Lord Millett expresses the same sentiment through the label of 'good neighbourliness':

*The governing principle is good neighbourliness, and this involves reciprocity. A landowner must show the same consideration for his neighbour as he would expect his neighbour to show for him. The principle which limits the liability of a landowner who causes a sensible interference with his neighbour's enjoyment of his property is that stated by Bramwell B in* Bamford v Turnley *(1860) 3 B & S 62, at pp 83–84 … Bramwell B was searching for the principle which exempts from liability activities which would otherwise be actionable. His conclusion was that two conditions must be satisfied:* ***the acts complained of must (i) 'be necessary for the common and ordinary use and occupation of land and houses' and (ii) must be 'conveniently done', that is to say done with proper consideration for the interests of neighbouring occupiers*** (page 20E, author's emphasis added).

Lord Millett's invocation of *Bamford* identifies two key issues that prima facie appear to be satisfied in your client's case. First, there cannot be any 'necessity' for the upstairs neighbour altering her flooring in that way. She might like its aesthetics, she might be attracted by its low cost, but those matters fall far short of necessity. Nor, obviously, has she shown any consideration for your client's interests. That proposition might be countered if it transpires that the neighbour went to a reputable flooring firm, that what was installed met current standards of good practice, but unfortunately ambient noise remains a problem. Nuisance is after all not a strict liability. If the act of replacing the flooring was itself done in a fashion which amounted to reasonable user then your client is likely stuck with the unhappy consequences.

The remedy achieved in the post-*Tanner* case of *Stannard* is also instructive. The claimant received damages of 33 per cent of the rent and, more importantly, injunctive relief in the form of a requirement that the upstairs neighbour alter his flooring in accordance with specifications set down by a court-appointed expert. Despite the headline view of *Tanner*, the law does offer a clear way forward to an effective remedy for someone in your client's position.

**Ian Loveland is Professor of Public Law at City University London and a barrister at Arden Chambers, London.**

# 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 possession cases

The Civil Legal Aid (Merits Criteria) (Amendment) (No 2) Regulations 2013 came into force on 27 January 2014. They withdrew legal aid for new 'borderline' category housing possession cases in England and Wales. That category had previously been available when it was not possible, by reason of disputed law, fact or expert evidence, to:

- decide that the chance of obtaining a successful outcome was 50 per cent or more; or
- classify the prospects as 'poor'.

The Joint Committee on Human Rights had called on the UK government to think again about the abolition of legal aid for these 'borderline' housing possession cases. It reported that only 41 such cases had been funded in 2011/12 and that the case for savings from withdrawing the category had not been made out: *The implications for access to justice of the government's proposals to reform legal aid. Seventh report of session 2013–14* (HL Paper 100, HC 766, December 2013).[1]

### Social housing allocation

On 31 December 2013, in exercise of his powers under Housing Act (HA) 1996 s169, the Secretary of State for Communities and Local Government issued new supplementary statutory guidance for councils in England on social housing allocations: *Providing social housing for local people. Statutory guidance on social housing allocations for local authorities in England* (Department for Communities and Local Government (DCLG), December 2013).[2]

The guidance suggests that councils place greater emphasis on priority in allocation schemes for local applicants and members of the armed forces who need 'and deserve' social housing (para 6). It encourages councils to revise their allocation schemes, in accordance with the new guidance, 'as soon as possible' (para 4). The departmental policy statement that accompanied the guidance stated that it 'makes clear that only hard-working families, with a well-established residency, relatives or a job in the local area can go on their council's waiting list'.[3]

### Rent arrears

There is growing evidence of a steep increase in demand for the services of advice agencies from tenants in difficulty with rent arrears. The Money Advice Trust has reported that from January to October 2013, the free advice helpline National Debtline received nearly 20,000 calls for help from people with rent arrears, compared with just 8,000 over the same period in 2007 – an increase of 146 per cent. Calls from people with rent arrears have increased 37 per cent over the last two years, and 13 per cent in the last 12 months – more than any other debt type.[4]

Citizens Advice has reported that rent arrears to social landlords have grown from four to six per cent of all debt advice since the introduction of the housing benefit (HB) size restrictions. The increase in advice to clients with social landlord rent arrears being advised about possession or eviction action has grown more alarmingly – up by 38 per cent in the quarter July to September 2013 compared with the same period in 2012: *Advice trends 2013/14 quarter 2 (July–September 2013)* (Citizens Advice, December 2013).[5] One-third of these latter clients were disabled or had long-term health problems and one-third were single parents with dependent children.

The causes and consequences of default on debts like rent repayments are identified in the report, *Maxed out: serious personal debt in Britain* (Centre for Social Justice, November 2013).[6] The contribution of the welfare reforms to increased rent arrears in social housing is analysed in *Welfare reform impact club report. The tipping point?* (HouseMark, November 2013).[7]

A recent survey of social landlords has shown that the number of eviction warning notices (notices seeking possession) issued to their tenants because of rent arrears has increased by more than a quarter in a year:

'Eviction notices surge by 26%', [2013] *Inside Housing* 13 December.[8]

## Housing law reform

New housing bills, which are designed to make radical reforms to housing law in the public and private rented sectors, have been published in both Wales and Scotland.

The Housing (Wales) Bill was introduced in the Welsh Assembly in November 2013. Available documentation includes: the bill; an explanatory memorandum; a timetable for legislative scrutiny;[9] and the terms of reference for an inquiry into its likely impact.[10]

The Housing (Scotland) Bill was introduced in the Scottish Parliament in November 2013. Available documentation includes: the bill; explanatory notes; a timetable for legislative scrutiny; a policy memorandum;[11] and a call for evidence in a scrutiny exercise by the Infrastructure and Capital Investment Committee.[12]

## Homelessness

In England, the number of households accepted as owed a housing duty under HA 1996 Part 7 fell to 13,330 for the three months July–September 2013, but at the end of that period the number of households in temporary accommodation had increased to 57,350.[13]

In Wales, the latest official statistics on statutory homelessness activity by local authorities also show a fall in acceptances in the same quarter: *Homelessness, July to September 2013* (Welsh government, SDR 222/2013, December 2013).[14]

Despite the abolition in Scotland of the requirement for 'priority need' to trigger a housing duty, the number of homelessness applications made to Scottish councils fell in 2013. The Scottish government stated that this was due to effective homelessness prevention and to housing options measures. However, the number of households in temporary accommodation had increased to 10,494 on 30 June 2013: *Operation of the homeless persons legislation in Scotland: quarterly update: 1 April to 30 June 2013* (Scottish government, November 2013).[15]

In December 2013, the House of Commons Library produced updates of its main briefing notes on a range of homelessness issues including:

- *Rough sleeping*;[16]
- *Homelessness in England*;[17]
- *Homeless households in temporary accommodation (England)*;[18] and
- *Homelessness: social indicators*.[19]

A new research report on homelessness analyses key trends since 2011, forecasts likely changes, and identifies the developments that may have the most significant impact on homelessness: *The homelessness monitor: England 2013* (Crisis, December 2013).[20]

## Private renting

The UK government has been pressing ahead with the process of establishing redress schemes for private tenants in England who have complaints about letting agents or managing agents. The 3,000 lettings and property management agents who do not currently belong to a redress scheme will be required to join one by October 2014. Each scheme requires approval by the secretary of state. The available documentation includes:

- the Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013 SI No 3192 and an explanatory memorandum;[21]
- guidance notes for applicants seeking approval for a scheme;[22] and
- the criteria by which such applications will be assessed.[23]

## Housing and immigration status

The Immigration Bill includes provisions that would impose penalties on landlords letting to certain types of migrants. The Joint Committee on Human Rights has published a paper expressing its concerns about the proposed controls, including its view that the provisions 'heighten the risk of … discrimination on racial grounds against ethnic minority prospective tenants, both UK citizens and foreign nationals with permanent residence, who are entitled to rent, notwithstanding the fact that such discrimination is unlawful under the Equality Act' (para 89): *Legislative scrutiny: Immigration Bill. Eighth report of session 2013–14* (HL Paper 102, HC 935, December 2013).[24]

## Regulating social landlords

The regulator of social housing in England has reported on the first complete year of the consumer regulation standards in the sector introduced by the Localism Act 2011: *Consumer Regulation Review 2012/13* (Homes & Communities Agency (HCA), November 2013).[25] Its report highlights its first finding of 'potential serious detriment' in respect of a complaint that a housing association was failing to secure regular gas safety inspections of tenanted properties.

The regulator has also announced the guideline rent limits that housing associations can introduce for the year 2014/15: *Guideline rent limit for private registered providers 2014–15* (HCA, November 2013).[26]

## Housing and anti-social behaviour

The Anti-social Behaviour, Crime and Policing Bill reached its report stage in the House of Lords on 8 January 2014 and is expected to complete its remaining parliamentary process shortly.

The Social Landlords Crime and Nuisance Group (SLCNG) issued a briefing to peers on the importance of the retention of clause 1 (threshold and burden of proof on certain remedies for anti-social behaviour) as initially drafted: *Briefing on the Antisocial Behaviour, Crime and Policing Bill: report stage in the House of Lords* (SLCNG, January 2014).[27]

The Joint Committee on Human Rights repeated its call for the proposed discretionary eviction ground for riot offences to be withdrawn from the bill: *Legislative scrutiny: Anti-social Behaviour, Crime and Policing Bill (second report). Ninth report of session 2013–14* (HL Paper 108, HC 951, January 2014).[28]

# HUMAN RIGHTS

### ■ Maznenko v Ukraine

*App No 46344/08,*
*4 November 2013*

In 1996, Ms Maznenko bought a flat, renovated it and lived in it with her son as their home. A court later declared that the purchase had been a nullity as the vendor had lacked the legal right to sell. On the application of the 'true' owner (an individual), a court annulled the purchase and ordered possession on the basis that Ms Maznenko's legal right to occupy had been lost. In August 2004, bailiffs broke into the flat and evicted her. She applied to the European Court of Human Rights (ECtHR) complaining that there had been a breach of article 8 of the European Convention on Human Rights ('the convention').

Despite the fact that the possession claim had been brought by an individual, the court posed this, among other questions, for the parties:

■ *Was the applicant's eviction lawful and necessary in a democratic society within the meaning of article 8 of the convention (see, eg,* McCann v the United Kingdom*, no 19009/04, § 50, 13 May 2008,* Kryvitska and Kryvitskyy v Ukraine*, no 30856/03, §§ 43–44 and 48–52, 2 December 2010 and* Gladysheva v Russia*, no 7097/10, § 95, 6 December 2011)?*

### ■ Karakutsi v Ukraine

*App No 18986/06,*
*21 October 2013*

Mr Karakutsi was a military serviceman provided with accommodation for himself and his family by the Ministry of Defence. When he resigned, the ministry sought possession and a district court made a possession order. The applicants appealed. The Court of Appeal heard and dismissed the appeal. It did not notify the applicants of the hearing or of the order it

made and they were evicted. Having later found out about the Court of Appeal hearing and order, they sought to appeal to the Supreme Court but their appeal was dismissed as it was brought out of time. He and his wife applied to the ECtHR, complaining that there had been a breach of article 8.

The court posed this question for the parties:

■ *Did the applicants' eviction constitute an interference with their right to respect for their home? If so, was that interference in accordance with the law and necessary in terms of article 8(2)? In particular, was the decision-making process in this case compatible with the requirements of article 8 of the convention?*

## SECURE TENANCIES

### ■ Francis v Brent Housing Partnership Limited

*9 December 2013*

The Supreme Court refused Brent's application for permission to appeal against the decision of the Court of Appeal ([2013] EWCA Civ 912, 29 July 2013; October 2013 *Legal Action* 33). The proposed appeal did not raise an arguable point of law of general public importance that ought to be considered by the Supreme Court.

## POSSESSION CLAIMS

### Public law defence

### ■ Leicester City Council v Shearer

*[2013] EWCA Civ 1467,*
*19 November 2013*

Mrs Baxter was a secure tenant. Her son, Mr Shearer, lived with her. In April 2005, he married and his wife came to live in the house with her young daughter. In May 2005, Mrs Baxter died and Mr Shearer succeeded to her tenancy. Mrs Shearer then had a baby. In January 2010, Mrs Shearer left the property due to Mr Shearer's violence. She and the children went to live at another house where she was given an assured shorthold tenancy. In February 2011, Mr Shearer committed suicide.

Mrs Shearer and her children moved back into Mr Shearer's house. She told a council officer that she would like to continue living in the property as a tenant following her husband's death. She was informed that that would not be possible and that she should complete an application form seeking other council accommodation. Council officers decided to require her to leave, rather than make a direct let of the house to her. The council served a notice to quit on the Public Trustee and the personal representatives of Mr Shearer, and began a possession claim.

Mrs Shearer defended the claim, relying to some extent on article 8 of the convention, but principally on a public law defence that the council's decision to bring possession proceedings was flawed, because it had not given any, or any proper, consideration to the possibility of making a direct let under its allocations policy. Recorder Maxwell QC dismissed the possession claim.

The Court of Appeal dismissed the council's appeal. At all stages, council officials gave firm advice to Mrs Shearer that there was no question of her being able to remain at the property. It was made clear to her that the most she could achieve by visiting the Housing Options Department was to pursue an application for different accommodation. No council official ever told her that if she made an appropriate application, the council might be able to make a direct let of the property to her. The facts of the present case were exceptional. Mrs Shearer had a respectable case for receiving the benefit of a direct let under the allocations policy. The council officials to whom she spoke did not tell her this. Indeed, they told her precisely the opposite. A public authority cannot rely on an applicant's non-compliance with procedural requirements, when the authority has itself caused that non-compliance. In commencing possession proceedings without giving any, or any proper, consideration to the option of making a direct let under the allocations policy, the council acted unlawfully.

### Assured shorthold tenancy

### ■ Spencer v Taylor

*[2013] EWCA Civ 1600,*
*20 November 2013*

Mr Spencer let a property to Ms Taylor under an assured shorthold tenancy for a fixed term of six months, beginning on 6 February 2006, a Monday. The rent was payable weekly. There was no further contractual agreement and she became a statutory periodic tenant. In October 2011, Mr Spencer served a HA 1988 s21(4) notice, stating that possession was sought '(a) after 01/01/2012 or (b) at the end of your period of tenancy which will end next after the expiration of two months from the service upon you of this notice'. The first of January 2012 was a Saturday. A notice expiring two months after the service of the notice would have expired on 18 December 2011. The next Sunday after that was 23 December 2011. The claim form seeking possession was issued on 27 April 2012.

Ms Taylor contended that the notice was invalid as it did not specify the correct date required by section 21(4). Mr Spencer accepted that the '01/01/2012' date was wrong, but contended that the formula gave the correct date. HHJ Godsmark QC held that the notice was valid and made a possession order. Ms Taylor appealed.

The appeal was dismissed. Although expressed to be a notice under section 21(4), the notice met all the requirements for section 21(1). Section 21(1)(b) does not require the notice to expire on any particular date nor does it require a date to be specified in the notice. The notice in this case gave more than two months' notice. In any event, the notice was also valid under section 21(4). The first date was clearly wrong, but the formula gave the correct date.

### Writ of possession

### ■ Ahmed v Mahmood

*[2013] EWHC 3176 (QB),*
*20 September 2013*

The claimants sought possession of property, claiming that the defendants were trespassers or, alternatively, that the tenancy granted to the first defendant had terminated; he had failed to pay rent due; and he had unlawfully sublet. The defendants counterclaimed for unlawful eviction. On 12 August 2013, District Judge Silverman struck out the claim for unlawful eviction and the defence and made a forthwith possession order. As a result of the defendants' repeated abuse of court procedures, he transferred the case to the High Court for enforcement only.

The defendants appealed the possession order and had an outstanding application for permission to appeal an earlier interlocutory order. Notwithstanding this, the first claimant applied for a High Court writ of possession, completing Form N293A in which she certified that there was no application or other procedure pending. The defendants were evicted and the claimants re-let the property. The defendants applied to set aside the writ of possession.

Lang J set aside the writ. The 'falsification' of Form N293A was an abuse of process (para 22). The judge was concerned about the practical consequences of setting aside the writ, given that the property had been re-let. However, at the hearing, counsel for the defendants undertook not to seek to re-enter the property, or apply to seek possession, until the claims had finally been determined.

## ANTI-SOCIAL BEHAVIOUR

### Injunctions and Equality Act 2010

### ■ Swan Housing Association Ltd v Gill

*[2013] EWCA Civ 1566,*
*9 December 2013*

Mr Gill was an assured tenant. Swan Housing Association, his landlord, sought an anti-social behaviour injunction under HA 1996 ss153A

and 153D, claiming that he had done acts which were in breach of his tenancy and a nuisance to adjoining occupiers. District Judge Dudley made findings that Mr Gill had done the acts complained of, but refused the application for an injunction on grounds relating to his supposed disability under Equality Act (EqA) 2010 ss6, 15 and 149 even though he had only advanced such grounds at the instigation and prompting of the judge. Swan appealed.

The Court of Appeal allowed the appeal. Manifestly, there was no evidence on which the district judge could make a finding that Mr Gill was disabled. The mere fact that Mr Gill asserted, 'not very forcibly', that he suffered from Asperger syndrome, without more, could not amount to evidence of disability or to evidence of discrimination arising from it (para 9). The district judge was not entitled to become a self-appointed medical expert by, for example, relying on his own medical dictionary to fill in the gaps. Furthermore, the court itself was not a public authority for the purposes of section 149. The judge's reasoning relating to the EqA 'was both flawed and a conspicuous red herring' (para 20). For Asperger syndrome to form any part of the arguments for not granting an injunction, proper medical evidence of its extent and effect would have been essential, especially given Mr Gill's refusal even to provide his medical notes. The Court of Appeal exercised its discretion to grant the injunction sought.

## RIGHT TO BUY

### ■ McIntosh v Castle Rock Edinvar Housing Association Limited

*6 November 2013*

Ms McIntosh was employed by the association as the warden of a sheltered housing scheme from 1987 to 2011. She occupied a warden's house. She claimed to have a continuing fair rent regulated tenancy that carried the right to buy. The association refused her application to buy on the grounds that either her employment status had deprived her of the right to buy or that its charitable status did so.

The Lands Tribunal (Scotland) held that the right to buy was not defeated on either ground but on the alternative ground that when the tenancy was granted the association had been entitled to a particular form of charitable tax relief within Housing (Scotland) Act 1987 s64(1)(e).

## COUNCIL TAX

### ■ Shah v Croydon LBC

*[2013] EWHC 3657 (Admin), 13 November 2013*

Mr Shah owned a property that was let to two tenants. Croydon applied to the magistrates' court for a liability order. It asserted that the property was a house in multiple occupation (HMO) within the meaning of the Council Tax (Liability for Owners) Regulations 1992 SI No 551 and that Mr Shah was accordingly liable to pay the council tax.

The magistrates' court held that both tenants had a tenancy of their own bedroom and a licence of the rest of the property, and that the property was accordingly let as an HMO. Mr Shah appealed by way of case stated.

Andrews J allowed the appeal. A tribunal or a magistrates' court looking at the question of multiple occupancy cannot shut its eyes to the realities on the ground, but the first port of call still has to be the tenancy agreement, if there is one. In this case, tenancy agreements provided for the tenants to each have use and enjoyment of the whole of the property. There was no suggestion that this was a sham. It followed that the property was not an HMO and Mr Shah was not liable for the council tax.

## TRAVELLERS

### ■ R (Eastwood) v Windsor & Maidenhead RBC

*[2013] EWHC 3476 (Admin), 13 November 2013*

In 2009, a group of Romany Travellers brought ten or 11 caravans on to a four-and-a-half acre field. They included around 20 children. They had the consent of the owner but their entry was unlawful because the land was part of the green belt and its use for residential accommodation was contrary to planning laws. The local authority issued an enforcement notice pursuant to Town and Country Planning Act 1990. A planning inspector dismissed the occupants' appeal against the refusal of planning permission, but in view of the absence of alternative Traveller sites, extended the time for compliance with the enforcement notice to 18 months. At the end of that period the council decided to evict them.

Mostyn J granted an application for permission for judicial review. The decision by the council to disregard the fundamental premise of the decisions of the inspector was arguably perverse. He gave permission on the ground that 'the decision of the local authority … was perverse in that it failed to give any meaningful weight to the failure of the local authority to provide alternative pitches in circumstances where both the inspector and the secretary of state in 2011 had expected that it would' (para 24).

## CRIMINAL LAW

### Improvement notices

### ■ Odeniran v Southend-on-Sea BC

*[2013] EWHC 3888 (Admin), 22 November 2013*

Southend served an improvement notice under HA 2004 ss11(2) and 12(2) on Mr Odeniran. It gave him less than 28 days after service to commence the works (see section 13(3)). He failed to comply with the notice and was prosecuted. He contended that the notice was accordingly defective.

Collins J allowed Mr Odeniran's appeal. The requirement in section 13(3) was mandatory. There was no doubt that the notice was defective and, accordingly, a prosecution for failure to comply with it was inappropriate.

### ■ Haringey LBC v Goremsandhu

*[2013] EWHC 3834 (Admin), 8 November 2013*

Haringey served a number of improvement notices, pursuant to HA 2004, on Ms Goremsandhu, the manager of a building containing a number of flats. She appealed to the Residential Property Tribunal. The tribunal varied the notices and the time for completion. Ms Goremsandhu commenced some works but did not complete them within time. Haringey prosecuted her for breach of the improvement notices. She contended that she had a reasonable excuse for the breach as she had been confused by the inconsistent time-frames in the notices and believed that she had a longer period to complete them all. The magistrates agreed and dismissed the prosecution.

Ouseley J allowed an appeal by way of case stated. The magistrates had failed to ask themselves whether there was a reasonable basis for Ms Goremsandhu holding the belief about the time for the completion of the works, which they accepted she honestly did. Furthermore, they had come to a completely untenable decision, which could properly be described as irrational.

## HOUSING ALLOCATION

### ■ R (Alansi) v Newham LBC

*[2013] EWHC 3722 (Admin), 27 November 2013*

The claimant applied to Newham for homelessness assistance: HA 1996 Part 7. It accepted that she was owed the main housing duty (section 193) and she was provided with temporary accommodation. The claimant registered herself on the council's housing

allocation scheme for social housing accommodation: HA 1996 Part 6. She was one of about 400 homeless applicants who were each told that if they took a qualifying offer of an assured shorthold tenancy in the private rented sector they would still retain their priority status under the council's housing allocation scheme. The claimant and the other applicants acted on those assurances, left their temporary council accommodation and took private rented sector tenancies.

The council later changed its allocation scheme. The change removed priority status from the group of 400, subject only to an individual right to a review of their ranking on the allocation scheme. The claimant brought a claim for judicial review, contending that she had a legitimate expectation that the council would honour the commitment it had made.

Stuart-Smith J dismissed the claim. Although the claimant had enjoyed a legitimate expectation that she would retain priority status, and had relied on the council's promise to her detriment, the council had not acted unlawfully in changing its policy given the demands on it to shape its allocation scheme in order to meet competing priorities for a limited stock of social housing.

### Public Services Ombudsman for Wales

***Complaint***

**■ Tai Ceredigion Cyf**

*201204677,*

*26 November 2013*[29]

Tai Ceredigion Cyf (TCC) is a stock-transfer housing association and a registered social landlord (RSL). It entered into a partnership agreement with the local council – Ceredigion County Council – under which all its housing stock was to be let in accordance with the council's statutory allocation scheme: HA 1996 Part 6.

The council accepted that it owed the main homelessness duty to the applicant (HA 1996 s193) and placed her on the allocation scheme. She was a previous tenant of TCC, which considered that she owed it a former tenant debt. The council did not exercise its power to disqualify her from the scheme on account of that previous history (HA 1996 s160A(7)) and nominated her to TCC. Three TCC properties became available for which the applicant was the highest qualified under the scheme but she was bypassed for an offer by TCC because of her alleged debt. She complained to the Public Services Ombudsman for Wales (PSOW).

The Ombudsman found that TCC had taken matters into its own hands in 'complete disregard for the partnership agreement …, the law and government guidance and all good practice' (para 36). However, TCC considered that other partners in the common housing register had similarly departed from the partnership agreement and circulated the draft embargoed PSOW report to other RSLs, which then wrote to the Ombudsman. The PSOW considered that this conduct demonstrated that there may be wider problems with stock transfer landlords in Wales and referred his report to the Welsh government. The PSOW recommended an apology and £1,000 compensation for the complainant.

### Local Government Ombudsman

***Complaint***

**■ Birmingham City Council**

*12 015 642,*

*11 November 2013*[30]

The council received an application for consent to mutual exchange from only one of two joint secure tenants: HA 1985 s92. It had previously served an abatement notice in respect of noise nuisance that he had created. He had breached the notice, his music equipment had been seized twice and there had been legal proceedings (but no claim for possession). Even though he did not have the consent of the other joint tenant to seek a mutual exchange, the council approved his application and he moved to a housing association property.

The council did not alert the association to his background. He then committed nuisance in his new home. His new landlord seized more music equipment and obtained injunctions and a possession order. It incurred legal costs of over £15,000.

The Local Government Ombudsman (LGO) found that the council had been guilty of maladministration in approving the application and recommended £1,500 compensation for the tenant's most recent neighbour.

**■ Wolverhampton City Council v Mpofu and Mpofu**

*Wolverhampton Magistrates' Court,*

*12 November 2013*[31]

The defendants were a married working couple who were tenants in Walsall. They made a fraudulent homelessness application to Wolverhampton Council. The application was accepted without knowledge of the true facts and they were housed by the council's arm's length management organisation (ALMO). Following enquiries, the council discovered the true position and brought a prosecution.

The defendants pleaded guilty to the offences. Mr Mpofu was sentenced to a 12-month community order and ordered to do 120 hours' unpaid work. His wife was given a three-month community order. Both were ordered to pay a victim surcharge of £60 and costs of £320.

## HOMELESSNESS

### Interim and temporary accommodation

***Local Government Ombudsman***

**Complaint**

**■ Ealing LBC**

*12 004 331 and 12 011 635,*

*22 November 2013*[32]

The council was making extensive use of B&B accommodation to house homeless households in performance of its duties under HA 1996 Part 7. Around 100 applicants had been in occupation for longer than the absolute legal maximum of six weeks: Homelessness (Suitability of Accommodation) (England) Order 2003 SI No 3326. The two complainants had been in unsuitable B&B accommodation for seven-and-a-half and ten months respectively.

The LGO recommended compensation of £1,750 and £2,000 respectively for that maladministration and directed the council to ensure that it put in place a strategy for complying with the law.

### Contracting out

**■ Tachie, Terera and II v Welwyn Hatfield BC**

*[2013] EWHC 3972 (QB),*

*13 December 2013*

The three claimants made separate applications to the council for homelessness assistance. On review, it decided that the first two had become homeless intentionally and the third was not in priority need. They appealed to the county court (HA 1996 s204), contending that their homelessness applications and reviews had wrongly been dealt with by an ALMO instead of by the council itself. The county court transferred the cases to the High Court.

Jay J held that the contracting out to the ALMO had initially been invalid because the relevant resolution had been made by the cabinet of the council rather than the full council itself. However, the claims failed because the council had later ratified the decision and there were no other legal errors made in the reviewing officers' decisions.

### Intentional homelessness

**■ Balog v Birmingham City Council**

*[2013] EWCA Civ 1582,*

*12 December 2013*

Mr Balog gave up his private rented accommodation in Margate and moved to live with a relative in Birmingham. He became homeless shortly afterwards. The council decided that he had become homeless intentionally by giving up the accommodation in Margate that would have been reasonable to occupy: HA 1996 s191. On a review, it decided that the accommodation had been

'affordable' having regard to his income and outgoings: Homelessness (Suitability of Accommodation) Order ('the H(SA) Order') 1996 SI No 3204.

Miss Recorder McNeill QC held that the review decision was flawed because there was no specific reference to any of the relevant provisions in the July 2006 homelessness code of guidance and no reference, in particular, to paragraph 17.40, which provides that:

*In considering an applicant's residual income after meeting the costs of the accommodation, the secretary of state recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseekers' allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit.*

The Court of Appeal allowed a second appeal by the council. The review letter did refer to the code generally and addressed the specific passages relevant to the points the applicant had taken in his original application and on review (about the condition of the property). The reviewing officer had himself taken and determined the affordability point and had applied the criteria in the H(SA) Order. The decision reached on review contained sufficient reasons and its conclusion was not perverse.

### ■ Viackiene v Tower Hamlets LBC

*[2013] EWCA Civ 1764, 11 December 2013*

Ms Viackiene held a joint tenancy of private rented accommodation. She fell into rent arrears when the other tenant stopped contributing towards the rent. The landlord suggested that she consider taking a different joint tenant and offered to help her find one. She declined. The arrears continued to accrue and she was eventually evicted. The council decided that she had become homeless intentionally. That decision was upheld on review and an appeal to the county court was dismissed.

The Court of Appeal dismissed a second appeal. There had been no error of law. The reviewing officer had been entitled to decide that the homelessness had resulted from the applicant's own deliberate omission (HA 1996 s191), ie, the failure to take up the landlord's offer of help to find a more reliable joint tenant.

### ■ Noel v Hillingdon LBC

*[2013] EWCA Civ 1602, 21 November 2013*

Mr Noel became homeless when he lost his accommodation on being evicted for rent arrears. He had initially taken the tenancy at a rent of £1,350 a month at a time when his combined benefit income was only £1,000. He failed to pay over all the HB to his landlord and when his partner and her child moved in he failed to notify that change of circumstances (which would have led to an increase in his benefit). The council decided that he had become homeless intentionally. That decision was upheld on review and an appeal to the county court was dismissed by HHJ Faber.

Mr Noel pursued a second appeal on the basis that he could not have become homeless intentionally because his most recent accommodation was not 'reasonable … to continue to occupy': HA 1996 s191. It had been doomed from the outset because he could not afford it. If the only act or omission that caused Mr Noel's eventual homelessness had been his taking a tenancy that he could not afford, then in conformity with *Denton v Southwark LBC* [2007] EWCA Civ 623, what the council should have done was wind the clock back to the position as it was before Mr Noel took the tenancy. The council should have asked the question whether or not it would have been reasonable to occupy his previous home but had not done so.

The Court of Appeal dismissed the appeal. This was not a case in which there was only one cause of Mr Noel's homelessness. There were two. The second cause was his omission to apply for an increase in HB. Mr Noel could reasonably have continued in occupation of his most recent home by applying all his HB towards the rent and by increasing his income to meet any shortfall, or by notifying his changed circumstances.

### ■ Huzrat v Hounslow LBC

*[2013] EWCA Civ, B5/13/0345 21 November 2013*

Ms Huzrat was evicted from her accommodation for rent arrears. She applied for homelessness assistance. She said that she had been unable to meet her housing costs as well as the costs of raising her three children. The council decided that she had become homeless intentionally because an income and expenditure assessment showed she could have met the rent and her basic living expenses: the H(SA) Order.

Her challenge to that decision was rejected on review and an appeal to the county court was dismissed. She then pursued a second appeal on the basis that the council had failed to comply with its duty to give priority to the interests of her children (Children Act (CA) 2004 s11) in determining her application.

The Court of Appeal dismissed the appeal. The section 11 duty had been applicable to the council's decision-making process but applying it to the facts of the present case did not change the result.

## Local connection

### ■ R (Tesfay) v Birmingham City Council

*[2013] EWCA Civ 1599, 20 November 2013*

The claimant was a refugee. While seeking asylum she was provided with accommodation in Newport, Wales, by the UK Border Agency (UKBA). Following the grant of refugee status, the UKBA accommodation was withdrawn. She applied for homelessness assistance to Birmingham where there was a community of people of the same ethnic and religious background as her own. The council decided that she had no connection with its area (HA 1996 s199) and made a referral to Newport (section 198), which was accepted. The claimant applied for a review (section 202) and for accommodation pending review (section 188(3)). Such accommodation was refused and she brought a claim for judicial review.

She then applied for an order that Birmingham accommodate her pending a decision on the judicial review claim, despite the offer of accommodation from Newport. That relief was initially refused on the papers and then again at an oral hearing before Lewis J. Sir Brian Leveson refused permission to appeal to the Court of Appeal because, on the facts, there was no arguable error in the refusal of such an interim order. This was a:

*… challenge to a decision which the court should itself interfere with only in 'a very exceptional case' by way of judicial review: see* R v Brighton and Hove Council ex parte Nacion *[1999] 31 HLR 1095 … In those circumstances, the court, therefore, must always be slow to interfere with the exercise of that discretion to refuse interim relief: see* Francis v Royal Borough of Kensington and Chelsea Council *[2003] EWCA Civ 443 at paragraphs 30 and 31* (para 16).

## Suitable accommodation

### ■ Oyebanji v Waltham Forest LBC

*Central London County Court, 22 August 2013*[33]

The appellant was a single woman in her fifties who suffered from severe post-traumatic stress disorder. The council owed her the main housing duty as a homeless person (HA 1996 s193) and provided her with accommodation. She accepted it but sought a review of its suitability and relied on a report by her psychotherapist. The council obtained a report from a psychiatrist (Dr Wilson of NowMedical). He did not examine her. The council decided, on review, that the accommodation was 'suitable'.

HHJ Mitchell allowed an appeal. He found that the report from the psychotherapist was

very powerful indeed. He noted that the psychiatrist might be thought to be better qualified than the psychotherapist but also found that the two disciplines go hand in hand and cover different areas. He found that Dr Wilson's report was generalised and that the reviewing officer had very strong evidence from the psychotherapist that the accommodation could do serious damage to the claimant and set back her psychological progress. In those circumstances, the reviewing officer was wrong simply to prefer evidence of generality from a doctor who had not seen the claimant over the evidence of a practising psychotherapist who saw her regularly.

## Reviews

### ■ Mohamoud v Birmingham City Council

*[2013] EWCA Civ 1509,*
*7 November 2013*

The council had notified the appellant of an adverse decision on her application for homelessness assistance. She made an application for a review (HA 1996 s202) and on her behalf Shelter raised new points that had not been considered in the original decision. Did that make the original decision 'deficient' so that the reviewing officer had to follow the 'minded to' letter procedure and offer an oral hearing: Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 SI No 71? HHJ McKenna thought not and dismissed an appeal.

Underhill LJ decided that determining the correct answer to the question justified the grant of permission to bring a second appeal.

## Appeals

### *Local Government Ombudsman* Complaint

### ■ Croydon LBC

*13 002 818,*
*6 November 2013*[34]

The council accepted that the complainant was owed the main housing duty as a homeless person (HA 1996 s193). It made her an offer of accommodation, which she said was unsuitable. The council decided on review that the offer had been suitable and advised that if the offer was refused its duty would be discharged. The letter failed to refer to the right of appeal to a county court, contrary to the requirement in section 203(5).

The LGO found that the council had been wrong to fail to give notice of that right, but in light of the fact that it had agreed (a) to make a further offer and (b) to amend its review decision letters, the investigation was discontinued.

## HOUSING AND CHILDREN

### ■ R (MK) v Barking & Dagenham LBC

*[2013] EWHC 3486 (Admin),*
*13 November 2013*

The council agreed to exercise its powers under CA 1989 s17 to provide alternative accommodation for a mother facing eviction with her two young children. The claimant (aged 20) was the mother's niece and had lived with the family but a social worker was not satisfied that her continuing to live with the younger children was important to their welfare. The council declined to accommodate her with the family or separately. She was unlawfully in the UK with no access to welfare benefits, housing or social services. She sought a judicial review.

HHJ Bidder QC (sitting as a deputy High Court judge) dismissed the claim. The claimant was not entitled to be accommodated with the family under section 17, following the social worker's assessment. The council could not be required to use alternative statutory powers to assist her when the statutory regimes of social welfare had been drawn to design out assistance for those unlawfully in the UK.

1 Available at: www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/100.pdf.
2 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/269035/131219_circular_for_pdf.pdf.
3 Available at: www.gov.uk/government/news/pickles-pushes-local-people-to-the-front-of-the-queue-for-council-homes.
4 See: www.moneyadvicetrust.org/media/news/Pages/Rent-arrears-the-fastest-growing-UK-debt-problem.aspx.
5 Available at: www.citizensadvice.org.uk//advice_trends_2013-14_q2_july_-_september_2013.pdf.
6 Available at: www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Serious_Debt_report_WEB_final.pdf.
7 Available at: www.housemark.co.uk/hmresour.nsf/lookup/WRIC_2nd_BM_report_FINAL.pdf/$File/WRIC_2nd_BM_report_FINAL.pdf.
8 Available at: www.insidehousing.co.uk/tenancies/eviction-notices-surge-by-26/6529938.article.
9 All available at: www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=8220.
10 Available at: www.senedd.assemblywales.org/documents/s22291/Consultation%20Letter.pdf.
11 All available at: www.scottish.parliament.uk/parliamentarybusiness/Bills/70102.aspx.
12 Available at: www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71002.aspx.
13 See: www.gov.uk/government/uploads/system/uploads/attachment_data/file/263337/Statutory_Homelessness_3rd_Quarter__Jul_-_Sep__2013_England.pdf.
14 Available at: http://wales.gov.uk/docs/statistics/2013/131218-homelessness-july-september-2013-en.pdf.
15 Available at: www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/RefTables/HomelessAprtoJun2013.
16 Available at: www.parliament.uk/briefing-papers/SN02007.pdf.
17 Available at: www.parliament.uk/briefing-papers/SN01164.pdf.
18 Available at: www.parliament.uk/briefing-papers/SN02110.pdf.
19 Available at: www.parliament.uk/briefing-papers/SN02646.pdf.
20 Available at: www.crisis.org.uk/data/files/admin_uploads/research/HomelessnessMonitorEngland2013_ExecSummary.pdf.
21 Available at: www.legislation.gov.uk/uksi/2013/3192/contents/made.
22 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/269448/Instructions_for_Redress_Schemes_covering_lettings_agency_work2.pdf.
23 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/269451/The_Redress_Schemes_for_Lettings_Agency_work_and_Property_management_work.pdf.
24 Available at: www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/102/102.pdf.
25 Available at: www.homesandcommunities.co.uk/sites/default/files/our-work/consumer_regulation_publication_full.pdf.
26 Available at: www.homesandcommunities.co.uk/sites/default/files/our-work/hca_guideline_rents_limits__2014-15.pdf.
27 Available at: www.slcng.org.uk/documents/n_yzxmlK.pdf.
28 Available at: www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/108/108.pdf.
29 See: www.ombudsman-wales.org.uk/~/media/Files/Cases_en/201204677%20Final%20Report.ashx.
30 See: www.lgo.org.uk.
31 See: www.wolverhamptonhomes.org.uk/aboutus/news/403-wolverhampton-couple-in-tenancy-fraud-conviction.
32 See note 30.
33 Liz Davies, barrister and Suzanne Bird, Moss & Co, solicitors, London.
34 See: www.lgo.org.uk/decisions/housing/allocations/13-002-818.

**Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. Nic Madge is a circuit judge. The authors are grateful to the colleagues at note 33 for the note of the judgment.**