16 See *Advocacy in social care for groups with protected under equality legislation*, 2010, available at: www.equalityhumanrights.com/uploaded_files/research/research_report_67_advocacy_in_social_care_for_groups_protected_under_equality_legislation.pdf.
17 Available at: http://lawcommission.justice.gov.uk/publications/1460.htm.
18 Human Rights Joint Committee, *Implementation of the right of disabled people to independent living*, available at: www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/257/25708.htm#a33.
19 Available at: www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084597.
20 See Flood, Byford, Henderson et al, 'Joint crisis plans for people with psychosis: economic evaluation of a randomized controlled trial', *British Medical Journal,* 16 August 2006; Henderson, Flood, Leese et al, 'Effect of joint crisis plans on use of compulsory treatment in psychiatry', *British Medical Journal,* 7 July 2004.
21 UN Doc E/C 12/2000/4 (2000), available at: www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En.
22 See *Choosing health: supporting the physical health needs of people with severe mental illness*, 2006, available at: www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4138290.pdf.
23 Available at: www.nice.org.uk/guidance/index.jsp?action=byType&type=2&status=3.
24 See, for example, the audit of the PSA to promote better health and wellbeing: www.nao.org.uk/publications/1011/review_data_systems_for_psa_18.aspx.
25 *The Right to Be Heard: Review of the Quality of Independent Mental Health Advocate (IMHA) Services in England*, University of Central Lancashire, June 2012, available at: www.uclan.ac.uk/schools/school_of_health/files/review_of_independent_mental_health_advocate_research_report_190612.pdf.
26 See, for example, Mental Act Commission, *In place of fear?* 11th Biennial Report, 2003–2005.
27 Available at: www.cqc.org.uk/sites/default/files/media/documents/cqc_mha_report_2011_main_final.pdf.
28 Available at: www.cqc.org.uk/public/news/national-report-dignity-and-nutrition-review-published.
29 Research available at: www.mind.org.uk/help/ecominds/mental_health_and_the_environment.
30 Available at: www.cqc.org.uk/sites/default/files/media/documents/state_of_care_2010_11.pdf.



Pauline Dall and Angela Truell are solicitors, and Martha Spurrier is a barrister, in Mind's Legal Unit.

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

Social housing allocation

On 18 June 2012, the amendments made by Localism Act (LA) 2011 ss145–147 to the statutory scheme of housing allocation set out in Housing Act (HA) 1996 Part 6 were brought into force in both England and Wales: Localism Act 2011 (Commencement No 6 and Transitional, Savings and Transitory Provisions) Order 2012 SI No 1463 article 3. For a description of the changes that they make see: 'The Localism Act 2011: allocation of social housing accommodation', January 2012 *Legal Action* 23. No new statutory guidance had been issued under HA 1996 s162, before the commencement date, in either England or Wales.

Homelessness

Private sector discharge

When brought into force, the provisions of LA ss148–149 will enable local housing authorities to choose to end the main homelessness duty HA 1996 s193 by making an offer of private rented sector accommodation. The accommodation offered will need to be 'suitable': HA 1996 s206(1). The UK coalition government proposes to make an order under HA 1996 s210(2)(a) which will treat private sector tenancies in England as not being 'suitable' when the local housing authority is of the view that:

- the accommodation is not in a reasonable physical condition;
- any electrical equipment provided does not meet with the 1994 Electrical Equipment (Safety) Regulations SI No 3260 ;
- the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied;
- the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning;
- the landlord is not a fit and proper person to act in the capacity of landlord; or
- the landlord has not provided a written tenancy agreement that is adequate.

Additionally, the following would not be 'suitable':

- a house in multiple occupation (HMO) that is subject to mandatory or discretionary licensing but is not licensed;
- a property that does not have a valid Energy Performance Certificate; or
- a property that does not have a current gas safety record.

The draft Order is appended to the consultation paper *Homelessness (Suitability of Accommodation) (England) Order 2012 – consultation* (Department for Communities and Local Government (DCLG), May 2012).[1] The consultation closes on 26 July 2012. The consultation paper is supported by an impact assessment: *Consultation on the Homelessness (Suitability of Accommodation) (England) Order 2012 – impact assessment* (DCLG, May 2012).[2] As part of the same consultation exercise, the UK government invites comments on whether the provisions of HA 1996 s208, which are designed to prevent placement of homeless households outside a receiving council's boundaries, should be strengthened by additional regulations or guidance, for example, by restricting permissible out-placements to the immediately neighbouring districts.

Use of bed and breakfast accommodation

Homelessness (Suitability of Accommodation) (England) Order 2003 SI No 3326 article 4 provides that bed and breakfast (B&B) accommodation is not to be used for homeless families in England except:

- where no accommodation other than B&B accommodation is available for occupation by an applicant with family commitments; and
- the applicant occupies B&B accommodation for a period, or a total of periods, that does not

exceed six weeks.

In May 2012, the housing minister laid a statistical table in the House of Commons Library indicating that, despite article 4, the number of homeless families in England placed in B&B temporary accommodation for more than six weeks had risen from 150 at the end of 2010 to 450 at the end of 2011: *Households in temporary accommodation with dependent children and/or pregnant woman in bed & breakfast accommodation resident for 6 weeks or more at the end of each quarter of 2011: by local authority* (DCLG, May 2012).[3]

The minister has written to the 20 local housing authorities responsible for more than 80 per cent of these placements 'reiterating the government's position that this practice is unacceptable, urging them to prioritise elimination of the use of long term bed and breakfast accommodation for families, and offering support from my department': *Hansard* HC Debates col 679W, 23 May 2012.

Discharge from hospital

A new report, *Improving hospital admission and discharge for people who are homeless* (Homeless Link, March 2012), indicates that more than 70 per cent of homeless people receiving hospital treatment are being discharged from hospital back onto the streets.[4]

Northern Ireland

The Northern Ireland Housing Executive (NIHE) has published a *Homelessness strategy for Northern Ireland for 2012–2017* (NIHE, May 2012).[5]

Wales

The Welsh Government (WG) has published the research it commissioned into the operation of the statutory homelessness provisions in Wales: *Impact analysis of existing homelessness legislation in Wales: a report to inform the review of homelessness legislation in Wales* (WG, January 2012).[6] This revealed considerable inconsistencies in the way in which the law is applied by the different local authorities in Wales. The WG considers this unacceptable: *Homes for Wales: a white paper for better lives and communities* (WG, May 2012) para 8.17.[7] Its white paper contains proposals for radical changes to homelessness law in Wales both to impose a general statutory duty of homelessness prevention and to enable the main homelessness duty to be satisfied by the offer of private rented accommodation.

Housing and anti-social behaviour

Following a consultation exercise, the UK government has announced that it is to press ahead with changes to the statutory grounds that landlords may use when seeking to recover possession for anti-social behaviour: *Strengthening powers of possession for anti-social behaviour: summary of responses to consultation and next steps* (DCLG, May 2012).[8] The nuisance-related discretionary ground will be enlarged to include any riot-related criminal behaviour, wherever committed. Additionally, a new power to obtain possession on a mandatory basis for repeated anti-social behaviour will be enacted.

Part of the motivation for the proposed changes comes from the perception that, even in serious cases of anti-social behaviour, possession cannot be obtained swiftly from the courts. The ministerial announcement annexed examples of delays arising in litigation brought by the social landlords Helena Partnerships, Adactus Housing and Gloucester City Homes: *DCLG news release* (22 May 2012).[9]

The changes to possession grounds were announced alongside publication of the white paper *Putting victims first: more effective responses to anti-social behaviour* (Home Office, May 2012).[10] The necessary amendments to housing legislation will be brought forward in a Home Office bill which will also deal with the replacement of anti-social behaviour orders (ASBOs) and anti-social behaviour injunctions.

New tenures in social housing

Those tenants granted new tenancies of social housing in England since the beginning of April 2012 have been subject to the new tenancy succession regime introduced by LA ss160–162. As a result of other changes made by this Act, such tenants are now increasingly being offered fixed-term rather than periodic tenancies. The Chartered Institute of Housing (CIH) has published an updated revision of its guide outlining the tenure and succession changes: *The practical implications of tenure reform* (CIH, May 2012).[11] The National Housing Federation (NHF) has published a more general guide to the housing and planning provisions of the LA: *Localism Act 2011: housing and planning: a guide for housing associations* (NHF, May 2012).[12]

The WG has decided not to follow the course on social housing tenure being taken in England. It proposes instead to enact the simplified arrangements for security of tenure in tenanted housing recommended in the 2006 Law Commission report *Renting homes: Homes for Wales: a white paper for better lives and communities* (WG, May 2012).[13]

Social housing fraud

The latest annual report on the National Fraud Initiative (NFI), which allows social landlords that are members to swap personal data to enable them to detect social housing fraud, has been published: *The National Fraud Initiative: national report* (Audit Commission, May 2012).[14] It records that 235 unlawfully occupied social housing properties have been recovered through anti-fraud work since 2010. Despite these successes, only six per cent of housing associations have joined the NFI. The Audit Commission has estimated that, had they all participated, a further 252 properties would have been recovered.[15] The Audit Commission has also published a series of good practice case studies highlighting anti-fraud work on housing in 2010/11.[16]

Possession proceedings

The latest available statistics on possession actions in the county courts cover January to March 2012: *Statistics on mortgage and landlord possession actions in the county courts in England and Wales – first quarter 2012* (Ministry of Justice, May 2012).[17] They indicate that the North West of England is the region most affected by mortgage possession claims. The number of landlord possession claims is up slightly across the country.

The Council of Mortgage Lenders (CML) reports that repossession activity by its members has remained broadly stable with 9,600 repossessions in the first quarter of 2012, breaking the recent trend of year-on-year increases in repossessions: *CML press release* (10 May 2012).[18] This data led the UK government to restate the assistance available to homeowners defaulting on their mortgages: DCLG news release, 10 May 2012.[19]

Disposal of social housing

Beyond the exercise by tenants of the right to buy, disposals of council housing in England (for example, by sale at auction) usually require ministerial consent under HA 1985 s32, and disposals by other social landlords in England require the consent of their regulator, the Homes and Communities Agency (HCA). Recent publications have relaxed the processes for obtaining consents as follows:

- The housing minister has responded to a recent consultation exercise on extending the classes of sales for which consent is deemed to be given for council housing disposals: *Streamlining council housing asset management: disposals and use of receipts. The government response to consultation* (DCLG, May 2012).[20] A new set of General Housing Consents 2012 has also been published: *The General Housing Consents 2012: section 32 of the Housing Act 1985* (DCLG, May 2012).[21]
- The HCA has released a new version of its guidance *Disposing of land* (HCA, May 2012), explaining the circumstances in which it will consent to other social landlords disposing of their stock.[22]

Social housing regulation

The HCA has also published a paper setting out its approach to regulation of social housing in England, indicating what landlords can expect from the HCA as regulator, and giving an explanation of the questions it will ask when seeking assurance that its regulatory standards are being met: *Regulating the standards* (HCA, May 2012).[23]

National housing policy

Shelter, the NHF and the CIH have jointly published their second detailed analysis of whether the UK government is achieving its objectives set out in the National Housing Strategy: *The housing report, edition 2* (May 2012).[24]

HUMAN RIGHTS

Article 8

■ Donegan v Dublin City Council; Dublin City Council v Gallagher

[2012] IESC 18,
27 February 2012

Mr Doneghan was a council tenant. In 2003, An Garda Síochána searched his house and found evidence of drug use in Mr Doneghan's son's bedroom. Relying on breach of the terms of the tenancy agreement, the council brought a possession claim under HA 1966 s62. Mr Doneghan argued that his son was a drug addict, not a drug dealer. He claimed that the process embodied in section 62 did not contain the requisite procedural safeguards so as to afford him the right to respect for his private and family life and his home, as guaranteed by article 8. In the High Court, Laffoy J found that section 62 was not capable of a convention-compatible interpretation and granted a declaration of incompatibility. The council appealed.

Mr Gallagher's mother was a council tenant. She died in 2005. Mr Gallagher made an application to the council to succeed to her tenancy. The council rejected this application on the grounds that he did not fulfil the criteria in its Scheme of Letting Priorities for succession to tenancies (ie, residence at the address for two years before death and being on the rent account during the same two-year period). Dublin sought possession relying on HA 1966 s62. A district judge referred questions of compatibility with the convention to the High Court. O'Neill J also made a declaration of incompatibility. The council and the Attorney-General appealed.

The Supreme Court held that on a section 62 application, the District Court could not entertain any submission other than that relating to the formal proofs demanded by the section. In particular, it had no jurisdiction to hear and determine issues of fact, or mixed issues of fact and law, concerning the housing authority's decision to terminate the tenancy. The obtaining of a warrant under section 62, and its execution, were undoubtedly an interference with a tenant's article 8 rights. After referring to the need for occupants to have an opportunity to test issues such as necessity and proportionality before an independent tribunal and given its interpretation of section 62, it stated:

Whilst, in a great number of cases judicial review will be a sufficient and appropriate remedy, by which issues between public landlords and their tenants, arising out of that relationship, can be resolved, there will undoubtedly be some rare cases in which such remedy will not be suitable (para 143(8)).

It noted that Mr Doneghan had had no opportunity of having his argument concerning his son's condition aired or determined before an independent body. This issue was:

... one of extreme simplicity but requires a mechanism to determine factual conflicts ... Given the enormous significance which this interference, by way of eviction, would have on his right to have due respect shown for his home, it follows, that the existing process by which such eviction may be sought, constitutes an inadequate safeguard in that respect and therefore, his article 8 rights have not been respected (para 149).

The court issued a declaration of incompatibility and dismissed the appeal.

However, it was clear that Mr Gallagher's name had been removed from the rent account and so he did not come within the Scheme of Letting Priorities. There was 'no doubt but that the council are entitled to have such requirements, as conditions of succession' or that 'such a requirement is a legitimate part of the council's estate management regime so as to efficiently and effectively discharge their public duties' (para 155). The court allowed the appeal.

■ Amicus Horizon Ltd v Hutchinson

Medway County Court,
25 April 2012

In 1990, Amicus granted Mr Hutchinson's father an assured tenancy. He died in 2004 and his wife, Mr Hutchinson's mother, succeeded to the tenancy under HA 1988 s17. Mr Hutchinson rented a flat away from the family home, which he maintained until May 2011. However, he moved back into the family home in 2009 to look after his mother. She died in January 2011. Mr Hutchinson requested that the tenancy be transferred to him. Amicus refused this request, served a notice to quit and began a possession claim. At an initial hearing, there were concerns about Mr Hutchinson's mental capacity and his sister was appointed to act as litigation friend.

District Judge Wilkinson noted that there was no evidence that Mr Hutchinson's health would be exacerbated by vacating the property. He was fortunate that he had family members to assist him. His mental health problems did not give him a right to remain in the property. The fact that he would have to be rehoused was not a significant factor which crossed the threshold in considering proportionality. Similarly, the fact that he chose to give up his own property after his mother's death did not assist his argument that this was an exceptional case which crossed the threshold. District Judge Wilkinson made a possession order to take effect in 56 days.

■ Viridian Housing v O'Connell

[2012] EWHC 1389 (QB),
25 May 2012

Ms O'Connell was an assured tenant of the claimant housing association. She was partially sighted and suffered from depression. When her mother died, she inherited property elsewhere. As a result of this asset, her housing benefit stopped and she accrued £4,590 rent arrears. The association sought possession under HA 1988 Sch 2 Grounds 8, 10 and 11. At the hearing, the defendant attended unrepresented, and the duty solicitor applied on her behalf for an adjournment because there was a possibility of a defence raising issues of disability discrimination, public law and article 8. HHJ Knowles refused an adjournment and made an outright order for possession.

Tugendhat J refused an application for permission to appeal. The defendant had failed to file evidence concerning why she had not been ready to advance her case at the hearing. There had been no evidence before the judge of a seriously arguable case that the arrears were related to the defendant's disability, and the judge had considered article 8 but held that no arguable defence based on it had been made out. There was no real prospect of Ms O'Connell showing that on the material before the judge, she was wrong or that there was any material procedural error.

POSSESSION CLAIMS

Reasonableness and suspension

■ Barking and Dagenham LBC v Bakare

[2012] EWCA Civ 750,
2 May 2012

Ms Bakare was a secure tenant. In 2005, a suspended possession order was made on the ground of rent arrears. In 2010, Barking and

Dagenham applied to vary this order into an outright order. The council relied on allegations of anti-social behaviour by her son, including involvement with drugs and firearms. It also sought an ASBO. At trial, HHJ Platt granted an ASBO but adjourned consideration of the application to vary the possession order. Subsequently the son breached the terms of his ASBO and the application to vary was restored. Ms Bakare arranged for her son to leave her home and argued that the possession order should not be varied. HHJ Platt held that her actions were too little, too late and that it was reasonable to vary the possession order as sought.

The Court of Appeal dismissed her appeal. The appeal was 'in reality [an] attack … upon the exercise of judicial discretion' (para 28). It was not possible to argue that no judge could properly have made an immediate order for possession in this case. It could not be said that the judge had been plainly wrong to make the order. He had a very clear grasp of the detail of the case and had given proper reasons for his decision.

■ Friendship Care and Housing Association v Begum

[2011] EWCA Civ 1807,
9 November 2011

Mrs Begum and her husband were assured tenants of a house in which they lived with their seven children. Mrs Begum's husband was sentenced to four-and-a-half-years' imprisonment for possession of Class A drugs with intent to supply. He was a long-term addict with previous drug-related convictions. Inside the house, the police found not only drugs paraphernalia, but also a significant number of electrical items which he had taken as payment for drugs. In a possession claim based upon his anti-social behaviour, HHJ Worster found that there had been serious and persistent breaches of the tenancy agreement over a number of years. Mrs Begum's husband had committed a series of serious offences in the property. Mrs Begum knew of her husband's criminal activities from 2004/2005, but had done nothing to stop him. The nature of the offences was such that they must have adversely affected the neighbourhood and those who lived there. The judge made an outright possession order refusing Mrs Begum's request that he suspend the order. Mrs Begum appealed.

The Court of Appeal dismissed the appeal. Hooper LJ said:

[T]he question of whether or not to suspend the execution of a possession order involves looking at the future. There is no point suspending an order when the inevitable outcome will be a breach. There must be a sound basis for the hope that the antisocial behaviour which has led to the making of the possession order will cease. Put another way: is there cogent evidence which demonstrates a sound basis for the hope that the previous conduct will cease? (para 6)

It was quite impossible to say that the judge reached a conclusion which he was not entitled to reach.

Hooper LJ also rejected a submission that the judge had failed to have regard to Baroness Hale's remarks in *ZH (Tanzania)* [2011] UKSC 4; [2011] 2 WLR 148, that: 'In making the proportionality assessment under article 8, the best interests of the child must be a primary consideration' (para 33). In this case, the judge had given full weight to the interests of the children, particularly the older child and the four younger children. It was not arguable that the judge did not take the interests of the children into account as a primary consideration. The court also rejected the submission that the judge ought to have found out what would happen to the children. He was entitled to assume that the local authority would 'comply with their numerous statutory and regulatory requirements which impose upon them duties towards children' (para 26).

Debt relief orders

■ Irwell Valley Housing Association Ltd v Docherty

[2012] EWCA Civ 704,
14 May 2012

In 2008, the housing association obtained a postponed possession order for rent arrears of £1,216. The order provided for payment of current rent and £3 per week towards the arrears. It stipulated that it would cease to be enforceable when 'the total judgment debt was paid'. Eighteen months later, the tenant obtained a debt relief order (DRO). By the end of the 12-month DRO moratorium period, the total arrears had risen to £2,000. The association applied for a date for possession to be fixed. The tenant argued that the effect of the DRO had been to satisfy the judgment debt. A district judge fixed a date for possession. A circuit judge dismissed an appeal. The tenant sought permission to bring a second appeal.

The Court of Appeal dismissed this application. While *Sharples v Places for People Homes Ltd* [2011] EWCA Civ 813, had decided that an order should not be made requiring instalment payments towards arrears against a tenant with a DRO, the order in this case had been made before the DRO. The DRO had expunged only the judgment debt but the arrears had increased because the tenant had not paid the current rent during the moratorium period.

Assured shorthold tenancies

■ Ismail v Genesis Housing Association

[2012] EWHC 1592 (QB),
26 April 2012

The defendants were assured shorthold tenants who accrued rent arrears. After service of a HA 1988 s21 notice, a district judge made a possession order. Mr and Mrs Ismail issued a 'request for a rehearing and the reasons' in the county court and applied at the same time to the Administrative Court for permission for judicial review, claiming that Genesis was a public authority and that there had been a breach of article 8 (para 6). The Administrative Court refused permission. Shortly afterwards, HHJ Redgrave directed that the 'request for a rehearing and reasons' should be treated as an application for permission to appeal against the district judge's decision, and ordered Mr and Mrs Ismail to obtain a transcript (para 18). They could not afford to pay for a transcript but stated that one was not necessary. At the hearing, however, they applied orally for a transcript at public expense. HHJ Redgrave refused the application for the transcript and refused permission to appeal on the basis that they had no reasonable prospect of success. Mr and Mrs Ismail sought permission to appeal.

Cooke J dismissed the appeal against the decision of the circuit judge: there was no realistic prospect of success. In relation to the request for a transcript, the conditions in Civil Procedure Rules (CPR) 52, PD 5.17 were not met. Furthermore, he could not criticise HHJ Redgrave for not considering an argument under article 8. Although article 8 could form a defence to a claim based on a section 21 notice, the point had not been raised before the district judge or circuit judge. Furthermore, as it had been determined by the Administrative Court that the housing association was not a public authority and that, in any event, the service of the section 21 notice was proportionate, any such argument was concluded against Mr and Mrs Ismail and issue estoppel applied. There was no available defence to the mandatory claim under section 21.

■ Woodman v Chowdhury

[2012] EWCA Civ 690,
14 May 2012

The claimant landlady served a HA 1988 s21 notice on the defendant assured shorthold joint tenants and sought possession. A district judge made a possession order and a circuit judge dismissed an appeal. The tenants sought permission to bring a second appeal. They argued that:

- they had not been served with information about the protection of their deposits;
- the landlady had not been able to let the property to them because she was a bankrupt

and/or did not have the mortgage lender's permission to let; and
- there were claims for damages for harassment and disrepair.

Lewison LJ refused permission to appeal. He held that:
- the judge had found as a fact that the deposit information had been served;
- the tenants were estopped from denying their landlady's title to let; and
- the possible counterclaims for damages were no defence to the claim for possession.

DEPOSITS

■ Ireland v Norton

Brighton County Court, 17 May 2012[25]

Mr Ireland let the flat of which he was a housing association tenant to Mr Norton and another jointly. A deposit of £800 was paid by Mr Norton's stepfather. In a possession claim, Mr Norton counterclaimed for the return of the deposit and for an order that he be paid a sum equal to three times the amount of the deposit. The Friday before the trial, LA s184 came into force so that the court had a discretion whether or not to order payment of between one and three times the amount of the deposit. Transitional provisions gave landlords of current tenancies 30 days to comply. If they did not, the provision remained mandatory. HHJ Simpkiss adjourned the counterclaim to give Mr Ireland the opportunity to comply. He did not do so.

At the resumed hearing, it was noted that the other joint tenant had left the flat before the proceedings began. He had not joined in the counterclaim and contact with him had been lost. It was suggested that *Gladehurst Properties Ltd v Hashemi* [2011] EWCA Civ 604 was authority for the proposition that 'where there is more than one tenant, the claim must be advanced by them all jointly and cannot be brought by one of the joint tenants unilaterally'.

However, after being referred to CPR r19.3 which provides: 'Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy must be parties unless the court orders otherwise', HHJ Simpkiss made an order that the joint tenant was not required to be a party for the purposes of the deposit counterclaim and ordered Mr Ireland to pay Mr Norton three times the deposit.

LONG LEASES

Service charges

■ Beitov Properties Ltd v Martin

[2012] UKUT 133 (LC), 8 May 2012

Beitov Properties Ltd was the lessor of property let under a long lease to Mr Martin. It claimed arrears of service charges in the county court. The proceedings were transferred to the Leasehold Valuation Tribunal (LVT). The LVT found that nothing was payable because the demands failed to comply with Landlord and Tenant Act 1987 s47(1) in that, while they contained the name of the landlord, the address was that of its managing agents.

George Bartlett QC, President of the Upper Tribunal (Lands Chamber), dismissed an appeal. Section 47(1) required the demand to contain the name and address of the landlord. The purpose of this requirement was not solely to provide tenants with an address through which they can communicate with their landlords, but also to enable them to know who their landlords are: a name alone may not be sufficient for this purpose. The address of the landlord as required by section 47(1) is the place where the landlord is to be found. In the case of an individual landlord, the address would be the landlord's place of residence or where the landlord carries on business. In the case of a company, it would be the registered office or place where it carries on business; in neither case could the requirement be satisfied by giving the address of an agent.

■ Havering LBC v MacDonald

[2012] UKUT 154 (LC), 4 May 2012

The council served demands for service charges on a tenant who had acquired a lease under the right to buy provisions of the HA 1985. The tenant said that the charges in respect of the service for communal TV and radio were unreasonably high. The LVT agreed. Relying on its own expertise, the LVT held that the charges were not reasonable. The council appealed on the basis that the LVT had failed to give proper reasons for its decision. The Upper Tribunal allowed the appeal and remitted the matter to a differently constituted LVT.

Comment: The judgment contains guidance on the adequacy of LVT reasons and the extent to which they can be amplified by the LVT after it has delivered its decision.

HOMELESSNESS

Applications

■ R (May) v Birmingham City Council

[2012] EWHC 1399 (Admin), 20 April 2012[26]

The claimant left her home in Slough because of domestic violence and applied to Birmingham City Council for accommodation because she had family in its area. In January 2010, the council accepted the homelessness application and made an offer of accommodation, which the claimant refused. The council decided that its duty had been discharged: HA 1996 s193. The claimant's grandmother then agreed that the claimant could stay with her until her name came to the top of the ordinary waiting list. However, in November 2010 the relationship with the grandmother broke down unexpectedly and the claimant was asked to leave. She made another approach to the council seeking homelessness assistance. The council declined to accept the new application on the basis that it was made on the same facts as the earlier application: *Rikha Begum v Tower Hamlets LBC* [2005] 1 WLR 2103.

Singh J allowed a claim for judicial review and quashed the council's decision. He held that it had been irrational of the council to take the view that the circumstances of the further application in November 2010 were based on the same facts as those applying when the January 2010 application had been made. He said:

> *… on any reasonable view, in my judgment, there plainly was an important change in the facts in around November 2010, as the claimant has described in her witness statement in these proceedings. There was a breakdown in the relationship between the claimant and her grandmother. There is all the difference in the world, in my view, between a person knowing that at some point in the future they may have to leave accommodation and a person being told that they will not have somewhere to sleep that night. No reasonable public authority, in my judgment, could come to a different conclusion when asked: are those two scenarios exactly the same or are they different?* (para 42)

Priority need

■ El-Goure v Kensington and Chelsea RLBC

[2012] EWCA Civ 670, 18 May 2012

The claimant and the mother of his children were separated. The children lived with their mother. On the claimant's application for homelessness assistance, the council decided that he did not have a priority need because the children did not live with him and because it was not a case in which the children 'might reasonably be expected to reside' with him: HA 1996 s189(1)(b). A reviewing officer upheld this decision as she did 'not consider that your case is an exceptional case' and she referred to *R v Port Talbot BC ex p McCarthy* (1991) 23 HLR 207, CA and *Holmes-Moorhouse v*

Richmond-Upon-Thames RLBC [2009] UKHL 7, [2009] 1 WLR 413, HL (para 21).

The claimant appealed, contending that there had been an error in applying a test of 'exceptionality'. HHJ Faber dismissed the appeal.

The Court of Appeal dismissed a second appeal. It held that the reviewing officer had applied the statutory language of section 189(1)(b) to the facts of the case. The reference to 'exceptional' simply described the outcome of a case in which it would be reasonable for a council to provide a second home for children who were already housed adequately.

Intentional homelessness

■ R (Dragic) v Wandsworth LBC

[2012] EWHC 1241 (Admin), 6 March 2012

In December 2008, the council decided that claimant was owed the main homelessness duty: HA 1996 s193(2). He was provided with temporary accommodation let to him by a housing association. In December 2009, he was offered, but refused, suitable alternative accommodation. In March 2010, the council decided, on a review, that its duty had ended. An application for permission to appeal out of time against this decision was refused. The claimant continued in occupation of the temporary accommodation. The association later sought and obtained a possession order. In March 2011, it was executed. Having been evicted, the claimant applied again for homelessness assistance. The council decided that he had become homeless intentionally because had he accepted the suitable accommodation earlier offered, he would not again be homeless. He applied for a review of this decision but was two weeks beyond the 21-day time limit: HA 1996 s202(3).

The council refused to extend time. The claimant sought judicial review of the decision and (in the alternative) of the substance of the intentional homelessness decision.

Ingrid Simler QC, sitting as a deputy High Court judge, dismissed a renewed application for permission to apply for judicial review. She held that the council had made no arguable error of law in refusing to extend time: the council had exercised its unfettered discretion. 'Two weeks in other contexts may not be regarded as very long but in the context of a tight time limit of three weeks, two weeks has a different complexion' (para 9). There had been no good reason for the delay. It could not even be said that the review would have been obviously likely to have succeeded.

The substantive decision was not arguably wrong. Questions of causation, such as what had actually caused the claimant to lose his most recent accommodation, were 'notoriously difficult' and raised matters on which there was scope for reasonable disagreement (para 19).

Offer of temporary accommodation

■ Maswaku v Westminster City Council

[2012] EWCA Civ 669, 18 May 2012

The claimant was homeless and was owed the main homelessness duty: HA 1996 s193. The council made her an offer of temporary accommodation in performance of its duty: HA 1996 s193(5). The offer letter warned that 'if you refuse this offer, you will have to find your own accommodation'. The offer was refused and the claimant unsuccessfully sought a review of the council's decision that its duty had ended. The claimant said that the council had not complied with its notification duty under section 193(5) to inform her of the 'possible consequence of refusal' of the offer because it should have informed her that:

- she would be evicted from her current accommodation;
- her homelessness application would be cancelled;
- there would be no obligation for the council to secure any further homelessness accommodation for her;
- she had the right to make a fresh application as a homeless person under section 193(9), but might be found to be intentionally homeless on any fresh application; and
- she would be able to remain on the waiting list, but would lose priority for an allocation of long-term accommodation under HA 1996 Part 6.

HHJ Knight QC dismissed an appeal against the review decision.

The Court of Appeal dismissed a second appeal. It held that the council had complied with its duty. The only 'possible consequence of refusal' that an applicant needed to be informed about was the one stipulated in section 193(5) itself, ie, that a refusal would end the council's duty to accommodate. The council's offer letter had met this requirement.

Accommodation pending review

■ R (Fadol) v Westminster City Council

[2012] EWHC 1357 (Admin), 21 March 2012

The claimant applied to the council for homelessness assistance: HA 1996 Part 7. It decided that she was owed the main housing duty (under HA 1996 s193) but that she had no local connection with its area. It referred her application to Cardiff Council (section 198). The claimant did have a local connection with the Cardiff area as she had been accommodated there by National Asylum Support Service (NASS) pending the outcome of her asylum application (section 199(6)). The claimant sought a review of this decision. Before the review was concluded, Cardiff notified the council that it accepted the referral and would accommodate the claimant. The council decided to withdraw the claimant's temporary accommodation and provide a warrant for travel to Cardiff. It gave her ten days' notice to leave. The claimant asked the council to provide continued temporary accommodation for her pending the outcome of the review (section 188(3)). This application was refused in a written decision giving reasons. The claimant applied for a judicial review.

HHJ Robinson, sitting as a judge of the High Court, refused permission to apply for judicial review. There were no arguable grounds for asserting that the council had erred in law in declining to provide accommodation pending review. It had considered the relevant facts and had applied the correct approach as suggested in *R v Camden LBC ex p Mohammed* (1998) 30 HLR 315. There was no merit in the contention that ten days' notice was so short as to be unlawful in circumstances where accommodation was available elsewhere and the claimant had been provided with the means of getting there.

Accommodation pending appeal

■ Hafiz and Haque v Westminster City Council

[2012] EWHC 1392 (Admin), 3 May 2012

The council received a homelessness application from a Mr Haldar. The decision made by the council on this application was subject to an appeal to the county court (HA 1996 s204) which was listed for hearing on 29 September 2011. On 24 August 2011, Mr Haldar's solicitors issued an application in the county court for an order that he be provided with accommodation pending the hearing of this appeal: HA 1996 s204A. The application was listed for 22 September 2011. Mr Haldar attended that hearing but the solicitors failed to do so. The application was dismissed. The judge ordered the solicitors to explain why the application had been made and he stood over the question of a wasted costs order to the section 204 appeal hearing the following week. The solicitors did not attend that hearing either, and the section 204 appeal was dismissed. The judge made a wasted costs order in respect of the earlier section 204A application. The solicitors applied, unsuccessfully, to set that costs order aside. They then lodged an appeal.

Lang J held that the appeal had been lodged out of time. She refused an application to extend time as the appellants were solicitors

and there was no good reason for their not having complied with the time limit. In any event, she indicated that permission to appeal would have been refused. The section 204A application heard on 22 September 2011 had been wholly unnecessary. By that date Mr Haldar had had temporary accommodation and the hearing of the main appeal had only been seven days away.

HOUSING AND COMMUNITY CARE

■ R (Okil) v Southwark LBC

[2012] EWHC 1202 (Admin), 20 April 2012

The claimant was an asylum-seeker from Algeria with mental health problems. NASS provided him with an offer of 'dispersed' accommodation in Plymouth, but he wished to stay in London. His solicitors invited the council to carry out a community care assessment with a view to providing him with accommodation under National Assistance Act (NAA) 1948 s21. The council provided for accommodation pending an assessment. Based on the outcome of the assessment, it decided that nothing more than NASS accommodation was required. The claimant sought judicial review.

Underhill J dismissed the claim. The assessment had been carried out reasonably and the conclusion reached, that the claimant had no need for care and attention requiring provision of accommodation under the NAA, had been open to the council on the facts. He said:

My conclusion does not mean that I find that the claimant has no mental health or other problems. It means only that I find that the council reached a proper conclusion that whatever problems he had were not such as to require the provision of care and attention of the relevant kind or therefore of residential accommodation. That means that his accommodation becomes again the responsibility of NASS. That is a responsibility which it has in the past shown itself entirely willing to shoulder and it is only the claimant's refusal to move to Plymouth that has prevented it from doing so. In that connection, I note that the view of the [council's No Recourse to Public Funds Panel], which no doubt has considerable practical experience in these matters, was that the claimant could make a case to NASS to be provided with accommodation in London because of his particular circumstances; but that is not something on which I am in a position to express a view (para 48).

HOUSING AND CHILDREN

■ M v Croydon LBC

[2012] EWCA Civ 595, 8 May 2012

The claimant was a refugee from Afghanistan who said that he had been born in 1996. Following an assessment, the council decided that he had been born in 1994. The claimant brought a claim for judicial review of this decision. Eventually, the claim was compromised by the council agreeing that the claimant was indeed born in 1996. The parties could not agree about costs and Lindblom J made 'no order for costs' (para 24).

The Court of Appeal allowed an appeal by the claimant. He was awarded most of the costs.

Comment: The Court of Appeal's judgment gives general guidance on the costs payable in settled judicial review cases and encourages parties to follow and apply that guidance in reaching their own agreements about the costs to be paid when a claim is compromised. The judgment discourages the practice, in judicial review proceedings, of concluding other aspects of a compromise but leaving costs to be determined by the court.

■ R (Sabiri) v Croydon LBC

[2012] EWHC 1236 (Admin), 23 April 2012

The claimant was a young man in his early twenties. He had been accommodated by the council as an unaccompanied asylum-seeking child: Children Act (CA) 1989 s21. Currently he fell within the definition of a 'former relevant child' in respect of whom the council had continuing functions under CA s23C. In judicial review proceedings the court was asked to determine, as a preliminary issue, whether, on a proper construction, section 23C(4)(b) was sufficiently wide to cover assistance by way of financial contribution to the cost of accommodation in connection with the receipt of education. The council's case was that such assistance with accommodation was not within its terms.

Charles George QC (sitting as a deputy High Court judge) granted the declaration:

... sought by the claimant ... 'that the words "contributing to expenses incurred by him in living near the place where he is or will be receiving education or training" in section 24B(2) and 23CA(5) of the Children Act 1989 permit the local authority to make a contribution, including 100 per cent contribution, to accommodation and accommodation-related expenses' (para 12).

1 Available at: www.communities.gov.uk/documents/housing/pdf/21513539.pdf.
2 Available at: www.communities.gov.uk/documents/housing/pdf/21512309.pdf.
3 Available at: http://data.parliament.uk/DepositedPapers/Files/DEP2012-0840/Buck-120523.xls.
4 Available at: http://homeless.org.uk/sites/default/files/attached-downloads/HOSPITAL_ADMISSION_AND_DISCHARGE._REPORTdoc.pdf.
5 Available at: www.nihe.gov.uk/homelessness_strategy_for_northern_ireland_2012-2017.pdf.
6 Available at: www.senedd.assemblywales.org/documents/s7352/Impact%20analysis%20of%20existing%20homelessness%20legislation%20in%20Wales.pdf.
7 Available at: http://wales.gov.uk/docs/desh/consultation/120521whitepaperen.pdf.
8 Available at: www.communities.gov.uk/documents/housing/pdf/2148929.pdf.
9 Available at: www.communities.gov.uk/news/housing/2149397.
10 Available at: www.official-documents.gov.uk/document/cm83/8367/8367.pdf.
11 Available at: www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Practical%20implications%20of%20tenure%20reform%20-%20May%202012.pdf.
12 Available at: https://www.housing.org.uk/OnlineStore/Default.aspx?tabid=44&action=INVProductDetails&args=12237.
13 Available at: http://wales.gov.uk/docs/desh/consultation/120521whitepaperen.pdf.
14 Available at: www.audit-commission.gov.uk/SiteCollectionDocuments/Downloads/20120514nfi.pdf.
15 See: www.audit-commission.gov.uk/pressoffice/pressreleases/Pages/20120516nfipr.aspx.
16 Available at: www.audit-commission.gov.uk/fraud/nfi/public-sector/case-studies/Pages/housing-case-study.aspx.
17 Available at: www.justice.gov.uk/downloads/statistics/civiljustice/mortgage-landlord-2012-q1/mortgage-landlord-possession-stats-q1-12.pdf.
18 Available at: www.cml.org.uk/cml/media/press/3203.
19 Available at: www.communities.gov.uk/news/housing/2142675.
20 Available at: www.communities.gov.uk/documents/housing/pdf/2147105.pdf.
21 Available at: www.communities.gov.uk/documents/housing/pdf/2147119.pdf.
22 Available at: www.homesandcommunities.co.uk/sites/default/files/our-work/disposing_of_land_120522.doc.
23 Available at: www.homesandcommunities.co.uk/sites/default/files/our-work/regulating_the_standards_-_may_2012.pdf.
24 Available at: www.housing.org.uk/publications/find_a_publication/general/idoc.ashx?docid=dcc5f209-735c-4c6a-8465-d3deae88b249&version=-1.
25 Catrin Harrhy, solicitor, Central and South Sussex Citizens Advice Bureau and David Watkinson, barrister, London.
26 Zia Nabi, barrister, London and Mike McIlvaney, solicitor, Community Law Partnership, Birmingham.

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 notes 25 and 26 for transcripts or notes of judgments.**