Recent developments in housing law

Nic Madge and **Jan Luba QC** continue their monthly series. They would like to hear of any cases in the higher or lower courts relevant to housing. In addition, comments from readers are warmly welcomed. See also page 8 of this issue.

POLITICS AND LEGISLATION

Housing and legal aid

The results of the bid rounds for legal aid contracts to undertake new housing work from October 2010 were delayed initially and then distributed gradually in late July 2010. A verification of the arrangements for successful bidders was due to be undertaken in August 2010. Free-standing housing contracts were not available. Contracts were only awarded for the following:

- housing with family; or
- social welfare law (which includes debt and benefits work with housing).

Over 30 per cent of current providers failed to secure a contract, including a number of very high-profile specialist firms and agencies, and many others received fewer matter starts than they had sought or expected. As a result, scores of appeals were lodged. The latest update is available at the Legal Services Commission's (LSC's) website.[1]

The latest statistics from the LSC show that in 2009/10 the number of specialist housing providers had already fallen to 501: *Statistical information* 2009/2010 (LSC, July 2010).[2] The figures also indicate that the number of full legal aid certificates issued in 2009/10 for housing cases fell slightly to 11,958. Of 11,202 certificated housing cases concluded in the year, 66 per cent had brought substantive benefits for the assisted person.

Housing and human rights

The government has reported on progress with the implementation of adverse human rights judgments delivered by the European Court of Human Rights (ECtHR) and the domestic courts in *Responding to human rights judgments: government response to the Joint Committee on Human Rights' fifteenth report of session 2009–10* (TSO, July 2010).[3] The report sets out the government's current position on three significant housing cases: *McCann v UK* [2008] HLR 40; App No 19009/04, *Connors v UK* [2004] HLR 52; App No 66746/01 and *Morris v Westminster City Council* [2006] 1 WLR 505; [2005] EWCA Civ 1184.

Social housing tenancy exchanges

In August 2010, the government announced its intention to create a National Affordable Home Swap Scheme enabling tenants of social housing to exchange homes with other such tenants across the country: Communities and Local Government (CLG) news release, 4 August 2010.[4] Presumably the scheme will enable greater use of the statutory right to exchange enjoyed by secure tenants: Housing Act (HA) 1985 ss91–92. The announcement accompanied publication of the *Report of the Mobility Taskforce* (National Housing Federation (NHF), August 2010) which indicated that at least 200,000 tenants were already registered on existing exchange schemes.[5]

Annual reports by social landlords

The national standards for social landlords published by the Tenant Services Authority require that an annual report for tenants is published by every social landlord on or before 1 October 2010. The report is intended to measure landlords' performance against the national standards and progress towards adopting local standards (known as 'local offers'). *The annual report to tenants: a toolkit* (NHF, July 2010) offers help on the content of reports, for both landlords and tenants.[6]

Protecting tenants of mortgage borrowers

The Mortgage Repossessions (Protection of Tenants etc) Act 2010 comes into force on 1 October 2010: Mortgage Repossessions (Protection of Tenants etc) Act 2010 (Commencement) Order 2010 SI No 1705. The Act requires lenders to give occupiers notice of intention to execute possession orders obtained against borrowers.

The Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010 SI No 1809 prescribe the form and content of the notice to be served on any tenant or other occupier when the landlord's mortgage lender seeks to enforce a possession order by obtaining a warrant for possession. The notice makes tenants aware that a warrant for possession is being sought and advises them of their rights and the need to seek advice. From 1 October 2010, the Civil Procedure Rules (CPR) are amended to accommodate the changes introduced by the new Act: Civil Procedure (Amendment No 2) Rules 2010 SI No 1953. New CPR 55.10(4A) provides that unauthorised tenants may apply for suspension of possession orders. New County Court Rules Ord 26 r17(2A) requires lenders applying to execute possession orders to certify that notice has been given in keeping with the new regulations.

Help for homeowners

In July 2010, the government's review of arrangements for helping homeowners who are unable to pay their mortgages produced a series of announcements: CLG news release, 20 July 2010.[7] First, the Mortgage Rescue Scheme (MRS) for England is to be refocused and the amount of subsidy available to housing associations purchasing properties under the scheme is to be reduced. The government has already ended the special fast track MRS arrangements (provided by a team in Birmingham). The fast track MRS team has not taken new applications since the end of June and closed over the summer. Ordinary applications for help under the MRS can still be made in the usual way through local housing authorities. Second, the Homeowners Mortgage Support (HMS) scheme, which is run by the major lenders, is to close at the end of the financial year. Reportedly, the HMS scheme has assisted only 34 borrowers in a year of operation. The key features of both the present schemes are set out in *Evaluation of the Mortgage Rescue Scheme and Homeowners Mortgage Support: interim report* (CLG, July 2010).[8]

The prospects for further mortgage default and repossession are outlined in *Modelling and forecasting UK mortgage arrears and possessions: report* (CLG, July 2010).[9]

The Social Security (Housing Costs) (Standard Interest Rate) Amendment Regulations 2010 SI No 1811 provide that from 1 October 2010 the standard rate of interest which will be met on mortgage interest repayments made through income support and other means-tested benefits will

be the effective interest rate for loans to households ('the average mortgage rate') published by the Bank of England in August 2010.

Housing and equality

The Equality and Human Rights Commission (EHRC) is pressing on with preparations for the intended commencement of the Equality Act (EqA) 2010 in October 2010. The EHRC has published four new guides for service providers (including landlords) and users (including tenants) about the prohibitions on discrimination and requirements to make reasonable adjustments contained in the EqA.[10]

Housing in Wales

On 22 July 2010, the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010 SI No 1838 came into force. The Order extends the legislative competence of the National Assembly for Wales to make laws (known as Measures of the National Assembly for Wales) in relation to almost all aspects of social housing. One of the first measures is likely to be the enactment of a new regulatory regime for social housing providers in Wales. The Welsh Assembly Government (WAG) is running a consultation exercise on its latest proposals for a regulatory framework for housing associations: *Developing a modern regulatory framework for housing associations in Wales: i) 3rd phase consultation – an approach to regulatory assessment and performance judgements* (WAG, July 2010). The deadline for responses is 17 September 2010.[11]

Rough sleeping

The government is undertaking a consultation exercise on proposals to review methods of counting rough sleepers in England: *Proposed changes to guidance on evaluating the extent of rough sleeping: consultation* (CLG, July 2010).[12] Responses should be provided by 3 September 2010. The consultation follows the announcement that while the official count published earlier this year showed that there were 440 rough sleepers in England, additional official experimental estimates suggest that the figure could be as high as 1,247: CLG news release, 23 July 2010.[13]

There is a new guide for GPs, health professionals and probation staff dealing with rough sleepers with mental health problems: *Meeting the psychological and emotional needs of homeless people: non-statutory guidance on dealing with complex psychological and emotional needs* (National Mental Health Development Unit and CLG, May 2010).[14]

Gypsy and Traveller sites

On 6 July 2010, by exercise of delegated powers under Local Democracy, Economic Development and Construction Act 2009 s79(6), the Secretary of State for Communities and Local Government achieved the immediate revocation of regional spatial strategies pending primary legislation to abolish them: *Hansard*, HC Written Ministerial Statement cols 4WS–5WS, 6 July 2010. The strategies will no longer form part of local authority development plans for the purposes of Planning and Compulsory Purchase Act 2004 s38(6). They had been major drivers in requiring site provision for Gypsies and Travellers.

On the same day, a letter was sent by CLG to all planning authorities explaining the impact of the change; however, in relation to Gypsy and Traveller sites it stated: 'We will review relevant regulations and guidance on this matter in due course.'[15]

HUMAN RIGHTS

Article 8

■ Belchikova v Russia

App No 2408/06,
5 December 2005

In February 2000, Ms Belchikova's sister was given a rent agreement for an apartment for a term of one year. Ms Belchikova lived with her sister in the apartment. In April 2000 her sister died. By her will, the sister bequeathed the apartment to Ms Belchikova. In May 2002, the Pushkinskiy District Court declared the sister's will invalid on the ground of her insanity. In February 2005, the district court heard a claim by the owner of the apartment to have Ms Belchikova evicted. It noted that the agreement had expired in February 2001 and that Ms Belchikova no longer had any right to live in the apartment. It also noted that the owner and his family did not own any other accommodation and wanted to live in the apartment. It considered that Ms Belchikova was not in need of accommodation, since she owned a house in the Crimea, and had, until 2002, owned an apartment in the Murmansk Region and then sold it. Having regard to these considerations, the court considered that the eviction order requested was an appropriate and necessary measure which was justified by the interests of the owner of the apartment. Ms Belchikova complained about the outcome of the eviction proceedings to the ECtHR, relying on articles 6, 8 and 13 of the European Convention on Human Rights ('the convention').

The First Section of the ECtHR observed that:

> *... the loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under article 8 ... notwithstanding that, under domestic law, his or her right of occupation has come to an end (*McCann v UK *Application no 19009/04, and* Paulić v Croatia *Application no 3572/06). [However, in this case] the domestic courts specifically weighed the conflicting interests of the applicant and the plaintiffs. Having regard to the fact that the plaintiffs were the owners of the apartment, had the intention of residing in the apartment at issue and had no other housing, whilst the applicant did not have any right under the domestic law to remain in that apartment and moreover owned a house elsewhere, the courts decided that ... the applicant's eviction had been an appropriate and justified measure.*

The court found that the interference with Ms Belchikova's article 8 rights was compatible with the requirements of article 8(2), in that it was lawful and necessary in a democratic society for the protection of the interests of the owners. There was no reason to believe that the proceedings did not comply with the requirements of the convention. The court found that the application was manifestly ill-founded and declared the application inadmissible.

■ Oluić v Croatia

App No 61260/08,
20 May 2010

Mrs Oluić was an owner-occupier of part of a building. Another part of the building was being run as a bar. Mrs Oluić complained to the local authority about the noise generated by the bar, late into the night. Numerous official sound measurements were taken over a lengthy period demonstrating that noise in excess of permitted levels could be heard in her home. Some sound insulation was installed, but it was not to an adequate standard. She complained to the ECtHR that the failure of the authorities to stop the excessive noise amounted to an infringement of her right to respect for her home under article 8.

The court held that although there is no explicit convention right to a clean or quiet environment, if an individual is directly and seriously affected by noise or other pollution, the state may be obliged to adopt measures designed to regulate the behaviour of private parties in order to prevent a violation. In this case, the noise levels were such that the state had failed to discharge its positive

obligation to guarantee Mrs Oluić's right to respect for her home and her private life (*Moreno Gómez v Spain* App No 4143/02; (2005) 41 EHRR 40). The ECtHR awarded her €15,000 in damages, plus costs.

■ **Poplar HARCA v Howe**

[2010] EWHC 1745 (QB), 13 July 2010

Mr and Mrs Howe were joint assured tenants. They separated and the council rehoused Mrs Howe as a homeless person. She then signed a 'termination of tenancy' form. Mr Howe applied to the council's housing management panel for rehousing. The panel made four offers of rehousing but he refused all of them as being unsuitable. Poplar HARCA sought possession against Mr Howe relying on *Hammersmith and Fulham LBC v Monk* [1992] 1 AC 478, HL. Recorder Wright QC made an order for possession. Mr Howe sought permission to appeal. He argued that *Monk* was incompatible with article 8 and that service of the notice to quit was unlawful.

Rafferty J refused the application. With regards Gateway (a), while *Harrow LBC v Qazi* [2003] UKHL 43; [2004] 1 AC 983 remained good law, such a defence could not succeed; *Qazi* defeated the incompatibility challenge. The recorder's decision was 'unimpugnable'. With regards Gateway (b), Rafferty J adopted the recorder's findings that Poplar HARCA had no responsibility to provide accommodation or to assist with Mr Howe's removal expenses.

SECURE TENANCIES

Death and succession

■ **Solihull MBC v Hickin**

[2010] EWCA Civ 868, 27 July 2010

In 1980, the council let a house to Mr and Mrs Hickin on a weekly secure tenancy. They lived there together with their daughter, Elaine Hickin. In 2001, after the failure of their marriage, Mr Hickin left the house, never to return. Elaine Hickin continued to live in the house with her mother, as their only or main residence. In 2007, Mrs Hickin died. Following her death, the council served a notice to quit on Mr Hickin, and then issued possession proceedings against Elaine Hickin. District Judge Hammersley made a possession order. HHJ Oliver-Jones QC allowed an appeal. The council appealed to the Court of Appeal.

The Court of Appeal allowed the second appeal. On the death of Mrs Hickin, the tenancy of the house vested in Mr Hickin as a result of the doctrine of survivorship. Mr Hickin did not reside in the property, and so the tenancy ceased to be a secure tenancy. It was therefore effectively determined by the notice. Miss Hickin was neither entitled to succeed to the tenancy under the provisions of HA 1985 ss87–90, nor remain in the house once the notice had expired.

■ **Sheffield City Council v Wall (No 2)**

[2010] EWCA Civ 922, 30 July 2010

Mr Wall was fostered when he was six months old and by the time of the court hearing was aged 39. In 1986, his mother was granted a secure tenancy of a two-bedroom house on the basis that it was to be occupied by her and her 'son'. Mr Wall lived at the property with his foster mother continuously, apart from term time when he was a student. In September 1999, he obtained a training contract with solicitors in Sheffield and continued to live 'at home'. However, in September 2001, the solicitors gave him a temporary, six-month contract in London, which was later extended until June 2002. Accordingly, he leased a flat in London for one year as he was unable to find a tenancy for a shorter time. In November 2001, he was admitted as a solicitor. When his contract ended, he physically returned to live in the house in Sheffield and moved all of his belongings back on 6 July 2002. He continued to live there with his mother until she died on 21 June 2003. The council claimed possession. Mr Wall defended on the basis that he had succeeded to his foster mother's tenancy (HA 1985 s87). A recorder made a possession order because he was not satisfied that Mr Wall had been in residence for the 12 months immediately preceding his foster mother's death. Mr Wall appealed. However, he did not seek a stay of execution and vacated the premises as he was ordered to do. In 2005, the council let the property to Mr and Mrs Ingham on a secure tenancy. The Court of Appeal then allowed Mr Wall's appeal and remitted the case for a rehearing ([2006] EWCA Civ 495; May 2006 *Legal Action* 31).

Mr Wall applied to have the matter restored. However, the council then changed its position and informed him that it no longer disputed his assertion that he satisfied the residence requirement for succession. Mr Wall then applied to join Mr and Mrs Ingham and issued his own claim for possession against them. HHJ Bullimore dismissed the council's claim against Mr Wall for possession, but likewise dismissed Mr Wall's claim for possession against Mr and Mrs Ingham. Mr Wall appealed.

The Court of Appeal dismissed the appeal.

■ The words 'a person is a member of another's family within the meaning of this Part if …' in HA 1985 s113 are to be construed to mean that he is *only* a member of the family if he can bring himself within its ambit (court's emphasis). The word 'child' must be limited to the closed categories stipulated in s113(2), namely blood relationships, step children and illegitimate children.

■ There was no doubt that Mr Wall's article 8 rights were engaged. The Court of Appeal was also prepared to accept that the enjoyment of those rights was discriminated against on the ground of his birth or status as a foster child. However, the crucial question was whether or not such difference in treatment had an objective and reasonable justification. Council housing is a precious and limited resource. It is for the authority concerned to decide its allocation schemes and who is qualified to be allocated housing accommodation by it. The exclusion of foster children was objectively justified. The legislation was compatible with Mr Wall's convention rights.

Setting aside warrants

■ **Hammersmith and Fulham LBC v Pill**

West London County Court, 26 May 2010[16]

Ms Pill was the secure tenant of premises owned by Hammersmith and Fulham. She lived there with her two children. Previously her partner, the father of her children, had been violent towards her. As a result of Ms Pill's increasing rent arrears, the council sought possession of the premises. In August 2008, a possession order, postponed on terms, was granted. In December 2008, a date for possession was fixed as 16 January 2009. There were then a series of warrant suspensions. The council was aware of the defendant's problems at home because they were described in the suspension of warrant applications. More recently, however, some progress had been made by social services in improving the relationship between Ms Pill and her partner and it was clear from her rent account that she had started to make regular payments of her rent contribution and arrears during November and December 2009.

However, in January 2010, Ms Pill's partner committed suicide by hanging himself. This suicide had a devastating effect on her and her son. She 'stopped functioning', ceased to manage her affairs and did not open letters or read them properly. From early January 2010, she stopped paying her rent contribution. The council sent her letters telling her that it was going to seek a further warrant of possession. In February 2010, the council applied for a further warrant. The court sent Ms Pill notification of the forthcoming eviction date. She saw the letter but did not take in the contents. In early February 2010, her housing officer was told about the effect of the suicide. The housing officer, while sympathetic, indicated that the eviction would

go ahead and did not arrange to visit Ms Pill. On 4 March 2010, the housing officer, accompanied by bailiffs, took possession of the premises when Ms Pill and her family were out. On 5 March 2010, her solicitors made an application to set aside the warrant of possession on the ground of oppression. It became clear that the council's officers had acted in a manner which was contrary to their own policies by applying for the eviction before senior management approval had been obtained and by failing to mention the recent bereavement and its effect in the report seeking approval for the eviction.

At the hearing of the application, District Judge Nicholson found that there had been oppression in the execution of the warrant and set aside the warrant. He held that maladministration by a local authority can be a relevant factor which the county court is entitled to consider in an oppression case (*Southwark LBC v Sarfo* (1999) 32 HLR 602, CA, at 608, *Jephson Homes Housing Association v Moisejevs* (2001) 33 HLR 594, CA, at 601 and 602 and *Southwark LBC v Augustus* February 2007 *Legal Action* 29). There had been maladministration here because the council had failed to follow its own rent arrears procedures, which had reduced the level of protection offered to Ms Pill. In any event, the district judge considered that common sense dictated that a housing officer coming across news of such a suicide and the effect on the family had a duty to investigate by making efforts to contact the tenant on a face-to-face basis. The failure to do that also represented maladministration. The defendant was denied a proper opportunity to tell the housing officer why she had not been paying the rent. He considered that the council was at fault and criticism could be levelled at it to a very high degree.

FULLY MUTUAL HOUSING ASSOCIATIONS

■ Mexfield Housing Co-operative Ltd v Berrisford

[2010] EWCA Civ 811,
15 July 2010

In 1993, Mexfield Housing Co-operative granted Ms Berrisford a tenancy. On 11 February 2008, Mexfield served a notice to quit terminating the tenancy on 17 March 2008. It began a possession claim. Mexfield's primary submission was that the tenancy fell outside the provisions of the HA 1988 because it was registered under the Industrial and Provident Societies Act 1965 and was a fully mutual housing co-operative association within the meaning of HA 1985 s5(2) and Housing Associations Act 1985 s1(2) and so it could not be an assured tenancy (HA 1988 Sch 1, para 12(1)(h)). It applied for summary judgment. HHJ Mitchell dismissed that application. Mexfield appealed. Peter Smith J allowed the appeal and made a possession order ([2009] EWHC 2392 (Ch); December 2009 *Legal Action* 15).

Ms Berrisford appealed to the Court of Appeal. She argued that as one clause provided that the landlord would only terminate the tenancy if the rent remained unpaid 21 days after it became due and there had been no finding of fact that she was in arrears, the claim for possession should be dismissed. Mexfield, however, claimed that the contractual limitation on giving notice to quit rendered the entire agreement void as being for an uncertain term (*Prudential Assurance Company Ltd v London Residuary Body* [1992] 2 AC 386).

The Court of Appeal, by a majority, dismissed the appeal. In view of the decision in *Prudential Assurance Company Ltd*, the agreement was incapable of taking effect as a lease. The maximum term of the lease was uncertain and, therefore, void. The uncertainty invalidated the agreement both as a contract and as a lease: equity would not enforce an uncertain contract. Ms Berrisford occupied the property as a tenant under a common law monthly periodic tenancy, with no restrictions on the circumstances in which it could be terminated.

NUISANCE

■ Brumby v Octavia Hill Housing Trust

[2010] EWHC 1793 (QB),
15 July 2010

Ms Brumby was an assured tenant of a one-bedroom flat on the lower ground floor of a block of flats. She claimed that, over a period of nearly four years, she had suffered from nuisance caused by visitors to another flat in the building as they passed through the common parts. Her case was that she had complained to the landlord and that it had failed to take reasonable steps to abate the nuisance (*Sedleigh-Denfield v O'Callaghan* [1940] AC 880, HL). The landlord applied to strike out the claim under CPR 3.4 and/or CPR 24.2. HHJ Gibson dismissed the application. The landlord appealed to the High Court.

Mackay J dismissed the appeal. Whether or not the landlord had failed to take reasonable steps to prevent or abate the nuisance was an acutely fact-sensitive issue which could only be determined at trial. The rule in *Sedleigh-Denfield* was not affected by the decisions in *Smith v Scott* [1973] 1 Ch 314, *Hussain v Lancaster City Council* [2000] 1 QB 1; (1999) 31 HLR 164, CA and *Mowan v Wandsworth LBC* (2001) 33 HLR 56, CA. If the judge took a favourable view of the evidence, liability in tort could be established.

ASSURED SHORTHOLD TENANCIES

Tenants' deposits

■ UK Housing Alliance (North West) Ltd v Francis

[2010] EWCA Civ 117,
24 February 2010

Mr Francis entered into a sale and leaseback contract relating to his home with UK Housing Alliance. He was paid 70 per cent of the sale price on completion and would receive the balance of 30 per cent after ten years on giving up possession. The contract provided that UK Housing Alliance might retain 30 per cent of the purchase price if it terminated the tenancy.

The Court of Appeal decided that this provision was not an unfair term within the meaning of Unfair Terms in Consumer Contracts Regulations 1999 SI No 2083 reg 5. The court also held that the payment of the final 30 per cent to Mr Francis was not a deposit within the meaning of the HA 2004. The references in that Act to 'paid', 'received', 'repay' and 'transfer of property' were 'inapt … to describe a situation in which a tenant pays nothing but is the person to whom money is paid' (para 9).

■ Green v Sinclair Investments Ltd

Clerkenwell and Shoreditch County Court,
11 June 2010[17]

In December 2008, the defendant let a property to the claimant on an assured shorthold tenancy for a fixed term of one year. The claimant paid a deposit of £2,100. The defendant did not deal with the deposit in keeping with the HA 2004 provisions at any time. In July 2009, the tenancy ended by surrender. In September 2009, the claimant sent a letter of claim for the return of the deposit and the payment of a sum equal to three times the deposit under HA 2004 s214. In response, the defendant sent a cheque for the full deposit to the claimant's solicitors. The cheque was received by the solicitors just after the claim was issued on 27 October 2009, but before it was served. The solicitors refused to accept the cheque, and returned it to the defendant. The defendant paid the monies into the claimant's bank account in February 2010. This payment was accepted by the claimant. The defendant argued that the court could not make any order under s214(3), either for the return of the deposit or for its protection, because the tenancy had ended and the deposit had been repaid in full.

It claimed that the court could not make an order for payment of three times the deposit under s214(4), because a subsection (4) order can only be made in addition to a subsection (3) order, and not on its own.

District Judge Manners accepted this submission and dismissed the claim. After referring to *Draycott and Draycott v Hannells Letting Ltd* [2010] EWHC 217 (QB); April 2010 *Legal Action* 25, she said: 'In my judgment, if breach of the requirements of section 213 can be remedied by late protection of the deposit and compliance with the information provisions of that section, it can also be remedied by repayment of the whole of the deposit … as the whole of the deposit has now been returned the court is unable to make an order under section 214(3) (a) or (b) and is consequently not able to make an order for payment of three times the deposit under section 214(4).'

TRAVELLERS' SITES

■ Brent LBC v Corcoran

[2010] EWCA Civ 774,
8 July 2010

In 1997, Brent granted Ms Corcoran and her sister licences to occupy pitches on a Traveller site. By the licences, they were prohibited from parking more than one vehicle on each pitch, causing harassment to staff, or selling or supplying drugs. The police discovered that Ms Corcoran's son and nephew were using additional caravans on the pitches for selling or supplying drugs. Brent terminated the licences and began possession proceedings. HHJ Copley made orders for possession but adjourned consideration of whether or not they should be suspended. Although possession orders were made in mid-May 2008, it was not until September 2009 that judgment was given on whether or not they should be suspended in keeping with Caravan Sites Act 1968 s4. HHJ Copley suspended the orders for 12 months on undertakings. Ms Corcoran and the council both appealed to the Court of Appeal.

The Court of Appeal dismissed Ms Corcoran's appeal. In rejecting arguments about a possible public law defence, Jacob LJ made it 'absolutely clear that public law attacks of the technical and over-theoretical sort advanced here have no merit whatsoever in this sort of case' (para 12). Brent's reasons for terminating the licences were 'clear and obvious. Both licensees were in severe and multiple breach of the terms of their licences' (para 14). In those circumstances, it was: '… entirely far-fetched to suppose that a local authority should think that racial discrimination considerations could come into play … If Brent had decided not to serve a notice … on the ground of race it would most likely have been exercising unlawful positive racial discrimination – treating a particular ethnic minority more favourably than other ethnic groups' (para 19).

The Court of Appeal allowed Brent's appeal. It was highly critical of the delay in considering whether or not the orders for possession should be suspended. Brent had already established its entitlement to possession: 'A final decision was crying out to be made. A local authority cannot properly conduct its management functions … if access to the courts can be delayed so much. Courts must make every endeavour to hold early hearings in cases such as these …' (para 27).

The judge had erred in disregarding or downgrading serious breaches of the licence agreements and a serious incident when staff had been abused; his exercise of discretion was flawed. After considering *Bristol City Council v Mousah* (1998) 30 HLR 32, the Court of Appeal exercised the discretion itself by removing the suspension of the possession orders.

TRESPASSERS

■ Mayor of London v Hall and others

[2010] EWCA Civ 817,
16 July 2010

The defendants took possession of Parliament Square Gardens in London to establish a 'Democracy Village' peace camp. The Greater London Authority Act (GLAA) 1999 vested title to the gardens in the Queen, but gave management and control to the Greater London Authority, acting through the mayor. The mayor sought a possession order. The defendants argued that the mayor could not maintain a possession claim in the absence of a right to possession or, alternatively, that a possession order would infringe their rights to assemble and protest. Griffith Williams J made a possession order and granted injunctions ordering the occupants to dismantle structures which they had erected.

The Court of Appeal upheld the possession order in relation to most of the defendants. The court held that:

■ Griffith Williams J had been correct in refusing an adjournment. Although the time between the issue of proceedings and the start of the trial was 'undoubtedly very short' (para 15) (ie, only 19 days), no prejudice was caused to any defendants.

■ The statutory scheme made by the GLAA implicitly gave the mayor the right to seek possession. Lord Neuberger MR rejected the contention that a claim for possession can only be successfully maintained if the person seeking possession can establish title of some sort to a legal estate in the land: '… the modern law relating to possession claims should not be shackled by the arcane and archaic rules relating to ejectment, … it should develop and adapt to accommodate a claim by anyone entitled to use and control, effectively amounting to possession, of the land in question …' (para 27).

■ Articles 10 and 11 of the convention were engaged. The defendants were entitled to have the proportionality of making a possession order assessed by the court. This was ultimately a matter for the court, not for the mayor. However, there were no grounds for attacking the judge's conclusion that the making of a possession order was 'a wholly proportionate response' (para 47).

■ Where only part of what could be fairly described as one piece of land was occupied by a defendant, the owner of the land can claim possession of the whole piece (*Secretary of State for Environment, Food and Rural Affairs v Meier* [2009] UKSC 11; [2009] 1 WLR 2780). Furthermore, where the whole piece of land was occupied by trespassers and it was difficult to identify precisely who occupied what part, it was particularly unrealistic to expect the claimant to identify which part each defendant occupied.

HOMELESSNESS

Eligibility

■ Lekpo-Bozua v Hackney LBC

[2010] EWCA Civ 909,
28 July 2010

The claimant was a British citizen. Her dependent niece was a French national. On a claim for homelessness assistance, the question arose whether or not the claimant's niece would count for the purposes of determining priority need: HA 1996 s185. Initially, Hackney decided that the claimant had no priority need because her niece was an ineligible person. On review, the council decided that it did owe the claimant a limited duty as a 'restricted person' in light of the amendments made to s185 by Housing and Regeneration Act 2008 s314. Her appeal against the review decision was dismissed by HHJ Mitchell.

The Court of Appeal dismissed a second appeal. It held that the niece was not exercising any right to reside in the UK given under the EU Treaty or the relevant EU Directives. She was therefore a person subject to immigration control and required leave to enter or remain (which she did not have). Accordingly, the niece did not confer

priority need on her aunt under the pre-amended version of HA 1996 s185. On the assumption (made by the council on review) that the HA 1996 applied in its post-amendment form, the claimant was not owed the main housing duty in the form usually owed to a person with a priority need because hers was a 'restricted person' case: HA 1996 s193(7AA).

HOUSING AND CHILDREN

■ R (P) v Barnet LBC

[2010] EWHC 1765 (Admin), 15 June 2010

The claimant sought asylum in the UK and claimed to be an unaccompanied minor entitled to housing and other assistance under Children Act (CA) 1989 s20. The council conducted an age assessment which concluded that he was aged 19 and not entitled to assistance.

Blake J dismissed a claim for judicial review of that decision. Although a dispute in relation to a person's age was ultimately for the court to decide, 'a very careful and thorough assessment [had been] conducted by the defendant of the question of age' (para 40). The authority's decision was upheld.

■ EA v GA and Westminster City Council

[2010] EWCA Civ 586, 27 May 2010

The claimants, two young children aged eight and six, were born in Ireland and were Irish nationals. In March 2010, their mother removed the children from Ireland and brought them to the UK. She had no right to remain in the UK. She had no entitlement to benefits and applied to Salford City Council for help. It housed her for four weeks, but then funded travel costs to London on condition that the trip was one way. The children's father applied in the family court for their return. A judge gave directions for a hearing of the application, but meanwhile directed Westminster City Council to house the mother and children, exercising the power to give directions contained in Child Abduction and Custody Act (CACA) 1985 s5. Westminster sought an order that Salford bear the costs of accommodating.

The Court of Appeal held that the CACA did enable an order to be made requiring a council to accommodate the family. Any application for such an order should be made on notice to the council concerned and any issue concerning which council was to accommodate or pay should be decided by the family court judge.

■ C v Nottingham City Council

[2010] EWCA Civ 790, 1 July 2010

The claimants were two young adults who had been accommodated (separately and later together) under duties owed to homeless people in HA 1996 Part 7. They claimed that while still children they should have been accommodated under children's services functions: CA 1989 s20. They sought a declaration that they were entitled to care-leaver services. HHJ Inglis, sitting as a High Court judge, refused permission to seek judicial review. The claimants appealed.

The Court of Appeal dismissed the appeal. Without admission of liability, the council had agreed voluntarily to provide the claimants with the services they would have had as care-leavers. The court was not prepared to entertain what had thus become an academic appeal.

HOUSING AND COMMUNITY CARE

■ R (Mwanza) v Greenwich LBC and Bromley LBC

[2010] EWHC 1462 (Admin), 15 June 2010

The claimant lived with his wife and children. They had no settled accommodation and were not UK nationals. He had been admitted to, and later discharged from, compulsory treatment for mental health problems under the Mental Health Act (MHA) 1983. He claimed that Greenwich was obliged to house the family as part of its aftercare duty in MHA s117. Alternatively, Bromley had to accommodate the family under National Assistance Act (NAA) 1948 s21.

Hickinbottom J rejected a claim for judicial review. Greenwich had long since lawfully discharged its aftercare duty and Bromley owed no duty because the claimant had no need of 'care' as he was cared for by his family.

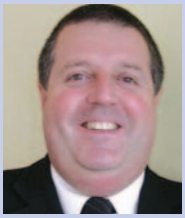
■ R (Buckinghamshire CC) v Kingston upon Thames RLBC

[2010] EWHC 1703 (Admin), 12 July 2010

A disabled adult was placed by the defendant at a special residential centre in the claimant's area pursuant to its duties under NAA s21. On a later needs assessment, the defendant agreed to help the disabled person move to more independent living on an assured shorthold tenancy in a nearby shared house. However, the disabled person continued to need help with her special needs. Once the move had been arranged, the defendant informed the claimant that the disabled person was now resident in its area and had become its responsibility. The claimant sought judicial review of the placement decision contending that the defendant had been under a duty to consult it before undertaking the placement in a shared supporting people scheme.

Wyn Williams J rejected the claim that the defendant had been under a duty to warn or consult the claimant. There had, however, been a failure to resolve the housing benefit position in relation to the new placement. To that extent only, the claim succeeded.

1 Visit: www.legalservices.gov.uk/civil/tendering/social_welfare_family.asp.
2 Available at: www.legalservices.gov.uk/docs/stat_and_guidance/Stats_Pack_0910_23Jul10.pdf.
3 Available at: www.official-documents.gov.uk/document/cm78/7892/7892.pdf.
4 Available at: www.communities.gov.uk/news/housing/1664130.
5 Available at: www.housing.org.uk/Uploads/File/Policy%20briefings/Neighbourhoods/Mobility%20Taskforce%20report%20August2010.pdf.
6 Available at: www.housing.org.uk/Uploads/File/Policy%20briefings/Neighbourhoods/Annual%20report%20for%20tenants%20-%20July%202010.pdf.
7 Available at: www.communities.gov.uk/news/corporate/1643931.
8 Available at: www.communities.gov.uk/documents/housing/pdf/1648140.pdf.
9 Available at: www.communities.gov.uk/documents/housing/pdf/1643676.pdf.
10 Visit: www.equalityhumanrights.com/legislative-framework/equality-bill/equality-act-2010-guidance/.
11 Available at: http://wales.gov.uk/docs/desh/consultation/100721housingphase3en.pdf.
12 Available at: www.communities.gov.uk/documents/housing/pdf/1648341.pdf.
13 Available at: www.communities.gov.uk/news/corporate/1648579.
14 Available at: www.nmhdu.org.uk/silo/files/meeting-the-psychological-and-emotional-needs-of-people-who-are-homeless.pdf.
15 Available at: www.communities.gov.uk/documents/planningandbuilding/pdf/1631904.pdf.
16 Gail Bradford and Jennifer Stokes, Hammersmith and Fulham Community Law Centre®, Jim Shepherd, barrister, Doughty Street Chambers.
17 Gillian Ackland-Vincent, barrister, London.



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