7 Available at: www.justice.gov.uk/downloads/legal-aid/funding-code/lord-chancellors-guidance.pdf.
8 Available at: www.justice.gov.uk/downloads/legal-aid/funding-code/chancellors-guide-exceptional-funding-non-inquests.pdf and www.justice.gov.uk/downloads/legal-aid/funding-code/chancellors-guide-exceptional-funding-inquests.pdf respectively.
9 Available at: www.justice.gov.uk/downloads/legal-aid/funding-code/evidence-requirements-for-private-family-law-matters.pdf.
10 Available at: www.justice.gov.uk/downloads/legal-aid/funding-code/guidance-reporting-controlled-work.pdf.
11 *The standard terms 2013*, available at: www.justice.gov.uk/downloads/legal-aid/civil-contracts/standard-terms-2013.pdf.
12 *2013 standard civil contract: specification*, available at: www.justice.gov.uk/downloads/legal-aid/civil-contracts/2013-standard-civil-contract-general-specification.pdf.
13 Sample *2013 standard civil contract schedule*, available at: www.justice.gov.uk/downloads/legal-aid/civil-contracts/final-draft-schedule-2013.pdf.

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Recent developments in housing law

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

POLITICS AND LEGISLATION

Legal aid for housing cases

Since 1 April 2013, legal aid help in housing cases has only been available from holders of a 2013 Standard Contract (or a varied 2010 Standard Contract) issued by the former Legal Services Commission (now the Legal Aid Agency). In 2012/13, there were 533 suppliers with contracts to undertake casework in housing law but 828 suppliers bid successfully for contracts for 2013/14.[1]

As the bid round was non-competitive, the available work (in the form of 51,889 'matter starts') will have been distributed among as many of those bidders as passed the self-verification exercise and accepted the offered contract.

The increased interest in providing legal aid services for housing law may have been stimulated by the retention within the scope of legal aid of most housing cases: Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 Sch 1. However, legal aid will only be available in those cases meeting the criteria specified in new regulations: the Civil Legal Aid (Merits Criteria) Regulations 2013 SI No 104. Guidance on how to apply the criteria has been issued by the Lord Chancellor: *Lord Chancellor's guidance under section 4 of Legal Aid, Sentencing and Punishment of Offenders Act 2012*.[2]

Some housing cases otherwise excluded from scope might be covered by the new 'exceptional funding' arrangements in LASPO Act 2012 s10. For guidance as to how that category operates, see *Lord Chancellor's exceptional funding guidance (non-inquests)*.[3]

The new (higher) rates for experts in housing disrepair cases, for which the Housing Law Practitioners Group pressed successfully, are set out in The Civil Legal Aid (Remuneration) Regulations 2013 SI No 422.

Housing cases in the county courts

The latest amendments to the Civil Procedure Rules (CPR) took effect on 1 April 2013: the Civil Procedure (Amendment) Rules 2013 SI No 262. They make fundamental changes to the rules on costs as recommended by Lord Justice Jackson's *Review of civil litigation costs*. Numerous other amendments are made to the handling of multi-track and other civil cases. The small claims track limit (below which costs cannot usually be recovered) has been doubled from £5,000 to £10,000. A swathe of new CPR Practice Directions (and amendments to Practice Directions) accompany the changes: *61st update – practice direction amendments* (Ministry of Justice (MoJ), April 2013).[4]

Although the number of mortgage possession claims issued in the county courts continues to fall, the recent increase in possession claims by landlords is continuing. In the last three months of 2012, 38,934 landlord possession claims were issued in England and Wales: equivalent to over 3,250 every month, or more than 100 a day: *Statistics on mortgage and landlord possession actions in the county courts in England and Wales: October to December 2012* (MoJ, February 2013).[5] In the same period, over 8,660 warrants for possession, generated by landlord possession claims, were actually executed by county court bailiffs.

Housing benefit in social housing

The new size criteria elements of the housing benefit (HB) scheme were applied to working-age social housing tenants on 1 April 2013: the Housing Benefit (Amendment) Regulations 2012 SI No 3040. They are expected to lead to benefit reductions for 660,000 households with one or more spare bedrooms. The detail is explained in HB/CTB Circular A4/2012 *Housing benefit size criteria restrictions for working age claimants in the social rented sector from 1 April 2013*.

The National Housing Federation (NHF) has published an information leaflet for tenants about this and the other main HB changes, describing who will be affected and how tenants can get help and advice: *What you need to know about changes to housing benefit* (NHF, February 2013).[6] The House of Commons Library has published a helpful policy briefing on the issue: *Under-occupation of social housing: housing benefit entitlement*

SN/SP/6272 (25 March 2013).[7]

The NHF has also published research commissioned from the University of Cambridge and Ipsos MORI considering the likely impact of these and other welfare reforms on housing association landlords: *Impact of welfare reform on housing associations* (NHF, January 2013).[8]

Direct payment of housing benefit

Several local housing authorities have been participating in demonstration projects designed to test the new arrangements for payment of universal credit (including the housing costs element) directly into the bank accounts of tenants, on a monthly basis. Southwark identified 2,000 tenants to take part in its area (1,500 council tenants and 500 tenants of Family Mosaic housing association). Its key findings were that:

- only 60 per cent of the 2,000 tenants were successfully moved onto the pilot scheme;
- 11 per cent refused to take part or were unable to engage with the council;
- 14 per cent were later deemed too vulnerable to take part; and
- there was a lack of understanding about personal finance among some tenants and others were unable to obtain a bank account.[9]

Based on these findings, the council has projected that its rent arrears for council tenants could increase by £14m when direct payment is implemented borough-wide. The estimated additional administrative cost will be in excess of £400,000 per year.

A similar situation has been reported by Wakefield. Its chief executive told a parliamentary committee that:

Overall, we have seen an increase in debt to about 11% of the debit, which normally on 31,000 properties is 2.9%. People who came into the demonstration pilot with no arrears now have an average of £180 debt going forward. On arrears cases, we used to make five, six or eight visits; now it is 40 visits in each particular case. One thing that is not understood is that the cost of administration of the system by the landlord, which could be an extra £3 million to £5 million of bureaucracy, is being borne by full and partial rent-payers.[10]

The House of Commons Library has published a helpful policy briefing on the issue: *Paying the housing element of universal credit direct to tenants in social rented housing* SN/SP/6291 (18 March 2013).[11] The Chartered Institute of Housing has issued *How to ... manage income collection effectively* (CIH, February 2013).[12]

Social landlords are being encouraged to ensure maximum income recovery after the move to direct payments: see, for example, Matthew Hennessy-Gibbs 'Cash is king', *Inside Housing*, 22 February 2013.[13]

Every HB authority is being allocated additional central government funding to meet some of the administrative costs of the impact of the various reforms to HB being introduced during 2013. This includes £4m in respect of the impact of the social housing size criteria. The details of the allocation to each local authority are given in Department for Work and Pensions Circular HB/CTB S2/2013 *Additional funding to meet the costs of implementing welfare reform changes in 2012/13*.[14]

Housing and anti-social behaviour

The draft Anti-social Behaviour Bill has completed its pre-legislative scrutiny by the House of Commons Home Affairs Select Committee. Its report states that current timescales for court proceedings do not reflect 'the misery caused by ASB [anti-social behaviour]' and the committee recommended abandoning the shift of remedies into the county court because:

We heard that this was likely to severely slow down the process for dealing with ASB as county courts are under pressure from reduced staffing and more litigants in person because of the reduction in eligibility to civil legal aid. County courts were also likely to be further away for victims to attend: (House of Commons Home Affairs Committee. The draft Anti-social Behaviour Bill: pre-legislative scrutiny. Twelfth Report of Session 2012–13).[15]

Private rented sector

A major new report on the private lettings market by the Office of Fair Trading (OFT), based on an analysis of nearly 4,000 complaints made by people renting a home as well as those letting out a property, has identified several consumer protection issues: *The lettings market: an OFT report* (February 2013).[16] The OFT found that both tenants and landlords were concerned about fees and charges levied by agents, poor service provided and that 'surprise' charges were introduced or 'drip-fed' once contracts have been signed. The report sets out a number of recommendations for government, industry, enforcers and others in order to make the lettings market work better for tenants.

HUMAN RIGHTS

Article 8

■ Lazarenko v Ukraine

App No 27427/02,
11 December 2012

The applicants were tenants of a housing department flat. They moved abroad. The relevant legislation provided that the right to occupy would be lost in cases of absence exceeding six months (subject to exceptions). On a claim for possession, a court made a possession order because the applicants had been absent for more than six months and there was no good reason to extend the period. Appeals against that order were dismissed. The applicants complained to the European Court of Human Rights that their right to respect for their home (article 8) had been infringed.

The complaint was declared inadmissible. The domestic courts had applied the relevant legislation and considered the reasons for absence and the applicants' circumstances. Although there had been no explicit reference to the proportionality of eviction, the court itself did not consider that eviction could be said to be disproportionate in all the circumstances of the case.

POSSESSION CLAIMS

Secure tenants

■ Brent LBC v Tudor

[2013] EWCA Civ 157,
6 March 2013

Ms Tudor's mother was a secure tenant of a six-bedroom property. She died in March 2009. As a member of the tenant's family who resided with the tenant throughout the 12-month period ending with the tenant's death, Ms Tudor was entitled to succeed to the tenancy under Housing Act (HA) 1985 s89. The council sought possession under Schedule 2, Ground 16 arguing that the accommodation afforded by the property was 'more extensive than is reasonably required by the tenant'. At trial, HHJ McDowell found that the property was reasonably needed to accommodate Ms Tudor's brother and two of his children, as well as herself, and her disabled brother. The council appealed.

The Court of Appeal dismissed the appeal. The judge had correctly identified the legal test as whether, at the date of the hearing, there had been genuine occupation of the property by Ms Tudor's brother and children. Although he did not set out the reasons for his findings in an ordered manner or deal with the implications of his rejection of important parts of the brother's evidence in a way that was understandable without extensive recourse to the underlying documentary material, on the evidence before him, it was open to him to reach the conclusion he did.

■ Paragon Housing Association v Manclark

[2013] ScotSC 11,
8 February 2013

The defendant was a secure tenant suffering from paranoid schizophrenia. She could not

maintain her home. The garden was overgrown, weed-ridden and full of rubbish. Inside the home, internal doors had been removed or damaged, glazing to doors and windows had been smashed and boarded up, and the interior was dirty, cluttered and malodorous. The property was an eyesore, acting as a magnet for anti-social behaviour. The defendant would not co-operate with agencies attempting to help her, or allow access. A move to more suitable sheltered housing had been arranged, but was cancelled by the defendant. The housing association sought possession relying on the discretionary ground relating to 'waste'.

Sheriff K J McGowan found that the ground was made out and that it was reasonable to order possession.

■ Croydon LBC v Massoud

[2012] EWCA 1827,
6 December 2012

In June 2005, a council tenant travelled to Burundi. In her absence, a transfer request was approved. The council agreed that her son could sign the tenancy agreement for the new premises in her absence. Without returning to the UK, the tenant died in November 2005. The son claimed that he had succeeded to the new tenancy as he had lived with the tenant at her former home and had moved into the new property. HHJ Ellis found that the succession conditions in HA 1985 s87 were not met because the son had not resided with the tenant for 12 months before her death.

McFarlane J refused permission to appeal. There was no prospect of the court disturbing the judge's findings of fact.

Assured shorthold tenants: deposits

■ Malik v Brohier

Bow County Court,
25 October 2012[17]

In December 2004, the defendant was granted a fixed term assured shorthold tenancy of a self-contained house. She paid a deposit of £996. The tenancy was extended several times by agreement. The latest tenancy was granted on 11 September 2007 for a fixed term of six months. On the same date, the claimant served a HA 1988 s21 notice, expiring on 10 March 2008. At the expiry of the fixed term, a statutory periodic tenancy arose. The claimant landlord retained the deposit throughout, but did not protect it, saying that since he had received it before 6 April 2007 (when HA 2004 Part 6 came into force), he did not believe that he was obliged to protect it. In May 2011, the claimant issued a claim for possession relying on the section 21 notice. The defendant filed and served a defence and counterclaim arguing inter alia that the deposit had not been protected. At trial, she withdrew her claim for section 214 damages because by that time the deposit had been protected.

Deputy District Judge McConnell was satisfied that the claimant had received the deposit on 11 September 2007, when the new tenancy agreement was entered into. He had not protected it at that date and so the section 21 notice served on the same day was not valid (HA 2004 s215(3)). The claim for possession was dismissed.

Non-secure tenants

■ Fareham BC v Miller

[2013] EWCA Civ 159,
6 March 2013

In 2009, the council accepted that Mr Miller, a 30-year-old man with a long history of persistent criminal offending, was homeless and in priority need and that he had not become homeless intentionally. He was granted a non-secure tenancy under HA 1985. In 2011, other tenants complained about the behaviour of another man living in the flat. In April 2011, while Mr Miller was serving a prison sentence, the council served a notice to quit. In May 2011, a housing officer met Mr Miller's probation officer and a representative from the Drug Intervention Programme and agreed to give him another chance. The conditions for his release on licence were tightly drawn so as to require him to live at the flat alone. However, the flat became a 'running sore of criminal behaviour which … so upset some of the neighbours that they have requested anonymity in respect of their complaints for fear of reprisals [and] made their lives intolerable' (para 15). The council claimed possession, relying on the April 2011 notice to quit. Mr Miller served a defence denying that he had committed any breaches of the tenancy agreement. He also raised an article 8 defence based on his vulnerability as an ex-offender and drug addict. Recorder Wood dismissed the claim for possession. He was satisfied that service of the notice to quit was a reasonable and proportionate exercise of the council's powers of estate management having due regard to its duty under the HA, but that 'the correct legal interpretation of the events that happened … [was] that, the notice [to quit was] revoked [and] the tenancy was reinstated in its original terms' (para 28).

The Court of Appeal allowed the council's appeal and made a possession order. First, as a matter of law, it was impossible for the council to revoke the notice to quit. The May decision to give Mr Miller another chance was never more than a conditional one and, once he had reoffended, the council decided to press ahead with its claim for possession. Second, the grant of a non-secure tenancy to a homeless person did create article 8 rights which were necessarily engaged by any decision of the local authority to seek possession. The corollary to this was that a local authority faced with such a challenge was required to give reasons for its decision to seek possession so that the court, in conducting a proportionality review, could decide whether an order was justified.

It was for the tenant to raise the proportionality challenge by way of defence and to establish a seriously arguable case that his/her own circumstances overrode the particular exercise by the council of its public responsibility to manage the available public housing stock for the benefit of the community as a whole. Only in exceptional cases is it possible for the tenant's personal circumstances to establish a claim to maintain a home under his/her existing tenancy.

The Court of Appeal was not persuaded that Mr Miller had a defence to the possession claim on either *Wednesbury* or article 8 grounds. Although his personal circumstances needed to be seriously considered, they did not raise a sufficiently compelling case as to require a full-blown proportionality review.

Boats

■ Moore v British Waterways Board

[2013] EWCA Civ 73,
14 February 2013

Mr Moore owned several vessels (including one which he occupied as his home) moored long term in the tidal part of the Grand Union Canal, adjacent to his riparian land. The British Waterways Board (BWB) gave notice that the vessels were moored 'without lawful authority' within the meaning of the British Waterways Act 1983 and requiring that he remove them. Hildyard J found that Mr Moore had not demonstrated any right under the general law to moor vessels permanently, either in association with his riparian ownership or possession, or otherwise and that therefore they were present 'without lawful authority'.

The Court of Appeal allowed Mr Moore's appeal. Although the rights of the riparian owner did not include a right permanently to moor vessels, the BWB had failed to establish that Mr Moore was doing anything unlawful. Absent some infringement of statute or common law (eg, trespass or nuisance) what a person did was 'lawful'. 'England … is not a country where everything is forbidden except what is expressly permitted; it is a country where everything is permitted except what is expressly forbidden' (para 38). The notices were quashed.

Costs

■ Munu v Southwark LBC

[2012] EWCA 1874,
18 December 2012

The council sought arrears of rent and a possession order against their tenants Mr and Mrs Munu. The tenants counterclaimed for breach of the covenant of quiet enjoyment and for disrepair. The trial took between two and three weeks of court time, with allegations and counter-allegations on each side. The arrears of rent were proved to be £1,172.82. HHJ Matheson QC made a conditional order for possession suspended for 18 months, requiring the tenants to pay £10 per week towards the arrears. He awarded damages of £5,750 on the counterclaim. Each of the tenant's three children was awarded £500. The damages did not extinguish the claim because there were also earlier orders for costs against the tenants, but the totals broadly balanced. HHJ Matheson QC made no order for costs on the claim and counterclaim. The tenants sought permission to appeal against the orders for possession and costs.

Maurice Kay LJ refused a renewed application for permission. On the facts, the tenants had a bad payment history and a conditional possession order was justified. The costs order broadly reflected the 'score draw' outcome of the litigation (para 2). An appeal would have no real prospect of success.

LONG LEASES

Service charges

■ Morshead Mansions Ltd v Mactra Properties Ltd

[2013] EWHC 224 (Ch),
15 February 2013

The claimant was the lessee of 19 flats in a block. The leases provided that, as soon as practicable at the end of each accounting year, the landlord must provide an '… account of the Expenses and the Service Charge … such account to be certified by the Landlord's auditors …' The claimant brought a claim against the freeholder seeking accounts of the expenses and service charges payable under the leases. The freeholder argued that it had not been 'reasonably practicable' to provide them. The lessee denied that the lease required detailed accounts and contended that a simple list of expenses would be sufficient. HHJ Bailey made an order for production of the accounts. The freeholder appealed.

Warren J held that, on a true construction of the leases, full accounts were not required. The freeholder had to show what had been paid or had become due for payment and what service charge income had been received. There was no requirement to produce anything more detailed. Such accounts should be produced.

■ Rey-Ordieres v Lewisham LBC

[2013] UKUT 14 (LC),
8 January 2013

The applicant was a leaseholder on the Brockley Estate. The council entered into an agreement with a contractor for the renovation of the estate (which comprised 500 leased properties and 1,300 tenanted homes) as part of a private finance initiative arrangement. The applicant and 23 other leaseholders applied to a Leasehold Valuation Tribunal (LVT) for a declaration that the service charges levied for 2007–09, in consequence of the works, were unreasonably high. The LVT found that the works had been reasonably undertaken but disallowed certain management fees and 'on-costs'.

On appeal, the council argued that an LVT could not go behind the terms of a public procurement contract which had been subject to competitive tendering. The Upper Tribunal rejected that submission. The contract terms were only persuasive evidence on the point.

ANTI-SOCIAL BEHAVIOUR ORDERS

■ Pender v DPP

[2013] EWHC (Admin),
23 January 2013

A magistrates' court made an anti-social behaviour order (ASBO) against Mr Pender. On his appeal to the Crown Court, he argued that no ASBO should have been made because he lacked capacity to understand any of its requirements or comply with them. He relied on medical evidence to that effect. The appeal was dismissed in the Crown Court, but he appealed to the High Court.

The Divisional Court allowed that further appeal. The real issue was whether Mr Pender had capacity to comply with the prohibitions in the order. The medical evidence had clearly been that he could not. No adequate reasons had been given in the Crown Court for not accepting that evidence. The ASBO was quashed.

CRIMINAL OFFENCES

■ R v Sumal & Sons (Properties) Ltd

[2012] EWCA Crim 3109,
18 December 2012

The defendant property company succeeded in some aspects of its appeal against a sentence for failing to hold a house in multiple occupation (HMO) licence under HA 2004 (see [2012] EWCA Crim 1840; October 2012 *Legal Action* 34). The Court of Appeal refused permission to appeal to the Supreme Court, but certified this question of general public importance: 'May rental income from a property which is unlicensed contrary to section 95(1) of the Housing Act 2004 be a person's benefit as being property obtained as a result of or in connection with particular criminal conduct for the purposes of section 76(4) of the Proceeds of Crime Act 2002?'

■ Oxford City Council v Tariq

Oxford Magistrates' Court,
8 February 2013

The defendant landlady dumped her tenant's belongings outside his home, changed the lock to the front door and refused to allow him back in. Police tried to persuade her to allow the tenant to keep his belongings in his room over the weekend as he was unable to arrange storage, but she refused. Following the eviction, the tenant was forced to sleep rough on several occasions. The defendant pleaded guilty to unlawful eviction (Protection from Eviction Act 1977 s1).

Magistrates imposed a community order with an unpaid work requirement of 80 hours. They ordered her to pay £460 compensation to the tenant and a contribution of £1,162.50 towards the council's costs.

■ Cornwall Council v Stoddern

Truro Magistrates' Court,
4 February 2013

The defendant was a private landlady. On inspection of a property let by her as a HMO, council officers found overcrowded living conditions, serious fire safety concerns and a dangerous spiral staircase to the attic room that was steep, lacked handrails and had no guarding to prevent someone falling. It served a HA 2004 prohibition order requiring the attic room not to be used for any purpose other than for storage (or the taking of remedial action). The property had no HMO licence. The council prosecuted for failure to comply with the notice and failure to obtain a licence.

On guilty pleas, the court ordered payment of fines and costs totalling £4,560.77.

■ Leeds City Council v Henry

Leeds Magistrates' Court,
24 January 2013

The defendant was a private landlord with several multi-occupied properties in Leeds. He had been prosecuted by the council in March 2011 for operating two licensable HMOs without licences. In respect of several properties, he failed to provide gas safety and electrical safety certificates after numerous requests. He also failed to comply with HMO licence conditions relating to fire safety. The council prosecuted again as a result of the disregard of tenant safety.

The defendant was convicted and ordered to pay £8,400 in fines and £5,000 towards the council's costs.

■ **Harlow Council v Hossain**
Chelmsford Magistrates' Court, 22 January 2013
The defendant converted a house and let parts of it to four separate households without having a HMO licence. He pleaded guilty to a charge of failing to obtain a licence.

He was fined £10,000. The council was awarded £800 costs.

■ **Leeds City Council v Digwa**
Bradford Magistrates' Court, 21 January 2013
The defendant was a private landlord. On inspection of a property let by him, council officers found inadequate fire precautions, mould and electrical hazards together representing a risk to the health and safety of the tenant. Improvement notices were served under HA 2004 Part 1 in October 2011 for the works to be completed by January 2012. Works were only undertaken in early January 2013, almost 12 months later. The council prosecuted for failure to comply with an improvement notice. The defendant pleaded guilty.

He was fined £2,800 and ordered to pay costs of £2,993 plus a £15 victim surcharge.

■ **Sandwell Council v Athwal and Kaur**
Sandwell Magistrates' Court, 7 January 2013
The defendants were private landlords. In May 2012, they were convicted of failure to comply with an improvement notice in respect of a tenanted property. They then attempted to undertake the necessary works 'on the cheap' around the tenant. That resulted in what the district judge (magistrates' court) described as conditions of 'Dickensian squalor'. The work done was unsatisfactory and incomplete.

They were fined a further £500 each, ordered to pay £1,500 each in compensation to the tenant, and the council was awarded costs of £4,000.

■ **Haringey LBC v Mehmet Parlak, Watchstar Ltd and Watchacre Properties Ltd**
Tottenham Magistrates' Court, January 2013
The defendants were private landlords. Council inspections found four properties operated as HMOs, two without licences. All were in an unsatisfactory condition.

The defendants pleaded guilty to offences under the HMO Management Regulations relating to the four properties and to failure to apply for HMO licences for two of them. Despite those pleas, fines totalling £40,000 were imposed plus £4,462.50 in costs. This reflected their poor history of previous convictions for similar offences.

Closure order

■ **Croydon LBC v Kite**
Croydon Magistrates' Court, 7 January 2013
The defendant was the proprietor of accommodation let to tenants and known as the 'Gomers Hotel'. Neighbours complained to the council about drug dealing and noise. Witnesses said that there was 'persistent nuisance and disorder' at the premises for a number of months.

The court made a three-month premises closure order prohibiting anyone from entering or remaining at the address during that period. The defendant was ordered to pay £6,683.60 in prosecution costs to the council.

HOMELESSNESS

Intentional homelessness

■ **Ibrahim v Wandsworth LBC**
[2013] EWCA 20, 29 January 2013
Ms Ibrahim applied to the council for homelessness assistance under HA 1996 Part 7 when her assured shorthold tenancy expired. The council decided that she had become homeless intentionally. The notification of that decision under HA 1996 s184 failed to set out the accommodation duty owed to her as an intentionally homeless person in priority need: HA 1996 s190(2). Ms Ibrahim applied for a review, but the finding of intentional homelessness was upheld and an appeal to the county court was dismissed by HHJ Redgrave.

Ms Ibrahim appealed to the Court of Appeal contending that the defect in the decision notice had required the reviewing officer to follow the 'minded-to' procedure in Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 SI No 71 reg 8 and this had not been done.

The appeal was dismissed. The defect had been immaterial to the question of whether or not the applicant had become homeless intentionally and had caused no prejudice (because the applicant had been accommodated pending the review and appeal for a period longer than that for which she would have been accommodated under section 190(2)).

Suitable accommodation

■ **Sharif v Camden LBC**
[2013] UKSC 10, 20 February 2013
The claimant's household included her disabled father and her dependent younger sister. Camden owed the main housing duty under the homelessness provisions of HA 1996 s193 and initially performed it by providing a three-bedroom house. Later, the council decided to provide the family with two self-contained units in a hostel (one for the father and one for the two sisters) in continued performance of its duty. The units were on the same floor of the hostel, but a few yards apart.

The Court of Appeal held that the statutory obligation to provide accommodation for an applicant 'together with' other household members (HA 1996 s176) could not lawfully be performed by the provision of two separate self-contained units: see [2011] EWCA Civ 463; [2011] HLR 32; June 2011 *Legal Action* 25.

The Supreme Court, by a majority, reversed that decision. It held that the statutory test is satisfied by a single unit of accommodation in which a family can live together, but that it may also be satisfied by two units of accommodation if they are so located that they enable the family to live 'together' in practical terms. Whether they are so located is a question of fact for the council on which a decision could be set aside only for error of law. In the instant case, there had been no such error.

Use of bed and breakfast accommodation

***Local Government Ombudsman* Complaint**

■ **Croydon Council**
11 010 420, 1 February 2013[18]
In July 2011, Merton decided that an applicant met conditions for referral of her application for homelessness assistance (HA 1996 s198) and decided to refer her application to Croydon. Croydon accepted the referral and from 2 August 2011 it provided accommodation. The applicant had children but, despite the terms of the Homelessness (Suitability of Accommodation) (England) Order 2003 SI No 3326, the council booked her into bed and breakfast accommodation for more than the maximum period of six weeks. A Law Centre indicated that it would issue judicial review proceedings if the applicant was not moved by 3 October 2011. She was moved to self-contained accommodation on 29 September 2011. Croydon did not notify the applicant that it had accepted the referred duty, or tell her how it would perform the duty, until 18 October 2011.

The Local Government Ombudsman found maladministration:

■ in keeping the applicant in bed and breakfast accommodation for more than the legal limit of six weeks; and

■ in failing to notify acceptance of a duty and how it would be performed (which had prevented the applicant having a decision that she could review).

However, the investigation was discontinued by the ombudsman when the council agreed

to remedy the injustice by paying the applicant £400.

Offer of temporary accommodation

■ Maswaku v Westminster City Council

UKSC 2012/0240, 11 February 2013

Justices of the Supreme Court have refused the homeless applicant's application for permission to appeal against the dismissal of her appeal by the Court of Appeal (see [2012] EWCA Civ 669, 18 May 2012; July 2012 *Legal Action* 42) because the application did not raise an arguable point of law. They said that the Court of Appeal was right for the reasons it gave.

HOUSING AND CHILDREN

■ R (Durani) v Secretary of State for Home Department

[2013] EWHC 284 (Admin), 19 February 2013

The claimant was a young Afghani national. He was arrested when found in the back of a lorry in Nottingham. He applied for asylum. Local social services carried out an age assessment and concluded that he was an adult. He was detained by the UK Border Agency (UKBA). He asserted that the assessment had been wrong and that he was a child.

In judicial review proceedings, Walker J held that the age assessment had been manifestly flawed. The outcome had been recorded as 'inconclusive' and requiring 'further work' but no further assessment had been undertaken (para 71). Furthermore, the social workers had not put their concerns about his asserted age to the claimant for comment. The detention had been unlawful and damages would be awarded.

■ R (AT, AG and HG) v Islington LBC

[2013] EWHC 107 (Admin), 1 February 2013

The claimant and her two disabled sons sought judicial review of an assessment of the family's needs made under the Children Act (CA) 1989. Their accommodation was overcrowded and was not on the ground floor. It was unsuitable given the disabilities of the children. The challenge was put on the basis that the assessment had failed to deal with the various contingencies which might arise in relation to the provision or non-provision of temporary or alternative housing.

Philip Mott QC, sitting as a deputy High Court judge, dismissed the claim. The assessment had been lawful and reasonable. The family had housing needs but they were being addressed by their application under the council's allocation scheme.

■ R (EAT) v Newham LBC

[2013] EWHC 344 (Admin), 28 February 2013

The claimant was a two-year-old child. She needed accommodation because she and her mother were homeless. They had had to leave their private rented home. The mother was not eligible for homelessness assistance under HA 1996 s185 (because she was a Ugandan national who had applied unsuccessfully for indefinite leave to remain and whose appeal against that decision remained outstanding). Newham's children's services department accepted that the claimant was a 'child in need' under CA 1989 s17. It decided that it would not provide accommodation but would assist with travel to Uganda. This was on the grounds that the claimant's mother had unsuccessfully made a claim for 'asylum' and that, accordingly, support should be provided by the UKBA pending her departure.

John Powell QC, sitting as a deputy High Court judge, quashed the decision. The claim for indefinite leave to remain did not expressly or impliedly seek 'asylum'.

HOUSING AND COMMUNITY CARE

Costs orders

■ R (Dempsey) v Sutton LBC

C1/12/2342, 21 February 2013

The claimant was disabled. She lived in residential accommodation provided by the council and part-funded by the local primary care trust. The council decided that on 15 December 2012 it would move her to alternative accommodation. The claimant did not consider the alternative accommodation suitable for her needs. In November 2012, her solicitors asked the council for copies of the care plan and needs assessment on which the decision to move her had been based. Despite reminders, these were not provided. On 14 December 2012, the claimant issued judicial review proceedings and obtained an interim injunction preventing her from being moved before a trial fixed for March 2013.

The parties then negotiated an agreement under which the claimant would be accommodated at a disabled persons' unit with support. She applied for her costs. A High Court judge refused because:

- she had issued the claim rather than pursue alternative remedies such as a complaints procedure; and
- it was impossible to say which party would have succeeded at trial.

The Court of Appeal allowed an appeal. Alternative remedies had been inappropriate in the circumstances of urgency and the outcome of the proceedings had achieved exactly what the claimant had sought.

1 Available at: www.justice.gov.uk/downloads/legal-aid/tenders/faq-itt-notification-and-verification-Jan13.pdf.
2 Available at: www.justice.gov.uk/downloads/legal-aid/funding-code/lord-chancellors-guidance.pdf.
3 Available at: www.justice.gov.uk/downloads/legal-aid/funding-code/chancellors-guide-exceptional-funding-non-inquests.pdf.
4 Available at: www.justice.gov.uk/courts/ procedure-rules/civil/pdf/update/cpr-61-pd-making-document.pdf.
5 Available at: www.justice.gov.uk/downloads/statistics/civiljustice/mortgage-landlord-2012-q1/mortgage-landlord-possession-bulletin-q4-12.pdf.
6 Available at: www.housing.org.uk/publications/find_a_publication/general/housing_benefit_changes.aspx.
7 Available at: www.parliament.uk/briefing-papers/sn06272.pdf.
8 Available at: www.housing.org.uk/idoc.ashx?docid=eb2e162d-59d5-4509-82ae-ffbf1c73c953&version=-1.
9 Available at: www.southwark.gov.uk/news/article/1149/southwark_council_reports_findings_from_direct_payment_benefits_test_project.
10 Available at: www.publications.parliament.uk/pa/cm201213/cmselect/cmcomloc/uc833-iii/uc83301.htm.
11 Available at: www.parliament.uk/briefing-papers/sn06291.pdf.
12 Available at: www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How%20to%20manage%20income%20collection%20effectively.pdf.
13 Available at: www.insidehousing.co.uk/need-to-know/briefings/cash-is-king/6525862.article.
14 Available at: www.dwp.gov.uk/docs/s2-2013.pdf.
15 Available at: www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/836/836.pdf.
16 Available at: www.oft.gov.uk/OFTwork/markets-work/othermarketswork/lettings/.
17 Gurminder Birdi and Suzanne Bird, solicitors, Moss & Co, London and Liz Davies, barrister, London.
18 Tony Martin, solicitor, South West London Law Centres®.

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