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

Legal aid for housing cases

Over 600 suppliers in England and Wales have been awarded contracts to provide legal aid services in housing (and debt). The list of suppliers has been published by the Legal Aid Agency (LAA).[1] The LAA has also published the list of successful bidders to provide legal aid funded duty schemes in housing possession cases in the county courts.[2]

While the new arrangements about the scope of legal aid are bedding down the LAA is publishing the answers to questions about the new scheme raised by suppliers with their contract managers.[3] Several of the questions raised cover housing issues.

Barristers undertaking legal aid housing cases may find assistance in the Bar Council's new free guidance booklet on changes to civil legal aid: *Changes to civil legal aid: Practical Guidance for the Bar* (March 2013).[4] Housing Law Practitioners Association (HLPA) members can access a guide to the way in which the new legal aid arrangements apply in housing cases through the HLPA website.[5]

Homelessness

The UK government has provided £1.3 million to establish a National Practitioner Support Service Team on Homelessness (to be hosted by Winchester City Council) and £700,000 to the National Homelessness Advice Service.[6] Together they will provide training, information and technical support to frontline homelessness staff of local housing authorities as part of the 'Gold Standard' initiative to drive up service standards in provision for the homeless in England.

Shelter has published a new guide for councillors and council officers on using the new powers to place homeless households in England in the private rented sector provided by Housing Act (HA) 1996 s193 as amended: *Using the private rented sector to tackle homelessness in your area A briefing for councillors and local authority officers on using your new powers* (March 2013).[7]

The House of Commons Library has published updated editions of its two key briefing notes on homelessness:

- *Homelessness in England*;[8]
- *Homeless households in temporary accommodation (England)*.[9]

The Chartered Institute of Housing (CIH) has published *How to ... maximise housing options and advice*.[10] The free briefing note considers the importance of a strategic approach that covers all the available housing options that help to ensure the best possible use of all available homes.

Letting agents and managing agents

The Enterprise and Regulatory Reform Act 2013 ss83–88 give the secretary of state power to make an order requiring all letting agents and managing agents, of privately rented and residential leasehold homes in England, to belong to a redress scheme. The government will consult on the detail of a proposed scheme, taking into account the recommendations of the Communities and Local Government Select Committee and the Office of Fair Trading.

The House of Commons Library has published an amended version of its briefing paper *The regulation of private sector letting and managing agents (England)*.[11]

Private rented sector conditions

The Chartered Institute of Environmental Health (CIEH) and the University of Greenwich have published a collection of papers by several leading practitioners covering a range of private sector housing conditions including: poor standards; overcrowding; homes in multiple occupation (HMOs); housing and health; and empty properties: *Effective Strategies and Interventions: environmental health and the private housing sector*.[12]

Housing law reform

Following the Welsh government's in-principle adoption of its *Renting Homes* proposals (for a simple two-type tenancy system) the Law Commission has reviewed and revised those proposals to take account of changes in the law since 2006. This comes ahead of the adoption of its draft Renting Homes Bill in Wales. The update published on 9 April 2013 considers article 8 and possession claims as well as the law on housing and anti-social behaviour: *Renting Homes in Wales*.[13]

Regulating social landlords

The social landlords' statutory regulator for England – the Regulatory Committee of the Homes and Communities Agency – has launched a preliminary discussion on proposals to reform the standards and principles set out in *Protecting social housing assets in a more diverse sector: A discussion paper on the principles for amending the Regulatory Framework for social housing in England* (April 2013).[14] The discussion will be followed by a formal consultation later this year.

Human rights

Article 8

■ **Lane v Kensington and Chelsea RLBC**
[2013] EWHC 1320 (QB), 19 April 2013

In 1956, Kensington and Chelsea granted a tenancy to Mr Lane's father. At about that time, a tree was planted in the garden. In 1989, Mr Lane's father died and his mother succeeded to the tenancy. The council entered into a new tenancy agreement with her. She died in January 2005. Mr Lane, who had been born in the property, continued to live there without paying rent. He suffered severe and chronic obsessive compulsive disorder associated with changes in his home, including the tree with which he had a particular fixation. The size of the tree and its roots caused difficulties between him and his neighbour. There was cracking in the wall between the gardens, and the tree might have been interfering with water services. It was overhanging the neighbour's garden. In July 2010, Kensington and Chelsea made an order entitling a neighbour to enter the garden to fell the tree. In March 2011, Mr Lane commenced proceedings against the local authority and the neighbour. He obtained an injunction preventing the felling. He argued that it would interfere with his right to respect for his home and private life under article 8. In November 2011, HHJ Collender QC ordered the trial of a preliminary issue, namely whether Mr Lane had a proprietary interest in the property and, if not, whether he had any other sufficient interest to bring a claim against Kensington and Chelsea. In December 2011, the judge held that he had no proprietary interest and had been living at the property as a trespasser. He further held that Mr Lane was unable to advance a claim under the Equality Act 2010 or article 8 of the European Convention on Human Rights ('the convention'). Mr Lane appealed. The local

authority accepted that the property was Mr Lane's home, even though he had no proprietary rights to it.

Sir Raymond Jack, sitting as a High Court judge, allowed the appeal. In the ordinary way, a legal threat to a home engages article 8(1). In situations where the law affords an unqualified right to possession on proof of entitlement, it might be that article 8(2) is met. Any person at risk of being dispossessed of his home at the suit of a local authority should, in principle, have the right to raise the question of the proportionality of the measure, and to have it determined by an independent tribunal, even if his right of occupation under domestic law has come to an end. As a general rule, article 8 only needs to be considered if it is raised by or on behalf of the residential occupier. If a point under article 8 is raised, the court should initially consider it summarily and, if it is satisfied that, even if the facts relied on are made out, the point would not succeed, it should be dismissed. Only if the court is satisfied that it is seriously arguable that it could affect the order that the court might make should the point be further entertained. Further, the concept of 'private life' is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person.

In this case, it was right to use the principles applicable to possession proceedings. The judge had not been addressed on how article 8 was to be applied and had not received appropriate submissions or authorities. He had not embarked on the requisite process of assessing proportionality on a summary basis. The proposition that felling a tree interfered with Mr Lane's home would be plainly unarguable if it were not for his obsessive compulsive disorder, as it was a far less drastic interference than proceedings enforcing a right to possession. However, the court could not form a view of the detrimental effect on his well-being if the tree was removed. Accordingly, it would not be fair to him to embark on a summary examination envisaged by the authorities. His argument that the felling of the tree was an interference with his private life had not added anything more to his case than his argument on interference with his home.

The case was remitted to the county court so that issues under article 8 could be considered.

■ Galovic v Croatia

Application No 54388/09,
5 March 2013

Ms Galovic was a private sector tenant. Her landlord brought a possession claim on a ground for possession that was available if: (1) the landlord intends to move into the flat or install his or her children, parents or dependants therein; and (2) the tenant owns a suitable habitable flat in the same municipality or township where the flat in which he or she lives is located. The domestic courts held that the second limb could be satisfied if any member of the tenant's household held a flat in the same area. Because the landlord was able to establish the first limb and because the tenant's son owned a house locally, a possession order was made. The applicant complained to the European Court of Human Rights (ECtHR). It was common ground that the court's possession order, made in proceedings between a private landlord and tenant, was an interference by the state with the tenant's article 8 rights.

However, the ECtHR held that the domestic courts had weighed Mrs Galovic's interests against those of her landlord and had struck a fair balance between those competing interests. Article 8(2) was satisfied. It followed that the application was inadmissible.

■ Stokes v United Kingdom

Application No 65919/10,
19 March 2013

Ms Stokes was an Irish traveller. She complained to the ECtHR that her rights under articles 6 and 8 had been infringed in possession proceedings brought by Brent Council because: (1) she had not been given a full explanation of why possession had been sought against her; and (2) the county court had not considered the proportionality of making a possession order. The Court of Appeal refused permission to appeal against a possession order ([2010] EWCA Civ 626, 27 April 2010; August 2010 *Legal Action* 33).

The UK government offered €2,000 compensation plus costs. The ECtHR was satisfied as to that settlement and struck the case from its lists.

■ R (JL) v Secretary of State for Defence

[2013] EWCA Civ 449,
30 April 2013

Mrs JL was married to an army officer. He was violent to her and abused one of their daughters. In July 1989, he resigned from the army. Although the army no longer had any duty to house Mrs JL, on compassionate grounds, because of her husband's misconduct towards her and the family, she was granted a licence of accommodation in Leeds where her children attended a boarding school. Even if there had been a tenancy, there could be no assured tenancy as a result of Housing Act 1988 Sch 1 para 11. In 2005, a notice to quit was served. By this time Mrs JL suffered ill-health, was registered disabled and had to use a wheelchair. She defended possession proceedings relying on article 8. Collins J made a possession order in May 2009 (*Defence Estates v JL* [2009] EWHC 1049 (Admin); August 2009 *Legal Action* 33).

In February 2011, the secretary of state decided to enforce the possession order. Mrs JL brought a claim for judicial review of that decision. She argued that: there had been a failure to have regard to considerations of mandatory relevance; the decision to enforce the possession order was a disproportionate interference with her article 8 rights; and that the decision was unreasonable. She claimed that, as a matter of common humanity, the defendant was required to take into account the absence of suitable alternative accommodation and the consequences of eviction. Ingrid Simler QC, sitting as a deputy High Court judge, dismissed the claim for judicial review ([2012] EWHC 2216 (Admin), 30 July 2012; September 2012 *Legal Action* 18). Mrs JL appealed.

Briggs LJ stated that in the overwhelming majority of cases the occupant's article 8 rights are appropriately and sufficiently respected by the provision of a proportionality review during the possession proceedings themselves, and usually at the hearing of them. Generally, an attempt to relitigate the article 8 issue at the enforcement stage, or to litigate it for the first time when it could and should have been raised as a defence in the possession proceedings, is an abuse of process. However, there are exceptional cases where the raising of article 8 rights at the enforcement stage is not an abuse. The obvious example is where there is a fundamental change in the occupant's personal circumstances after the making of the possession order but before its enforcement (eg the diagnosis of an incurable illness for the first time after the making of the possession order), making it disproportionate for the public authority to evict the occupant before he or she could be allowed to die peacefully at home. Mrs JL's case was a (probably unique) example where it was not an abuse of process to pray in aid article 8 rights at the enforcement stage. She vigorously pursued her article 8 rights during the possession proceedings but, as the law then stood, they afforded her no defence. However, it was now recognised, before the end of the process designed to lead to her eviction, that she had a right to a proportionality review of the enforced loss of her home. There was no occasion, other than judicial review of the enforcement process, in which that review could be conducted. Accordingly, the defence of disproportionate interference with an occupier's right to respect for private and family life under article 8 can be used as a defence against enforcement of an order once it has been obtained. However, the Court of Appeal dismissed Mrs JL's appeal on the facts of her case.

■ **Hattingh v Juta**

[2013] ZACC 5,
14 March 2013

Mr Juta owned a single dwelling that had previously comprised two units. He allowed Mrs Hattingh, a former employee, to occupy it rent-free. She lived there with her three adult sons, a daughter-in-law and three young grandchildren. Mr Juta later decided that he wanted to convert the property back to two units. One would be occupied by Mrs Hattingh and her youngest son. The other would be occupied by his new farm manager, who needed accommodation. He sought possession against the other two sons and the daughter-in-law. They defended the claim on the basis that their eviction would infringe Mrs Hattingh's statutory 'right to family life' against which the owner's claim had to be balanced. Mr Juta said that 'family' constituted only an individual, their spouse and minor children.

The Constitutional Court of South Africa held that 'family life' was not confined to the protection of a nuclear family. The right to family life would embrace such extended family of an occupier as was 'just and equitable' given the owner's rights to the land. On the facts, balancing the owner's rights and the rights of the family members, it had been appropriate to grant possession against them.

Article 1 of Protocol No 1

■ **Salvesen v Riddell**

[2013] UKSC 22,
24 April 2013

Landlords in Scotland developed a method of avoiding security of tenure for agricultural tenants. In 2003, legislation was enacted that closed the loophole. In part, the change had retrospective effect so as to apply to circumstances in which landlords had given notice prior to the new law. A landlord complained that this provision unlawfully interfered with his human rights under article 1 of Protocol No 1.

Lord Hope, with whom four other Justices of the Supreme Court agreed, said (para 38) that 'As a minority group landlords, however unpopular, are as much entitled to the protection of the Convention rights as anyone else.' Although legislation that is retroactive is not necessarily incompatible with the convention, the new legislation was discriminatory in a respect that affected landlords' rights to the enjoyment of their property. The difference in treatment between different classes of landlord had no logical justification and was unfair and disproportionate. The Supreme Court found that the provision was incompatible with the landlord's rights, but granted a 12-month suspension of its finding that the new legislation was outside the legislative competence of parliament in order to enable new legislation to be formulated.

Secure tenancies

Succession

■ **Wandsworth LBC v Sweeby**

[2013] EWCA Civ 435,
20 March 2013

Mrs Sweeby was a secure council tenant. She died in September 2009. The defendant, her grandson, claimed that he had succeeded to her tenancy because he was a member of her family who had resided with her through the 12 months prior to her death (Housing Act 1985 s87). The council did not believe the residence period had been met and brought a possession claim. District Judge Habershon found that the defendant had lived at the property for substantially less than 12 months and granted the order. HHJ Welchman dismissed an appeal.

McCombe LJ refused permission to bring a second appeal. The district judge had been engaged in an 'entirely classic fact-finding exercise'. The appeal did not have the slightest prospect of success and could not surmount the test for a second appeal.

Rent Act tenancies

Succession

■ **Northumberland & Durham Property Trust Ltd v Ouaha**

[2013] EWCA Civ 291,
22 February 2013

A Rent Act tenant died in November 2010. His son, then aged 16, had lived with him. The son's mother, the defendant, did not live with them but claimed that she had succeeded to the tenancy as the surviving 'spouse' under Rent Act 1977 Sch 1 para 2(1). HHJ Baucher rejected that claim on the basis that the tenant and the defendant had not been 'married' in a sense that would have been recognised under matrimonial legislation.

McCombe LJ granted permission to appeal. It was at least arguable that 'spouse' had a wider meaning when used in the Rent Act. The full appeal will be heard later this year.

Assured shorthold tenancies

Deposits

■ **Johnson v Old**

[2013] EWCA Civ 415,
23 April 2013

Landlords let a flat to Ms Old on an assured shorthold tenancy. The term of that tenancy was six months from 1 May 2009 to 31 October 2009 at a monthly rent of £950. The tenancy agreement required Ms Old to pay the first six months' rent in advance. It also required payment of a deposit of £1,425. She paid those sums. The parties entered into further fixed-term agreements on the same terms, but in due course a statutory periodic tenancy came into existence. In April 2011, the landlords served a Housing Act 1988 s21 notice and sought possession. Ms Old claimed that the notice was invalid because the six months' rent in advance amounted to a deposit that had been paid but that had not been protected by a deposit protection scheme (Housing Act 2004 s215). A deputy district judge found that the payment of rent in advance was a deposit. HHJ Simpkiss allowed the landlords' appeal.

The Court of Appeal dismissed Ms Old's further appeal. It held that, on the particular wording of the tenancy agreement, read as a whole, it did require that the first six months' rent be paid in advance. That lump sum was not a further 'deposit' for the purposes of the Housing Act 2004 and therefore did not require protection.

Anti-social behaviour

■ **Croydon LBC v Allan**

C0/7094/2012,
23 April 2013

The council applied for an anti-social behaviour order (ASBO) as a result of the defendant's anti-social behaviour. It invited the court to make a series of ten prohibitions. The magistrates' court made a four-year order with multiple prohibitions. The defendant appealed, contending that the prohibitions were in part too wide, lacked precision or were unnecessary.

Simon J allowed the appeal in part – upholding the order but modifying or removing several of the prohibitions. Clauses that prohibited conduct that was already covered by a broader clause were not permitted as they were not necessary, even where those clauses had been introduced in order to emphasise the prohibited conduct. The court also held that although the authorities were inconsistent on broad terms, each case turned on its own facts.

Harassment and unlawful eviction

■ **Singh v Sanghera**

[2013] EWHC 956 (Ch),
22 April 2013

The claimants took over a supermarket with living accommodation above. They paid £60,000 to the leaseholder. They lived at the property and ran the shop. The freeholder forfeited the leaseholder's lease by re-entry and took possession. The claimants sought damages for unlawful eviction and breach of contract.

HHJ Purle QC, sitting as a deputy High Court judge, held that the eviction had not been unlawful because: (1) the claimants had no interest binding the freeholder (because the agreement for a sub-lease or assignment of the lease was void for failure to comply with the Law Reform (Miscellaneous Provisions) Act 1989 s2); and (2) neither the head lease nor

their sub lease was granted for residential purposes. They were not covered by the Protection from Eviction Act 1977. Because there had been a total failure of consideration, they were entitled to return of the £60,000 on the basis of unjust enrichment.

■ **R v Allen and Mohammed**

[2013] EWCA Crim 676,
17 April 2013

The first defendant was a private landlord with previous convictions for violence. When one of his tenants fell behind with his rent, he enlisted the second defendant to help him with an eviction. Their presence was intended to dominate and frighten the tenant whom they ejected. The police were called. Although the tenant was let back in, Sheffield City Council brought a prosecution for offences contrary to Protection from Eviction Act 1977 s1(3) and (3A). After a trial, the defendants were convicted. The first defendant received an immediate custodial sentence of nine months. The second defendant was given a six-month suspended sentence order.

The Court of Appeal dismissed an appeal against conviction. The complaint that the judge should have left the statutory defence that the defendant 'had reasonable grounds for doing the acts' (s1(3B)) was rejected in the light of a concession made by trial counsel.

Long leases

Variation

■ **Brickfield Properties Ltd v Botten**

[2013] UKUT 133 (LC),
14 March 2013

HHJ Huskinson held that an order varying a lease made under the Landlord and Tenant Act 1987 s35 may have retrospective effect.

Service charges

■ **Burr v OM Property Management Ltd**

[2013] EWCA Civ 479,
3 May 2013

Mr Burr was the lessee of a flat. OM Property Management was a party to his lease and was responsible for managing the development. It was told by the developer that the gas to the swimming pool in a communal leisure centre was supplied by EDF Energy. Between 2001 and 2007, gas bills were received from EDF. OM paid them and recovered the costs from the lessees through the service charge. In 2007, OM received notification from Total Gas and Power that it, rather than EDF, had been supplying gas to the swimming pool. Total demanded over £135,000. Following negotiations, this was reduced to around £100,000. OM paid this sum and sought to recover the costs from the lessees through the service charge. Mr Burr made a part payment under protest and issued proceedings in the county court, denying that he was liable to pay the sums claimed. He relied upon Landlord and Tenant Act 1985 s20B(1), which provides that a tenant is not liable to pay service charges that were incurred more than 18 months before a demand for payment was served on the tenant. The case was transferred to the Leasehold Valuation Tribunal (LVT). The LVT held that Mr Burr was not liable to pay the service charges for the gas as the costs had been incurred when the gas was supplied and, therefore, were now irrecoverable. OM appealed successfully to the Upper Tribunal (Lands Chamber). Mr Burr appealed to the Court of Appeal.

The Court of Appeal dismissed that appeal. There is an obvious difference between a liability to pay and the incurring of costs. As a matter of ordinary language, a liability must crystallise before it becomes a cost. Costs are not 'incurred' within the meaning of section 20B on the mere provision of services or supplies to the landlord or management company.

■ **Morshead Mansions Ltd v Di Marco**

[2013] EWHC 1068 (Ch),
30 April 2013

Mr Di Marco was a long lessee in a block comprising 104 flats. He had a long-running dispute about service charges (see eg *Morshead Mansions Ltd v Di Marco* [2008] EWCA Civ 1371). Morshead issued two new claims for rent and service charges. Mr Di Marco counterclaimed, challenging the validity and propriety of the demands and the use of the money raised without complying with the provisions of the Landlord and Tenant 1985 Act, which give tenants the right to investigate and challenge service charges. HHJ Hand struck out the counterclaims. Mr Di Marco appealed.

One of the issues that Mann J considered on the appeal was the enforceability of Landlord and Tenant Act 1985 s21 (request for summary of relevant costs) and s22 (request to inspect supporting accounts). Mann J stated that tenants who have qualifying tenancies are a class of persons who suffer harm if there is a breach. The duties are not owed to the public at large. They are designed to achieve a situation in which a class of persons needs information to be able to check that their interests in paying no more than they should pay are properly respected and given effect. They are the persons who suffer if there is a breach. While the criminal sanctions provide an incentive to comply with the provisions, they are less likely to achieve the intended result (the production of records and information) than injunctive relief that is specifically framed and geared to the provision of the information. Parliament did not intend that prosecutions should be the only enforcement route. Parliament intended the duties to be enforceable in the same manner as other civil duties, that is to say by application to the civil courts (para 23). Mann J allowed Mr Di Marco's appeal in that respect.

■ **Carey-Morgan v De Walden**

[2013] UKUT 134 (LC),
14 March 2013

Under the terms of a long lease, landlords had a power to employ a resident caretaker and to recover the associated costs through the service charge. They were not the freeholder, but held a long lease of the building. Under their lease, they were under a duty to provide a resident caretaker. Between about 1984 and 2008, they did not provide a resident caretaker. In 2008, the freeholder informed them that they were in breach of covenant and at risk of forfeiture. They arranged for a resident caretaker to be provided at the building and sought to recover the costs from the lessees through the service charge. The practical effect of this was to increase the total service charge from around £8,000 pa to around £56,500 pa. The lessees argued that it was unreasonable within the meaning of Landlord and Tenant Act 1985 s19 to provide a resident caretaker. In subsequent proceedings, the LVT found that the building did not need a resident caretaker but only a part-time cleaner and the difference in cost was unreasonable.

HHJ Huskinson, sitting in the Upper Tribunal, allowed an appeal. The landlords needed to employ a resident caretaker so as to ensure that they were not in breach of their covenants under their lease. The lessees' lease had to be construed within that factual matrix. In considering whether it was reasonable to provide a resident caretaker, the LVT had failed to consider the need for the landlords to avoid potential forfeiture proceedings. The costs of the caretaker were reasonable within the meaning of section 19.

HMOs

■ **Naz v Redbridge LBC**

[2013] EWHC 1268 (Admin),
19 April 2013

The council decided that a property owned by Mr Naz had been let to multiple tenants and was an HMO in respect of which he was liable to pay council tax. Mr Naz appealed to a valuation tribunal. He produced a written tenancy agreement showing that the whole property had been the subject of a tenancy at the relevant time. The tribunal preferred the council's documentary evidence purporting to show that there were numerous separate tenants of different parts of the property during that time.

David Holgate QC, sitting as a Deputy High Court Judge, allowed a late appeal. The tribunal had plainly erred in law. Only in exceptional cases would it be right for a judicial body to determine that a written tenancy

agreement did not represent the true position. The decision would have to be retaken.

■ Haringey LBC v Mehmet Parlak

2 April 2013

The defendant was the private landlord of unlicensed HMOs. Following successful prosecutions for operating the HMOs without a licence, the council applied for rent repayment orders. A residential property tribunal ordered the defendant to repay £32,278 of housing benefit payments.

■ Oxford CC v Ali

Oxford Magistrates' Court,
22 March 2013

The defendant was a private landlord of a HMO. On inspection of his property, council officers found no notices displaying the landlord's details, kitchen tiles broken, the cooker located in an unsafe place (as there was no sufficient work surface either side for hot pans) and a damaged door frame to the ground floor bathroom. They also found loose wires on the first and second floor landing, the rear garden was full of debris and rubbish, and the stair carpet was worn and loosely fitted.

The defendant pleaded guilty to nine offences contrary to the HMO Regulations and was fined £2,350 with £200 costs.

■ Birmingham CC v Nasim and Choudhry

Birmingham Magistrates' Court,
14 March 2013

The defendants bought a house as a business venture and rented it out to tenants. They did not apply for an HMO licence or comply with minimum HMO standards. A ceiling in the house was in danger of collapsing, there were inoperable smoke alarms and the property had inadequate fire precautions.

They pleaded guilty to offences of failing to hold an HMO licence and to seven breaches of the HMO Management Regulations. They were each fined £4,000, a victim surcharge of £15 was made and they were ordered to pay costs of £1,026 (totalling £5,041 each).

■ Cannock Chase DC v Bishop

Stafford Magistrates' Court,
27 February 2013

The defendant was the private landlord of an HMO. The council's inspection found that the property had an unsafe cooker switch/socket, unsafe light fittings, unsafe shower switch, exposed wires on lights, a number of sub-standard fire doors and loose stair coverings. The defendant pleaded guilty to six offences under the Management of Houses in Multiple Occupation Regulations (England) 2006 SI No 373.

He was fined a total of £8,700 and costs of £490.

■ Kingston Upon Thames LBC v Shadrawy

Richmond Magistrates' Court,
31 January 2013

The defendant was the private landlord of an HMO let to seven students. A council inspection found the property in disrepair with rotten windows, missing stair rails, exposed wiring and penetrating damp. The defendant was charged with offences including failing to provide fire doors, smoke alarms and emergency lights following non-compliance with Housing Act improvement notices and the HMO Regulations. He pleaded guilty and was fined £3,500 with £1,720 costs.

HOMELESSNESS

Suitability of accommodation

■ Obiorah v Lewisham LBC

[2013] EWCA Civ 325,
12 April 2013

In 2004 the council accepted that it owed the appellant the main homelessness duty (HA 1996 s193). It provided her with temporary accommodation in performance of that duty. Under its housing allocation scheme (HA 1996 Part 6) the council made a series of offers of permanent accommodation. Those offers were all later withdrawn and the appellant was awaiting a further offer. Before making another offer of permanent accommodation, the council secured alternative temporary accommodation. The appellant rejected it, contending that she should be made an offer of permanent accommodation rather than more temporary accommodation. A reviewing officer decided that the offer had been 'suitable' and HHJ Carr dismissed an appeal from that decision.

The Court of Appeal dismissed a second appeal. The appellant could not establish a 'legitimate expectation' of a permanent offer rather than further temporary accommodation and there had been no unfairness or failure to comply with the review regulations.[15]

HOUSING & CHILDREN

■ R (Ezeh) v Barking and Dagenham LBC and Secretary of State for the Home Department

CO/4252/2013,
12 April 2013

The claimant was a Nigerian national who had arrived in the UK in 2008 with her young son. They were destitute and were accommodated by the council under Children Act 1989 s17. The council subsequently sought to withdraw that support as it considered that the claimant was an asylum-seeker and that it was therefore for the secretary of state to provide support. The UK Border Agency (UKBA) asserted both that it had no record of any application for asylum and that she had indeed made such an application. The claimant sought judicial review of the decision to withdraw support and an injunction for continued accommodation pending trial.

Elisabeth Laing QC, sitting as a deputy High Court judge, granted an interim injunction prohibiting the council from withdrawing support. It was not possible to resolve the underlying dispute without disclosure of the relevant files from the UKBA. The council had been placed in a difficult position by the contradictory information provided by the UKBA, but interim relief was necessary in order to maintain the status quo. (See also page 19 of this issue.)

OTHER CRIMINAL PROSECUTIONS

■ Leeds CC v Poorsheiki

Leeds Magistrates' Court,
26 March 2013

The defendant was a private landlady. On inspection of her property, council officers found a number of serious breaches of housing legislation. The property appeared to have been neglected for some time, with internal doors smashed and disrepair to the external fabric. The council brought a prosecution for five offences relating to fire safety.

The defendant failed to appear at trial. She was convicted in her absence and fined £9,066.

■ Westminster CC v Goatley

Southwark Crown Court,
26 March 2013

The defendant was a Westminster Council tenant from 2000. Following a call to the council's fraud hotline, investigators found that she had sub-let her flat on at least two occasions through an estate agent. She charged more than £1,400 a month in rent. She had been paid a total of £37,370 and had made a profit of £23,743.

For offences under the Fraud Act 2006, she was sentenced in July 2012 to a suspended sentence order with nine months' imprisonment, suspended for two years. She was ordered to carry out 140 hours of community service and required to pay £2,000 costs. The council later secured an order under the Proceeds of Crime Act 2002 for the defendant to pay £10,000 in respect of the profits made from the sub-letting.

■ Health & Safety Executive v Yaqub

Sheffield Magistrates' Court,
25 March 2013

The defendant was a private landlady. She let a house in Sheffield to a family. A Health and

Safety Executive (HSE) investigation found that: (1) she never provided her tenant with a landlord's gas safety record; (2) she used an unregistered gas fitter to install a boiler, leaving it in a dangerous condition; (3) she ignored a warning notice from the National Grid after they capped the gas supply to the appliance; (4) she sent the same unregistered fitter back to reconnect the boiler without fixing the faults; (5) she allowed the family to use the boiler for several weeks after it was illegally reconnected until it was capped off for a second time and again classed as dangerous; (6) she ignored repeated warnings from the HSE to check the safety of the boiler; and (7) she failed to provide information to the HSE to identify the unregistered fitter despite numerous requests.

She pleaded guilty to five offences under the Gas Safety (Installation and Use) Regulations 1998 SI No 2451. She was fined a total of £17,000 and ordered to pay costs of £6,916.

1 Available at: www.justice.gov.uk/downloads/legal-aid/tenders/tender-outcome-housing-debt.pdf.
2 Available at: www.justice.gov.uk/downloads/legal-aid/tenders/tender-outcome-hpcds.pdf.
3 Available at: http://nearlylegal.co.uk/blog/wp-content/uploads/2013/04/legal-aid-reform-FREQUENTLY-ASKED-QUESTIONS-2013.pdf.
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Recent developments in inquest law and practice

Leslie Thomas, Adam Straw and **Tom Stoate** explore some of the most important proposals in the Coroners and Justice Act (CJA) 2009 and the Ministry of Justice (MoJ) consultation on the implementation of the coronial reforms in CJA Part 1, and provide an update on important inquest case-law.[1]

POLICY AND LEGISLATION

Coronial law reform

Coronial law is at a crossroads. The CJA and the MoJ consultation on the implementation of the coronial reforms in Part 1 of the Act are expected to bring in a number of important and, in some cases, much-needed changes to the often archaic and over-burdened coronial system.

Objectives

The objectives of the CJA are noble, ie:

- to put the needs of bereaved people at the heart of the coroner system;
- to set locally delivered coroner services within a new national framework with national leadership; and
- to enable a more efficient system of investigations and inquests.

The provisions in CJA Part 1 will be implemented when the new proposed rules, regulations and orders on coroner areas come into force (currently expected in June 2013). These provisions create the office of Chief Coroner as the new national head of the coroner system, introduce the new concept of 'investigations' into deaths as well as inquests and seek to remove barriers to where investigations can be held by introducing new coroner areas – all of which are to be welcomed.

Chief Coroner's 'ten point plan'

The Chief Coroner's 'ten point plan', announced in September 2012, includes a welcome proposal for specialist groups of coroners, including coroners specialising in deaths in custody, which could, where possible, hear cases close to the bereaved family's location.[2] The plan also looks at issuing practical guidance notes to coroners on issues such as disclosure and case management, 'law sheets' for coroners on topics such as the scope of article 2 of the European Convention on Human Rights ('the convention') and a complaints procedure about a coroner's personal conduct.

In future, the Chief Coroner will simply ask the Lord Chief Justice to nominate a judge or former judge to conduct an investigation and will have the power to direct that judge to conduct it. In addition, the Chief Coroner may himself investigate a death, or ask a retired coroner to do so. He has issued guidance to coroners on the use of less invasive post-mortem examinations (for example, by computerised tomography scans or magnetic resonance imaging). Many bereaved families object to invasive post-mortem examinations on religious and cultural grounds.

New rules, regulations and terminology

The proposed new Coroners (Investigations) Regulations 2013 and the Coroners (Inquests) Rules ('the Inquests Rules') 2013 touch on a wide range of areas that are of concern to practitioners.[3]

- At the pre-inquest stage, the effect of *Middleton (R v HM Coroner for the Western District of Somerset and other ex p Middleton* [2004] UKHL 10, 11 March 2004; [2004] 2 AC 182) is now mentioned specifically in CJA s5(2), ie: the purpose of an article 2 investigation being to include 'ascertaining in what circumstances the deceased came by his or her death'.
- Under CJA s47, the coroner has discretion to recognise as an 'interested person' anyone with 'a sufficient interest'.
- In addition, concerning whether to summon a jury – a frequent source of disagreement between coroners and practitioners representing bereaved families – CJA s7(3) now includes discretion to summon a jury if the senior coroner thinks that there is 'sufficient reason' to do so.

There is hope that disclosure and important pre-inquest matters will be resolved properly and more consistently; this is a significant grievance of bereaved families and their