

# 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

### Homelessness

In the third quarter of 2012, the number of cases in which an application for homelessness assistance made to a local authority in England led to the acceptance of the main housing duty under Housing Act (HA) 1996 s193 reached 13,890, an 11 per cent increase on the same quarter in 2011: *Statutory homelessness: July to September quarter 2012 England* (Department for Communities and Local Government (DCLG), December 2012).<sup>1</sup> This continues an upward trend which started in 2010 and is causing a significant bottleneck in temporary accommodation. The figures show that on 30 September 2012 there were 52,960 households in such accommodation, 8 per cent higher than at the same date in 2011.

The unlawful practice of accommodating families in bed and breakfast (B&B) accommodation for more than six weeks (contrary to the Homelessness (Suitability of Accommodation) (England) Order 2003 SI No 3326) has reached epidemic proportions. On 30 September 2012:

... 880 [households] had been in bed and breakfast style accommodation for six or more weeks ... an increase of 185% since the end of the same quarter last year. ... there were 120 households headed by 16 and 17 year old applicants in bed and breakfast style accommodation ... 50 of these had been there for six or more weeks. (*Statutory homelessness* (see above), p6).

Advisers able to provide examples of the practice of using B&B for teenagers are invited to contact the young people's programme development consultant at the Law Centres Network.<sup>2</sup>

Faced with the spiralling numbers of applicants, some local housing authorities are splitting large homeless households into separate units of temporary (or permanent)

housing accommodation. Shelter has indicated that it would be interested to hear from advisers about any cases in which this has happened.<sup>3</sup>

An analysis of the recent trends for homelessness figures in England has been prepared by the House of Commons Library: *Homelessness* (SN/SG/2646, p34).<sup>4</sup>

The Scottish government has issued its latest statistics on applications made for homelessness assistance to local authorities in Scotland: *Operation of the homeless persons legislation in Scotland. Quarterly update: April–June 2012* (National Statistics Publication for Scotland, October 2012).<sup>5</sup> The figures show that over 10,000 applications were made in the second quarter of 2012. Of those, 93 per cent were in priority need. Since 31 December 2012 the concept of 'priority need' has been removed from the statutory scheme for homeless people in Scotland: *Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012 SSI No 330*.

The Welsh government has been reviewing proposals to amend the statutory regime for homelessness assistance in Wales (which is presently the same scheme as that operating in England, ie, HA 1996 Part 7). It has published a new report containing a statistical assessment of the likely effects of any proposed changes: *Assessing the impacts of proposed changes to homelessness legislation in Wales: A report to inform the review of homelessness legislation in Wales* (Welsh government, September 2012).<sup>6</sup>

### Possession claims

The latest UK government figures for possession claims in the county courts cover the period from July to September 2012: *Statistics on mortgage and landlord possession actions in the county courts in England and Wales* (Ministry of Justice, November 2012).<sup>7</sup> They show that:

- 38,947 landlord possession claims were issued;
- 25,756 landlord possession claims

led to an order;

- 14,599 warrants for possession were issued for landlords; and
- there were 8,738 actual repossessions for landlords by county court bailiffs.

All these figures were higher than in the previous year, continuing the upward trend since 2010. The majority of the claims were brought by social landlords.

The same official figures reveal a decline in court-based repossession activity by mortgage lenders. The Council of Mortgage Lenders has reported that a total of 8,200 properties were taken into possession by its members in the third quarter of 2012, down from 8,500 in the second quarter and from 9,600 last year. This is the lowest number of properties taken into possession in a single quarter since 2007.<sup>8</sup>

### Social housing allocation

New regulations, requiring local housing allocation schemes in England to give 'additional preference' to certain members – and former members – of the armed forces in urgent housing need, came into force on 30 November 2012: *Housing Act 1996 (Additional Preference for Armed Forces) (England) Regulations 2012 SI No 2989*. The regulations achieve their effect by amending HA 1996 s166A(3). Advisers must ensure that any copy of the HA 1996 to which they refer contains that revision. The explanatory memorandum accompanying the regulations reveals that a number of respondents to the consultation on a draft sought clarification of the terminology used, for example, what was meant by 'urgent need', 'former Service personnel' and 'additional preference'.<sup>9</sup> In the event, no definitions were included in the final regulations.

### Social housing tenants and welfare reform

During 2013, the ability of working-age tenants of social housing to meet their rents may be affected by a combination of four welfare reforms:

- the social sector size criteria for housing benefit (HB) ('the bedroom tax');
- the overall benefit cap of £26,000 per annum;
- the abolition of council tax benefit and its replacement by local schemes with reduced funding; and
- the phased introduction of universal credit.

A new review of the likely impacts of universal credit on low income working households has been published: *Making work pay: universal credit & low income working households* (Chartered Institute of Housing (CIH), November 2012).<sup>10</sup> CIH has also published a guide providing practical advice, checklists and suggestions to help housing organisations to prepare for the changes:

*Welfare reform: practical approaches* (CIH, December 2012).<sup>11</sup>

Tenants who are likely to be caught by changes to HB because they are under-occupying may be well advised to take in lodgers. Landlords are helped to encourage that process by the publication

*How to ... support tenants to find a lodger* (CIH, 2012).<sup>12</sup>

In Northern Ireland, the Federation of Housing Associations has called on the UK government to defer the under-occupation changes for a further six months to enable social landlords to prepare for the impact.<sup>13</sup> For its part, the Northern Ireland Housing Executive (the major social landlord in Northern Ireland) has published on-line information for its tenants, with worked examples, explaining the impact of the changes.<sup>14</sup>

### Social housing fraud

By the end of 2012 the Prevention of Social Housing Fraud Bill had completed all its stages in the House of Commons and had had its second reading and committee stage in the House of Lords. The latest version of the bill is now available.<sup>15</sup>

The 'making best use of stock' team at CIH has published a practice note on the bill's provisions.<sup>16</sup> The team has also prepared a new briefing on *How to ... make the case for tackling tenancy fraud*.<sup>17</sup>

### Private rented sector

A survey of over 1,000 private landlords in relation to recent and prospective HB changes and to the introduction of universal credit has indicated the likely impacts in the private letting market: *RLA/SAL universal credit survey* (Residential Landlords Association, 2012).<sup>18</sup> On 31 October 2012, Lord Freud, the welfare reform minister in the UK government, gave a speech to the National Landlords Association outlining 'what the state is prepared to pay' to private landlords through the HB scheme.<sup>19</sup>

A recent report suggests that the UK government should be doing more to assess the public health impacts of these welfare reforms on private rented sector tenants: *Poor homes, poor health – to heat or to eat? Private sector tenant choices in 2012* (Pro-Housing Alliance, October 2012).<sup>20</sup>

In what may be an indication of the beginning of the end of cross-party support for short-term private sector tenancies at market rents, the Labour Party has published: *Labour's policy review: private rented housing*.<sup>21</sup>

### Housing and anti-social behaviour

The Anti-social Behaviour Bill, designed to give effect to the UK government's commitment to replace and simplify the tools and powers available to deal with anti-social behaviour, will

pass through parliament during 2013. On 31 October 2012, the House of Commons Home Affairs Select Committee announced that it would conduct pre-legislative scrutiny. The committee has invited written evidence and will begin to take oral evidence in January 2013.<sup>22</sup>

### Mobile homes

The new Mobile Homes Bill has completed all its House of Commons stages and had its first reading in the House of Lords on 3 December 2012. The latest version of the bill is now available.<sup>23</sup> A dedicated web page has been established on the new 'gov.uk' website to bring together all the latest information and materials about improving protection of the rights of those occupying mobile homes.<sup>24</sup>

On 19 November 2012, new rules came into force in Wales setting out the terms of the new written statement that site owners must provide in relation to an agreement to station a mobile home on a protected site in Wales: Mobile Homes (Written Statement) (Wales) Regulations 2012 SI No 2675.

## HUMAN RIGHTS

### Article 6

#### ■ Velimirović v Montenegro

*App No 20979/07, 2 October 2012, [2012] ECHR 1774*

Mr Velimirović was an employee of a state-owned company, which let several flats to workers. Mr Velimirović applied for one. When he was not successful, he made an application to the Labour Court. In 1991, the court ordered the company to re-allocate a number of the flats. In 1992, the High Court upheld that judgment. Despite many further court hearings, the company never complied with the judgment.

The European Court of Human Rights (ECtHR) held that there had been a denial of justice to the applicant contrary to article 6. It awarded €3,600 compensation.

### Article 8

#### ■ Affinity Sutton Homes Ltd v Cooper

*Bromley County Court, 17 October 2012*<sup>25</sup>

Ernest Cooper was granted a secure tenancy by Bromley LBC. There was a large-scale transfer of Bromley's housing stock to Affinity. As a result, Mr Cooper became an assured tenant. Accordingly, there was no statutory right for any family member other than a spouse to succeed, but his new tenancy agreement contained a contractual option for a new tenancy to be granted to any family member who resided with the tenant throughout the 12-month period before his or her death. It

stated: 'all claims to succeed to the tenancy must be made ... in writing within six months of the death of the tenant'. Mr Cooper died in March 2009. His son Colin Cooper, who had been living with him for 37 years, did not make a claim within six months of his father's death but Affinity was aware during the six-month period that he wanted to succeed to the tenancy. Affinity did not ask him to give a written request for a new tenancy, but served a notice to quit and began a possession claim. Colin Cooper was sectioned under the Mental Health Act (MHA) 1983 in October 2009.

District Judge Brett dismissed the possession claim because the claimant had waived its right to insist on written notice. He also accepted the defendant's article 8 defence. He found that the claimant was a public authority. He continued:

*... apart from a technical omission (failure to serve written notice) [he] would have an incontrovertible right to a tenancy ... and because of this it would be disproportionate to deny him the right to continue to reside in a home where he has been for 37 years.*

The claim fell foul of article 8.

## PUBLIC SECTOR

### Power to lease

#### ■ Charles Terence Estates Ltd v Cornwall Council

*[2012] EWCA Civ 1439, 13 November 2012*

The council was established in April 2009 as a unitary authority. It absorbed, among others, the liabilities of a district council and a borough council. Those two councils had taken long leases of 30 properties from Charles Terence Estates. The properties were used to provide temporary accommodation for homeless people. The councils had supplied loans and grants to the company to help it enter into private sector leasing arrangements in this way. The new unitary council did not wish to be bound by the leases and ceased to pay the rents. The company claimed for unpaid rents and the council counterclaimed for restitution of the rents, grants and loans already paid. Cranston J dismissed both claims. ([2011] EWHC 2542 (QB); November 2011 *Legal Action* 39). He found that the leases had no legal effect and were nullities because they had been entered into by both the previous councils in breach of their fiduciary duties to have regard to prevailing market rents.

The Court of Appeal allowed an appeal by Charles Terence Estates on the fiduciary duty issue. There was no justification for reading the words 'at a reasonable price' into the council's

statutory power to acquire housing (HA 1985 s17). There had been no evidential basis to conclude that the rents agreed by the district councils were not fair and reasonable. There had been no expert evidence on rental levels in the local area. The rents were not so unreasonable as to be contrary to law, a breach of fiduciary duty or otherwise ultra vires. Furthermore, even if the judge had been right to hold that there had been a breach of fiduciary duty, it did not follow that the leases were void because there was no question of the district councils having lacked capacity to enter into the leases.

## POSSESSION CLAIMS

### Reasonableness

#### ■ Birmingham City Council v Ashton

[2012] EWCA Civ 1557,  
29 November 2012

In December 1997, Birmingham City Council let premises to Mr Ashton on a secure tenancy. The council's standard terms and conditions imposed an obligation not to do anything 'which causes or is likely to cause a nuisance to anyone in the local area'; not to do anything 'which interferes with the peace, comfort or convenience of other people living in the local area'; and not to 'harass or threaten to harass, or use violence towards anyone in the local area'. In 2004 Mr Ashton was convicted of possession of an offensive weapon. In May 2007 he brandished a baseball bat in an aggressive manner in front of the premises and was convicted of affray. Later in May 2007, after being asked to turn his music down, he threatened a neighbour with a 12-inch kitchen knife and was subsequently convicted of affray. In October 2010, he was sentenced for offences of affray and possession of an offensive weapon (a two-foot long samurai sword) relating to an incident which took place at the premises. He was made the subject of a community order, which included a condition preventing him from returning to the property for three years. For a while he was sectioned under the MHA 1983 and detained in hospital. In January 2011, Birmingham served a notice seeking possession, relying on HA 1985 Sch 2 Grounds 1 and 2.

HHJ Owen QC found that the grounds for making a possession order were proved and that it was reasonable to make a possession order. However, he decided to suspend the possession order on terms. Birmingham appealed, submitting that the judge had not given sufficient consideration to the matters set out in HA 1985 s85A(2) (the effect of the tenant's conduct in the past, the present and the future) and that he should have made an assessment of the effect of the

tenant's conduct.

The Court of Appeal allowed the appeal. There was still a significant risk of future harmful events occurring. The judge's analysis of the situation was flawed. There was undoubtedly a past history of lapses from sobriety which did not appear to have been given any weight by the judge. It was clear that if Mr Ashton relapsed into abuse of drink or drugs, further highly unpleasant incidents of the sort which had occurred in the past were 'very likely to recur' (para 39). The judge did not appear to have made any assessment of that sort for himself. Treacy LJ said:

*It seems to me that there existed at the time of the hearing a significant risk for the future which had not been properly addressed, and that the judge had over-concentrated on the respondent's present condition. He did not adequately address the fact that, if there were repetition, it would represent a fifth incident for the respondent's neighbours who had already suffered four in six years. ... The onus should be on the party who seeks to have the benefit of suspension of a possession order, (which by definition the judge has already found it was reasonable in the circumstances to make), to provide cogent evidence to show that what can generally be characterised as anti-social behaviour will not recur, or will be unlikely to do so (paras 41 and 42).*

### Equality Act 2010

#### ■ The Ralph & Irma Sperring Charity v Tanner

Bristol County Court,  
16 October 2012<sup>26</sup>

In 2002 the claimant charity granted Ms Tanner an assured shorthold tenancy. In 2009, the landlord began to receive complaints about the condition of the property and the garden. A number of inspections were carried out. The landlord wrote to the tenant explaining what works were required of her. In December 2011 the landlord was informed that Ms Tanner had a learning disability. A later report from a clinical psychologist indicated that the state of the property and garden was attributable to the tenant's inabilities because of her learning disability. The charity served a HA 1988 s21 notice and issued possession proceedings under the accelerated procedure. Ms Tanner defended, relying on Equality Act 2010 ss15 and 35.

At trial, the claimant conceded that the defendant had a disability and that causation was established. The issue was whether an eviction was a proportionate means of achieving a legitimate aim. The evidence at trial was that there had been improvement over time and the property was currently at an acceptable standard. There was also evidence

of support that had recently been put in place and that yet more intensive support was to be introduced.

HHJ Rayner refused to make a possession order, accepting that it was not proportionate to evict the defendant. The judge found that some of the issues complained of were not legitimate complaints by a landlord (for example, clothes not having been put away) and that there was no evidence of damage to the property itself. He took into account a number of factors:

- the low risk of the tenancy terms and conditions not being met in the future: he found that the aim of ensuring compliance with the tenancy could perfectly well be met by leaving the defendant in possession;
- the property was in a reasonable state of repair, ie, the defendant's conduct had not caused damage to the structure of the property;
- the relevant breaches of the tenancy had now been addressed;
- between 2002 and 2009 there had been no problems with the tenancy; and
- there would plainly be considerable distress involved in the eviction – the defendant's 11-year-old daughter had never known any other home.

### Possession procedure

#### ■ Hounslow LBC v Cumar

[2012] EWCA Civ 1426,  
2 October 2012

The defendant was a secure tenant of Hounslow Council. A claim for possession was issued against him naming Hounslow Homes, an arms length management organisation (ALMO), as the claimant. The defendant argued that he was not the tenant of the claimant and that the court could not order the council to be substituted as claimant because Civil Procedure Rule (CPR) 19.2(4) allowed substitution only when a new claimant had acquired a previous claimant's interest. The judge decided that he could use his powers to (1) add the council as a party and then (2) remove the ALMO as a party, leaving the council as the only claimant. The tenant appealed to the Court of Appeal on the ground that this circumvented the terms of CPR 19.2(4).

The appeal failed. The Court of Appeal held that there was no prohibition on the court doing in two steps what the rules prevented it doing in one.

## FREEDOM OF INFORMATION

### ■ Complaint to Information Commissioner concerning Sheffield Homes

FS50429553,

9 October 2012

Sheffield Homes was an ALMO. The complainant requested access under the Freedom of Information Act (FoIA) 2000 to the minutes of its AGM held on 20 September 2011. Sheffield Homes responded late and initially provided only a redacted version of the minutes. It withheld a requested document 'Project business case', relying on FoIA s36(2)(c) on the basis that disclosure would prejudice the effective conduct of public affairs and section 43(2) in respect of the redactions made to the minutes, since the information was commercially sensitive. During the investigation of a complaint, the ALMO withdrew its reliance on section 36(2)(c) and instead relied on section 41 because the document had been provided in confidence.

The Information Commissioner decided that the ALMO had incorrectly applied FoIA ss43(2) and 41 to the withheld information. The commissioner also decided that in responding outside 20 working days, the ALMO had breached section 10. The commissioner required provision of the withheld information.

## ANTI-SOCIAL BEHAVIOUR

### ■ Moray Council v Debdin

[2012] ScotSC,

28 September 2012

The defendant lived on remote land on which he kept a pack of 46 Alsatian dogs. His relationship with the dogs was such that he was effectively the pack leader. The nearest neighbours (living 670 yards away) complained of noise nuisance from the dogs barking. The council applied for an anti-social behaviour order (ASBO) prohibiting the defendant from keeping any more than four dogs.

A sheriff dismissed the claim. The evidence did not establish that the defendant had caused alarm or distress or other anti-social behaviour. The neighbours had had an unreasonably low tolerance or an unreasonably high sensitivity to noise. There was no justification for any interference with the defendant's right to a – perhaps unusual – 'family life' under Human Rights Act 1998 Sch 1 article 8.

### ■ R (Southern Landlords Association) v Thanet DC

[2012] EWHC 3187 (Admin),

13 November 2012

Thanet District Council decided to introduce a selective licensing scheme (HA 2004 Part 3)

for parts of Margate. The claimant represented a number of landlords. It sought judicial review of that decision, arguing that there was no, or no sufficient, evidence of low housing demand (HA 2004 s80(3)) or of anti-social behaviour (HA 2004 s80(6)) and, more generally, that Thanet DC should have attempted to use other remedies (for example, ASBOs) to address any problems of anti-social behaviour.

Cranston J dismissed the claim. There was ample evidence of both low housing demand and anti-social behaviour. This had been considered in detail by Thanet DC before reaching the decision to introduce selective licensing. It was also clear that a wide range of other remedies had been considered and implemented over the previous decade.

## UNLAWFUL EVICTION

### ■ Schubart Park Residents' Association v City of Tshwane Metropolitan Municipality

[2012] ZACC 26,

9 October 2012

Four blocks of council flats in Pretoria, South Africa, became very run down. Most were occupied by tenants but many were inhabited by unauthorised occupants. One block was unoccupied but 700 families lived in the other three blocks. After ten days without any electricity or water supply, the residents began a protest which escalated into arson and vandalism. The police cordoned off the area and all the families were forced to leave. The High Court declined to grant orders restoring the residents to their homes.

The Constitutional Court of South Africa allowed an appeal. The evictions of the occupiers had not been lawful. The state authorities had been justified in preventing occupation only while the scene was unsafe. As soon as it became safe, the residents should have been allowed to return. If the council wanted to exclude any individual permanently it had to apply for a possession order in the courts in the usual way. The court declared that the residents (whether tenants or not) were entitled to return to their homes as soon as reasonably possible.

## SHARED OWNERSHIP

### ■ Optima Community Association v Ker

[2012] EWCA Civ 1441,

4 October 2012

The claimant association developed a housing scheme. It was funded by a grant from the Homes and Communities Agency for the provision of mixed housing, part for social rent

and part for shared ownership. Because the shared ownership element of the scheme proved difficult to sell, the association offered the properties on what it called a 'FlexiBuy' scheme on the basis that it was a secure way to save up for a deposit while occupying. The defendant took a tenancy on those terms. The association later sought possession and an order was made.

The Court of Appeal granted permission to appeal and a stay. The appeal raised a question of some significance as to whether an element of the amount being paid to the landlord was truly 'rent' or was a 'savings scheme' for a future purchase for a deposit and what effect that might have on the proportionality of recovery of possession.

## LONG LEASES

### ■ Freehold Managers (Nominees) Ltd v Piatti

[2012] UKUT 241 (LC),

6 November 2012

A lease provided that the tenant could not sublet without consent, which would not be unreasonably withheld by the landlord. The tenant sought retrospective permission to sublet. The landlord imposed a charge. The tenant applied to a leasehold valuation tribunal, which held that there was no provision in the lease for such a charge and it was therefore not recoverable.

The Upper Tribunal allowed an appeal. The landlord was entitled to impose a reasonable charge as a condition for the grant of consent because refusal of consent would not be unreasonable if the tenant refused to pay a reasonable charge: Landlord and Tenant Act 1927 s19.

## ADVERSE POSSESSION

### ■ Swan Housing Association Ltd v Gill

[2012] EWHC 3129 (QB),

7 November 2012,

(2012) Times 13 December

Mr Gill had been an assured tenant of a flat since 2000. His tenancy gave him the right to use a side passage to the property and part of the rear garden. He installed a lock on the passageway gate and obstructed it with a greenhouse. He also erected a gazebo over part of the garden belonging to the tenant of another flat. The housing association applied for an anti-social behaviour injunction (ASBI) requiring him to remove them. His defence claimed that he had acquired the right to the land by adverse possession. He applied to the Land Registry to register his possessory title and sought an adjournment of the trial of the

ASBI claim. The judge held that Mr Gill could not make the Land Registry application (see Land Registration Act 2002 Sch 6 para 1(3)) and gave directions for the trial to proceed.

Eady J allowed an appeal. The prohibition in paragraph 1(3) applied only if the tenant was facing a claim for possession. Because Mr Gill faced only a claim for an ASBI, his Land Registry application could proceed.

## CRIMINAL OFFENCES

### Safety and HMOs

#### ■ Welwyn Hatfield BC v Pindidas Madan

*St Albans Crown Court,*  
12 October 2012  
*Watford Magistrates' Court,*  
18 October 2012

The defendant was the private landlord of a house in multiple occupation (HMO). On inspection, council officers found that routes of escape from fire were not kept free from obstructions, some smoke detectors had been removed, the emergency lighting did not work, fire doors to several rooms and areas of the property were defective, and some exit doors were a fire safety hazard because they could be kept locked. In response to action by the council, the landlord tried to get one of the tenants to accept the blame. The landlord was prosecuted by the police and convicted of blackmail of that tenant in St Albans Crown Court. He received a suspended sentence order with six months' imprisonment suspended for 12 months and a requirement that he perform 150 hours' unpaid work. He was ordered to pay compensation and costs.

The council then prosecuted for multiple breaches of the HMO management regulations. Watford Magistrates' Court found the defendant guilty of nine breaches of the regulations and imposed fines and costs of £15,702.

#### ■ Luton BC v Ahmed

*Luton Magistrates' Court,*  
15 October 2012

The defendant was the private landlord of a four-storey house divided into eight bedrooms. He failed to obtain an HMO licence. On inspection, council officers found one tenant living in an attic room with no heating, ventilation or windows and another in a bedroom measuring five square metres. Multiple breaches of the HMO management regulations were detected including obstructed fire exits, accumulations of rubbish, lack of fire doors, lack of fire alarms and general disrepair to the property.

The defendant was found guilty in his absence. The court described the property as a 'death trap'. The defendant was fined £15,000

for failing to obtain an HMO licence and a further £4,000 for each of nine breaches of the HMO management regulations (£36,000 in total). The council was also awarded £1,957 costs. Total fines and costs came to £52,957.

#### ■ Norwich City Council v Howman

*Norwich Magistrates' Court,*  
12 October 2012

The defendant was the private landlord of a house divided into ten bedsits. He had an HMO licence. On inspection, council officers found that, among other problems, the rooms had no heating, the main bathroom had no hot water, the communal bathrooms were dirty, the fire doors were in poor condition with many not working, and there were electrical hazards, including hanging wires and defective lighting. The council brought a prosecution for breach of the licence conditions and of the HMO regulations.

On a guilty plea, the defendant was fined £5,000. The council then applied for a confiscation order to recover the proceeds of the crime – the rents the defendant had received. The court made an order for payment of £40,000 and a further £8,500 in costs.

#### ■ Lancashire Fire & Rescue v Gilligan

*Preston Crown Court,*  
11 October 2012

The defendant was the private landlord of seven houses subdivided into flats. On inspection, serious breaches of fire safety legislation were detected including: inadequate fire risk assessments; fire alarm systems switched off or damaged; fire safety equipment, such as fire extinguishers, fire alarm systems and emergency lighting not being maintained in adequate condition; obstructions and combustibles (including a motorcycle) on escape routes; and inadequate fire separation, meaning that a fire could have swept through the accommodation unchecked by fire doors or appropriate barriers to fire spread. Enforcement notices and prohibition notices were not complied with. The defendant pleaded guilty to 13 offences under the Regulatory Reform (Fire Safety) Order 2005 SI No 1541.

He was sentenced to a suspended sentence order, with six months' imprisonment suspended for 18 months, with a six-month curfew between 7 pm and 7 am.

#### ■ Camden LBC v Boyle

*Highbury Magistrates' Court,*  
6 November 2012

The defendant was the private landlord of a licensed HMO. In January 2011, she was made subject to a two-year ASBO prohibiting her from causing harassment, alarm or distress to her tenants, entering their rooms without consent, or cutting off their gas and electricity supply. By an improvement notice served in April 2011 she was required to carry out

extensive works to deal with serious hazards in relation to excess cold, entry by intruders, damp, fire, food safety and falls. The work was not done and a council inspection in May 2012 found that the fire detection and alarm system was not connected to a power supply, fire doors were inadequate and furniture was non-fire-retardant. The HMO had poor thermal efficiency because there was a lack of insulation in the roof and walls and the single glazed windows were in a state of disrepair causing draughts. On a prosecution brought by the council, the defendant was found guilty of failing to carry out works specified in an improvement notice, four breaches of fire-related HMO regulations, and breach of the HMO licence by providing her tenants with non-fire-retardant furniture.

She was fined £3,600 and ordered to pay costs of £4,459.60.

### Lack of planning consent

#### ■ Haringey LBC v Antoniadis

*Enfield and Haringey Magistrates' Court,*  
25 October 2012

The defendant was the private owner of a house. Without planning consent, he converted it into flats to rent out. The council served an enforcement notice and the defendant initially restored the property to use as a house. However, again without planning permission, he later re-converted it into nine flats, which he rented out. The council prosecuted for multiple breaches of the enforcement notice.

The defendant was fined £13,500 with costs of £1,980.

## HOMELESSNESS

### Applications

#### Local Government Ombudsman Complaint

##### ■ Newham LBC

*Complaint No 11 022 307,*  
27 November 2012

The complainant and her young son lived with her sister. Her sister told her to leave and the complainant applied on 13 February 2012 to Newham Council for homelessness assistance. A council officer told her she would need a letter from her sister confirming that she had been told to leave. On 22 February 2012, she returned to the council offices with such a letter. The council offered her an appointment for an initial interview about her homelessness on 27 April 2012. On 13 March, she asked that the appointment be brought forward. When that was refused, she complained to the Local Government Ombudsman. An interview was immediately arranged for 14 March 2012 and interim accommodation was provided from 15 March until 18 October 2012 (when the

council accepted that she was homeless and had a priority need).

The ombudsman found that the council had failed to comply with HA 1996 Part 7 (Homelessness) and the Homelessness Code of Guidance. The delay of an interview for more than two months after application was 'far too long' (para 36) and the council had had sufficient information at first approach to trigger an assessment of whether to provide interim accommodation: HA 1996 s188. The council was unable to show that it had made any such assessment until 14 March 2012 (para 37). The ombudsman recommended £250 compensation, an apology, a backdating of the housing application to the date of the first approach, and a review of the council's handling of applications for homelessness assistance.

### Eligibility

#### ■ **Samin v City of Westminster**

[2012] EWCA Civ 1468,  
21 November 2012

The appellant was an Austrian citizen. He came to the UK in 2005 to work. After ten months he lost his job. He had not worked since. He applied to Westminster Council for homelessness assistance. The council decided that he was not eligible: HA 1996 s185. It considered that he did not qualify as an EU 'worker' because he was not 'temporarily unable to work': Immigration (European Economic Area) Regulations 2006 SI No 1003 reg 6(2)(a). In the light of his disabilities, he was thought unlikely to work again. That decision was upheld on review and HHJ Mitchell dismissed an appeal.

The Court of Appeal dismissed a further appeal. The reviewing officer had applied the right test. She asked herself the statutory question, namely whether his inability to work was or was not temporary. That was the right question. The judge was right to hold that, in the context of this case, her decision that it was not temporary was also a decision that it was permanent. Moreover, if she had posed the question in terms of a realistic prospect of return to work, her decision would undoubtedly have been the same (para 34).

### Intentional homelessness

#### ■ **Carthew v Exeter City Council**

B5/2012/1128,  
4 December 2012

Ms Carthew and her partner jointly bought a home. In 2008 they separated and her partner left. He bought out her share of the home but he let her remain living there as his tenant. Later, Ms Carthew became homeless and applied to Exeter Council for homelessness assistance. The council decided that she had become homeless intentionally because she

had sold her share of the home in 2008. That decision was upheld on a review and in the county court on appeal.

The Court of Appeal allowed a second appeal and quashed the review decision. The council had failed to address the question of whether it would have been reasonable for the appellant to have remained in occupation as joint owner in 2008, given her means at that time. The review decision would need to be retaken bearing in mind the statutory requirement that a person can only become homeless intentionally by loss of accommodation which, at the time the deliberate act was done, was reasonable for him or her to have continued to occupy: HA 1996 s191.

### Suitability

#### ■ **Abdi v Waltham Forest LBC**

Bow County Court,  
2 July 2012

Ms Abdi was pregnant and homeless. She was on maternity leave from her part-time shop work at a department store in Leytonstone. The council accepted that it owed her the main housing duty (HA 1996 s193) and in performance of that duty offered her a three-year placement in private sector leased accommodation in Erith, Kent (18 miles away). Ms Abdi sought a review on the basis that the accommodation was not 'suitable': HA 1996 s206. Once the baby was born she would need to make a two-hour journey (each way), with three interchanges, to reach her workplace and to get her baby to childcare with her relatives in Walthamstow. She could not meet that expense or the cost of the private rented accommodation once her maternity leave ended. The council's reviewing officer determined that, given the pressure on the council's ability to address housing need, the offer had been suitable.

Recorder Judith Rowe QC allowed an appeal and varied the decision to one that the accommodation had not been suitable. Unusually, the decision was one beyond the spectrum of decisions a reasonable council could take. The judge said:

*It seems plain to me that any reasonable authority would look at the nature of this journey to be undertaken by the appellant with her baby, the level of the appellant's earnings, the costs of monthly travel and, the other side of the coin, the fact that childcare would almost inevitably be unaffordable for this applicant and conclude that this property is unsuitable, and/or that it was not reasonable for her to accept the offer (para 72).*

### Appeals

#### ■ **Ali v UK**

App no 40378/10,  
7 November 2012,  
[2012] ECHR 1969

The applicant applied to Birmingham Council for homelessness assistance: HA 1996 Part 7. The council accepted that it owed the main housing duty: section 193. An issue later arose as to whether the applicant had received a letter from the council offering her housing accommodation. It was a pure question of fact and was decided against her by the council's own reviewing officer. On an appeal to the county court, the judge declined to deal with the issue of fact because appeal lay only on 'a point of law'. That decision was upheld by the Court of Appeal and by the Supreme Court (sub nom *Tomlinson and others v Birmingham City Council* [2010] UKSC 8; [2010] 2 AC 39).

The applicant complained to the ECtHR that her right of access to a fair trial by an impartial and independent tribunal (article 6 of the European Convention on Human Rights) had been infringed. The court has posed these questions for the parties:

1. *Did the determination of the rights and/or entitlements of the applicant in respect of the 'main housing duty' owed to her by Birmingham City Council involve the determination of a 'civil right' within the meaning of Article 6(1)?*

2. *If so, did the determination of the applicant's civil rights satisfy the requirement of article 6(1) of the convention?*

#### ■ **Richmond upon Thames LBC v Kubicek**

[2012] EWHC 3292 (QB),  
23 November 2012

Ms Kubicek applied to the council for homelessness assistance. She said that she had fled her matrimonial home as a result of violence from her husband. In the course of its enquiries into her application, the council said two calls had been made to her mobile phone and both calls had been answered by her husband. It decided that she was not homeless as it was reasonable for her to return home: HA 1996 s175(3). That decision was upheld on review. On her appeal to the county court, Ms Kubicek sought to put in a witness statement which asserted that she had been told by a council officer that the two alleged calls had never in fact been made to her. HHJ Jakens admitted that evidence and directed a trial of a preliminary issue of fact as to whether the calls had been made.

Leggatt J allowed the council's appeal from that order. The judge had been wrong to admit the evidence and wrong to direct a preliminary hearing. On a 'point of law' appeal, the

admission of fresh evidence and the contention of error of fact had to be guided by principle. The starting point was that appeal lay only on a point of law and that on such an appeal there was no room for resolution of disputes of fact. The judgment sets out what the applicable principles are and why they were not satisfied in this case. But see also *Ali v UK*, summarised above.

## Correction

### ■ **Ayannuga v Swindells**

*B5/2012/804*,

6 November 2012

In the summary in December 2012 *Legal Action* 29, the names of the landlord and tenant were transposed in error. Mr Ayannuga was the landlord. Mrs Swindells was the tenant.

- 1 Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/16512/Statutory\\_Homelessness\\_3rd\\_Quarter\\_July\\_-\\_Sep\\_2012\\_England.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/16512/Statutory_Homelessness_3rd_Quarter_July_-_Sep_2012_England.pdf).
- 2 E-mail: [holly@lawcentres.org.uk](mailto:holly@lawcentres.org.uk).
- 3 To report such a case send an e-mail to: [jo\\_underwood@shelter.org.uk](mailto:jo_underwood@shelter.org.uk).
- 4 Available at: [www.parliament.uk/briefing-papers/SN02646.pdf](http://www.parliament.uk/briefing-papers/SN02646.pdf).
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- 8 See: [www.cml.org.uk/cml/media/press/3327](http://www.cml.org.uk/cml/media/press/3327).
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- 13 See: [www.nifha.org/press-room/index.php/358/](http://www.nifha.org/press-room/index.php/358/).
- 14 Available at: [www.nihe.gov.uk/index/benefits/housingbenefit/welfare\\_reform.htm](http://www.nihe.gov.uk/index/benefits/housingbenefit/welfare_reform.htm).
- 15 See: <http://services.parliament.uk/bills/2012-13/preventionofsocialhousingfraud.html>.
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- 24 See: [www.gov.uk/government/consultations/a-better-deal-for-mobile-home-owners](http://www.gov.uk/government/consultations/a-better-deal-for-mobile-home-owners).
- 25 Jamie Burton, barrister, London.
- 26 Geraldine Winkler, Stone King LLP, solicitors and Russell James, barrister.



**Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers. He is also a recorder. The authors are grateful to the colleagues at notes 25 and 26 for transcripts or notes of judgments.**

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