

moving the boat is to attempt to escape the requirement to have a permanent mooring (para 14).

However, importantly, the judge also stated that:

*I think it right to say however that my decision is not to be taken as fully endorsing the Board's guidance. It is possible to envisage use of a vessel which fell short of the Board's concept of continuous cruising but which still qualified the vessel for a licence ... (para 15).*

- 1 Available at: [www.communities.gov.uk/publications/corporate/statistics/caravancountjul2010](http://www.communities.gov.uk/publications/corporate/statistics/caravancountjul2010).
- 2 Available at: <http://wales.gov.uk/topics/statistics/headlines/housing2011/110323/?lang=en>.
- 3 Available at: [www.travellersaidtrust.org/panel-review/](http://www.travellersaidtrust.org/panel-review/).
- 4 Available at: [www.communities.gov.uk/publications/planningandbuilding/travellersitesconsultation](http://www.communities.gov.uk/publications/planningandbuilding/travellersitesconsultation).
- 5 Available at: <http://wales.gov.uk/docs/desh/consultation/110331housinghomelessnesscodeen.pdf>.
- 6 Geraldine Winkler, Stone King LLP, Bath.

## 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

#### Housing law reform

The Localism Bill had its second reading in the House of Lords on 7 June 2011. The only changes to the new version of the bill from that introduced in the House of Commons reflect government amendments and the fact that it now requires two volumes. The housing provisions are in Volume 1 Part 6. The bill is now being considered in its House of Lords' committee stage. Further amendments are likely to include changes to the Housing Act (HA) 2004 provisions dealing with tenants' deposits in the light of recent cases (see below). The House of Commons Library has produced a helpful briefing note: *Tenants' deposits* (SN/SP/2121, May 2011).<sup>1</sup>

#### Legal advice and housing

The Legal Services Commission (LSC) has just published the third edition of its quality guide for legal advisers: *Housing: improving your quality* (LSC, April 2011).<sup>2</sup>

The online searchable directory of legal advisers able to help with housing problems under the legal aid scheme has been moved to the 'Directgov' website.<sup>3</sup>

The UK coalition government has confirmed funding of £1.5m over two years in 2011/12 and 2012/13 for FirstStop, an advice agency. FirstStop is a free, independent, information and advice service for older people, their families and carers. It aims to help older people make informed decisions about their housing options.<sup>4</sup>

#### Housing for persons from abroad

The House of Commons Library has produced several useful updated briefing notes covering housing and housing benefit for applicants from abroad, including:

- *The habitual residence test* (SN/SP/416, May 2011);<sup>5</sup>
- *EEA nationals: the 'right to reside' requirement for benefits* (SN/SP/5972, May 2011);<sup>6</sup>
- *Entitlement to social housing: persons*

*from abroad (non-EEA)* (SN/SP/5433, April 2011);<sup>7</sup> and

■ *EU migrants: entitlement to housing assistance (England)* (SN/SP/4737, April 2011).<sup>8</sup>

#### New affordable rent tenancies

To reflect the new arrangements under which housing associations are able to grant assured shorthold tenancies at 'affordable rents' (of up to 80 per cent of market rates), the statutory social housing regulator, the Tenant Services Authority (TSA), has issued a revised version of the rents and tenure sections of its National Tenancy Standard: *Revision to the Tenancy Standard: affordable rent* (Instrument number 5, TSA, April 2011).<sup>9</sup> The most important change is the removal of the requirement that landlords' policies 'should set out how [they] will make sure that the home continues to be occupied by the tenant they let the home to'. Without that change, a policy of requiring tenants paying affordable rents to leave – once their fixed-term tenancies expire under the new scheme – would not have been possible.

The UK coalition government has published *Planning policy statement 3 (PPS3): housing* (Department for Communities and Local Government (DCLG), June 2011), which contains a technical revision in Annex B intended to make clear that affordable rent lettings fall within the definition of affordable housing for planning purposes.<sup>10</sup> It also published a summary of the responses that were received to the consultation paper on the revision of Annex B: *Planning policy statement 3: planning for housing. Technical change to Annex B – affordable housing definition – consultation. Summary of responses* (DCLG, June 2011).<sup>11</sup> In relation to the affordable rent strategy itself, two impact assessments have been made available:

- *Impact assessment for affordable rent* (DCLG, June 2011);<sup>12</sup> and
- *Full equality impact assessment for affordable rent* (DCLG, June 2011).<sup>13</sup>



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## Landlord claims for possession

The latest figures on landlord possession claims in England and Wales have been published: *Statistics on mortgage and landlord possession actions in the county courts in England and Wales – first quarter 2011* (Ministry of Justice, statistics bulletin, May 2011).<sup>14</sup> They indicate a significant increase in the number of claims:

■ 34,897 landlord possession claims were issued in the first quarter (January to March) of 2011 on a seasonally adjusted basis, five per cent higher than in the first quarter of 2010 and one per cent higher than in the fourth quarter of 2010; and

■ 24,170 landlord possession claims led to an order being made in the first quarter of 2011 on a seasonally adjusted basis, nine per cent higher than in the first quarter of 2010 and five per cent higher than in the fourth quarter of 2010.

## Tackling housing fraud

The Secretary of State for Communities and Local Government has issued a new ten-point counter-fraud blueprint for tackling fraud in local government: DCLG news release, 11 May 2011.<sup>15</sup> Funding of £19m has already been committed to 51 councils in England to help them recover unlawfully occupied homes, and last year they recovered nearly 1,600 properties. Oxford City Council hired a dedicated fraud officer who recovered 25 properties in the first six months. In 15 of these cases, the unlawfully sub-letting tenant was still claiming housing benefit, the total cost of which was £1,500 per week. *The guide to tackling housing tenancy fraud* by the National Fraud Authority is now available widely.<sup>16</sup>

## Homelessness

The number of applicants accepted as being owed a main homelessness duty (HA 1996 s193) in England during January to March 2011 rose 18 per cent compared with the same quarter last year: *Statutory homelessness: March quarter 2011 England* (DCLG, June 2011).<sup>17</sup> The number of applicants accepted as owed that duty in the full year 2010/11 was ten per cent higher than in 2009/10. Many local housing authorities will need to adjust their homelessness services to cope with this higher level of demand. In a parliamentary written answer given on the day the statistics were released, the DCLG minister Andrew Stunell MP reminded councils of the need to consult service users when reviewing homelessness services (*Hansard* HC Written Answers col 450W, 9 June 2011).

## Housing and human rights

The Equality and Human Rights Commission (EHRC) has published guidance for social landlords on how the Human Rights Act (HRA) 1998 can affect their housing services: *Human rights at home: guidance for social housing providers* (EHRC, March 2011).<sup>18</sup> The non-statutory guidance contains a number of useful examples of how human rights may be relevant to allocations, tenancy management, tenancy terms and eviction as well as offering an introduction to the provisions of the HRA and rights under the European Convention on Human Rights ('the convention').

## Empty homes

Two new toolkits have been produced to help in efforts to bring 300,000 empty homes back into use. They are the *Empty homes toolkit* and the *Empty homes mapping toolkit* (Homes & Communities Agency, May 2011).<sup>19</sup>

## Housing in Wales

The Housing (Wales) Measure 2011 received royal assent on 10 May 2011.<sup>20</sup> The Welsh Assembly, exercising its devolved powers to make primary housing legislation, passed the measure to make provision:

■ for the suspension of the right to buy under the HA 1985; and

■ about the regulation of registered social landlords (and the enforcement action that may be taken against them) under HA 1996.

## Housing in Northern Ireland

The Housing (Amendment) Act (Northern Ireland) 2011 received royal assent on 3 May 2011.<sup>21</sup> The Act deals with many aspects of housing law in Northern Ireland including: tenancy deposits; houses in multiple occupation (HMOs); anti-social behaviour; abandoned tenancies; and the powers of the Northern Ireland Housing Executive.

## Long leases and ground rents

By way of a correction slip, the UK coalition government has addressed an error in the prescribed form of notice set out in the Landlord and Tenant (Notice of Rent) (England) Regulations 2004 SI No 3096. The notes to the notice now make clear that forfeiture action cannot be taken for non-payment of rent, service charges or administration charges (or a combination of these) unless the unpaid amount is more than £350 or consists of (or includes) an amount which has been outstanding for more than three years: *Change to ground rent notice* (DCLG, May 2011).<sup>22</sup>

## POSSESSION CLAIMS

### Human rights

The European Court of Human Rights (ECtHR) in Strasbourg is handling a backlog of complaints from UK residents who were public authority occupants but were, pre-*Pinnock* and *Powell* (*Manchester City Council v Pinnock* [2010] UKSC 45 and *Hounslow LBC v Powell*; *Leeds City Council v Hall*; *Birmingham City Council v Frisby* [2011] UKSC 8 (see pages 13–14 of this issue)), unable to have a county court determination of the proportionality of their evictions. The court has now invited responses from the parties in six such complaints.

■ *Wacey-Germaine v UK* App No 71308/10, 23 May 2011; [2011] ECHR 806 – in which the complainant was a non-secure tenant of accommodation provided under homelessness functions.

■ *Buckland v UK* App No 40060/08, 23 May 2011; [2011] ECHR 808 – in which the complainant was resident on a council Gypsy and Traveller site. See *Smith (On Behalf of the Gypsy Council) v Buckland* [2007] EWCA Civ 1318; [2008] 1 WLR 661.

■ *JL v UK* App No 66387/10, 26 May 2011; [2011] ECHR 831 – in which accommodation was provided by the Ministry of Defence. See *Defence Estates v JL* [2010] EWCA Civ 969.

■ *Dixon v UK* App No 3468/10, 23 May 2011; [2011] ECHR 809 – in which a secure tenancy was terminated by one of two joint tenants. See *Wandsworth LBC v Dixon* [2009] EWHC 27 (Admin); [2009] L&TR 28.

■ *Wilkes v UK* App No 56387/07, 2 June 2011; [2011] ECHR 865 – in which a possession order was made against introductory tenants.

■ *Birch v UK* App No 26393/10, 2 June 2011; [2011] ECHR 866 – in which the council sought and obtained a possession order against occupiers who had no right to possession in domestic law. See *Central Bedfordshire Council v Taylor* [2009] EWCA Civ 613.

The statements include questions such as (in *Buckland v UK* above):

■ If the applicant was a victim, was the interference with her right to respect for her family life or home, within the meaning of article 8(1) of the convention, necessary in terms of article 8(2) (see, in particular, *Connors v UK* App No 66746/01, 27 May 2004)?

■ Has the applicant suffered discrimination in the enjoyment of her convention rights, contrary to article 14 of the convention read in conjunction with article 8?

It is not yet clear whether the cases will be compromised or fully defended.

**■ Moore v Dun Laoghaire Rathdown CC**

[2010] IEHC 466,  
29 November 2010

Mr and Mrs Moore were council tenants from 1993. They owed arrears of rent which in July 2009 amounted to over €12,000. They were evicted on 29 April 2010 as a result of a warrant for possession. They sought an order of certiorari quashing the warrant for possession.

Pearl J refused to grant the relief sought. He concluded that:

■ even though the form of warrant failed to conform with the form provided by the District Court Rules, it complied with the relevant statutory provision, and must be seen as being in line with law in that respect;

■ although possession was obtained some 15 minutes earlier than the earliest time permitted by the relevant Act of parliament, that error was not one which of itself would be sufficient to entitle Mr and Mrs Moore to relief. It was a de minimis departure from the statute, and the court had discretion to refuse relief on that ground where there was no particular prejudice to the applicants;

■ although the warrant was issued outside the period of six months from the date of the order for possession as provided for in Order 47 r14 of the District Court Rules, and it could not be disputed that the warrant by which the applicants were evicted was not one which was issued in line with law, there was no mala fides on the part of the Sheriff or the council officers. Quashing the warrant now on the ground of its invalidity would achieve no useful purpose since it had already been executed. No quashing of the warrant could restore the applicants to possession of the premises. After referring to article 8 of the convention, Pearl J concluded that refusing to grant the relief sought was not disproportionate and that discretion should be exercised by refusing the relief.

**Grant of tenancy induced by false statement****■ Windsor and District Housing Association v Hewitt**

[2011] EWCA Civ 735,  
19 May 2011

Windsor granted Ms Hewitt an assured tenancy of a one-bedroom flat. Later she applied for a transfer to a two-bedroom property. Her transfer application form stated that she needed a two-bedroom flat on medical grounds so that her son, who was her carer, could live with her. She was offered a two-bedroom flat. When she completed the core lettings log for the new tenancy, she stated that she was to be the only occupant. Windsor claimed possession on the ground that it had been induced to grant the tenancy

on a false basis: HA 1988 Sch 2 Ground 17. A district judge dismissed the possession claim finding that her representation that she intended her son to live with her had become false by the time the new tenancy commenced, but that since she did not remember her original representation, the grounds for possession were not made out.

The Court of Appeal allowed an appeal and set aside the district judge's order. Before a judge embarks on an enquiry about whether or not a representor remembered a statement, the representor has to have asserted that s/he has forgotten it. In the absence of some evidence that Ms Hewitt had forgotten her earlier stated intention or reason for needing two-bedroom accommodation, there was no basis for considering whether or not she remembered making that representation. Whether or not Ms Hewitt remembered her statement in the transfer application had never been an issue in the case and the district judge had never said that Windsor should prove that she had remembered it. Windsor had made out its case that Ms Hewitt had sought a two-bedroom property on a false basis. The core log was irrelevant as it had not been relied on when deciding whether or not to grant a tenancy.

**Rent arrears****■ Glasgow Housing Association Ltd v Campbell**

[2011] CSOH 55,  
24 March 2011

Mr Campbell fell into arrears of rent when he allowed a non-dependant to stay in his flat and his housing benefit was reduced. The non-dependant failed to pay a promised contribution to the rent and Mr Campbell failed to meet the shortfall between his benefit and his rent. In 2008, the housing association sought possession. After several hearings, eventually a decree of ejection was made in September 2009. Mr Campbell applied to set aside the decree relying, as exceptional circumstances, on:

■ his full medical history and disabilities (which had not been known to the trial judge);  
■ the fact that there was a £300 disturbance payment which could be set-off against the arrears; and  
■ the fact that an arrears-direct arrangement could be set up to meet the arrears by deduction from his welfare benefits.

The Court of Session held that Mr Campbell and his solicitors had had ample opportunity to raise these three matters, and adduce evidence in support of them, during the proceedings. They did not justify the use of the exceptional power to set aside a decree.

**Enforcement of possession orders****■ Fineland Properties v Pritchard [No 3]**

[2011] EWHC (Ch),  
17 May 2011

In a High Court claim against a former licensee of a house, the claimant obtained a possession order and then a warrant of possession, which was executed. The defendant's application for an order restoring her to possession was dismissed (*Fineland Properties v Pritchard [No 4]* [2011] EWHC 1063 (Ch); June 2011 *Legal Action* 24). The defendant regained access to the property and changed the locks. The claimant obtained and enforced a writ of restitution and placed people inside the property to occupy it. The claimant then applied for an injunction to restrain the defendant from trespassing on the property and to prevent her from interfering with the quiet enjoyment of the occupiers of the property.

Morgan J granted the application. The test in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396; [1975] 2 WLR 316, clearly favoured an interim injunction being granted.

**ASSURED SHORTHOLD TENANCIES****Grant of new tenancy****■ Kahlon v Isherwood**

[2011] EWCA Civ 602,  
19 May 2011

Mr Isherwood was granted an assured tenancy in about 1994. In 2007, his landlord, Mrs Kahlon, began a possession claim alleging rent arrears and a breach of a covenant to allow access to the property. Mr Isherwood counterclaimed for damages for breach of the landlord's repairing covenants. The proceedings were compromised by a Tomlin Order which, among other things, provided that: 'The claimant and the first defendant shall execute an assured shorthold tenancy agreement for the period of 12 months commencing 2nd June 2008 in the form annexed hereto, to be signed by the parties not later than 2nd June 2008' (para 5). In May 2008, the parties executed a tenancy agreement headed 'Assured shorthold tenancy agreement'. Clause 2 provided that the landlord may terminate the tenancy at any time before the expiry of the term by giving to the tenant not less than two months' written notice.

In March 2009, Mrs Kahlon served a HA 1988 s21 notice stating that she required possession. She then issued proceedings under the Accelerated Procedure (Civil Procedure Rule 55.11). Mr Isherwood defended, saying that no notice in the

prescribed form had been served under HA 1988 Sch 2A para 7(1)(c) stating that the tenancy granted in 2008 would be a shorthold tenancy. Recorder Willetts rejected this defence and made an order for possession. He held that the schedule to the Tomlin Order, although not identical in form to Form 8 in the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 SI No 194, was in a form substantially to the same effect. Mr Isherwood appealed.

The Court of Appeal allowed his appeal and remitted the case to the county court. A comparison between Form 8 and the Tomlin Order schedule disclosed a number of material omissions. The bullet points were missing and there was nothing in the schedule which corresponded to paragraph 4 of Form 8 setting out the tenant's understanding and acceptance of the consequences, in terms of security of tenure, of a change from an assured to an assured shorthold tenancy; clearly, these were matters of substance. After referring to *Manel v Memon* [2000] 2 EGLR 40 and *Tegerdine v Brooks* (1977) 36 P&CR 261, Patten LJ said that 'where the provision in the prescribed form is clearly part of the substance of the notice ... it is no answer to its omission to say that the information it conveys was well known to the tenant at the relevant time' (para 21). Paragraph 4 is an essential part of the notice and there was nothing in the Tomlin Order schedule 'which even remotely corresponds to it' (para 22). The schedule to the Tomlin Order was not, therefore, a form substantially to the same effect as Form 8.

### Tenants' deposits

#### ■ Hashemi v Gladehurst Properties Limited

[2011] EWCA Civ 604, 19 May 2011

In 2007, Gladehurst let a flat to Mr Hashemi and Mr Johnson under an assured shorthold tenancy for a fixed term of one year. The rent was £2,080 per month. They also paid a deposit of £6,240 which was held by the landlord as stakeholder. The deposit was never registered or paid into a tenancy deposit scheme. Instead, it was retained by Gladehurst in its own bank account until October 2008 when the tenants vacated the flat. In February 2009, both tenants claimed a sum equal to three times the deposit under HA 2004 s214. District Judge Manners struck out the claim on the ground that it had been made after the tenancy had come to an end and, therefore, the provisions of section 214 no longer applied. HHJ Cryan allowed the tenants' appeal against the striking out.

The Court of Appeal allowed an appeal by Gladehurst. The power of the court to make

an order under section 214(3) and (4) is no longer exercisable once the tenancy has come to an end. The grounds for a section 214 application cease to exist once the lease expires and no order under either section 214(3) or (4) can therefore be made after that date. From that moment, the application ceases to be 'such an application' as described in section 214(2).

#### ■ Davies and Davies v Schofield

*Clerkenwell and Shoreditch County Court*, 7 January 2011<sup>23</sup>

In 2006, Mr Schofield moved into a room in a house owned by the claimants. He paid a deposit of £350 to the outgoing occupant and, after the claimants learnt of his arrival, was treated by them as having had his predecessor's rights in a deposit paid to the claimants transferred to him. He paid rent of £350 per month. In November 2006, after expiry of an earlier joint assured shorthold tenancy, he and the other three occupants of the house entered into a joint assured shorthold tenancy for a term of one year at a rent of £1,500 per month. By the expiry of that term, he was the only one of the four joint tenants still living in the house. In May 2008, Mr Schofield and three new occupants signed a new joint assured shorthold tenancy at a rent of £1,600 per month. The deposit was expressed to be £1,600, but Mr Schofield paid no additional sum as a deposit. During the course of this tenancy Mr Schofield, who was claiming housing benefit, became erratic in payment of his share of the rent and arrears accrued. The claimants sought possession, inter alia, under a notice served under HA 1988 s21. The other tenants moved out. Mr Schofield defended and counterclaimed relying on HA 2004 ss213 to 215. The landlords had failed initially to comply with these provisions but, on 8 April 2009, after the possession claim had been issued, paid various sums totalling £1,550 to the Deposit Protection Services. They included £350 in respect of Mr Schofield's deposit. The landlords then served a further section 21 notice.

Following the Court of Appeal's decision in *Tiensia v Vision Enterprises Ltd (t/a Universal Estates)* [2010] EWCA Civ 1224; [2011] HLR 10; January 2011 *Legal Action* 35, counsel agreed that:

- if a landlord has protected a deposit by the date of the hearing, no sanction is applicable;
- if the landlord has protected the deposit before serving a section 21 notice, the section 21 notice is valid;
- failure to do either within 14 days does not prevent the landlord from rectifying the situation; and
- if the landlord only remedies the situation by the date of the hearing, tenants ordinarily

recover their costs.

HHJ Cryan found that notwithstanding the May 2008 agreement, the intention of the parties was that Mr Schofield would pay rent of £375, but by way of concession it would remain at £350 until September 2008. His deposit was to be £375, but all that was paid was the sum of £350 carried over. He found that Mr Schofield had a tenancy of a single room, rather than a joint tenancy of the whole house. In view of this, the deposit had been protected by the time of service of the second section 21 notice. This notice was valid because all sums held by the landlords as deposits had been paid into the protection scheme. HHJ Cryan dismissed the counterclaim and made an order for possession.

## RENT ACT 1977

### Notices of increase

#### ■ Heartpride Ltd v Sawhney

*Lawtel*,

12 May 2011

The defendant was a Rent Act (RA) 1977 statutory tenant. Following registration of a fair rent, the landlord served a RA 1977 s45(2) notice of increase dated 27 March 2001, to take effect from 20 March 2001. In 2007, the landlord issued possession proceedings, relying on non-payment of rent. The tenant defended the proceedings, claiming that the notice of increase was invalid because it had failed to give four weeks' notice. At a case management conference, a recorder accepted this argument and struck out the claim. The landlord appealed.

Sarah Asplin QC, sitting as a deputy High Court judge, allowed the appeal. It was clear from the plain wording of section 45(3) that the date specified in a notice of increase under section 45(2)(b) cannot be earlier than the date from which the registration of the rent took effect, nor earlier than four weeks before service of the notice itself. In the light of the clear wording in section 45(3), neither section 45(3) nor the notice of increase, which was in a prescribed form based on section 45, could be construed as if 'earlier than' did not apply to the second limb of the provision.

## DAMAGES FOR UNLAWFUL EVICTION

#### ■ Deelah v Rehman

*Clerkenwell and Shoreditch County Court*, 10 March 2011<sup>24</sup>

From February 2009, Mr Deelah was an assured shorthold tenant in a shared first

and second floor flat. He had exclusive possession of one bedroom with shared use of a kitchen and bathroom. He lived there with his wife and two sons aged nine and 16. His landlord, Mr Rehman, ran a mobile phone shop downstairs. There were two other bedrooms in the flat. One of these was occupied by a friend of the landlord, Mr Zuhai, and the other by a couple of Mr Zuhai's relatives. In June 2010, Mr Rehman asked Mr Deelah to take a tenancy of the whole flat. After he refused, Mr Rehman told him to leave, saying he had agreed to re-let the flat to Mr Zuhai's relative. On 22 June, Mr Rehman came to Mr Deelah's room with a neighbouring shopkeeper. The shopkeeper accused Mr Deelah of using his commercial waste bin and behaved aggressively. Later that day, Mr Rehman seized Mr Deelah's forearm during a further row and twisted it. He threatened to change the locks and throw the family's belongings into the street. On 20 July, Mrs Deelah returned with their 16-year-old son to find the locks had been changed. The son climbed over a fence to try to gain access. The landlord swore at him and threatened to kill him, approaching him with an iron bar.

The family was ineligible for homelessness assistance. They had to stay with a friend, sleeping on a sofa and the floor in the friend's living room. The children missed school. Mr Deelah obtained an injunction without notice. Mr Rehman refused initially to readmit them, suggesting he had already re-let the flat. However, he later complied with the injunction. The family moved back in and recovered their belongings. Mr Rehman sought to defend the claim on the basis that Mr Zuhai, not he, was the landlord. His defence was later struck out for failure to comply with directions. He failed to attend the final hearing. There was evidence of further harassment after the injunction, including two occasions when Mr Deelah had been unable to get into or out of his room for short periods because the lock had been tampered with.

District Judge Millard extended the injunction and awarded damages as follows:

- £1,000 for the four nights during which the family had been excluded (£250 per night);
- £1,500 for the harassment before and after the eviction;
- £1,500 aggravated damages; and
- £2,500 exemplary damages, on the basis that the eviction had been intended to save the landlord the cost of court proceedings. The evidence suggested the property was probably an unlicensed HMO. The judge accepted that the costs of recovering possession lawfully were likely to be more expensive as a result.

## ANTI-SOCIAL BEHAVIOUR: CLOSURE ORDER

### ■ R (Byrne) v Commissioner of Police of the Metropolis

[2010] EWHC 3656 (Admin),  
15 October 2010

A district judge (magistrates' court) made a closure order under Anti-social Behaviour Act 2003 s11B. The effect of the order was that for a period of up to six months no one was permitted to enter or remain on the premises which were the subject of the order. On appeal to the Crown Court, it was contended that a police superintendent had failed to comply with an obligation to have regard to Home Office guidance before reaching a decision about the issue of a notice and that that failure rendered the issue of the notice unlawful. HHJ Huskinson ruled that any failure to comply with a code of guidance was not a matter for the magistrates, nor for the Crown Court on appeal, and therefore it was not for either of those courts to conduct what he described as 'some form of prior judicial review analysis to see whether the matter has been properly considered by the police' (para 2). Mr Byrne appealed by way of case stated.

Moses LJ stated that the Crown Court 'is entitled to prevent its processes from abuse and, in exceptional cases, may prevent an application from being persisted in or continued where it is clear to the court that there is either bad faith or manipulation of its processes in order to achieve a closure order' (para 16). However, he dismissed the appeal. The statutory scheme does not allow someone who faces a closure order to challenge the lawfulness of the prior closure notice on appeal. The issue of a notice is merely the trigger for the magistrates' jurisdiction. The legality or otherwise of the notice has no impact on the jurisdiction of the magistrates. The magistrates make their own decision about whether or not the conditions for the making of an order are satisfied.

## HOMELESSNESS

### Priority need and intentional homelessness

#### ■ Oxford City Council v Bull

[2011] EWCA Civ 609,  
18 May 2011

Mr and Mrs Bull separated. Mrs Bull remained in the matrimonial home with the children and Mr Bull moved out to a single room in a shared house. Later, the children decided that they wanted to live with their father. He allowed them to move in with him but the landlord required them to leave the single room.

Mr Bull applied for homelessness assistance and he and the children were placed in interim accommodation together in performance of the HA 1996 s188 duty. On completing its enquiries, the council decided that he was not in priority need and had become homeless intentionally. This decision was upheld on review. The reviewing officer decided that:

- the children resided with their mother and that the period spent with their father in the interim accommodation could not constitute residence with him; and
- Mr Bull's actions in allowing the children to move into his rented room had made eviction from that room inevitable.

On appeal, HHJ Harris QC varied the decision to one that Mr Bull was in priority need and had not become homeless intentionally. The Court of Appeal allowed a second appeal, in part. It held that:

- Mr Bull was in priority need at the date of the reviewing officer's decision because the children were in fact residing with him in the interim accommodation: HA 1996 s189(1)(b). The reviewing officer had to take account of factual matters arising after the date of the application for assistance: *Mohamed v Hammersmith and Fulham LBC* [2001] UKHL 57; [2002] 1 AC 547;
- on the facts, the council was entitled to find that Mr Bull became homeless intentionally: HA 1996 s191. The children had a satisfactory home with their mother where they could have continued living. The father's agreement that he would accede to their wish to live with him caused the loss of his accommodation which it would otherwise have been reasonable for him to continue to occupy alone (distinguishing *R v Hillingdon LBC ex p Islam* [1983] AC 688).

## HOUSING AND CHILDREN

### ■ R (TG) v Lambeth LBC

[2011] EWCA Civ 526,  
6 May 2011

The claimant was a young man. Lambeth provided accommodation for him between March and October 2006 when he was aged 16 and 17. The accommodation was provided ostensibly by the council in performance of its duties as a local housing authority to provide interim accommodation for the homeless: HA 1996 s188. In judicial review proceedings, Lambeth conceded that 'in all probability' the accommodation should have been provided by it as a children's services authority under a duty under Children Act (CA) 1989 s20 (para 4). The issue in the judicial review claim was whether a court could treat or deem the accommodation as having been provided

under section 20 so that the claimant would have the statutory rights enjoyed by a care-leaver.

McCombe J dismissed his claim that he was a 'former relevant child' within the meaning of CA 1989 s23C(1). The Court of Appeal allowed an appeal. It held that the proceedings had revealed a serious absence of co-ordination within Lambeth between its housing department and its children's services department, and that the circumstances suggested a need for all local authorities to take urgent steps to remedy any such failures in their own services. On the particular facts, a social worker employed by the council had decided that the claimant was a child in need of accommodation before referring him to the homeless persons service, and in those circumstances the CA 1989 duty was owed.

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

CO/7671/2010,  
13 May 2011

The claimant applied to Westminster for homelessness assistance for herself and her stepson. The council arranged temporary accommodation for her in Hackney but eventually decided that it did not owe her the main housing duty: HA 1996 s193. On the stepson's application for accommodation under CA 1989 s20, the council said that the relevant children's services authority was Hackney.

The claimant sought judicial review. Westminster later conceded that there had been an error and it agreed to arrange accommodation under its CA 1989 powers. It declined to pay the costs. HHJ Richard Foster (as he then was), sitting as a deputy High Court judge, ordered that, although the claim could be discontinued by the claimant, Westminster should pay the costs.

## HOUSING AND COMMUNITY CARE

### ■ R (Nassery) v Brent LBC

[2011] EWCA Civ 539,  
11 May 2011

The claimant sought judicial review of the council's decision that he was not in need of 'care and attention' and therefore did not qualify for accommodation under National Assistance Act (NAA) 1948 s21. His case was that, in the light of his mental illness, personality disorder, history of self-harm and previous detention under the mental health legislation, the council should have been satisfied that he either now needed or in future would need care and attention.

HHJ Robinson, sitting as a deputy High

Court judge, dismissed Mr Nassery's claim for judicial review: [2011] C1/10/2051, QBD (Admin); February 2011 *Legal Action* 45. The Court of Appeal dismissed an appeal. It held that on the facts as at the date of the council's decision, the claimant's condition had been under control. To provide for someone who might in due course need care and attention was beyond what the statute required, applying *R (M) v Slough BC* [2008] UKHL 52; [2008] 1 WLR 1808.

### ■ R (MK) v Secretary of State for the Home Department

[2011] EWCA Civ 671,  
14 April 2011

The claimant was a failed asylum-seeker for whom the Home Secretary was prepared to provide accommodation and food vouchers under Immigration and Asylum Act 1999 s4. The claimant wanted to live with his partner and child in her private rented accommodation and receive vouchers there. The secretary of state decided that she had no power to make such arrangements. Mr Michael Supperstone QC, as was, sitting as a deputy High Court judge, dismissed a claim for judicial review of that decision: [2010] EWHC 1002 (Admin).

The Court of Appeal dismissed an appeal. It held that on the true construction of the statutory provisions, the Home Secretary had no power to provide vouchers without also providing accommodation. To arrange with the private landlord that the claimant could stay with his partner would not amount to the provision of accommodation by the Home Secretary.

- 1 Available at: [www.parliament.uk/briefing-papers/SN02121.pdf](http://www.parliament.uk/briefing-papers/SN02121.pdf).
- 2 Available at: [www.legalservices.gov.uk/docs/cls\\_main/Housing\\_Guide\\_Edition3\\_.pdf](http://www.legalservices.gov.uk/docs/cls_main/Housing_Guide_Edition3_.pdf).
- 3 See: <http://legaladviserfinder.justice.gov.uk/AdviserSearch.do>.
- 4 The service is provided through a dedicated telephone line (0800 377 7070) and see: [www.firststopcareadvice.org.uk/](http://www.firststopcareadvice.org.uk/).
- 5 Available at: [www.parliament.uk/briefing-papers/SN00416.pdf](http://www.parliament.uk/briefing-papers/SN00416.pdf).
- 6 Available at: [www.parliament.uk/briefing-papers/SN05972.pdf](http://www.parliament.uk/briefing-papers/SN05972.pdf).
- 7 Available at: [www.parliament.uk/briefing-papers/SN05433.pdf](http://www.parliament.uk/briefing-papers/SN05433.pdf).
- 8 Available at: [www.parliament.uk/briefing-papers/SN04737.pdf](http://www.parliament.uk/briefing-papers/SN04737.pdf).
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- 13 Available at: [www.communities.gov.uk/documents/housing/pdf/1908006.pdf](http://www.communities.gov.uk/documents/housing/pdf/1908006.pdf).
- 14 Available at: [www.justice.gov.uk/publications/](http://www.justice.gov.uk/publications/)

statistics-and-data/civil-justice/mortgage-possession.htm.

- 15 Available at: [www.communities.gov.uk/news/localgovernment/1899158](http://www.communities.gov.uk/news/localgovernment/1899158).
- 16 See: [www.attorneygeneral.gov.uk/nfa/WhatAreWeSaying/Documents/Housing\\_Tenancy\\_fraud\\_guide\\_final.pdf](http://www.attorneygeneral.gov.uk/nfa/WhatAreWeSaying/Documents/Housing_Tenancy_fraud_guide_final.pdf).
- 17 Available at: [www.communities.gov.uk/documents/statistics/pdf/1918613.pdf](http://www.communities.gov.uk/documents/statistics/pdf/1918613.pdf).
- 18 Available at: [www.equalityhumanrights.com/uploaded\\_files/humanrights/human\\_rights\\_at\\_home.pdf](http://www.equalityhumanrights.com/uploaded_files/humanrights/human_rights_at_home.pdf).
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- 20 Available at: [www.legislation.gov.uk/mwa/2011/5/pdfs/mwa\\_20110005\\_en.pdf](http://www.legislation.gov.uk/mwa/2011/5/pdfs/mwa_20110005_en.pdf).
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- 22 Available at: [www.communities.gov.uk/documents/housing/pdf/1904855.pdf](http://www.communities.gov.uk/documents/housing/pdf/1904855.pdf).
- 23 William Ford, Osbornes, solicitors, London.
- 24 Erica Ffrench, Hopkin Murray Beskine, solicitors, London and Ben Chataway, barrister, London.



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