

# 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

### Social housing allocation

The latest statistical data on lettings of social housing in England by councils and housing associations is given in the *Social lettings tables: 2011 to 2012* (Department for Communities and Local Government (DCLG), December 2012).<sup>1</sup> There were 266,000 general needs lettings in 2011/2012 – a one per cent fall from 269,000 in 2010/2011. This has been caused by a reduction in the number of local authority lettings from 117,000 to 113,000 households, while the number of housing association lettings has increased from 151,000 to 153,000.

The reduction in local authority lettings reflects a continuing decline in the size of the council housing stock, detailed in *Local authority housing statistics: 2011–12 Local authority-owned stock and stock management* (DCLG, December 2012).<sup>2</sup> The same report indicates that the number of applicants on council waiting lists has continued to grow.

### Private rented sector

The Greater London Authority (GLA) has published *The mayor's housing covenant: Making the private rented sector work for Londoners* (GLA, December 2012).<sup>3</sup> The report proposes a new 'London rental standard' for private rented sector housing in the capital. Responses to it are invited by 15 February 2013. The new proposals should be seen in the context of the mayor's general policy on private renting issues in London, summarised in a GLA press release on 13 December 2012.<sup>4</sup>

### Housing and anti-social behaviour

The Home Office has published a draft Anti-social Behaviour Bill setting out changes to the law on injunctions, anti-social behaviour orders (ASBOs), dispersal and closure orders, and introducing new 'absolute grounds' for possession. It is accompanied by four impact assessments:

1) *Reform of the anti-social behaviour toolkit –*

*criminal behaviour order, crime prevention injunction and dispersal powers* (Home Office, 13 December 2012);<sup>5</sup>

2) *New powers to speed up eviction for serious anti-social behaviour* (Home Office, 6 December 2012);<sup>6</sup>

3) *Reform of anti-social behaviour powers: community protection notice, community protection orders and the community trigger* (Home Office, 13 December 2012);<sup>7</sup>

4) *Introduce the community remedy* (Home Office, 13 December 2012).<sup>8</sup>

The Home Affairs Select Committee has issued a call for oral and written evidence about the draft bill before producing its own report as part of the bill's pre-legislative scrutiny.<sup>9</sup>

The Home Office has also launched a separate consultation exercise on the bill's provisions to allow police and crime commissioners (or the relevant local policing body) to give victims of anti-social behaviour a say in the punishment of the offender. The consultation closes on 7 March 2013 and responses are invited by completion of an on-line form.<sup>10</sup>

The UK government has also published *Working with troubled families: A guide to the evidence and good practice* (DCLG, December 2012).<sup>11</sup> The guide reviews evidence and good practice in working with troubled families to reduce their anti-social behaviour.

### Gypsies and Travellers

A 'temporary stop notice' can be served to bring an immediate end to a breach of planning controls, but cannot be served by a planning authority in England where the unauthorised use of land is placement of an occupied caravan: Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 SI No 206. On 27 December 2012, the DCLG launched a consultation on proposals to remove the prohibition: *Changes to temporary stop notices: revoking Statutory Instrument 2005/206 consultation* (DCLG, December 2012).<sup>12</sup> The closing date is 13 February 2013.

On 17 December 2012, the House of Lords

gave a third reading to a Caravan Sites Bill designed to cast a duty on every local authority in England to grant planning permission for sufficient Gypsy and Traveller caravan sites in their area. The bill now moves to the House of Commons.

### Rents in social housing

The Homes and Communities Agency (HCA) has published its guideline rent limit for private registered providers (mainly housing associations) for the financial year 2013/14: *Guideline rent limit for private registered providers 2013–14* (HCA, December 2012).<sup>13</sup>

### Complaints about social housing

The Chartered Institute of Housing (CIH) has published *Complaints: CIH Charter for Housing* (CIH, December 2012) to help social landlords improve their arrangements for the handling of housing complaints.<sup>14</sup>

## HUMAN RIGHTS

### Article 8

#### ■ **Evans v Brent LBC**

*QB/2012/0243,*  
18 December 2012

A council tenant died. His daughter claimed that she had succeeded to his tenancy. The council decided that she did not meet the succession conditions under Housing Act (HA) 1985 s87. It refused to grant her a discretionary tenancy and sought possession. Her defence asserted that: (a) she did meet the 12-months qualifying condition for succession; (b) if not, the decision to bring the claim was vitiated by a public law irregularity in refusing the discretionary tenancy; and (c) eviction would infringe her rights under article 8 of the European Convention on Human Rights ('the convention'). A judge decided that none of the issues gave rise to an arguable defence (see Civil Procedure Rules r55.8) and made a possession order at a summary hearing.

Ramsey J allowed the daughter's appeal. While the second and third aspects of the defence were not seriously arguable, the first raised issues of fact which required a trial. There was strong evidence in favour of the local authority and the defendant which required further investigation.

#### ■ **R (Chatting) v Viridian Housing**

*[2012] EWHC 3595 (Admin),*  
13 December 2012

The defendant housing association provided accommodation and support for an elderly tenant. It decided to withdraw from the business of providing personal care services. It continued as the claimant's landlord, but arranged for a specialist contractor to provide her with care and support. She sought judicial

review of this decision, claiming that it breached her article 8 right to respect for her private life, both substantively and (because she had not been consulted) procedurally.

Nicholas Paines QC, sitting as a deputy High Court judge, dismissed the claim. Although such a decision might in principle engage article 8, in this case the change in the legal identity of the care provider had no substantive adverse effect on the claimant's private life. There had therefore been no obligation to consult her.

## ASSURED SHORTHOLD TENANCIES

### Rent repayment orders

#### ■ **Parker v Waller**

[2012] UKUT 301 (LC),  
26 November 2012

A landlord let a house in multiple occupation (HMO) without obtaining a licence. He was prosecuted, convicted and fined. The occupiers then applied for a rent repayment order (HA 2004 s73). The Southern Rent Assessment Panel of the Residential Property Tribunal Service (RPTS) ordered a total repayment of £15,423. This represented 100 per cent of the rent that the tenants had paid. The landlord appealed.

George Bartlett QC, President of the Lands Chamber, held that the panel had erred. Although the statutory scheme provided that if the rent had been paid by housing benefit it had to be repaid in full in the absence of 'exceptional circumstances', the scheme allowed a wider discretion where the rent had been privately paid. The president reduced the amount repayable to 75 per cent of the rent paid, less the costs and the fine which the landlord had to pay. The total was reduced to less than £6,000.

#### ■ **Various occupiers v Kalam and Begum**

*London Rent Assessment Panel*,  
26 November 2012

The applicants were students who had occupied premises let by the defendants for the academic year 2011 to 2012. The defendants had been convicted and fined for letting the property without an HMO licence. The local council helped the students apply for a rent repayment order.

The London Rent Assessment Panel of the RPTS made an order awarding six students £6,500 each – a total of £39,000.

## ANTI-SOCIAL BEHAVIOUR

### Introductory tenancies

#### ■ **Wolverhampton City Council v Shuttleworth**

[2012] 27 November, QB<sup>15</sup>

Wolverhampton Council granted Ms Shuttleworth an introductory tenancy. After receiving complaints of anti-social behaviour, the council served a HA 1996 s128 notice. The notice informed her that she had a right to review. It stated: 'You have the right to request a review ... Any request must be made within 14 days of service of this Notice. To make a request for a review you should complete the enclosed form and return it to your local housing office.' Ms Shuttleworth did not request a review. The council issued a claim for possession. HHJ Mithani struck out the claim for possession on the basis that the notice was defective in that it restricted the way in which Ms Shuttleworth could request a review. The council appealed.

Keith J allowed the appeal. He addressed the question of construction of the notice. Did the notice and the form stipulate that using the form was the only way in which Ms Shuttleworth could request a review? There was a contrast between the words 'must' and 'should'. 'Must' meant that the time limit of 14 days was mandatory. The fact that 'should' was used in relation to filling in the form should be treated as a recommendation or encouragement only. There was nothing on the notice to say that a tenant had to fill in the form. The notice was valid. Keith J made a possession order to take effect in 28 days.

### Sentence for breach of anti-social behaviour injunction

#### ■ **Islington LBC v Doey**

[2012] EWCA Civ 1825,  
11 December 2012

Islington Council granted Mr Doey a tenancy. After complaints of anti-social behaviour, the council obtained an interim injunction restraining him from causing nuisance to a neighbour. He breached that injunction. The court imposed a suspended sentence of 14 days' imprisonment. Later, the court made a suspended possession order and an anti-social behaviour injunction (ASBI) with a power of arrest. Mr Doey breached the ASBI by making noise, shouting, banging doors, arguing loudly with a girlfriend and threatening the neighbour. He was arrested and admitted the breach. When sentencing him, HHJ Cryan had regard to the Sentencing Guidelines Council's *Breach of an anti-social behaviour order: Definitive guideline* (2008).<sup>16</sup> He decided that Mr Doey's behaviour fell towards the higher end of the middle category. He found that his conduct was so serious that a custodial sentence was

required. He took 24 weeks as the starting point but, because of the defendant's admissions, reduced it to 16 weeks, to which the earlier suspended sentence, which was activated, was added but was to be served concurrently. Mr Doey appealed.

The Court of Appeal dismissed his appeal. Although the guidelines were only directly applicable to criminal sentences, they had an obvious role in civil contempt cases (see *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817, 30 May 2012; [2012] HLR 43). The defendant's lack of foresight when drunk was why he should not have allowed himself to get drunk. Drunkenness was normally an aggravating, not a mitigating, factor. The judge had been entirely correct to take the view that this case fell at the higher end of the middle category of breaches or at least on the border between the middle and higher categories. The 16-week sentence was a proper one within the permissible range and in line with the guidelines.

#### ■ **Eaton Mansions (Westminster) Ltd v Stinger Compania de Inversion SA**

[2012] EWHC 3354 (Ch),  
27 November 2012

The claimant company sought damages for trespass. The trespass consisted of installing air conditioning equipment on the roof of a block of flats without the claimant's consent. It invited the court to award aggravated and exemplary damages in the light of the flagrant conduct of the defendant.

The High Court held that (1) aggravated damages were designed to compensate for distress and injury to feelings and that such damages were accordingly not payable to a company and (2) the conduct of the defendant had not been so outrageous as to reach the threshold for exemplary damages.

## POSSESSION CLAIMS

### Trespassers

#### ■ **City of London v Persons unknown**

[2012] EWCA Civ 1648,  
21 November 2012

Mr Moran was one of the protesters encamped outside St Paul's cathedral. When he learned of the possession claim, he decided to attend a case management hearing at the High Court and apply for permission to be added as a named defendant. He arrived late and the judge had no written application from him. The judge added three other named individuals and decided that, in order to keep the case manageable, no more applicants should be joined as defendants. Mr Moran lodged an appeal. The possession claim was tried and possession was granted. Permission by other occupiers to appeal that order was refused.

The Court of Appeal refused Mr Moran's

application for leave to appeal against the refusal to join him as a party. It had no arguable merit and had been rendered academic.

## LONG LEASES

### Service charges

#### ■ **Arnold v Britton**

[2012] EWHC 3451 (Ch),  
3 December 2012

The claimant lessor let chalets on a leisure park. The leases required the defendant lessees to pay an annual charge in a specified amount 'as a proportionate part of the expenses and outgoings' incurred by the lessor. In the county court, HHJ Jarman QC held that this was a variable service charge triggering the controls on such charges contained in the Landlord and Tenant Act 1985.

Morgan J allowed the lessor's appeal. On a true construction, the charge was a fixed annual sum payable under the lease and not a service charge.

#### ■ **R (Khan) v Upper Tribunal (Lands Chamber)**

[2012] EWCA Civ 1669,  
14 November 2012

The claimant held a long lease of a flat in a block. A resident-owned management company incurred legal costs of £75,000 in earlier litigation against him. The claimant referred those costs to a costs judge for assessment. They were reduced to £25,000. The company then sought to recover the full £75,000 from all the residents by way of service charges. A leasehold valuation tribunal held that the lease entitled the company to recover its full costs. The Upper Tribunal refused permission to appeal from that decision. The claimant sought judicial review of the refusal of permission. The High Court refused permission. The £25,000 assessment simply capped what the company could recover from the paying party in the litigation. It did not prevent the company recovering its full costs through the service charges.

The Court of Appeal refused a renewed application for permission to appeal against that decision.

### Variation of leases

#### ■ **Tweedie v Souglides**

[2012] EWCA Civ 1546,  
4 December 2012

Mr and Mrs Souglides held the sublease of a flat. They entered into a deed of variation with their landlord to extend the premises let by the sublease to include a roof terrace. Later, an issue arose as to whether, after the deed of variation, the couple held the same legal interest in the flat as they had done before. Newey J decided that they did.

The Court of Appeal allowed an appeal by the freeholders, who were asserting that they did not. It held that the deed of variation operated by way of surrender and re-grant because it is not possible to vary an original lease by adding additional land to the demised premises. The couple therefore held under a new lease pursuant to that re-grant even if otherwise on the same terms as the previous lease.

## ADVERSE POSSESSION

#### ■ **Hounslow LBC v Devanney**

[2012] EWCA Civ 1660,  
13 December 2012

The council brought a claim for possession of land it owned. Mr Devanney claimed that he had acquired title to the land by adverse possession. This required him to show that by 13 October 2003 he had been in continuous adverse possession for 12 years. HHJ Oppenheimer was satisfied on the evidence that there were periods during which he had not been in occupation and made a possession order.

The Court of Appeal dismissed Mr Devanney's appeal. The judge had been entitled to hold that the evidence demonstrated that at least at one point in the necessary period Mr Devanney had not been occupying the land at all.

## CRIMINAL OFFENCES

#### ■ **Health and Safety Executive v Apollo Property Services Group Ltd**

Central Criminal Court,  
17 December 2012

In 2008, the defendant undertook roof refurbishment works on the Abbey Road Estate in Camden. During the works, seven residents were exposed to carbon monoxide because boiler flues servicing the flats were obstructed. The defendant knew that some flues might still be serving boilers in the properties but did not have an adequate system for inspecting them. Work continued without checks being carried out.

The defendant was found guilty of breaching Health and Safety at Work etc Act (HSWA) 1974 s3(1). It was (1) fined £165,000; (2) ordered to pay £117,582 costs; and (3) required to pay £19,000 in compensation.

#### ■ **Health and Safety Executive v Chesterfield BC**

Chesterfield Magistrates' Court,  
13 December 2012

The council was notified that the chimney stack of one of its tenanted houses was leaning and in danger of collapsing. The council arranged

for it to be removed by a contractor and capped. However, the stack contained the flue for a gas fire and gas-fired back boiler and the capping meant that they were no longer safely vented to open air. The contractor had not been told of the presence of the fire and boiler. The problem was only discovered six weeks later during an annual gas safety inspection. The Health and Safety Executive prosecuted for breach of HSWA s3(1) for failure to maintain the property in such a way that the tenant was not exposed to the risks associated with carbon monoxide. The council pleaded guilty.

Chesterfield Magistrates' Court fined the council £18,000 and ordered it to pay costs of £7,534.

#### ■ **Darlington BC v Uddin**

Darlington Magistrates' Court,  
30 November 2012

The defendant owned a restaurant. On an inspection in 2011, council officers found people living both above and below the restaurant in squalid conditions without amenities or fire safety protection. It issued an emergency prohibition notice to prevent the premises being occupied. When a subsequent inspection found residents still in occupation, the council prosecuted. The defendant was found guilty of breach of the notice.

He was fined £3,000 and ordered to pay costs of £300 and a victim surcharge.

## HOMELESSNESS

### Interim accommodation Local Government Ombudsman Complaint

#### ■ **Croydon LBC**

11 005 774,  
12 December 2012

The complainant lived with her young children and her partner in private rented accommodation. Three unknown men armed with hammers and knives broke into their home and seriously assaulted them. The man was hospitalised and the complainant and her children fled to her mother's home before applying to Croydon Council for homeless assistance on 28 April 2010. The council failed to offer interim accommodation under HA 1996 s188 until June 2010. It failed to notify a decision on the application (required by section 184) until 19 November 2010. The only accommodation offered during the interim period was bed and breakfast (B&B), despite the fact that the family included dependent children. B&B was made available for a period in excess of six weeks contrary to the Homelessness (Suitability of Accommodation) (England) Order 2003 SI No 3326.

The Local Government Ombudsman found extensive maladministration. She recommended

an apology, £2,500 compensation and a review of policy and practice on handling homelessness applications.

### Accommodation pending review

#### ■ R (Miah) v Westminster City Council

[2012] EWHC 3563 (Admin),

7 November 2012

The claimant applied to Westminster Council for homelessness assistance under HA 1996 Part 7. The council decided that he had become homeless intentionally (section 191). The claimant sought a review of that decision (section 202) and the provision of accommodation pending the review (section 188(3)). The council refused such accommodation and the claimant sought a judicial review.

Francis Patterson QC, sitting as a deputy High Court judge, decided that there was an arguable case that the refusal of accommodation pending review had been unlawful. In particular, (1) the council had relied on documentation mentioned in the letter refusing accommodation which had not been mentioned in the decision letter on intentional homelessness and (2) it had given the claimant no opportunity to comment on it. The judge continued an injunction requiring the council to accommodate the claimant until the trial of the claim or the completion of the review.

### HOUSING AND COMMUNITY CARE

#### ■ R (Cornwall Council) v Secretary of State for Health

[2012] EWHC 3739 (Admin),

21 December 2012

A disabled young man had been provided with accommodation under Children Act 1989 s20. When he reached 18, the local authorities for the areas in which he had lived could not agree which of them was responsible for accommodating him as an adult under National Assistance Act (NAA) 1948 s21. They asked the secretary of state to decide the issue under the dispute resolution procedure in NAA s32. They agreed that the question would turn on where the man had been 'ordinarily resident' on the day before he turned 18. The secretary of state decided that he had been ordinarily resident in Cornwall. That decision was then challenged in judicial review proceedings brought by Cornwall Council.

Beatson J dismissed the claim. The secretary of state's decision had not been vitiated by any legal error. The judgment contains useful guidance on deciding which council bears responsibility under NAA s21 when a child turns 18.

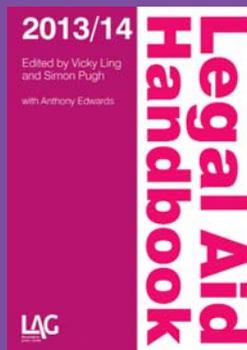
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Jan Luba QC is a barrister at Garden Court Chambers. He is also a recorder. Nic Madge is a circuit judge. The authors are grateful to the colleague at note 15 for the transcript or note of judgment.

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