

# Recent developments in housing law



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

## POLITICS AND LEGISLATION

### Housing law reform

The House of Commons Library has produced a useful summary of changes made to the Localism Bill in the Public Bill Committee: *Localism Bill: committee stage report. Research paper 11/32*.<sup>1</sup> The housing parts of the bill are reviewed at pages 41–58. The bill will have its second reading in the House of Lords on 7 June 2011.

### New equality duty for social landlords

The new public sector equality duty introduced by the Equality Act (EqA) 2010 s149 came into force on 5 April 2011: Equality Act 2010 (Commencement No 6) Order 2011 SI No 1066. The duty is owed by most social landlords in carrying out their functions.

### Residential property tribunals

On 30 April 2011, new procedure rules and fee rates took effect in the residential property tribunals (RPTs) which determine many classes of housing dispute: Residential Property Tribunal Procedures and Fees (England) Regulations 2011 SI No 1007.

### Social housing allocation

A new research paper shows that ethnic minorities using choice-based letting schemes to apply for social housing are the most likely to end up in deprived and ethnic concentration neighbourhoods: *Choice-based letting, ethnicity and segregation in England*.<sup>2</sup>

### Mortgage arrears

The National Homelessness Advice Service has produced an updated April 2011 version of its leaflet *Are you worried about your mortgage? Get advice now*.<sup>3</sup>

### Social housing rent arrears

In Northern Ireland, new rent collection guidance has been developed by the Department for Social Development, with support from the Northern Ireland Federation

of Housing Associations, Housing Rights Service and the Northern Ireland Housing Executive.<sup>4</sup> The guidance states that '[e]viction should always be viewed as a last resort and should only be used when all other avenues have been exhausted' (para 10.23).

### Gypsy and Traveller sites

On 30 April 2011, the provision exempting council-provided Gypsy and Traveller sites from the protection of the Mobile Homes Act (MHA) 1983 was removed by the coming into force of Housing and Regeneration Act (H&RA) 2008 s318: Housing and Regeneration Act 2008 (Commencement No 8 and Transitional, Transitory and Saving Provisions) Order 2011 SI No 1002. A new set of terms and conditions for occupation of such sites has been prescribed: Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011 SI No 1003. However, those Travellers on official transit sites will have a reduced set of prescribed rights: Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) Order 2011 SI No 1004.

The coalition government has published a guidance note on the provisions applying the MHA to local authority Traveller sites: *Applying the Mobile Homes Act 1983 to local authority Traveller sites: guidance* (Department for Communities and Local Government (DCLG), April 2011).<sup>5</sup> The guidance covers the new requirement to provide a written statement to existing residents, other transitional arrangements, and terms relating to the operation of transit pitches.

The coalition government has also launched a consultation exercise seeking views on a new draft planning policy statement for controlling authorised and unauthorised Traveller sites: *Planning for Traveller sites. Consultation* (DCLG, April 2011).<sup>6</sup> The final statement will replace the current policy set out in Circular 01/2006: *Planning for Gypsy and Traveller caravan sites* and Circular 04/2007: *Planning for travelling*

*showpeople*. The closing date for responses is 6 July 2011.

The Secretary of State for Communities and Local Government has announced a range of other measures related to accommodation for Gypsies and Travellers, including a decision to provide £1.2m central government funding to assist Basildon Council in evicting those who are residing unlawfully at the Dale Farm site: DCLG news release, 13 April 2011.<sup>7</sup>

### Park home residents

On 30 April 2011, new regulations made under the MHA took effect to regulate the rights of mobile home residents on park home sites: Mobile Homes (Written Statement) (England) Regulations 2011 SI No 1006. The regulations set out the terms of written statements to be given to residents by site owners.

A new Order made under Housing Act (HA) 2004 ss229 and 250 gives the RPT jurisdiction to adjudicate on most disputes between residents and site owners: Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011 SI No 1005.

### Charging for social services accommodation

The coalition government has published a new edition of its guidance on charging occupiers for the provision of residential accommodation under the National Assistance Act (NAA) 1948 and other social services functions: *Charging for residential accommodation guide (CRAG)* (Department of Health (DoH), April 2011).<sup>8</sup> The new guidance follows the earlier distribution of the local authority circular (LAC) *Charging for residential accommodation* (LAC(DH) (2011)1, DoH, January 2011).<sup>9</sup>

### Poor housing in Wales

The authors of a new report on housing conditions in Wales have calculated that the cost to the NHS of treating accidents and illnesses caused by problems in the home, such as unsafe steps, electrical hazards, and excessive cold, damp and mould, is around £67m a year.<sup>10</sup> They concluded that the total cost to society of bad housing in Wales, including factors such as children's poor educational attainment and reduced life chances, is around £168m a year: *The cost of poor housing in Wales*, Shelter Cymru and the Building Research Establishment Trust, April 2011.

### Converting buildings into homes

The coalition government has launched a consultation exercise on proposed changes to

planning laws designed to make it easier for empty office blocks and other commercial premises to be converted for use as residential accommodation: *Relaxation of planning rules for change of use from commercial to residential: consultation* (DCLG, April 2011).<sup>11</sup> The consultation closes on 30 June 2011.

Meanwhile, the secretary of state called on local councils to use their existing powers more flexibly to facilitate such conversions pending the outcome of the consultation: DCLG news release, 8 April 2011.<sup>12</sup>

## HUMAN RIGHTS

### Article 1 of Protocol No 1

#### ■ *Brezovec v Croatia*

*App No 13488/07*,  
29 March 2011

From 1980, Mr Brezovec held a flat in Vojnić on a specially protected tenancy. He lived there with his family until October 1991, when Vojnić was captured by occupying forces. He fled and went to live in Karlovac, where, in January 1992, as an internally displaced person, he was awarded a flat on a temporary basis. In July 1996, his status as an internally displaced person was terminated, and in January 1999 he was forced to leave the flat in Karlovac. Mr Brezovec claimed that, in October 1995, after Croatia had regained control of almost its entire territory, he visited Vojnić and found his flat uninhabitable and in a very bad state of repair. He immediately began rebuilding with a view to moving into the flat; however, while he was still living in Karlovac, the local authorities, accompanied by the police, entered the flat, made a list of personal belongings, changed the locks and gave the keys of the flat to a local policeman called ZH. In December 1996, Mr Brezovec and his wife made a request to buy the flat from the Municipality of Vojnić relying on the Specially Protected Tenancies (Sale to Occupier) Act 1991. In May 2000, Mr Brezovec and his wife brought a civil action seeking a judgment which would allow them to purchase the flat. In September 2003, the court dismissed the action. It found that during the period between August 1995, when Vojnić was liberated, and August 1996, when the flat was awarded to ZH, Mr and Mrs Brezovec had only occasionally visited and used it. As a result, their specially protected tenancy had been terminated. Consequently, they were not entitled to purchase the flat. Mr Brezovec claimed in the European Court of Human Rights (ECtHR) that, by refusing his claim, the domestic authorities had violated his right to the peaceful enjoyment of his possessions.

The ECtHR found that Mr Brezovec's claim for the purchase of the flat was sufficiently established to qualify as an 'asset' attracting the protection of article 1 of Protocol No 1 (para 45). The refusal of the domestic courts to allow that claim undoubtedly constituted an interference with his right. The decisions of the domestic courts had a legal basis in domestic law as their refusal to grant the applicant's claim for purchase of the flat was based on section 2 of the Act on the Lease of Flats on the Liberated Territory 1995; however, that decision was not consistent with the court's previous case-law.

Contracting states have an obligation to organise their legal system so as to avoid the adoption of discordant judgments and conflicting decisions in similar cases. Failure to do so may, in the absence of a mechanism which ensures consistency, breach the principle of legal certainty. Where no reasonable explanation is given for the divergence, such interferences cannot be considered lawful for the purposes of article 1 of Protocol No 1. There was, accordingly, a violation of article 1 of Protocol No 1. In view of this finding, it was unnecessary to examine whether a fair balance had been struck between the demands of the general interest of the community and the requirements of the protection of Mr Brezovec's fundamental rights. The ECtHR decided that the most appropriate form of redress was to reopen the domestic proceedings. There was no call to award the applicant any sum on account of just satisfaction.

#### ■ *The Association of Real Property Owners in Łódź v Poland*;

#### ■ *Piotrowski v Poland*

*App Nos 3485/02 and 27910/07*,  
8 March 2011

The applicants, or their predecessors in title, owned houses which were taken under the 1946 'state management of housing matters', the 1974 'special lease scheme' and the 1994 system of 'controlled rent', which continued to apply until 2001. Since 2001, different provisions applied to the leases of flats in the houses in respect of rent increases, termination of leases, maintenance and repairs, and succession. The applicants complained that the continued restrictions on their property rights, including the control of rent increases, limitations on lease termination and vacation of flats, amounted to a breach of article 1 of Protocol No 1 to the European Convention on Human Rights ('the convention').

The ECtHR struck the applications out of its list of cases. After reviewing the legislative measures in the present-day situation and in the context of these cases, the court found no reason to depart from the findings made

in the friendly settlement judgment in *Hutten-Czapska v Poland* App No 35014/97. The ECtHR found that a redress scheme introduced in 2008 offered persons affected reasonable prospects of recovering compensation for damage caused by the earlier systemic violation of article 1 of Protocol No 1. The matters giving rise to the present application and the remaining 'rent-control' applications against Poland had been resolved for the purposes of article 37(1)(b) of the convention and it was no longer justifiable to continue the examination of these cases.

### Article 8 and possession claims

#### ■ *Southwark LBC v Barrett*

*Bromley County Court*,  
18 March 2011<sup>13</sup>

Ms Barrett had a non-secure tenancy granted in line with HA 1996 Part 7. It was determined when the landlord served a notice to quit. On 8 November 2010, a possession order was made at a hearing which Ms Barrett did not attend because, *pre-Manchester City Council v Pinnock* [2010] UKSC 45; [2010] 3 WLR 1441, her solicitor advised that there was no defence. On 2 December 2010, Ms Barrett issued an application to set aside the order or, in the alternative, to stay execution for three months. Her argument was that to do otherwise would breach her article 8 rights as confirmed in *Pinnock*. Ms Barrett accepted that she could not remain in the premises in the long term, but claimed that she needed more time to find alternative accommodation.

By agreement of both parties' counsel, and in the light of *Hackney LBC v Findlay* [2011] EWCA Civ 8, District Judge Brett applied the checklist in Civil Procedure Rule (CPR) 39.3(5) and decided that Ms Barrett had acted promptly after finding out about the possession order and had a good reason for not attending trial (her solicitor's advice). However, the judge dismissed the application because there was no reasonable prospect of success in defending the claim. The case did not cross the initial threshold of being seriously arguable. Although article 8 of the convention was engaged and there were no factual disputes, Ms Barrett had been through the review procedure provided for by HA 1996 Part 7, but she had decided not to appeal against Southwark's decision to discharge its homelessness duty following her refusal of alternative accommodation.

## SECURE TENANCY

### Possession claim and drug use ■ **Hammersmith and Fulham LBC v Forbes**

*Willesden County Court,  
14 April 2011<sup>14</sup>*

The defendant was the secure tenant of premises in which he had lived for 31 years. He was a heroin addict. There were no nuisance issues before June 2010. In the period between June 2010 and October 2010, the council received complaints from residents on the estate, who believed that the defendant was dealing drugs. The police raided his home and found a small amount of heroin. He was charged with possession of a Class A drug. He pleaded guilty. The police, with the assistance of the council, obtained a closure order for three months. The closure order was extended for a further three months by the magistrates' court. The evidence relied on to obtain the closure order was principally that of anonymous witness statements by residents on the estate, who believed that the defendant was dealing drugs at the premises and in the locality. There was also covert CCTV evidence showing the number of visitors to the premises. The same evidence was relied on at the possession trial along with further anonymous witness statements confirming the improvement on the estate as a result of the closure order. During the period of the closure order, the defendant made strenuous efforts to address his drug addiction, although at the date of the trial there had been some relapse because he was of no fixed abode.

District Judge Morris decided that, on the balance of probability, the defendant was a drug user who had allowed his home to be used by others for drug taking which had caused a nuisance to his neighbours. However, the district judge was satisfied that the defendant was not a drug dealer. He made a suspended possession order on strict terms with a review after three months so that the defendant's progress in addressing his drug addiction and the nuisance could be further assessed.

## ASSURED AND ASSURED SHORTHOLD TENANCIES

### Tenancy deposit scheme ■ **Potts v Densley**

*[2011] EWHC 1144 (QB),  
6 May 2011*

The claimant was the tenant and the defendants were the landlords of a property let on an assured shorthold tenancy. The deposit was not registered with a deposit protection scheme. After the tenancy ended,

the tenant brought a claim for the deposit's return and for a penalty of three times its amount under HA 2004 s215. Before the hearing the deposit was placed with a protection scheme. The judge considered that there was discretion under the HA 2004 regarding whether or not to impose the sanction and declined to do so. The claimant appealed.

The High Court decided that if there was non-compliance with the Act, there was no discretion about the penalty. However, as the deposit had been protected before the trial, the penalty provisions did not apply (see *Tiensia v Vision Enterprises Ltd (t/a Universal Estates)* and *Honeysuckle Properties v Fletcher* [2010] EWCA Civ 1224). The fact that the defendants had ceased to be the landlords under a tenancy by the time the deposit was protected could not alter that result.

### Disability Discrimination Act 1995 ■ **Beedles v Guinness Northern Counties Ltd**

*[2011] EWCA Civ 442,  
19 April 2011*

Mr Beedles was an assured tenant. He suffered from epilepsy and experienced seizures regularly. It was a term of Mr Beedles' tenancy agreement that he would keep the interior of the property in good decorative order. As a result of his disabilities, he was unable to carry out those responsibilities. The landlord agreed to waive the obligation in his case, but Mr Beedles claimed that the 'reasonable adjustments' requirements of Disability Discrimination Act 1995 s24C imposed a duty on the landlord to meet his request that it carry out the works for him. Mr Beedles issued proceedings, relying on sections 24A and 24C, contending that 'enjoy' required the landlord to ensure that he could obtain pleasure from the tenancy. The High Court dismissed the claim.

The Court of Appeal dismissed Mr Beedles' appeal. The words 'enjoy' or 'enjoyment' of premises used in the Act meant no more than that the tenant should be able to live in his home as any typical tenant would. Although anti-discrimination statutes are, in general, to be construed benevolently towards their intended beneficiaries (see *Archibald v Fife Council* [2004] UKHL 32; [2004] 4 All ER 303 and *Malcolm v Lewisham LBC* [2008] UKHL 43; [2008] 1 AC 1399), on the facts found by the judge, conditions at the premises had not degraded to such extent as to interfere with their ordinary use. Readers should note that since 1 October 2010, EqA ss20, 21, 22 and 38, and Sch 4, apply, which contain similar, but not identical, provisions.

## Costs

### ■ **Cockett v Moore**

*[2011] EWCA Civ 493,  
29 March 2011*

Ms Cockett brought a claim for possession and rent arrears against her tenant, Mr Moore. He counterclaimed for a declaration that he had a beneficial interest in the value of the property. At the first hearing, a possession order was made and the other claims were adjourned for full trial. At the trial, the rent arrears claim was dismissed save for an admitted and agreed amount and the counterclaim was dismissed. The judge ordered the tenant to pay 90 per cent of the landlord's costs. He appealed against the costs order.

The Court of Appeal refused permission to appeal. Although Mr Moore had defeated the main rent arrears claim, the judge had found that his counterclaim had taken up the bulk of the time at trial and in preparation for it. The claim for a possession order had also succeeded. There were no prospects of upsetting the judge's order on costs.

## Warrant for possession

### ■ **Finland Investments Ltd v Pritchard [No 3]**

*[2011] EWHC 1063 (Ch),  
20 April 2011*

In a High Court claim against a former licensee of a house, the claimant obtained a possession order and other relief (see *Finland Investments Ltd v Pritchard* [2011] EWHC 113 (Ch)). Once the date for possession had passed, the claimant applied, without notice, for a warrant of possession, which was executed, again without notice, by High Court officials. The defendant applied for an order restoring her to possession on the basis that the grant of the warrant and its execution had been unlawful.

Morgan J dismissed the defendant's application. Once her licence ended, she was a trespasser. The claim for possession against her was therefore a claim against a trespasser under CPR Part 55, even if other remedies had been sought on the claim. In the High Court, no notice had to be given of the application for, or execution of, a warrant to recover land from trespassers.

## PROTECTION FROM HARASSMENT ACT 1997

### ■ **Allen v Southwark LBC [No 2]**

*[2011] EWCA Civ 470,  
23 February 2011*

Mr Allen was the defendant in five claims for possession for rent arrears. All the claims were dismissed. He claimed that the taking

of the multiple claims amounted to a course of harassment contrary to the Protection from Harassment Act (PHA) 1997. The Court of Appeal decided that his claim was arguable: [2008] EWCA Civ 1478. At the subsequent trial, the judge decided that the possession claims had each been brought in good faith by the council 'however mistakenly or incompetently' and dismissed Mr Allen's claim.

The Court of Appeal dismissed an application for permission to appeal. There was no real prospect of showing successfully that, on the facts, the judge had been wrong.

### ■ **Kosar v Bank of Scotland plc (t/a Halifax)**

[2011] EWHC 1050 (Admin),  
18 January 2011

District Judge Richardson ruled that PHA s7(5), which states that 'references to a person, in the context of the harassment of a person, are references to a person who is an individual' means that an offence of harassment 'can only be committed by a person who is an individual against a person who is an individual' (para 2).

Silber J allowed an appeal. He held that section 7(5) does not preclude a company from committing a criminal offence of harassment contrary to section 2(1).

## MOBILE HOMES ACT 1983

### ■ **Murphy v Wyatt**

[2011] EWCA Civ 408,  
12 April 2011

In 1975, an owner let a plot of 1.7 acres of land on a weekly tenancy. The land was used for horse stabling, a livery business and grazing. In 1979, the tenant brought a caravan onto the land and lived in it as his home. The caravan was later replaced with a mobile home. The landlord served notice to quit and sought possession. HHJ Wakefield decided that the MHA did not apply to the tenancy of the land.

The Court of Appeal rejected the tenant's appeal. The Act only applied to the letting of a mobile home's site and any associated amenity land (for example, a garden). The MHA could not apply to the tenancy of a large parcel of land on only a small part of which the mobile home was stationed. It would be a little surprising if the MHA protected an occupier who, after entering into an agreement, brought a caravan onto the premises and lived in it, simply because there was nothing in the agreement which prevented him/her from so doing. The MHA was clearly directed to agreements whose purpose was, and was substantially limited to, providing a pitch and amenity land. It was

not permissible to sever the land consisting of the pitch from the rest of the land comprising the tenancy. In addition, in 1975 when the tenancy began, the MHA could not have applied because the land had no planning consent for residential use (see *Balthasar v Mullane* (1985) 17 HLR 561, CA).

## HOMELESSNESS

### Terminating the temporary accommodation duty

#### ■ **Goodwill SIP Ltd v Newham LBC**

[2011] EWHC 980 (QB),  
14 April 2011

The claimant companies provided Newham with residential accommodation to be used for temporary housing by homeless households who were being assisted under HA 1996 Part 7 (homelessness). The companies sued on unpaid invoices for over £78,000 in respect of accommodation charges for 'overstayers', ie, residents who had refused to leave even though the council had notified the occupiers that its homelessness duties towards them had ended. The council accepted liability in respect of those cases where it had delayed eviction awaiting the outcome of *Desnousse v Newham LBC* [2006] EWCA Civ 547; [2006] QB 831, CA. The council denied liability in all the other cases on the basis that once it had notified the resident and the company that a duty had been discharged, no further charges were payable in respect of that occupier.

Hickinbottom J rejected the companies' claim that it was for the council to evict those residents who overstayed. On a true construction of the contractual arrangements made, the council had no financial liability once its duties to the homeless households in question had ended. It was for the companies to evict the residents if they did not leave.

#### ■ **Sharif v Camden LBC**

[2011] EWCA Civ 463,  
20 April 2011

The claimant applied to the council for homelessness assistance. Her household included her disabled father and a dependent younger sister. Camden accepted that it owed the main housing duty (HA 1996 s193) and initially performed it by providing a three-bedroom house in the private rented sector. Later, the council decided to provide the claimant with two self-contained units in a hostel: one for the father and one for the two sisters. The units were on the same floor of the hostel but a few yards apart. The claimant refused the offer. The council decided that the refusal had released it from the main housing duty: section 193(5). This decision

was upheld on review and HHJ Mitchell dismissed an appeal against it.

The Court of Appeal allowed a second appeal. It held that the statutory obligation to provide suitable accommodation for an applicant could only be satisfied if the accommodation met the requirements in section 176: 'Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with: (a) any other person who normally resides with him as a member of his family ...'. The obligation to accommodate the claimant 'together with' other household members could not lawfully be performed by the provision of two, separate self-contained units.

#### ■ **Akhtar v Birmingham City Council**

[2011] EWCA Civ 383,  
12 April 2011

Birmingham owed the claimant the main housing duty under the homelessness provisions: HA 1996 s193. It made her an offer of a tenancy of council accommodation which she refused. The council decided that its duty had been discharged by the refusal: section 193(7). The claimant sought a review on grounds that the offered property had not been suitable because of:

- its small size; and
- its location in a particular part of the city.

A reviewing officer found that the property had not been suitable. File notes recorded that the officer had accepted that the family required larger accommodation. The decision to uphold the review was notified by a letter that did not contain the reasons.

The council then offered a second larger property in the same area of the city. The claimant again refused and sought a review on the basis that the second property was unsuitable by reason of its size and location. The reviewing officer upheld a decision that the second offer had discharged the council's duty. HHJ Worster dismissed an appeal and the Court of Appeal dismissed a second appeal.

The court held that as the first review had succeeded, there had been no duty to give reasons for the successful review outcome: sections 202–203. It had not therefore been necessary to spell out that the first review had only dealt with size and not location. Nor was there a duty in making a second offer to indicate expressly why the review of an earlier offer had succeeded.

**HOUSING AND CHILDREN****■ R (YA) v Hillingdon LBC**

[2011] EWHC 744 (Admin),  
1 March 2011

The council provided accommodation for the claimant under the Children Act (CA) 1989 on the basis that she was 15. In May 2009, the council undertook an assessment in which it found her age to be 19. In February 2010, a claim for judicial review of that decision was made and fixed for trial at the end of March 2011. Ahead of the trial, the High Court dealt with three preliminary issues at a case management hearing.

Keith J decided, first, that usually the claim would be out of time. Ascertaining a child's age correctly was not a continuing duty: time had begun to run in May 2009 with the first assessment. However, on the particular circumstances of the case, an extension of time was granted. Second, as the claimant would on any view be an adult at the date of trial, she should attend for cross-examination. Third, special measures would be in place to accommodate her vulnerabilities at trial.

**■ R (G) v Newham LBC**

[2011] EWCA Civ 503,  
5 April 2011

The claimant said that he had been born on 31 January 1993 and had been a child on his arrival in the UK to seek asylum. Kent County Council Social Services assessed him as being over 18. He sought accommodation from Newham under CA 1989 s20. In 2010, Newham assessed him as being between 21 and 25 years old. The claimant sought judicial review. Burton J refused him permission to pursue that claim and he appealed.

The Court of Appeal refused a renewed application for permission to appeal. Sullivan LJ said that three features of the case were particularly important:

■ there had been a full and detailed assessment;

■ this was not a case like *R (FZ) v Croydon LBC* [2011] EWCA Civ 59, in which the assessed age was only relatively narrowly different from the claimed age;

■ there was no expert evidence in support of the claimant's case.

**HOUSING AND COMMUNITY CARE****■ R (W) v Croydon LBC**

[2011] EWHC 696 (Admin),  
3 March 2011

The claimant was a young disabled adult to whom the council owed the accommodation duty under NAA s21. From 2005, the council

had funded his accommodation in a residential placement at a specialist facility in Yorkshire. In June 2010, it conducted an assessment which decided that the claimant should be moved because:

■ he was not being encouraged sufficiently towards independence; and

■ the cost of £4,800 a week for the Yorkshire accommodation was more than double what the council would usually have paid for similar accommodation.

Acting on the assessment, the council decided to move the claimant. He sought a judicial review.

Ouseley J allowed the claim. He held that on the specific facts the council had failed to consult the claimant's parents properly. They had only been provided with a copy of the assessment on their arrival to meet council officials and had not had a proper opportunity to prepare a response before the decision was taken.

**■ Buckinghamshire CC v Kingston upon Thames RLBC**

[2011] EWCA Civ 457,  
19 April 2011

Kingston had a statutory duty to provide residential accommodation for a disabled woman under NAA s21. In 2009 it decided that she could leave residential care and live independently in the community with support. It facilitated a move by her to a shared bungalow in Buckinghamshire provided by a charity, and which she occupied on an assured shorthold tenancy. Kingston later notified Buckinghamshire County Council that it would become liable for meeting her ongoing care needs under NAA s29.

Buckinghamshire contended that the move had been unlawful as the council had not been consulted and, as a result, it had no such liability. Wyn Williams J dismissed a claim for judicial review: [2010] EWHC 1703 (Admin); November 2010 *Legal Action* 31.

The Court of Appeal dismissed an appeal. It held that there had been no obligation on Kingston to consult Buckinghamshire. Consequently, the move had been lawful and Buckinghamshire had the responsibility to meet ongoing care costs.

**Local Government Ombudsman Complaint****■ Liverpool City Council**

10/008/979,  
4 April 2011

The council transferred some of its housing stock to a social landlord, Liverpool Mutual Homes (LMH). As part of the transfer, LMH agreed a protocol that if an occupational therapist identified a tenant as needing an adaptation to his or her home, the necessary work would be completed within 60 working

days, subject to the social landlord having funding.

The complainant was assessed by an occupational therapist as needing a level-access shower by reason of his disability. His landlord, LMH, told him that it would take three years before the work could be carried out because of a shortage of funds. After 16 months had passed, he complained to the council but it took no action.

The Local Government Ombudsman (LGO) found that the council had no system for monitoring whether or when adaptation work that an occupational therapist had identified as necessary had been carried out by a social landlord. The council had not considered how to discharge its statutory duty owed as a social services authority under the Chronically Sick and Disabled Persons Act 1970 and had not informed the complainant of the right to apply for a disabled facilities grant. The LGO recommended £2,000 compensation and made a series of service improvement recommendations.

- 1 Available at: [www.parliament.uk/briefingpapers/commons/lib/research/rp2011/RP11-032.pdf](http://www.parliament.uk/briefingpapers/commons/lib/research/rp2011/RP11-032.pdf).
- 2 Available at: [http://enhr2010.com/fileadmin/templates/ENHR2010\\_papers\\_web/papers\\_web/WS12/WS12\\_120\\_Manley.pdf](http://enhr2010.com/fileadmin/templates/ENHR2010_papers_web/papers_web/WS12/WS12_120_Manley.pdf).
- 3 Available at: [www.nhas.org.uk/publications\\_events.htm](http://www.nhas.org.uk/publications_events.htm).
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- 11 Available at: [www.communities.gov.uk/documents/planningandbuilding/pdf/1883189.pdf](http://www.communities.gov.uk/documents/planningandbuilding/pdf/1883189.pdf).
- 12 Available at: [www.communities.gov.uk/news/corporate/1883250](http://www.communities.gov.uk/news/corporate/1883250).
- 13 Daniel Skinner, solicitor, Batchelors, Bromley and Andrew Lane, barrister, London.
- 14 Sue James, solicitor, Hammersmith and Fulham Community Law Centre® and Jim Shepherd, barrister, London.

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