Recent developments in housing law

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

POLITICS AND LEGISLATION

Reforming social housing law

The version of the Localism Bill published for consideration during the House of Lords report stage which begins on 5 September 2011 contains revised housing provisions in Part 6.[1] The revisions include amendments proposed by the UK government and adopted at the committee stage:

- to amend the tenancy deposit scheme;
- to remove the requirement that a tenancy of social housing with a fixed term exceeding three years must be executed as a deed;
- to remove the requirement that a tenancy of social housing with a fixed term exceeding seven years must be entered at the Land Registry; and
- to amend Ground 7 of Housing Act (HA) 1988 Sch 2 so that the landlord of an assured tenant can regain possession if the tenant has died and the tenancy has been inherited by someone not qualifying as a successor.

As amended, the Localism Bill still provides that any new flexible tenancy of social housing must be for a minimum fixed term of two years. In the light of suggestions in parliament that this period would become the 'norm', the minister for housing (Grant Shapps MP) has revised the draft directions he proposes to issue to the social housing regulator to provide that the normal minimum becomes five years.[2] The consultation on the new (revised) draft directions closes on 29 September 2011.

Housing and human rights

The Equality and Human Rights Commission has launched an online resource of material about human rights designed for public sector bodies in England and Wales.[3] The resources cover nine public sector issues including housing.

Housing and anti-social behaviour

The housing minister has issued a consultation paper on the detail and practicalities of introducing a new mandatory ground for possession for anti-social behaviour: *A new mandatory power of possession for anti-social behaviour. Consultation* (Department for Communities and Local Government (DCLG), August 2011).[4] The paper proposes that possession will be automatically granted in respect of:

- a conviction for a serious housing-related offence, including violence against neighbours, drug dealing and criminal damage;
- breach of an injunction for anti-social behaviour, where the social landlord has obtained, or is party to, the injunction; or
- closure of a premises under a closure order, for example, where a property has been used for drug dealing.

In the light of the civil disturbances that had taken place in England, the minister wrote to all major social landlords on 15 August 2011 in addition suggesting that the current discretionary grounds for possession available against tenants of social housing could be enlarged to cover anti-social behaviour taking place outside the locality of a tenant's home.[5] This suggestion will be considered alongside the proposals in respect of the new mandatory ground. The consultation ends on 7 November 2011.

Tenants lacking mental capacity

The Court of Protection (CoP) has published guidance on how and when to make applications to that court in relation to the signing or termination of tenancy agreements by adults who lack the mental capacity to understand or sign the agreements themselves: *Applications to the Court of Protection in relation to tenancy agreements* (CoP, June 2011).[6]

Regulation of social housing providers

The present regulator, the Tenant Services Authority (TSA), has published its *Annual report and accounts 2010–11*.[7] The TSA's chief executive has written to all social landlords to remind them that they must publish their own annual reports to tenants by 1 October 2011.[8] The individual annual reports are intended to demonstrate progress with operating locally agreed standards or 'offers'. The TSA has also published the latest report from those landlords which have been trailblazing the use of local offers: *Local offer trailblazers – from planning to practice* (TSA, July 2011).[9]

Legal advice in housing emergencies

The Legal Services Commission (LSC) announced on 21 July 2011 that all emergency legal aid certificates granted on or after 1 May 2011 will be extended to remain in place for *eight* weeks. This arrangement will be reviewed in October 2011.[10] Advisers have also been reminded by the LSC of the importance of checking eligibility for such certificates given the significant numbers presently being retrospectively revoked.

Housing Ombudsman

The Law Commission has published the final report of its review of public sector ombudsman arrangements in England and Wales: *Public services ombudsmen* (Law Com No 329, HC 1136, July 2011).[11] The report reviews the use of 'filter' mechanisms, preventing direct applications to the ombudsmen, such as those contained in the Localism Bill.

Access to information from social landlords

The housing minister has announced that the UK government will consult with housing associations later this year on whether to extend the scope of the Freedom of Information Act (FOIA) 2000 to include housing associations expressly: DCLG news release, 23 June 2011.[12]

The Ministry of Justice (MoJ) is currently undertaking a review of the FOIA, including the issue of whether to bring additional public bodies within section 5: MoJ news release, 7 January 2011.[13]

Low-cost home purchase schemes

The housing minister has launched a new FirstBuy scheme under which the government and housebuilders will together offer new house purchasers a 20 per cent equity loan for their new homes: DCLG news release, 20 June 2011.[14] Put together with a five per cent deposit from the purchaser, that equity loan will enable buyers to take out a 75 per cent mortgage on the rest of the purchase price. The scheme will be available through local HomeBuy agents.

The minister has also called on mortgage lenders to be more ready to help young first-time buyers who want to club together and

buy their first homes jointly: DCLG news release, 5 July 2011.[15]

Mortgage repossessions

Shelter has published a research report which helps create a national picture of England's repossession hotspots, ie, the areas with the highest proportion of homeowners against whom lenders have obtained possession orders: *England repossession hotspots 2010/11* (Shelter, June 2011).[16]

Street homelessness

The UK government has published the first report from the Ministerial Working Group formed to tackle street homelessness in England: *Vision to end rough sleeping: No Second Night Out nationwide* (DCLG, July 2011).[17] It sets out six joint commitments to provide the tools to tackle rough sleeping. In a linked statement, the housing minister announced that the 'No Second Night Out' scheme, which has been operating in London since April 2011, is to be rolled out nationwide: DCLG news release, 6 July 2011.[18] The scheme is based on a 24-hour helpline and website that can be used to report and refer rough sleepers, with an outreach worker dispatched to contact the person as quickly as possible. The roll out will be funded by a new £20m Homelessness Transition Fund for the voluntary sector, to be made available over three years. The fund will be administered by Homeless Link.

Housing briefing notes

The House of Commons Library has published further helpful briefings on housing topics. They include:

- *Private sector letting and managing agents: should they be regulated?* (June 2011).[19]
- *Mortgage arrears and repossessions* (June 2011).[20]
- *Mobile (park) homes* (August 2011).[21]
- *Dealing with infestations in privately rented property* (July 2011).[22]
- *Housing: overcrowding* (July 2011).[23]
- *Gypsies and Travellers: camp sites and trespass* (July 2011).[24]

Energy saving for tenants

On 14 June 2011, the House of Commons Public Bill Committee on the Energy Bill discussed clauses 42–45 relating to energy saving in private rented homes.[25] Those clauses will impose new obligations on the landlords of private rented properties. Amendments debated included a proposal that a landlord who has not complied with the provisions as enacted should not be able to serve a HA 1988 s21 notice seeking eviction. The bill, as amended by the committee, has now been published and it will next be considered by the House of Commons at report stage in the autumn.[26]

Right to buy in Wales

The Welsh Assembly Government has invited comments on the draft content of the guidance it proposes to issue on the exercise of the new power – under the Housing (Wales) Measure 2011 – for local authorities in Wales to suspend the right to buy in their areas.[27] Comments are sought by 31 October 2011.

HUMAN RIGHTS

■ X, Y and Z v UK

App No 32666/10,
5 July 2011

Z rented a flat from a local authority. Z was mother to X but carer to both X and Y, who were both adults. Both had learning disabilities. During a 15-month period, Z notified the local authority on a number of occasions that a gang of local youths were harassing and exploiting the family. On one occasion, X had to seek hospital treatment after he was assaulted by one of the youths. On another occasion, the police raided the flat and discovered that the youths had been using it as a 'doss house'. Representatives from the local authority made several visits to the flat and concluded that X and Y were vulnerable and needy and that their accommodation was very unsafe. However, the housing department did not consider that they were eligible for a transfer. Over the weekend of 17–19 November 2000, X and Y were effectively imprisoned in their flat and were physically and sexually abused by the youths. In September 2001, a report concluded that X and Y had been 'under-supported' by the local authority. X, Y and Z then claimed damages from the local authority but the claim was unsuccessful as the domestic courts found that no duty of care existed between the local authority and the applicants. They complained to the European Court of Human Rights (ECtHR) that there had been breaches of articles 3, 6, 8 and 13.

Earlier this year, the court received friendly settlement declarations signed by the parties under which X, Y and Z agreed to waive any further claims against the UK in return for an undertaking by the government to pay €25,000 each to X and Y and €7,000 to Z, plus costs.

The ECtHR took note of the friendly settlement. It was satisfied that it was based on respect for human rights and found no reason to justify a continued examination of the application. Accordingly, it struck the case out of the list.

■ Grimkovskaya v Ukraine

App No 38182/03,
21 July 2011

Ms Grimkovskaya was the owner of a house on K Street in Krasnodon. She lived there with her parents and her son. In 1998, the Krasnodon City Council's executive committee agreed that the M04 motorway from Chisinau (Moldova) to Volgograd (the Russian Federation) should pass via K Street. Following this change in the routing of traffic, her house eventually became practically uninhabitable. It suffered heavily from vibration and noise caused by several hundred lorries passing by every hour. In addition, air pollution increased substantially and numerous potholes emerged in the inadequate surface of the road. As they drove across these potholes, vehicles emitted additional fumes and stirred up clouds of dust. The road service department started filling the potholes with cheap materials, such as waste from nearby coal mines, which had a high heavy metal content. The family claimed that these conditions damaged their health and presented certificates confirming illness such as chronic bronchitis, respiratory insufficiency and heart disease. Ms Grimkovskaya's son was found to have excessive levels of copper and lead in his blood and urine and was diagnosed as suffering from chronic poisoning from heavy-metal salts, chronic toxic hepatitis and toxic encephalopathy. In 2001, Ms Grimkovskaya's mother lodged a civil claim on her behalf, but the Krasnodon Court rejected the claim. Subsequent appeals were dismissed. Ms Grimkovskaya complained to the ECtHR that her article 8 rights had been breached.

After referring to *López Ostra v Spain* App No 16798/90, 9 December 1994 and *Dubetska v Ukraine* App No 30499/03, 10 February 2011, paras 105–108, the court reiterated that, where a case concerns an environmental hazard, an arguable claim under article 8 may arise only where the hazard attains a level of severity resulting in significant impairment of the ability to enjoy a home, private or family life. The assessment of that minimum level is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects on the individual's health or quality of life. In this case, although not all of the allegations were proved, the court considered that the cumulative effect of noise, vibration and air and soil pollution generated by the motorway significantly deterred Ms Grimkovskaya from enjoying her rights guaranteed by article 8. It emphasised that states enjoy a considerable

margin of appreciation in the complex sphere of environmental policy-making. Article 8 cannot be construed as requiring them to ensure that every individual enjoys housing that meets particular environmental standards. However, in this case there was a breach of article 8.

The court noted the government's failure to show that there had been an adequate environmental feasibility study or that Ms Grimkovskaya had a meaningful opportunity to contribute to the decision-making processes. The court could not conclude that a fair balance was struck between her interests and those of the community. Ruling on an equitable basis, it awarded €10,000 in respect of non-pecuniary damage and dismissed the remainder of her claim as unsubstantiated.

■ Zolotareva v Russia

App No 15003/04,
26 July 2011

Ms Zolotareva lived in a municipal two-roomed flat together with her son, his ex-wife and their daughter. She brought a claim against her son's ex-wife, seeking her eviction. The ex-wife countersued asking the court to rehouse everyone. In 1998, the Tverskoy District Court dismissed Ms Zolotareva's claims and granted the ex-wife's claim. It ordered that all the parties be rehoused and assigned the flat to another family. The bailiff then initiated enforcement proceedings.

Ms Zolotareva asked for supervisory review of the judgments against her and, in January 1999, a judge of the Supreme Court of the Russian Federation noted that execution of the judgment 'should be stayed' (para 11). However, on 17 June 1999, a bailiff called at the flat and told Ms Zolotareva that she would be evicted the following day. On 18 June 1999, the bailiff arrived at 10 am. Ms Zolotareva refused to open the door. The bailiff left but returned with the rescue service at 2 pm. Ms Zolotareva was not in the flat. The bailiff entered. Ms Zolotareva returned one and a half hours later. She claimed that she did not feel well and was undergoing treatment in a hospital. The bailiff left. After having verified that she had not been admitted to any hospital, the bailiff forced open the door to the flat at 7 pm and started the eviction process. The bailiff summoned police officers, who took Ms Zolotareva to the police station where she stayed for three hours. The bailiff completed the eviction at 1.30 am. Within the next four days, all Ms Zolotareva's belongings were moved to her new home.

Ms Zolotareva lodged a complaint against the bailiff, challenging the manner in which he had conducted her eviction. That complaint was upheld and the court found that the actions taken by the bailiff were unlawful. Ms Zolotareva brought an action against the Ministry of Finance of the Russian Federation for damages resulting from the bailiff's unlawful actions. In 2003, the Basmanniy District Court of Moscow rejected her claims. She then complained to the ECtHR that there had been a breach of article 8.

It was common ground between the parties that the eviction constituted an interference with Ms Zolotareva's right to respect for her private life and home as protected by article 8(1). The ECtHR noted that although the domestic authorities declared the bailiff's actions unlawful, they did not offer any compensation. She was not afforded appropriate and sufficient redress for a breach of the European Convention on Human Rights ('the convention'). There was, accordingly, a violation of article 8. The court awarded €5,000 in respect of non-pecuniary damage.

■ Krahulec v Slovakia

App No 19294/07,
7 June 2011

In 1929, Mr Krahulec's grandfather built a house comprising four flats. The family retained ownership of the house under the Communist regime. The house was given to him by his mother in 1998. The rent paid by the tenants of the flat was restricted. In December 2003, the Ministry of Construction and Regional Development issued an Ordinance on Control of Rent for Lease of Flats. It fixed the maximum permissible amount of rent for a flat according to its surface area and category, without distinction as to its location. That rent was much lower than uncontrolled market rents. Mr Krahulec petitioned the Constitutional Court alleging that the Ordinance was contrary to the Constitution, was discriminatory and restricted the right of house-owners. In 2009, the Constitutional Court discontinued the petition. Mr Krahulec complained to the ECtHR that his rights under article 1 of Protocol No 1 had been violated.

On the question of admissibility, the ECtHR found that the complaint raised serious issues of fact and law under the convention, the determination of which required an examination of the merits. It declared that the complaint that the restrictions which the rent-control scheme imposed on Mr Krahulec's right to peaceful enjoyment of his possessions was admissible.

SECURE TENANCY: SUCCESSION

■ Haringey LBC v Theobald

Clerkenwell and Shoreditch County Court,
7 April 2011[28]

Mr Theobald's father was granted a tenancy of a four-bedroom property in 1962. Mr Theobald lived in the property from that date. In 1993, his father was suffering from dementia and moved permanently into residential care. Mr Theobald and his brother applied to succeed to the tenancy. The council purported to treat the situation as one of succession but also made reference to an assignment of the tenancy, with the brother taking over the tenancy in November 1993. The brother died in April 2009. The council served a notice to quit on the public trustee and on the property. In the subsequent possession claim, the council contended that Mr Theobald had no rights of occupation.

District Judge Cooper accepted evidence that Mr Theobald's father suffered a deterioration in his mental health before moving to residential accommodation and that he had difficulty recognising persons who visited. The issue of the tenancy was never discussed as the father would not have understood what was being talked about. There was no legal assignment in 1993. For there to have been an equitable assignment there had to be evidence of agreement on the part of the assignor, supported by acts of part performance. In the absence of any evidence of agreement on the part of the assignor there could be no equitable assignment. Furthermore, there could have been no succession because the tenant was still alive. On an objective assessment, as the original tenant moved into residential care and never expressed a wish to go home, around that time security of tenure was lost. A new tenancy was granted to the brother. It followed that on his death, Mr Theobald was entitled to succeed to the tenancy under HA 1985 ss87 and 89.

POSSESSION CLAIMS AND BANKRUPTCY

■ Places for People Homes Ltd v Sharples; A2 Dominion Homes Ltd v Godfrey

[2011] EWCA Civ 813,
15 July 2011

Ms Sharples was an assured tenant. Her landlord sought possession on the ground of rent arrears. Before the hearing of the claim, Ms Sharples was made bankrupt. A district judge refused to order payment of the rent arrears since they were provable in the

bankruptcy, but he rejected Ms Sharples' argument that he was precluded from making a possession order by Insolvency Act 1986 s285(3)(a), which provides that after the making of a bankruptcy order no creditor should 'have any remedy against the property ... of the bankrupt in respect of that debt'. Ms Sharples' appeal to HHJ Tetlow was dismissed. She brought a second appeal to the Court of Appeal.

The Court of Appeal dismissed that appeal. The grant of a tenancy created a property interest which was an incumbrance on the landlord's title. An order for possession was a remedy which restored the landlord's full proprietary rights in respect of property. The failure to pay rent was a breach of a contractual obligation. Neither forfeiture, a possession order, recovery of possession by the landlord, nor a bankruptcy order, eliminated the personal indebtedness constituted by rent arrears. It followed as a matter of general principle that an order for possession of property, whether let under an ordinary contractual tenancy or a secure or an assured tenancy, was not a remedy 'in respect of' the debt represented by the rent arrears within section 285(3)(a). It made no difference whether a possession order was made before or after bankruptcy. Section 285(3)(a) did not preclude the making of a possession order on the ground of rent arrears. In this connection, there was no difference between an outright possession order and a suspended possession order.

However, in Mr Godfrey's case, the existence of a debt relief order made it unreasonable for the court to make a possession order conditional on the repayment of arrears. His appeal was allowed to the extent of varying the order to exclude payment of the arrears.

HOUSEBOATS

■ Mew v Tristmire Limited

[2011] EWCA Civ 912,
28 July 2011

There were a number of plots on Embankment Road, Bembridge Harbour which were covered by the sea at high tide. On one of the plots, there was a houseboat named 'Emily'. It was a converted landing craft constructed during the Second World War, which was later modified by the addition of a super-structure so as to make it watertight and habitable. It was once capable of floating but now rested on a wooden platform which was supported by wooden piles driven into the bed of the harbour. It could only be removed from the platform by the use of a crane with an extensive supporting cradle. It had mains services such as water, electricity and gas but these could easily be disconnected.

Mr Mew purchased 'Emily' in 1993. The purchase agreement contained a covenant by Mr Mew with the vendor to 'pay all harbour dues and any other fees, tolls or other sums due for mooring' but did not include an assignment of the tenancy or licence under which the site was occupied (para 10). Initially, he paid a 'site-rent' of £96 for his plot quarterly in advance. Tristmire bought a long lease of the plot at auction from the freeholder, the Bembridge Harbour Improvements Company Limited ('BHIC') in June 2007. In July 2007, Tristmire gave notice terminating Mr Mew's licence and requiring him to deliver up possession on 31 August 2007. It then issued a possession claim. Mr Mew served a defence contending that he occupied the plot as a tenant, that 'Emily' was a dwelling house and that he was an assured tenant under the HA 1988. His Honour Graham Jones held that 'Emily' had not become annexed to the land and so was not a dwelling house. Mr Mew was merely a licensee. Mr Mew appealed.

The Court of Appeal dismissed the appeal. Patten LJ said that there could only have been a tenancy if the houseboat (as well as the wooden platform) had become part of the land. If the correct analysis was that it remained a chattel removable (although with some difficulty) by the tenant at the end of the lease then the conditions for an assured tenancy were not satisfied. Annexation so as to become part of the realty is a question both of intention and degree. The current state of repair of 'Emily' was irrelevant. After referring to *Elitestone Ltd v Morris* [1997] UKHL 15; [1997] 1 WLR 687, *HL and Chelsea Yacht and Boat Co Ltd v Pope* [2000] EWCA Civ 425; [2000] 1 WLR 1941, CA, Patten LJ said that whatever condition 'Emily' may now be in, it was, on the judge's findings, a structure which could have been removed without being dismantled or destroyed in the process. Like a caravan, it was moveable. The overwhelming inference was that the licence or tenancy of the plot did not extend to the houseboat but continued to be limited to the plot and the supporting platform which BHIC had provided for the owner of the houseboat. The judge was right to conclude that the houseboat had not become affixed to the land and that the defendant was not an assured tenant.

NEED FOR A LITIGATION FRIEND

■ Ganley v Jones

[2011] EWCA Civ 754,
6 July 2011

Miss Ganley's landlord claimed possession of agricultural land. Miss Ganley was debarred from defending for breach of an 'unless' order and a possession order was made. Notice of appeal was filed over 20 months late. One of the points taken in the appeal was that the claim had been issued and pursued at a time when Miss Ganley was mentally incapacitated by depression and so was in need of a litigation friend.

Permission to extend time to appeal was refused but the judgment contains a useful description at paragraphs 9–22 of the provisions and procedures for determining whether and when a litigation friend is needed.

ENFORCEMENT OF POSSESSION ORDERS

■ Barking and Dagenham LBC v Bakare

Romford County Court,
13 June 2011

Ms Bakare was a secure tenant. In November 2005, her landlord, Barking and Dagenham, obtained a suspended order for possession on the ground of rent arrears. Subsequently, Barking and Dagenham obtained a warrant. Ms Bakare made an application to suspend the warrant. Barking and Dagenham applied to vary the existing suspended order by making a final order for possession on the ground of serious breaches of the tenancy conditions.

HHJ Platt suggested that:

> *... the procedure by way of application in existing proceedings is more likely to be appropriate and cost effective in cases involving a small number of allegations particularly where these are unlikely to be contested, for example criminal convictions. Cases of the complexity of this case involving not only a large number of contested allegations but also applications for anti-social behaviour orders [ASBOs] against other family members can be more efficiently case managed if they are initiated by separate proceedings.*

However, he found that the factors in favour of an outright order included:

- the very long history of rent arrears;
- findings of serious misbehaviour on the part of Ms Bakare's son in the period up to February 2011 for which she was legally responsible;
- the effect that further incidents may have

on the well-being of other residents in the block; and

- the absence of any acceptance by Ms Bakare that her son had misbehaved or any expression of remorse on her part.

Crucial factors which pointed against any suspension of the order included:

- the continuance of the son's behaviour not only after issue of proceedings but after the judge's draft judgment had been issued;
- breach of an ASBO;
- a significant escalation in the son's criminal activities; and
- the fact that it was not until May 2011 that Ms Bakare took any practical steps to acknowledge that her son's behaviour presented a serious threat to the well-being of other residents.

Moving her son away from the property then was 'simply too little and too late'. HHJ Platt dismissed the application to suspend the possession warrant and made an order for possession forthwith.

ASSURED SHORTHOLD TENANTS: DEPOSITS

■ Suurpere v Nice

[2011] EWHC 2003 (QB),
27 July 2011

Mr and Mrs Nice granted Ms Suurpere an assured shorthold tenancy for a fixed term of six months, at a monthly rent of £300. Ms Suurpere paid a deposit of £500, but Mr and Mrs Nice did not in fact transfer the deposit from their bank account to the Deposit Protection Service until 20 July 2009. They informed Ms Suurpere of this transfer by a letter of the same date. After serving notices which failed to comply with HA 1988 s21, Mr and Mrs Nice issued summary proceedings for possession in Guildford County Court. On 10 August 2009, Ms Suurpere issued proceedings against Mr and Mrs Nice claiming the return of her deposit and a sum of three times the amount of the deposit (HA 2004 ss213–214). She left the property on 14 August 2009, allegedly as a result of unlawful harassment by Mr and Mrs Nice. She did not return.

At trial, HHJ Reid QC dismissed Ms Suurpere's claim relating to the deposit, finding that, since the deposit had in fact been lodged under the Deposit Protection Scheme on 20 July, before the commencement of her proceedings on 10 August, the penal sanctions in section 214(4) did not apply. Ms Suurpere appealed, contending that Mr and Mrs Nice were in breach of section 213(5) and (6)(a), in that they failed to provide the information required by subsection (5) in the prescribed form.

Cox J allowed her appeal. After referring to *Tiensia v Vision Enterprises Limited* [2010] EWCA Civ 1224, she said:

> *Whilst the primary focus in the cases involving these statutory provisions has so far been on the deposit, it is clear that a landlord's obligations … are two-fold. Parliament regards the landlord's obligation to provide the prescribed information as being of equal importance to his duty to safeguard the tenant's deposit. Judges who have to determine the extent of a landlord's compliance with these provisions will always need to consider whether the prescribed information has been supplied to the tenant, in addition to the question of protection of the deposit. The list of particulars to be provided is detailed and specific. The requirement for landlords to provide such detailed information, together with the sanction for non-compliance, demonstrate the importance attached to the giving of particulars, certified as accurate by the landlord, which will enable tenants to understand how the scheme works and how they may seek the return of their deposit. …*
>
> *[I]t will make no difference to the landlord's statutory obligation to provide the prescribed information if, by the date of the hearing, the tenant's deposit has been repaid* (paras 41 and 43).

The obligation was that of the landlord personally. Provision of information to a tenant by the Deposit Protection Service does not amount to compliance by the landlord personally with the section 213(5) and (6)(a) obligation. In this case, Mr and Mrs Nice did not address the obligation to give Ms Suurpere the prescribed information, despite the fact that she had pleaded this breach specifically in her particulars of claim. In her judgment, Cox J referred to the existence of a prescribed information template for landlords online.[29] The Court of Appeal's decision in *Gladehurst Properties Ltd v Hashemi* [2011] EWCA Civ 604 was of no assistance to Mr and Mrs Nice because the tenancy had not been terminated before the trial. Cox J ordered Mr and Mrs Nice to pay Ms Suurpere the sum of £1,500.

DISABILITY DISCRIMINATION ACT 1995

■ Barnsley MBC v Norton

[2011] EWCA Civ 834,
21 July 2011

Mr Norton was a school caretaker. As a result, the council granted him a tenancy of a house in which he lived with his wife and daughter. He was dismissed as a result of misconduct. Barnsley sought possession so that it could provide accommodation for a new caretaker. Mr Norton's daughter had cerebral palsy and epilepsy and as a result was 'disabled' under the Disability Discrimination Act (DDA) 1995. At the date of the county court hearing she was also pregnant. In the county court, Mr Norton and his wife and daughter did not dispute that Barnsley was entitled to possession, but they challenged the decision to bring and continue the possession claim on public law grounds, saying that Barnsley had breached its duty under DDA 1995 s49A to have 'due regard to … the need to take steps to take account of disabled persons' disabilities'. They also relied on article 8. HHJ Swanson made an order for possession. The Norton family appealed.

The Court of Appeal dismissed the appeal. When the decision to start the possession claim was made, Barnsley did not have any regard to the need to take steps to take account of the daughter's disability. The duty under the DDA 1995 was not something which only had to be considered when a public authority was exercising functions that bore on the rights of a disabled person under some other specific legislation. Section 49A was entirely general. It applied to the carrying out of any function of any public authority. 'Due regard' meant 'such regard as is appropriate in all the circumstances' (para 17). As the daughter's position could be critically affected by Barnsley obtaining an order for possession, it was under a duty to have due regard to her disability. Barnsley had therefore breached its public law obligations by failing to address the duty under section 49A(1)(d) before commencing the claim. However, once a possession order had been made, it was up to Barnsley to provide suitable accommodation for the family in accordance with the DDA 1995 and the Equality Act 2010. It was therefore right to make an order for possession and to leave it to Barnsley to deal properly with the logically consequent issue of the daughter's need for accommodation.

SERVICE CHARGES

■ Daejan Investments Limited v Benson

[2011] UKSC 0057,
27 June 2011

The Supreme Court has granted Daejan Investments permission to appeal (see [2011] EWCA Civ 38; [2011] L&TR 14; April 2011 *Legal Action* 30).

ADVERSE POSSESSION

■ Hopkins v Beacon

CH/10/0335,
13 April 2011

The parties were neighbours. Mr Beacon applied to register title by way of adverse possession over land of which Mr Hopkins was the registered proprietor. The Land Registry sent the standard notice to Mr Hopkins, asking him to indicate whether he objected or consented to the application and whether he wished the application to be dealt with under Land Registration Act 2002 Sch 6 para 5. The claimant ticked a box to indicate that he objected to the application, but did not tick the box asking for the case to be dealt with under Schedule 6 paragraph 5. He submitted a statement with the form, in which he challenged Mr Beacon's belief in his ownership. An adjudicator to the Land Registry held that the failure to tick the relevant box prevented Mr Hopkins from raising any of the matters under Schedule 6 paragraph 5, including an allegation that Mr Beacon did not believe that the property was his. Mr Hopkins appealed to the High Court.

Vos J dismissed the appeal. The procedural rules could not be seen as mandatory. It cannot have been parliament's intention that any error should invalidate such a notice. The correct approach was to consider whether the notice, together with the statement, would have indicated to a reasonable registrar that Mr Hopkins sought to invoke the procedure under Schedule 6 paragraph 5 (*Mannai Investment Co Ltd v Eagle Start Life Assurance Co Ltd* [1997] UKHL 19; [1997] AC 749, HL). However, even on this test, Mr Hopkins had not made it sufficiently clear that he wanted the procedure under Schedule 6 paragraph 5 to be applied. A reasonable registrar receiving the form might reasonably have thought that Mr Hopkins had intended not to tick the counter-notice box. The registrar should have looked at the form and statement together.

HOMELESSNESS

■ Bathaei v Ealing LBC

[2011] EWCA Civ 934,
6 July 2011

Mr Bathaei applied to the council for homelessness assistance under HA 1996 Part 7. It accepted that it owed him the main homelessness duty: section 193. The council later reached a decision, on a homelessness review, that an offer of accommodation made to Mr Bathaei was 'suitable': section 206. HHJ Oppenheimer dismissed his appeal from that decision.

Lord Neuberger MR dismissed a renewed application for permission to bring a second appeal. He said such second appeals in homelessness cases 'are really renewed appeals against the review decision, rather than against the judge's decision, in the same way as appeals against decisions of the Employment Appeal Tribunal often are really reconsiderations of the decisions of the employment tribunal' (para 6). The review decision was 'unusually full, careful and well-reasoned' and the grounds of appeal disclosed no error of law (para 6).

HOUSING AND CHILDREN

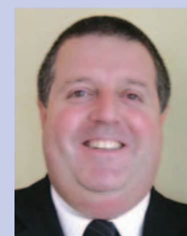
■ R (O) v Hammersmith and Fulham LBC

[2011] EWCA Civ 925,
28 July 2011

The council accepted that it was under a duty to accommodate a 13-year-old disabled boy in accordance with Children Act 1989 s20. The boy's parents wanted him to be accommodated at a specialist residential school. The council decided that he should be placed at a specialist children's home and attend a specialist school on school days. The parents sought judicial review and an injunction requiring the council to provide a residential school placement. Blair J held that the council's decision-making had been unlawful but refused to grant a mandatory injunction compelling the council to provide the residential school placement. Both parties appealed. Before the appeal hearing the council reconsidered the matter and reached a fresh decision based on modified arrangements but not a residential specialist school placement.

The Court of Appeal accepted the claimant's application to treat the appeal as a judicial review of the council's new decision. It held that the council's revised decision was not unlawful and refused an injunction. As the proceedings were by nature the judicial review proceedings, the welfare of the child was not the paramount consideration for the court. The essential issue was whether the decision was lawful. In this case, it was.

1 Available at: www.publications.parliament.uk/pa/bills/lbill/2010-2012/0090/2012090v1.pdf.
2 Available at: www.communities.gov.uk/documents/housing/pdf/1956470.pdf.
3 Available at: www.equalityhumanrights.com/human-rights/human-rights-practical-guidance/.
4 Available at: www.communities.gov.uk/publications/housing/antisocialbehaviourconsult.
5 Available at: www.communities.gov.uk/documents/housing/pdf/19666871.pdf.
6 Available at: www.mentalhealthlaw.co.uk/images/COP_guidance_on_tenancy_agreements_June_2011.pdf.
7 Available at: www.tenantservicesauthority.org/upload/pdf/TSA_Annual_report_2011_20110728114644.pdf.
8 Available at: www.tenantservicesauthority.org/upload/pdf/CLJ_letter_to_CEO_July_11.pdf.
9 Available at: www.tenantservicesauthority.org/upload/pdf/Local_Offer_Trailblazer_Report_July_2011.pdf.
10 See: www.legalservices.gov.uk/civil/cls_news_12872.asp?page=1&dm_i=4P,GYKX,7482C,1DTQ0,1.
11 Available at: www.justice.gov.uk/lawcommission/docs/lc329_ombudsmen.pdf.
12 Available at: www.communities.gov.uk/news/corporate/1930171.
13 Available at: www.justice.gov.uk/news/press-releases/moj/press-release-070111a.htm.
14 Available at: www.communities.gov.uk/news/corporate/1926856.
15 Available at: www.communities.gov.uk/news/newsroom/1937920.
16 Available at: http://england.shelter.org.uk/__data/assets/pdf_file/0015/361230/Repossessions_Hotspots_report_final_17June.pdf.
17 Available at: www.communities.gov.uk/documents/housing/pdf/1939099.pdf.
18 Available at: www.communities.gov.uk/news/corporate/1938982.
19 Available at: www.parliament.uk/briefing-papers/SN06000.
20 Available at: www.parliament.uk/briefing-papers/SN04769.
21 Available at: www.parliament.uk/briefing-papers/SN01080.
22 Available at: www.parliament.uk/briefing-papers/SN06041.
23 Available at: www.parliament.uk/briefing-papers/SN01013.
24 Available at: www.parliament.uk/briefing-papers/SN01127.
25 See: www.publications.parliament.uk/pa/cm201011/cmpublic/energy/110614/pm/110614s01.htm#11061477000276.
26 Available at: www.publications.parliament.uk/pa/bills/cbill/2010-2012/0206/12206.pdf.
27 Available at: http://wales.gov.uk/docs/desh/consultation/110728housingrighttobuyen.pdf.
28 Daniel Fitzpatrick, Hodge, Jones and Allen, solicitors, London.
29 Available at: www.depositprotection.com/documents/prescribed-information-template.pdf.



Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. **The authors are grateful to the colleague at note 28 for the transcript of the judgment.**