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

Housing cases in the county court

Most county courts in England and Wales now have a Legal Aid Agency (LAA) funded duty scheme for representation on housing possession days. The complete list of providers and courts has been published: *All housing possession court duty schemes and service providers* (LAA, July 2013).[1] The scope of the services provided by the schemes is set out in *Housing possession court duty scheme. Guidance for service providers* (LAA, April 2013).[2]

The schemes are unlikely to be able to cover ad hoc last-minute applications to stay or suspend warrants for possession made, even on the very eve of eviction, by mortgage borrowers and tenants in arrears. If such an application is refused by a district judge, an appeal can be made to a circuit judge, but an increasing number of courts are without a resident circuit judge able to deal with an appeal immediately. The Designated Civil Judge for London (HHJ David Mitchell) has issued a practice note about how appeals in these cases should be dealt with in such courts in the London area.[3]

Housing cases and legal aid

The most recent annual legal aid statistics show that since 2007/08 the number of providers of civil legal aid services has fallen by 30 per cent: *Legal aid statistics in England and Wales. Legal Services Commission 2012–2013* (Ministry of Justice (MoJ), June 2013).[4] Over the same period, the volume of housing cases dealt with on legal aid fell by 16 per cent. By 2012/13, there were only 509 suppliers authorised to undertake housing legal aid work and only 10,130 legal aid certificates were issued for housing cases in that year.

The last annual report of the Legal Services Commission (LSC) records that spending on civil legal aid fell from £977.7m in 2011/12 to £941.6m in 2012/13, with 15 per cent fewer acts of assistance: *Legal Services Commission annual report and accounts 2012–13*, p23 (LSC, June 2013).[5] It also reveals that net expenditure on administration by the LSC itself increased from £82.1m to £111.2m over the same period.

Social housing stock transfer and disposal

In July 2013, the Department for Communities and Local Government (DCLG) launched a consultation exercise on the content of a new *Housing Transfer Manual* to govern arrangements for stock transfers of council housing in England to other social landlords: *Consultation on the Housing Transfer Manual* (DCLG, July 2013).[6] The consultation closed on 2 September 2013.

A separate consultation exercise had already been completed on proposals to make it easier for tenants to trigger a transfer from their local authority landlord to another social landlord or to take over responsibility for managing housing services themselves: *Giving tenants control: Right to Transfer and Right to Manage Regulations. Summary of consultation responses* (DCLG, July 2012).[7]

The UK government has also published an updated version of its statutory consent for local authorities in England to dispose of their social housing: *The general housing consents 2013: section 32 of the Housing Act 1985. Correction* (DCLG, July 2013).[8] It has invited comments by 13 September 2013 on proposals to revise other general consents relating to housing: *Consultation on the general consents issued under section 25 of the Local Government Act 1988* (DCLG, August 2013).[9]

Higher income social housing tenants

Following a consultation exercise, DCLG has confirmed that the UK government intends to proceed with proposals that will enable social landlords in England to charge higher rents to tenants with higher household incomes: *High income social tenants. Pay to stay consultation paper: summary of responses* (DCLG, July 2013).[10]

The Centre for London produced an analysis of the proposals for London: *House-keeping: a fair deal for London's higher earning social tenants* (June 2013).[11]

Rent arrears in social housing

There have been a series of reports documenting the increase in rent arrears in the social housing sector arising from the April 2013 welfare reforms (including the 'bedroom tax'):

- Aragon Housing Association has published a report on the adverse effects of the first 100 days on its finances and on its tenants: *Should I stay or should I go? 100 days of the bedroom tax* (July 2013).[12]
- Carers UK reported the results of a survey of 100 carers affected by the 1 April 2013 changes. Seventeen per cent had already fallen into rent arrears as a result of the benefit changes.[13]
- Local authority landlords in Scotland are reporting significant increases in social housing rent arrears among tenants who have had their housing benefit reduced: *Briefing – housing impacts of welfare reform – survey of councils* (Convention of Scottish Local Authorities, July 2013).[14]
- In Merseyside, 18 housing associations are predicting a loss of £22.9m in rental income over 12 months as a result of the bedroom tax: *The bedroom tax in Merseyside. 100 days on* (National Housing Federation, July 2013).[15]
- Renfrewshire Council reported that the bedroom tax has seen 800 of its tenants go into rent arrears: *New figures show real impact of benefit cuts on Renfrewshire residents* (Press release, 5 July 2013).[16]
- Dundee Council reported that rent arrears due to the bedroom tax are rising at £21,000 per week.[17]

Private rented sector

The House of Commons Communities and Local Government Committee has published the report of its inquiry into the private rented sector in England. It has made numerous recommendations: *The private rented sector. First report of session 2013–14* (TSO, July 2013).[18] There is a LAG housing law blog commentary on the report.[19]

On 3 July 2013, the Home Office (HO) launched a consultation exercise seeking views on a proposed new requirement for private landlords to conduct immigration checks on tenants, with penalties for those who provide rented accommodation to illegal non-EEA migrants, in breach of new requirements to be included in the Immigration Bill: *Tackling illegal immigration in privately rented accommodation. Consultation document* (HO, July 2013).[20] The consultation closed on 21 August 2013.

On 18 July 2013, DCLG wrote to every local authority in England inviting them to bid for a

share of £3m additional funding to support enforcement activity against rogue private landlords and to raise housing standards in the sector.[21]

The Selective Licensing (Housing Standards) Bill was presented to the House of Commons on 17 July 2013.[22] This private members' bill would allow local authorities to apply a wider range of selective licensing conditions to private landlords in order to improve housing standards. The concerns behind the bill were outlined in an earlier parliamentary debate on 3 July 2013 (*Hansard* HC Debates cols 297WH–303WH, 3 July 2013).[23]

The Letting Agents (Competition, Choice and Standards) Bill was introduced in the House of Commons on 2 July 2013 by John Healey MP (*Hansard* HC Debates cols 783–785, 2 July 2013).[24]

The Private Landlords and Letting and Managing Agents (Regulation) Bill had a House of Commons first reading on 19 June 2013.[25] It would:

- establish a mandatory national register of private landlords;
- introduce regulation of private sector letting agents and managing agents;
- establish a body to administer the national register and monitor compliance with regulations applying to letting agents and managing agents; and
- require all tenancy agreements entered into with private landlords to take the form of written agreements.

In London, the organisation London Councils has produced a briefing on the impact of housing benefit (local housing allowance) reform on the private rented sector in the capital: *Tracking welfare reform* (June 2013).[26] The Mayor of London has published a voluntary code for landlords and letting/managing agents: *The London rental standard* (Greater London Authority, July 2013).[27] Shelter has published a new policy report calling for controls on letting agency fees: *Letting agencies: the price you pay* (Shelter, June 2013).[28]

Homelessness

Homeless families placed by local housing authorities outside their 'home' areas often dispute the placement decision on the basis that changing schools in-year will adversely affect their child's education. A new report sets out the effects that moving schools can have: *Between the cracks. Exploring in-year admissions in schools in England* (RSA, July 2013).[29]

A new report explores the causes of homelessness among 16- and 17-year-olds, its long-term impact on young adults, and whether they are being effectively looked after and safeguarded by local authorities. It finds widespread failures: *No excuses. Preventing homelessness for the next generation* (Homeless Link, June 2013).[30]

There has been a significant increase in the number of rough sleepers in London: *Street to home annual report 2012/2013* (Broadway, 2013).[31]

HUMAN RIGHTS

Articles 3, 6, 8 and 13

■ Brežec v Croatia

App No 7177/10,
18 July 2013,
[2013] ECHR 705

Ms Brežec worked for a state-owned hotel business. The state provided her with the shared use of a flat, in staff quarters, which she occupied for over 30 years. Later, the company was privatised and it bought the building containing the flat. It sought possession on the basis that Ms Brežec had no legal right to occupy. The municipal court made a possession order. Appeals to the county court and the Constitutional Court were rejected and Ms Brežec moved out. She complained to the European Court of Human Rights (ECtHR) that her article 8 of the European Convention on Human Rights ('the convention') right to respect for her home had been infringed.

The ECtHR held that:

- the flat was her home whether she had the legal right to occupy it or not;
- the possession order engaged her article 8 rights whether it was enforced or not; and
- there had been a violation because none of the domestic courts had considered the proportionality of her eviction on the facts of the case but had treated the absence of a legal right as decisive.

These principles were applied even though the claimant in the possession proceedings was a private company.

■ Bor v Hungary

App No 50474/08,
18 June 2013,
[2013] ECHR 557

Mr Bor lived in a house opposite a railway station. In 1988, the Hungarian Railway Company replaced its steam engines with diesels. This led to a significant increase in noise levels. In 1991, Mr Bor issued proceedings seeking the implementation of noise reduction measures. In 2008, he was awarded damages. In separate proceedings, the railway company was fined. Noise mitigation measures were introduced between 2010 and 2012. Mr Bor applied to the ECtHR, alleging that the noise pollution had constituted a violation of his rights under article 8 and that the length of the proceedings was a violation of article 6. The government did not contest the allegations under article 6.

The ECtHR held that there had been a violation of article 8. The state was required to strike a fair balance between the interests of the applicant and the wider community. It was clear that the noise produced by the trains was in excess of what was permitted by domestic law. It was not until 2010 that mitigation works started. This was an unacceptably long period. While domestic law did provide mechanisms for the regulation of noise, those protections were ineffective in the present case. The court awarded Mr Bor damages of €9,500 and costs of €2,500.

■ Busuioc v Republic of Moldova

App No 61382/09,
16 July 2013,
[2013] ECHR 684

Mrs Busuioc was a victim of domestic violence from her husband. After she divorced him, they continued to live separately in the same flat. His violence continued. She applied to the civil courts for his exclusion. An order was made by the local court and upheld on appeal but the Supreme Court reversed that decision. The violence continued. Mrs Busuioc applied again for her ex-husband's exclusion, but the courts treated themselves as bound by the Supreme Court judgment.

The ECtHR held that there had been a violation of both articles 3 and 8. The state had failed in its positive duty to provide effective protection for the victims of domestic violence. The court awarded non-pecuniary damages of €15,000.

■ Balakin v Russia

App No 21788/06,
4 July 2013,
[2013] ECHR 639

The applicant and his wife owned a two-room apartment in which they lived with their daughter and son. The daughter was disabled by severe diabetes. In 1988, they joined the local council's waiting list for social housing, seeking a three-room property. In 1999, they were moved to the 'first priority list' (para 7). National law provided an enforceable right to immediate rehousing, but only to those on an 'extraordinary' cases list (para 19). In 2005, the applicant brought a claim in the domestic courts to obtain an order that he should be made an offer of accommodation. It was dismissed on the grounds that the waiting lists were not time-limited and so the courts had no jurisdiction to enforce them.

The ECtHR held that the applicant had not been deprived of access to the courts to enforce his human rights (contrary to article 13) because the provision of social housing to persons in need of improved living conditions clearly belonged to the realm of socio-economic rights, which is not covered by

the convention. The court also rejected a complaint that there had been a breach of the right to a fair determination of a dispute about those rights (article 6). It was questionable to what extent the applicant's 'right to better housing', as it existed at the material time, gave rise to an 'actionable domestic claim' (para 46).

■ Malik v Fassenfelt

[2013] EWCA Civ 798,
3 July 2013

Mr Malik owned land near Heathrow airport. He ran a taxi business and had previously used the land for parking and storing cars. In March 2010, the defendants went on to Mr Malik's land and established their homes there. In July 2010, Mr Malik issued proceedings against them, contending that they were squatters and that he was entitled to a possession order forthwith. The occupiers defended the claim on the basis that their eviction would not be proportionate and would infringe article 8. HHJ Walden-Smith held that article 8 applied as between private parties, but that, on the facts, it was proportionate to make a possession order. The defendants appealed.

The Court of Appeal dismissed the appeal. In this case, the judge was correct to hold that a possession order was proportionate. Although the claimant did not serve a respondent's notice challenging the judge's decision that article 8 applied, Sir Alan Ward stated that article 8 is capable of application where squatters have trespassed on to a private landowner's land and established a home there. He said that the court must approach a claim made by a private landowner against a trespasser in a similar way to that adopted to claims of various sorts made by a local authority. However, even if the defendants have established a home on the land but otherwise have no legal right to remain there, it is difficult to imagine circumstances that would give the defendants an unlimited and unconditional right to remain. The circumstances would have to be exceptional.

Sir Alan Ward also stated that the rule in *McPhail v Persons, Names Unknown* [1973] Ch 447 that the court has no jurisdiction to extend time to a trespasser can no longer stand against a requirement that proportionality may demand. It followed that if proportionality confers on the court, as the public authority, a discretion to consider giving time to a trespasser even at the suit of a private landlord, then Housing Act (HA) 1980 s89 must apply. Lord Toulson and Lloyd LJ decided, however, to express no view on the point.

■ Webster v Dun Laoghaire Rathdown CC

[2013] IEHC 119,
22 March 2013

Mrs Webster was allocated a tenancy of a house by the council in 1985. In 2006, Mr Webster was made redundant. The family had other personal problems. As a result, significant rent arrears built up. There were also complaints of anti-social behaviour emanating from the address, including allegations of serious violence and drug dealing. In November 2009, the council decided to terminate the tenancy. By December 2009, the arrears amounted to €19,280 (192 times the weekly rent). In June 2010, the council applied to Dún Laoghaire District Court under HA 1966 s62 for an order for possession. In July 2012, Mr and Mrs Webster applied by way of judicial review for an order quashing the decision to issue and serve a notice to quit. Relying on article 8 of the convention, *Bjedov v Croatia* App No 42150/09 and *Buckland v UK* App No 40060/08, they argued that the court had to have jurisdiction to conduct an article 8 assessment, hear evidence and be in a position to come to its own independent judgment on the appropriateness of the remedy sought.

Hedigan J refused the reliefs sought. He stated that there must be some dispute about the facts before procedural safeguards in relation to rights such as those found under article 8 are required. The mechanism introduced by section 62 was to enable the housing authority to take back houses expeditiously to ensure they can be reallocated to someone else in need of housing and cannot be deemed to be unjust, unreasonable or arbitrary in the light of this legislative objective. In this case, the exigencies of the common good meant that the housing authority needed to be able to manage the limited housing and resources available in an efficient manner and ensure that houses unlawfully occupied were vacated efficiently so that they could be allocated to others. That meant that the procedure set down by section 62 was necessary, was proportionate to what it sought to achieve and was in accordance with Mr and Mrs Webster's rights under articles 40.3.2 and 43 of the Irish constitution. The provisions of section 62 were in accord with the principles of social justice and were to serve the demand of the common good. In this case, an eviction order could not give rise to a finding of incompatibility with article 8 on the ground of non-consideration of the proportionality of the eviction measure. The judge concluded:

There is, to put it quite simply, no proportionality case to argue here. It may well be that in the light of Bjedov *and* Buckland*, the Irish courts may eventually find that the absence of an independent tribunal to determine the proportionality of an eviction from a home may give grounds for a declaration of incompatibility even where there is no factual dispute. The circumstances here, however, do not support such a finding* (para 7.9).

Article 1 of Protocol 1

■ Maksymenko and Gerasymenko v Ukraine

App No 49317/07,
16 May 2013,
[2013] ECHR 439

In 2004, the applicants jointly bought a hostel comprising residential accommodation from the creditors of an insolvent company. They decided to obtain vacant possession and live in the building themselves. They gave the residents notice to leave. In 2006, the Court of Appeal declared that the hostel had been a state asset that ought never to have come into the possession of the insolvent company and ought not to have been sold to the applicants. It transferred the hostel to the local council without compensation to the applicants.

The ECtHR upheld a complaint that article 1 of Protocol 1 had been infringed. It awarded the applicants a refund of the purchase price they had paid and interest.

■ Cusack v Harrow LBC

[2013] UKSC 40,
19 June 2013

A building, which had been a house, had a front garden that had been turned into a forecourt. It had a frontage to a road. The owner and others drove cars from the road across the pavement to park them on the forecourt. The council decided to use its powers under the Highways Act 1980 to restrict access from the road in the interests of the safety of pedestrians. The power used by the council carried no right to compensation. The owner complained that the action infringed his right to peaceful enjoyment of his possessions under article 1 of Protocol 1.

The Supreme Court rejected his case. He had not been deprived of any property amounting to a possession. To the extent that there had been state control imposed on his property it was lawful, not arbitrary, and did not need to carry a right to compensation.

ASSURED TENANCIES

Possession claims

■ Incommunities Ltd v Boyd

[2013] EWCA Civ 756,
26 June 2013

Mr Boyd was an assured tenant. In 2011, he

received a custodial sentence for an offence of theft and breach of the requirements of a suspended sentence order. His landlord served notice seeking possession and subsequently issued proceedings relying on allegations of anti-social behaviour directed at his neighbours, including noise nuisance and intimidating requests for money. The evidence of these matters was contained in three anonymous hearsay witness statements from neighbours. Recorder Salter made a possession order but suspended it for two years on terms that Mr Boyd did not engage in any further anti-social behaviour. Mr Boyd appealed, contending that the judge had placed impermissible weight on the anonymous hearsay evidence.

The Court of Appeal dismissed the appeal. Although the recorder did not expressly refer to the Civil Evidence Act 1995 s4(2) criteria, he did expressly refer to the considerations which are in fact covered in sub-paragraphs (a), (d), (e) and (f) so far as they pertained to this case. His finding that he had no doubt that local residents found the defendant's behaviour intimidating and that it was reasonable for the claimant's three witnesses to remain anonymous in view of the defendant's history of criminal convictions and fear of possible reprisals demonstrated that reliance on anonymous evidence was not an attempt to prevent proper evaluation of the weight of the evidence. The recorder carried out the necessary evaluation exercise in an entirely proper manner. It might have been better had he expressly identified the section 4(2) criteria and tied his conclusions to them, but it was the substance of his conclusions which mattered, not the precise manner in which they were set out. His judgment demonstrated that he did indeed have regard to all the circumstances from which any inference could reasonably be drawn about the reliability or otherwise of the evidence. (See too *Moat Housing Group v Harris* [2005] EWCA Civ 287; [2005] HLR 33.)

ASSURED SHORTHOLD TENANCIES

Deposits

■ Superstrike Ltd v Rodrigues

[2013] EWCA Civ 669,
14 June 2013

Mr Rodrigues was the assured shorthold tenant of Superstrike Ltd. His tenancy commenced in January 2007 and was for a fixed period of one year less one day. He paid a deposit of £606.66. At the expiry of the fixed term, he became a statutory periodic tenant on equivalent terms. In June 2011, Superstrike gave notice under HA 1988 s21, requiring possession. Mr Rodrigues defended the claim arguing that the statutory periodic tenancy was a new tenancy, so that the previously paid deposit was to be treated as having been paid in respect of that new tenancy and, as the deposit had not been protected with an authorised scheme, the section 21 notice was of no effect. Deputy District Judge Whiteley found for Mr Rodrigues, but HHJ Winstanley allowed an appeal.

Mr Rodrigues's appeal to the Court of Appeal was allowed. At the end of the fixed-term tenancy, a new and distinct statutory tenancy was created (see *N & D (London) Ltd v Gadson* (1991) 24 HLR 64, CA). The deposit was held to guarantee obligations under it and was therefore to be treated as having been paid under it. The obligations under HA 2004 s213 applied to the deposit, requiring it to be held in accordance with an authorised scheme, no later than the end of January 2008. Since it was not so held, the landlord was not entitled to serve a notice under section 21 in June 2011. Accordingly the landlord was not entitled to possession. The section 21 notice was invalid. (Note: the events relevant to this appeal took place before the amendments made by the Localism Act 2011 came into force.)

TENANTS OF MORTGAGORS

■ Paratus AMC Ltd v Fosuhene

[2013] EWCA Civ 827,
11 July 2013

In 2008, Paratus AMC Ltd lent £425,000 to the purchaser of a property. The loan was secured by a mortgage. In 2009, someone purporting to be the purchaser's agent granted a five-year tenancy to Ms Fosuhene. The borrower did not make the payments required under the terms of the mortgage, but Ms Fosuhene did make some payments to Paratus by a combination of cash and electronic bank transfers. Paratus issued possession proceedings and Ms Fosuhene contended that her tenancy was binding on Paratus by virtue of the payments she had made. A master granted a possession order. Ms Fosuhene appealed.

The Court of Appeal dismissed the appeal. It rejected the suggestion that Ms Fosuhene had been adopted by the lender as its own tenant. The judgment contains a useful review of the circumstances in which such an assertion might succeed. Here, it failed on the facts because the tenant could not show any evidence that the lender knew of her or of the capacity in which, or reason for which, she was making payments into the borrower's loan account.

DISCRIMINATION

■ Black v Wilkinson

[2013] EWCA Civ 820,
9 July 2013

The claimants were two men who were partners but had not entered into a civil partnership. The defendant operated a bed and breakfast establishment from rooms in a property where she also lived. She accepted a booking from one of the claimants for a double room but, on appreciating that the two men would be sharing a bed, she cancelled the booking.

The Court of Appeal upheld a finding that this amounted to unlawful direct discrimination against homosexual men. It was also indirect discrimination for which no justification could be established. The defendant's appeal was dismissed.

UNFAIR CONTRACT TERMS

■ Brusse and de Man Garabito v Jahani BV

C-488/11,
30 May 2013

Jahani BV was a company that owned a number of properties in the Netherlands. From 2007, it was the landlord of Mr Brusse and Ms de Man Garabito. The tenancy agreement provided that there would be an additional charge of €25 per day if the tenants were in rent arrears. Early in 2009, Mr Brusse and Ms de Man Garabito accrued rent arrears. Jahani issued possession proceedings and sought a money judgment for the arrears (over €5,000) and for additional charges (over €8,000). The trial judge made a possession order and entered a money judgment as sought. The tenants appealed to the Regional Court of Appeal. That court referred the case to the European Court of Justice (ECJ) and posed a number of questions, including whether: Council Directive 93/13/EEC, which deals with unfair terms in consumer contracts, applied to the tenancy; and the domestic court was 'competent and obliged' to assess the fairness of the contractual terms even if this issue had not been raised by the parties (para 22).

The ECJ held that the Directive did apply to the tenancy. It applies to all residential tenancy agreements where the landlord is acting for purposes relating to a 'trade, business or profession' and the tenant was renting the property for use as his/her home (para 34). The court also held that if, as a matter of domestic law, the national court has power to raise an issue which was not raised by the parties, it is required to assess the fairness of a contractual term and apply the Directive. The case was remitted to the Regional Court of Appeal for

disposal in accordance with the judgment. (Compare in England and Wales, the Unfair Terms in Consumer Contracts Regulations 1999 SI No 2083 and *R (Khatun) v Newham LBC* [2004] EWCA Civ 55; [2004] HLR 29.)

LONG LEASES

Service charges

■ **Arnold v Britton**

[2013] EWCA Civ 902,
22 July 2013

Leases of holiday chalets obliged the lessees to pay a 'proportionate part' of the lessor's costs of providing specified services (para 7). They also provided that this would be a fixed sum, increasing by specified proportions at specified times. On the lessor's construction the lessees would be liable to pay over £1m per year at the end of the term. The lessor issued proceedings seeking declarations about the true construction of the provisions and that they did not come within Landlord and Tenant Act 1985 s18. A circuit judge found that they were service charges within the meaning of section 18. Morgan J allowed an appeal ([2012] EWHC 3451 (Ch)), holding that the clauses provided for a fixed charge increasing by fixed proportions at specified times and so were not service charges within the meaning of section 18.

The Court of Appeal dismissed an appeal. The covenants clearly referred to fixed sums increasing in a specified manner. They were not service charges within the meaning of section 18.

CRIMINAL LAW

■ **R v Sumal and Sons (Properties) Ltd**

UKSC 2013/0020,
7 May 2013

Lords Hope, Wilson and Hughes refused an application for permission to appeal from the Court of Appeal ([2012] EWCA Crim 3109; April 2013 *Legal Action* 44) on the question of whether rental income from a property, which is unlicensed contrary to HA 2004 s95(1), may be a person's benefit as property obtained as a result of or in connection with particular criminal conduct for the purposes of Proceeds of Crime Act 2002 s76(4). The application did not raise an arguable point of law that ought to be considered by the Supreme Court.

HOMELESSNESS

Applications

Local Government Ombudsman complaint

■ **Southwark LBC**

12 011 599,
5 June 2013

A council tenant urgently needed to leave her home with her family because her son (a former gang member) was in danger of violent assault. The council provided her with temporary accommodation under its personal protection policy. She remained there for 18 months.

The Local Government Ombudsman found extensive maladministration. The council had failed to take a homelessness application under HA 1996 Part 7. It had breached its own policy on risk assessment cases and had failed to make a decision. It had failed to help the family apply for alternative council housing. There had been a failure to keep in touch with the family or keep them informed. The Ombudsman made a raft of recommendations, including payment of £2,000 compensation.

Homeless

■ **Horwitz v Bath and North East Somerset Council**

[2013] EWCA Civ 839,
26 June 2013

Mrs Horwitz was severely disabled. She needed care and support and lived with her daughter. Following an attack by her daughter, she was moved, on an emergency basis, to a nursing home. She applied to the council for homeless assistance. It decided that she was not 'homeless' because she was living at the nursing home and that was accommodation that it was reasonable for her to continue to occupy: HA 1996 s175. HHJ Denyer QC dismissed an appeal.

Lewison LJ granted permission to bring a second appeal on the ground that it was arguable that nursing provision made on an emergency basis did not constitute 'accommodation'.

Interim accommodation

■ **R (CN) v Lewisham LBC; R (ZH) v Newham LBC**

[2013] EWCA Civ 805,
11 July 2013

The claimants were members of homeless families provided with interim accommodation under licences by the respective councils in pursuit of their responsibilities under HA 1996 Part 7. When those duties ended, the councils terminated the licences but did not propose to take possession proceedings.

The Court of Appeal held that it was bound by its own previous decisions (*Mohammed v Manek and Kensington and Chelsea RLBC* (1995) 27 HLR 439 and *Desnousse v Newham LBC* [2006] EWCA Civ 547; [2006] QB 831) to hold that the Protection from Eviction Act 1977 did not apply to repossession of such accommodation by the councils and nothing in the Human Rights Act (HRA) 1998 required a council to take possession proceedings before recovering possession of interim accommodation held on licence.

Notifying decisions

Local Government Ombudsman complaint

■ **Bristol City Council**

12 015 826,
4 July 2013

A single woman applied to the council for homelessness assistance under HA 1996 Part 7. She said that she was sleeping rough and taking medication for her depression. The council thought she might not be eligible but it did not issue her with a written decision on her application: HA 1996 s184.

The Local Government Ombudsman found that this was not a one-off incident. Rather, the council was deliberately and 'actively focussing its resources on homeless applications from households with children and away from applications from single people or childless couples' (para 20). The council was aware that it was failing to meet its statutory duty. It agreed to apologise, provide a written decision, pay £200 compensation and review its procedures.

Intentional homelessness

■ **Murphy v Slough BC**

[2013] EWCA Civ 569,
17 April 2013

The applicant's fixed-term assured shorthold tenancy expired. Her landlady served a HA 1988 s21 notice and obtained a possession order. The applicant applied for homelessness assistance. In response to enquiries, the landlady said that she had decided to evict the applicant because of her rent arrears. The applicant said that the arrears could and should be set off against damages she was owed for disrepair. The council was satisfied that the landlady had been given no notice of the alleged disrepair. It decided on a review that the applicant had become homeless intentionally: HA 1996 s191. Recorder Moulder dismissed an appeal from that decision.

Briggs LJ refused permission to bring a second appeal. He held that the law, on the discretion of a council about what enquiries it was reasonable to pursue, was well settled. The proposed appeal raised no important point of practice or procedure.

Appeals to the county court

■ Peake v Hackney LBC

QB/2013/0165,
11 July 2013

The council's reviewing officer decided that Ms Peake had become homeless intentionally: HA 1996 s191. The notification of that decision drew attention to the 21-day time limit for appeals to the county court. The notice of appeal was filed after that time limit had expired. Ms Peake applied for an extension of time under HA 1996 s204(2A). In the county court, the judge was not satisfied that she had made out a 'good reason' for failing to appeal in time.

Lewis J dismissed an appeal from that decision. Whether a 'good' reason had been established was a matter to be determined on the relevant facts. It did not involve an inquiry into the merits of the appeal. In fixing a time limit which could only be extended for good reason, the legislation did not breach the HRA.

■ Dawkins v Central Bedfordshire Council

[2013] EWHC (QB),
4 July 2013

Mr Dawkins appealed to the county court against a decision that he had become homeless intentionally. The council applied to strike out the appeal on the ground that it had been made out of time. The appeal was in time if calculated from the date of receipt of the reviewing officer's decision by post but was out of time if, as the council suggested, it had been hand-delivered several days earlier. In the county court, the judge accepted the council's evidence on service and struck out the appeal.

Griffith Williams J allowed an appeal. Factual material about the time of service put before the judge had been incorrect and justice required the strike-out application to be reconsidered on the correct facts.

Appeals to the Court of Appeal

■ Johnson v City of Westminster

[2013] EWCA Civ 773,
26 June 2013

The council decided that Mr Johnson had become homeless intentionally: HA 1996 s191. That decision was upheld on review and on appeal to the county court: HA 1996 s204. Mr Johnson asked the council to provide him with temporary accommodation while he made an application to the Court of Appeal for permission to bring a second appeal. The council declined. He made an application to the Court of Appeal for an order that he be accommodated pending the outcome of his application for permission to appeal.

The Court of Appeal decided that it had no jurisdiction to grant such an order or to interfere with the council's decision. A refusal of accommodation, pending an application or appeal to the Court of Appeal, could only be challenged by a claim for judicial review.

HOUSING AND CHILDREN

■ R (X) v Tower Hamlets LBC

[2013] EWCA Civ 904,
24 July 2013

The claimant was a foster parent accommodating three children to whom the council owed the accommodation duty in Children Act 1989 s20. Because she was related to the children, she was paid a lower allowance by the council than other foster parents received. Males J held that the decision to pay a different rate had been unlawful.

The Court of Appeal dismissed an appeal. The council could not show any good reason for having departed from statutory guidance that recommended parity of treatment for foster parents.

1 Available at: www.justice.gov.uk/downloads/legal-aid/civil-categories-of-law/hpcds-providers.pdf.
2 Available at: www.justice.gov.uk/downloads/legal-aid/civil-categories-of-law/housing-possession-court-duty-scheme-guidance.pdf.
3 Available at: www.gardencourtchambers.co.uk/imageUpload/File/Housing%20Bulletin%20attach.%2029%20July.pdf.
4 Available at: www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf.
5 Available at: www.justice.gov.uk/downloads/publications/corporate-reports/lsc/lsc-annual-report-12-13.pdf.
6 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/224567/Consultation_on_the_Housing_Transfer_Manual.pdf.
7 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/8373/2179793.pdf.
8 Available at: www.gov.uk/government/publications/general-housing-consents-2012.
9 Available at: www.gov.uk/government/consultations/consultation-on-the-general-consents-issued-under-section-25-of-the-local-government-act-1988.
10 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/225313/High_Income_Social_Tenants_-_Pay_to_stay.pdf.
11 Available at: http://centreforlondon.co.uk/wp-content/uploads/2013/06/CFL-HOUSEKEEPING-REPORT.pdf.
12 Available at: www.aragon-housing.co.uk/EasySiteWeb/GatewayLink.aspx?alId=8128.
13 See: www.carersuk.org/newsroom/item/3210-bedroom-tax-carers-facing-debt-eviction-and-food-poverty.
14 Available at: www.cosla.gov.uk/sites/default/files/documents/briefing_-_bedroom_tax_main_findings.pdf.
15 Available at: http://s3-eu-west-1.amazonaws.com/pub.housing.org.uk/Merseyside_bedroom_tax.pdf.
16 Available at: www.renfrewshire.gov.uk/webcontent/home/services/council+and+government/council+information%2C+performance+and+statistics/news+-+recent+releases/ce-news-welfarereform-3monthson.
17 See: www.thecourier.co.uk/news/local/dundee/bedroom-tax-costs-dundee-city-council-more-than-250-000-1.108896.
18 Available at: www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/50/50.pdf.
19 Available at: http://laghousinglaw.com/2013/07/29/regulating-the-private-rented-sector/.
20 Available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/consultation.pdf?view=Binary.
21 See: www.gov.uk/government/uploads/system/uploads/attachment_data/file/210465/Letter_from_Mark_Prisk_to_Council_leaders.pdf.
22 See: http://services.parliament.uk/bills/2013-14/selectivelicensinghousingstandards.html.
23 See: www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130703/halltext/130703h0002.htm#13070370000002.
24 See: www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130702/debtext/130702-0002.htm#13070275000002.
25 See: http://services.parliament.uk/bills/2013-14/privatelandlordsandlettingandmanagingagentsregulation.html.
26 Available at: http://collateral.vuelio.uk.com/RemoteStorage/LondonCouncils/Releases/40/Welfare%20Reform%20report.pdf.
27 Available at: www.london.gov.uk/sites/default/files/2013.07.22%20Final%20London%20Rental%20Standard.pdf.
28 Available at: http://england.shelter.org.uk/__data/assets/pdf_file/0006/671649/Letting_agencies_-_The_price_you_pay.pdf.
29 Available at: www.thersa.org/__data/assets/pdf_file/0007/1527316/RSA_Education_Between_the_cracks_report.pdf.
30 Available at: http://homeless.org.uk/sites/default/files/site-downloads/130627.No%20Excuses.pdf.
31 Available at: www.broadwaylondon.org/CHAIN/Reports/S2h2013/Street-to-Home-report-2012_20132.pdf.

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