Recent developments in housing law

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

POLITICS AND LEGISLATION

Social housing allocation in England

The UK government is consulting presently on the draft of new statutory guidance to be issued under Housing Act (HA) 1996 s169 on social housing allocation in England: *Allocation of accommodation: guidance for local housing authorities in England. Consultation* (Department for Communities and Local Government (DCLG), January 2012).[1] The draft takes account of the changes to be made to allocation law by the Localism Act (LA) 2011 and would replace all current statutory guidance in England issued under HA 1996 Part 6. Responses are invited by 30 March 2012.

Fraud in social housing

The UK government is consulting currently on proposals to amend the law relating to fraud in social housing, ie, unauthorised subletting, assignment without consent and deception used to achieve tenancy succession: *Social housing fraud. Consultation* (DCLG, January 2012).[2] In addition to proposing new criminal offences which local authorities could prosecute, the consultation paper suggests amendments to the security of tenure of absentee secure and assured tenants including:

- fixing a period of absence beyond which tenants would be deemed not to have an intention to return to their homes; and
- applying to assured tenants the same rule as applies to secure tenants: ie, subletting of the whole property leads to a permanent loss of security of tenure (HA 1985 s93(2)).

The consultation period ends on 4 April 2012.

Under-occupation of social housing

An additional £30m will be made available for discretionary housing payments to help some of the 40,000 households containing disabled people and foster carers who will have their housing benefit (HB) reduced from April 2013 when the new under-occupation rules relating to HB take effect in social housing: Department for Work and Pensions news release, 14 December 2011.[3]

Social housing for ex-Armed Services personnel

The UK government is consulting presently on the content of two new sets of regulations intended to ensure greater preference in social housing allocation for former military personnel in housing need.[4] The Housing Act 1996 (Additional Preference for Former Armed Forces Personnel) (Amendment) (England) Regulations 2012 would require every local housing authority in England to give additional preference to such applicants in their allocation schemes. The Allocation of Housing (Qualification Criteria for Armed Forces Personnel) (England) Regulations 2012 would ensure that those personnel could not be caught by any of the residency requirements likely to be imposed by local authorities once the amendments made by the LA are in force. Responses are invited by 30 March 2012.

Private rented sector

A survey of tenants' experiences of renting private sector accommodation through letting agents has found that the letting agency market is largely unregulated and does not have transparent charging arrangements: *Renting in the dark: creating a lettings market that works for tenants* (Resolution Foundation, December 2011).[5] The authors make a series of policy recommendations for reform of the sector.

The UK government has appointed Sir Adrian Montague to lead a review of barriers to investment in private renting in England: DCLG news release, 23 December 2011.[6] The review will examine how best to encourage greater investment in rental properties: *Independent review of the potential for institutional investment in the private rented sector. Terms of reference* (DCLG, December 2011).[7]

Housing legislation in England

The UK government is inviting comments and suggestions identifying whether any secondary legislation imposing obligations on landlords in the private or social housing sectors should be repealed or replaced: DCLG news release, 12 January 2012.[8] A Cabinet Office webpage lists most of the current regulations relating to housing and invites views on those that might be withdrawn, amended or retained.[9]

Eviction by bailiffs

Court statistics have revealed significant increases in eviction rates by county court bailiffs. In the third quarter of 2011, 16,600 repossessions of properties were made, a 20 per cent increase on the third quarter of 2010: *Court statistics quarterly July to September 2011* (Ministry of Justice (MoJ), January 2012).[10] Of these, 7,300 of the properties were recovered on behalf of mortgage lenders, 23 per cent more than in the third quarter of 2010.

The UK government has published a new set of enforcement standards which apply to, among others, bailiffs: *National standards for enforcement agents* (MoJ, January 2012).[11]

Housing and anti-social behaviour

New guidance has been published for housing staff on the effective handling of anti-social behaviour, giving practical advice on the management of such cases: *How to ... manage anti-social behaviour cases effectively* (Chartered Institute of Housing, December 2011).[12]

Housing in Wales

The Auditor General for Wales (AGW) has reported that the Welsh government's aim that all social housing in Wales would achieve the Welsh Housing Quality Standard (WHQS) by the end of 2012 will not be met: *Progress in delivering the Welsh Housing Quality Standard* (AGW, January 2012).[13] His report points to weaknesses in leadership to achieve the WHQS target and finds that the Welsh government has not acted swiftly enough to support and monitor progress.

The Welsh government has published the results of a consultation exercise on its draft new code of guidance for both social housing allocation and homelessness in Wales: *Consultation – summary of responses. Code of guidance for local authorities on allocation of accommodation and homelessness* (Welsh Government, December 2011).[14] The paper summarises the 34 responses received and identifies the suggestions that the government is minded to adopt.

During the period from July to September 2011, 1,845 households were accepted as homeless by local authorities in Wales, a 15 per cent increase on the same quarter of 2010 and 25 per cent higher than the same quarter of 2009: *Homelessness April to June 2011*

and July to September 2011 (Welsh Government, December 2011).[15]

The new regime for the regulation of social landlords in Wales came into effect in December 2011. As a result of their powers under HA 1996 Part 1, Welsh ministers have set out the standards with which housing associations registered in Wales are expected to comply: *The regulatory framework for housing associations registered in Wales* (Welsh Government, December 2011).[16]

HUMAN RIGHTS

Article 1 of Protocol No 1 and article 6

■ Mammadov and others v Azerbaijan

App Nos 3172/08, 42347/08, 454/09, 2772/09 and 32585/09, 6 December 2011

All the applicants either had tenancy rights to flats as a result of occupancy vouchers or ownership rights as a result of ownership certificates. However, the flats were unlawfully occupied by internally displaced persons (IDPs) from different regions of Azerbaijan. The applicants brought civil claims seeking the eviction of the IDPs. They obtained possession orders which became final and enforceable. However, the IDPs refused to comply with those judgments and despite the applicants' complaints to various authorities, the judgments were not enforced. They complained of breaches of article 6, article 13 and article 1 of Protocol No 1 of the European Convention on Human Rights ('the convention').

The European Court of Human Rights (ECtHR) referred to its decision in *Gulmammadova v Azerbaijan* App No 38798/07 paras 18–24. The court found that the government had not put forward any fact or argument capable of persuading it to reach a different conclusion in respect of the present applications. No adequate measures were taken by the authorities to ensure compliance with the judgments. It had not been shown that the authorities acted with expedition and diligence. The ECtHR found that there had been a violation of article 6 and article 1 of Protocol No 1. It made various awards for pecuniary and non-pecuniary loss.

■ Lavrov v Russia

App No 33422/03, 17 January 2012

On his retirement from military service in 1993, Mr Lavrov became entitled to permanent housing funded by the state. The state failed to comply with this obligation and, in October 1998, the Shchekinskiy District Court awarded Mr Lavrov 143,100 Russian roubles (RUB) to enable him to purchase a flat. This sum was not paid. In March 1999, the Tula Regional Court ordered that the judgment award should be paid from federal funds. It was not paid. In December 2010, the Tula Regional Court awarded Mr Lavrov RUB 50,000 (approximately €1,200) as non-pecuniary damage for the enforcement delay of more than 12 years.

The ECtHR stated that, notwithstanding a wide margin of appreciation, the amount awarded did not comply with standards under the convention. It found a violation of article 6 and article 1 of Protocol No 1. The court ordered that the award of RUB 143,100 be paid in full, but given the depreciation of the national currency, converted it into euros, at the rate applicable in January 1999 (ie, €5,520). It also awarded interest and €6,000 as non-pecuniary damage.

Articles 6 and 8

■ Wacey-Germaine v UK

App No 71308/10, 13 December 2011, [2011] ECHR 2325

Luton Council granted Ms Wacey-Germaine, a homeless person, non-secure temporary accommodation. In 2009, it served a notice to quit and claimed possession, referring to rent arrears of over £9,000. A district judge made a possession order at a summary hearing. A circuit judge refused permission to appeal. The council obtained possession. Ms Wacey-Germaine complained under articles 6 and 8 of the convention that a possession order was made in respect of her home without the proportionality of the eviction being considered by an independent court.

The ECtHR received friendly settlement declarations whereby the government agreed to pay Ms Wacey-Germaine €5,000 to cover any non-pecuniary damage as well as costs and expenses. The court noted the settlement and struck the case out of the list.

Article 8

■ Chesterfield BC v Bailey

Derby County Court, [2011] EW Misc 18 (CC), 22 December 2011

Mrs Bailey was granted a secure tenancy in 1996. In 2002, she agreed to move to another house so that substantial refurbishment and modernisation of the original property could be carried out. Although she had been the sole tenant of the original property, her husband became a joint tenant of the new house. Her evidence, which Recorder Tidbury accepted, was that she was not told the consequences of accepting a joint tenancy and that the council told her that she had to have her husband on the new tenancy. The tenancy agreement provided that any notice to quit should take effect 'on the Monday on which it is to take effect at midday' (para 25). The marriage broke down, and in 2005 Mr Bailey moved out of the house. Mrs Bailey obtained an order restraining him from harassing her. On Monday 6 September 2010, Mr Bailey signed a notice to quit which had been written out by a housing officer. It expired on Monday 4 October 2010. The recorder was not able to decide whether it was served out of malice or to protect Mr Bailey from responsibility for rent arrears, but concluded that 'the council made the running on the serving of the notice to quit' (para 5). The housing officer could not remember the time when the notice to quit was signed. She said that she would have put in the same date even if it had been signed after 4 pm. The council then issued possession proceedings. Mrs Bailey defended, arguing that the notice did not give sufficient notice and relying on articles 6 and 8 of the convention.

Recorder Tidbury dismissed the possession claim. He found that the notice to quit was not valid because it only gave three weeks and six and a half days' notice (see Protection from Eviction Act 1977 s5). He also found that the claim for possession was not necessary or proportionate and so was a breach of article 8. He had regard to a letter written by Mrs Bailey in which she said that she and her sons, aged 14 and 11, were only just recovering from the violent actions of her husband. The recorder also referred to newspaper reports that included threats of arson by him. He accepted that her current neighbours were supportive and that any new neighbours would not be in a position to telephone the police if her husband loitered in the area. He noted that had she received advice, Mrs Bailey could have made an application to transfer the tenancy under Family Law Act 1996 s53 and Sch 7. He also accepted her evidence that she had spent money on the property and noted that she was without blame.

SECURE TENANCIES

Tenancy induced by false statement

■ Windsor and District Housing Association Ltd v Hewitt

UKSC 2011/0200, 1 November 2011

The Supreme Court has refused Ms Hewitt permission to appeal against the Court of Appeal's decision: [2011] EWCA Civ 735; [2011] HLR 39; July 2011 *Legal Action* 18.

Avoiding the right to buy

■ Brumwell v Powys CC

[2011] EWCA Civ 1613, 21 December 2011

Mr Brumwell was employed as the resident warden at a caravan park owned and operated by the council. In 1998, he entered into three

new agreements with the council. These were drawn with the intention of avoiding his acquiring the right to buy the warden's accommodation as a council tenant. When the agreements determined, he claimed a new lease as a former tenant of the council. HHJ Jarman QC rejected that application and held that under the agreements he ran the caravan site as a mere agent of the council. Mr Brumwell appealed, contending that the agreements had been 'shams' and that he was the council's tenant.

The Court of Appeal dismissed the appeal. It was not persuaded that the parties entered into the agreements with a common intention that the documents were not to create the legal rights and obligations which they gave the appearance of creating (*Snook v London and West Riding Investments Limited* [1967] 2 QB 786, CA). The fact that the agreements had been drawn to avoid the application of the statutory provisions did not mean that they were shams.

NOTICE TO QUIT

■ Potter v Dyer

[2011] EWCA Civ 1417, 30 November 2011

One of two joint tenants left a property and later, in response to an invitation from the landlord, gave notice to quit. The former landlord then sought possession. The remaining joint tenant wanted to argue that the notice was not valid to determine the tenancy because it had been induced by the landlord's misrepresentation. He was refused permission to amend his statement of case to advance that defence.

The Court of Appeal dismissed his appeal. Even if the tenant could establish the misrepresentation, the notice could not take effect as a simple release of the other joint tenant's interest in the tenancy which was the construction he wished to place on it.

POSSESSION CLAIMS

■ Kinnear v Whittaker

[2011] EWCA Civ 1609, 21 December 2011

Mr Kinnear bought a property from Ms Whittaker and entered into a written tenancy agreement enabling her to remain in occupation at a rent of £1 per month. The purchase was funded by a mortgage. Mr Kinnear defaulted on the mortgage and the lenders appointed receivers. In his name they brought a claim for possession. Ms Whittaker defended on the basis that the tenancy agreement did not represent the true agreement between the parties which had been that she could remain in the house for the rest of her life. HHJ Lochrane decided that the defence did not pass the Civil Procedure Rule (CPR) 55.8(2) threshold (claim genuinely disputed on grounds which appear to be substantial) and granted possession. Bean J allowed an appeal and ordered a trial.

Stanley Burnton LJ refused permission to appeal from that decision. There were no grounds for impugning the decision that the claim and defence should be tried. It was better for questions of law to be decided, if they arise, on the basis of findings of fact, rather than on the basis of the pleadings.

■ Benesco Charity Ltd v Kanj

[2011] EWHC 3415 (Ch), 16 December 2011

HHJ Lamb QC concluded that a claim for possession of a garage 'was not genuinely disputed on substantial grounds' (CPR 55.8(2)) (para 2). He rejected the contents of the defendant's witness statement that there was a sub-tenancy and made a possession order.

Peter Smith J allowed the defendant's appeal. He stated:

> *A witness statement should [not be] rejected at a summary stage unless the evidence is incredible. A person is entitled where there are matters raised in the witness statement unless that high threshold is reached to take the matter to trial. I do not accept that the learned judge was right to conclude there was no evidence showing exclusive possession. The totality of the evidence shows that it is at least arguable that [there was a] sub lease as opposed to a licence* (para 21).

He did not accept that the judge's decision to shut out the defendant summarily at trial was correct.

■ Hardy v Haselden

[2011] EWCA Civ 1387, 29 November 2011

Occupiers claimed that they had a tenancy of a farmhouse. At trial, which the defendant owner did not attend, a judge made a declaration to that effect and ordered execution of an appropriate lease. The defendant applied to set aside the order but could not meet CPR 39.3(5)(a) (that the application had been made promptly). The defendant then sought to bring a late appeal.

The Court of Appeal considered its recent judgment in *Bank of Scotland v Pereira* [2011] EWCA Civ 241; [2011] HLR 26 about the overlap between set-aside applications and appeals. It granted an extension of time and allowed the appeal. There was no legal basis for upholding the judge's order.

■ Sun Street Properties Ltd v Persons Unknown

[2011] EWCA Civ 1672, 19 December 2011[17]

Protesters took possession of the claimant's unused office building. At about 7 pm on 18 November 2011, Proudman J granted an order abridging the normal two-day period for service of possession proceedings against trespassers under CPR Part 55 from two days to 45 minutes. The claim form and some 100 pages of relevant documents were served by fixing them to conspicuous places around the property by 9.15 pm. Although a text message was sent to the occupants notifying them that an interim injunction had been granted, they were not notified by text of the possession hearing. At 10 pm, and in their absence, Proudman J made an order for possession.

The defendants applied to set aside the possession order. Roth J stated that 'the position was profoundly unsatisfactory and the notice given was grossly inadequate', but refused the application (para 7). He said that the defendants' rights under Human Rights Act (HRA) 1998 Sch 1 articles 10 and 11 could not legitimise their occupation of the property or amount to any defence to a possession claim.

Lloyd LJ granted permission to appeal to allow the defendants to argue grounds based on articles 10 and 11 and procedural irregularities. He said:

> *... I find it difficult to imagine what the occupiers were expected to do on receipt of the text message, ... they were given no notice of any kind that there would or might be a hearing of some kind at or soon after 10 o'clock that same evening, let alone where, when and in what circumstances it might take place, what they should do in order to participate in any way in that hearing, or any other relevant information. Moreover to send a text message saying that an injunction had been granted is one thing, but not to say in the same message, or even better by a voice telephone call, that there would be a hearing shortly thereafter, and when, where and what about, seems to me to be surprising, to say the least* (para 6).

Subsequently, the case was settled without a substantive judgment from the Court of Appeal.

■ City of London v Samede

[2012] EWHC 34 (QB), 18 January 2012

Lindblom J made a possession order in respect of land outside St Paul's Cathedral. The extent and duration of the obstruction of the highway, and the public nuisance inherent in that obstruction, justified such an order. Any

interference with the protesters' rights under HRA Sch 1 articles 10 and 11 was lawful, necessary and proportionate.

ASSURED TENANCIES

Rent

■ Pimlott v Varcity Accommodation Ltd

[2012] EWHC 19 (Admin), 17 January 2012

After the expiry of a 12-month, fixed-term tenancy granted in June 1992, Ms Pimlott became an assured periodic tenant under the HA 1988. In February 2010, her landlords served notice under section 13(2) proposing that the rent should be increased to £550 per month. Ms Pimlott referred the notice to the Rent Assessment Committee (RAC). The RAC determined that the rent should be £495. She appealed, submitting that the RAC had erred in law in taking, as its starting point, a rent for a comparable house let under an assured shorthold tenancy.

Wyn Williams J dismissed the appeal. HA 1988 s14 does not preclude the RAC from taking account of any material which it considers relevant. It did not act unlawfully when it took into account the rent which a comparable property let under an assured shorthold tenancy might be expected to command in the open market. However, if he was wrong in that conclusion and there was an error, it was advantageous to Ms Pimlott because a tenant under an assured periodic tenancy enjoys greater security of tenure than a tenant under an assured shorthold tenancy. He concluded that the RAC had not erred in law in its determination.

ASSURED SHORTHOLD TENANCIES

Unlawful eviction and tenancy deposits

■ Dada v Adeyeye

Central London County Court, 24 August 2011[18]

Mr Dada was an assured shorthold tenant of a room in a shared house. At the start of the tenancy in September 2008, he paid a deposit equal to two weeks' rent. Mrs Adeyeye, the defendant landlady, claimed that it had never been paid to her. The deposit was never protected. Mrs Adeyeye began harassing Mr Dada when he fell behind with the rent after losing his job. On one occasion she visited the property accompanied by her adult son and an unknown man who threatened to kill Mr Dada if he did not vacate the property. Solicitors acting for Mr Dada wrote to Mrs Adeyeye to warn her against harassing or unlawfully evicting him. However, on 29 July 2010, Mrs Adeyeye unlawfully evicted Mr Dada by changing the front door locks. He was street homeless for 13 nights and spent a further 53 weeks in local authority temporary accommodation. He was diagnosed with depression as a result of the eviction and was prescribed medication but, in August 2011, he was about to be evicted from the temporary accommodation as the local authority decided that he was not vulnerable. Mr Dada brought claims for damages for unlawful eviction and under HA 2004 s214 in respect of the deposit.

At trial, HHJ Gerald found that Mrs Adeyeye had been paid a deposit and that she had terminated Mr Dada's tenancy by unlawfully evicting him. He distinguished *Gladehurst Properties Limited v Hashemi* [2011] EWCA Civ 604; [2011] HLR 36, on the basis that it did not apply to defeat a claim under the HA 2004 where the tenancy had been terminated by an unlawful eviction. HHJ Gerald awarded damages amounting to £17,270, ie:

- £600 for the deposit claim;
- £1,500 for harassment and trespass;
- £2,600 for the period of street homelessness;
- £10,000 for the period spent in temporary accommodation;
- £2,000 as exemplary damages; and
- £570 as special damages.

RENT ACT 1977

Rent registration

■ Tolui v London Rent Assessment Panel

[2011] EWHC 3636 (Admin), 15 December 2011

Mr Tolui was the landlord of a Rent Act tenant. The rent was £60 per week. He applied for registration of a fair rent of £360 per week. A rent officer registered the rent at £62.50 per week. The landlord appealed to a RAC and in January 2010 it fixed a rent of £63.50 per week. Mr Tolui applied for judicial review of that decision in April 2010. He ought to have lodged a statutory appeal in the High Court within 28 days of the RAC's decision. He did not lodge that appeal until September 2010.

Wyn Williams J refused an extension of time. Despite acting in person, Mr Tolui had ample opportunity to commence an appeal. He had been informed of his procedural error in April 2010 and had taken no steps to remedy it until September 2010. To justify an extension of time, there would need to have been something in the nature of a manifest error in the RAC's decision. Despite the criticisms made by Mr Tolui of the handling of issues relating to scarcity and improvements, there were no grounds for concluding that the RAC fell into error. As there were no strong grounds of appeal, it would not be right to extend time for bringing the appeal.

COURT PROCEDURE

■ Howard v Stanton

[2011] EWCA Civ 1481, 16 November 2011

A tenant brought a claim against her landlady for the return of the balance of her deposit. The landlady counterclaimed for the costs of remedial work and rent lost by the inability to relet immediately. At trial, the tenant succeeded and the counterclaim was dismissed. The landlady sought permission to appeal and her application was listed for an oral hearing. The tenant was not required to attend and, on enquiring, was told by court staff that she need not attend. At that hearing, HHJ Reid QC granted permission to appeal and immediately proceeded to hear the appeal which he allowed.

The Court of Appeal allowed the tenant's further appeal. There had been a serious procedural irregularity as the judge had decided the substantive appeal in the tenant's absence, without giving her a chance to argue her case. The appeal was remitted for reconsideration by a different circuit judge.

■ Fineland Investments Ltd v Pritchard

HC06C02639, 9 November 2011

Ms Pritchard was a council tenant who exercised the right to buy at a discount. She entered into a series of transactions with Fineland with the aim of transferring the property to Fineland without having to repay the discount to the council. They included a provision that she vacate the premises within a few weeks of the contract being signed in return for a lump sum of £20,000. Ms Pritchard suffered from anxiety and depression. She claimed to have been pressured into signing the agreements and refused to leave the property. Fineland brought a possession claim. Ms Pritchard submitted a doctor's certificate which the judge treated as an application to adjourn the trial on the ground of ill health. He dismissed that application and the trial proceeded in her absence. A possession order was made. Ms Pritchard made various without notice applications to stay the possession order. She then issued an application under CPR 39.3 to set aside the judgment.

Norris J dismissed the application. He held that she had acted promptly. She had made the application within seven weeks. As she was a litigant in person, the test should not be too rigorous. However, she had failed to show that

she had a good reason for not attending trial. A mere assertion of inability to attend on health grounds unsupported by evidence from her regular doctor was unlikely to amount to evidence of inability to attend. Furthermore, she had failed to show that she had a reasonable prospect of success at trial.

LONG LEASES

Service charges

■ Newham LBC v Hannan and Nessa

[2011] UKUT 406 (LC), 7 October 2011

Newham intended to carry out building works to a number of tower blocks. In view of the total value of the works, the Public Contracts Regulations 2006 SI No 5 applied. Due to an oversight, Newham served notice under Landlord and Tenant Act 1985 s20 after publication of the contract in the Official Journal. Newham then applied to the leasehold valuation tribunal (LVT) for dispensation from the consultation obligations. The LVT refused the application. Newham appealed to the Upper Tribunal (Lands Chamber).

HHJ Gerald allowed the appeal. The lessees had suffered no prejudice as a result of the error. It was a minor error. All relevant information required by the Service Charges (Consultation Requirements) (England) Regulations 2003 SI No 1987 had been given.

■ Palley v Camden LBC

[2010] UKUT 469 (LC), 12 December 2011

After considering the terms of lease, the LVT decided that the landlord was entitled to charge a ten per cent management fee on top of the other heads of service charge. The lessee appealed.

HHJ Mole QC dismissed the appeal. The plain and natural meaning of the lease was that the landlord was entitled by way of service charge to 'direct and indirect costs and overheads (including management costs)' and an 'additional management charge for the estate and the building in which the particular flat is situated, calculated as [ten per cent] of all other items included in the relevant service charge' (para 34). As HHJ Mole was 'clear about the interpretation of the provisions in question there [was] no reason to turn to the contra proferentem principle for assistance' (para 35). He stressed however that there 'can be no question of double recovery being reasonable' (para 36).

ADVERSE POSSESSION

■ Havering LBC v Chambers

[2011] EWCA Civ 1576, 20 December 2011

In a claim for possession of open land, HHJ Wulwik dismissed the defendant's counterclaim that he had been in adverse possession of the disputed land for more than 12 years before the commencement of Land Registration Act 2002 Part 9 and made a possession order. He found that the defendant's use of the land to graze animals was 'intermittent'.

The Court of Appeal allowed the defendant's appeal. The relevant principles as set out in *JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30; [2003] 1 AC 419 are that:

(1) In applying the statutory provisions, the question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner ... There will be 'dispossession' of the paper owner in any case where ... a squatter assumes possession in the ordinary sense of the word ... (2) There are two elements necessary for legal possession: a sufficient degree of physical custody and control ('factual possession'), and an intention to exercise such custody and control on one's own behalf and for one's own benefit (para 8).

In this case the judge seemed to have been looking for 'continuous use'. However:

... continuous use is not the test. It is the taking of possession that is critical (para 57).

It 'was not necessary for [the defendant] to have livestock on the disputed land 24 hours each day during every day of the year in order to have legal possession of it' (para 26). The case was remitted to the county court for a further hearing.

HOMELESSNESS

■ Sharif v Camden LBC

UKSC 2011/0117, 22 November 2011

The Supreme Court has granted the council permission to appeal against the Court of Appeal's decision noted in June 2011 *Legal Action* 25 ([2011] EWCA Civ 463). The Court of Appeal had decided that in performing the main housing duty (HA 1996 s193) a local authority had to provide accommodation for the applicant 'together with' other household members and that that duty could not be performed by splitting the household into neighbouring self-contained properties.

HOUSING AND CHILDREN

■ TL [No 2] v Angus Council

[2011] CSOH 196, 25 November 2011

The claimant, a young Moroccan man, stowed away on a ship which docked in Scotland. He applied to Angus Council for accommodation, claiming to be 15. It undertook an assessment of his age and decided that he was over 18. He challenged the assessment by a claim for judicial review and sought a declaration. His claims failed. The judgment of Lord Stewart contains an extended review of how claims relating to age assessments are to be determined in the courts and tribunals in Scotland.

1 Available at: www.communities.gov.uk/documents/housing/pdf/2060702.pdf.
2 Available at: www.communities.gov.uk/documents/housing/pdf/2064044.pdf.
3 Available at: www.dwp.gov.uk/newsroom/press-releases/2011/dec-2011/dwp145-11.shtml.
4 See note 1.
5 Available at: www.resolutionfoundation.org/us/downloads/renting-dark/Renting_in_the_Dark.pdf.
6 Available at: www.communities.gov.uk/news/corporate/2057868.
7 Available at: www.communities.gov.uk/documents/housing/pdf/2057113.pdf.
8 Available at: www.communities.gov.uk/news/corporate/2064803.
9 See: www.redtapechallenge.cabinetoffice.gov.uk/themehome/housing-and-construction/.
10 Available at: www.justice.gov.uk/downloads/publications/statistics-and-data/courts-and-sentencing/court-stats-quarterly-q3-2011.pdf.
11 Available at: www.justice.gov.uk/downloads/guidance/courts-and-tribunals/courts/enforcement-officers/national-standards-enforcement-agents.pdf.
12 Available at: www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How_to_Manage_ASB_cases_effectively.pdf.
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14 Available at: http://wales.gov.uk/docs/desh/consultation/111213housinghomelessnessen.pdf.
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16 Available at: http://wales.gov.uk/docs/desh/publications/111202housingregframeworken.pdf.
17 Bindmans LLP, London and Stephen Knafler QC and David Renton, barristers, London.
18 Kavita Rana, trainee solicitor, Edwards Duthie, London and Patricia Tueje, barrister, London.

Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder.