

Cornerstone Housing Newsletter

August 2017

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Welcome to the Cornerstone Housing Newsletter May 2017

The Editor Speaks...

When looking back over the last 3 months in the social housing world the one thing that stands out is of course the tragic events that took place at Grenfell Tower on 14 June 2017. 15 days later a public inquiry was announced into the fire to be led by Sir Martin Moore-Bick, and the Prime Minister agreed and published the [terms of reference](#) to the inquiry on 15 August 2017. [Matt Lewin](#) has written a short article in this newsletter on how local housing authorities can respond to such an emergency, and it is clear that the public inquiry will not be the end of the matter whether that be on an [individual](#), investigative or wider policy basis.

Elsewhere, the Government has announced its intention to commence the provisions in the [Homelessness Reduction Act 2017](#) in April 2018, with regulations under the Act being laid this winter. We at Cornerstone Barristers have been very busy in dealing with this legislation, both in an advisory and training capacity. In our last newsletter [Matt Lewin looked](#) at the

opportunities and challenges arising from this important piece of legislation.

As a chambers we continue to be extremely busy across all disciplines, and we are approaching one of the most important events in the Housing Team's calendar, the Annual Housing Conference. This is on [4 October 2017](#) and is the penultimate occasion in our seminar year. Before that [Zoe](#) and I are presenting a [disrepair seminar](#) on 6 September 2017, whilst on 1 November 2017 we finish the year with a session on [anti-social behaviour](#).

On a personal level, I am coming to the end of writing the latest in the Cornerstone Barristers' series of books – [Cornerstone on Social Housing Fraud](#) – which would not have been possible without the patience of my clerking team and publishers (and family), the support of senior management and wonderful assistance of my colleagues.

Finally, one of our editors (Clare Gilbey) is leaving us for pastures new and I would like to wish her all the very best. She has been a wonderful colleague and, along with Lauren, has somehow managed to translate my ramblings and incoherent emails into an impressive product that is this newsletter. Good luck.



[Andy Lane](#)

Barrister

Are Housing Associations public or private?

Section 6(1) of the Human Rights Act 1998 makes it

unlawful for a public authority to act in a way which is incompatible with a Convention right. 'Public authority' includes 'any person certain of whose functions are of a public nature (section 6(3)(b)). In relation to 'a particular act' a person is not a public authority by virtue only of section 6(3)(b) if the nature of the act is private (section 6(5)). A public body is one that is one that is susceptible to judicial review – the two overlap but are not identical.

As housing associations and other registered providers of social housing become ever more complex, providing an increasing range of services to their tenants which fill the voids left by cuts in public services, the distinction between public and private can be ever more blurred. Housing associations are given powers akin to those given to local authorities, in areas such as anti-social behaviour. I well remember an appearance in Walsall Magistrates Court, shortly after the power to seek an ASBO was extended to housing associations, where the Bench were annoyed by my continued denial that my housing association client had a social services department that was under any obligation to work with the young offender in front of them. "But Miss Rowlands, you act for the Council!" they said in exasperation. No, I act for a housing association but it may be a public authority or a public body, or a public authority doing a private act...

The issue first came to the fore in 2002 when the Court of Appeal in *Poplar Housing and Regeneration Community Association Ltd v Donoghue* [2002] QB 48 considered what was a public authority and what was a public function for the purposes of section 6 of the Human Rights Act 1998. They held that housing associations were hybrid bodies – part public, part private - so lettings could in some cases be private acts. This was followed by *Weaver v London & Quadrant Housing Trust* [2009] EWCA Civ 235 which made it clear that not all housing associations are public authorities and not everything they do are public acts. The touchstone is the nature of the act and how close to the State it approaches. Thus, in *Donoghue*, the housing association was standing in the shoes of the

local authority. In *Weaver*, L&Q accepted that they were susceptible to judicial review as a public body. Both L&Q and Poplar Housing are large entities with substantial resources. They have taken stock transfers from local authorities and thus inherited some of the roles of the local authority. They “feel” very public.

On the other hand, the Leonard Cheshire Foundation is not a public authority when running a residential care home, even though it accommodates people to whom the local authority owed a statutory duty: *R (Heather) v Leonard Cheshire Foundation* [2002] EWCA Civ 366. An almshouse run by a charity was (probably) not a public authority in *Watts v Stewart* [2016] EWCA Civ 1247; and Southward Housing Co-Operative Ltd, a fully mutual housing association, was held not to be a public authority in *Walker’s* case [2015] EWHC 1615 (Ch).

How can you tell whether something is a public authority? Some indicia were given in *Weaver*:

- a. The possession of statutory or other special powers;
- b. Performance on a contracted-out basis of governmental services
- c. A charitable/public service motivation;
- d. Non-commercial activities;
- e. Working in a field which has state control and meets the Government’s aims;
- f. Statutory control and/or guidance;
- g. Public subsidy;
- h. The voluntary transfer of housing stock from the public sector to RSLs [registered providers];
- i. A duty of co-operation with local authorities under section 170 of the Housing Act 1996.

Some of these criteria seem dubious. Being under statutory control, for example, would apply to schools and care homes. Performing governmental services on a contracted-out basis would presumably mean that Securicor and G4S are public authorities, something from which they would no doubt recoil. Perhaps it is a matter of a combination of all these factors.

It is also necessary to look at the nature of the act. A

hybrid may do public acts and private acts and it is often hard to see which is which. When a housing association grants a tenancy to a homeless person nominated by a local authority that may be a public act. When it grants a lease to a tenant under a shared ownership scheme that may well be a private act. It’s negotiated at arm’s length. It is more a commercial transaction than a statutory duty.

A recent case that flagged up the importance of this issue and shows that nothing can be taken for granted is *R (Esposito) v Camden LBC*, a decision of May J in the Administrative Court on 31 July 2017. Following the horrendous Grenfell Tower fire, Camden had evacuated some of its similarly constructed towers on the advice of the fire service. It has carried out works to improve fire safety there, and although the fire service is satisfied that the imminent risk is ameliorated, many residents are critical of the works that have been done. Ms Esposito, in particular, did not wish to return to her flat, contending that there was still a risk and that the existence of that risk was itself prejudicial to her health to such a degree that the refusal of another two weeks in temporary accommodation was a breach of her article 8 rights. Camden argued that this was not a public law decision but one arising out of the contractual relationship between it and its tenants. May J rejected this argument. Although there is sadly no full transcript of her judgment currently available she is reported as saying

Public sector landlords providing social housing were not in the same position as a commercial landlord. The number of people affected and the fact that they provided social housing was sufficient to make their decisions reviewable.

Nonetheless, the claim for judicial review failed.

The claimant had not made out a sufficient case that the defendant acted irrationally. The evacuation of the building was not done because of a failure of the cladding, but in response to advice from the fire brigade. The defendant was justified in

asking the tenants to return. There was no basis for an art. 8 claim by virtue of the risk of fire or due to the cladding.

In *Hertfordshire County Council v Davies* [2017] EWHC 1488 (QB) Laing J gave an admirable exposition of the interrelationship of private and public law when considering the termination of a service tenancy by a local authority. The Defendant relied on section 11 of the Children Act 2004 and section 149 of the Equality Act 2010 as matters which the local authority was bound to take into consideration when considering whether to seek possession of the caretaker's bungalow. She said:

I also accept that this was the exercise of a function to which section 149 of the 2010 Act and section 11 of the 2004 Act could apply in theory. However, neither of those duties confers a private law right on the Defendant. That means, on the authority of *Mohamoud* and *Lambourne*, that even if the Defendant could have applied for judicial review of the decision to serve the notice to quit, on the grounds that the Claimant had not complied with those public law duties, any failure to comply with them would not provide a defence to the claim for possession. Contrast the attack on the decision to increase the rent due in *Winder's* case.

These cases go to demonstrate that the distinction between public and private is far from black and white. Even a local authority – clearly public in nature – can do things which are private in nature and which therefore are less susceptible to judicial oversight. And a housing association? The issues are far from evident. Some time should always be taken in considering the nature of the entity in question, and the nature of the act before turning to the more meaty issues of whether there has been a breach of statutory or other provisions.



[Catherine Rowlands](#)

Barrister

How can housing authorities respond to an emergency?

I happened to be walking along Holland Park Avenue in west London on the day of the fire at Grenfell Tower. Suddenly, its blackened form came into view. It was still burning. It was one of the most horrific sights I have ever seen. The scale of the disaster was almost too great to comprehend.

A few evenings later, I went to join the hundreds of volunteers to sift through and sort the vast quantities of stuff donated by members of the public to the people made homeless by the fire. There was literally tons of material of all kinds. Yet, despite the best efforts of a handful of people wearing high-visibility jackets, it was obvious that there was no overall co-ordination of the relief effort: was there a need for all of these high-heeled shoes?; why was there apparently no clean underwear?; where was all this stuff going to be stored?; would any of it actually get to the victims? The scale of the task of helping these poor people rebuild their lives, also, was almost too great to comprehend.

Meanwhile, the Labour party and lots of outraged citizens on social media were calling for the many empty properties in the surrounding area (an FOI request to Kensington and Chelsea showed that there were 1,857 in the borough) to be requisitioned.

The Civil Contingencies Act 2004 provides the legal framework for preparing for and responding to emergencies. Section 1(1) of the Act defines an "emergency" and it includes, by paragraph (a), "*an event or situation which threatens serious damage to human welfare in a place in the UK*". For the purposes of section 1(1)(a), that definition will be satisfied where the event or situation involves, causes or may cause homelessness: section 1(2)(c).

All local authorities are classed under the Act as a Category 1 Responder. Local authorities will play a critical role in responding to emergencies, and housing authorities in particular will be at the forefront of that response, potentially dealing with large numbers of people made homeless by a disaster. For most housing authorities, responding to a disaster on the scale of Grenfell Tower by finding sufficient suitable emergency accommodation will be an extremely difficult task.

Section 2 of the Act imposes certain general duties to assess the risks of an emergency occurring and to plan for a response. In the wake of the Grenfell Tower tragedy, it is obvious that housing authorities have an important role in contributing to the formulation of emergency plans:

- identifying reception and rest centres to be activated in the immediate aftermath of an emergency
- plans for securing emergency accommodation (most likely in phases: hotel and, subsequently, self-contained) so that victims can be moved out of ad hoc accommodation as soon as possible
- ensuring there is capacity to accept and process large numbers of homelessness applications
- reviewing housing allocation schemes to make provision for people affected by an emergency (and for determining priority among victims)
- applying for emergency funding assistance (which may include the cost of

accommodation) from the government under the *Bellwin* scheme

Interestingly, there is an express statutory power to requisition property in cases of emergency (there has long been a common law power, under the Royal Prerogative, which was part of the Supreme Court's consideration of Gina Miller's Article 50 case earlier this year). Section 22(3)(b) of the Act enables an Order in Council to be made for the requisition of property (with or without compensation) where this is urgently necessary for (among other things) mitigating the effect of an emergency.

However, recourse to these draconian powers will only be made in the most exceptional of cases. In response to the Grenfell Tower, it was well publicised that the government opted to purchase 68 flats in a luxury development which had been reserved for affordable housing under a section 106 agreement. The properties in question were purchased and will be managed by the City of London Corporation with allocations delegated to RBKC.

It is, of course, impossible to prepare for every eventuality or to predict when and in what form an emergency will occur. Local authorities all over the country will no doubt be urgently reviewing their emergency planning procedures; housing authorities ought to be contributing to that discussion.



[Matt Lewin](#)

Barrister

Unlawful sub-letting & the abuse of social housing

High court overturns SPO and gives unprecedented UPO guidance

Poplar HARCA v (1) Begum (2) Rohim [2017] UKHC 2040 (QB)

"... it is not compassionate to allow profiteering fraudsters indefinitely to continue to occupy premises and thereby exclude from such accommodation more needy and deserving families."

Turner J

The High Court has overturned a suspended possession order in a case concerning the partial sub-letting of social housing.

In the first case to consider the proper interpretation of section 5 of the Prevention of Social Housing Fraud Act 2013, it has also ordered the tenants to yield up their unlawful profits.

[Dean Underwood](#) and Pupil [Liam Wells](#) explain the judgment.

The background

The Respondents were the assured tenants of social housing in Poplar – a two bedroom flat, which they occupied with their children. They received Housing Benefit to cover their rent in full. In about August 2015, they moved out of the flat and went to live with the First Respondent's mother. They sublet the flat to a couple, at a rent of £400 pcm, but retained one bedroom, containing children's belongings, to convince their landlord – should they need to – that they still lived there.

On 12 November 2015, their landlord visited the flat and the mother's house simultaneously, accompanied by local authority fraud officers and a BBC camera crew.

They found the Respondents and their children at the mother's house; the flat sublet; and the retained bedroom padlocked shut. The Second Respondent later evicted the sub-tenants unlawfully, threatened to burn their clothes and bragged that he would 'get away with it'. He and the First Respondent then moved back into the flat with their children.

Six months later, the police raided the flat and found the Second Respondent in possession of cannabis; and drug dealing paraphernalia in the kitchen, including scales, dealing bags and calling cards.

The trial

At trial, Poplar HARCA claimed that the Respondents had, in effect, parted with possession of the whole of the flat and had lost security of tenure by operation of section 15A of the Housing Act 1988. In the alternative, it claimed, it was entitled to possession on Grounds 10, 12 and/or 14 of the 1988 Act, the Respondents' tenancy breaches being such an affront to the public interest that nothing less than outright possession would be reasonable.

The Respondents denied moving out of the flat at all, or that they had received any money from the 'distant relatives' who were staying there. They claimed that, at 4am on 12 November 2015, they had been called to the mother's house to care for the First Respondent's brother and had gone there as a family to do so, locking the children's bedroom behind them; and leaving the 'relatives' to sleep in their bed.

The Recorder dismissed the Appellant's primary claim: the Respondents had neither sublet nor parted with possession of the whole flat. In the alternative claim, he granted but suspended enforcement of a possession order, finding that the Respondents had not made a profit, had moved into the mother's house for altruistic reasons – to care for the First Respondent's brother – and had been living in cramped conditions. These, he held, were 'special circumstances' which took the case 'right out of the ordinary'.

He also refused the Appellant's claim for an UPO under section 5 of the 2013 Act on the premise that the Respondents had not made enough from sub-letting to cover the rent for the flat.

The appeal

Poplar HARCA appealed. It argued that the exercise of the Recorder's discretion had been seriously flawed; his decision to suspend enforcement of the possession order contrary to the public interest and plainly wrong; and his decision not to make an UPO premised on the erroneous belief that the Respondents had not made a profit.

It invited the court to exercise the Recorder's discretion afresh, applying the approach taken to claims on Ground 17 of the 1988 Act (misrepresentation inducing the grant of a tenancy; see *Shrewsbury & Atcham BC v Evans* (1998) 30 HLR 123) and, in that context, the approach to claims on grounds of criminal conduct (see *Sandwell MBC v Hensley* [2007] EWCA Civ 1425; [2008] HLR 22). It further invited the court to make an UPO.

The decision

Possession

Satisfied that the Recorder's decision had been, "fatally and demonstrably flawed," Turner J allowed the appeal on all grounds. Declining Poplar HARCA's invitation to apply *Evans*, he held that there was nonetheless a "complete dearth of material which could amount to cogent evidence that the Respondents would mend their ways in future." Having observed that,

"... there is a very long waiting list indeed for [affordable] accommodation and that those who secure it should ... be slow to abuse the benefits and advantages which it brings,"

He went on to stress that,

"... it is not compassionate to allow profiteering fraudsters indefinitely to continue to occupy premises

and thereby exclude from such accommodation more needy and deserving families"

and substituted an outright order for the Recorder's suspended order.

Unlawful Profit Order

In the first appellate decision to consider the proper interpretation of section 5 of the 2013 Act, Turner J gave guidance about the relevance of ill-gotten Housing Benefit in the UPO calculation.

Prevention of Social Housing Fraud Act, subsection 5(6)

(6)The maximum amount payable under an unlawful profit order is calculated as follows

Step 1

Determine the total amount the tenant received as a result of the conduct described in subsection ... (4)(c) (or the best estimate of that amount).

Step 2

Deduct from the amount determined under step 1 the total amount, if any, paid by the tenant as rent to the landlord (including service charges) over the period during which the conduct described in subsection ... (4)(c) took place.

Finding that the Respondents had not profited from their sub-letting, the Appellant argued, the Recorder had clearly accounted for the Housing Benefit they received under Step 2 (above), but not Step 1. That was plainly wrong: to safeguard the purpose and effect of the UPO, Housing Benefit should be taken into account in both Steps or neither.

The better approach, the Appellant contended, was to take it into account under neither Step: to do otherwise would require the court to depart, in Steps 1 and 2, from the plain meaning the words, "...as a result of the [subletting]..." and "...paid by the tenant as rent...". In that regard, it argued, the dicta in *Wallace v Manchester CC* (1998) 30 HLR 111 at [26] were obita and of no material application. Further, if the tenant were to receive but not pass on his Housing Benefit to the landlord the UPO would become, in effect, a backdoor and unintended means of rent or Housing Benefit recovery. In the alternative, the Appellant argued, Housing Benefit should be taken into account in both Steps.

The Respondents contended that the Recorder had been right: Housing Benefit should be included in Step 2, but not Step 1.

Adopting the Appellant's alternative submission, Turner J held that,

"the word, "total" [in Step 1] indicates that the gross receipts secured and consequent upon the dishonest relinquishment of possession should be considered under Step 1. To hold otherwise would be to render all but nugatory the clear purpose of the section. A very considerable proportion of tenants in socially rented homes are in receipt of Housing Benefit and those who have their rents paid for them are those in the best position to be able to benefit from unlawful profiteering of this type. To disregard Housing Benefit under Step 1 but include it to the ill-gotten advantage of the fraudster under Step 2 would be to thwart the obvious intention of Parliament to provide a mechanism with which to strip him of his spoils."

He overturned the Recorder's decision and ordered the Respondents to pay over the profits of their subletting.

Commentary

Turner J's decision in the possession claim will be welcomed by social landlords nationwide, reinforcing

as it does the policy rationale of the 2013 Act and dicta in both *Evans* (at 132-133) and *Lewisham LBC v Malcolm* [2008] UKHL 43; [2008] 1 AC 1399 at [61] about the public interest in safeguarding social housing for those who genuinely need it.

For lawyers, the decision is primarily of interest for its interpretation of section 5 of the 2013 Act – the first appellate decision on point. In future, when proving and calculating the maximum amount available under section 5 of the 2013 Act, landlords and their representatives will be required to evidence, "the gross receipts secured and consequent upon the dishonest relinquishment of possession". That, the court has found, is the proper meaning of "total" in Step 1 and, it is suggested, will therefore include rent and any other ill-gotten rewards, whether deposits, Housing Benefit, Discretionary Housing Payments, attendance or service charges.

Dean Underwood and Pupil Liam Wells appeared on behalf of the Appellant, Poplar HARCA Ltd, instructed by Helen Gascoigne of Capsticks LLP.

For a full transcript of the judgment [click here](#).



[Dean Underwood](#)

Barrister



[Liam Wells](#)

Pupil Barrister

Housing cases of interest

[Andy Lane](#) has put together the housing cases of interest over the last few months...

Allocation

[R \(on the application of C\) v ISLINGTON LONDON BOROUGH COUNCIL \[2017\] EWHC 1288 \(Admin\)](#)

A local lettings policy within a local authority's housing allocation scheme unlawfully discriminated against victims of domestic violence and therefore women, contrary to ECHR art.14 in conjunction with ECHR art.8. However, the discrimination was justified on the ground of proportionality because it struck a fair balance between the severity of the consequences for a social housing applicant and the importance of the legitimate aim pursued by the policy.

[EALING LONDON BOROUGH COUNCIL \(Appellant\) v R \(on the application of H & ORS\) \(Respondents\) & EQUALITY & HUMAN RIGHTS COMMISSION \(Intervener\) \[2017\] EWCA Civ 1127](#)

The Court of Appeal allowed an appeal against a judge's findings that there had been unjustified indirect discrimination pursuant to section 19 of the Equality Act 2010, a contravention art. 14 and a breach of section 11 of the Children Act 2004 with regard to the authority's allocation scheme and in particular the setting aside of a proportion of lets for "working households" and "model tenants". The former preference gave rise to indirect discrimination and the judge approached the question of justification in a wrong manner. The Court also considered the public sector equality duty and doubt was cast as to whether art. 8 was engaged in these instances.

[Matt Hutchings QC](#) appeared on behalf of the Appellant authority.

See the Cornerstone Barristers' [e-flash](#) on this decision.

Homelessness

[VIDA POSHTEH v KENSINGTON & CHELSEA ROYAL LONDON BOROUGH COUNCIL \[2017\] UKSC 36](#)

The Supreme Court declined to depart from its earlier decision in *Ali v Birmingham City Council* [2010] UKSC 8 that the duties imposed on local housing authorities under the Housing Act 1996 Pt VII did not give rise to "civil rights [or] obligations" and that accordingly ECHR art.6 did not apply. The decision of the European Court of Human Rights to the opposite effect in *Ali v United Kingdom* (40378/10) (2016) 63 E.H.R.R. 20 did not persuade it to change its view.

[R \(on the application of ROMEO SAMBOTIN\) v BRENT LONDON BOROUGH COUNCIL \[2017\] EWHC 1190 \(Admin\)](#)

Although a local authority was entitled to revisit a decision which it had communicated to an applicant for housing assistance where either it had not completed its enquiries under the Housing Act 1996 s.184 or it had not made a final decision as to the nature of the duty it owed to an applicant, in the circumstances, such enquiries had been completed by the local authority and a decision had been communicated to the applicant regarding the nature of the duty which it owed to him.

[JAMILA AFONSO DA TRINDADE v HACKNEY LONDON BOROUGH COUNCIL \[2017\] EWCA Civ 942](#)

It was argued that ignorance of a future event could fall within the good faith definition of section 191(2) of the Housing Act 1996, and that authority to the contrary was per incuriam. This was rejected by the Court of Appeal who confirmed that *Enfield LBC v Najim* [2015] EWCA Civ 319 had been correctly decided.

[R \(on the application of E\) v ISLINGTON LONDON BOROUGH COUNCIL \[2017\] EWHC 1440 \(Admin\)](#)

Judicial review was sought in respect of the local authority's acts and omissions with regard to the Claimant's educational provision. The Court held that where a local housing authority was considering placing a school-age homeless child out of borough it was under a duty to assess the likely impact of the transfer on the educational welfare of the child. A declaration was made that the authority had acted unlawfully by denying the Claimant the right to education for defined periods. There was also a remedy in damages.

[Kelvin Rutledge QC](#) appeared on behalf of the Defendant authority.

HEMLEY v CROYDON LONDON BOROUGH COUNCIL CA (Civ Div) (Lewison LJ, McCombe LJ) 25/07/2017

The local authority appealed against a section 204 appeal decision quashing its decision because of the review officer applying the wrong priority need test. Both parties accepted that *Hotak v Southwark LBC* [2015] UKSC 30 had changed the previous “*Pereira*” test, which had been used by the review officer. It was argued that given the Judge’s findings the same decision would have been reached regardless and as such there was no material error. The Court of Appeal however was not sufficiently confident that the review officer would have reached the same decision and the quashing of his decision was therefore upheld.

[David Lintott](#) appeared on behalf of the Appellant authority.

R (on the application of LETIZIA ESPOSITO) v CAMDEN LONDON BOROUGH COUNCIL QBD (Admin) (May J) 31/07/2017

A judicial review claim was brought against the local authority’s decision to refuse to provide extended emergency accommodation without further tests being carried out and results obtained in respect of the tower block in which the claimant lived. The application was refused by Mrs Justice May who held that the local authority’s decision to cease the emergency accommodation could not be said to be irrational. They had acted on the advice of the Fire Service in respect of the original evacuation rather than because there had been any failure of the cladding. (on Lawtel)

Possession

[HERTFORDSHIRE COUNTY COUNCIL v BRYN COLIN DAVIES \[2017\] EWHC 1488 \(QB\)](#)

Mr Davies, a school caretaker, was held to be a service occupier whose right to occupy school premises had

determined when he was dismissed from his employment. The public law and discrimination defences did not affect the local authority’s right to possession. Paragraph 2 of Schedule 1 to the Housing Act 1985 was not incompatible with art. 14 when read with art. 8.

[Andy Lane](#) and [Tara O’Leary](#) appeared for the local authority.

See the Cornerstone Barristers’ [e-flash](#) on this decision.

[POPLAR HOUSING & REGENERATION COMMUNITY ASSOCIATION LTD v \(1\) AFSANA BEGUM \(2\) MOHAMMED ROHIM \[2017\] EWHC 2040 \(QB\)](#)

The Recorder had exercised his discretion in respect of a possession claim based on allegations of sub-letting on a demonstrably flawed basis when suspended such an order on terms, and the Court instead made an outright order to take effect in 21 days. The treatment of an unlawful profit order application was also wrong and the housing benefit being received during the sub-letting period should have been treated as monies received for the purposes of step 1 of the calculation provided for at section 5(6) of the Prevention of Social Housing Fraud Act 2013.

[Dean Underwood](#) and [Liam Wells](#) appeared on behalf of the Appellant housing association.

See the Cornerstone Barristers’ [e-flash](#) on this decision.

[DACORUM BOROUGH COUNCIL v CHENALEE BUCKNALL \(FORMERLY CHENALEE ACHEAMPONG\) \[2017\] EWHC 2094 \(QB\)](#)

The appellant had been provided with accommodation by the local authority when she applied for homelessness assistance. This was under a licence and continued after the authority accepted that she was owed the full housing duty. When she refused alternative accommodation the authority sought to discharge its duty and served a notice to quit in respect of the premises she was occupying. This was defective as it did not contain the prescribed information required

but it was argued that the appellant had not been occupying the premises "as a dwelling" at the time when she was served with notice to quit, with the result that she was not entitled to the procedural protections provided for by the Protection from Eviction Act 1977. Mr Justice Popplewell held that whilst she had not occupied the premises as a dwelling while the local authority was performing its interim housing duty, the position changed when the local authority acknowledged its full housing duty and allowed her to stay where she was while it searched for suitable permanent accommodation. A valid notice to quit was therefore required and the appeal against the possession order was allowed.

[Matt Hutchings QC](#) and [Jack Parker](#) appeared on behalf of the Respondent authority.

See the Cornerstone Barristers' [e-flash](#) on this decision.

Private Rented Sector

[DAVID WOOD v KINGSTON UPON HULL CITY COUNCIL \[2017\] EWCA Civ 364](#)

When quashing an improvement notice served by a local housing authority under the Housing Act 2004 s.12 the Upper Tribunal had not erred in concluding that, as a matter of practicality, it was preferable to serve a notice specifying a single course of remedial work to be carried out by a single owner.

[Michael Paget](#) appeared on behalf of the Appellant authority.

[AB v London Borough of Newham \[2017\] UKUT 299 \(LC\)](#)

A landlord appealed against a rent repayment order pursuant to section 73 of the Housing Act 2004, after she had failed to obtain a mandatory HMO licence. The decision of the first-tier tribunal was set aside to the extent that it dealt with the amount to be repaid by the landlord (but not so far as it concerned the principle that a rent repayment order was to be made). There had been procedural mishap, insufficiency of reasons with regards to the landlord's case on why she had not

obtained a licence and a failure to make an assessment of the mandatory issues it was required to take into account by reason of section 74(6).

Repairs

[MOHAMED ABDULRAHMAN v CIRCLE 33 HOUSING TRUST LTD CA \(Civ Div\) \(King LJ, Burnett LJ\) 29/06/2017](#)

Service of an injunction by alternative method under CPR r.81.8 had been effected by posting the order through an individual's letterbox. The judge had been entitled to make a committal order against him after finding on the evidence that he had prevented access to his property for the purpose of carrying out repairs, in breach of the injunction. (on Lawtel)

Service Charges

[JLK LTD v EMMANUEL CHIEDU EZEKWE \[2017\] UKUT 277 \(LC\)](#)

A landlord successfully appealed against the decision of the First-tier Tribunal that it had jurisdiction to hear applications brought by 56 leaseholders (student accommodation) for a determination of the amount of service charges they were liable to pay. The accommodation was not occupied or intended to be occupied as a separate dwelling and they were not dwellings within the meaning of section 38 of the Landlord and Tenant Act 1985.



[Andy Lane](#)

Barrister

Cornerstone Housing News

On 7th June, Andy Lane, Tara O'Leary and Ruchi Parekh hosted a seminar on Public Law and Equality Act 2010 defences in Chambers. The seminar considered the increasing number of defences to possession claims based on some public law challenge, or the Equality Act 2010 and how Local Authorities and Housing Associations can meet these defences successfully or, better still, avoid them entirely.



Andy Lane discusses Equality Act defences



Ruchi Parekh discusses Public Sector Equality Duty

Upcoming events

The next Cornerstone Housing seminar is on Wednesday 6th September on Defending disrepair claims. The seminar has now sold out but to be put on the waiting list or for more information please [click here](#).

The Cornerstone Barristers annual housing conference will be taking place on Wednesday 4th October. Tickets have now gone on sale, for more information and to book tickets please [click here](#).

In other news...

For even more housing news, follow the links below to view recent e-flashes by the team:

- [What Does "Significantly" Mean?](#)
- [High Court rejects Article 14 challenge regarding security of tenure for local authority employees occupying 'tied accommodation'](#)
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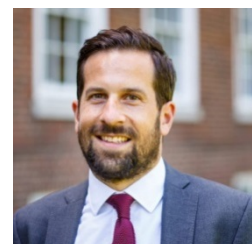
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