

# Recent developments in housing law



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

## POLITICS AND LEGISLATION

### Housing and Regeneration Bill

During June 2008, the Housing and Regeneration Bill was given detailed consideration in the Grand Committee of the House of Lords. The bill is anticipated to complete its parliamentary scrutiny during the present session.

■ **Tenant Services Authority:** the housing minister Caroline Flint has announced that the new regulator of social housing to be established under the bill is to be known as the Tenant Services Authority (TSA) rather than the Office for Tenants and Social Landlords (OFTENANT). She also announced details of recruitment for TSA board members, including tenants' representatives: Communities and Local Government (CLG) press release, 6 June 2008.<sup>1</sup> Although most of the TSA staff will transfer from the Housing Corporation, the deputy chief executive of the corporation in a conference speech on 15 May 2008 called for a 'cultural change' when TSA takes over.<sup>2</sup>

■ **Rent arrears and Ground 8:** the government is coming under more pressure to amend the bill so as to prevent housing associations from using Housing Act (HA) 1988 Sch 2 Ground 8 (a mandatory ground for rent arrears). Citizens Advice has published an evidence paper, *Unfinished business. Housing associations' compliance with the rent arrears pre-action protocol and use of Ground 8* (May 2008), outlining a case for change.<sup>3</sup> The scope for defending current Ground 8 claims is reviewed by a Sheffield Citizens Advice Bureau worker in the article 'Mandatory but not inevitable' (first published in *Quarterly Account* and reprinted at [2008] 127 *Adviser* 20).

### The next housing bill

The government's draft legislative programme for the parliamentary session 2008/2009, *Preparing Britain for the future*, outlines an intention to publish a housing reform green

paper 'towards the end of 2008' and to include another housing bill (The Community Empowerment, Housing and Economic Regeneration Bill) in the next Queen's speech.<sup>4</sup> The primary function of the new bill will be to enable local authority housing to be brought under the remit of the new TSA (see above) from 2011. The deadline for responses to the proposals in the draft programme is 6 August 2008.

### Rented housing

In its recent report, *The supply of rented housing*, the House of Commons CLG Committee details the current state of private and social renting in England.<sup>5</sup> The report reviews issues of quality, overcrowding, lettings policies and housing benefit, and makes numerous recommendations for action by government and local authorities.

The current position in the social renting sector is detailed by the Housing Corporation in a series of eight briefing papers entitled *Planning for the future*. They set out the statistical and research material available on the issues relating to affordable housing. The first two papers, *Who lives in affordable housing?* and *Life in affordable housing* have already been published.<sup>6</sup>

### Housing allocation

The government has retained its target for every local housing authority to have a choice-based lettings (CBL) scheme by 2010, with increased emphasis on regional and sub-regional schemes covering groups of authorities. As part of its work for Wirral Council in the production of *Review of the Wirralhomes choice-based lettings service* (March 2008), the School of the Built Environment at Heriot-Watt University surveyed 26 stock-transfer local authorities to discover how they and partner registered social landlords were achieving choice-orientated allocation. The results are summarised in 'Spoilt for choice', [2008] 25 *April Inside Housing* 23.

Notwithstanding the rigours of statutory allocation schemes, some social tenancy allocations are achieved by fraud. In *National fraud initiative 2006/07* (May 2008), the Audit Commission reported that its exercises to match electronic data across regulated bodies (authorities, associations and government departments) had enabled 69 local authority tenancies to be repossessed following tenancy fraud.<sup>7</sup> One London authority (Southwark) had appointed an experienced housing investigator to use the 'matched' data, resulting in the recovery of 30 properties (with 19 more anticipated) and identification of 65 inappropriate right to buy applications.

### Homelessness

Local authorities have only a few weeks left to comply with their statutory duty to produce a new local homelessness strategy. Homelessness Act 2002 s1(4) requires each authority to publish a new strategy within five years of publication of its previous strategy. Because the last date for compliance with the requirement to produce an initial strategy was 31 July 2003 for English authorities, the very latest date for any English authority to produce a new strategy will be 31 July 2008. (Both dates are extended by three months for Welsh authorities). Statutory consultation on the draft is required before any authority adopts a new strategy: s3(8). The deadlines do not apply to more than 90 English authorities recognised as 'excellent' because it is assumed that such authorities will have been reviewing and revising their strategies regularly without the prompt provided by a statutory deadline: Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005 SI No 157 article 3.

Meanwhile, the work undertaken by housing associations to help address the issue of homelessness is reviewed regularly in the Housing Corporation's Homelessness Action Team's HAT Update.<sup>8</sup>

### Housing disrepair claims

In *Claims management regulation: impact of regulation one year assessment* (Ministry of Justice, April 2008) the former head of claims management regulation reports that malpractice by 'claims farmers' in the housing disrepair field has been addressed and tackled.<sup>9</sup> Mark Boleat notes that local authorities are giving disrepair claims more rigorous scrutiny so that they are not 'seen as a "soft touch"' (para 12.3).

### Home ownership

The *First time buyers' initiative buyers' guide* (English Partnerships, April 2008) is a new booklet setting out the terms of the government's latest house purchase

assistance schemes.<sup>10</sup> Details of changes to government policy on help for first-time buyers have been given by the housing minister Caroline Flint: CLG press release, 14 May 2008.<sup>11</sup>

In May 2008, the Office of Fair Trading announced that it was launching a market study of the practice of private companies buying up the homes of those in mortgage difficulties and then renting them back to the occupiers.<sup>12</sup>

### Resolving housing disputes

The final report of the Law Commission's work on this topic, *Housing: proportionate dispute resolution*, has been published (May 2008).<sup>13</sup> In the light of the content of responses to its earlier consultation paper, the commission has reined back from the suggestion that possession cases, homelessness appeals and housing judicial review work should be transferred to the tribunal system. Instead, it recommends a series of pilot projects.

### Children and young people

The new paper *Joint working between housing and children's services: preventing homelessness and tackling its effects on children and young people* (CLG, May 2008) contains cross-departmental, non-statutory guidance for housing providers and social services authorities.<sup>14</sup> It is designed to encourage greater collaboration in meeting the housing needs of the young.

### Right to buy in Wales

The Wales Office has initiated a pre-legislative scrutiny of proposals to give the Welsh Assembly law-making powers in respect of the right to buy (not least so that the power can be used to suspend the right to buy in certain parts of Wales).<sup>15</sup>

### Mobile home owners

Disputes between the residents of mobile home park sites and site owners are currently decided in the county courts. In *A new approach for resolving disputes and to proceedings relating to park homes under the Mobile Homes Act 1983 (as amended)* (CLG, May 2008), the government has proposed that disputes be resolved by tribunals rather than courts.<sup>16</sup> The consultation closes on 22 August 2008.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

### Ireland

#### ■ Leonard v Dublin City Council

[2008] IEHC 79,  
31 March 2008

Ms Leonard was a tenant of Dublin City Council. She signed an agreement stating that 'if at any time in the future, Mark Keating [her partner] is found to be or have been in [the premises], you are in breach of the terms of your tenancy and Dublin City Council will be entitled to bring proceedings to recover possession [under HA 1966 s62], in the interests of good estate management'. Later, Mark Keating visited and stayed at the premises, and the council served a notice to quit. The council brought court proceedings under s62 and a warrant for possession was granted. Section 62 provided that a district court judge hearing an application for a warrant for possession was obliged to grant the warrant provided that a formal demand for the possession had been made. Ms Leonard sought judicial review on the ground that s62 deprived the district court judge of any real judicial discretion on the hearing of such an application and that it accordingly breached articles 6, 8, 13 and 14 of the European Convention on Human Rights ('the convention').

In a long judgment (delivered before the ECtHR's decision in *McCann*) Dunne J, after reviewing authorities from England and Wales and Strasbourg, found that there was no breach of the convention. There was nothing wrong in principle with decisions to evict being taken by local authority housing officers. The right of tenants to apply for judicial review provided sufficient protection under both articles 6 and 8. With regard to article 8, Dunne J said: '... it is difficult to see how the guarantee of respect for the home could confer a right to possession on the part of a tenant in circumstances where the tenancy has been lawfully terminated'. In refusing relief, Dunne J concluded: '... in the absence of any particular or special circumstances pleaded by the applicant, the procedure provided for under s62 coupled with the right to judicially review the decision of the council to terminate the tenancy is such as to ensure that the rights of the applicant under article 8 have not been violated'.

### Article 8

#### ■ McCann v UK

App No 19009/04,  
13 May 2008,<sup>17</sup>

(2008) Times May 23

Mr McCann and his wife were joint secure council tenants. Mrs McCann was rehoused by the council on the ground of domestic

violence. At the council's instigation, she signed a notice to quit. She did not realise that the notice to quit would bring the joint tenancy to an end. Mr McCann sought to transfer the tenancy into his own name, but was told that the tenancy had come to an end and given notice to vacate. However, the council's possession claim was dismissed.

Following *Harrow LBC v Qazi* [2003] UKHL 43; [2004] 1 AC 983, the Court of Appeal ([2003] EWCA Civ 1783; [2004] HLR 27) allowed the council's appeal. Subsequently, the House of Lords refused a petition for leave to appeal. Mr McCann was evicted in March 2005. He complained to the European Court of Human Rights (ECtHR), alleging that there had been a breach of his article 8 rights under the convention.

The ECtHR found that there had been a violation of article 8. It noted that whether or not a property is to be classified as a 'home' is a question of fact and does not depend on the lawfulness of the occupation under domestic law. The parties agreed that, in Mr McCann's case, the right to respect for the home contained in article 8 was engaged and that the effect of the notice to quit served by his wife, together with the possession proceedings, was to interfere with his right to respect for his home. The court considered that this interference was in accordance with the law and pursued the legitimate aim of protecting the rights and freedoms of others in two respects.

First, it protected the local authority's right to regain possession of the property as against an individual who had no contractual or other right to be there. Second, the interference also pursued the aim of ensuring that the statutory scheme for housing provision was applied properly.

The court accepted that it is only by limiting the protection of the Housing Acts to the categories to which they apply that the policy underlying the Acts can sensibly be implemented. The central question in Mr McCann's case was whether or not the interference was proportionate to the aim pursued and 'necessary in a democratic society'. The court rejected the UK government's argument that the reasoning in *Connors v UK* App No 66746/01, 27 May 2004, paras 81–84 was to be confined only to cases involving the eviction of Gypsies or where applicants sought to challenge the law itself rather than its application in their particular case. It stated:

*The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of*

*the measure determined by an independent tribunal ... (para 50).*

Here, the local authority chose to bypass the statutory scheme by requesting Mrs McCann to sign a common law notice to quit. It does not appear that it gave any consideration to Mr McCann's right to respect for his home. It was not open to the county court, in the possession claim, to consider any issue concerning the proportionality of the possession order. As in *Connors*, the 'procedural safeguards' required by article 8 for the assessment of the proportionality of the interference were not met by the possibility of Mr McCann applying for judicial review. The judicial review procedure is not well-adapted for the resolution of sensitive factual questions which are better left to the county court responsible for ordering possession.

The ECtHR did not accept that giving occupiers the right to raise issues under article 8 would have serious consequences for the functioning of the system or for the domestic law of landlord and tenant. It would be only in very exceptional cases that occupiers would succeed in raising an arguable case which would require a court to examine the issue. In the great majority of cases, orders for possession could continue to be made 'in summary proceedings'.

Turning to the question of damages, the court indicated that it was far from clear that, had a domestic tribunal been in a position to assess the proportionality of the eviction, the possession order would not still have been granted. Deciding on an equitable basis, the court awarded non-pecuniary damages of €2,000.

The House of Lords has already had the opportunity to consider the ECtHR's decision in *McCann*. It heard the appeal in *Birmingham City Council v Doherty* [2006] EWCA Civ 1739; [2007] HLR 32 in March 2008, but invited further written submissions in the light of *McCann*. Judgment is awaited.

## South Africa

■ **Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg** [2008] ZACC 1, 19 February 2008

Johannesburg City Council sought to evict 400 occupiers from two unsafe and unhealthy inner-city buildings. In the South African High Court, a judge declared that the city's housing programme fell short of what was required, ordered it to produce a programme to cater for those people in desperate need and interdicted the eviction of the occupiers. On appeal, the Court of Appeal authorised the eviction but ordered the city to provide those

occupiers who were 'desperately in need of housing assistance with relocation to a temporary settlement area'. The occupiers appealed to the Constitutional Court.

The Constitutional Court, two days after the application for leave, made an interim order that: 'The city ... and the applicants are required to engage with each other meaningfully ... in an effort to resolve the differences and difficulties aired in this application ...' In giving the reasons for the engagement order, Yacoob J noted that the city had made no effort to engage with the occupiers before beginning proceedings, despite the fact that the city must have been aware of the probability that people would become homeless. The Constitutional Court made the interim order because it was not appropriate to grant any eviction order against the occupiers unless there had at least been some effort at meaningful engagement. After referring to Constitution of South Africa s26, which provides that everyone has the right to have access to adequate housing and that the state must take reasonable measures to achieve the progressive realisation of that right, Yacoob J said:

*Reasonable conduct of a municipality pursuant to section 26(2) includes the reasonableness of every step taken in the provision of adequate housing. Every homeless person is in need of housing and this means that every step taken in relation to a potentially homeless person must also be reasonable if it is to comply with section 26(2) ... It has been suggested that there are around 67,000 people living in the inner city of Johannesburg in unsafe and unhealthy buildings in relation to whom ejection orders will have to be issued and that it would be impractical to expect meaningful engagement in every case. I cannot agree ... The ejection of a resident by a municipality in circumstances where the resident would possibly become homeless should ordinarily take place only after meaningful engagement ... [Furthermore,] the city must take into account the possibility of the homelessness of any resident consequent upon ... eviction in the process of making the decision as to whether or not to proceed with the eviction (paras 17, 19, 22, 46).*

Accordingly, the Constitutional Court allowed the appeal against the order of ejection. It approved an interim agreement between the council and the occupiers aimed at rendering both properties 'safer and more habitable' in the interim, including the installation of chemical toilets, the cleaning and sanitation of the buildings, the delivery of refuse bags and the installation of fire extinguishers.

It also found that National Building Regulations and Building Standards Act 1977 s12(6), which made it a criminal offence for occupants to remain in certain buildings after being served with notices requiring them to leave, was not consistent with the constitution. It held that any provision which compelled people to leave their homes on pain of criminal sanction in the absence of a court order was contrary to the provisions of s26(3). It decided, however, that it was neither just nor equitable to set s12(6) aside, because it was appropriate to encourage people to leave unsafe or unhealthy buildings. A reading-in order which provided for a criminal sanction only after a court order for eviction had already been made was appropriate to save the section.

## LOCAL AUTHORITY TENANCIES

### Liability for anti-social behaviour

#### ■ **Mitchell v Glasgow City Council**

[2008] CSIH 19, 29 February 2008

James Mitchell and James Drummond were neighbouring tenants of Glasgow City Council. Mr Drummond made threats towards Mr Mitchell, including a claim that he would kill him if he (Drummond) were to be evicted. The council was aware of Mr Drummond's threatening and aggressive behaviour, and in 2001 held a meeting with him, at which his possible eviction for anti-social behaviour towards Mr Mitchell was discussed. Shortly after the meeting, Mr Drummond attacked and killed Mr Mitchell. Subsequently, Mr Drummond was charged with murder, but the prosecution accepted his plea to culpable homicide. In 2003, Mr Mitchell's widow and daughter raised a civil action for damages against Glasgow City Council in respect of the death. The pursuers (claimants) maintained that the defenders (defendants) owed the deceased and his family a duty of care: ■ to instigate eviction proceedings against Mr Drummond within a reasonable time of complaints about his behaviour being made; and ■ to warn Mr Mitchell about the meeting with Mr Drummond.

They relied on the common law and article 2 of the convention (right to life shall be protected by law). After a debate (ie, a pre-trial hearing, where no evidence was heard), Lord Bracadale, the Lord Ordinary, dismissed the action as irrelevant. The pursuers reclaimed against that dismissal.

An Extra Division of the Inner House of the Court of Session carried out a wide-ranging review of authorities from Scotland, England and Wales and the ECtHR. The Court of Session held:

■ by a majority, that it was premature to conclude that the pursuers must fail on their claim that there was a duty to warn and that that element of the case should proceed to trial; but

■ by a majority, that the pursuers' case based on breach of article 2 was without foundation; and

■ unanimously, that there was no duty to instigate proceedings for eviction within a reasonable time of complaints being made.

### **Committal for breach of injunctions**

#### ■ **Kirklees Council v Davis**

[2008] EWCA Civ 632,  
21 May 2008

Neighbours complained that Mr Davis carried out a violent, threatening and racially aggravated course of behaviour towards them. The local authority obtained an injunction under HA 1996 s153A preventing him from entering an exclusion zone around the neighbours' homes. He breached the injunction and was arrested. After he had been remanded in custody for 16 days, a judge varied the order so as to exclude him from the estate where he and his neighbours lived. He was released on conditional bail, but was again found to be in breach of the terms of the injunction. At the committal hearing, he denied that he had breached the amended order but the allegations were proved. The judge considered that the fact that he had lied about returning to the exclusion zone was an aggravating factor justifying the imposition of a sentence of three months' imprisonment. Mr Davis appealed.

The Court of Appeal indicated that although Mr Davis's lies were not in themselves aggravating features, those denials demonstrated a flagrant unwillingness to comply with orders made by the court. The judge was justified in imposing the sentence that he did. Ordinarily, however, time spent on remand was time which should be set-off against the length of time ordered to be spent in prison. The appeal was allowed in so far as it related to the judge's failure to discount properly 16 days from the duration of the sentence.

### **HOUSING ALLOCATION**

#### ■ **Dixon v Wandsworth LBC**

[2008] EWCA Civ 595,  
29 April 2008

The council decided that Mr Dixon was not eligible for council accommodation because his conduct of a previous tenancy had been such that a judge would have made a possession order of his then home and his present circumstances did not demonstrate

that he was suitable to be a tenant: HA 1996 s160A(7). A claim for judicial review of that decision was dismissed ([2007] EWHC 3075 (Admin); February 2008 *Legal Action* 40).

On an application for permission to appeal, it was argued that:

■ the council had been wrong to think that an outright possession order would have been granted rather than some other form of order; and

■ the council had failed to have regard to the personal circumstances of the applicant at the date of its decision.

The Court of Appeal refused a renewed application for permission. It had been open to the council to find that an outright order would have been granted where the facts were that the applicant had a history of drug abuse for a period of ten years, during which time his flat had been raided three times and the last raid (which had resulted in a conviction for possession of drugs) had caused £1,000 worth of damage to the flat. As to personal circumstances, the council's reviewing officer had considered all the representations made by the applicant's solicitors over a period of six months. His conclusion about the applicant's suitability did not overlook that material; nor was it perverse.

#### ■ **R (Sawalha) v City of Westminster**

[2008] EWHC 1216 (Admin),  
9 May 2008<sup>18</sup>

In March 2007, a housing association tenant applied to Westminster under its housing allocation scheme for allocation of a different tenancy on the basis that his current accommodation was unsuitable for his medical needs. He submitted supporting letters from a GP and a consultant neurologist recording that he had received maximum possible scores in tests for depression and anxiety arising from the noise and neighbour problems at his present home. The letters referred to conditions of sleep apnoea, urinary incontinence, back pain, anxiety and depression. In May 2007, the council declined to award 'Category A' medical status under its allocation scheme. The only reasons given were: '... we feel that he is currently suitably accommodated ...' and '... he does not meet the criteria ...'.

On a judicial review, Davis J quashed that decision. Although housing assessment officers could not be expected to 'engage in detailed judgments in the manner of some judge sitting in a county court or High Court', the decision was insufficiently reasoned. Its wording did not demonstrate sufficient engagement with, or consideration of, the points raised in the March 2007 application or in the supporting letters. He found that '... there is really no statement as to just what their grounds or reasons for rejecting the two doctors' observations are'.

#### ■ **R (Ahmad) v Newham LBC**

*House of Lords*,  
30 May 2008

Newham has been granted leave to challenge a decision of the Court of Appeal upholding a declaration that its housing allocation scheme is unlawful: [2008] EWCA Civ 140; April 2008 *Legal Action* 34.

### **HOMELESSNESS**

#### **Accommodation pending review**

##### ■ **R (Lusamba) v Islington LBC**

[2008] EWHC 1149 (Admin),  
14 May 2008

Ms Lusamba applied to Islington for homelessness assistance, asserting that she had a priority need because she resided with her younger sister (an 18-year-old full-time student). On 2 April 2008, the council decided that, although homeless, she had no priority need because the sister did not reside with her and/or was not a dependant. On 4 April 2008, the applicant sought a review and accommodation pending review. On 10 April 2008, proceedings for judicial review were issued contending that the council had failed to make a decision on the request for interim accommodation pending review and an interim injunction was granted.

In fact, the council had refused to provide such accommodation by letter of 9 April 2008 and, following representations, a further, fully-reasoned decision letter refusing accommodation pending review was sent on 28 April 2008. The council applied to discharge the injunction.

Ouseley J treated the judicial review claim as amended to attack the decision of 28 April 2008 and dismissed that claim. The decision had addressed the *Mohammed* criteria (*R v Camden LBC ex p Mohammed* (1998) 30 HLR 315). It had dealt with the merits of the claim for priority need, noted that no new material had been put forward on the dependency issue and recorded that the applicant could access private accommodation with the help of housing benefit if in urgent need. It contained proper responses to the request for interim accommodation and contained no arguable error of law. The interim injunction was discharged with effect from 19 May 2008 (to give the applicant 'packing up' time).

#### **Discharge of duty**

##### ■ **Ahad v Tower Hamlets LBC**

[2008] EWCA Civ 606,  
1 May 2008

Tower Hamlets owed Mr Ahad, a homeless person, the main housing duty and had provided him with temporary accommodation:

HA 1996 s193. Under the council's CBL scheme, he bid for a particular property. He was successful and the property was offered to him. He refused it. The council decided that the refusal had the effect of releasing it from its duty because the accommodation had been suitable and reasonable to occupy: s193(7F).

On review, Mr Ahad accepted that the offer was objectively suitable but said that his wife had viewed the property and made it clear that if he moved there she would not join him. In those circumstances, he contended that it was not reasonable for him to accept the offer because the consequence would have been the breakdown of the marriage. A reviewing officer upheld the decision.

Recorder Proudman QC dismissed an appeal. She held that it had been reasonable for the reviewing officer to uphold the original decision in the light of:

- the lack of foundation for the wife's objections;
- the fact that the reviewing officer found that Mr Ahad was given particulars of the property and its location before bidding for it;
- it was a choice-based bidding system;
- the authority was not concerned with matrimonial problems arising between the persons to be housed in a single household and the result of a dispute about subjective matters of suitability; and
- the authority was not in a position to make findings of fact about the legitimacy of Mr Ahad's fears about the future of his marriage.

Lawrence Collins LJ refused a renewed application to bring a second appeal. He found that the review decision contained no flaw in process or reasoning and that the proposed appeal raised no important point of principle or practice.

#### ■ **Omar v Birmingham City Council** (2008) 1 April, HL

Mr Omar has sought leave to challenge a decision of the Court of Appeal upholding a decision that Birmingham's housing duty was discharged by an offer he was made and refused: [2007] EWCA Civ 610; August 2007 *Legal Action* 29.

## HOUSING AND CHILDREN

### ■ **R (C) v Lambeth LBC**

[2008] EWHC 1230 (Admin), 19 May 2008

In October 2004, the claimant was 17 and in Lambeth's care. She was offered and accepted a one-bedroom council flat on the Oaklands Estate. The offer was made following an assessment of her needs as an imminent care-leaver. In 2005, having turned 18, she left the flat following a serious sexual assault. She

spent some time living with her former foster mother until, in March 2007, she was asked to leave and became street homeless (aged 20).

In judicial review proceedings, an interim order was made requiring the council to accommodate her pending trial. In August 2007, permission to seek judicial review was granted. In February 2008, the council accepted that it owed a duty to rehouse her. The matter continued to a full hearing of the judicial review claim (on the issue of whether or not the claimant was owed duties in respect of education and training after she had reached 21).

Noting the decision on rehousing, Blake J said:

*That inevitably involves some degree of acceptance of the proposition that the previous housing that had been offered at the Oaklands Estate, and that historically had been said to be sufficient to discharge their obligations to C, whether as a looked after child or a former looked after child or as a homeless person, did not. In the light of the particular facts related to her, it was not appropriate accommodation or sufficient or available to her and hence the recognition that a permanent re-housing duty was owed (para 8).*

## HOUSING AND COMMUNITY CARE

### ■ **R (S) v Lewisham LBC**

[2008] EWHC 1290 (Admin), 15 May 2008

The claimant lived, in turn, in Lambeth and Hackney. She applied to Lewisham for accommodation under National Assistance Act (NAA) 1948 s21. All three councils agreed that she was entitled to accommodation but they could not agree which of them should provide it. The secretary of state declared that the claimant had no 'settled' residence. On a claim for judicial review, Lewisham was ordered to house her pending the hearing. It sought an order requiring Hackney to meet those accommodation costs.

Davis J held that the authority subject to the s21 duty for a person with no settled residence was the authority for the area where the person was physically present. On the day of her application to Lewisham, the claimant had physically been in Lewisham. No degree of residence in the area of the authority to which the claimant presented herself was required. Lewisham was liable to pay.

- 1 Available at: [www.communities.gov.uk/news/corporate/835807](http://www.communities.gov.uk/news/corporate/835807).
- 2 Available at: [www.housingcorp.gov.uk/upload/](http://www.housingcorp.gov.uk/upload/)

[doc/PMs\\_Speech\\_Social\\_Housing\\_Regen\\_Conf\\_15\\_May\\_2008.doc](http://doc/PMs_Speech_Social_Housing_Regen_Conf_15_May_2008.doc).

- 3 Available at: [www.citizensadvice.org.uk/pdf/unfinished\\_business.pdf](http://www.citizensadvice.org.uk/pdf/unfinished_business.pdf).
- 4 Available at: [www.official-documents.gov.uk/document/cm73/7372/7372.pdf](http://www.official-documents.gov.uk/document/cm73/7372/7372.pdf).
- 5 Eighth report of session 2007–08, HC 457, 21 May 2008 is available at: [www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmcomloc/457/457.pdf](http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmcomloc/457/457.pdf).
- 6 Available at: [www.housingcorp.gov.uk/upload/pdf/Who\\_lives\\_in\\_affordable\\_housing.pdf](http://www.housingcorp.gov.uk/upload/pdf/Who_lives_in_affordable_housing.pdf) and [www.housingcorp.gov.uk/upload/pdf/Life\\_in\\_affordable\\_hsgng.pdf](http://www.housingcorp.gov.uk/upload/pdf/Life_in_affordable_hsgng.pdf) respectively.
- 7 Available at: [www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=&ProdID=A3F1CBB1-C859-4bb1-82CD-B8A088FAAA07](http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=&ProdID=A3F1CBB1-C859-4bb1-82CD-B8A088FAAA07).
- 8 Available at: [www.housingcorp.gov.uk/hat](http://www.housingcorp.gov.uk/hat).
- 9 Available at: [www.justice.gov.uk/docs/claims-management-impact.pdf](http://www.justice.gov.uk/docs/claims-management-impact.pdf).
- 10 Available at: [www.englishpartnerships.co.uk/publications.htm](http://www.englishpartnerships.co.uk/publications.htm).
- 11 Available at: [www.communities.gov.uk/news/corporate/803699](http://www.communities.gov.uk/news/corporate/803699).
- 12 Available at: [www.oft.gov.uk/advice\\_and\\_resources/resource\\_base/market-studies/saleandrent](http://www.oft.gov.uk/advice_and_resources/resource_base/market-studies/saleandrent).
- 13 LAW COM No 309, available at: [www.lawcom.gov.uk/docs/lc309.pdf](http://www.lawcom.gov.uk/docs/lc309.pdf).
- 14 Available at: [www.communities.gov.uk/documents/housing/pdf/jointworkinghomelessness](http://www.communities.gov.uk/documents/housing/pdf/jointworkinghomelessness).
- 15 Pre-legislative scrutiny of the proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2008, Cm 7379, May 2008, available at: [www.walesoffice.gov.uk/wp-content/uploads/2008/05/cm-7379-wales-na\\_housing.pdf](http://www.walesoffice.gov.uk/wp-content/uploads/2008/05/cm-7379-wales-na_housing.pdf).
- 16 Available at: [www.communities.gov.uk/documents/housing/pdf/parkhomesdisputes](http://www.communities.gov.uk/documents/housing/pdf/parkhomesdisputes).
- 17 Gurbinder Gill, Eric Bowes & Co, solicitors, Solihull.
- 18 Kerry Bretherton, barrister, London.



**Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. He is Legal Aid Barrister of the Year 2007. The authors are grateful to the colleagues at notes 17 and 18 for transcripts or notes relating to these judgments.**