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

New housing legislation

In March and early April 2010, before parliament was dissolved for the general election, a number of statutes containing housing-related measures obtained royal assent, including:

- The Mortgage Repossessions (Protection of Tenants etc) Act 2010, which applies to England and Wales and will be brought into force by commencement order. It will give tenants some notice of the making of possession orders against their landlords and the opportunity to apply for a stay of any warrant of possession (see 'The Mortgage Repossessions Bill', [2010] 14 L&T Review 48).
- The Equality Act 2010, which, in addition to making new provision to outlaw a variety of forms of discrimination, includes measures in relation to lettings to disabled tenants addressing the making of reasonable adjustments by landlords and the right to carry out improvements: ss189 and 190 (see: Chris Syder, 'Moving the goalposts' *Inside Housing*, 23 April 2010, p33).
- The Crime and Security Act 2010, which contains provisions that:

– enable injunctions to be made against young gang members;
– allow magistrates temporarily to evict perpetrators of domestic violence; and
– further amend the anti-social behaviour order (ASBO) and parenting order provisions of the Crime and Disorder Act 1998.

Social housing allocation

When the latest statutory code of guidance on housing allocation in England, *Fair and flexible*, was published on 4 December 2009, the then housing minister, John Healey MP, made it clear that he expected all local housing authorities to review their local housing allocation schemes to reflect the new guidance.[1] To help local housing authorities in England undertake that task, the Chartered Institute of Housing (CIH) has published a practice brief: *Allocations and local flexibility* (CIH, March 2010).[2]

Anti-social behaviour and housing

Practical guidance for social landlords in Wales on implementation of the Wales housing management standard for tackling anti-social behaviour has been published by the CIH (Cymru): *The Wales housing management standard for tackling anti-social behaviour: guidance for implementation* (CIH (Cymru), March 2010). See also *Anti-social behaviour tools and powers. Information pack for councillors in Wales* (Home Office, February 2010).[3]

In England, in spring 2010, the then Home Secretary announced two new developments on enforcement action to tackle anti-social behaviour:

- From 5 April 2010, the Ministry of Justice gave judges new powers to set targets to ensure applications for ASBOs are dealt with speedily by the courts.
- When agencies and the police fail to take action to protect communities from anti-social behaviour, victims should get the support necessary to pursue any legal action against the perpetrator, with the agency that has failed them obliged to meet the costs.

How communities perceive the problem of anti-social behaviour is explored in *Research Report 34: The drivers of perceptions of anti-social behaviour* (Home Office, March 2010).[4]

Communities and Local Government (CLG) has published new guidance designed to help local authorities and other agencies to address anti-social behaviour related to Gypsies and Travellers: *Guidance on managing anti-social behaviour related to Gypsies and Travellers* (CLG, March 2010).[5]

In April 2010, a new team of four specialist anti-social behaviour action team advisers was appointed and seconded by the Tenant Services Authority (TSA) to the CIH to help social landlords in their efforts to address housing-related misconduct: TSA news release, 1 April 2010.[6]

A new *Tackling anti-social behaviour: tools and powers – toolkit for social landlords* has been published (CLG, April 2010).[7]

Homeless young people

Homeless young people aged 16 and 17 may be entitled to assistance with accommodation under either or both of the Housing Act (HA) 1996 Part 7 (homelessness) and the Children Act (CA) 1989 s20. In an attempt to help housing and social services authorities understand which of them should take responsibility for particular homeless teenagers, the Department for Children, Schools and Families and CLG have published new guidance for local authorities in England: *Provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation*.[8] See also page 10 of this issue.

Those advising homeless young people who are in their late teens or older may be assisted by obtaining a copy of *Young, adult and no support: the entitlements of young adults to care in the community* (Howard League for Penal Reform, 2010).[9]

Houses in multiple occupation

Recent changes have increased the number of new houses in multiple occupation (HMOs) that require planning permission (thus enabling local authorities to consider the impact of any proposals to establish them).[10] Where local authorities have concerns about the impact of HMOs in particular areas, they are now able to adopt local policies to control the density and spread of HMOs or to introduce standard conditions for HMO development.

Planning applications should now be assessed against these local policies, allowing local authorities greater control over HMOs. The likely effects of the changes are detailed in *Introducing a definition of houses in multiple occupation into the Use Classes Order: impact assessment* (CLG, March 2010).[11] The changes were introduced on 6 April 2010 by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 SI No 653.

Council housing

Before the general election, CLG announced that it intended to dismantle the current Housing Revenue Account subsidy system and replace it with a devolved scheme of financing and accountability for council housing: CLG news release, 25 March 2010. The announcement followed publication of the responses to a consultation exercise on the reform of council housing finance conducted in 2009: *Reform of council housing finance: consultation. A summary of the housing sector response* (CLG, March 2010).[12] Consultation on the new proposals runs until 6 July 2010: *Council housing: a real future. Prospectus* (CLG, March 2010).[13] An

assessment of the impact of the proposals has been published: *Council housing: a real future. Impact assessment* (CLG, March 2010).[14]

Housing Tribunal rules

The Tribunals Service is conducting a consultation exercise on the proposed new procedure rules for the Upper Tribunal (Lands Chamber): *Consultation on the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010*.[15] The tribunal hears appeals from Residential Property and Leasehold Valuation Tribunals. The consultation closes on 20 July 2010.

HUMAN RIGHTS

Article 8 and succession to a tenancy

■ Kozak v Poland

App No 13102/02, 2 March 2010

Mr TB rented a council flat. In 1989, Mr Kozak moved into the flat. They lived together in a homosexual relationship and shared expenses. Mr Kozak was registered as a permanent resident of the flat in the residents' register kept by the Szczecin Municipality. In April 1998, Mr TB died. Mr Kozak applied to the Mayor of Szczecin, asking him to conclude a lease agreement with him, to replace that with Mr TB. Later, the Szczecin Town Office's Department for Municipal Buildings and Dwellings sent Mr Kozak a letter informing him that his application could not be granted because he did not meet the relevant criteria. In 2000, Mr Kozak sued the municipality, seeking a judgment declaring that he had succeeded to the tenancy. The relevant statutory provision stated: 'In the event of a tenant's death, his or her descendants, ascendants, adult siblings, adoptive parents or adopted children or a person who has lived with a tenant in de facto marital cohabitation, shall, on condition that they lived in the tenant's household until his or her death, succeed to the tenancy agreement' (para 40). The court dismissed the claim. It found that these criteria had not been met. Mr Kozak's appeals were dismissed. Mr Kozak complained to the European Court of Human Rights (ECtHR) under articles 14 and 8 that the Polish courts, by denying him the right to succeed, had discriminated against him on the ground of his homosexual orientation.

The ECtHR noted that the Polish courts interpreted the legal term 'de facto marital cohabitation' in a manner which resulted in a difference of treatment between heterosexual and homosexual couples in respect of succession to a tenancy after the death of a partner. The ECtHR stated that article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations, but that not every difference in treatment will amount to a violation. Contracting states enjoy a margin of appreciation, but where a difference of treatment is based on sex or sexual orientation, the margin of appreciation is narrow and the principle of proportionality does not merely require that the measure chosen is, in general, suited for realising the aim sought, but it must also be shown that it is necessary in the circumstances. The ECtHR noted that the Polish court rejected the succession claim on the ground that under Polish law only a different-sex relationship qualified for de facto marital cohabitation. It concluded that a blanket exclusion of persons living in homosexual relationships from succession to a tenancy could not be accepted by the court as necessary for the protection of the family viewed in its traditional sense and no convincing or compelling reasons had been advanced by the Polish government to justify the distinction in treatment of heterosexual and homosexual partners. There was accordingly a violation of article 14 taken in conjunction with article 8.

PUBLIC SECTOR

Possession claims

Public law defences

■ Eastlands Homes Partnership Limited v Whyte

[2010] EWHC 695 (QB), 31 March 2010

Ms Whyte was granted successive assured shorthold 'starter tenancies'. As a result of rent arrears and allegations of anti-social behaviour, Eastlands served a HA 1988 s21 notice. Ms Whyte sought to rely on Eastlands' 'starter tenancy appeals procedure'. The appeals panel rejected her appeal. It decided that 'terminating the tenancy was the appropriate course of action'. Ms Whyte was notified of the decision, but no reasons were given. A possession claim was issued, relying on the s21 notice. Ms Whyte defended the claim, alleging that the decision 'to seek possession was unlawful, procedurally unfair, unreasonable and disproportionate'. She claimed that Eastlands had failed to act in keeping with its own published policy and take into account material considerations, and had reached a decision which no reasonable authority could have reached. At trial, counsel for Eastlands, while reserving his position for higher courts, conceded, having regard to *R (Weaver) v London and Quadrant Housing Trust* [2009] EWCA Civ 587; [2010] 1 WLR 363, that the claimant was to be regarded as a public authority and a public body.

HHJ Holman, sitting as a judge of the High Court, dismissed the claim for possession. He concluded that:

> *… the decision was one which no reasonable authority could have reached. The key elements are the failure to supply written evidence in advance, the broadening of the matters considered by the appeal panel beyond the information contained in the case summary, and most importantly the failure to consider the claimant's clearly stated policy for dealing with rent arrears, which applied to starter as well as assured tenancies. Although it is of less moment … the defendant had a legitimate procedural expectation of a further appeal. Applying the questions in* [R (Bibi) v Newham LBC *[2001] EWCA Civ 607; [2002] 1 WLR 237], the claimant committed itself in its appeal procedure document to a further appeal, and it ignored this. Taken in isolation, the court might not interfere, but in the context of the existence of other criticisms it would, as I see it, be wrong to have no regard to it* (para 58).

HHJ Holman granted permission to appeal.

Reinstatement after eviction

■ Croydon LBC v Mensah-Bonsu

Croydon County Court, 15 March 2010[16]

Ms Mensah-Bonsu was a secure tenant. She was illiterate. In August 2009, Croydon obtained an order for possession suspended on terms that she pay current rent plus £21.60 per month. She complied with the order for three months, but was unable to make payment in December 2009 because of a reduction in wages caused by ill health. She contacted Croydon and offered to pay double in February 2010. She thought that agreement had been reached, but, on 19 January 2010, Croydon rejected the offer. There were then confusing and contradictory demands for payment. In the meantime, on 5 January 2010, Ms Mensah-Bonsu made a payment. On 1 February, Croydon applied for a warrant. On 5 February, Ms Mensah-Bonsu made the double payment promised. The final letter from Croydon stated that she was required to pay £177.96 'immediately'. The letter also said that if this payment was made, the eviction would be cancelled. Ms Mensah-Bonsu borrowed and paid £178, but the eviction went ahead. She applied for reinstatement. In its evidence, Croydon did

not deal with its final letter and the council's witness, an income officer, failed to attend the hearing.

In allowing the application on the ground of oppression, District Judge Wright said that it was of 'great concern' that Croydon's witness failed to attend the court hearing and so could not be questioned. She also described the council's failure in any of its letters to inform Ms Mensah-Bonsu of her ability to apply to stay or suspend the warrant as 'very worrying'.

Application to reopen possession proceedings

■ Manchester City Council v Trayers

Manchester County Court, 2 February 2010[17]

Ms Trayers lived with two sons, both of whom had convictions for criminal behaviour in the locality. She had received a caution for possession of drugs at a pub in the area. Manchester City Council, her landlord, claimed possession based on rent arrears and anti-social behaviour. There was some reduction in allegations before the hearing in July 2009, when live evidence was called by both parties. Recorder McDermott QC reserved judgment until 3 September 2009, when he handed down a written judgment with a direction that the parties propose agreed terms for a suspended possession order, if possible. In response, the council made an application to reopen the proceedings (see *Re Barrell Enterprises* [1973] 1 WLR 19, CA and the note in *Civil Procedure* ('the White Book') at Vol 1, 40.2.1) on the ground that one of Ms Trayers's sons had been found guilty of two criminal offences after the hearing. Manchester claimed that this demonstrated that the pattern of behaviour had not changed for the better, but had in fact worsened. It was argued that if the proceedings were not reopened, Ms Trayers would enjoy an advantage caused by the delay.

Recorder McDermott QC dismissed the application. Relying on *Robinson v Fernsby* [2003] EWCA Civ 1820, he held that such applications should only be made in 'exceptional circumstances'. Although there had been some delay, his judgment was 'final', subject to the terms on which the order should be suspended and costs, and he had made that clear. The fact that one son had been convicted of two offences after the judgment had been handed down, but before the order was sealed, was not 'exceptional'. It was open to Manchester to make a further application to enforce the order, but it was not appropriate to reopen the proceedings for the purposes of reversing his decision.

PRIVATE SECTOR TENANCIES

Rent repayment orders

■ Palframan v Gill

Residential Property Tribunal of the Northern Rent Assessment Panel, MAN/00DA/HMA/2009/0009, 8 December 2009

Mrs Gill was the landlord of a HMO. On 1 October 2007, she let accommodation in the house to Mr Palframan and Ms Cromwell on an assured shorthold tenancy for six months at a rent of £300 per calendar month. The tenancy agreement was renewed on 1 April 2008 for a further six months. Mr Palframan stayed in the property until 2 November 2008. Mrs Gill was convicted at Leeds Magistrates' Court on 20 July 2009 of an offence under HA 2004 s72(1) of failing to licence a HMO under her management and control. She was fined £1,000 with costs of £1,554. Mr Palframan applied for a rent repayment order (RRO), claiming £3,600 for 12 months' rent. He stated that Mrs Gill's management of the properties had put the occupiers' health and safety at risk. On inspection, a council officer found that there was no fixed heating system and that the fire alarm system was dated and inadequate. The conditions were such that even if there had been an application for a licence, it would not have been granted.

The tribunal found that the property was an unlicensed HMO throughout the time that Mr Palframan was a tenant, but that of the rent which he paid, all but £600 had been paid more than 12 months before the application for a RRO (see s74(6) and (8)). It noted that, as Mrs Gill had licensed another property she owned, she was fully aware of the need to licence the HMO in which Mr Palframan was living. The tribunal, using its discretion about what was reasonable, ordered Mrs Gill to pay Mr Palframan £300. It concluded that to order payment of any greater sum would afford him 'an unwarranted windfall'.

Harassment and unlawful eviction

Damages

■ Fakhari v Newman

Woolwich County Court, 7 January 2010[18]

Mr Fakhari granted Mr Newman a one-year, fixed-term tenancy in May 2008. The monthly rent was £985. A deposit of one month's rent was taken and receipted, but was not protected by a tenancy deposit scheme. There were problems with the boiler from the outset. In December 2008, the boiler broke down completely leaving Mr Newman without heating and hot water until 17 June 2009, when hot water (but not heating) was restored. The property was also draughty because of defective windows that leaked during periods of heavy rain. From December 2008 onwards, Mr Fakhari and his sister made it clear that they did not want Mr Newman as a tenant. They telephoned and texted him continually. They tried to force him to sign a new tenancy agreement with an additional £500 per month rent. They threatened him and suggested that it was no longer safe for him to be in the property. They attended the property a number of times without appointment. Mr Fakhari's sister told the police that Mr Newman had tried to blow up the property. Mr Fakhari claimed possession. Mr Newman counterclaimed.

On the counterclaim, District Judge Lee awarded the following:

- £2,955 under HA 2004 s214.
- £9,250 for disrepair (viz:
  – 25 per cent of rent for May 2008 to December 2008;
  – 75 per cent of rent between December 2008 and June 2009; and
  – 43 per cent of rent from June 2009 onwards).
- £2,000 for 'harassment'.
- £2,000 in exemplary damages.

The total award was £16,205. District Judge Lee also ordered that the deposit be covered by one of the authorised tenancy deposit schemes within 28 days.

■ Walsh v Shuangyan

Manchester County Court, 14 January 2010[19]

In June 2009, Ms Shuangyan granted Mr Walsh a tenancy of a room in a HMO. The monthly rent was £298. There were six other tenants occupying rooms in the same house. In early July 2009, the local authority served notices on Ms Shuangyan as a result of her failure to obtain a licence for the property under HA 2004, and requiring various remedial works to be effected to, inter alia, the electrical installations and boiler. On 8 August 2009, Ms Shuangyan disconnected the boiler. In the days following, four of the occupants decided to move out. On 31 August 2009, the electricity supply was also disconnected, and a few days later two of the remaining occupants also left, leaving Mr Walsh as the sole tenant.

He was then subjected to harassment and threats by Ms Shuangyan and her father, who assaulted him and kicked his door. They were also abusive and threatening to him. On one occasion, he had to barricade himself in his room all night as Ms Shuangyan and her father remained in the house, in an attempt to intimidate him into leaving. On 16 September 2009, he returned home to find the locks had been changed and some of his possessions had been put into bin bags

outside. Most of his belongings were still inside his room and he was unable to access them.

The local authority's tenancy relations officer contacted Ms Shuangyan to advise her of the unlawfulness of her actions, but she refused to readmit Mr Walsh. Mr Walsh obtained an injunction from the county court requiring Ms Shuangyan to readmit him, but she failed to comply with it and an order was made committing her to prison for 28 days. Mr Walsh spent 30 days sleeping on the sofas of various friends and members of his family, missed some work as a result of having to travel around so much and developed a painful back as a result of his living conditions.

District Judge Richmond awarded the following:

- £2,000 for the harassment before the eviction.
- £6,000 for the eviction and its consequences (based on a 'daily rate' of £200).
- Aggravated damages of £4,000.
- Exemplary damages of £1,500 (being a sum representing the costs Ms Shuangyan might have incurred were she to have sought advice and proceeded to evict Mr Walsh lawfully).

He also awarded special damages of £5,750, representing the estimated value of the items Mr Walsh was unable to recover from his room and his lost earnings, interest in the sum of £204 and costs on the indemnity basis.

■ Anslow v Hayes

Manchester County Court, 15 October 2009[20]

Mr Hayes granted Mr Anslow a tenancy of a room in a HMO at a monthly rent of £350. On 1 September 2007, Mr Anslow moved in. He accrued a modest level of arrears and, as a result, Mr Hayes threatened to evict him. On 17 December 2007, Mr Anslow returned home to find that he was prevented from entering the property. He tried to call Mr Hayes to ask that he be readmitted, but Mr Hayes refused to do so. Instead, Mr Hayes rang the police to tell them that he had been advised by a neighbour that someone was acting suspiciously outside the house, causing the police to seek to apprehend Mr Anslow. Mr Anslow sought help from a tenancy relations officer and from a solicitor who both contacted Mr Hayes on the telephone, but he refused to readmit Mr Anslow. Mr Hayes agreed that Mr Anslow could come and remove his possessions, but then decided to pack those items without Mr Anslow's permission. He was forced to remain outside in the street while his girlfriend had to do her best to retrieve what she recognised as his from inside the premises. Some of his possessions, including items with a high sentimental value, were disposed of or otherwise removed without his consent. Mr Anslow spent a period of 73 days staying in cramped conditions with his then girlfriend, before he found alternative suitable accommodation of his own. In the subsequent claim for damages, Mr Hayes filed a defence, but then failed to attend trial.

Recorder Yip found that Mr Hayes' actions were unlawful. She awarded the following:

- General damages in the sum of £7,000 to compensate Mr Anslow for the 73-day period during which he had been deprived of occupation of his home.
- £2,000 aggravated damages, taking into account Mr Hayes' actions generally and the fact that he had been warned of the illegality of his conduct.
- Exemplary damages in the sum of £1,000 (being a sum representing the costs Mr Hayes might have incurred were he to have sought legal advice and proceeded to evict Mr Anslow lawfully), plus interest and costs.

■ Schuchard v Fu

Brentford County Court, 25 February 2010[21]

Mr Schuchard was the assured shorthold tenant of one room in a HMO. The landlady wanted possession of the room and the rest of the property in order to carry out renovation works. She sent a number of letters asking for possession, but no HA 1988 s21 notice was ever given to the tenant nor were possession proceedings ever started. On 6 July 2009, the landlady sent Mr Schuchard a letter requiring him to leave the property the next day because of rent arrears. On 7 July 2009, the landlady attended the property with a locksmith and changed the locks to the front door. The landlady refused to give Mr Schuchard a key to the new lock to the front door. Mr Schuchard left the property. That evening, Mr Schuchard attempted to re-enter the property but was unable to do so. Most of Mr Schuchard's personal possessions remained in his room. On 8 July 2009, the landlady was asked by the tenancy relations officer of Richmond upon Thames RLBC to readmit Mr Schuchard to the property. She refused. She said that she was only willing to readmit Mr Schuchard if the rent arrears were cleared. She continued to refuse to readmit Mr Schuchard even when written to by Mr Schuchard's solicitors. As a result of the unlawful eviction, Mr Schuchard was left street homeless for a period of 120 days. Attempts by solicitors to secure him accommodation from the local authority failed. The only support Mr Schuchard had throughout that 120 days was from a day care project. After the 120 days, Mr Schuchard was accommodated for a period of 77 days by the local authority while it considered its duty under the National Assistance Act 1948. After that time, the local authority discharged its duty and refused to accommodate Mr Schuchard. Mr Schuchard then spent the next 35 days until the trial sleeping on a friend's floor.

Assessing damages, District Judge Plaskow considered *Tvrtkovic v Tomas* August 1999 *Legal Action* 29, *Ahmed v Bains* September 2001 *Legal Action* 25, *Dorival v Simmons* August 2003 *Legal Action* 31 and *Cooper v Sharma* October 2005 *Legal Action* 17. He awarded the following:

- General and aggravated damages at the daily rate of £200 for the 120 days when Mr Schuchard was street homeless (total £24,000).
- A lump sum of £2,000 for the 77 days when he was accommodated by the local authority.
- General and aggravated damages at the daily rate of £125 for the final period when he was sleeping on a friend's floor (total of £4,375).
- Exemplary damages of £1,750 as the eviction was partly so that the landlord could do up the property with a cynical disregard for Mr Schuchard's rights.

■ Keddey v Hughes

Sheffield County Court, 12 March 2010[22]

Mr Keddey lived in a property from 2005. In mid-June 2007, he took on the tenancy for himself, when his mother moved out. The defendant landlord claimed that Mr Keddey agreed to move out in October 2008, and entered into an agreement with new tenants. However, Mr Keddey decided not to move out. The defendant attended at the property and assaulted Mr Keddey twice. Later, the defendant came back and entered the property with three other men. Mr Keddey was assaulted again and then physically ejected, although he returned to the property later the same day. Later in the month, he returned home to find the defendant inside the property packing up furniture. Many of his possessions had been placed in bin liners, and others had been damaged. He decided to leave and not return. He stayed in bed and breakfast accommodation for three to four weeks before securing accommodation under HA 1996 Part 7.

In a claim for damages, Recorder Khan made the following awards of damages:

- £165 per night, for a period of 28 days following the unlawful eviction (total £4,620).
- £1,500 for harassment and trespass to person and property.
- £1,000 in aggravated damages. Such an award was stated to be 'entirely fair'.
- £2,000 in exemplary damages. The ejection from the property had been public,

upsetting and humiliating. Recorder Khan found that the defendant had been warned by the local authority against evicting Mr Keddey without following court procedures. Furthermore, he accepted that he had been told to 'tread carefully' and demonstrated clear knowledge of the statutory framework of the HA 1988. The court also noted that the rent sought from the new tenants exceeded that paid by Mr Keddey. The court made reference to the principle that exemplary damages can be awarded in order to teach a wrongdoer 'that tort does not pay' (*Rookes v Barnard* [1964] AC 1129).

■ £750 for special damages.

Assured tenancies

Rents

■ Hughes v Borodex Ltd

[2010] EWCA Civ 425, 27 April 2010

In 1977, an underlease was assigned to Ms Hughes's mother. In 1992, she carried out improvements to the property. Before the underlease expired by effluxion of time in 2003, Ms Hughes's mother died. On expiry of the fixed term, Ms Hughes became an assured tenant in line with the provisions of the Local Government and Housing Act (LGHA) 1989. The parties could not reach agreement about the rent, and so there was a reference to a rent assessment committee (RAC) under LGHA Sch 10. The RAC disregarded improvements which had been carried out in 1992 and determined a rent of £1,668 per month. After a further reference in 2007, the RAC determined that the rent payable with effect from April 2008 would be £2,340 per month. (In view of HA 1988 Sch 1 para 2, as amended, this meant that the tenancy ceased to be an assured tenancy because the annual rent exceeded £25,000, but see the Assured Tenancies (Amendment) (England) Order 2010 SI No 908.) In fixing the rent, the RAC stated that it could not disregard the improvements. Ms Hughes appealed. Collins J dismissed the appeal ([2009] EWHC 565 (Admin); [2009] 2 EGLR 47).

The Court of Appeal dismissed a second appeal. The effect of LGHA Sch 10 paras 9 and 11 was to provide a means of fixing the initial rent. Their function was limited to enabling the rent to be fixed at the outset. Once the initial terms, including rent, were fixed, those paragraphs were spent, and it was open to the landlord to serve a notice and start the procedure for fixing a new rent under the provisions of HA 1988 s13. Sections 13 and 14 only allow improvements made by a tenant under a previous tenancy of the same premises to be disregarded, if that tenancy was an assured tenancy (s14(3)). Sections 13 and 14 provide a complete code for the notices to which they applied and there was no warrant to read in a further principle deduced from Sch 10.

Assured shorthold tenancies

Tenants' deposits

■ Qurat-Ul-Ain-Zia v Mourtada

Central London County Court, 9 February 2010[23]

Mrs Qurat-Ul-Ain-Zia granted Mr Mourtada a series of assured shorthold tenancies. The last was granted on 6 December 2008 for a term of one year. The tenancy agreement stated 'Deposit £1,400 (already held)', which was to be held by Mrs Qurat-Ul-Ain-Zia 'without interest for the term … and the deposit or the balance thereof shall be returned on the expiry of the term'. She did not provide a deposit protection certificate within the 14-day period provided for in HA 2004 s213(3). A certificate was sent by fax on 14 October 2009, ie, over ten months after the commencement of the term. Mrs Qurat-Ul-Ain-Zia claimed possession relying on HA 1988 Sch 2 Grounds 10 and 11 (rent arrears). Mr Mourtada counterclaimed. He argued that he was entitled to set off against the arrears 'compensation under the provisions of sections 212 to 215'. At the hearing of the possession claim on 17 November 2009, it was agreed that the arrears were £3,123. Mrs Qurat-Ul-Ain-Zia argued that the deposit was not received at the commencement of the tenancy on 6 December 2008, but had been received on or near the commencement of the first assured shorthold tenancy in 2005 or 2006 and so was not subject to the statutory deposit protection scheme.

Recorder Talbot QC rejected this argument. He held that 'with effect from 6 April 2007 (when … the statutory scheme under the 2004 Act came into force) any deposit moneys used by or on behalf of the claimant as deposits under the successive, separate shorthold tenancies … were 'received' by the claimant on the commencement of each such tenancy and had to be dealt with strictly in accordance with that scheme, and, in particular, with section 213'. When the December 2008 tenancy agreement came into force, the deposit of £1,400 had to be dealt with under the statutory scheme. He dismissed the possession claim and entered judgment on the counterclaim for the sum that now represented the balance due from Mrs Qurat-Ul-Ain-Zia after the agreed rent arrears were set off against 'the triple statutory compensation' of £4,200 payable under s214(4).

LONG LEASES

Ground rent and service charges

■ Chasewood Park Residents Ltd v Kim

[2010] EWHC 579 (Ch), 24 March 2010

The claimant freeholder sought judgment for arrears of ground rent and service charges claimed to be due under a long lease. There was no evidence that any notice was served in respect of some of the alleged arrears in keeping with Commonhold and Leasehold Reform Act (CLRA) 2002 s166, which provides that tenants under long leases of dwellings are not liable to make payments of rent unless the landlord has given notice stating the amount of the payment and the date on which it is due. Neither the claim form nor the defence made any reference to CLRA s166. The claim was listed for a fast track trial. Again, no reference was made at trial to CLRA s166. HHJ Copley struck out the defence and gave judgment for the claimant. The defendants appealed.

Arnold J allowed the appeal. Compliance with s166 is a condition precedent to the tenant's liability for ground rent under a long lease. It followed that it was for the landlord claiming unpaid ground rent to plead and prove compliance with that section. There was also an arguable basis for disputing the reasonableness of the expenditure on maintenance claimed in the service charges. The case was remitted to the county court.

HOUSING ALLOCATION

■ R (Adow) v Newham LBC

[2010] EWHC 951 (Admin), 14 April 2010

Newham's housing allocation scheme, made under HA 1996 Part 6, provided that medical assessments of applications for housing accommodation would be carried out by the 'medical assessment officer in the quality and review team'. The claimant made an application for housing supported by the reports of a GP, a paediatrician and an environmental health officer. The application needed a medical assessment. The council had no employee in post as a 'medical assessment officer' and sent the claimant's application for assessment to an external adviser, a Dr Keen. He advised that no change to the claimant's medical priority status was required and the council accepted that advice and declined further medical priority. The claimant sought judicial review. On the eve of the hearing, the council conceded that its practice did not comply with the terms of its scheme.

McCombe J, nevertheless, granted a declaration that the council had acted in breach of the terms of its scheme by having 'out-sourced' its decision-making. No further relief was required as the claimant's immediate housing problems had been resolved by other means.

HOMELESSNESS

Homelessness and violence

■ Yemshaw v Hounslow LBC

[2009] EWCA Civ 1543, 15 December 2009

Since the preparation of the note of this appeal, which appeared in March 2010 *Legal Action* 31, the full transcript has become available. It indicates that the adverse decision subject to review and appeal was that the claimant was not 'homeless' (rather than that she 'had become homeless intentionally' as reported initially).

The claimant has petitioned the Supreme Court for permission to appeal from the Court of Appeal's decision.

HOUSING AND CHILDREN

■ R (S) v A Local Authority

[2010] EWHC 848 (Admin), 7 May 2010

The claimant was a child. Her parents were unable to look after her and, ordinarily, the council could have applied for a care order in respect of her. Instead, it asked the claimant's grandmother if she would accommodate the claimant. She agreed to do so. The question later arose whether or not the accommodation with the grandmother had been arranged under CA 1989 s17 (a power to assist a child in need) or CA 1989 s20 (duty to accommodate a child in need).

On an application for judicial review, Black J held that the claimant was a 'looked after' child and that her placement with the grandmother by the local authority had been in performance of a CA 1989 s20 duty. It followed that the grandmother was entitled to payments from the council.

■ R (TG) v Lambeth LBC

[2010] EWHC 907 (Admin), 29 April 2010

In 2006, when he was 16, the council provided the claimant with accommodation. Later, the question arose whether or not that accommodation had been provided as a social services function (in which case the claimant was entitled to services under the Children (Leaving Care) Act 2000) or under the homelessness provisions of the HA 1996 Part 7 (in which case no such services were available).

On a claim for judicial review, McCombe J considered the two recent House of Lords cases: *R (M) v Hammersmith and Fulham LBC* [2008] UKHL 14; [2008] 1 WLR 535 and *R (G) v Southwark LBC* [2009] UKHL 26; [2009] 1 WLR 1299, and decided that, whatever should properly have happened, the claimant in fact had only ever been accommodated by the housing department in performance of the Part 7 functions. Accordingly, the claimant had never been a 'looked after' child.

■ R (Clue) v Birmingham City Council

[2010] EWCA Civ 460, 29 April 2010

The claimant was a Jamaican national and an overstayer. She had several children, most of whom were British citizens. When she lost her financial support and accommodation, she sought assistance from the council for herself and her dependent children. She had applied to the Home Office for indefinite leave to remain under the terms of the relevant immigration policy. That application awaited determination.

The council declined to provide support or accommodation (under the CA 1989) on the basis that the claimant could return, with her children, to Jamaica.

She sought judicial review and Charles J quashed that decision: [2008] EWHC 3036 (Admin). The council appealed.

The Court of Appeal dismissed the appeal. It held that the application ought not to have been refused while the claimant had an undetermined claim to remain in the UK made in accordance with a relevant immigration policy unless that claim was hopeless or an abuse of the system. See also page 13 of this issue.

HOUSING AND COMMUNITY CARE

■ R (Kiana) v Home Secretary

[2010] EWHC 1002 (Admin), 20 April 2010

The claimant was a failed asylum-seeker. On his application, the secretary of state agreed to provide him with support under Immigration and Asylum Act 1999 s4 in the form of accommodation and vouchers. The claimant wanted to continue to live with his partner and child in her accommodation. He asked the secretary of state to treat his partner as supplying him with accommodation under s4 and to provide him with vouchers there. When that request was declined, he brought a claim for judicial review.

Michael Supperstone QC, sitting as a deputy High Court judge, held that neither of the canvassed options was available to the secretary of state under the s4 regime and dismissed the claim. See also page 12 of this issue.

1 Available at: www.communities.gov.uk/documents/housing/pdf/1403131.pdf.
2 Available at: www.cih.org/practice/briefs/documents/AllocationsPracticeBrief.pdf.
3 Available at: www.cih.org/cymru/policy/ASB-Guidance/ASBGuidance-E.pdf and http://webarchive.nationalarchives.gov.uk/20100418065544/http://asb.homeoffice.gov.uk/uploadedFiles/Members_site/Documents_and_images/About_ASB_general/CouncillorPackWales_2010_0168.pdf respectively.
4 Available at: www.homeoffice.gov.uk/rds/pdfs10/horr34c.pdf.
5 Available at: www.communities.gov.uk/documents/housing/pdf/1512778.pdf.
6 Available at: www.tenantservicesauthority.org/server/show/ConWebDoc.20255/changeNav/14567.
7 Available at: www.communities.gov.uk/documents/housing/pdf/1530807.pdf.
8 Available at: www.communities.gov.uk/publications/housing/homelesssixteenseventeen.
9 To order, visit: www.howardleague.org/publications-youngpeople, £15.
10 CLG Circular 05/2010: *Changes to planning regulations for dwelling houses and houses in multiple occupation*, available at: www.communities.gov.uk/documents/planningandbuilding/pdf/1528858.
11 Available at: www.communities.gov.uk/documents/planningandbuilding/pdf/1503595.pdf.
12 Available at: www.communities.gov.uk/documents/housing/pdf/1520232.pdf.
13 Available at: www.communities.gov.uk/documents/housing/pdf/1512947.pdf.
14 Available at: www.communities.gov.uk/documents/housing/pdf/15129471.pdf.
15 Available at: www.tribunals.gov.uk/Tribunals/Documents/Rules/ConsultationPaper.pdf.
16 Tony Martin, Merton Law Centre®.
17 Elizabeth Hudson, Peasegoods solicitors, Manchester and Adam Fullwood, barrister, Manchester.
18 Brian Tan, solicitor, Messrs H E Thomas & Co, Woolwich and Michael Paget, barrister, London.
19 John Stringer, solicitor, Platt Halpern, Manchester and Ben McCormack, barrister, Manchester.
20 See note 19.
21 Brian McKenna & Co solicitors, Hounslow and Alastair Panton, barrister, London.
22 Graham Hogarth, solicitor, Howells, Sheffield and John Hobson, barrister, Manchester.
23 Alan Mullem, Moss Beachley Mullem and Coleman, solicitors, London.

Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. The authors are grateful to the colleagues at notes 16–23 for transcripts or notes of judgments.