Recent developments in housing law

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

POLITICS AND LEGISLATION

County court possession claims

The official statistics for county court possession claims in the third quarter of 2013 cover both mortgage lender claims and landlord claims: *Mortgage and landlord possession statistics quarterly: July to September 2013* (Ministry of Justice (MoJ), 14 November 2013).[1]

In relation to landlord claims, they show that:

- the number of possession claims continued the upward trend that has been in place since 2010;
- there were 19,401 warrants of possession issued in the quarter; and
- there were 9,469 actual repossessions by county court bailiffs.

As to mortgage possession cases, they show that in the third quarter of 2013:

- the number of claims has continued to fall; but
- 13,032 warrants of possession were issued.

The number of repossessions by Council of Mortgage Lenders (CML) members is also falling. The 7,200 repossessions in the third quarter of 2013 is the lowest number since quarterly data began to be published: CML press release, 14 November 2013.[2]

In contrast, in Northern Ireland during the period July to September 2013 there were 677 final possession orders made in mortgage cases: *Statistical press release – mortgages: actions for possession. July–September 2013 (provisional figures)* (Northern Ireland Courts and Tribunals Service, 15 November 2013).[3] This was a 20 per cent increase from the same period in the previous year (562 in 2012) and a 126 per cent increase compared with the same period in 2009 (299).

Mortgage arrears

The Mortgage Rescue Scheme in England is closing to new applicants from 31 March 2014, except in London where it has already closed to new applicants. Mortgage-to-Rent applications referred to housing associations by 31 March 2014 will have the opportunity to complete during 2014/15, except in London, where cases will need to be complete by 31 March 2014 unless there are exceptional circumstances: *Mortgage rescue in England* (CML, November 2013).[4]

Social housing fraud

The latest annual report on tackling local government fraud shows that councils in England recovered 2,642 homes from fraudsters in the last year: *Protecting the public purse 2013* (Audit Commission, November 2013).[5] This represents a 51 per cent increase in detected social housing fraud since 2011/12.

The Chartered Institute of Housing (CIH) has issued a new briefing note: *How to … prevent right to buy and right to acquire fraud* (CIH, November 2013).[6]

Right to buy

The Master of the Rolls has issued a Practice Direction (PD) on case management of 'right to buy cases': *Practice Direction – solicitors' negligence in right to buy cases (transfer of existing and new claims to the Chancery Division and appointment of designated judge)* (November 2013).[7] The PD applies to claims 'brought by any person or persons claiming damages and/or equitable compensation against a solicitor or firm of solicitors (or former solicitor or firm of solicitors) who acted for the claimant or claimants on the exercise of the right to buy their council houses under the Housing Act [(HA)] 1985 and who did so having allegedly been advised by a mortgage broker and/or introducer where such claim is not concerned solely with an alleged defect in title or an alleged error in conveyancing'. The designated judge is Sales J.

The Housing Minister for England has issued a statement applauding take-up of the 'reinvigorated' right to buy: *Swindon leads the way in taking up the right to buy* (Department for Communities and Local Government (DCLG) press release, 7 November 2013).[8]

Discretionary housing payments

In a written answer to a parliamentary question, Department for Work and Pensions (DWP) Minister, Steve Webb MP, stated that: 'Housing costs which may be eligible for assistance via discretionary housing payment are comprised of rental liability, rent in advance, deposits and other lump sum costs associated with a housing need such as removal costs' (*Hansard*, HC Written Answers col 94W, 4 November 2013).[9] His answer also drew attention to the *Discretionary housing payments guidance manual, including Local authority good practice guide* (DWP, April 2013).[10]

The CIH has published a report showing that half of those subject to the total welfare benefit cap in Haringey are now being paid discretionary housing payments: *Experiences and effects of the benefit cap in Haringey* (CIH, October 2013).[11]

Council housing stock transfer

The Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013 SI No 2898 came into force on 5 December 2013. They enable local authority tenants in England to form tenants' groups for the purpose of putting forward proposals to transfer their homes to private registered providers of social housing (such as a housing association). The DCLG has issued statutory guidance for tenants and local authorities about the new regulations: *The Housing (Right to Transfer from a Local Authority Landlord) (England) Regulations 2013: statutory guidance* (DCLG, November 2013).[12]

The DCLG has also published the final version of the guidance manual which will govern the stock transfer process until the end of March 2015: *Housing transfer manual* (DCLG, November 2013).[13] An earlier version had been subject to a consultation process that produced only 25 responses: *Housing transfer manual: summary of responses to consultation* (DCLG, November 2013).[14]

Housing and anti-social behaviour

The Anti-social Behaviour, Crime and Policing Bill has completed its House of Lords committee stages. The bill includes proposals to replace anti-social behaviour orders (ASBOs). The latest statistics show a continuing fall in the number of such orders granted: *Anti-social behaviour order statistics: England and Wales 2012* (Home Office, October 2013).[15]

Private rented sector

The Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013 has been laid before parliament in

draft.[16] If passed by both Houses of Parliament, it would set out the arrangements for securing government approval of any new redress scheme for complaints in respect of letting agents and managing agents in England. The House of Commons Library has issued an updated version of its briefing on *The regulation of private sector letting and managing agents (England)* (Standard Note SN/SP/6000, 21 November 2013).[17]

The National Landlords Association (NLA) has written to all local authorities in England in the light of three recent court and tribunal judgments that have raised issues over the licensing of houses in multiple occupation (HMOs) and how local licensing fees should be determined.[18]

If passed, the current Immigration Bill will impose obligations on landlords to undertake immigration status checks on new tenants. The House of Commons Home Affairs Select Committee has reported that it 'is concerned about the implications of this proposal on millions of private landlords across the [country]. This additional regulatory burden, in effect requiring them to carry out immigration checks on behalf of the Home Office, is challenging': *The work of the UK Border Agency (January–March 2013)* (HC 616, 8 November 2013, para 26).[19]

Sir Alan Meale MP's Private Landlords and Letting and Managing Agents (Regulation) Bill had its House of Commons second reading on 25 October 2013.[20] The bill seeks to:

- establish a mandatory national register of private landlords;
- introduce regulation of private sector letting agents and managing agents;
- establish a body to administer the national register and to monitor compliance with regulations applying to letting agents and managing agents; and
- require all tenancy agreements entered into with private landlords to take the form of written agreements.

The Residential Landlords' Association (RLA) has published a paper inviting the UK government to desist from attempts to force longer term tenancy agreements on the private sector: *Why governments should not enforce long-term contracts in the UK's private rented sector* (RLA, October 2013).[21]

New controls on misleading advertising about the costs of private rented accommodation were brought into force in England on 1 November 2013. The charity Shelter has launched an online form which prospective tenants can use to report instances of 'hidden' letting fees imposed by landlords or their agents.[22]

Social housing complaints

HouseMark has issued the latest findings of its work on benchmarking standards for the handling of housing complaints by social landlords: *Complaints benchmarking: summary report 2012/13* (October 2013).[23]

The Scottish Public Services Ombudsman has produced a special thematic annual report on housing complaints for 2012–2013: *Annual complaints report 2012–2013: Housing* (October 2013).[24] The report includes an outline of the work of the Complaints Standards Authority in developing a standardised model complaints handling procedure for registered social landlords, which is now in place across the sector.

HUMAN RIGHTS

■ Winterstein and others v France

App No 27013/07,
17 October 2013

The applicants were 25 Travellers who were part of a much larger Travelling community living in huts and mobile homes in the Val d'Oise department. They had occupied the land for many years. They did not own it. There was no planning permission. The local council obtained orders for possession and removal which were upheld on appeal. The applicants claimed that their evictions, even though some had been offered social housing, infringed their article 8 rights (right to respect for private and family life) under the European Convention on Human Rights ('the convention') to respect for their homes.

The European Court of Human Rights (ECtHR) accepted that there had been an infringement because:

- the Travellers had not had the benefit, in the context of the eviction proceedings, of a proper examination of the proportionality of the interference with their right to respect for their private and family lives and their homes as required by article 8; and
- there had also been a violation of article 8 in the case of those applicants who had requested alternative accommodation on family sites, as their needs had not been duly considered.

■ Zrilić v Croatia

App No 46726/11,
3 October 2013,
[2013] ECHR 921

Ms Zrilić lived in a house which she had built and jointly owned with her husband. Their marriage broke down and she issued proceedings seeking a declaration to establish the size of her share in the property. Her ex-husband did not contest the proceedings and it was held that she owned one-third. During this period, she and her ex-husband continued to live in the property. The ex-husband subsequently issued proceedings seeking, inter alia, an order for sale. Ms Zrilić resisted that claim and argued that the building should be partitioned so as to create two separate flats. The domestic courts rejected that argument, partly in view of an expert's report which stated that partition was not possible. The courts ordered a sale. Ms Zrilić was ordered to vacate. She applied to the ECtHR, alleging a violation of, inter alia, article 8.

The court held that Ms Zrilić had sufficient and continuing links with the house for it to be considered her 'home' for the purposes of article 8. The order to vacate it amounted to an interference with the right to respect for her home. The national courts' decisions had a basis in the relevant domestic law and the interference in question pursued the legitimate aim of the 'protection of the rights of others'. The central question was therefore whether the interference was 'necessary in a democratic society'. The court was satisfied that the decision-making process leading to measures of interference with Ms Zrilić's rights was fair and such as to afford due respect to the interests safeguarded by article 8. There was no violation of article 8.

■ Miladinović v Croatia

App No 31588/12,
23 September 2013

Ms Miladinović owned a house in Croatia. From 1991 to 2000 she was a refugee abroad and her house was occupied by another person without her consent. In July 2001 she obtained a possession order for his eviction but because of delays in legal and enforcement proceedings, she could not recover possession until June 2007, by which time her house had been destroyed and rendered uninhabitable. She complained to the ECtHR.

The court has posed the following questions for the parties:

- Has there been a violation of the applicant's right to peaceful enjoyment of her possessions, on account of the prolonged inability to use her house, within the meaning of article 1 of Protocol No 1?
- Did the applicant have at her disposal an effective domestic remedy for her complaint under article 1 of Protocol No 1, as required by article 13?

■ Vinniychuk v Ukraine

App No 34000/07,
7 October 2013

The applicant was the tenant of a flat. She was sentenced to a term of imprisonment. She later returned to live in the flat and cleared the arrears which had accrued. However, relying on the loss of security of tenure caused by her absence, the council landlord obtained a possession order and she was evicted in 1998. In 2005 a court ordered that she be provided with council accommodation equivalent to her previous flat. The council

failed to comply with the judgment until 2010, when it provided a dilapidated house with no modern plumbing or sewage facilities.

The ECtHR has directed the parties to address the questions:

■ Was the protracted failure of the authorities to house the applicant following her eviction and enforce the 2005 judgment compatible with article 8?

■ Did the applicant have at her disposal an effective domestic remedy for her complaint under article 8, as required by article 13?

■ Kashchuk v Ukraine

App No 5407/06,
7 October 2013

Mr Kashchuk owned a house. Due to a rise in groundwater levels in 1996, it was rendered uninhabitable and was officially recommended for demolition. The Housing Code provided that free accommodation would be provided to any citizen whose home became uninhabitable 'as a result of a natural disaster'. The Court of Appeal decided that the provision did not apply to Mr Kashchuk's case. The Supreme Court dismissed an appeal.

The ECtHR has directed the parties to address the questions:

■ Did the applicant have a fair hearing in the determination of his civil rights and obligations? In particular, did the Court of Appeal and the Supreme Court give adequate reasons for their decisions?

■ Did the state comply with its positive obligations under article 8 as regards the applicant's right to respect for his home?

■ Lambeth LBC v Partridge

[2013] EWCA Civ 1334,
8 October 2013

The council acquired a street of 'short life' properties. They were made available on licence to housing associations and co-operatives. Mr Partridge was granted a sub-licence by a co-op. After many years, the council decided to sell the stock and terminated the licences. Mr Partridge was in turn given notice to quit. On the council's claim for possession, he asserted that:

■ he had obtained title by adverse possession; or

■ he was a secure tenant; or

■ an eviction would infringe his article 8 rights.

HHJ Welchman made a possession order.

Moore-Bick LJ refused permission to appeal. The judge had rejected the adverse possession claim on the facts. There could be no secure tenancy as there had never been a legal relationship between the council and the occupiers and nothing to suggest that the housing association or the housing co-operative were themselves any more than licensees. The judge had considered the article 8 claim in some detail and had ultimately decided that it would not be disproportionate to grant possession. An appeal would have no real prospect of success.

POSSESSION CLAIMS

■ Lorimer v Griffiths

Sheriffdom of Lothian and Borders,
Case No A4185/07,
30 August 2013

Mr Griffiths was a Rent (Scotland) Act 1984 statutory tenant. His landlord, Mr Lorimer, sought possession for rent arrears and obtained an order for possession. The order was suspended on two conditions:

■ payment of £17,471 in arrears of rent within 21 days; and

■ that access be allowed to the landlord and workmen on seven days' notice.

The arrears were paid on time. Access was sought by notice and given on 16 August 2011, but the tenant declined to admit an electrician, suggesting in advance that the electrical inspection be undertaken separately at a different time. The sheriff decided that this amounted to a breach of the second condition and that eviction should be permitted.

Sheriff Principal Mhairi M Stephen allowed an appeal. The tenant had sufficiently complied with the second condition. In those circumstances both conditions had been met and the possession order was discharged.

■ R (Raiss) v Central London County Court

[2013] EWHC 3217 (Admin),
8 August 2013

In August 2010 District Judge Lightman made an order for possession. Mr Raiss appealed against it but HHJ Mitchell dismissed his application for permission to appeal in the same month. Mr Raiss applied in the county court for the re-opening of that decision but his application was finally rejected in March 2012. The order was executed and the claimant was evicted. He applied for a judicial review of the county court orders.

Dingemans J refused a renewed application for permission to seek judicial review. The claim was out of time and in any event did not demonstrate the exceptional circumstances required to secure a review of a refusal of permission to appeal in the county court (see *Sivasubramaniam v Wandsworth County Court* [2002] EWCA Civ 1738, 28 November 2002; [2003] 1 WLR 475).

■ R (Centerprise Trust Ltd) v Hackney LBC

[2013] EWHC 3314 (Admin),
29 August 2013

The council brought a county court possession claim. A possession order was made. Lewison LJ refused an application for permission to appeal from that order. The claimant (who had been the defendant in the county court) sought judicial review of the council's decision to bring the possession proceedings. The claim was based on the Equality Act 2010, public law duties, failure to undertake an impact assessment and legitimate expectation.

Clare Moulder, sitting as a deputy High Court judge, rejected a renewed application for permission to proceed with the judicial review. The points made could and should have been made in the county court proceedings.

■ Watson v Simpson

Croydon County Court,
4 October 2013[25]

Ms Simpson was a statutory periodic assured shorthold tenant. Mr Watson, her landlord, served a notice to quit and then commenced possession proceedings against her. No HA 1988 s21 notice was served. The particulars of claim were completed using a standard N119 form. No particulars of any rent arrears were given. The landlord did not claim any money judgment or make any claim for use and occupation charges. District Judge Bishop dismissed the claim but with 'no order for costs'. Ms Simpson appealed.

HHJ Ellis allowed the appeal. He held that when departing from the usual costs order under Civil Procedure Rules (CPR) 44.2, 'the conduct' of the parties was limited to litigation conduct and not the whole of their landlord and tenant relationship. He further held, following *Re appeals by Governing Body of JFS* [2009] 1 WLR 2353, that how a party was funded was completely irrelevant to determining the correct inter partes cost order.

POWERS OF TRIBUNALS

■ Scriven v Calthorpe Estates

[2013] UKUT 469 (LC),
25 September 2013

A leasehold valuation tribunal (LVT) concluded that it did not have jurisdiction to vary an estate management scheme under Commonhold and Leasehold Reform Act 2002 s159 and as a result dismissed an application made by Dr Scriven. On appeal all parties accepted that in the light of the Lands Tribunal decision in *Botterill v Hampstead Garden Suburbs Trust Ltd* LRX/135/2007, 18 December 2007, the LVT was wrong to reach that conclusion. They also agreed that the tribunal's decision should be set aside, and that the application for a variation of the estate management scheme should be reconsidered on its merits.

Martin Rodger QC, Deputy President, pointed out that tribunals now have wide powers to review their own decisions. The statutory basis for this is Tribunals, Courts and Enforcement Act 2007 s9 and the Tribunal

Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI No 1169, which came into force on 1 July 2013. He said:

The power is important and valuable and its exercise in appropriate cases has the potential to achieve significant savings for parties and tribunals by avoiding expensive and time consuming appeals. It should therefore be kept in mind when a First-tier Tribunal is invited to grant permission to appeal (para 36).

■ Simon v Denbighshire CC
[2010] UKUT 488 (LC), 15 October 2013
The council decided that a category 1 hazard (excess cold) existed in an HMO let by Mr Simon. It served an improvement notice under HA 2004 Part 1, requiring insulation, double glazing and heating facilities. Mr Simon lodged an appeal to the residential property tribunal and a hearing was fixed for August 2009. Three weeks prior to the hearing, the council purported to withdraw the improvement notice.

The Upper Tribunal held that there was no power to withdraw a notice. The council either had to revoke the notice or submit to the appeal being allowed.

■ Forest House Estates Ltd v Al-Harthi
[2013] UKUT 479 (LC), 26 September 2013
A tenant's lease required that he provide and maintain good quality carpeting and underlay throughout his flat (with the exception of the kitchen and bathroom). He replaced the fitted carpet with wooden flooring and rugs. The landlord applied to the LVT for a determination that there had been a breach of the lease. The LVT inspected and found that carpet had been laid once again. It decided there was no breach.

The Upper Tribunal allowed an appeal. It decided that the breach may have been temporary, and perhaps even trivial, but it was clearly a breach. The question for an LVT was not whether a breach had been remedied, but whether there had been one.

LONG LEASES

■ Eaton Mansions (Westminster) Ltd v Stinger Compania de Inversion SA
[2013] EWCA Civ 1308, 30 October 2013
The claimant company was the headlessee of a block of flats. Stinger was the underlessee of two flats in the building. It installed a number of air conditioning units on the roof of the building which was retained by the claimant company. Stinger had no right to use the roof for that purpose. The claimant company brought an action for trespass to its roof and sought aggravated damages. The trial judge awarded £6,000, but rejected the claim for aggravated damages ([2012] EWHC 3354 (Ch), 27 November 2012, see February 2013 *Legal Action* 34). The claimant company appealed.

The Court of Appeal dismissed the appeal. The general rule is that damages should be based on direct loss, but that approach is not always appropriate for damages for trespass. In such cases, damages may be assessed by reference to the benefit received by the trespasser. The High Court had also been right to refuse aggravated damages. Aggravated damages are designed to compensate the successful claimant for distress and injury to feelings caused by the defendant's conduct which, in the case of a company, was not a possibility. A company can never be awarded aggravated damages.

■ MacGregor v B M Samuels Finance Group plc
[2013] UKUT 471 (LC), 21 October 2013
B M Samuels Finance was the freeholder of two adjacent blocks of flats in Chatham. Mr MacGregor was the lessee of two flats. The freeholder applied to the LVT for a determination as to the amount of service charges payable by Mr MacGregor and a number of others. The freeholder's application was largely successful. Mr MacGregor appealed to the Upper Tribunal. As a preliminary issue, he argued that, if he was successful in establishing that the relevant costs had not been reasonably incurred, the freeholder would be obliged to reimburse to the service charge account all the money that was shown not to have been reasonably incurred. The company responded that the tribunal's jurisdiction under Landlord and Tenant Act 1985 s27A was limited to determining whether the service charge was payable.

The Upper Tribunal accepted the company's argument. The jurisdiction of the tribunal was limited to determining the amount payable to the appellant in this appeal under section 27A. The tribunal did not have jurisdiction to consider the effect of that determination on the other lessees. Those other lessees must look to such remedy (if any) as may be available to them in the light of the tribunal's decision. Having reviewed the evidence, the Upper Tribunal made minor reductions to the service charges.

■ Realreed Ltd v Cussens
[2013] EWCA Civ 1333, 9 October 2013
A landlord brought a county court claim for a declaration that a tenant was in breach of a covenant in her lease. The tenant defended the claim but she failed. The declaration was made and she was ordered to pay the costs. Those orders were upheld in the High Court ([2013] EWHC 1229 (QB), 15 May 2013, see July/August 2013 *Legal Action* 22). Andrew Smith J held that county courts have jurisdiction under County Courts Act 1984 s15 to make declarations for the purposes of Commonhold and Leasehold Reform Act (CLRA) 2002 s168 that tenants are in breach of covenant. The tenant sought permission to bring a second appeal on the basis that she should not pay the costs. She said the landlord could and should have obtained the declaration from an LVT which does not generally award costs.

Tomlinson LJ refused permission to bring the second appeal. The county court and the LVT have parallel jurisdictions. It was common ground before the judge that he had jurisdiction to entertain the action for a declaration, and no effort of any sort was made at any stage either to protest that it was inappropriate that the claim be brought in that way, or any application made either to set aside the proceedings or for them to be stayed pending determination of the tribunal or for a transfer or for anything of that sort. In those circumstances, the judge was perfectly entitled to take the view that the tenant had acquiesced in the choice of jurisdiction with all the consequences that flowed therefrom. The costs order was properly within the ambit of the judge's discretion and there was no justification for a second appeal.

■ Fairhold Mercury Ltd v HQ (Block 1) Action Management Company Ltd
[2013] UKUT 487 (LC), 3 October 2013
The Upper Tribunal considered whether HQ (Block 1) Action Management Company Ltd was a 'right to manage' (RTM) company within the meaning of CLRA s73.

Martin Rodger QC, Deputy President, held that whether a company was a RTM company was determined by section 73, unaffected by a failure to comply with section 74 (adoption of provisions in the RTM Companies (Model Articles) (England) Regulations 2009 SI No 2767). The Upper Tribunal also gave guidance on the test to be applied by the appropriate tribunal when considering whether to grant permission to appeal. The tribunal should ask itself:

... whether the appeal has a real or realistic prospect of success, as opposed to only a fanciful prospect ... If the point on which permission is sought is a purely technical one ... the ... tribunal should be slower to grant permission ... (para 25).

■ Fairhold (Yorkshire) Ltd v Trinity Wharf (SE16) RTM Co Ltd
[2013] UKUT 502 (LC), 7 October 2013
During a hearing before a LVT to determine

whether a RTM company was entitled to acquire the right to manage, the landlord raised an additional objection which had not been raised in its CLRA s84 notice.

Lindblom J, President of the Upper Tribunal, stated that although it was desirable that all issues be raised as early as possible, there was nothing in the Act which limited the arguments open to a landlord to those set out in the counter-notice. The case was remitted for a decision on the additional objection.

ADVERSE POSSESSION

■ Smart v Lambeth LBC

[2013] EWCA Civ 1375,
7 November 2013

Mr Smart claimed that he and his predecessors were in adverse possession of a house for a continuous period of 12 years prior to November 1993 when Mr Smart acknowledged Lambeth's title. On the basis of that period of adverse possession he claimed to have extinguished Lambeth's registered title. HHJ Dight rejected that claim and similar claims by other occupants in the same road. The principal ground on which he did so was that their occupation of the properties had been with the express or implied permission of Lambeth, and therefore not adverse possession at all. Mr Smart appealed.

The Court of Appeal dismissed the appeal. The judge's conclusion that Mr Smart occupied the premises with the express permission of Lambeth was a finding of fact. In the circumstances of this case, he was entitled to make that finding.

CRIMINAL LAW

■ R v Duputell

Hove Crown Court,
31 October 2013

The defendant was charged with squatting in residential premises contrary to Legal Aid, Sentencing and Punishment of Offenders Act 2012 s144. He was found in a residential property with his limbs superglued around a wooden beam. To be guilty of the offence he had to have been 'living in the building' or intending 'to live there for any period'.

A judge directed an acquittal as there was insufficient evidence of actual residential occupation.

■ Bristol City Council v Digs (Bristol) Ltd

Bristol Magistrates' Court,
7 October 2013

The defendant was the private landlord of a maisonette in multiple occupation. The council brought a prosecution for failure to obtain an HMO licence and for breaches of the HMO regulations. A district judge (magistrates' court) tried the preliminary issue of whether the maisonette was a licensable HMO. It extended over two storeys of a building with a further entrance corridor and hallway on a lower storey. The council included the lower storey in deciding that the HMO extended to three storeys.

The judge held that, having regard to article 3 of the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 SI No 371, the maisonette was not an HMO. The council had been wrong to include the lower storey. In the light of that ruling, the council offered no evidence and the defendant was acquitted.

HOUSING ALLOCATION

■ R v Boateng

Case No 1303798 A6,
6 November 2013

A local authority conducted an investigation into housing fraud. The results suggested that, in about 120 cases, applicants had been supplied with, or had provided, false documents to enable them to make homelessness applications and to obtain council tenancies. The loss to the council was estimated at £25m.

Following a trial, the defendant was found guilty of having produced a false birth certificate and a passport with a false entry which had enabled her to obtain a council home from that local authority. She was convicted on one count of obtaining by deception and six counts of using false instruments and was sentenced to 12 months' immediate imprisonment. She appealed on the basis that the sentence was manifestly excessive.

The Court of Appeal dismissed the appeal. The effects of the deception had been long term and very advantageous to the defendant. Absent any significant mitigation, the sentence could not be faulted.

■ R (Clulow) v Secretary of State for Work and Pensions

[2013] EWHC 3241 (Admin),
24 October 2013

The claimant accepted the tenancy of an unfurnished council house. Although the council could have provided her with furniture (HA 1985 s10), she applied to the social fund for a discretionary grant to help pay for a bed, cooker, washing machine, fridge, etc. She did not qualify because she was receiving contribution-based employment and support allowance (ESA). Had she not paid national insurance contributions she would have been in receipt of income-related ESA, which would have allowed her to qualify. She claimed that this was unlawful discrimination contrary to article 14 (prohibition on discrimination) read with article 8 (right to respect for private and family life) of Human Rights Act 1998 Sch 1.

Timothy Brennan QC, sitting as a deputy High Court judge, dismissed a judicial review claim. The discrimination was not within article 14 of the convention because it was not on grounds of 'property' or 'other status'. Even if it had been, the discrimination had been justified.

HOMELESSNESS

Local connection

■ Wandsworth LBC v NJ

[2013] EWCA Civ 1373,
7 November 2013

The applicant fled her home in Leicester as a result of domestic violence. On arrival in London, the first women's refuge able to offer her a place was in Lambeth. After six months in that refuge, she was ready to make a fresh start and she made an application for homelessness assistance to neighbouring Wandsworth under HA 1996 Part 7. That council accepted that it owed the main housing duty (HA 1996 s193) but made a local connection referral to Lambeth. Lambeth accepted that the conditions for referral (HA 1996 s198) were made out and that it would perform the duty.

The applicant wanted to live in Wandsworth rather than Lambeth and sought a review on the basis that the conditions for referral were not satisfied because she had no connection with Lambeth (given that her residence in the refuge there had not been by her 'choice': HA 1996 s199(1)(a)). On the review she also said that since the initial decision, she had been placed in fear of violence in Lambeth, as a result of which she had been moved to a refuge in Southwark. A reviewing officer upheld the initial decision, but HHJ Welchman reversed that on appeal. The council brought a second appeal.

The Court of Appeal held that the reviewing officer had been entitled to find that the applicant had voluntarily chosen London as the place to escape to and had chosen to take up the offer of a refuge place secured for her there. She was accordingly resident in Lambeth of her own choice. However, the reviewing officer had wrongly failed to treat the initial decision as 'deficient' because it did not address the more recent risk of violence in Lambeth. A 'minded-to' letter should have been issued on that point pursuant to Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 SI No 71 reg 8(2). The review decision was quashed.

Appeals

■ Poorsalehy v Wandsworth LBC

QB/2013/0452,
7 November 2013

The council decided on a review that the applicant was not 'homeless'. His appeal to the county court was lodged by his solicitors in April 2013, one day beyond the 21-day time limit: HA 1996 s204(2). No application to extend time was lodged until the eve of the full appeal hearing, four months later. HHJ Welchman decided that although there was good reason why the appeal had been lodged a day late, there was no good reason for the delay in submitting the application to extend time. A good reason had to be established for both delays: HA 1996 s204(2A)(b). Time could therefore not be extended and the appeal was struck out. The applicant appealed, contending that the fact that he had instructed experienced housing solicitors, who were on the record for him throughout and had been responsible for the late submission of the application notice, was sufficient for him to show 'good reason'.

Jay J dismissed the appeal. There was no rule of law that instructing seemingly competent solicitors was, of itself, sufficient to amount to 'good reason' or 'good cause' for any subsequent delay. Absent any direct evidence as to why the application to extend time had been made late, the judge had been entitled to hold that the second condition was not made out.

■ Ealing LBC v Purewal

B5/12/3203,
5 November 2013

The applicant was a disabled woman living in wheelchair-adapted accommodation. She made an application for homelessness assistance contending that she could no longer reasonably occupy her home: HA 1996 s175(3). The application was based on an assertion that she had been assaulted by a neighbour and had been subject to harassment and threats after reporting the assault. The council decided that she was not homeless. The decision was upheld on review. A judge allowed an appeal on the basis that the reviewing officer had not considered relevant material. He decided to vary the decision (HA 1996 s204(3)) to one that the applicant was homeless as the council could not lawfully reach any other conclusion.

The Court of Appeal allowed the council's appeal. The council had rightly asserted that, on the fresh review being correctly conducted on all the available material, a reasonable council might or might not conclude that the applicant was homeless. In those circumstances, the judge should not have varied the order but simply remitted the review to the council.

■ Unichi v Southwark LBC

[2013] EWHC 3681 (QB),
16 October 2013

Ms Unichi applied to the council for homelessness assistance under HA 1996 Part 7. It decided that she had become homeless intentionally (section 191). She applied for a review and told the council that she would provide a psychologist's report with details of her learning difficulties in support of that review request. She asked the council not to conclude the review until that report was provided. The reviewing officer declined to wait and upheld the original decision. An appeal was lodged and the report was provided to the council. Upon receipt of it, the council agreed to carry out a fresh review. The parties were unable to agree the costs of the appeal. A recorder made no order as to costs and Ms Unichi appealed.

Andrews J held, applying *M v Croydon LBC* [2012] EWCA Civ 595, 8 May 2012, that it was clear that Ms Unichi had obtained the substantive relief she had sought in the appeal. The council had been alerted to the importance of the report but had decided to determine the review before it was available. The costs were payable by the council.

1 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/257007/mortgage-landlord-possession-bulletin-q3-2013.pdf.
2 Available at: www.cml.org.uk/cml/media/press/3731.
3 Available at: www.courtsni.gov.uk/en-GB/Publications/Press_and_Media/Documents/p_pr_29-13/p_pr_MortgageJulSep13.html.
4 Available at: www.cml.org.uk/cml/policy/issues/4495.
5 Available at: www.audit-commission.gov.uk/wp-content/uploads/2013/11/Protecting-the-public-purse-2013-Fighting-fraud-against-local-government.pdf.
6 Available at: www.cih.org/freepublications.
7 Available at: www.justice.gov.uk/courts/procedure-rules/civil/rules/practice-direction-solicitors-negligence-in-right-to-buy-cases.
8 See: www.gov.uk/government/news/ swindon-leads-the-way-in-taking-up-the-right-to-buy.
9 See: www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131104/text/131104w0004.htm#13110512000007.
10 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/184207/discretionary-housing-payments-guide.pdf.
11 Available at: www.cih.org/freepublications.
12 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/256523/The_Housing__Right_To_Transfer_from_A_Local_Authority_Landlord___England__Regulations_2013.pdf.
13 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/256529/131111_Housing_Transfer_Manual_-_Period_ to_31_March_2015_as_published.pdf.
14 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/256525/Housing_Transfer_Manual_-_Summary_of_Responses_to_consulation.pdf.
15 Available at: www.gov.uk/government/publications/anti-social-behaviour-order-statistics-england-and-wales-2012.
16 Available at: www.legislation.gov.uk/ukdsi/2013/9780111105122/pdfs/ukdsi_9780111105122_en.pdf.
17 Available at: www.parliament.uk/briefing-papers/SN06000.pdf.
18 See: www.landlords.org.uk/node/8726.
19 Available at: www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/616/616.pdf.
20 Available at: www.publications.parliament.uk/pa/bills/cbill/2013-2014/0016/14016.pdf.
21 Available at: www.longertermtenancies.com/long-term-tenancies-ball-report-october-2013.pdf.
22 Available at: http://england.shelter.org.uk/campaigns/fixing_private_renting/letting_agencies/report_hidden_letting_fees.
23 Available at: www.housemark.co.uk/hmresour.nsf/lookup/Complaints_Benchmarking_summary_report_2012-13.pdf/$File/Complaints_Benchmarking_summary_report_2012-13.pdf.
24 Available at: www.spso.org.uk/sites/spso/files/communications_material/annual_report/Complaints-reports/SPSO%20housing%20complaints%20report%202012-13.pdf.
25 Jeinsen Lam, Merton Law Centre® and Michael Paget, barrister, London.

CORRECTION

In 'Recent developments in housing law', October 2013 *Legal Action* 35, we wrongly reported the case of *Isse v Haringey LBC*. The respondent in this case was, in fact, Wandsworth BC: *Isse v Wandsworth BC* [2013] EWCA Civ 1049, 14 May 2013.

Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. The authors are grateful to the colleagues at note 25 for the transcript or note of the judgment.