

March 2015, DoH, November 2012, available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/127193/mandate.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/127193/mandate.pdf).

14 See: [www.gov.uk/government/news/review-of-nhs-complaints-system](http://www.gov.uk/government/news/review-of-nhs-complaints-system).

15 See: [www.nice.org.uk/guidance/qualitystandards/socialcare/home.jsp](http://www.nice.org.uk/guidance/qualitystandards/socialcare/home.jsp).

16 See: [http://consultations.dh.gov.uk/quality-and-safety/nice-future-quality-standards-2/consult\\_view](http://consultations.dh.gov.uk/quality-and-safety/nice-future-quality-standards-2/consult_view).

17 *Transforming care: a national response to Winterbourne View Hospital*, DoH, 2012, available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/127310/final-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/127310/final-report.pdf).

18 Available at: [www.gov.uk/government/speeches/the-government-s-response-to-the-francis-report](http://www.gov.uk/government/speeches/the-government-s-response-to-the-francis-report).

19 Available at: [www.publications.parliament.uk/pa/jt201213/jtselect/jtcare/143/143.pdf](http://www.publications.parliament.uk/pa/jt201213/jtselect/jtcare/143/143.pdf).

20 *Charging for residential accommodation guide (CRAG) in support of the National Assistance (Assessment of Resources) Regulations 1992 (SI 1992/2977)*, available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/127105/Updated-CRAG-guidance-20121.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/127105/Updated-CRAG-guidance-20121.pdf) and *Fairer charging policies for home care and other non-residential social service: guidance for councils with social services responsibilities*, available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/127104/Updated-Fairer-Charging-Guidance1.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/127104/Updated-Fairer-Charging-Guidance1.pdf).

21 Available at: [www.dwp.gov.uk/docs/pip-toolkit-all-factsheets.pdf](http://www.dwp.gov.uk/docs/pip-toolkit-all-factsheets.pdf).

22 See: [www.gov.uk/government/news/landmark-reform-to-help-elderly-with-care-costs](http://www.gov.uk/government/news/landmark-reform-to-help-elderly-with-care-costs).

23 *Fairer funding for all – the commission's recommendations to government*, 2011, available at: [www.dilnotcommission.dh.gov.uk/our-report/](http://www.dilnotcommission.dh.gov.uk/our-report/).

24 See: <http://wales.gov.uk/about/cabinet/cabinet-statements/2013/socialcareupdate/?lang=en>.

25 Available at: <https://www.education.gov.uk/publications/eOrderingDownload/Working%20Together%20April.pdf>.

## 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

#### Legal aid for housing cases

On 1 April 2013, the new Legal Aid Agency at the Ministry of Justice (MoJ) took on responsibility for legal aid casework. The list of legal services providers in England and Wales who have entered into contracts to provide legal aid work in housing law was not available at the time of writing.

The national telephone-based advisory service for members of the public financially eligible for legal aid has been rebranded as the new Civil Legal Advice (CLA) service. Advice on housing law matters is available by telephone Monday to Friday (9 am to 8 pm) and Saturdays (9 am to 12.30 pm) by calling 0845 345 4345. Call-back and e-mail services are also available. Callers can text 'legalaid' and their name to 80010 for a call back within 24 hours or e-mail: [emailhelp@civillegaladvice.org.uk](mailto:emailhelp@civillegaladvice.org.uk). More details of the CLA service are provided on its website.<sup>1</sup>

Those facing loss of their homes because of non-rent debt (eg, mortgage arrears or charging orders) must go through this CLA service 'gateway' in order to be eligible for legal aid help with their cases. The MoJ has produced a special leaflet for such debtors: *Legal aid in debt, discrimination and special educational needs cases – A summary of what you need to do* (MoJ, April 2013).<sup>2</sup>

Some housing law cases that are not otherwise within the scope of the new legal aid scheme could be pursued with 'exceptional' funding: Legal Aid, Sentencing and Punishment of Offenders Act 2012 s10. Contracted providers of legal services will not have delegated powers to grant exceptional funding. The Public Law Project is running a project to assist with making exceptional funding applications and challenging refusals of exceptional funding where appropriate.<sup>3</sup> (See also page 4 and page 19 of this issue.)

#### Housing benefit in social housing

New arrangements to apply the housing benefit (HB) size criteria to claimants in social housing took effect on 1 April 2013, with negligible

transitional provision.

A helpful description of the changes and of the policy behind them is given in *Under-occupation of social housing: Housing benefit entitlement SN/SP/6272* (House of Commons Library Briefing Note, 3 April 2013).<sup>4</sup>

Last-minute modifications made by the Housing Benefit (Amendment) Regulations 2013 SI No 665 mean that the changes will not apply to some foster carers who are keeping a spare room for a foster child's arrival or to some tenants who are keeping a room available for household members in the Armed Forces.

The National Housing Federation (NHF) has suggested that the new size criteria could have 'serious, unintended consequences' for the social housing tenants affected: *The bedroom tax: some home truths* (NHF, March 2013).<sup>5</sup>

Both Citizens Advice<sup>6</sup> and Shelter<sup>7</sup> have a series of information pages for affected tenants and 'bedroom tax checker' tools on their websites.

#### Housing benefit in all sectors

The new total benefit cap (£500 pw) will mainly be enforced, in respect of tenants, by local authorities. They should reduce help with housing costs to ensure that total benefit received by a household remains within the cap: the Benefit Cap (Housing Benefit) Regulations 2012 SI No 2994.

The cap took effect on 15 April 2013 in the four London boroughs of Bromley, Croydon, Enfield and Haringey and will apply from 15 July 2013 across the rest of the country: *Housing Benefit Direct*, March 2013 (Department for Work and Pensions (DWP), March 2013).<sup>8</sup> The Benefit Cap (Housing Benefit) (Amendment) Regulations 2013 SI No 546 make special provision for cases of supported housing known as 'exempt accommodation'.

An evaluation of the likely impact on social landlords of the overall benefit cap found that 'nearly two-thirds (63%) of [housing] associations likely to be affected by the household benefit cap believe it will likely lead to increased difficulty collecting rent. ...more



**Karen Ashton** is a partner with Public Law Solicitors in Birmingham. She specialises in community care and health law and general public law. **Simon Garlick** is Head of the Community Care Department at Ben Hoare Bell solicitors, Newcastle and Sunderland.

than seven in ten (71%) associations operating in London believe it is likely to result in increased difficulty collecting rent': *Impact of welfare reform on housing associations – 2012 Baseline report* (NHF, January 2013).<sup>9</sup>

### Housing Ombudsman

On 1 April 2013, jurisdiction over social housing management matters in respect of council housing in England was transferred to the Housing Ombudsman by the coming into force of most of Localism Act 2011 ss180–182: Localism Act 2011 (Commencement No 2 and Transitional Provisions) Order 2013 SI No 722.

The part of section 180 which would make ombudsman awards enforceable in court (by inserting a new paragraph 7C into Housing Act (HA) 1996 Sch 2) has not been brought into force. The Housing Ombudsman website has been redesigned to take account of the new jurisdiction.<sup>10</sup> Parallel information has been added to the Local Government Ombudsman's website.<sup>11</sup>

### Homelessness

The latest figures for statutory homelessness were published in March 2013: *Statutory Homelessness: October to December Quarter 2012 England* (Department for Communities and Local Government (DCLG), March 2013).<sup>12</sup> They show that:

■ 13,570 applicants were accepted as owed a main homelessness duty in the last three months of 2012, bringing the total to 53,450 acceptances in the 2012 calendar year (up 10 per cent from 2011); and

■ 53,130 households were in temporary accommodation on 31 December 2012 (a figure 9 per cent higher than at the end of 2011).

The Young People's Programme at the Law Centres Network (LCN), has published an analysis of 138 local authority protocols for dealing with homeless 16- and 17-year-olds: *Supporting homeless 16 and 17-year-olds* (LCN, February 2013).<sup>13</sup> It found that many protocols do not adequately guarantee that the correct processes are being followed to ensure that homeless young people are provided with the support they need and that they are entitled to under the legislation and statutory guidance.

### Social housing for non-UK nationals

The UK government has announced that it will strengthen the statutory guidance on social housing allocation (HA 1996 s169) as a result of data indicating that in England 'almost [one] in [ten] of all new social housing tenancies are given to foreign nationals': *DCLG press release* (25 March 2013).<sup>14</sup> The new guidance will be issued in draft for consultation and will:

*... ensure councils require people to have lived in the area for at least [two] years. Only those who passed this test would be accepted onto the waiting list in the local area... It will also encourage them to set other local rules for testing a resident's connection to the area. This could include having attended the local school having family living in the local area.*

### Immigration status and private rented housing

The UK government has announced that, in future, 'private landlords would be required to make simple checks on new tenants to make sure that they are entitled to be in this country': *DCLG Press Release* (25 March 2013).<sup>15</sup> The proposals, to be issued for consultation:

*... will be straightforward, quick and inexpensive for law-abiding landlords and tenants to comply with. Action could be targeted at particular high-risk sectors, such as houses in multiple occupation ... [Landlords] would receive support from public bodies such as the UK Borders Agency to make the necessary checks.*

### Differential rents for tenants of social housing

In the March 2013 Budget Statement, the UK government announced that it would proceed with plans to introduce an income-cap on sub-market rents for social housing tenants in England.<sup>16</sup> The cap will be a total household income of £60,000, and tenants will be required to disclose their incomes to their social landlords. Tenants with an income above the cap may be charged market rents:

*The move could see tens of thousands of high-earning social tenants paying market rents to continue living in their social homes, and the additional income generated could then be used by landlords to increase spending on affordable housing. Ministers believe the changes are necessary to address the problem of precious social housing resources being occupied by tenants who could comfortably afford to live elsewhere: (DWP Press Release (20 March 2013)).<sup>17</sup>*

### Right to buy

The maximum discount on right to buy purchases in London was increased to £100,000 on 25 March 2013: Housing (Right to Buy) (Limit on Discount) (England) Order 2013 SI No 677. The latest statistics suggest that increasing numbers of tenants in social housing in England are exercising their right to buy: *DCLG Press Release* (26 February 2013).<sup>18</sup> They show that by the end of December 2012, 3,495 council-owned properties had been sold

to tenants under the right to buy since the 'reinvigorated' scheme was launched in April 2012 – one-third more than in the whole of the previous year and the highest number of sales since 2007.

### Mobile homes

The Mobile Homes Act 2013 received royal assent on 26 March 2013. The Act will come into force in stages. It will improve the rights of residents in mobile home parks and enhance site licensing arrangements.

### Buying a new home

The Help to Buy scheme in England began operating on 1 April 2013 and will run until 31 March 2016 (or until available funding is exhausted, if earlier). The scheme makes new build homes available to those who wish buy a newly built home and may otherwise find it difficult so to do – for example, as a result of deposit requirements – but who could otherwise be expected to sustain a mortgage. Up to a maximum of 20 per cent of the purchase price is available to the buyer as an equity loan funded by the government through the Homes and Communities Agency (HCA) and paid direct to the builder: *Help to buy buyers' guide* (HCA, April 2013).<sup>19</sup>

### Disposing of social housing

New general consents for the disposal of social housing in England have been issued under HA 1985 s32. In cases governed by the terms of the new document, individual ministerial consents are not required: *The general housing consents 2013* (DCLG, March 2013).<sup>20</sup>

## POSSESSION CLAIMS

### Article 8

#### ■ *Birmingham City Council v Beech (aka Howell)*

[2013] EWHC 518 (QB),  
15 March 2013

Birmingham let a semi-detached house to Norman Warren and his wife Rita in 1967. In 1980, their joint tenancy became secure. Mr Warren died in 1994. Mrs Warren succeeded to the tenancy in accordance with HA 1985 s88(1)(b). Janet Beech, the first defendant, was one of Mr and Mrs Warren's daughters. She lived at the property when her parents were first granted the tenancy, but moved out in 1970 when she married her first husband. After her marriage ended, she went back to live with her mother for a few months in 2005 before moving to Worthing. However, she returned to Birmingham with her second husband in 2007. They lived with her mother, but were looking for their own accommodation.

Birmingham made five offers, all of which were declined. In October 2009, Mrs Warren went into hospital. She did not return home but moved into a residential care home. On 19 February 2010, a housing officer visited Mrs Warren at the care home where she signed a notice to quit in which she gave up her tenancy of the property with effect from 22 March 2010. Mrs Warren died in June 2010. Birmingham sought possession.

Keith J made a possession order. He rejected the defendants' contention that Mrs Warren's willingness to sign the notice to quit was procured in circumstances amounting to undue influence or unconscionable behaviour on the part of the housing officer. The notice to quit was validly signed by Mrs Warren, and the effect of it was that she gave up her tenancy with effect from 22 March 2010. He also rejected a human rights challenge advanced by Mrs Beech and her husband. Their personal circumstances were 'a long way from making an order for possession against them a disproportionate means of ensuring compliance with the council's policy of allocating properties with three bedrooms only to those who really need a property of that size' (para 65).

## Secure tenants

### ■ Redbridge LBC v West

*Bow County Court, 19 June 2012*<sup>21</sup>

Mr West's grandmother was granted a tenancy of a three-bedroom property in 1968. Mr West, his parents and his sister lived there with her. After his grandmother's death in 1972, the tenancy was transferred to Mr West's father. In 1980, it became a secure tenancy. In 2004, Mr West's father suffered a major stroke leaving him paralysed and unable to speak clearly. Later in the same year Mr West's mother died. Mr West became the sole carer for his father, and, in this role, provided him with round-the-clock care. Mr West's father suffered a second stroke in 2009. Mr West continued to care for his father until his death in 2010, whereupon he succeeded to the tenancy. At the time of the hearing, Mr West was 55 years of age. He had left school at 12 and had never learned to read or write. His social contacts were limited to his family and the neighbours he grew up around. Mr West, who suffered from chronic anxiety, found it very difficult to cope after his father's death and when the claimant informed him that it would commence possession proceedings under HA 1985 Sch 2 ground 16, his mental health deteriorated. The claimant offered Mr West the tenancy of a one-bedroom flat in a block a mile away from the property, which it said was suitable alternative accommodation. It contended that his mental health had stabilised and that he had access to family and

other support. Mr West refused the offer. The medical evidence from Mr West's GP and consultant psychiatrist was that he could not cope with moving and if he did there was a real risk of harm.

HHJ Rowe dismissed the claim. Mr West's mental health problems had been seriously exacerbated by the worries over losing his home, leading him to contemplate suicide. The judge noted that Mr West had in every way lived his life in the property and had never developed a social circle or network away from it. A move to the alternative accommodation would render him completely isolated and he would lose the present system by which his mental health was monitored by his neighbours. The judge accepted that there was a very real risk of Mr West taking his own life if the possession order was made. With regards the suitability of the alternative accommodation, the judge found that one bedroom was not sufficient as it was central to Mr West's wellbeing for him to have space for family to stay overnight on a frequent basis. The existence of a balcony in the flat was a risk to Mr West given his mental state. The lack of a garden was also important to his mental health, given Mr West's particular personality and characteristics. The alternative accommodation was therefore held to be unsuitable.

## Assured shorthold tenants

### ■ Viridian Housing v Zamanian

*Brentford County Court, 23 November 2012*<sup>22</sup>

The defendant was a statutory periodic assured shorthold tenant. A landlord served a HA 1988 s21 notice on 28 March 2012, which not only specified a valid date for giving up possession (9 June 2012) but also included a saving clause. The date provided by the saving clause was 2 June 2012. Both dates were valid. The notice did not specify which date was to prevail. The landlord waited until after the later of the two dates had passed before issuing possession proceedings.

District Judge Plascow made a possession order. He said:

*The question here is unusual. Is the landlord to be prejudiced if it gives two dates: one valid and a saving formula date which is also valid but different. It would be illogical for a landlord to be worse off for giving two potentially valid dates than a landlord who gives a valid and an invalid date. But it is often said that 'The life of the law has not been logic; it has been experience'. What would a non-lawyer who received the notice understand it to mean? A purposive approach is correct. In the context of specifying two alternative dates which are both valid and providing a landlord*

*waits for the last date before issuing his claim then it is a valid notice. There can't be prejudice to the tenant because he gets a later date. I find this to be an unanswerable claim for possession based on a valid s21 notice.*

## Trespassers

### ■ Enfield LBC v Phoenix

*(2013) 19 March, QBD*

Enfield issued a possession claim in the county court in respect of land occupied by protesters. That claim was dismissed because of a number of procedural defects. Enfield then issued a new claim in the High Court alleging the possibility of risk of future public disturbance or serious harm.

HHJ Reddihough, sitting as a deputy High Court judge, transferred the claim to the county court. It was not enough that there might be some possible risk of future disturbance or serious harm. The Practice Direction to Part 55, para 1.3 requires an immediate risk: that was absent in this case. There were no other exceptional circumstances which justified bringing the claim in the High Court.

## LONG LEASES

### Service charges

#### ■ Daejan Investments Ltd v Benson

*[2013] UKSC 14, 6 March 2013*

Daejan was the freehold owner of a building containing seven flats. In 2005, major works were required. The Leasehold Valuation Tribunal (LVT) found that there had been a failure to consult the lessees in accordance with Landlord and Tenant Act 1985 ss20 and 20ZA(2) and the Service Charges (Consultation Requirements) (England) Regulations 2003 SI No 1987. Daejan then applied to dispense with that requirement. The LVT refused that application. Daejan appealed first to the Lands Tribunal, and then to the Court of Appeal. Both dismissed the company's appeal. The Court of Appeal ([2011] EWCA Civ 38; 28 January 2011 and April 2011 *Legal Action* 30) held that the financial consequences to the landlord of granting or refusing dispensation were irrelevant to the decision whether to grant dispensation.

The Supreme Court allowed Daejan's appeal (Lords Hope and Wilson dissenting). The consultation process is a means to an end rather than an end in itself. The purpose of the statutory consultation process was to ensure that leaseholders were protected from paying for inappropriate works or paying more than would be appropriate. The LVT should focus on how any breach of the consultation regulations had impacted on those matters. If the extent, quality or cost of the works were not affected

by the failure to consult, dispensation should normally be granted. It was not appropriate to approach the issue of dispensation by considering whether the breach was minor, technical or serious. The focus should be on prejudice to the leaseholders. The factual burden of identifying this lay on them. Once they had done that, it was for the landlord to rebut it. The LVT could, however, grant dispensation on terms which could include imposing less onerous consultation requirements or a requirement that the landlord agreed to reduce the recoverable costs and/or to pay the leaseholders' reasonable costs of the dispensation application. Daejan was granted dispensation on terms that the recoverable costs were reduced by £50,000 and that they paid the reasonable costs of the leaseholders in so far as those costs related to testing the application for dispensation and canvassing the question of prejudice. See also page 19 and 38 of this issue.

### **HMO licensing: storeys**

#### **■ Islington LBC v Unite Group Plc**

[2013] EWHC 508 (Admin),  
22 March 2013

The defendant company provided student accommodation in a five-storey, purpose-built block. The ground floor primarily consisted of a shop and the main entrance to the student accommodation. The four upper floors comprised self-contained flats. Most had between four and six bedrooms. Each bedroom had its own en suite WC and shower, and a lockable door. There were communal living-room/kitchens shared by the tenants of the bedrooms. Islington applied to the High Court for a declaration that the cluster flats were Houses in Multiple Occupation (HMOs) and that each required a licence under HA 2004 Part 2.

Blake J dismissed the claim. Article 3(2) of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2006 SI No 371 stated that for a HMO to be subject to mandatory licensing, it, or any part of it, must comprise three storeys or more. Blake J held that it is the HMO that must comprise the three storeys and not the building in which the HMO is to be found. Each flat was on one storey and was self-contained. Each was a HMO, but none required a licence.

## **HOMELESSNESS**

### **Homeless**

#### **■ Miah v Tower Hamlets LBC**

*Clerkenwell and Shoreditch County Court*,  
15 March 2013

The appellant, an unmarried woman, was required to leave her parental home in the late stages of her pregnancy. On her application for homelessness assistance, the council provided interim accommodation under HA 1996 s188. Its enquiries revealed that the applicant was the legal owner of a house rented out to tenants. The council decided on a review that the applicant was not 'homeless' because she held a legal interest in that accommodation: section 175(1)(a).

HHJ Mitchell allowed an appeal and varied the decision to one that the appellant was not homeless at the date of the review. The Act required that the relevant accommodation be 'available for [the applicant's] occupation': section 175(1)(a). In this case, the accommodation had been let to tenants on an unexpired fixed term assured shorthold tenancy. Even if the appellant had given a HA 1988 s21 notice and immediately sought possession on expiry of the term, it would have taken a minimum of some 17 weeks after the date of the reviewing officer's decision to secure vacant possession. On those facts, it was impossible to say that the accommodation had been 'available' to the appellant.

### **Intentional homelessness**

#### **■ Chishimba v Kensington and Chelsea RLBC**

*B5/2012/2657*,  
25 March 2013

Ms Chishimba was a Zambian national. She was not eligible for homelessness assistance: HA 1996 s185. She deceived the council into believing that she was eligible by producing a false British passport. The council accepted that she was owed the main housing duty (section 193) and provided her with temporary accommodation. It later discovered the deception and notified her that its duty had been discharged because she had ceased to be eligible: section 193(6)(a). It gave notice to quit and obtained a possession order.

Ms Chishimba then applied as homeless again. This time she was eligible because she had been granted leave to remain. The council decided that she had become homeless intentionally from the temporary accommodation because it had been gained and lost by her deception. That decision was upheld on review and HHJ Bailey dismissed an appeal.

The Court of Appeal allowed a second appeal. Ms Chishimba could not have become homeless intentionally from the temporary

accommodation within the meaning of HA 1996 s191 because:

■ she ceased to occupy it 'in consequence of the fact that she was ineligible and not in consequence of any act or omission on her part; and

■ once the deception was discovered, it was not reasonable for her 'to continue to occupy' accommodation she ought never to have been occupying and which she had obtained by deception (applying *R v Exeter CC ex p Gliddon* [1985] 1 All ER 493).

### **Suitable accommodation**

#### **■ El-Dinnaoui v Westminster City Council**

[2013] EWCA Civ 231,  
20 March 2013

The appellant suffered from severe vertigo and a lifelong fear of heights. The council owed her the main homelessness duty (HA 1996 s193) and made her an offer of accommodation on the 16th floor of a tower block. On a viewing, the appellant became distressed, had a panic attack, collapsed and was taken by ambulance to A&E. She refused to accept the accommodation. The council decided that the offer had been suitable and its duty had ended: section 193(5). That decision was upheld on review and HHJ Bailey dismissed an appeal.

The Court of Appeal allowed a second appeal and quashed the review decision. The reviewing officer's reasoning – that the appellant would have settled in the property 'with time' – failed to give proper weight to the medical evidence. The conclusion on suitability was outside the range of decisions a reasonable reviewing officer could take and was perverse.

## **HOUSING AND CHILDREN**

### **■ R (ES) v Barking and Dagenham LBC**

[2013] EWHC 691 (Admin),  
27 March 2013

The claimant came to the UK in 2009 from Albania. She claimed asylum but that claim was rejected. In 2012, she and her two-year-old son were living with a family friend. The council carried out a 'child in need' assessment in September 2012. It found that the child was not a child in need as he was being well looked after and there was no reason why he could not travel to Albania with his mother. The council agreed to pay for the tickets. The family friend later asked the mother and son to leave and she approached the council again. The council decided (mistakenly) that it could not assist under Children Act (CA) 1989 s17 because the mother was an 'asylum-seeker'. The family were sheltered by a charity and representations

continued to be made to the council. It declined to reassess.

Eventually, the UK Border Agency (UKBA) agreed to provide 'section 4' support for the family. It arranged a double bed for the mother and son in a bedroom shared with six other people. The council declined to undertake a CA assessment. An application for judicial review was made and an interim order granted requiring the council to provide suitable accommodation.

At the full hearing, Robin Purchas QC, sitting as a deputy High Court judge, held that, before the UKBA arranging 'section 4' support, the council had mistakenly believed that it could not assist. It wrongly thought that the UKBA should have been providing support for the claimant as an 'asylum-seeker' when her application for asylum had long since been rejected. When 'section 4' support was offered, and the nature of what had been provided had been made known to the council, the child's needs should have been reassessed and that had not happened. He ordered a full CA reassessment.

## HOUSING AND COMMUNITY CARE

### ■ R (Hayle) v Camden LBC

[2012] EWHC 4169 (Admin),  
26 November 2012

The claimant was an elderly Eritrean asylum-seeker. She was befriended and accommodated by a Camden resident. Her needs were such that the friend could no longer cope. The claimant was then provided with National Asylum Support Service accommodation in Leeds. She returned to London for an asylum appeal and again stayed with the friend in Camden. Her solicitors pressed the council to undertake an assessment of her community care needs. They also asked the council to accept that her condition was of such 'urgency' that temporary accommodation should be provided: NHS and Community Care Act 1990 s47(5). The council agreed to carry out the assessment, but did not agree that there were circumstances of urgency. The claimant applied for judicial review and sought an interim injunction requiring the council to provide temporary accommodation under section 47(5).

Sales J rejected the injunction application and refused permission to apply for judicial review. There was no medical evidence to support the claim and no material to demonstrate that the interim assessment of a trained and experienced council social worker, that there was no 'urgency', was flawed.

- 1 Available at: [www.gov.uk/civil-legal-advice](http://www.gov.uk/civil-legal-advice).
- 2 Available at: <http://www.justice.gov.uk/legal-aid/news/latest-updates/legal-aid-reform/community-legal-advice?a=67496>.
- 3 Available at: [http://www.publiclawproject.org.uk/exceptional\\_funding\\_project\\_page.html](http://www.publiclawproject.org.uk/exceptional_funding_project_page.html).
- 4 Available at: [www.parliament.uk/briefing-papers/SN06272](http://www.parliament.uk/briefing-papers/SN06272).
- 5 Available at: [http://issuu.com/nationalhousingfederation/docs/bedroom\\_tax\\_home\\_truths](http://issuu.com/nationalhousingfederation/docs/bedroom_tax_home_truths).
- 6 Available at: [www.adviceguide.org.uk/england/benefits\\_e/benefits\\_welfare/benefits\\_reform\\_e/housing\\_benefit\\_cuts\\_for\\_social\\_housing\\_tenants\\_from\\_april\\_2013/housing\\_benefit\\_-\\_bedroom\\_calculator\\_for\\_social\\_housing\\_tenants.htm](http://www.adviceguide.org.uk/england/benefits_e/benefits_welfare/benefits_reform_e/housing_benefit_cuts_for_social_housing_tenants_from_april_2013/housing_benefit_-_bedroom_calculator_for_social_housing_tenants.htm).
- 7 Available at: [http://england.shelter.org.uk/get\\_advice/housing\\_benefit\\_and\\_local\\_housing\\_allowance/changes\\_to\\_local\\_housing\\_allowance/bedroom\\_tax\\_from\\_april\\_2013](http://england.shelter.org.uk/get_advice/housing_benefit_and_local_housing_allowance/changes_to_local_housing_allowance/bedroom_tax_from_april_2013).
- 8 Available at: [www.dwp.gov.uk/docs/issue-135-march-2013.pdf](http://www.dwp.gov.uk/docs/issue-135-march-2013.pdf).
- 9 Available at: <http://s3-eu-west-1.amazonaws.com/pub.housing.org.uk/Impact%20of%20welfare%20reform%20on%20housing%20associations%20-%20IPSOS%20MORI%20report.pdf>.
- 10 Available at: [www.housing-ombudsman.org.uk/](http://www.housing-ombudsman.org.uk/).
- 11 Visit: [www.lgo.org.uk/making-a-complaint/what-we-can-look-at/complaints-about-social-housing/](http://www.lgo.org.uk/making-a-complaint/what-we-can-look-at/complaints-about-social-housing/).
- 12 Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/157996/Statutory\\_Homelessness\\_4th\\_Quarter\\_Oct\\_-\\_Dec\\_2012\\_England\\_revised.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157996/Statutory_Homelessness_4th_Quarter_Oct_-_Dec_2012_England_revised.pdf).
- 13 Available at: [www.lawcentres.oi-dev.org/policy/papers-and-publications](http://www.lawcentres.oi-dev.org/policy/papers-and-publications).
- 14 Available at: [www.gov.uk/government/news/tough-new-housing-rules-to-control-immigration](http://www.gov.uk/government/news/tough-new-housing-rules-to-control-immigration).
- 15 Available at: [www.gov.uk/government/news/tough-new-housing-rules-to-control-immigration](http://www.gov.uk/government/news/tough-new-housing-rules-to-control-immigration).
- 16 Available at: [www.hm-treasury.gov.uk/budget2013\\_statement.htm](http://www.hm-treasury.gov.uk/budget2013_statement.htm).
- 17 Available at: [www.gov.uk/government/news/4-5-billion-budget-deal-to-help-homebuyers-and-boost-economy](http://www.gov.uk/government/news/4-5-billion-budget-deal-to-help-homebuyers-and-boost-economy).
- 18 Available at: [www.gov.uk/government/news/right-to-buy-sales-double](http://www.gov.uk/government/news/right-to-buy-sales-double).
- 19 Available at: [www.homesub.co.uk/media/7895/help%20to%20buy%20buyers%20guide%20080413.pdf](http://www.homesub.co.uk/media/7895/help%20to%20buy%20buyers%20guide%20080413.pdf).
- 20 Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/140106/The\\_General\\_Housing\\_Consents\\_2013.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/140106/The_General_Housing_Consents_2013.pdf).
- 21 Kathy Meade, Tower Hamlets Law Centre®, Catherine O'Donnell, barrister, London.
- 22 Jon Holbrook, barrister, 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 21 and 22 for transcripts or notes of judgments.

## Housing Disrepair

23 May 2013

- London ■ 9.15 am–5.15 pm
- 6 hours CPD ■ Level: Suitable for all levels

Deirdre Forster and Beatrice Prevatt



## Defending Possession Proceedings

20 June 2013

- London ■ 9.15 am–5.15 pm
- 6 hours CPD ■ Level: Suitable for all levels

John Gallagher and Derek McConnell

- Commercial rate: £215 + VAT ■ Standard rate: £205 + VAT

For details about the content of courses and to book, visit: [www.lag.org.uk/trainingevents/](http://www.lag.org.uk/trainingevents/)  
Credit card booking hotline: 020 7833 2931  
Fax: 020 7837 6094. E-mail: [lag@lag.org.uk](mailto:lag@lag.org.uk)

