

than the small, unostentatious Kara which was only 5mm wide.

■ The school failed to comply with its obligations under RRA s71: race equality issues had played no part in its decision-making in relation to S's desire to wear a Kara.

■ The court considered a factual dispute about the effect of the internal seclusion on S, who maintained that it had made her very unhappy and placed her at a disadvantage educationally and in other ways. The school, however, gave evidence to the contrary. The court proceeded on the factual basis put forward by the school and rejected S's article 8 claim.

■ The court held that the school had accepted correctly its breach of the obligations under Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 SI No 3227 reg 4 to inform S of the initial fixed-term exclusions. The policy behind the school's position that S could not attend unless she stopped wearing the Kara was unlawful; therefore, when S was told that she could not attend unless she stopped wearing the Kara, this constituted exclusion and S should have been enabled to invoke the appropriate appeal procedure.

■ The school had failed to take into account the relevant guidance on exclusions from school when it excluded S.

- 1 Available at: [www.teachernet.gov.uk/\\_doc/12395/JK%20Letter%20-%20schools.pdf](http://www.teachernet.gov.uk/_doc/12395/JK%20Letter%20-%20schools.pdf). For a copy of the code, visit: [www.dcsf.gov.uk/sacode/docs/DfES%20Schools%20text%20final.pdf](http://www.dcsf.gov.uk/sacode/docs/DfES%20Schools%20text%20final.pdf).
- 2 Available at: [http://www.teachernet.gov.uk/\\_doc/12798/Exclusions\\_guidance\\_2008\\_FINAL\\_pdf\\_110808.pdf](http://www.teachernet.gov.uk/_doc/12798/Exclusions_guidance_2008_FINAL_pdf_110808.pdf).
- 3 See *Guidance on education-related parenting contracts, parenting orders and penalty notices*, 2007, at: [www.dcsf.gov.uk/behaviourandattendance/uploads/7150-DCSF-Guidance%20on%20Education%20Related%20Parenting.pdf](http://www.dcsf.gov.uk/behaviourandattendance/uploads/7150-DCSF-Guidance%20on%20Education%20Related%20Parenting.pdf).
- 4 *Implementing the Disability Discrimination Act in schools and early years settings* is available at: [www.teachernet.gov.uk/wholeschool/sen/disabilityandthedda/ddapart0](http://www.teachernet.gov.uk/wholeschool/sen/disabilityandthedda/ddapart0).



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## 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. Comments from readers are warmly welcomed.

### POLITICS AND LEGISLATION

#### Housing and Regeneration Act 2008

The Housing and Regeneration Act 2008 (Commencement No 1 and Transitional Provision) Order 2008 SI No 2358 brought certain provisions of Parts 1 and 2 of the Act into force in September 2008.

Provisions in force from 8 September 2008 relate to the following:

- the establishment, constitution, objects and initial proceedings of the new Homes and Communities Agency;
- the establishment, constitution, objects and initial proceedings of the new regulator – the Office for Tenants and Social Landlords; and
- powers to permit consultation in preparation for certain actions to be taken by the regulator or the secretary of state. Article 3 also makes transitory provision to permit consultation to be carried out before Part 2 is brought fully into force.

The provisions in force from 22 September 2008 are s317 (building regulations: time limit for prosecutions) and s321(1) (the repeal of Housing Act (HA) 1985 ss156(5) and (6) (aspects of the right to buy)). The Act itself brought a range of other provisions into force from 22 September 2008: s325(2).

#### Social housing allocation

Hazel Blears, Secretary of State for Communities and Local Government (CLG), has published a further statutory code of guidance for local authorities in England on social housing allocation under HA 1996 Part 6, in the exercise of her powers contained in s169. This further guidance, *Allocation of accommodation: choice based lettings. Code of guidance for local housing authorities* (August 2008), supplements the existing code of guidance issued in 2002 which remains in force.<sup>1</sup> The new code was initially circulated as a consultation draft in 2007 and a summary of the responses to the consultation exercise has been published.<sup>2</sup>

Both the new code and the consultation responses will be analysed in an article by Robert Latham, which will appear in December 2008 *Legal Action*.

#### Avoiding mortgage repossessions

On 2 September 2008, CLG announced a £1 billion funding package to help first-time buyers struggling to get on to the housing ladder, support vulnerable homeowners at risk of repossession, and support the house-building industry: CLG news release, 2 September 2008.<sup>3</sup> The 'support for vulnerable homeowners' element comprises three new mortgage rescue measures to be operated by registered social landlords (RSLs):

- **shared equity:** the RSL provides an equity loan enabling the householder's mortgage repayments to be reduced;
- **shared ownership:** the RSL buys a share (enabling the householder to pay off some of the mortgage) and converts the property to shared ownership by issuing a shared ownership lease; and
- **sale and rent back:** the RSL clears the secured debt completely and the applicant pays rent to the RSL at a level s/he can afford.

The schemes will begin operating later this year and can only be accessed by applicants seeking help through local authority homelessness services.<sup>4</sup>

The Department for Work and Pensions announced simultaneously that it would be reforming Support for Mortgage Interest (SMI) by shortening the waiting period before SMI is paid from 39 weeks to 13 weeks for new working age claims from April 2009.<sup>5</sup> The capital limit for new working age claims will also be increased to £175,000 from April 2009.

#### Choice of landlord for social housing tenants

A new research report, *A real choice for tenants?* (Housing Corporation, August 2008), suggests that giving tenants a right to make a choice of landlord could lead to

significant changes in the social housing sector.<sup>6</sup> The report explains how the process of giving tenants a choice of landlords or managers might be organised.

### Housing and human rights

In its report *A Bill of Rights for the UK?*, the parliamentary Joint Committee on Human Rights has called on the government to consider providing for economic and social rights, including a right to housing, in any UK Bill of Rights.<sup>7</sup> The South African Constitutional Court case of *Government of South Africa v Grootboom* [2001] 10 BHRC 84; November 2001 *Legal Action* 23, on a human 'right to shelter' is reviewed in that context at paras 179–181 of the report.

### Domestic violence and housing

*Behind closed doors. Providing services to those at risk of domestic violence* (Housing Corporation, September 2008) contains new non-statutory guidance for housing associations encouraging them to adopt a strategic approach when responding to domestic violence and to encourage association staff to put such strategies into practice.<sup>8</sup>

In *Domestic violence: local authority duties and responsibilities*, Johanne Enright and Justin Bates explore the capacity of landlords to use anti-social behaviour injunctions (available under HA 1996 s153) to address domestic violence issues in social housing.<sup>9</sup>

### New certificates for tenants

From 1 October 2008, landlords have been required to issue new tenants with energy performance certificates for their homes: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 SI No 991. The intention is that prospective tenants will know the energy efficiency of the homes they are proposing to rent. CLG has published explanatory booklets setting out how the new provisions will work: *Energy performance certificates (EPCs) and renting homes: a tenant's guide* (July 2008) and *Energy performance certificates (EPCs) and renting homes: a landlord's guide* (June 2008).<sup>10</sup>

### Homelessness and registered social landlords

The *HAT Update August 2008* (Homelessness Action Team, Housing Corporation, August 2008) examines how associations using assured shorthold starter tenancies can make them work better to avoid homelessness.<sup>11</sup> The *Update* also contains other information for RSLs working on homelessness issues.

### Housing and anti-social behaviour

A new research report commissioned for CLG and the Housing Corporation outlines the results of the latest survey of tenants' experiences of anti-social behaviour in their communities: *The Housing Corporation and Communities and Local Government panel survey 7* (July 2008).<sup>12</sup>

### Regulating the private rented sector

*Housing: encouraging responsible letting* (Law Commission, August 2008) represents the final element of the Law Commission's work on housing law reform.<sup>13</sup> The report is directed at means of encouraging responsible conduct by landlords. The Law Commission supports a 'new approach' to the regulation of private landlords that eventually may require the introduction of a compulsory system of self-regulation.

### Poor local authority services

CLG has set up a review team to consider rights of redress for individuals where council services fail to meet agreed standards: CLG news release, 26 August 2008.<sup>14</sup> The review team, which has not formally called for evidence, is due to report in 2009.

## PUBLIC SECTOR

### Possession claims, death and estoppel

#### ■ Newport City Council v Charles (No 2)

*B5/08/0688*

*17 July 2008,*

*(2008) Times 11 August*

Mr Charles lived with his mother who was a secure tenant of Newport City Council. Shortly before her death, he made anonymous enquiries of the council and learned that, after her death, it would seek possession against him under HA 1985 Sch 2 Ground 16 (under-occupation). When his mother died in January 2003, he did not inform the council of her death, or register her death. He continued to pay both rent and council tax in her name for a number of years. The council learnt of her death in 2006.

Within a year, it sought possession under Ground 16. Mr Charles defended. He argued that a claim for possession under Ground 16 may only be commenced (by notice or issue) not less than six months but not more than one year after the death. In the county court, the council claimed that Mr Charles's conduct in failing to notify his mother's death gave rise to an estoppel which prevented him from asserting the true date of his mother's death. HHJ Milwyn Jarman QC made a possession

order. Mr Charles appealed.

The Court of Appeal allowed the appeal and dismissed the possession claim. It upheld the county court's finding that Mr Charles's conduct – which it described as deliberately dishonest and fraudulent – did comprise a representation that his mother was still alive, on which the council had been intended to, and did, rely. It gave rise to an estoppel so long as it remained undiscovered.

However, the doctrine of proprietary estoppel did not apply in these circumstances, since the council's interest as freeholder was not in question. It was raising a strictly statutory claim to possession. The estoppel did not create any expectation on the part of the council to an interest in the tenancy. The defendant's acts were estoppel by representation. As the estoppel was not proprietary, it was subject to the usual rule that an estoppel cannot be used as a cause of action. As a result, the council could not found a claim on it outside the time limits laid down by the HA 1985. The court said that this result was unjust and frustrated the statutory purpose.

## POSSESSION CLAIMS

### Trespass, possession orders and injunctions

#### ■ Secretary of State for the Environment, Food and Rural Affairs v Meier

*[2008] EWCA Civ 903,*

*31 July 2008*

New age Travellers occupied land in Hethfelton Wood which was owned by the claimant but managed by the Forestry Commission. Some of them had children who attended local schools. The claimant sought possession against a number of named defendants and persons unknown of the wood which they were occupying and other sites. The defendants accepted that they were trespassers. Some had camped previously at Moreton Plantation, less than five miles from Hethfelton. The only defence advanced related to the Human Rights Act 1998. Recorder Michael Norman made forthwith possession orders, but refused to extend the possession orders to other sites or grant an injunction in relation to other land (see October 2007 *Legal Action* 25). The claimant appealed the latter part of his order.

The Court of Appeal allowed the appeal. Arden LJ approved comments by Wilson J in *Drury v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWCA Civ 200; [2004] 1 WLR 1906, para 21 that:

*It follows that the inclusion in a possession order of an area of land owned by the claimant which has not yet been occupied by the defendants should be exceptional. Although it would be foolish to be prescriptive about the nature of the necessary evidence, it seems safe to say that it will usually take the form either of an expression of intention to decamp to the other area or of a history of movement between the two areas from which a real danger of repetition can be inferred or . . . of such propinquity and similarity between the two areas as to command the inference of a real danger of decampment from one to the other (para 17).*

She stated that in such a case the court has a general discretion, but it should only exercise its discretion to refuse an order in exceptional circumstances. There was no reason why 'exceptional circumstances' should not, in an appropriate case, include the failure to perform an obligation imposed by public law. In this case, however, the highest the obligation in public law could be put was an obligation to consider the acceptability of an encampment once the encampment has occurred.

The recorder was inconsistent in his reasons for the grant of an immediate possession order for Hethfelton Wood and his reasons for refusing such an order in relation to the further sites. As to the grant of an injunction, the court rejected a submission that the grant of an injunction and the wider possession order were incompatible. An injunction binds the individual occupiers served with the order, whereas a possession order operates for the protection of the land and can be enforced against anyone on the land. Possession orders and injunctions are complementary and not incompatible. Arden LJ said:

*The grant of an injunction is undoubtedly discretionary but . . . in a society governed by the rule of law, the court should grant an injunction necessary to uphold legal rights against a threatened invasion unless there is some factor which is sufficiently weighty to displace this general rule. Accordingly, I start from the premise that the injunction in this sort of case should normally be granted (para 53).*

Pill LJ said that once the task of establishing the *Drury* criteria (see above) has been performed, 'an injunction should normally be granted'. The Court of Appeal granted an injunction restraining further trespass.

## Local housing authorities and enforceability of covenants

### ■ **Cantrell v Wycombe DC**

[2008] EWCA Civ 866,  
29 July 2008

As a result of Warden Housing Association Ltd's acquisition of a house, which had been partly funded by Wycombe, Warden agreed with the council to let six houses including 155 Bowerdean Road, a property that Warden owned, 'on a periodic tenancy to a nominee of the council'. Warden then sold 155 Bowerdean Road to Home Group Ltd, a RSL. Home Group sold the property at auction to Mr Cantrell. The council, relying on HA 1985 s609, sought to enforce its nomination rights against Mr Cantrell. In the county court, HHJ Campbell held that it was entitled to do so. Mr Cantrell appealed.

The Court of Appeal allowed the appeal. At common law, the burden of a covenant affecting freehold land does not bind subsequent purchasers from the original covenantor. The burden of a covenant will bind subsequent purchasers in equity (but not at common law) where:

- the covenant is negative in substance;
- the covenant is made to protect land retained by the covenantee; and the covenantee continues to retain that land when s/he seeks to enforce the covenant;
- the burden is intended to run with the land of the covenantor; and
- the subsequent purchaser is not a bona fide purchaser for value without notice of the covenant.

In this case it was common ground that Warden's obligations were positive rather than negative both in form and in substance. In relation to s609, Lewison J said:

*The concluding part of section 609 puts a local housing authority into the same position as a landowner who has taken a covenant on a disposal of freehold land for the benefit of retained land and who continues to retain that land. The manner and extent to which a covenant is enforceable against a subsequent purchaser of the freehold are as I have described in paragraph [18] above. In my judgment it follows that section 609 does not permit the enforcement of positive covenants against a subsequent purchaser of the freehold (para 26).*

Parliament could not have intended to put a local housing authority into a position that no private landowner could achieve, namely to make the burden of positive covenants run with freehold land, without saying so. Had that been the intention of parliament, much clearer words would have been necessary.

## LONG LEASES

### Service charges

#### ■ **M & M Savant Limited v Brown**

LRX/26/2006,  
Lands Tribunal,  
8 August 2008

The landlord of flats let on long leases wished to carry out works and recover the cost as service charges. Its agent obtained estimates from two contractors and wrote to all lessees giving the names of the contractors and the total sums of their estimates. The letters also stated that, subject to observations from lessees, the landlord intended to instruct the cheaper contractor. The letters did not enclose copies of the estimates, but stated that they were available for inspection in the agent's offices.

Solicitors instructed by one lessee objected and asked for a copy of the estimates. The agent sent copies of the estimates to the solicitors, but four days later the contractors started work. The Leasehold Valuation Tribunal (LVT) concluded that the landlord had not complied with the consultation requirements of Landlord and Tenant Act (LTA) 1985 s20. The landlord appealed. In addition, the landlord issued proceedings in the county court seeking dispensation under s20(9). Both matters were listed before HHJ Huskinson, sitting as the Lands Tribunal and a judge in the county court. He dismissed the appeal and refused the application for dispensation.

HHJ Huskinson stated that he had difficulty in accepting that it was possible to satisfy the requirement that notices and estimates were displayed 'in one or more places where it is likely to come to the notice of all those tenants' (as required by s20(4)(b)) by merely writing to tenants informing them of a place where, on application to the appropriate person within office hours, documents would be made available for inspection.

However, even assuming that such a course of action did satisfy the statutory requirement, he concluded that the landlord had failed to comply with s20(4)(b) because the only place in which the estimates were 'displayed' was in offices eight to ten miles from the block of flats. They were not likely to come to the notice of all the lessees. He continued: 'having available for inspection of documents at a place where a determined tenant has the ability if he makes an effort to see the documents in due course does not constitute a display within [s20(4)(b), which] envisages the documents being displayed in a sufficiently convenient and obvious place for it to be likely that the documents will come to the attention of the tenants straight away

rather than in due course' (para 37).

As to dispensation, HHJ Huskinson noted that in *Martin v Maryland Estate Limited* [1999] L&TR 541, CA, it was held that the power of the court created by s20(9) to dispense with all or any of the relevant statutory requirements was not a general dispensing power, but a two-stage process under which the court's discretion only arose if the court was satisfied that the landlord had acted reasonably. In this case, the landlord had not acted reasonably in all the circumstances. It would have been simple for the agent to comply by enclosing, with its letter, copies of the two estimates which were each on a single sheet of paper. Furthermore, where a landlord receives a letter from solicitors which asserts correctly, with reasons, that the landlord is failing to comply with the consultation requirements, if a landlord merely carries on regardless and commences the works without first properly carrying out the consultation requirements, such a landlord acts unreasonably. No explanation was given about why the contractors started works as if there was no problem.

#### ■ Phoenix Housing Association v Mckibbin

LON/00AZ/LSC/2007/0456,  
*Leasehold Valuation Tribunal*,  
4 August 2008

The landlord sought dispensation under LTA s20ZA from the consultation requirements of s20 in respect of major works carried out in 2006 and 2007. The most important aspect of the works was stripping away and replacing concrete which had become subject to carbonisation. Consultation took place on initial specifications, but these did not include:

- the installation of a lightning conductor;
- a more thorough encasement of services such as wiring; or
- additional works required when it was found that the depth of carbonisation was 65mm, rather than the 42mm found when the blocks were last surveyed. Additional works because of the greater extent of carbonisation appear to have increased the cost of works by over 50 per cent.

The LVT held that:

- The lessees had suffered no prejudice from the failure to consult on the lightning conductor; its installation was essential. Failure to include its installation in the initial specification was a complete oversight. If it had been necessary, the LVT would have dispensed with the consultation requirement but, in fact, because the cost per flat was less than £250, there was no need to grant dispensation.

- Although the encasement was a good idea, a careful weighting of cost and benefit should

have been carried out. There was serious prejudice to the lessees from the failure to consult on the improved encasement. Dispensation was refused.

- On discovering the extent of the deterioration in the condition of the concrete, the landlord had little alternative but to direct the contractor to carry out the much more extensive repairs necessary. The lessees had suffered no relevant prejudice from the failure to consult. It was reasonable to dispense with the consultation requirements in this respect.

In addition, the LVT:

- granted dispensation in relation to two 'technical' defects in relation to stage 2 consultation;
- reduced the sums claimable by the landlord because of discrepancies in the contractors' day-work sheets; and
- considered in detail the reasonableness or otherwise of other service charge items.

## HOMELESSNESS

### Priority need

#### ■ R (Ogbeni) v Tower Hamlets LBC

CO/9251/2007,  
8 August 2008,  
[2008] All ER (D) 67 (Aug)

The claimant and his aunt were evicted from their home following a possession order. On his application, made under HA 1996 Part 7 (homelessness), the council decided that he had become homeless unintentionally and, because he was 17, he had a priority need for accommodation: Homelessness (Priority Need for Accommodation) (England) Order 2002 SI No 2051 article 3. The council accepted that it owed the main housing duty and had to accommodate him: s193. But the council declined to accommodate his aunt with him.

Rabinder Singh QC, sitting as a deputy High Court judge, allowed a claim for judicial review and quashed the decision. The council had to secure accommodation 'available for occupation by the applicant': s193(2). That phrase imported the wider definition in s176 so that accommodation had to be provided not only for the claimant, but also any family member who 'normally resides with him': s176(a). The aunt was a member of the claimant's family with whom he normally resided, and the council therefore had to provide accommodation for her together with him, ie, to include her in his homelessness application.

#### ■ Littlejohn v City of Westminster

[2007] EWCA Civ 1562,  
16 February 2007

Between 2004 and 2006, Mr Littlejohn, a single man, lived at a significant number of different addresses for short periods of time,

interspersed with periods of rough sleeping and staying with friends. He made a homelessness application in June 2006. The council decided that he was not 'vulnerable' and thus had no priority need for accommodation: HA 1996 s189(1)(c). That decision was upheld on review and HHJ Behar dismissed an appeal brought under s204.

A renewed application for permission to bring a second appeal was made on the basis that the reviewing officer and the judge had, in assessing 'vulnerability', left out of account the housing history and what could be inferred from it about Mr Littlejohn's ability to retain any accommodation he had obtained.

The Court of Appeal dismissed the application. The correct context for applying the test of vulnerability is the context of a person who is actually homeless. A person's propensity to lose accommodation that s/he already has does not render him/her vulnerable. Even if the propensity to lose accommodation were relevant, the evidence did not support the contention that the applicant was vulnerable for any of the statutory reasons. Rix LJ said, however, that: 'It may be that a proven ability to obtain accommodation will not prevent an applicant from being found to be vulnerable within the statutory guidelines, if his obtaining of accommodation proves to be illusory because of an inability to maintain that accommodation' (para 21).

### Intentional homelessness

#### ■ White v Southwark LBC

[2008] EWCA Civ 792,  
19 June 2008

Ms White was excluded from her mother's home when she was aged 15. Her mother complained that she had behaved unreasonably and failed to comply with the house rules. The council decided that she had become homeless intentionally: HA 1996 s191. That decision was upheld on review and HHJ Simpson dismissed an appeal brought under s204.

On a renewed application to make a second appeal, Ms White contended that her acts or omissions as a dependent child aged 15 ought not to have been taken into account because the statutory homelessness regime did not envisage consideration of the homelessness of dependent children or the consideration of applications by them: *R v Oldham MBC ex p Garlick* [1993] AC 509.

Sir Peter Gibson (sitting as a judge of the Court of Appeal) dismissed the application. Neither the statute nor authority precluded a local authority from considering the deliberate acts or omissions of children even at the ages of 13, 14 or 15. Authorities dealing with an application from a currently independent

young person can properly take into account his/her earlier conduct.

■ **Keita v Southwark LBC**

[2008] EWCA Civ 963,  
1 July 2008

Mr Keita was a street homeless single man with mental health difficulties. He was given shelter by a charity for the homeless under a licence which required him to move out when made an offer of suitable accommodation. A year later, the charity secured an offer for him of a one-bedroom mews house to be let by a housing association. He refused the offer. The charity gave him notice to quit and he was evicted. The council decided that he had become homeless intentionally: HA 1996 s191. That decision was upheld on review and HHJ Simpson dismissed an appeal brought under s204.

On a renewed application to bring a second appeal, it was argued that the judge had failed to consider whether or not, in refusing the accommodation offered, Mr Keita had been acting in good faith and in ignorance of the relevant facts: s191(2).

Rimer LJ refused the application. The reviewing officer and the judge had taken full account of the applicant's mental state. Both the initial decision and the reviewing officer's decision had expressly addressed s191(2) and considered that his refusal of the offer had been 'deliberate'. The point had not been raised in the grounds of appeal before the judge and did not raise an issue of principle or practice justifying a second appeal: Civil Procedure Rule 52.13.

■ **N v Allerdale BC**

Carlisle County Court,  
4 August 2008<sup>15</sup>

Ms N was given notice to leave her privately rented accommodation with her son, then aged 14. The landlord explained that, although he had no difficulties with the tenant or her tenancy, notice had been given because of the anti-social behaviour and misconduct of her son. On her homelessness application, the council took statements from Ms N, her son and the landlord and concluded that she had become homeless intentionally. That decision was upheld on review.

HHJ Peter Hughes QC allowed an appeal and varied the decision to one that Ms N had not become homeless intentionally. He held that:

■ the original decision was totally silent about what deliberate acts or omissions of the applicant had rendered her homeless;  
■ that was a fundamental flaw which the reviewing officer had wrongly failed to identify as triggering the additional requirements of reg 8(2) of the Allocation of Housing and Homelessness (Review Procedures)

Regulations 1999 SI No 71;

■ the correct question was not whether the applicant could show that she had not acquiesced in her son's misconduct. The proper approach was for the decision-takers to make an assessment of all the available factual material and ask whether there was material that indicated that she did not acquiesce: *R v North Devon DC ex p Lewis* [1981] 1 WLR 328;

■ if a reviewing officer was to conclude that an applicant was responsible for the acts of another, s/he had to say so in terms in a decision letter that gave clear and cogent reasons for that conclusion. That had not been done;

■ in a case where the issue was the credibility of an applicant and the extent of her responsibility for the acts of another, fairness dictated that the reviewing officer should have personally interviewed the applicant. The reviewing officer had been wrong to delegate that task;

■ on the available material, it could not have been reasonable for the council to have concluded that the applicant became homeless intentionally.

## HOUSING AND COMMUNITY CARE

■ **R (Thomas) v Havering LBC**

C0/7803/2008

4 September 2008,

[2008] All ER (D) 18 (Sept)

The council resolved to close a care home for the elderly. The decision was challenged on the basis that literature on the increased risk of mortality associated with moving settled elderly and disabled care home residents demonstrated that the closure decision was either unreasonable or infringed the claimants' right to life contrary to article 2 of the European Convention on Human Rights.

The claim for judicial review was dismissed by HHJ Pelling QC sitting as a deputy High Court judge. He noted that the council had agreed to undertake impact assessments on each resident before requiring any to leave the home, and held that it had not acted unreasonably.

- 1 Available at: [www.communities.gov.uk/documents/housing/pdf/choicecodeguidance](http://www.communities.gov.uk/documents/housing/pdf/choicecodeguidance).
- 2 *Summary of responses to the consultation on the choice based lettings code of guidance*, CLG, August 2008, available at: [www.communities.gov.uk/documents/housing/pdf/cblresponsecode.pdf](http://www.communities.gov.uk/documents/housing/pdf/cblresponsecode.pdf).
- 3 See: [www.communities.gov.uk/news/housing/950571](http://www.communities.gov.uk/news/housing/950571).
- 4 See: [www.communities.gov.uk/housing/buyingselling/mortgagerescuemeasures/](http://www.communities.gov.uk/housing/buyingselling/mortgagerescuemeasures/).

5 See: [www.dwp.gov.uk/aboutus/news/](http://www.dwp.gov.uk/aboutus/news/).

6 Available at: [www.housingcorp.gov.uk/upload/pdf/A\\_real\\_choice\\_for\\_tenants\\_1\\_%5B1%5D.pdf](http://www.housingcorp.gov.uk/upload/pdf/A_real_choice_for_tenants_1_%5B1%5D.pdf).

7 *A Bill of Rights for the UK?*, twenty-ninth report of session 2007-08, HL Paper 165-1, HC 150-1, August 2008, available at: [www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf](http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf).

8 Available at: [www.housingcorp.gov.uk/upload/pdf/Behind\\_closed\\_doors.pdf](http://www.housingcorp.gov.uk/upload/pdf/Behind_closed_doors.pdf).

9 Available at: [www.familylawweek.co.uk/site.aspx?i=ed25246](http://www.familylawweek.co.uk/site.aspx?i=ed25246).

10 Available at: [www.communities.gov.uk/documents/planningandbuilding/pdf/925424.pdf](http://www.communities.gov.uk/documents/planningandbuilding/pdf/925424.pdf) and [www.communities.gov.uk/documents/planningandbuilding/pdf/957171.pdf](http://www.communities.gov.uk/documents/planningandbuilding/pdf/957171.pdf) respectively.

11 Available at: [www.housingcorp.gov.uk/upload/pdf/HAT\\_update\\_Aug08.pdf](http://www.housingcorp.gov.uk/upload/pdf/HAT_update_Aug08.pdf).

12 Available at: [www.housingcorp.gov.uk/upload/pdf/Panel\\_7\\_-\\_Final.pdf](http://www.housingcorp.gov.uk/upload/pdf/Panel_7_-_Final.pdf).

13 Available at: [www.lawcom.gov.uk/housing/\\_renting.htm](http://www.lawcom.gov.uk/housing/_renting.htm).

14 See: [www.communities.gov.uk/news/corporate/940753](http://www.communities.gov.uk/news/corporate/940753).

15 Claire Sephton, solicitor, Shelter, Cumbria and James Stark, barrister, Manchester.



**Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. He was Legal Aid Barrister of the Year 2007. The authors are grateful to the colleagues at note 15 for the transcript of that judgment.**