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

Housing and anti-social behaviour

At the time of writing, the Anti-social Behaviour, Crime and Policing Bill was scheduled to be in ping pong in the House of Lords on 11 March 2014.[1] Its provisions will introduce new tools and powers for local authorities, the police and social landlords relating to housing and anti-social behaviour.

Immigration status and access to housing

The UK government's Immigration Bill has completed its House of Commons stages and is now making its way through the House of Lords: Immigration Bill, HL Bill 84 (January 2014).[2] Part 3 Chapter 1 of the bill deals with penalties for landlords who let to migrants with the 'wrong' immigration status.

Homelessness

New statistics show that from 2007/08 to 2012/13, Citizens Advice Bureaux saw a 57 per cent increase in enquiries about problems for young people with actual homelessness and a 39 per cent increase in enquiries about problems for young people with threatened homelessness: Citizens Advice press release, 30 January 2014.[3]

A detailed review of homelessness among young people in England has recently been published: *Young and homeless 2013* (Homeless Link, January 2014).[4]

A report prepared for Kent County Council (KCC) records that homelessness in the county increased by 25 per cent in the first quarter of 2013 compared with the first quarter of 2012 and that, at the end of March 2013, 163 households were in bed and breakfast accommodation – an increase of 22 per cent over a year and a doubling over three years: *Welfare reform: update on the evidence of the impact in Kent* (KCC, November 2013).[5]

The latest statistics on local authority homelessness work in Scotland show that 9,114 applications for homelessness assistance were made in the second quarter of 2013/14 – 13 per cent lower than in the same period in 2012: *Operation of the homeless persons legislation in Scotland: quarterly update: 1 July to 30 September 2013* (Scottish Government, January 2014).[6] It is believed that the fall is mainly due to the impact of housing options/homelessness prevention strategies adopted by most local councils rather than changes in the underlying drivers of homelessness.

The homelessness provisions of the Housing (Wales) Bill were the main focus of a submission made by the Garden Court Chambers Housing Law Team to the Welsh Assembly's scrutiny of that bill: *Response to the consultation on the Housing (Wales) Bill* (January 2014).[7]

The European Parliament held a debate on an EU Homelessness Strategy on 16 January 2014 and passed a composite motion relating to the strategy.[8]

Mortgage default

The Mortgage Rescue Scheme (MRS) in England is in the process of being wound-up (following the earlier closure of the London scheme). Any final applications must be made by 31 March 2014 by referral from local authorities (or by the National Homelessness Advice Service) to MRS lead providers: *Mortgage Rescue Scheme closure – key points* (Department for Communities and Local Government (DCLG), January 2014).[9]

Private rented sector

A new report gives a useful review of emerging trends in the private rented sector in England based on census data: *Briefing paper: some key trends in the private rented sector in England: analysis of census* (CHASM, December 2013).[10] Another new report addresses conditions in the sector: *Back to rising damp: addressing housing quality in the private rented sector* (IPPR North, January 2014).[11]

In Scotland and Wales, three new briefing notes have been published on private sector renting:

- *Compulsory licensing in the private rented sector: myths and facts* (Shelter Cymru, January 2014);[12]
- *The private rented sector in Wales* (Chartered Institute of Housing (CIH) Cymru, January 2014);[13]
- *Spotlight on the private rented sector in Scotland* (CIH Scotland, December 2013).[14]

Discretionary housing payments

In 2014/15, local councils in the UK will have £165m available to enable them to pay discretionary housing payments (compared with £180m in the current year). Underspends from 2013/14 cannot be carried forward. The detailed figures for each council area are given in Housing Benefit Subsidy Circular HB S1/2014 (Department for Work and Pensions (DWP), January 2014).[15]

Mutual exchange

A new briefing note has been published to help social landlords support tenants to find mutual exchange partners: *How to … support tenants to find a mutual exchange* (CIH, January 2014).[16]

Social housing tenants

The facts relating to higher income households living in social housing are explored in a new briefing for MPs: *Social housing tenants (England): pay to stay* (House of Commons Library, January 2014).[17]

Rented housing and universal credit

A new guidance note has been published which provides private and social sector landlords and tenants with information about universal credit and its impact on arrangements for rental payments: *Universal credit and rented housing frequently asked questions* (DWP, January 2014).[18]

Accommodation for asylum-seekers

The National Audit Office (NAO) has published a new report reviewing the Home Office contracts for the provision of accommodation for asylum-seekers: *COMPASS contracts for the provision of accommodation for asylum seekers* (NAO, January 2014).[19] It found poor performance, delays and additional costs.

Housing and disability

A new briefing note has been published to help social landlords make best use of stock with adaptations for the disabled: *How to … make effective use of adapted properties* (CIH, January 2014).[20]

Regulating social housing

The social housing regulator for England has updated its outline of the approach it takes to the regulation of social landlords: *Regulating the standards 2014* (Homes & Communities Agency, January 2014).[21]

Park homes

There are approximately 2,000 park home sites in England accommodating about 85,000 owner-occupied homes. The Mobile Homes (Site Rules) (England) Regulations 2014 SI No 5 came into force on 4 February 2014. They prescribe the procedure for the making, variation and deletion of mobile home site rules, prescribe the matters to which site rules may and may not relate and grant appeal rights in relation to those matters.

HUMAN RIGHTS

Article 6 and article 1 of Protocol No 1

■ Nekvedavičius v Lithuania

App No 1471/05,
10 December 2013

Mr Nekvedavičius's father owned land on which there were two houses. It was nationalised in the 1940s following Soviet occupation. Title to the buildings was later transferred to third parties. After Lithuanian independence in 1990, he applied to the government for the restoration of his property. The authorities took no steps to process this application and he issued proceedings. In November 2001, a court found that his property rights had been infringed, but that he was not entitled to the return of the land. Instead, he was awarded compensation. He was placed on a waiting list for a new plot of land but received no compensation before he died. Mr Nekvedavičius applied to the European Court of Human Rights (ECtHR) complaining that the length of the proceedings and the absence of any remedy amounted to a violation of article 6 of the European Convention on Human Rights ('the convention'). He also claimed that the failure to return the land or provide adequate compensation was a violation of article 1 of Protocol No 1.

The ECtHR found that there were breaches of article 6 and article 1 of Protocol No 1. Execution of a judgment is an integral part of the 'trial' for the purposes of article 6 (para 54). Mr Nekvedavičius's father's property rights had been recognised by the November 2001 judgment. A significant part of the actions taken by the authorities were ineffective, repetitive and not aimed at restoring his property rights. The judgment should have been executed without undue delay. No remedy had yet been provided after more than 11 years. That amounted to a violation of article 6. The 2001 judgment was a 'possession' and the delay in enforcing it was a violation of article 1 of Protocol No 1. The court adjourned the question of pecuniary damages to enable the parties to attempt a settlement.

Article 8

■ Škrtić v Croatia

App No 64982/12,
5 December 2013

Mrs Škrtić and her husband were holders of a specially protected tenancy of a flat in Karlovac. In 1991, a bomb was thrown into the flat. The family moved out. The Karlovac Housing Committee gave them another flat for temporary occupation. Later, Mrs Škrtić's husband moved out and they were divorced. In 2000, the Karlovac Municipality began a possession claim. In February 2008, a possession order was made on the ground that the flat had been given for temporary occupation to her husband who had left the flat and that that decision had been annulled in 2000. There was therefore no longer any legal basis for Mrs Škrtić to occupy the flat. Appeals were dismissed. She complained to the ECtHR that the national courts' judgments ordering her eviction solely on the ground that she had no legal basis for occupying the flat violated her right to respect for her home under article 8.

The ECtHR confirmed that the concept of a 'home' within the meaning of article 8 is an autonomous concept that does not depend on classification under domestic law. Whether or not particular premises constitute a 'home' that attracts the protection of article 8 depends on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (para 21). As Mrs Škrtić had been living in the flat since 1991, she had sufficient and continuing links with the flat for it to be considered her 'home' for the purposes of article 8. The eviction order amounted to an interference with her right to respect for her home. The national courts' decisions ordering her eviction were in accordance with domestic law. The central question was whether the interference was proportionate and 'necessary in a democratic society' (para 30). That raised a question of procedure as well as one of substance. Any person at risk of an interference with his/her right to a home should, in principle, be able to have the proportionality and reasonableness of the measure determined by an independent tribunal, even if, under domestic law, s/he has no right to occupy the premises. However, such an issue does not arise automatically in each case concerning an eviction. If an applicant wishes to raise an article 8 defence to prevent eviction, it is for him/her to do so and for a court to uphold or dismiss the claim.

In this case, Mrs Škrtić had raised the issue of her right to respect for her home in the national courts, but the national authorities, in their decisions ordering and upholding the eviction, did not give any explanation or put forward any arguments demonstrating that her eviction was necessary. The national courts had confined themselves to finding that her occupation was without legal basis. There was no analysis as to proportionality. The decision-making process leading to eviction was not fair and did not afford due respect to Mrs Škrtić's article 8 interests. There was, therefore, a violation of article 8. The court awarded non-pecuniary damage of €3,000.

SECURE TENANCIES

Succession

■ Brent LBC v AP

Central London County Court,
22 January 2014[22]

Brent granted a new sole secure tenancy to AC in August 1990. He had previously been a joint tenant of the same flat. AC was profoundly deaf and without speech. He communicated using British Sign Language (BSL). He had limited ability to read and write English. In 2005, AC met AP at a social club for deaf lesbians and gay men called 'Brothers and Sisters'. He started a relationship with him and AP moved into AC's flat later that year. AP was also profoundly deaf and without speech. He was originally from Poland but learnt BSL. His ability to read and write either Polish or English was very limited. AC, who was in his 60s and from a Protestant family in east Belfast, was very reluctant to be open about his sexuality, apart from with other members of the lesbian and gay community. He was not 'out' to his family, the local authority (housing department or social services) or his GP. AP, who was from a Catholic family, was also reluctant to be open about his relationship and did not tell his social worker. He had not explicitly told his family that he was gay but he took AC to Poland to meet his family and his mother came to stay in the flat with them both. A neighbour of AC, who had known him for a long time, said he did not tell people in the block that he was gay but that people knew he was.

AC became very ill with prostate cancer. He was cared for mainly by AP. Brent Social Services did not have to provide homecare services because AC's care needs were being met. AC died in 2010. AP wanted to succeed to AC's secure tenancy on the basis that he had been living with AC as if they were civil partners (Housing Act (HA) 1985 s86A(5)(b)). A Brent housing officer took the initial decision that AP was entitled to succeed to the tenancy. However, when it was discovered that AC had claimed housing benefit as a single person, that decision was revoked and an investigation took place. When it was discovered that AC had not informed the local authority or his GP that he was in a relationship with AP, a possession claim was issued. AP defended the

claim on the basis that he had succeeded to the tenancy. Evidence to support AC and AP's relationship was given by a neighbour, the founder of Brothers and Sisters, AP's work colleague, AP's employer and AP's BSL interpreter as well as AP himself. The housing officer who considered that AP was entitled to succeed gave evidence, as did the investigation officer.

HHJ Lochrane, after considering the law on 'living together as husband and wife or as civil partners' as discussed by Ward LJ in *Amicus Horizon Ltd v Mabbott* [2012] EWCA Civ 895; [2012] HLR 42, decided that AP was entitled to succeed. He found that Brent had failed to show the required delicacy and sensitivity that such a case required, given the potentially devastating effect of a vulnerable disabled man losing his home. It had failed to make proper enquiries before coming to its conclusion that he was not entitled to succeed and had imposed an inflexible set of criteria that were inappropriate when considering lesbian or gay relationships. He found that being open and unequivocal about a relationship (as required by the High Court in *Nutting v Southern Housing Group Ltd* [2004] EWHC 2982 (Ch); [2005] HLR 25) did not require being open with the wider world, and in particular with a landlord or local authority, but rather required there to be sufficient external witnesses who could testify to the relationship, as there were in this case. HHJ Lochrane did not find it necessary to consider article 14 of the the convention or evidence from Stonewall and Age UK on the reluctance of older lesbians and gay men to be 'out'. Brent sought permission to appeal, but permission was refused.

JOINT TENANCIES

Notice to quit

■ Muema v Muema

[2013] EWHC 3864 (Fam), 10 June 2013

Mr and Mrs Muema were married in 2001. They had two children. In January 2006, a local authority granted them a joint weekly tenancy of a three-bedroom maisonette. The marriage fell into difficulties. In June 2009, Mrs Muema vacated the property with the children. In October 2009, an exclusion order was made requiring Mr Muema to move out. It appears that Mrs Muema and the children moved back in. In January 2010, as a result of rent arrears, the council obtained a suspended possession order. Warrants were obtained but suspended. In July 2011, Mrs Muema wished to move, and was offered homeless accommodation. In January 2012, she signed a notice to quit terminating the weekly joint tenancy (*Hammersmith and Fulham LBC v Monk* [1992] 1 AC 478). Mr Muema applied under Matrimonial Causes Act 1973 s37(2)(b) to set aside the notice to quit. District Judge Major concluded that that application could not succeed, but adjourned to the High Court the question as to whether or not there is incompatibility between article 8 and the rule in *Newlon Housing Trust v Alsulaimen* [1999] 1 AC 313, HL, namely that a notice to quit is not a disposition for the purposes of section 37(2)(b).

After referring to *Sims v Dacorum BC* [2013] EWCA Civ 12, Peter Jackson J concluded that:

> *… it is not correct to assert that the decision in* Alsulaimen *is no longer good law. The overall framework enables tenants to have their rights under article 8 respected during the course of the process of possession proceedings* (para 12).

Even if it were necessary or appropriate for article 8 rights to extend to the scope of section 37 applications, he could not see any arguable case for the court exercising such a power in favour of Mr Muema. It was 'essentially for [the council] to exercise its distributive function in relation to its housing stock, and … [it was] entitled to the view that other families have greater need of this property than this family' (para 14). The children would continue to have a roof over their heads with their mother, until such time as their father could also provide one for them.

UNLAWFUL EVICTION

■ Waliezada v Dickson

Manchester County Court, 16 August 2013[23]

In November 2011, Mr Dickson, a private landlord, obtained a possession order against Mr Waliezada on the basis of alleged rent arrears. Mr Waliezada applied to set the order aside. On 13 December 2011, before the application to set aside had been determined and before the issue of any warrant, Mr Dickson attended the property with a locksmith, while Mr Waliezada was taking his three children to school, and changed the locks. He left some items of Mr Waliezada's property outside and some inaccessible in the house. Mr Waliezada and his family spent six nights in temporary accommodation and were then permanently re-housed. On 19 December 2011, the defendant gave an undertaking to return all Mr Waliezada's property to him, but only some of it was returned.

Recorder Smith gave judgment for Mr Waliezada. He awarded damages totalling £11,822, as follows:

- general damages (trespass to property, harassment and breach of the covenant of quiet enjoyment): £6,050;
- special damages (trespass to possessions and miscellaneous other expenses): £1,866;
- aggravated damages: £2,200;
- exemplary damages: £1,650; and
- interest on special damages: £56.

Costs were awarded on the indemnity basis, owing to the defendant's breach of the 19 December undertaking and his 'shameful' conduct of the subsequent litigation.

TRESPASSERS

■ Enfield LBC v Phoenix

[2013] EWHC 4286 (QB), 19 March 2013

Mr Phoenix and a number of other people squatted in premises that had been vacated by Enfield's Children's Services Unit. Enfield made an application for possession in Barnet County Court. Its application contained a number of procedural failings and irregularities. Also, although counsel and legal representatives were at court on the hearing day, they failed to appreciate that their case had been called on, and it was apparently dealt with by a deputy district judge in their absence. He took the various procedural points that arose and for those reasons he dismissed the application.

Enfield then issued a claim for possession in the High Court against Mr Phoenix, another named defendant and persons unknown. In support of the application, Enfield filed a witness statement stating that there were exceptional circumstances that justified the issue of the claim in the High Court. It referred to a skeleton argument which the defendants had lodged in the county court raising 'complex points of human rights law' including arguments under articles 10 and 11 of the convention (para 9). The witness statement also made much of the fact that the defendants were members of 'a protest group called Occupy' and that they had previously occupied library premises in Barnet and land at St Paul's Cathedral (para 10). It was also suggested that 'at the eviction stage there [would be] an anticipated substantial risk of public disturbance or of serious harm to persons or property which properly require immediate determination and would require the superior enforcement powers of the High Court' (para 10).

HHJ Reddihough, sitting as a judge of the High Court, described the human rights contentions as 'fairly typical' (para 9). They 'could hardly be said to raise complex points of human rights law' (para 9). Insofar as they did, they were 'very well within the capability of a circuit judge or district judge in the county

court' (para 9). He held that in so far as Civil Procedure Rules (CPR) Practice Direction 55A para 1.3(3) refers to 'a substantial risk of public disturbance or of serious harm to persons or property which properly require immediate determination', it is clearly referring to:

a present substantial risk … of a nature that is such that immediate determination of the possession claim is required. Simply to argue that at some time in the future there may be problems about enforcing any possession order that is made is not sufficient to come within this paragraph in the Practice Direction (para 12).

In any event, if a possession order were granted in the county court, enforcement could be transferred to the High Court. Enfield had 'wholly failed to place before the court any evidence that goes anywhere near satisfying the requirement in paragraph 1.3(3)' (para 13). There was no evidence that the occupiers were causing any damage to the premises, beyond breaking a padlock. There was no justification for issuing the claim in the High Court. However, the judge decided not to strike out the claim, but ordered that it be transferred to Barnet County Court.

LONG LEASES

Service charges

■ Christoforou v Standard Apartments Ltd

[2013] UKUT 586 (LC), 17 December 2013

Mr Christoforou was a lessee. He covenanted to pay service charges and, as a separate covenant, to indemnify the freeholder in respect of costs arising out of any breach of covenant by him. Standard, the freeholder, issued a claim in the leasehold valuation tribunal (LVT) for a determination that unpaid service charges were due. It was largely successful. Standard then claimed the legal costs it had incurred in respect of the proceedings, stating that they were costs due under the terms of the lease as they arose from Mr Christoforou's breach of covenant. Mr Christoforou refused to pay those costs. The freeholder issued further proceedings in the LVT. It found that the costs were payable under the lease and were reasonable. It rejected Mr Christoforou's argument that Commonhold and Leasehold Reform Act 2002 Sch 12 para 10(4) prevented the recovery of the costs. That paragraph was aimed at preventing the LVT from ordering a party to pay costs and did not prevent a party from relying on a contractual right.

The Upper Tribunal (Lands Chamber) dismissed Mr Christoforou's appeal. The costs were contractually due under the terms of the lease. They arose directly out of a breach or non-observance of the covenants in the lease. The costs were reasonable in their amount. The purpose of Schedule 12 para 10(4) was to restrict the power of the LVT to award costs. It did not override a contractual right to costs.

HOUSING ALLOCATION

■ R (Jakimaviciute) v Hammersmith and Fulham LBC

[2013] EWHC 4372 (Admin), 20 December 2013

The council adopted a new social housing allocation scheme pursuant to HA 1996 Part 6. The scheme designated certain classes of applicant as non-qualifying (HA 1996 s160ZA(7)). They included a class comprising homeless applicants whom the council had provided with suitable temporary accommodation under its homelessness functions (HA 1996 Part 7). The claimant fell into that class. As a result she would normally be entitled to a statutory 'reasonable preference' in any allocation scheme (HA 1996 s166A(3)) but the council told her she did not qualify for its scheme at all.

She brought a claim for judicial review contending that it was unlawful to exclude from an allocation scheme a person who would otherwise be entitled to a reasonable preference. D Gill, sitting as a deputy judge of the High Court, refused permission to apply for judicial review. The claimant's case was unarguable. The claimant did not qualify for the council's scheme so there could be no question of her securing any 'preference' within it.

HOMELESSNESS

Whether 'homeless'

■ R (Miah) v Tower Hamlets LBC

[2013] EWHC 4434 (Admin), 10 December 2013

The claimant was the beneficial owner of a house that was let to a tenant. On her application for homelessness assistance, the council initially decided that she was not homeless because she had the house. An appeal to the county court against that decision was allowed on the basis that the house was not 'available' to her (HA 1996 s176) because it had a sitting tenant. The council then decided that it did owe the main housing duty (section 193) but would perform it by giving the claimant advice and assistance to secure her own accommodation (section 206(1)(c)), ie, by obtaining possession against the tenant. The council declined a request to review its decision to adopt that method of performing its duty. When the council declined to carry out a review, the claimant sought judicial review to compel it to do so. She also lodged a county court appeal against the decision.

Michael Kent QC, sitting as a deputy judge of the High Court, refused permission to bring a judicial review claim. The claimant could pursue the county court appeal (HA 1996 s204) or, alternatively, put new information to the council indicating why she could not proceed with an eviction as it had proposed.

Intentional homelessness

■ H v Southwark LBC

Central London Civil Trial Centre, 30 January 2014[24]

Ms H left the matrimonial home following domestic violence by her husband. She took an assured shorthold tenancy in a different district. She later saw her husband in that area and concluded that he knew she was there and that he was trying to make contact with her. She feared that he would be violent towards her again. She abandoned the tenancy and later made an application for homelessness assistance to the council. On review, it decided that she had become homeless intentionally. It was satisfied that her husband did not know her address and that it would have been reasonable for her to continue to occupy the rented property.

HHJ Bailey found that on the evidence it was open to the council to find that it was not probable that there would be violence, but that it had failed to analyse or consider the facts presented. The review decision was deficient for inadequate reasons. Ms H did not know whether the council had accepted her account in its entirety, or had thought that some of the account had been exaggerated, or even had rejected her account altogether. If the council had not accepted her account, it had failed to say so. It had simply jumped to the conclusion that it was satisfied that it was less likely than otherwise that there would be violence or threats of violence. The judge directed himself of the risk of imposing too high a burden on review officers but here the narrowness of the issue, and the importance of considering that issue by reference to the evidence, had required more from the reviewing officer. The appeal was upheld and the review decision was quashed.

Local connection

■ Nakiyingi v Lambeth LBC

Central London Civil Trial Centre, 21 November 2013[25]

Ms Nakiyingi was trafficked to the UK. She managed to escape and spent a number of years moving between various addresses in the London area. She stayed for some time in Lambeth. In 2012, she made an asylum application and was placed in National Asylum Support Service accommodation in Bristol. She was later granted discretionary leave to remain, returned to Lambeth and applied to the council for homelessness assistance. It accepted that she was owed the main housing duty but also decided that she had no local connection with its area. It was satisfied that she had a local connection with Bristol and made a referral to that council.

The reviewing officer confirmed the decision on the basis that 'normal residence' (HA 1996 s199(1)(a)) means lawful residence. Ms Nakiyingi could not have built up a local connection with Lambeth because at that time she had been in the country without leave.

HHJ Carr quashed the review decision. He held that in the context of HA 1996 Part 7, which contained a detailed framework for making decisions about eligibility on the basis of immigration status (sections 185–186), immigration status was not relevant to the question of 'normal' residence. Paraphrasing Simon Brown LJ in *R v Wandsworth LBC ex p O* [2000] 1 WLR 2359, he thought it inconceivable that parliament could have intended migrants living in an area without leave to be excluded from building up a local connection. Those who are homeless are often the most vulnerable, and removing a person from an area where s/he has support can be damaging. Had parliament intended to exclude those who are unlawfully resident it would have said so explicitly.

Suitable accommodation

■ Solihull MBC v Khan

[2014] EWCA Civ 41, 28 January 2014

Ms Khan was homeless. The council accepted that it owed her the main housing duty under HA 1996 Part 7 s193. She told the council that she could not live in a particular part of its district because of fear of violence from her former partner and a gang with which he was associated. The council made a final offer of accommodation in that area. Ms Khan assumed that the offer must have been made in error and refused it. On a review, the council decided that the offer had been suitable and reasonable to accept. It did not agree that she would have been at risk in the area in which the property was located.

Recorder Mountfield QC allowed an appeal on the basis that, when making the offer (and before it came to be accepted or rejected), the council should have explained that it did not accept the alleged risk.

The Court of Appeal allowed the council's second appeal. It held that there was no duty under HA 1996 Part 7 to explain why any particular offer of accommodation was being made. That represented a sensible approach because '[i]t enabled a hard-pressed housing authority to act more expeditiously because it was able to make its final offers in a standard format rather than in individually-crafted letters' (para 31). If Ms Khan had thought that the offer had been made in error, she should have contacted the council.

■ Kingston upon Hull City Council

13 002 073, 23 January 2014

The complainant applied to the council for homelessness assistance. It accepted a duty towards her and offered a property which she refused, as she felt it was unsuitable. The council wrote explaining that by rejecting the property she had brought the council's duty to an end. She applied for a review but was unsuccessful. Notice of the review outcome failed to give the reasons for the decision or notify her of the right to appeal to the county court on a point of law, contrary to HA 1996 ss202–203.

The Local Government Ombudsman (LGO) found that the failure to give reasons and notice of the appeal right was in breach of the law and of the council's own policy. This was not an isolated error because the omissions were a feature of its template letters.

The council agreed to provide a new decision on the homelessness review, give details of how to appeal the decision to the county court, apologise, and pay £200. It also agreed to check its records and identify others who had not received proper notice of their rights.

■ Isle of Wight Council

12 001 189, 14 January 2014

The complainant applied to the council for homelessness assistance. It accepted a duty towards him under HA 1996 Part 7 and provided four-bedroom temporary accommodation for himself and his family. Later, it nominated him for a four-bedroom housing association property. He did not want to take it, but the council said it was his only offer. He accepted the tenancy, which brought the council's duty to an end. The council did not tell him he could accept the offer and review its suitability (HA 1996 s202(1A)) and gave him no information about his right to seek a review. The council later accepted that the offer was not suitable because one of the rooms was too small to count as a bedroom under the council's own bedroom size standard. It did not move him out and left him in Band 3 on its allocation scheme.

The LGO recommended an immediate move up to Band 1 and £1,000 compensation for the maladministration in offering an overcrowded and unsuitable property.

■ Slattery v Basildon BC

[2014] EWCA Civ 30, 22 January 2014

Ms Slattery was an Irish Traveller. She was made homeless when she was evicted from an unauthorised encampment at Dale Farm. The council accepted that she was owed the main housing duty (HA 1996 s193) but in performance of the duty it offered her bricks-and-mortar accommodation. She contended that, given her cultural aversion to such housing, the offer was unsuitable and that the only reason she had not been offered a pitch was because of the council's failure to secure sufficient authorised sites. The offer was upheld on review and an appeal to the county court was dismissed by HHJ Moloney QC.

The Court of Appeal dismissed a second appeal. The council's decision was not unlawful. The court was not satisfied that there was any inconsistency between two of its previous decisions relating to offers of conventional housing accommodation to homeless Travellers: *Codona v Mid-Bedfordshire DC* [2004] EWCA Civ 925 and *Sheridan v Basildon BC* [2012] EWCA Civ 335.

HOUSING AND CHILDREN

■ R (PK) v Harrow LBC

CO/16177/2013, 30 January 2014

A mother and her children had been evicted from their home. They were destitute and street homeless. The council accepted that it was obliged under Children Act (CA) 1989 s20 to accommodate the children. It decided that it was not obliged to secure housing for their mother, who was their sole carer, under that provision. The children sought judicial review, claiming that the council's assessment meant that they would be separated from their mother in breach of the right to respect for family life protected by Human Rights Act 1998 Sch 1 article 8.

Eder J held that the council had failed properly to take into account the children's article 8 rights. No human rights assessment had been carried out. The decision was unlawful and was quashed.

1 See: http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill.html.
2 See: http://services.parliament.uk/bills/2013-14/immigration.html.

3 Available at: www.citizensadvice.org.uk/index/pressoffice/press_index/press_office-20143001.htm.
4 Available at: http://homeless.org.uk/sites/default/files/Youth%20Homelessness%20FINAL.pdf.
5 Available at: www.scribd.com/fullscreen/189205238?access_key=key-ijegs561rzgy967kqit&allow_share=false&show_recommendations=false&view_mode=scroll.
6 Available at: www.scotland.gov.uk/Resource/0044/00442057.pdf.
7 Available at: www.gardencourtchambers.co.uk/imageUpload/File/Housing%20(Wales)%20Bill%20-%20Response%20by%20GCC%20Housing%20Team.pdf.
8 Available at: www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P7-RC-2014-0008&language=EN.
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11 Available at: www.ippr.org/images/media/files/publication/2014/01/back-to-rising-damp_PRS_Jan2014_11767.pdf.
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22 Debra Wilson, solicitor, Anthony Gold, London and John Beckley, barrister, London.
23 Platt Halpern, solicitors and Tom Royston, barrister, Manchester.
24 Liz Davies, barrister, London and Catrin Harrhy, Gans & Co, solicitor, London.
25 Connor Johnston, barrister, London and Katie Brown, TV Edwards, London.

Nic Madge is a circuit judge. Jan Luba QC is a barrister at Garden Court Chambers, London. He is also a recorder. The authors are grateful to the colleagues at notes 22–25 for the transcript or notes of the judgments.

Employment law update

This article by Philip Tsamados looks at new secondary legislation concerning collective redundancies and transfers of undertakings, guidance on asking and responding to questions of discrimination at work and a code of practice on subject data access. It also reviews recent case-law on discrimination, employment tribunal (ET) procedure, contractual and employment rights, unfair dismissal and redundancy.

POLICY AND LEGISLATION

Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 SI No 16

Effective from 31 January 2014 onwards, these regulations ('the Amendment Regs') make a number of changes to the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006 SI No 246 as well as to Trade Union and Labour Relations (Consolidation) Act (TULR(C)A) 1992 s198.

The principal changes are as follows:

■ *The definition of 'service provision change'*: regulation 5 amends TUPE reg 3 to clarify that the activities carried out after the change in provider must be fundamentally the same as those carried out before. This has the effect of preventing TUPE from applying to services which are not essentially carried out the same both before and after the transfer.

■ *Unfair dismissal protection*: regulation 8 amends TUPE reg 7 effectively to narrow the protection given to dismissed employees. For transfers occurring before 31 January 2014, it is automatically unfair to dismiss an employee if the sole or principal reason for the dismissal is the transfer or for a reason connected with the transfer. From 31 January 2014 onwards, this protection is narrowed to dismissals where the sole or principal reason for the dismissal is the transfer. While this reduces the scope of automatic unfairness, of course the ordinary unfair dismissal protection would still apply (under Employment Rights Act (ERA) 1996 s98).

■ *Variations to terms and conditions*: regulation 6 amends TUPE reg 4 to allow a number of exceptions to the protection against variation of terms and conditions of employment of transferred employees where the sole or principal reason for a dismissal or the variation is the transfer. These are:

– where the sole reason for the variation is an economic, technical or organisational (ETO) reason entailing changes in the workforce (as defined in TUPE reg 7) and the employer and employee agree;
– where the contract of employment permits such a variation; and
– where terms and conditions have been incorporated by collective agreement, one year after the transfer, and those variations are no less favourable to the employee.

While this lessens the scope of protection, it only applies in the main to either agreed or non-controversial variations.

■ *ETO reason*: this is a defence to automatic unfair dismissal under TUPE, if the employer can show that dismissal occurred because there were ETO reasons entailing changes in the workforce. The dismissal is then considered under the ordinary unfair dismissal protection in ERA s98. Amendment Regs reg 8 amends TUPE reg 7 to expand the meaning of the words 'changes in the workforce' to include changes to the place where employees are employed. The intention is to prevent genuine place of work redundancies from being automatically unfair.

■ *Collective agreements*: regulation 7 amends TUPE to insert a new regulation 4A which provides that rights, powers, duties and liabilities arising from collective agreements do not transfer if the provision of the collective agreement was agreed after the transfer and the transferee was not a party to the agreement or collective bargaining for that provision.

■ *Employee liability information*: regulation 10 amends TUPE reg 11 to increase the number of days by which a transferring employer must provide employee liability information to the transferee employer to not less than 28 days before the transfer (previously 14 days).

■ *Collective consultation where a transfer involves redundancies*: regulation 3 amends TULR(C)A to insert a new section 198A so that a transferee may elect to consult (or start to consult) with representatives of transferring staff about proposed collective redundancies