

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

Social housing allocation

The UK government has issued a new draft Code of Guidance under Housing Act (HA) 1996 s169 on social housing allocation by local housing authorities in England: *Providing social housing for local people: strengthening statutory guidance on social housing allocations* (Department for Communities and Local Government (DCLG), October 2013).¹ It suggests that authorities introduce residence qualifications for access to their waiting lists. Responses should be made by 22 November 2013. The DCLG has also issued advice to councils inviting them to collect and publish information on the ethnicity and nationality of new tenants: *Provision of social lettings data: advice to local authorities* (DCLG, October 2013).²

Social housing fraud

The Prevention of Social Housing Fraud Act 2013 was brought into force in England on 15 October 2013: The Prevention of Social Housing Fraud Act 2013 (Commencement) (England) Order 2013 SI No 2622. The DCLG has published an impact assessment of the Act's provisions: *Prevention of Social Housing Fraud Act 2013 impact assessment* (DCLG, October 2013).³

The Act creates new freestanding criminal offences in relation to the subletting of social housing and makes provision for landlords to recoup profits made from such subletting. For a helpful summary of the Act's provisions and a background to its enactment, see: *The Prevention of Social Housing Fraud Act 2013* (House of Commons Library Standard Note SN/SP/6378, October 2013).⁴

A report entitled *Shutting the door on tenancy fraud – one year on* suggests that although detection of fraud and recovery of social housing have increased, there is still much to be done.⁵

Homelessness

The Local Government Ombudsman (LGO) service has issued a report triggered by the increasing number of cases it is investigating about local authority homelessness services, in particular, in relation to families and young people: *No place like home: councils' use of unsuitable bed & breakfast accommodation for homeless families and young people* (LGO, October 2013).⁶ The report invites local housing authorities, central government and policymakers to learn from the examples given of the experiences of complainants and to use them to drive up standards.

The Home Affairs Select Committee has published a report dealing with the provision of accommodation to homeless asylum-seekers: *Asylum: seventh report of session 2013–14* (House of Commons Home Affairs Committee, October 2013).⁷ It records a concern with the alleged substandard level of housing provided to asylum-seekers and states that the length of time it is taking to get problems resolved is unacceptable.

The latest statistics on homelessness in Wales indicate a decrease in the number of applications accepted by local housing authorities, but a significant increase in the use of bed and breakfast (B&B) accommodation: *Homelessness, April to June 2013* (National Statistics, September 2013).⁸

In England, single, homeless ex-prisoners are accorded priority need status only if they are vulnerable: HA 1996 s189(1)(c). In Wales, there is no 'vulnerability' requirement for homeless ex-prisoners: The Homeless Persons (Priority Need) (Wales) Order 2001 SI No 607 article 7. The Welsh Government has issued a consultation document proposing that the position in Wales is reconsidered: *Consultation on the proposal to amend the duty of a local authority to accommodate a former prisoner as a result of their priority need status* (Welsh Government, September 2013).⁹

Private renting

A range of measures to tackle rogue landlords in the private rented sector is set out by

the UK government in its response to recommendations made by the Communities and Local Government Select Committee: *Government response to the Communities and Local Government Select Committee report: the private rented sector* (Cm 8730, October 2013).¹⁰ It has agreed to undertake a review of the Housing Health and Safety Rating System regime, to establish a Tenants' Charter, to promote a model tenancy agreement and to issue further guidance on enforcement of standards and prosecutions for illegal eviction. A draft Tenants' Charter has been published: *Draft Tenants' Charter: guidance note for discussion* (DCLG, October 2013).¹¹

The Office of Fair Trading (OFT) has launched a consultation on draft guidance which aims to help professionals in the private rented sector, including letting agents and landlords, to comply with laws designed to protect consumers of their services: *Guidance for lettings professionals: Compliance with relevant consumer protection law. A consultation* (OFT, October 2013).¹² Responses should be submitted by 10 December 2013.

Jeremy Corbyn MP's bill to provide for the regulation of letting agents; to protect tenants' deposits; to require the enforcement of environmental and energy-efficiency standards in private-sector rented accommodation; to amend the law on secure tenancies; to provide for fair rent to be applicable to all rented accommodation; to require landlords not to discriminate against people receiving state benefits; to require local authorities to establish a private rented sector office; and for connected purposes has been given a first reading: *Hansard HC Debates* cols 599–601, 15 October 2013.

The House of Commons Library has updated its key briefing papers on private sector renting, including the following:

- *Houses in multiple occupation* (HMOs) (Standard Note SN/SP/708, September 2013);¹³
- *The regulation of private sector letting and managing agents* (England) (Standard Note SN/SP/6000, October 2013);¹⁴
- *Housing Health and Safety Rating System* (HHSRS) (Standard Note SN/SP/1917, October 2013);¹⁵ and
- *Selective licensing of privately rented housing* (Standard Note SN/SP/4634, September 2013).¹⁶

Part 3, Chapter 1 of the UK government's Immigration Bill deals with residential tenancies and will, if passed, impose penalties on landlords who let to certain classes of migrants.¹⁷

The compliance team at the Committee of Advertising Practice (CAP) has issued an information note for estate agents, letting and managing agents and private landlords about the need for accuracy and transparency when

advertising rents and ancillary charges: CAP letter dated 10 September 2013.¹⁸ Separate guidance on costs and charges imposed by letting agents has also been published: *Compulsory costs and charges: letting agents* (CAP, September 2013).¹⁹ The Advertising Standards Authority (ASA) imposed a deadline of 1 November 2013 for compliance by private landlords and letting agents with these new standards: ASA news release, 10 September 2013.²⁰

Housing and anti-social behaviour

The UK government's bill to reform the tools available to tackle anti-social behaviour has completed all its House of Commons stages: Anti-social Behaviour, Crime and Policing Bill.²¹ The bill will begin its committee stage in the House of Lords on 12 November 2013.

The Joint Select Committee on Human Rights suggested that the bill be amended so that:

- the courts take into account the best interests of the child as a primary consideration when deciding measures against children;
- individuals are not evicted from their homes as a result of a conviction for a riot-related offence; and
- the drafting is made clearer in relation to the following:
 - the definition of anti-social behaviour;
 - the legislative tests that are to be applied by courts when imposing anti-social behaviour measures; and
 - the conditions that can be attached to the measures: *Legislative scrutiny: Anti-social Behaviour Crime and Policing Bill. Fourth report of session 2013–14* (Joint Committee on Human Rights, October 2013).²²

Right to buy

The latest national statistics reveal a significant increase in right to buy sales in England: *Social housing sales, England: 2012–13* (DCLG, October 2013).²³

The UK government has launched a consultation on proposals to curb allegedly 'excessive' service charges levied by councils on leaseholders: *Consultation on protecting local authority leaseholders from unreasonable charges* (DCLG, October 2013).²⁴ Responses should be submitted by 18 November 2013.

Housing tribunal

The first practice directions have been issued for the new Property Chamber of the First-tier Tribunal:

- *Practice directions Property Chamber, First-tier tribunal: Residential property cases*;²⁵ and
- *Practice directions Property Chamber, First-tier Tribunal: Areas in the Property Chamber*.²⁶

New arrangements for resolving housing disputes between landlords and tenants are to be established in Scotland. Jurisdiction for civil private rented sector (PRS) cases will be transferred from the sheriff courts to the PRS tribunal as part of plans to be included in the forthcoming Housing Bill: Scottish Government news release, 6 September 2013.²⁷

Housing complaints

On 1 April 2013, responsibility for complaints about all council housing management matters was transferred from the LGO to the Housing Ombudsman. Complaints against local authorities about other housing matters (such as homelessness and housing allocation) still go to the LGO. The LGO service has decided to publish details of all post-April 2013 housing complaints in the interests of fairness and transparency.²⁸

HUMAN RIGHTS

Article 8

■ Pinnock and Walker v UK

App No 31673/11,
24 September 2013

Mr Pinnock and Ms Walker complained to the European Court of Human Rights (ECtHR) that the Supreme Court had breached their rights under article 8 of the European Convention on Human Rights ('the convention') in making a possession order. (See also [2010] UKSC 45; [2010] 3 WLR 1441, December 2010 *Legal Action* 34.) The Fourth Section of the ECtHR accepted that the eviction interfered with Mr Pinnock and Ms Walker's right to respect for their home, but was satisfied that it was open to them to challenge the order by invoking their rights under article 8. In considering proportionality, the court held that while the removal of a source of nuisance to neighbours was undoubtedly one of the aims pursued by the possession order, another important aim was to protect the rights and freedoms of others, namely, the local authority's right to manage its housing stock and to apply properly the statutory scheme for housing provision for the protection of other intended beneficiaries of the complex arrangements put in place under domestic legislation (para 30).

The Supreme Court had regard to all relevant factors when making the possession order and weighed Mr Pinnock's interests in remaining in the property against the interests of the local authority in seeking his eviction. It provided detailed reasons which were relevant and sufficient for its conclusion that the eviction would not be disproportionate. In so far as Mr Pinnock and Ms Walker complained about the failure of the Supreme Court to resolve disputed matters of fact, it was evident

from the court's judgment that, even if the matters had been resolved in Mr Pinnock's favour, this would not have affected the outcome of the case.

The ECtHR concluded that the application was inadmissible as it was manifestly ill-founded. The Supreme Court had not exceeded its margin of appreciation in finding that the eviction was proportionate. The facts of the case disclosed no appearance of a violation of article 8.

■ Collins v Secretary of State for Communities and Local Government

[2013] EWCA Civ 1193,
9 October 2013

Travellers challenged an enforcement notice alleging that the use of land had been changed without planning permission from equestrian and agricultural use to use as a residential caravan site and a refusal to grant planning permission for such a change of use. Relying on article 8 of the convention, they argued that insufficient consideration had been given to the best interests of 39 children living on the site. HHJ Pelling QC, sitting as a deputy High Court judge, dismissed an appeal from the inspector's decision. In dismissing a further appeal, the Court of Appeal found that all the matters relevant to article 8 had been considered in detail in the course of the reasoning which led to the view that neither permanent nor temporary planning permission was justified.

■ Moore v Secretary of State for Communities and Local Government

[2013] EWCA Civ 1194,
9 October 2013²⁹

Ms Moore, a Romany Gypsy Traveller, applied for planning permission for change of use of land to permit use as a 'Gypsy and Traveller caravan site comprising 1 pitch accommodating one mobile home and one touring caravan' (para 1). Bromley Council refused permission. An inspector dismissed an appeal. Cox J allowed Ms Moore's appeal. In dismissing the secretary of state's appeal, Richards LJ said:

If the family was likely to face a roadside existence in the event of refusal of temporary permission, it would involve a far more serious interference with their article 8 rights, especially through the impact on health and education, than if they were likely to obtain alternative accommodation. [That] ... issue went to the core of the article 8 analysis (para 24).

■ Riverside Housing Group Ltd v Ahmed

Lambeth County Court,
15 June 2012³⁰

Mr Ahmed was the licensee of a room in a

hostel for persons with psychiatric, alcohol or drug problems. He suffered from serious mental illness, including auditory hallucinations. The hostel operated a 'no alcohol on the premises' policy. Mr Ahmed breached this rule within a few days of his arrival, but denied having breached it thereafter. As a result of that breach, a notice to quit was served, but no further steps were taken until after further alleged incidents. The claimant housing association brought possession proceedings against him. At trial, a district judge found that the only incident which was proved was the throwing of a cup at a member of staff while he was waiting to be given medication for his psychiatric condition. The claimant conceded that it was a public authority for the purpose of Human Rights Act 1998 s6.

The district judge, applying *Hounslow LBC v Powell* [2011] UKSC 8; [2011] 2 AC 186, found that the proposed eviction was, on the facts, a disproportionate restriction of Mr Ahmed's right to a home under article 8, given that the only type of possession order which it would be open to the court to make would be an outright possession order. HHJ Blunsden upheld the district judge's finding of a breach of article 8, and accordingly dismissed the claimant's appeal.

RENT ACT 1977

■ **Tolui v Rent Assessment Committee of the London Rent Assessment Panel CO/2370/2013, 8 October 2013**

Mr Tolui owned a property which was let to a Rent Act regulated tenant at a rent of £50 per week. In January 2008, Mr Tolui applied to the rent officer for the registration of a fair rent of £350 per week. He sought to rely on improvements that he had made to the property. The rent officer registered a rent of £58.50 per week. He appealed. The Rent Assessment Committee concluded that generally the property was in an unmodernised state. It decided that the uncapped fair market rent would be £154 per week, but applied the capping provisions. However, the committee also considered the provisions in Rent Acts (Maximum Fair Rent) Order 1999 SI No 6 article 2. Accordingly, the maximum fair rent was £60 per week. In August 2009, after making further improvements, Mr Tolui applied to register a fair rent of £360 per week. The rent officer registered a rent of £62.50 per week. Mr Tolui appealed. Applying the capping provisions, the committee allowed a maximum fair rent of £63.50 per week. In July 2012, Mr Tolui applied to register a fair rent of £400 per week. He sought to rely on the improvements

made previously. The rent officer registered a rent of £74 per week. Mr Tolui appealed. The committee held that only repairs and/or improvements which had been made since the August 2009 application could be taken into account under article 2(7). Accordingly, the committee held that the maximum fair rent was £74.50 per week. Mr Tolui appealed. He argued that the effect of article 2(7) was cumulative and that the committee had erred in not having regard to the earlier improvements when considering the July 2012 application.

Cox J dismissed the appeal. The committee had been correct to find that only improvements and/or repairs made after the August 2009 application could be considered under article 2(7).

UNLAWFUL EVICTION

Damages

■ **Alves v Smart Move and Akhtar**

*Peterborough County Court, 30 August 2013*³¹

Ms Alves rented premises from Mr Akhtar. They were managed by Smart Move, who were letting agents. Ms Alves went on holiday with her family, including three young children. When she returned home, she discovered that the locks had been changed. She found another family in occupation. The council housed her as a homeless person in temporary accommodation in a hostel which she had to share with her children and her husband. She also lost a large number of personal possessions at the property. The defendants failed to file a defence and judgment was entered against them.

District Judge Farquhar (as he then was) awarded damages of £22,500 against both defendants, comprising £17,500 under HA 1988 s28, based on valuation evidence, and £5,000 for special damages.

■ **Lopes and Alves v Singh and Singh**

*Bristol County Court, 14 February 2013*³²

Ms Lopes and Mr Alves were assured shorthold tenants of a house which they rented from Mr Singh. The second defendant was his brother-in-law. The tenants paid the full rent for the first month, but were then unable to pay the rent because they had been given very little work by the agency for which they worked. On 28 August 2012, the defendants changed the locks at the property and refused to readmit Ms Lopes and Mr Alves. Their belongings were withheld. Ms Lopes was 18 weeks pregnant. On the first night after their eviction, the couple stayed in a hotel. For the next nine nights they stayed at friends, although for three nights they were forced to sleep in their car. Following the three nights spent in the car, Ms Lopes had to

receive hospital treatment for a bladder infection. On 31 August 2012, Ms Lopes and Mr Alves obtained an injunction ordering their immediate readmission to the property and prohibiting any destruction or disposal of goods. The defendants refused to readmit the couple until they had paid the outstanding rent, although they were allowed to retrieve their goods. On 6 September 2012, Ms Lopes and Mr Alves surrendered their tenancy because the defendants were still refusing to readmit them to the property. They then went to stay at another friend's house.

Deputy District Judge Close awarded damages of £10,472.75. She awarded £3,000 at £300 per day for the ten days until the surrender of the tenancy. She made a further award of £2,100 at £25 per day for the 84 days following the surrender of the tenancy until the six month assured tenancy would have expired because Ms Lopes and Mr Alves then lived in inferior accommodation, without security of tenure. She awarded Ms Lopes £2,000 in aggravated damages and Mr Alves £1,750 in aggravated damages. She made an award of £1,500 in exemplary damages. An award of £122.75 was made for the costs associated with staying at the hotel.

■ **Pyne v Aryeetey**

*Wandsworth County Court, 12 April 2013*³³

Ms Aryeetey, a single mother with two young children, was the assured shorthold tenant of a flat which she rented from Ms Pyne. Ms Pyne served a notice to quit and at the same time sent men to threaten Ms Aryeetey to try to make her vacate the property. She later disconnected water, gas and electricity, removed the toilet and washbasin, and left a notice telling Ms Aryeetey that if she found her there next time she visited she would change the locks. Ms Aryeetey continued to live in the premises, with her children, without water, lighting or heating for 23 days, taking the children to a nearby McDonald's to use the toilet and using bottled water. She then managed to move with the children to live in a single room at a new address. Later, Ms Pyne aggressively and noisily threatened Ms Aryeetey at her church at the end of a service in front of the congregation, demanding unpaid rent, until the police were called to restrain her. Ms Pyne sued for unpaid rent and Ms Aryeetey counterclaimed for unlawful eviction.

After trial, District Judge Jones found that Ms Aryeetey owed £1,200 in rent, but she recovered damages on her counterclaim as follows:

- £1,000 for the pre-eviction threats;
- £300 per day during the 23 days when she was living in the flat without toilet or utilities, totalling £6,900;
- £100 per day for a further 40 days during

which the defendant was living in the new single room but would still have been in the property, but for Ms Pyne's interference, totalling £4,000; ■ £2,000 for the harassment in front of the church congregation; and ■ £2,000 exemplary damages.

The total award on counterclaim was £15,900.

LONG LEASES

■ **Burchell v Raj Properties Limited**

[2013] UKUT 443 (LC),
23 September 2013

Martin Rodger QC, Deputy President of the Upper Tribunal (Lands Chamber) held that a covenant in a lease of a flat obliging the lessee to 'use the flat as a private dwelling for the lessee and his family and for no other purpose' prohibited subletting to a person who was not a member of the lessee's own family (para 8).

Adverse possession

■ **Couper v Albion Properties Ltd**

[2013] EWHC 2993 (Ch),
8 October 2013

Arnold J dismissed claims by an artist that he had the benefit of 'ancient mooring rights', under Port of London Act 1968 s63, which entitled him to moor boats and pontoons, and that he had acquired title to part of the riverbed and a section of river wall by adverse possession (para 2).

HOUSING ALLOCATION

■ **Turley's application for judicial review**

[2013] NIQB 89,
15 August 2013

Mr Turley applied for social housing accommodation under the allocation scheme adopted by the Northern Ireland Housing Executive (NIHE). He was awarded 330 points. This was the highest points score of any applicant for two-bedroom accommodation in the area where he wished to live.

A local housing association had a development of two-bedroom units in that area and it had agreed to allocate its housing accommodation in keeping with the rules of the published NIHE allocation scheme. However, the association decided that it should let the new units only to transfer cases, rather than to new applicants such as Mr Turley. The properties were then allocated to tenants with fewer points than he had. One was a board member of the association who had 112 points, another was a management transfer applicant with 90 points and the third was the niece of a board member, who was not a transfer applicant, and had only 34 points. Mr

Turley sought a judicial review.

Horner J held that the association was amenable to judicial review because it was a participant in an allocation scheme which had been adopted under a statutory requirement and it had, in turn, adopted that scheme as its own allocation policy.

He also held that the allocation decisions were unlawful. They had not been made fairly because the two board members ought to have declared their interests in the lettings and taken no part in the relevant decision-making. The decision to let only to transfer applicants had not accorded with the rules of the scheme. The association had failed to consider the application made by Mr Turley alongside the others and had fettered its discretion in deciding only to consider transfer applicants. The failure to deal with the claimant fairly had been in breach of his legitimate expectation and of article 8 of the convention. Horner J declined to disturb the lettings of two of the three properties. He decided that in relation to the third, where the incoming tenant had not yet moved in, the allocation decision should be retaken on a proper basis by someone outside the association ie an official of NIHE who had not been involved in the pre-allocation of housing.

HOMELESSNESS

Definition of 'homelessness'

Local Government Ombudsman

Complaint

■ **Wiltshire Council**

12 011 081,
16 July 2013

The complainant and her partner were joint tenants of a housing association property. She left the home, and in November 2010 approached the council for help with accommodation. She told them that her relationship had broken down, that her former partner was using drugs and that there had been emotional abuse. The council did not treat her as having made an application for homelessness assistance as it was not satisfied that it had reason to believe that she may be homeless or threatened with homelessness: HA 1996 s184.

The LGO rejected a complaint that the decision had amounted to maladministration. Until the judgment in *Yemshaw v Hounslow LBC* [2011] UKSC 3; [2011] 1 WLR 433 was delivered on 26 January 2011, the word 'violence' sufficient to render a person homeless (HA 1996 s177) had been widely treated as limited to physical abuse. Accordingly, the ombudsman considered that the council had not erred in failing to take the application in November 2010.

Intentional homelessness

■ **Noel v Hillingdon LBC**

[2013] EWCA Civ 1120,
26 July 2013

Mr Noel became homeless when he lost his private sector rented accommodation. The council decided that he had become homeless intentionally because he had taken on the tenancy of a three-bedroom property knowing that it was too large for him and that he could not afford it. The decision was upheld on review. HHJ Faber dismissed an appeal to the county court.

Patten LJ granted permission for a second appeal on the basis that it was arguable that Mr Noel could not have become homeless intentionally because the council:

■ had decided that his 'deliberate act' was the taking on the tenancy; but

■ had failed to consider whether it would have been reasonable for him to have continued to occupy his previous home.

The full appeal is scheduled to be heard later this month.

■ **Ali and Grover v Ealing LBC**

Brentford County Court,
13 August 2013³⁴

The appellants were a young couple with two small children. In 2011, they applied to the council for homelessness assistance and were found a private sector tenancy in Nottingham on a six-month let. The couple took it, but within a few months felt very isolated and decided to return to London. They found accommodation to rent in London and paid a deposit. However, after leaving Nottingham they found that the London flat was not available because the previous tenants had refused to leave. They applied to the council again. It decided that they had become homeless intentionally by giving up the Nottingham tenancy. On review, the issue was whether they had known of the changed circumstances relating to the London flat before, or only after, they left Nottingham; these were two starkly different alternatives. The reviewing officer affirmed the finding of intentional homelessness.

HHJ Powles QC quashed the review decision. The reviewing officer either had to make sufficient enquiries to settle which scenario was correct or put the two alternatives to the applicants for their explanation. Neither step had been taken.

Interim accommodation

■ **R (Testamical) v Local Government Ombudsman**

[2013] EWCA Civ 1183,
14 August 2013

The applicant applied to Birmingham Council for accommodation on 29 December 2012, reporting that he was in fear of racist and

anti-social behaviour towards himself and his family. On 25 January 2013, the council provided temporary accommodation under its homelessness duties. The applicant complained to the LGO that the council had failed to provide interim accommodation between 29 December and 25 January. The LGO declined to determine the complaint as there was no evidence of any injustice. That was because there had been no further incidents between those dates. The applicant sought permission to apply for judicial review. That was refused by the High Court. The Court of Appeal likewise refused permission. Whether there was sufficient injustice to warrant investigation of a complaint was a matter within the LGO's discretion.

Main housing duty Local Government Ombudsman Complaint

■ Westminster City Council

*12 009 140,
13 September 2013*

The council was routinely providing temporary B&B accommodation for homeless households in excess of the absolute maximum period of six weeks: The Homelessness (Suitability of Accommodation) (England) Order 2003 SI No 3326. Thirty-eight other applicants complained to the LGO.

The ombudsman found that 'the council had not complied with its statutory duties. Its failure to avoid the use of B&B for families in excess of six weeks has caused injustice to those families. The families concerned have been deprived of self-contained accommodation.' The council agreed to pay £500 to all complainants placed in B&B for more than six weeks, and in addition, to pay £500 to each complainant to acknowledge that it was not able to provide self-contained accommodation after six weeks.

■ Tower Hamlets LBC v Djafray

*Bow County Court,
5 September 2013³⁵*

The defendant applied to the council for homelessness assistance. Under the council's duties, she was provided with temporary housing accommodation on a non-secure licence. After receiving complaints of anti-social behaviour carried out by the defendant, the council gave notice to determine the licence and sought possession. The defendant claimed that:

- the decision to seek possession had been unlawfully made; and
- the making of a possession order would not be proportionate having regard to the right to respect for her home protected by article 8 of the convention.

At a summary hearing, District Judge Stone found that neither defence was seriously

arguable and made a 14-day possession order.

Recorder Antonio Bueno QC allowed an appeal and gave directions for trial of the defences. The allegations of anti-social behaviour had not been particularised in the warning letters, in the notice determining the licence or in the particulars of claim. Applying the dictum of Lord Phillips in *Hounslow LBC v Powell* (see above) at para 114 ('If the defendant is not informed of the reason why the authority is seeking possession he will be denied the opportunity of displacing the presumption that the authority's action will serve a legitimate aim') the recorder held that the defendant had not been given a fair and proper opportunity to address the complaints against her and that in those circumstances both her alternative defences passed the threshold between summary determination and the need for a trial.

Appeals

■ Ali and Grover v Ealing LBC

*Brentford County Court,
13 August 2013³⁶*

The 21-day time limit for the appellants to lodge an appeal in a county court against a reviewing officer's decision expired on 1 October 2012. The notice of appeal was sent to the county court office by fax and e-mail at 16.18 pm on that day, and was therefore treated as filed the following day, ie, one day out of time. On 22 January 2013, the appellants applied to extend time under HA 1996 s204(2A).

HHJ Powles QC allowed the application. There was 'good reason' (as required by HA 1996 s204(2A)) for the failure to file the appeal in time given a confused background history (in which the council had initially accepted that it owed the main housing duty, and then retracted that decision) which may have removed some of the sense of urgency from the appellants' minds. There was also 'good reason' for the delay in applying to extend time in that the period had been used by the parties to see whether agreement could be reached so as to avoid the court needing to be troubled with an application.

Challenging decisions

■ R (C) v Kensington and Chelsea RLBC

*[2013] EWHC 2887 (Admin),
6 September 2013*

The claimant had been owed the main housing duty under HA 1996 s193. The council offered her accommodation in Ilford, Essex. She did not consider it suitable, but the offer was upheld by a reviewing officer's decision. Recorder Ullstein QC dismissed an appeal. Lloyd LJ refused a renewed application for permission to appeal to the Court of Appeal.

The claimant then sought judicial review of the reviewing officer's decision and interim relief to prevent her eviction from temporary accommodation. Interim relief was refused.

Permission to apply for judicial review was refused by Turner J. A renewed application was, in turn, dismissed by Charles George QC sitting as a deputy High Court judge. Judicial review was not available in respect of a decision amenable to a challenge under an alternative procedure, and particularly in a case which had already been fully considered under that procedure.

HOUSING AND CHILDREN

■ R (KA) v Essex CC

*[2013] EWCA Civ 1261,
26 June 2013*

The claimant was unlawfully in the UK. She applied for accommodation and other assistance for herself and her three children under Children Act 1989 s17. The council declined to accommodate. Robin Purchas QC, sitting as a Deputy High Court Judge, quashed that decision on the basis that a refusal of assistance would frustrate the claimant's ability to pursue appeals about her immigration status in this country, and thus infringe her procedural rights under article 8 of the convention (see [2013] EWHC 43 (Admin)). The council appealed.

The Court of Appeal dismissed the appeal. It had been rendered academic by recent UK Border Agency guidance and by the fact that the claimant had an imminent hearing before a tribunal about her removal from the UK.

HOUSING AND COMMUNITY CARE

■ R (AB) v Croydon LBC

*[2013] EWHC 3113 (Admin),
31 July 2013*

The claimant lived in the family home of his parents. He was a disabled man confined to a wheelchair and restricted to occupying the ground-floor rooms. The house needed a single-storey rear extension in order to accommodate the claimant's disabilities.

The council had agreed to fund the works, estimated to cost £40,000, with the maximum disabled facilities grant of £30,000 and a loan of £10,000 to the parents. There would be a delay in agreeing the terms of the loan, so the claimant asked that the council release £1,100 of the grant to enable him to engage experts to begin the process of drawing the plans. The council declined to make that advance. The claimant sought judicial review

and an order for interim relief requiring the council to release the initial funds.

HHJ Waksman QC, sitting as a judge of the High Court, was persuaded that the position taken by the council was arguably irrational and ordered the release of £1,100 pending the grant of permission to apply for judicial review.

■ **A Local Authority v WMA**

[2013] EWHC 2580 (COP),

23 July 2013

A disabled adult lived with his disabled mother in her home. The conditions in which they lived were chaotic, unhygienic and had impaired his development. The local council decided that it would be in his best interests to be placed in his own supported housing accommodation. He did not want to move and his mother did not want him to go.

The council applied for orders designed to bring about the move. HHJ Cardinal, sitting as a judge of the Court of Protection, granted a series of orders which included the following:

- a power for the council to enter the current home;
- a power for the police to restrain the son, if necessary; and
- an order that the son be removed from his current home and taken to the supported housing where the council would have power to retain him (if needs be) and to sign the tenancy agreement on his behalf.

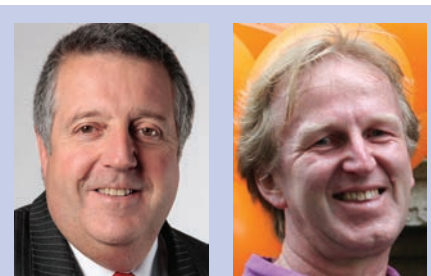
These measures were considered to be not only in his best interests but proportionate and necessary.

- 1 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/249439/131008_Providing_social_housing_for_local_people.pdf.
- 2 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/248785/Provision_of_Social_Lettings_Data.pdf.
- 3 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/249632/Prevention_of_Social_Housing_Fraud_Act_2013_-_Impact_Assessment.pdf.
- 4 Available at: www.parliament.uk/briefing-papers/SN06378.pdf.
- 5 Available at: www.callcredit.co.uk/contact-us/white-paper-request-shutting-the-door-on-tenancy-fraud.
- 6 Available at: www.lgo.org.uk/publications/advice-and-guidance#focus.
- 7 Available at: www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71.pdf.
- 8 Available at: <http://wales.gov.uk/docs/statistics/2013/130918-homelessness-april-june-2013-en.pdf>.
- 9 Available at: <http://wales.gov.uk/docs/desh/consultation/130916-accommodating-former-prisoners-en.pdf>.
- 10 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/251147/CM_8730.pdf.
- 11 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/251148/Draft_Tenants_Charter.pdf.

- 12 Available at: www.oft.gov.uk/shared_of/consultations/oft1509.pdf.
- 13 Available at: www.parliament.uk/briefing-papers/SN00708.pdf.
- 14 Available at: www.parliament.uk/briefing-papers/SN06000.pdf.
- 15 Available at: www.parliament.uk/briefing-papers/SN01917.pdf.
- 16 Available at: www.parliament.uk/briefing-papers/SN04634/selective-licensing-of-private-landlords.
- 17 Available at: www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/14110.pdf.
- 18 Available at: www.cap.org.uk/~media/Files/CAP/CAP/2013-09-05%20Guidance%20PDF.ashx.
- 19 Available at: www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Compulsory-costs-and-charges-Letting-agents.aspx.
- 20 Available at: www.asa.org.uk/News-resources/Media-Centre/2013/ASA-sets-deadline-for-letting-agents-to-be-up-front-about-fees.aspx.
- 21 Available at: <http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill.html>.
- 22 Available at: www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/56/56.pdf.
- 23 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/249316/Social_housing_sales_in_England_2012_to_2013_v.pdf.
- 24 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/248647/Protecting_Local_Authority_Leaseholders_From_Unreasonable_Charges_v2.pdf.
- 25 Available at: www.judiciary.gov.uk/Resources/JCO/Documents/Practice%20Directions/ft-pd-forms-residential-property090913.pdf.
- 26 Available at: [www.judiciary.gov.uk/Resources/JCO/Documents/Practice%20Directions/ft-pd-pc-](http://www.judiciary.gov.uk/Resources/JCO/Documents/Practice%20Directions/ft-pd-pc-areas-090913.pdf)

areas-090913.pdf.

- 27 Available at: <http://news.scotland.gov.uk/News/Housing-disputes-addressed-3cc.aspx>.
- 28 Available at: www.lgo.org.uk/decisions/housing.
- 29 Chris Johnson, solicitor, The Community Law Partnership, Birmingham.
- 30 Ziadies Solicitors, London and Paul Harris, barrister, London.
- 31 Dirghayu Patel, solicitor, GT Stewart Solicitors, London.
- 32 Frances Barratt and Mariam Seddon, solicitors, South West Law, Bristol and Stephen Marsh, barrister, London.
- 33 See note 30.
- 34 Liz Davies, barrister, London and Asghar & Co Solicitors, London.
- 35 Stephen Marsh, barrister, London.
- 36 See note 34.



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