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

Legal aid in housing cases

Following a parliamentary debate on 4 September 2013 (HC Debates col 75WH), the Lord Chancellor published his response to the *Transforming legal aid* consultation exercise on 5 September 2013: *Transforming legal aid: next steps* (Ministry of Justice, September 2013).[1] In relation to housing cases, the key changes to be introduced later this year by secondary legislation are:

- reduction of county court and High Court advocacy fees for counsel (down to the rates paid to solicitor-advocates);
- abolition of civil legal aid for cases assessed as only having 'borderline' prospects of success; and
- a further reduction in rates paid to expert witnesses.

As a concession, the rates paid to housing disrepair surveyors will not be cut further but will be held at current rates. A further consultation exercise is being conducted on funding for the permission stage of judicial review applications.

The Low Commission is looking at the impact of legal aid reform on areas of social welfare law including housing. It has closed its evidence-gathering phase but is now seeking the views of those working in and around the advice sector on its draft report and its emerging recommendations.[2]

The Parliamentary Joint Committee on Human Rights is pursuing a formal inquiry into the implications for access to justice of the government's proposed legal aid reforms.[3]

Housing and anti-social behaviour

The Anti-social Behaviour, Crime and Policing Bill has completed its House of Commons Committee Stage and the version of the bill that will be considered at report stage in the Commons has been published.[4] The report stage will take place on 14 October 2013.

Social landlords are estimated to be dealing with 300,000 anti-social behaviour cases a year and it has been suggested that such behaviour costs social landlords about £325m a year: *ASB benchmarking: analysis of results 2012/13* (HouseMark, July 2013).[5]

Homelessness

The homelessness statistics for England for the first quarter of 2013/14 have been published: *Statutory homelessness: April to June quarter 2013 England* (DCLG, September 2013).[6] They show that:

- 13,460 applicants were accepted as owed a main homelessness duty (Housing Act (HA) 1996 s193), 5 per cent higher than during the same quarter of 2012;
- 56,210 households were in temporary accommodation on 30 June 2013, 9 per cent higher than at the same date in 2012;
- 760 households had been in bed and breakfast accommodation for more than six weeks, a 10 per cent increase since the end of the same quarter last year, when the number was 690.

The UK government has decided to provide financial help to those local housing authorities in England most frequently breaching the prohibition on the use of bed and breakfast accommodation for homeless households. It has made a total of £1.9m available to seven of those councils: Barking and Dagenham, Croydon, Hounslow, Crawley, Birmingham, Redbridge and Westminster.[7]

The latest homelessness prevention figures show that 202,400 cases of homelessness prevention or relief are estimated to have taken place outside the statutory homelessness framework in England in 2012/13. Of these, 181,500 (90 per cent) were preventions and 21,000 (10 per cent) were cases of relief.[8]

The homelessness charity St Mungo's has published a free guide on the interface between the homeless and frontline health services: *Health and homelessness: understanding the costs and role of primary care services for homeless people*.[9]

Rent and service charge arrears in social housing

The Local Government Association (LGA) has published a report on the impact of the UK government's welfare reform programme on local councils, including the impact on rent collection: *The local impacts of welfare reform: an assessment of cumulative impacts and mitigations* (LGA, August 2013).[10]

The Chartered Institute of Housing (CIH) in Scotland has produced guidance for social landlords on the impact of universal credit on rent arrears: *Guidance for social landlords rent payment and collection under universal credit* (CIH Scotland, July 2013).[11]

The organisation HouseMark has published a new free briefing for social landlords on the effective collection of service charges: *Managing your service charges effectively* (August 2013).[12]

Private rented sector

In January 2013, Newham London Borough Council declared the whole of its district an area of mandatory licensing of private sector landlords: Housing Act 2004 Part 3. On 27 August 2013 it published statistics indicating that it has 110 legal cases ongoing against local private landlords – including 67 prosecutions for failure to license and/or for offences contrary to the Management of Houses in Multiple Occupation (England) Regulations 2006 SI No 372 – and that 43 cautions and/or £300 enforcement charges were issued for lower level failure-to-license offences. Inter-agency working has also led to over 100 arrests by police arising from visits to privately rented accommodation: *News release* (Newham Council, 27 August 2013).[13]

In the absence of compulsory minimum standards for private letting, the Mayor of London has published a voluntary code for landlords and letting/managing agents: *London rental standard* (Greater London Authority, July 2013).[14] A freestanding document explains how it is intended that the new standards be applied.[15]

Squatting

Legal Aid, Sentencing and Punishment of Offenders Act 2012 s144 made squatting in residential premises a criminal offence with effect from 1 September 2012. Records indicate that since then: (1) outside London 90 arrests have been made, but fewer than half of those had resulted in charges; and (2) in London, 92 people had been charged or accepted a caution.[16]

Tenancy deposits

A group of national housing organisations has issued an amended version of its helpful free guidance note, *Likely implications of the*

tenancy deposit protection case Superstrike Ltd v Marino Rodrigues.[17]

In a letter to the Residential Landlords Association, the housing minister has indicated that the government is exploring the possibility of new legislation on tenancy deposits in the light of the decision in *Superstrike*.[18]

Possession claims in the county courts

In the three months from April to June 2013, 39,293 landlord possession claims were issued in county courts in England and Wales, and during the same period bailiffs executed over 9,000 possession warrants for landlords: *Mortgage and landlord possession statistics quarterly April to June 2013* (Ministry of Justice, August 2013).[19] However, the downward trend in repossessions by mortgage lenders is continuing. In the first six months of 2013, members of the Council of Mortgage Lenders (CML) repossessed 15,700 properties: *CML Press Release*, 8 August 2013.[20]

Mobile homes

Mobile home owners and residents on about 2,000 park home sites in England[21] gained increased rights with the commencement of the Mobile Homes Act 2013 ss9–12 on 26 May 2013: s15(3). See too the Mobile Homes Act 2013 (Saving Provisions) (England) Order 2013 SI No 1168.

On 10 July 2013, Housing and Regeneration Act 2008 s318 was brought into force in Wales: Housing and Regeneration Act 2008 (Commencement No 3 and Transitional, Transitory and Saving Provisions) (Wales) Order 2013 SI No 1469. As a result, agreements in respect of mobile home pitches on local authority Gypsy and Traveller sites in Wales have become subject to the Mobile Homes Act 1983.

A new park homes advice line, run by the Leasehold Advisory Service, is now available for park site residents on 0207 383 9800.

The UK government has reissued its guidance to local authorities on powers available to address unauthorised encampments: *Dealing with illegal and unauthorised encampments: a summary of available powers* (DCLG, August 2013).[22]

Right to Buy scheme

In England local authorities sold an estimated 5,942 dwellings under the Right to Buy scheme in 2012/13 – more than twice the number sold in 2011/12.[23] In the first quarter of 2013/14, local authorities sold an estimated 2,149 dwellings under the Right to Buy scheme – nearly five times the 443 sold in the same quarter of the previous year.[24]

The UK government's draft Deregulation Bill, presently before parliament, would reduce the qualifying period for the right to buy under HA 1985 Pt V. On 31 July 2013 the new Parliamentary Joint Committee on the draft Deregulation Bill published a call for the submission of evidence on the bill.[25]

Social housing complaints

The Chartered Institute of Housing has published *How to ... work with tenant panels to resolve complaints* (CIH, July 2013).[26] A new organisation, Tenant Central, has been established to provide free training for tenants and their representatives. Its programme includes complaints handling and tenants panels.[27]

HUMAN RIGHTS

Articles 8 and 14 and article 1 of Protocol No 1

■ Rousk v Sweden

App No 27183/04,
25 July 2013

Mr Rousk owed the government tax which he did not pay. The Enforcement Authority issued a writ of execution attaching his 'site-leasehold right' and the house on the site where he and his wife lived. When the debt remained unpaid, the Enforcement Authority sold his house at auction. Later Mr Rousk and his wife were evicted. The house was emptied by professional movers and the contents stored by them. His cat was taken to a cattery and his car was taken to a pound. A number of items were thrown away as they were considered to be impossible to store. He complained to the European Court of Human Rights (ECtHR) that the Enforcement Authority's measures had caused violations of his right to the peaceful enjoyment of his property contrary to article 1 of Protocol No 1 and article 8.

The ECtHR reiterated that article 1 of Protocol No 1 guarantees in substance the right to property. It contains three distinct rules. The first rule enounces the principle of peaceful enjoyment of property. The second rule covers deprivation of possessions and subjects it to certain conditions. The third rule recognises that states are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. The court found that it was most appropriate to examine Mr Rousk's complaints under the head of 'control the use of property ... to secure the payment of taxes' under the third rule. Such measures, taken in order to facilitate the enforcement of tax debts and secure tax revenue to the state, were in the general interest and in accordance with national legislation. After reviewing his personal circumstances, the court found that Mr Rousk had time and the opportunity to avoid enforcement measures being taken against him. There were sufficient procedural safeguards to ensure that individuals were not put in a position where their appeals were effectively circumscribed and they were unable to protect correctly their interests. However, both the Enforcement Agency's decision to uphold the sale and the ensuing eviction were excessive and disproportionate, especially since Mr Rousk had other assets, such as a car, which could have been seized and sold to cover what little remained of his enforceable debts. There was accordingly a violation of article 1 of Protocol No 1. For similar reasons the court also found that there had been a breach of article 8. It awarded as pecuniary damage the difference between the market value of the house and the price at which the property was sold. It also awarded further sums in respect of pecuniary and non-pecuniary damage.

■ Secretary of State for Transport v Blake

■ Secretary of State for Defence v Nicholas

[2013] EWHC 2945 (Ch),
31 July 2013

The Ministry of Transport acquired a number of properties close to the M1 as part of an anticipated road-widening scheme. The works were delayed and in 2001 one of the houses was let to Mrs Blake. In 2009, she fell into arrears of rent. After serving a notice to quit, the secretary of state began a possession claim. In 2010, the road-widening scheme was abandoned. Mrs Blake defended the claim, arguing that it would be a violation of article 8 for her to be evicted as she had lived in the property for a considerable period of time and had a disabled child who needed access to local medical services.

Mrs Nicholas lived in a flat owned by the Ministry of Defence. Her husband was a serving member of the Royal Air Force and was the licensee of the flat. After they divorced, the Ministry of Defence claimed possession. Mrs Nicholas contended that it would be a violation of article 8 for her to be evicted.

Burton J made possession orders in both cases. There was no arguable violation of article 8. The claimants were not social landlords. They were entitled to recover possession to make efficient use of their properties. There was, however, a potential issue under article 14. It was common ground that the exclusion of Crown tenancies from the security of tenure provisions of HA 1985 and HA 1988 was capable of amounting to discrimination within the meaning of article 14. Accordingly, the possibility of granting a declaration of incompatibility arose. It was not, however, necessary to resolve the matter. First,

the claimants had offered undertakings relating to the timing of the enforcement of the possession orders to give both occupiers ample time to make alternative arrangements. Secondly, the housing minister had recently announced (18 July 2013), that the government intended to consult on a proposal to bring Crown tenancies within HA 1988.

SECURE TENANCIES

■ Francis v Brent Housing Partnership Limited

[2013] EWCA Civ 912, 29 July 2013

From 1981 until 2005, Ms Francis occupied a flat at 25C Stonebridge Park. Brent LBC owned the property. For much of the time, she was a tolerated trespasser. In 2005, she entered into an agreement with Brent Housing Partnership Limited, Brent's managing agent, to take up temporary occupation of a flat at 1 Kingthorpe, Stonebridge, so that Brent could carry out necessary repairs to 25C. The agreement entitled her to return to 25C when the works were completed but, in the meantime, Brent let 25C to a Ms Williams. Ms Francis issued proceedings claiming possession of 25C, injunctions enabling her to resume undisturbed possession and damages. HHJ Moloney QC found that she was a secure tenant, but not of 25C.

The Court of Appeal allowed her appeal. The decant agreement evinced a combined intention that, as from the moment of the signing of the agreement, Ms Francis was to be recognised as having the status of a secure tenant of No 25C.

POSSESSION CLAIMS

Assured tenancies

■ Poplar HARCA v Reilly

Bow County Court, 4 June 2013

Ms Reilly was an assured tenant. She accrued rent arrears. On 4 January 2013, after a serious assault, she fled the premises with her children and went to Edinburgh where she obtained temporary accommodation from the local authority. When she fled, she did not intend to return. On 13 February 2013, the claimant landlord served a notice seeking possession relying on HA 1988 Sch 2 ground 10. It subsequently issued possession proceedings in the county court. On 14 April 2013, Ms Reilly returned to the premises because her children were being bullied and she was not getting the support that she had expected from her family in Edinburgh. At court, the level of arrears was not denied, but she contended that, at the time the notice was served and during the notice period, she did not reside in the premises as her only or principal home and was therefore not an assured tenant. It was submitted that she regained assured tenancy status when she returned but because she was not an assured tenant at the time the notice was served, the notice was of no effect. Its purpose was to give notice of grounds for possession on an assured tenancy under HA 1988 and so it could not have any effect if there was no assured tenancy in place at the time.

District Judge Vokes accepted those submissions. As there was no application from the claimant to dispense with service of the notice, the proceedings were dismissed.

Tenants of mortgagors

■ Chadwick v Hussain

Romford County Court, 8 October 2012[28]

A bankrupt lived in a large house which she owned. It was subject to a mortgage. She lived there with her seven children, two of whom were very severely disabled, requiring 24-hour care and an adapted environment. Disabled facilities grants had been applied for and approved for the adaptation of the house, but the expenditure had been blocked by the bankruptcy proceedings. The trustee in bankruptcy issued an application for an order for sale of the property in the interests of the creditors, of whom the major one was the local authority. The two disabled sons were joined as respondents to the application, with the Official Solicitor acting as litigation friend. Under Insolvency Act 1986 ss335A and 337, the court was required to make such order as it considered just and reasonable having regard to the interests of the creditors and, since the case involved a dwelling house, the needs of any children, and other circumstances but excluding the needs of the bankrupt. By sections 335A(3) and 337(6), a year after the bankruptcy, the interests of the creditors were to outweigh all other considerations unless the circumstances were exceptional.

At trial, it was held that the circumstances were exceptional, and further that given the needs of the disabled sons and the likely non-availability of suitable alternative accommodation which could be adapted for their occupation, the application for an order for sale should be dismissed outright. The trustee's interest should instead be protected by a charge. In doing so, the court distinguished and went further than the leading case of *Brittain v Haghighat* [2009] EWHC 90 (Ch), another case involving a severely disabled child, where an order for sale had been made but deferred for three years.

UNLAWFUL EVICTION

Damages

■ Lee v Lasrado

[2013] EWHC 2302 (QB), 26 July 2013

Ms Lee rented a room in a house in 2008. She claimed that, in June and July 2009, Mr Lasrado, the landlord, harassed her on a number of occasions. Finally, he changed the locks to her room and gave her a notice stating that she had been evicted. She issued proceedings for damages and obtained an interim injunction requiring him to readmit her. He did not comply with the injunction and a committal order was made. Ms Lee was homeless for 84 days before obtaining accommodation at a hostel. At trial, damages of £24,600 were awarded. Mr Lasrado appealed to the High Court, contending that it was his wife who was the landlord and that the damages were excessive.

Griffith Williams J dismissed the appeal. There was no evidence that Mr Lasrado's wife was the landlord. Indeed, Mr Lasrado had repeatedly referred to himself as landlord throughout the tenancy and subsequent litigation. The point had been raised for the first time on the appeal and there was no merit in it. The quantum of damages was in no way unjust.

LONG LEASES

Service charges

■ Riniker v Mattey

[2013] EWHC 1851 (Admin), 5 June 2013

Mr Riniker was the lessee of a flat in a residential block. Mr Mattey was the company secretary of the company which owned the freehold. Mr Riniker served a Landlord and Tenant Act (LTA) 1985 Sch 1 para 3 notice on the freehold company, requiring it to allow him to inspect the insurance policy and any associated documents. The company failed to comply with the notice. He issued criminal proceedings against Mr Mattey (Sch 1 para 6). A district judge (magistrates' court) sitting at Highbury Corner Magistrates' Court held that there was no case to answer. Even if the notice had been served on the company, it had not been served on Mr Mattey. In any event, Mr Mattey was not the landlord and so could not commit an offence under the Schedule.

The Divisional Court dismissed an appeal. It was clear that Mr Mattey was not the landlord but only an agent or employee of the landlord. No notice had been served upon him. If any offence had been committed, it was not by him, but by the freehold company.

■ The Moorings (Bournemouth) Ltd v McNeill

[2013] UKUT 243 (LC), 16 May 2013

The freeholder of a block of flats imposed a parking scheme which provided that anyone parking other than in a marked bay would be liable to wheel clamping and required to pay a fee of £190 to be released. Mr McNeill, one of the lessees, issued county court proceedings challenging the validity of the parking scheme and sought a refund of a clamping fee which he had paid. At a directions hearing, he abandoned his challenge to the validity of the scheme. Later he discontinued his claim. The freeholder sought to recover legal costs of over £3,000 from Mr McNeill under the terms of his lease. He did not pay. The freeholder then issued proceedings in the Leasehold Valuation Tribunal (LVT) seeking a determination as to the recoverability of the costs under Commonhold and Leasehold Reform Act 2002 s168. Mr McNeill again sought to challenge the validity of the parking scheme. The freeholder contended that he was estopped from doing so as he had abandoned this challenge in the county court proceedings. The LVT rejected that argument.

The freeholder successfully appealed to the Upper Tribunal (Lands Chamber). HHJ Walden-Smith held that the issue had been raised and abandoned in the county court and could not now be revived. Even if this was wrong, the parking scheme was clearly permitted under the terms of the lease. Mr McNeill was in breach of covenant and was liable to pay the sums demanded.

■ BDW Trading Ltd v South Anglia Housing Ltd

[2013] EWHC B10 (Ch), 16 July 2013

LTA 1985 s20 provides that consultation requirements apply to 'qualifying long term agreements' (QLTAs), under which costs would be incurred which would form the basis of service charges. A QLTA is defined by section 20ZA as 'an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than 12 months'.

N Strauss QC, sitting as a deputy High Court judge, held that those consultation requirements do not apply to long term agreements entered into in relation to buildings which have not yet been constructed or which are not let at the time of the agreement. There was no landlord/tenant relationship as there were no leases of the blocks.

■ Jastrzembski v Westminster City Council

[2013] UKUT 0284 (LC), 20 June 2013

The council served a demand for service charges of £9,199 in respect of a tenant's share of the cost of major works. The tenant complained that the consultation requirements had not been complied with because a 2009 consultation notice had not been served on him. The LVT did not resolve the issue of service but decided, on its own initiative, that the 2009 notice had been invalid for other reasons. It held that an earlier 2007 notice had been valid and that the charge was payable.

The Upper Tribunal held that: (i) there was a procedural irregularity by reason of the LVT raising a point about the validity of the 2009 notice which had not been raised by either party; (ii) the 2009 notice was not, in any event, invalid; (iii) the 2007 notice was not a valid notice for the purpose of the 2009 works; but that (iv) there was no relevant prejudice to the appellant so that the LVT did not err in determining that the 2009 notice be dispensed with pursuant to the provisions of LTA 1985 s20ZA.

■ Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd

[2013] UKUT 0264 (LC), 30 May 2013

A house was divided into three flats. Avon held the lease of one flat from Sinclair (the freeholder). The lease provided that the freeholder would insure the house and that the premium would be recoverable by service charges. An LVT held that the premium claimed was payable, except in relation to a 12 per cent claims handling fee. Avon appealed, contending that the premium was unreasonable because it was above market rates and had been provided through a company linked to Sinclair. Sinclair put in a cross-appeal seeking to restore the 12 per cent reduction.

The Upper Tribunal dismissed both appeals. The first appeal raised an issue of fact which had been a matter for the LVT to decide. The cross-appeal had not secured the required permission to appeal. The judgment contains a useful summary of the law on the obligations (or otherwise) of lessors when seeking to obtain insurance for buildings.

HOUSING ALLOCATION

Mutual exchange

■ R (Ewing) v Camden LBC

[2013] EWHC 2542 (Admin), 17 July 2013

The council had a policy for handling applications by its secure tenants for permission to undertake mutual exchanges. The policy provided that the council would not refuse consent to an assignment on the grounds that the property was 'substantially more extensive' than the proposed swop-partner reasonably required (HA 1985 Sch 3 ground 3) if the effect of the exchange would leave only one spare bedroom. Later, the council changed its policy so that it would refuse consent if the swop would leave the incoming tenant with a spare bedroom. The claimant sought judicial review of the policy change on the grounds that: (1) a single spare bedroom could not make a property 'substantially' more extensive than a tenant required; and (2) the council had not undertaken statutory consultation on the change of policy (HA 1985 s105).

Dingemans J refused permission to seek judicial review. Neither ground was arguable. The council had been entitled to consider that a property with one spare bedroom was 'substantially' more than a tenant might require. No obligation to consult had arisen under section 105 because although secure tenants as a class would be affected by the policy change, only 120 of those 23,000 tenants applied for mutual exchange each year. The change of policy could not therefore be said to 'substantially' affect the whole class.

Fraudulent allocation applications

■ R v Wilson-Ellis

Bristol Crown Court, 20 August 2013

The defendant was a barrister and law lecturer at a college in Nottingham. She owned two properties in that city, one of which she had acquired through the Right to Buy scheme. In 2009 she applied to Bristol City Council for a housing allocation, without disclosing her Nottingham properties. She was allocated a council maisonette which she sublet. In 2011, she applied to Bristol for a transfer to a bigger property at which point her fraud was detected.

She was sentenced on conviction to seven months' immediate imprisonment. The judge indicated that the period would have been longer but for her compelling family circumstances.

■ Camden LBC v Rahman Aziz

Highbury Corner Magistrates' Court, 12 August 2013

The defendant owned a property in Merseyside which he had let out to tenants. He applied to Camden for a social housing allocation in June 2009 and updated his information again in March 2011. He failed to disclose that he was a property owner or that was receiving rental payments from tenants.

Having changed his plea to guilty, for making a false representation under the Fraud Act 2006, he was fined £110 and ordered to pay prosecution costs of £1,800.[29]

HOMELESSNESS

Intentional homelessness

■ Isse v Haringey LBC

[2013] EWCA Civ 1049, 14 May 2013

Mr Isse lived and worked in the UK and was the tenant of a small private flat. His wife and their children lived in Egypt. The wife gave up that accommodation and came to the UK to join her husband. The family were then homeless because the flat was too small to accommodate the wife and children. On an application for homelessness assistance, the council decided that Mr Isse had become homeless intentionally. HHJ Faber dismissed an appeal from that decision.

Sir David Keene granted permission to bring a second appeal. There was a real prospect of success in establishing either that the appellant himself had not occupied (and could therefore not have 'ceased to occupy': HA 1996 s191(1)) the home in Egypt or that (if he had) it was not reasonable for him to continue to occupy it because he was not permitted to work in Egypt.

Temporary accommodation

■ Chelfat v Kensington and Chelsea RLBC

[2013] EWCA Civ 793, 3 June 2013

The council owed Mrs Chelfat the main homelessness duty under HA 1996 s193. It placed her in private sector leased accommodation in Enfield. When the council's landlord sought possession, it offered her further accommodation in Ilford under section 193(5). Mrs Chelfat rejected the offer on the grounds that it was not suitable: HA 1996 s206. The council decided that the accommodation had been suitable and that her rejection had brought the duty to an end. Recorder Ullstein QC dismissed an appeal.

Lloyd LJ refused an application for permission to bring a second appeal. The reviewing officer had considered all the evidence and material put forward by Mrs Chelfat and had reached a conclusion that was not wrong in law.

■ Dixon v Haringey LBC

[2013] EWCA Civ 1050, 10 July 2013

The appellant was homeless. He was separated from his wife. Their disabled adult child lived with her. The council owed the appellant the main housing duty and offered him a one-bedroom property. The appellant claimed it was not 'suitable' as he had staying contact visits from his son on weekends and during holidays. HHJ Carr dismissed an appeal from that decision.

Arden LJ refused a renewed application for permission to bring a second appeal. There were no real prospects of success on the appeal and the issue of principle, as to whether in such circumstances a child might reasonably be expected to live with a parent, had already been settled by the House of Lords in *Holmes-Moorhouse v Richmond LBC* [2009] UKHL 7.

Discharge of duty

■ Bernie v Haringey LBC

[2013] EWCA Civ 1011, 12 July 2013

The council owed Ms Bernie the main housing duty: HA 1996 s193. It made her a HA 1996 Part 6 offer of permanent accommodation. Ms Bernie refused it. The council then decided that its section 193 duty had ended: s193(7). That decision was upheld on review. HHJ Faber dismissed an appeal. A renewed application for permission to bring a second appeal raised the interesting question of the correct target for the applicant's challenge. Was it 'the decision to offer the accommodation'? Or was it the later 'decision that the duty had been discharged'?

Moore-Bick LJ refused permission to appeal because, either way, an appeal had no real prospect of success on the particular facts of the appellant's case.

HOUSING AND CHILDREN

■ R (KO) v Lambeth LBC

[2013] EWHC 2637 (Admin), 20 August 2013

The council was accommodating a failed asylum seeker and her baby in hostel accommodation under Children Act (CA) 1989 s17. The baby (as claimant) sought judicial review of the council's alleged failure to conduct a lawful assessment of whether accommodation should also be provided for another child of the mother (from whom she had been separated since 2009) so that the family could live together. Failure to provide accommodation for the whole family was said to represent a breach by the council of the article 8 right to respect for family life. Before the claim could be tried, the claimant sought an interim injunction requiring the council to accommodate the whole family.

HHJ Alice Robinson refused interim relief. The interim application sought provision of accommodation whereas the claim itself was simply for a lawful assessment (under which accommodation might or might not be provided). Article 8 did not contain a freestanding right or claim to a home. There was insufficient prejudice to the claimant to justify an injunction in a claim which did not make out a strong prima facie case.

■ R (N and N) v Newham LBC

[2013] EWHC 2475 (Admin), 9 August 2013

The claimants were children. Their father was an illegal entrant. Their mother was an overstayer. Neither parent faced immediate deportation as the UK Border Agency (UKBA) was reviewing their applications for leave to remain. The family was homeless but neither parent was eligible for homelessness assistance: HA 1996 s185. The children applied to the council for accommodation with their parents under CA 1989 s17. It declined to assist. The claimants obtained an interim injunction in judicial review proceedings. Since December 2011, the council had accommodated the family in bed and breakfast accommodation.

Swift J dismissed the judicial review claim. The council had not materially erred in declining assistance under either its initial or subsequent assessments of the claimants. It had been entitled to find that the children were not 'in need' because the family had alternative means of support provided by family and friends.

■ R (GE) v Bedford BC

[2013] EWHC 2186 (Admin), 26 July 2013

The claimant was a young woman from Eritrea who had claimed asylum. The UKBA decided that she was an adult, refused her asylum application, detained her and arranged for her removal from the UK. The claimant said she was a child and should be accommodated by the council under CA 1989 s20. On an interim application, made in judicial review proceedings against the Home Secretary and the council, Thirlwall J ordered her release and ordered the UKBA to provide her with National Asylum Support Service (NASS) support and accommodation. After she had turned 18, the claimant sought a declaration that she was a 'former relevant child' because the council had owed her the section 20 duty.

Mr Ockelton, sitting as a deputy High Court judge, rejected that claim. The claimant had never been accommodated by the council at all. Absent such provision, there could be no 'leaving care' duties, whatever could or should have happened on the correct factual basis.

■ R (Kebede) v Newcastle City Council

[2013] EWCA Civ 960, 31 July 2013

The claimants had been accommodated under CA 1989 s20. They wanted to go to university but did not meet conditions for student grants or loans. They applied to the council for funding on the basis that it had a duty towards them as 'former relevant children' under section 23C(4)(b). The council declined to award funding given its strained resources. Timothy Straker QC, sitting as a deputy High Court

judge, quashed the decision.

The Court of Appeal dismissed an appeal by the council. The duty was a mandatory statutory duty in respect of which the council's financial position was irrelevant.

■ Redcar and Cleveland BC v B

[2013] EWCA Civ 964, 31 July 2013

The parents of a two-year-old child were no longer able to look after her. She needed alternative accommodation. The council would have been under a CA 1989 s20 duty to accommodate her, but the parents objected (section 20(7)). She went to live with her grandparents. A question arose as to whether she had been a 'looked after' child.

The Court of Appeal decided that the question ought to have been posed in judicial review proceedings, not in county court family proceedings. The answer, on the facts, was that the parental objection had prevented the council from coming under a section 20 duty so that the child had never become 'looked after', even though assistance had been given under section 17.

■ R (A) v Croydon LBC

CO/3254/2012, 21 May 2013

The council decided that the claimant was not a child but an adult and declined to accommodate him under CA 1989 Part III. The claimant brought a claim for judicial review. The council failed to comply with directions given in the proceedings or deal with correspondence from the claimant's solicitors or from the UKBA (which had itself relied on the council's age assessment). A few days before trial, the council conceded that the claimant was a child.

On an application for costs, the council was ordered by Mr Ockelton, sitting as a deputy High Court judge, to pay the costs of all parties from the date on which it had failed to comply with the directions of the court.

■ R (MN and KN) v Hackney LBC

[2013] EWHC 1205 (Admin), 10 May 2013

The claimants were the children of parents who were themselves unlawfully in the UK. They applied to the council for accommodation and support for themselves and their parents under CA 1989 s17. Assistance was refused. They sought a judicial review of that decision.

Leggatt J dismissed the claim. The council had reasonably decided that it was not satisfied that the family would be destitute unless they were provided with assistance. Its decision to refuse to provide accommodation and support to the claimants and their parents was therefore lawful.

HOUSING AND COMMUNITY CARE

■ R (R) v Tower Hamlets LBC

[2013] EWHC 2802 (Admin), 18 July 2013

The claimant was a prisoner aged 21. He had been in custody from the age of 14 and was eligible for parole. The council indicated that, if he was released, he could live in probation service accommodation and would then be assisted in obtaining housing in the usual way. He sought a judicial review, seeking an order requiring the council to provide him with accommodation in a facility offering therapeutic programmes and support.

HHJ Mackie dismissed the claim. The council had carried out a lawful community care assessment and had been entitled to assess the claimant's needs in the way it had. Its only failure had been in not informing the Parole Board of its detailed proposals to help the claimant.

1 Available at: https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult_view.
2 See: www.lowcommission.org.uk/Can-you-help.
3 See: www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/legal-aid-inquiry---call-for-evidence/.
4 See: www.publications.parliament.uk/pa/bills/cbill/2013-2014/0093/14093.pdf.
5 Available at: www.housemark.co.uk/hmresour.nsf/lookup/ASB_BM_report_2013.pdf/$File/ASB_BM_report_2013.pdf.
6 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/236899/PROTECT_-_Statutory_Homelessness_2nd_Quarter__Apr_-_Jun__2013_England.pdf.
7 See: www.gov.uk/government/news/19-million-to-tackle-bed-and-breakfast-living.
8 See: www.gov.uk/government/uploads/system/uploads/attachment_data/file/229740/Homelessness_Prevention_and_Relief_England_201213.pdf .
9 Available at: www.housinglin.org.uk/_library/Resources/Housing/OtherOrganisation/Health_and_Homelessness.pdf.
10 Available at: www.cesi.org.uk/sites/default/files/publications/The%20local%20impacts%20of%20welfare%20reform%20version%207.pdf.
11 Available at: www.cih.org/resources/PDF/Scotland%20Policy%20Pdfs/Bedroom%20Tax/Rent%20payment%20guidance%20-%20final%20pdf%20-%20July%202013.pdf.
12 Available at: www.housemark.co.uk/hmresour.nsf/lookup/ManagingYourServiceChargesEffectively.pdf/$File/ManagingYourServiceChargesEffectively.pdf.
13 Available at: www.newham.gov.uk/Pages/News/Council-winning-war-against-rogue-landlords,-new-figures-show.aspx.
14 Available at: www.london.gov.uk/sites/default/files/2013.07.22%20Final%20London%20Rental%20Standard.pdf.
15 See: www.london.gov.uk/priorities/housing-land/renting-home/london-rental-standard.
16 See: www.huffingtonpost.co.uk/2013/08/30/squatting-law_n_3843266.html?utm_hp_ref=tw.
17 See: www.mydeposits.co.uk/sites/default/ files/Superstrike%20Ltd%20vs%20Marino%20Rodrigues%20Likely%20implications%20v%206%20(3).pdf.
18 See: www.gov.uk/government/publications/tenancy-deposit-protection-schemes.
19 See: www.gov.uk/government/uploads/ system/uploads/attachment_data/file/227097/mortgage-landlord-possession-q2-13.pdf.
20 See: www.cml.org.uk/cml/media/press/3605#.
21 Department for Communities and Local Government, Press release, 27 May 2013; see: www.gov.uk/government/news/new-resident-rights-for-park-homes-will-root-out-the-rogues.
22 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/227492/130807_Dealing_with_illegal_encampments_format_and_ISBN.pdf.
23 See: www.gov.uk/government/uploads/ system/uploads/attachment_data/file/199058/Right_to_Buy_sales_in_England_2012-13_quarter_4.pdf.
24 See: www.gov.uk/government/uploads/system/uploads/attachment_data/file/230813/Right_to_Buy_sales_in_England_2013_to_2014_quarter_1.pdf.
25 See: www.parliament.uk/business/committees/committees-a-z/joint-select/draft-deregulation-bill/news/have-your-say-on-the-draft-deregulation-bill/.
26 See: www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How%20to%20work%20with%20tenant%20panels%20to%20resolve%20complaints.pdf.
27 See: www.tenantcentral.org.uk/.
28 Deighton Pierce Glynn, solicitors, London and Ben Chataway, barrister, Doughty Street Chambers, London.
29 See: www.camden.gov.uk/ccm/content/press/2013/august-2013/two-housing-fraud-cheats-caught-in-two-weeks-and-a-two-month-key-amnesty.en.

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 note 28 for the transcript or notes of the judgment.