the confidence of the parties in the impartiality of the LVT (para 20).

■ Wales and West Housing Association Ltd v Paine

[2012] UKUT 372 (LC),
22 October 2012

The housing association sought to recover service charges from one of its right-to-buy leaseholders. The service charge had several elements including a management charge, which itself contained an element for administration. The lessee applied to the LVT challenging the service charges and wrote that 'administration should not be included' (para 4). The LVT decided that the housing association was entitled to recover that element but that it was unreasonably high and reduced it.

The Upper Tribunal allowed the housing association's appeal. The LVT had acted without procedural fairness in taking a point (reasonableness of the charge) which the

lessee had not raised and on which it had invited no evidence. The charge was payable as claimed.

■ **Gala Unity Ltd v Ariadne Road RTM Company Ltd**

[2012] EWCA Civ 1372,
23 October 2012

Tenants established a management company to take over the management of two blocks of flats. An issue arose with the freeholder as to the management of common parts of the development of which the blocks formed part. The Upper Tribunal (Lands Chamber) decided that the company could manage property 'appurtenant' to the blocks (CLRA 2002 s71), including car parking spaces allotted with the leases of the flats and the common areas over which the tenants had rights. The freeholder appealed on the basis that this would lead to both it and the management company managing the common parts because it would retain management functions for properties on the development which were not in the blocks.

The Court of Appeal dismissed the appeal. The tribunal had correctly identified the statutory rights. The parties would need to work out joint management on a practical basis.

HOUSING ALLOCATION

Local Government Ombudsman

Complaints

■ **Newham LBC**

11006128,
29 October 2012

A council tenant applied for an emergency housing transfer. She had been subjected to domestic violence. Her application would normally have resulted in a direct offer of alternative accommodation, but the council's allocation scheme provided that if an applicant had a 'property-related debt' they would only have a reduced priority and that this provision could only be waived in 'exceptional circumstances' (para 9).

The tenant had former tenant arrears in respect of earlier accommodation from which the council had rehoused her. After her rehousing, the council had allowed the tenancy to run on for 18 months, leading to very significant rent arrears. Those arrears were taken into account in making the decision under the housing allocation scheme and operated to block the transfer.

The tenant complained under the council's complaints procedure and her complaint was upheld. The council accepted that it should have terminated the earlier tenancy no later than about two weeks after she was rehoused. The effect of that decision was to reduce the arrears to under £140, but the complainant was still not awarded a management transfer and complained to the Local Government Ombudsman.

The ombudsman decided that, but for the council's error in failing to end the old tenancy earlier, the arrears would have been modest and would have been cleared by the tenant in order to secure the transfer. The error had been maladministration and had caused injustice. The ombudsman recommended that the council:

■ issue an apology;
■ pay £250 compensation; and
■ reconsider the management transfer application in light of the reduced arrears.

■ **York City Council**

11 018 683,
16 October 2012

The complainant, his wife and their two daughters (then aged nine and ten) were homeless in March 2010. The council accepted that it owed the main housing duty: HA 1996 s193. It made an offer under its housing allocation scheme of a two-bedroom property which was accepted. In January 2012, the complainant complained that his family had been overcrowded for the whole period they had been in occupation. The second bedroom was only 7.7 square metres and the girls had been sharing it.

The council rejected suggestions that the home was statutorily overcrowded on the basis that it had a living room which could be used for sleeping accommodation. However, following a complaint to the ombudsman, the council eventually conceded that because the living room also had a gas fire and a back boiler, it could not be used for sleeping in.

The council apologised for the error and agreed to backdate priority status under the allocation scheme to the date when the tenancy had been accepted. The ombudsman found that it was maladministration for the council to have offered a property which would be statutorily overcrowded from the outset. Each day that the family had occupied it, the council had been committing an offence. Compensation of £2,000 was agreed. The council also agreed to provide guidance and training to its staff on overcrowding rules.

HOMELESSNESS

Applications

Public Services Ombudsman for Wales

Complaint

■ **Cardiff CC**

2011/02310,
24 October 2012

The complainant was a secure tenant of the council. In August 2010, his ex-partner smashed the glass of his front door and stabbed him with a knife. He left the property and went to stay temporarily elsewhere. In January 2011, he sent the council a letter explaining what had happened and wrote that he had 'great difficulty in residing' at his address, and asked for a transfer to alternative accommodation as a matter of 'great urgency'. The council failed to treat the letter as an application under both HA 1996 Part 6 (Allocation) and HA 1996 Part 7 (Homelessness) even though the complainant was seeking assistance in obtaining (other) accommodation and the letter must have given the council reason to believe that he may be homeless: HA 1996 s183.

The Public Services Ombudsman for Wales said that he 'was concerned that this case yet again reflected a series of similar cases where the council has not only failed to recognise when its homelessness duty to make enquiries is engaged, but has failed to appreciate that a [formal] homelessness application is not necessary to trigger that duty'.

He recommended the following:

■ an apology;
■ payment of £5,750; and
■ an audit of 'front-line services to identify any significant problems in the identification of when its homelessness duty is triggered'.

Eligibility

■ **Pryce v Southwark LBC**

(2012) 7 November, CA

Ms Pryce was in the UK unlawfully. Her two dependent children were British citizens. On her application for homelessness assistance, the council decided that she was not eligible for assistance: HA 1996 s185. That decision was upheld on review, and she appealed unsuccessfully to the county court.

The Court of Appeal allowed a second appeal. As a result of her children's need for her to remain in the UK as their carer, Ms Pryce also had a right to reside in the UK under article 20 of the EU Treaty as explained by the European Court of Justice in *Zambrano* (see above). It followed that she was eligible for assistance.

Comment: This decision will only assist applicants who applied for homelessness assistance or social housing allocation before 8 November 2012. On that date, regulations took effect specifically to provide that those solely relying on article 20 would not be eligible (see above).

■ **R (TJ) v Birmingham City Council**

[2012] EWHC 2731 (Admin),
3 September 2012

The applicant applied to the council for homelessness assistance. It decided that she was a person subject to immigration control and not eligible for such assistance: HA 1985 s185. The applicant's solicitors applied for a

review – and for accommodation pending that review – on the basis that one of her dependent children was an EU citizen and that accordingly, in reliance on *Zambrano*, the applicant was entitled to the provision of accommodation. The council declined to provide accommodation pending the review on the basis that no regulations had been made under HA 1996 s185(2) prescribing those with derived rights based on *Zambrano* as eligible, notwithstanding their being subject to immigration control.

The applicant sought a judicial review on the basis that the effect of *Zambrano* was that the applicant was no longer subject to immigration control at all and did not need to rely on exempting regulations. HHJ Robert Owen QC refused a renewed application for permission to apply for judicial review because it did not follow, just because a person asserted that they enjoyed derived rights under *Zambrano*, that they were necessarily eligible and entitled to homelessness assistance. The council had directed itself in accordance with the *Mohammed* test (*R v Camden LBC ex p Mohammed* (1998) 30 HLR 315) in deciding not to accommodate pending review.

Intentional homelessness

■ Ali v Wandsworth LBC

[2012] EWCA Civ 1337,
18 October 2012

The claimant was a private rented sector tenant. She decided that she needed to travel abroad to visit relatives. She ended her tenancy and used the refunded deposit money to meet the air fare. When she returned to the UK, she had no funds and applied to the council for homelessness assistance. It decided that she had become homeless intentionally. HHJ Welchman dismissed an appeal from that decision.

Rimer LJ refused the claimant's application for permission to bring a second appeal. While it may have been correct that the claimant was mistaken, in good faith, about her entitlement to continuing housing benefit during a temporary absence, that was irrelevant to her deliberate act in terminating the tenancy which had been motivated by the need to obtain the return of the deposit.

Offences

■ Luton BC v Jackson and Mahia

Luton Magistrates' Court,
20 September 2012

The defendants applied to the council for homelessness assistance. They said that they had lived in private rented accommodation in Ireland and had been given notice to leave their home when the landlord defaulted on the mortgage. They gave the council a false address for the property in Ireland and a false name for the landlord.

The council traced the real landlord who denied that he had required them to leave. The council brought a prosecution and the defendants pleaded not guilty to offences contrary to the Fraud Act 2006 and HA 1996 s214. They were convicted following a trial. Each received a suspended sentence order with 26 weeks' imprisonment suspended for 18 months and a requirement to perform 100 hours' unpaid work. The defendants were also each ordered to pay £500 towards the council's costs.

HOUSING AND COMMUNITY CARE

■ R (Sunderland City Council) v South Tyneside Council

[2012] EWCA Civ 1232,
9 October 2012

Two councils could not agree which of them would be responsible for providing accommodation and other aftercare services, under Mental Health Act (MHA) 1983 s117. The duty was owed to a young woman who was in a mental hospital but was about to be discharged. Before being admitted for treatment, she had lived in a hall of residence in Sunderland's area. In 2009, she was moved to a hospital in South Tyneside's area where she remained for two years before moving again to a hospital in Sunderland's area. While she had been in South Tyneside, her placement in the hall of residence in Sunderland had been ended.

The Court of Appeal held that South Tyneside was the authority responsible for her aftercare. The judgment gives guidance on how authorities should decide which council has responsibility under the MHA 1983.

1 Available at: http://www.legislation.gov.uk/uksi/2012/2601/pdfs/uksi_20122601_en.pdf.
2 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11314/homelessness_sor.pdf.
3 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9323/121026_Stat_guidancewith_front_page_and_ISBN_to_convert_to_pdf.pdf.
4 Available at: http://www.legislation.gov.uk/uksi/2012/2560/pdfs/uksi_20122560_en.pdf.
5 See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11348/2252992.pdf.
6 Available at: www.parliament.uk/briefing-papers/SN06378.pdf.
7 Available at: http://www.audit-commission.gov.uk/fraud/protecting-the-public-purse/Pages/protecting-the-public-purse-2012.aspx.
8 See: http://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/inquiries/parliament-2010/private-rented-sector/.
9 Available at: http://www.housing-ombudsman.org.uk/downloads/HousingOmbudsmanScheme-DRAFT.doc.
10 See: http://www.housing-ombudsman.org.uk/downloads/HOS-SchemeConsultationDocument.doc.
11 Available at: http://www.parliament.uk/briefing-papers/SN06438.pdf.

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