

# 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

### Possession claims in the county court

On 1 October 2009, Civil Procedure Rules (CPR) Part 55 (Possession Claims) was amended to require mortgage lenders to give notice to occupiers and local housing authorities when they obtain hearing dates for possession claims against borrowers. The amended CPR Part 55 r55.10 states:

(1) *This rule applies where a mortgagee seeks possession of land which consists of or includes residential property.*

(2) *Within five days of receiving notification of the date of the hearing by the court, the claimant must send a notice to –*

(a) *the property, addressed to ‘the tenant or the occupier’; and*

(b) *the housing department of the local authority within which the property is located.*

(3) *The notice referred to in paragraph (2)(a) must –*

(a) *state that a possession claim for the property has started;*

(b) *show the name and address of the claimant, the defendant and the court which issued the claim form; and*

(c) *give details of the hearing.*

(3A) *The notice referred to in paragraph 2(b) must contain the information in paragraph (3) and must state the full address of the property.*

(4) *The claimant must produce at the hearing –*

(a) *a copy of the notices; and*

(b) *evidence that they have been sent.*

Although the rule provides for notice to be given to ‘the housing department’, lenders have been asked by Communities and Local Government (CLG) to address their notifications to ‘heads of housing’. The housing minister, John Healey MP, has written to all local authority chief executives to indicate that councils will be expected to use the opportunity provided by the notification to

supply homeowners with practical money advice and support (including debt and legal advice), help in obtaining support for mortgage interest, or help in assessment for the Mortgage Rescue Scheme. CLG has also published *Lender notification of repossession proceedings to local authorities. Non-statutory guidance for local housing authorities* (September 2009).<sup>1</sup>

At any mortgage possession hearing taking place after 1 October 2009, the lender’s representative must present a district judge with two copies of the completed *Mortgage pre-action protocol checklist* (Form N123). The new forms are required by a new paragraph 5.5 in the Practice Direction to CPR Part 55.

Advisers should also note that on 1 October 2009, modest revisions were made to the text of the *Pre-action protocol for possession claims based on mortgage or home purchase plan arrears in respect of residential property*. The latest version is available on the Ministry of Justice (MoJ) website.<sup>2</sup>

The work of the county courts last year, including the handling of possession and other claims, is reviewed in *Judicial and court statistics 2008* (Cm 7697, MoJ, September 2009).<sup>3</sup> The figures reveal increases since 2007 in the number of both mortgage arrear and rent arrear possession claims and show that bailiffs repossessed 63,000 properties in 2008. The number of charging order applications (designed to secure debts against property) increased by 25 per cent from 2007 to 165,000. Excluding these cases, only a further 6,100 housing claims were started in the county courts. The statistics for the second quarter of 2009 were released on 24 September 2009: *Court statistics quarterly April to June 2009* (MoJ statistics bulletin).<sup>4</sup>

A new internet facility provided by the National Homelessness Advice Service enables advisers and defendants to find out whether there is a duty scheme operating at any local county court by accessing its ‘County court duty desk search’.<sup>5</sup>

### Help for homeowners

On 24 September 2009, the housing minister called for registered social landlords (RSLs) to increase the help they provide to mortgage borrowers in trouble with repayments. He indicated that, between April and June 2009, 605 households applied to sell and rent back their homes through the government’s Mortgage Rescue Scheme but only 46 received an offer from an RSL. He confirmed that grants made to RSLs to buy and rent back the homes of struggling homeowners had been raised from 55 per cent to 65 per cent of the property purchase price with immediate effect: *John Healey: housing associations must raise their game in the downturn*: CLG news release, 24 September 2009.<sup>6</sup>

On 11 September 2009, the *Government response to the Communities and Local Government Committee’s report on the Department for Communities and Local Government housing and the credit crunch: follow-up* was published (Cm 7695, CLG).<sup>7</sup> The paper outlines the general measures the government is taking to stimulate house-building and assist buyers to obtain mortgages. For those facing repossession, a new easy-access portal to advice has been created by the government on the ‘Directgov’ website.<sup>8</sup>

### Homelessness

*Statutory homelessness: April to June quarter 2009, England* (CLG housing statistical release) was published on 10 September 2009.<sup>9</sup> The report gives the most up-to-date information available on the reasons for applications for homelessness assistance, the characteristics of applicant households, assessments and outcomes, and the number of households in temporary accommodation.

On 4 September 2009, the latest official data was published on homelessness applications made to local authorities in Scotland: *Operation of the homeless persons legislation in Scotland: 2008–09* (Scottish Government, September 2009).<sup>10</sup> It covers the reasons for application, the characteristics of applicant households, assessments and outcomes and information on households in temporary accommodation.

In England, the government’s target is to eliminate rough sleeping by 2012. It has published *Ending rough sleeping by 2012. A self assessment health check* (CLG, September 2009) designed for councils to review what arrangements, interventions and services are in place, assess their current capability to prevent and respond to existing levels of rough sleeping, and explore the need for additional interventions or a separate rough sleeping strategy.<sup>11</sup> The separate

publication *No one left out: communities ending rough sleeping*. Good practice notes: *developing a strategic response to prevent and tackle rough sleeping* (CLG, September 2009) is intended for use by local housing authorities which may not have traditionally experienced high numbers of people sleeping rough, or that have in place significant levels of specialist provision, but which still need to adopt a strategic response to preventing rough sleeping.<sup>12</sup>

In England, the government is on course to achieve its target of a 50 per cent reduction of the number of homeless households in temporary accommodation by 2010. From 1 April 2010, new subsidy arrangements will apply to housing benefits and other financial help with the costs of temporary accommodation provided by local authorities. The changes are foreshadowed in the Income-related Benefits (Subsidy to Authorities) (Temporary Accommodation) Amendment Order 2009 SI No 2580.<sup>13</sup>

The September 2009 issue of the *HAT update* from the Homelessness Action Team at the Tenant Services Authority (TSA) contains items on allocations, illegal occupation, overcrowding and under-occupation, among other topics.<sup>14</sup>

### Housing and domestic violence

On 29 September 2009, the government announced that as soon as parliamentary time allows, new legislation will be introduced to enable the police to initiate Domestic Violence Protection Orders, also known as a 'Go' orders, barring perpetrators of domestic violence from their homes for up to 14 days: *Tough new powers to help victims break cycle of domestic violence*: Home Office press release, 29 September 2009.<sup>15</sup> The new orders will be piloted in two police force areas and further details will be published later this autumn.

### Housing fraud

The Audit Commission has published *Protecting the public purse: local government fighting fraud* (September 2009).<sup>16</sup> The commission has found that housing tenancy fraud could be tying up nearly 50,000 council and housing association properties worth more than £2 billion. Its report considers the key fraud risks and pressures facing local authorities. It identifies good practice in fighting fraud and tackling risks that are often not addressed adequately in relation to housing tenancies.

### Local housing allowance

The Rent Officers (Housing Benefit Functions) Amendment Order 2009 SI No 2459 came into force on 12 October 2009.<sup>17</sup> If a rent

officer is not satisfied that the list of rents for a particular category of property contains sufficient rents to enable a representative local housing allowance to be determined, s/he may now add to that list the rents for dwellings in the same category located in other areas in which a comparable market exists.

### Information about housing and the housing stock

*Housing in England 2007–08* (CLG, September 2009) is the latest and last report from the Survey of English Housing.<sup>18</sup> The survey has now been merged with the English House Condition Survey into the new statistical English Housing Survey. To mark its passing, an historical perspective, *Fifteen years of the Survey of English Housing: 1993–94 to 2007–08* has also been published (CLG, September 2009).<sup>19</sup> The last *English House Condition Survey 2007 annual report* (CLG, September 2009) presents detailed findings from the 2007 survey on the housing conditions and energy performance of the stock.<sup>20</sup>

*Housing association and local authority key findings digest for lettings and sales 2009* (TSA, August 2009) contains the latest information about activity in the social housing sector.<sup>21</sup> *Existing tenants survey 2008. Comparisons by landlord type and over time* (TSA, September 2009) contains a snapshot of the state of tenant satisfaction, and dissatisfaction, in the social housing sector.<sup>22</sup> The survey team found that 80 per cent of social housing tenants believe being a tenant of a housing association, local authority or arms length management organisation is better than owning a home or renting from a private landlord and that 92 per cent of shared owners have not increased their equity share since purchasing their property (and 25 per cent have been living in their home for at least ten years).

## HUMAN RIGHTS

### Article 1 of Protocol No 1: security of tenure and rent control

#### ■ Gauci v Malta

*App No 47045/06*,  
15 September 2009

Mr Gauci owned a flat. From 1975 to 2000 it was let under a 25-year agreement. When that expired, the tenants were asked to leave. They then exercised their right to a statutory tenancy under a 1979 Act. Under that Act the maximum rent payable was approximately €420 per year. The market rent was around €280 per month. Mr Gauci discovered that the tenants had other accommodation and he

wanted the flat back for his daughter. However, under the 1979 Act he had no ground for possession. The tenants were likely to remain indefinitely and the tenancy carried succession rights. He complained that his right to his enjoyment of his flat had been lost contrary to article 1 of Protocol No 1 of the European Convention on Human Rights.

The European Court of Human Rights found that there was a breach of article 1 of Protocol No 1. It held that the rent and security of tenure provisions of the 1979 Act cast a disproportionate and excessive burden on Mr Gauci. He had no procedural means to get back his flat, the tenancy could run on indefinitely with no certainty that he could ever recover possession, and meanwhile the tenants were only paying an exceptionally low rent. The court awarded over €16,000 compensation for his loss to date and costs.

## PUBLIC SECTOR

### Possession claims: rent arrears Local Government Ombudsman Complaint

#### ■ Luton BC

*07/B/10865*,  
27 August 2009

Ms Salt became a secure tenant in 1999. She had mental health problems. Several incidents of abusive and threatening behaviour by her were recorded by council staff and contractors. In February 2007, the council obtained a county court injunction forbidding her from using or threatening violence and from acting in a threatening, abusive or insulting way in the housing office or the area around her home. There was also a history of rent arrears. The council obtained a suspended possession order and a number of warrants were suspended. In July 2007, when her arrears were just over £800, she was evicted and the council put her possessions into storage.

Ms Salt complained to the Local Government Ombudsman that the council had unfairly evicted her because the rent arrears were created by an incorrect calculation of housing benefit entitlement, and that the council did not delay the eviction until after the outcome of her appeal against this was known. As a result of the eviction, she and her daughter were made homeless and had to stay with friends, sleep in her car, and return briefly to Ms Salt's violent ex-partner. Many of their belongings were not easily accessible from the time of the eviction until Ms Salt was offered accommodation again in May 2008.

The Ombudsman found that the council had incorrectly filed Ms Salt's application to review its decision about her housing benefit:

that was maladministration. If the council had properly recorded this information, the housing team would have discovered that a benefit review decision was pending when it did its final cross-check before eviction. This should have prevented the eviction from taking place on the ground of rent arrears.

Most significantly, the Ombudsman saw no evidence that the council weighed in the balance Ms Salt's vulnerability, its statutory duty towards children and families, or the concerns of its own social services staff and medical professionals about her housing situation, when taking its decision to evict. The council should have considered whether it could reasonably take steps to assist Ms Salt to overcome her debt problems. If the council had done so, it would have uncovered her underlying entitlement to housing benefit. The Ombudsman recommended that, to remedy the injustice caused by its maladministration, the council should apologise and pay Ms Salt compensation of £5,000.

### **Anti-social behaviour** **Anti-social behaviour injunctions**

#### ■ **Swindon BC v Redpath**

[2009] EWCA Civ 943,  
11 September 2009

Mr Redpath was a secure tenant. In 2003, a neighbour reported him to the police for driving when under the influence of alcohol. He was arrested and imprisoned. On his release from prison, he pursued a campaign of harassment against the neighbour and his partner. It included threats towards them and damage to their property. As a result, in 2005 the council, Mr Redpath's landlord, obtained a suspended possession order. He breached that order. In 2006, the suspension was lifted and he was evicted. At the same time, the court granted an anti-social behaviour injunction (ASBI) prohibiting him from engaging in anti-social behaviour or entering the cul-de-sac where he used to live. He breached the ASBI and in 2007 he was committed to prison for eight months. The judge granted a second, similar ASBI. After his release, there were six further incidents and HHJ Wade granted a third ASBI, this time under Housing Act (HA) 1996 s153A. HHJ Wade was satisfied that, even though Mr Redpath had ceased to be a council tenant, there was a sufficient nexus between Mr Redpath, his conduct, his victims and the council for the conduct to be 'housing-related' within the meaning of s153A, which provides that "'housing-related" means directly or indirectly relating to or affecting the housing management functions of a relevant landlord'. Mr Redpath appealed.

The Court of Appeal dismissed the appeal. Rix LJ said that Mr Redpath's conduct had to

be viewed as a whole: 'Viewed as a whole ... the council's housing management functions easily embrace its sense of responsibility to its continuing tenants and also to owner-occupiers [in the cul-de-sac] for the conduct of its former tenant, ... who has pursued his vendetta against his former neighbours irrespective of the loss of his tenancy' (para 55). Lord Neuberger said that it was clear that the definition was intended 'to have a broad sweep' (para 62). He said that 'housing-related' conduct 'can clearly be engaged in by someone who is not a tenant or an occupier of property owned by the relevant landlord; equally, it can be engaged in by someone who neither resides nor works within the area in which the conduct occurs' (para 64).

### **Landlord's duty** **Public Services Ombudsman for Wales** **Complaint**

#### ■ **Cardiff CC**

200702358,  
14 August 2009

Miss Brown was a council tenant living in a high-rise block. She and her partner complained that they had been subjected to anti-social behaviour, including amplified music and threatening behaviour from a neighbour, also a council tenant, for a period of six years. They complained to the council repeatedly and completed nuisance diaries as requested. They said that the council did not communicate with them adequately and different sections involved with the complainant did not work together. They said that initially the neighbour would have had an introductory tenancy and they could not understand why he had not been evicted early on in his occupation or subsequently after the complaints became more serious in nature and he received a criminal conviction. The perpetrator of the nuisance was transferred by the council in October 2008, for reasons unconnected with the complaints against him. However, he remained in close proximity and Miss Brown and her partner continued to live in fear.

In view of an earlier Ombudsman report on Cardiff made in January 2007 dealing with unaddressed anti-social behaviour for periods extending into years, the Ombudsman for Wales was concerned that further failings in the council's response to anti-social behaviour had been identified. He recommended that the council should transfer Miss Brown and her partner to suitable alternative accommodation, apologise for the failings and pay her £7,500 in recognition of the difficulties they had experienced. He also recommended that the council should revise its procedures for dealing with anti-social behaviour to take

account of human rights and homelessness considerations, and should provide further training to its staff on sanctions for anti-social behaviour, including demotion of secure tenancies and termination of introductory tenancies.

## **PRIVATE SECTOR TENANCIES**

### **Tenants' deposits**

#### ■ **Da Costa v Pinter**

*Bromley County Court,*  
*April 2009*

The claimants were assured shorthold tenants of a flat. The tenancy agreement provided for a rent of £1,950 a month and stated: 'Payment required in advance of £4,200'. After the claimants left in December 2007, by amended Particulars of Claim, they sought the return of a deposit of £2,250 and the additional sum of £6,750 under HA 2004 s214(4). In July 2008, after the issue of proceedings, the sum of £2,250 was placed in an authorised tenancy deposit scheme.

District Judge Burn was satisfied that the £2,250 paid in autumn 2007 was a deposit. The agent's own invoice described it as such. There was accordingly a breach of s213 since the deposit was not paid into a recognised tenancy deposit scheme within 14 days of receipt. She was satisfied that there was non-compliance with the 'initial requirements' of a tenancy deposit scheme (s214(1)(a) and s214(2)(a)). The ss213 and 214 remedies applied. She gave judgment for the sums of £2,250 and £6,750. She stated:

*The purpose of the Act is to try to ensure that landlords secure tenancy deposits in a recognised deposit scheme at the start of the tenancy, so that the deposit can be returned to tenants quickly when the tenancy ends, and that disputes about the deposit can be resolved under the schemes' procedures without the need for court proceedings. Landlords who describe a deposit as something else, who do not secure it promptly in a deposit scheme as required by the Act, then fail to return the deposit when the tenant leaves (especially if this is without good cause, thereby forcing the tenant to start court proceedings to recover the money) but who then at the last minute after the tenant issues proceedings, pay the deposit into a scheme, are clearly flouting the spirit of the legislation and, on my interpretation, the letter also. If the s213 and s214 remedies are not applied in a case such as the instant one, the Act would be rendered virtually toothless when landlords flout its provisions.*



## HOUSING ALLOCATION

### ■ **R (Fidelis-Auma) v Octavia Housing and Care**

[2009] EWHC 2263 (Admin),  
26 June 2009

The claimant was an assured tenant of a housing association flat. She applied for a transfer. The association had a housing allocation scheme which recognised priority by bands. The claimant was placed in non-priority Band D. She claimed that she was entitled to a higher priority by reason of her medical condition and her experience of nuisance from neighbours. On review, the association confirmed its decision to offer no higher priority. The claimant did not challenge the lawfulness of the association's policy, but sought judicial review of its failure to accord her greater priority and of its letting of a vacant flat in the same block as her own to a new applicant (with Band A priority) rather than to her.

Dismissing a renewed application for permission to seek judicial review, Kenneth Parker QC, sitting as a deputy High Court judge, held that:

- the court had no jurisdiction because the decisions of the association were made under its own transfer scheme and were not amenable to judicial review;
- the claim was academic because the particular vacant flat the claimant wanted had since been let and there were no grounds available to the association or the court on which to oust the new tenant;
- the association had lawfully and reasonably applied its allocation policy; and
- there had been substantial delay in bringing the claim.

## HOMELESSNESS

### Eligibility

#### ■ **Moreno v Hackney LBC**

*Mayors & City of London County Court*,  
9 January 2009<sup>23</sup>

The claimant, a Spanish national, had lived in the UK from 1992. He worked between 2002 and 2004. Thereafter, he received welfare benefits, most recently incapacity benefit. On an application for homelessness assistance (HA 1996 Part 7), Hackney decided that the claimant was a person from abroad who was ineligible for assistance because he was not a worker and was not exercising a treaty right (HA 1996 s185(3) and the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI No 1294 reg 4(1)(b)). On review, Hackney was not satisfied that the claimant was temporarily unable to work for the purposes of the Immigration

(European Economic Area) Regulations (I(EEA) Regs) 2006 SI No 1003 reg 6(1)(b) because he had not been working for four years (reg 6(2)(b)(ii)). The claimant appealed: HA 1996 s204.

HHJ Matheson QC allowed the appeal. Hackney had misdirected itself in law in failing to consider I(EEA) Regs reg 6(2)(a) and whether the claimant remained an eligible person because he was temporarily unable to work by reason of illness. Hackney had also failed to consider whether the claimant's medical treatment would enable him to return to work. It had been wrong to conclude that there was no evidence that the claimant had left his employment for medical reasons when there was a medical report raising this possibility.

### Intentional homelessness

#### ■ **Kendall v City of Westminster**

*Central London County Court*,  
14 May 2009<sup>24</sup>

The claimant had a long history of drug abuse and addiction, particularly to crack cocaine, which came to an end in 2007. On the claimant's release from custody in July 2008, she applied to Westminster for homelessness assistance: HA 1996 Part 7. The council decided that the claimant's last settled accommodation had been a housing association property from which she had been evicted in 2002 for rent arrears. It also decided that she had become homeless intentionally. The claimant explained that she had failed to deal with housing benefit and other matters at that time because of her chronic drug addiction. On an appeal she relied on Code of Guidance para 11.17 which reads:

*Generally, an act or omission should not be considered deliberate where:*

- iii) *the act or omission was the result of limited mental capacity; or a temporary aberration or aberrations caused by mental illness, frailty, or an assessed substance abuse problem;*

HHJ Mitchell allowed an appeal. The council had wrongly failed to take the Code of Guidance into account given that the conduct of the claimant in 2002 suggested aberrant conduct arising from drug addiction. Westminster had also failed to consider whether her omission to pay rent had been 'deliberate' in the sense that she may have acted in ignorance of relevant facts but in good faith: HA 1996 s190(1).

#### ■ **Adekunle v Islington LBC**

*Mayors & City of London County Court*,  
18 August 2009<sup>25</sup>

In 2003 the claimant exercised her statutory right to buy and bought her property with the

assistance of a mortgage. The purchase price, after discount, was £137,000. She had a mortgage advance of £150,391. In 2005 she completed a remortgage for £211,500. The previous advance was cleared and the balance was used to consolidate debts. She fell into arrears with the new mortgage repayments. In 2006 the home was sold realising only £11,000 equity. She applied for homelessness assistance.

On review, Islington decided that she had become homeless intentionally because she had deliberately sold her home when it was still reasonable for her to occupy it: HA 1996 s191(1). The reviewing officer wrote:

*In your case you did not lose your home as the result of mortgage arrears. As stated previously above, you were under no threat of possession proceedings. You made a conscious and deliberate decision to sell your home in order to extricate yourself from financial difficulties. You could therefore have continued to reside at your property and at the date at which you decided to sell your property I am still of the opinion that it would have been reasonable for you to do so despite your precarious financial circumstances ... The above indicates to me that, far from being in a position of utter financial desperation ... you did have funds with which to meet these commitments but that you chose to use the available funds in the manner in which you did.*

HHJ Matheson QC allowed an appeal and substituted a finding that the claimant was unintentionally homeless. He said:

*A strictly literal reading of [HA 1996 s191] might be said to lead to the conclusion that if a person makes a conscious decision, eg, to sell his home, then that fact alone has the consequence that he will be found to have 'done' something 'in consequence of which he ceases to occupy accommodation which is available for his occupation'. But this ignores the fact that a person may find himself in a situation in which there is no realistic alternative ... my reading of the [review] letter ... leads me to the conclusion that [the reviewing officer] proceeded on the basis that the mere making of the conscious decision I have described, without more, was of itself enough to establish 'intentional homelessness' and in that respect I think that that view was mistaken and wrong.*

**Accommodation pending review****■ R (Gebremariam) v City of Westminster**

[2009] EWHC 2254 (Admin),  
20 August 2009

The claimant was a refugee. While she was an asylum-seeker she was accommodated in Wales by the National Asylum Support Service (NASS). When granted refugee status, she left the NASS accommodation and rented privately in Cardiff. When later reunited with her four children, she gave up her rented one-bedroom flat and applied to Westminster for homelessness assistance: HA 1996 Part 7. She said that she wanted to live in London because it contained more members of her Orthodox church and her ethnic minority community.

Westminster accepted that it would have owed the main housing duty (HA 1996 s193) but it made a local connection referral to Cardiff which was accepted by that council. The claimant applied for a review of that referral decision and, pending the review, asked for interim accommodation under HA 1996 s200(5). Westminster declined that request and the claimant sought judicial review and an interim injunction.

Cranston J refused permission to seek judicial review and interim relief. He held that:

■ Westminster had considered all the factors raised by the claimant and relevant to its exercise of discretion;

■ it had correctly directed itself in accordance with the guidance on accommodation pending review provided by *R v Camden LBC ex p Mohammed* [1997] 30 HLR 315; and

■ it had reached a lawful decision not to provide accommodation while it conducted the review not least because it had been satisfied that Cardiff would provide accommodation and that there was an Orthodox church in that city which the claimant and her children could attend.

**Securing accommodation****■ Villiers v Lewisham LBC**

Central London County Court,  
12 January 2009<sup>26</sup>

Lewisham accepted that the main housing duty was owed to the claimant (HA 1996 s193). She was provided with temporary accommodation and encouraged to bid for properties when the council adopted a new choice-based lettings allocation policy. The claimant made a number of unsuccessful bids. After six months, Lewisham made her a direct final offer of accommodation under HA 1996 Part 6, and when she failed to accept it, treated its duty owed to the claimant as discharged: s193(7). In the course of his

review of that decision, the reviewing officer expressed concern in an e-mail that the claimant may not have been aware of the direct offer aspect of the allocation policy, but ultimately he upheld the decision.

HHJ Collender QC allowed an appeal and varied the decision to one that the council's duty had not been discharged. The failure to apprise the claimant of the policy of making a direct single offer after six months may well have caused prejudice. Had the claimant known of it, she may have bid more vigorously and for a wider range of properties in the six months and may have accepted the direct offer. The reviewing officer had been right to consider that the failure to inform was material and had erred in law in not dealing with the point in reaching his decision.

**HOUSING AND CHILDREN****■ R (A) v Leicester City Council and Hillingdon LBC**

[2009] EWHC 2351 (Admin),  
30 July 2009

The claimant, a teenage girl, arrived unaccompanied in the UK and sought asylum. After a period in detention, she was released into the care of Hillingdon. It immediately provided accommodation, but then Ms A told social workers that she wished to live with a particular family in Leicester. She voluntarily left Hillingdon and went to live with that family. When that arrangement broke down, she applied again for accommodation under Children Act 1989 s20. Both authorities declined to assist, indicating that the other owed the necessary duty.

On a claim for judicial review, HHJ Farmer QC declared that the duty owed by Hillingdon had not been brought to an end and that, in view of what happened, Leicester had also become subject to a duty. Concurrent duties were owed and both authorities had been in breach of their duties.

**■ R (NA) v Croydon LBC**

[2009] EWHC 2357 (Admin),  
18 September 2009

The claimant entered the UK as an unaccompanied minor seeking asylum. He sought accommodation and other assistance from the council claiming that he was 15 and producing an Afghan identity card to that effect. The council concluded that he was probably over 17 and that assessment was upheld on review.

On a claim for judicial review, Blake J quashed the assessments. The review decision had been delayed in breach of the council's procedures and it had been conducted unfairly. No concerns about the identity document had been put to the

claimant and no adult had accompanied him to the review interview. The initial assessment had been flawed by a mistake about the identity card and undue reliance on the claimant's physical appearance.

For a recent case in which an age assessment was upheld see: *R (MT) v Hillingdon LBC* [2009] EWHC 2402 (Admin).

- 1 Available at: [www.communities.gov.uk/documents/housing/pdf/1346182.pdf](http://www.communities.gov.uk/documents/housing/pdf/1346182.pdf).
- 2 See: [www.justice.gov.uk/civil/procrules\\_fin/contents/protocols/prot\\_mha.htm](http://www.justice.gov.uk/civil/procrules_fin/contents/protocols/prot_mha.htm).
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- 26 Tracey Bloom, barrister, London.

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