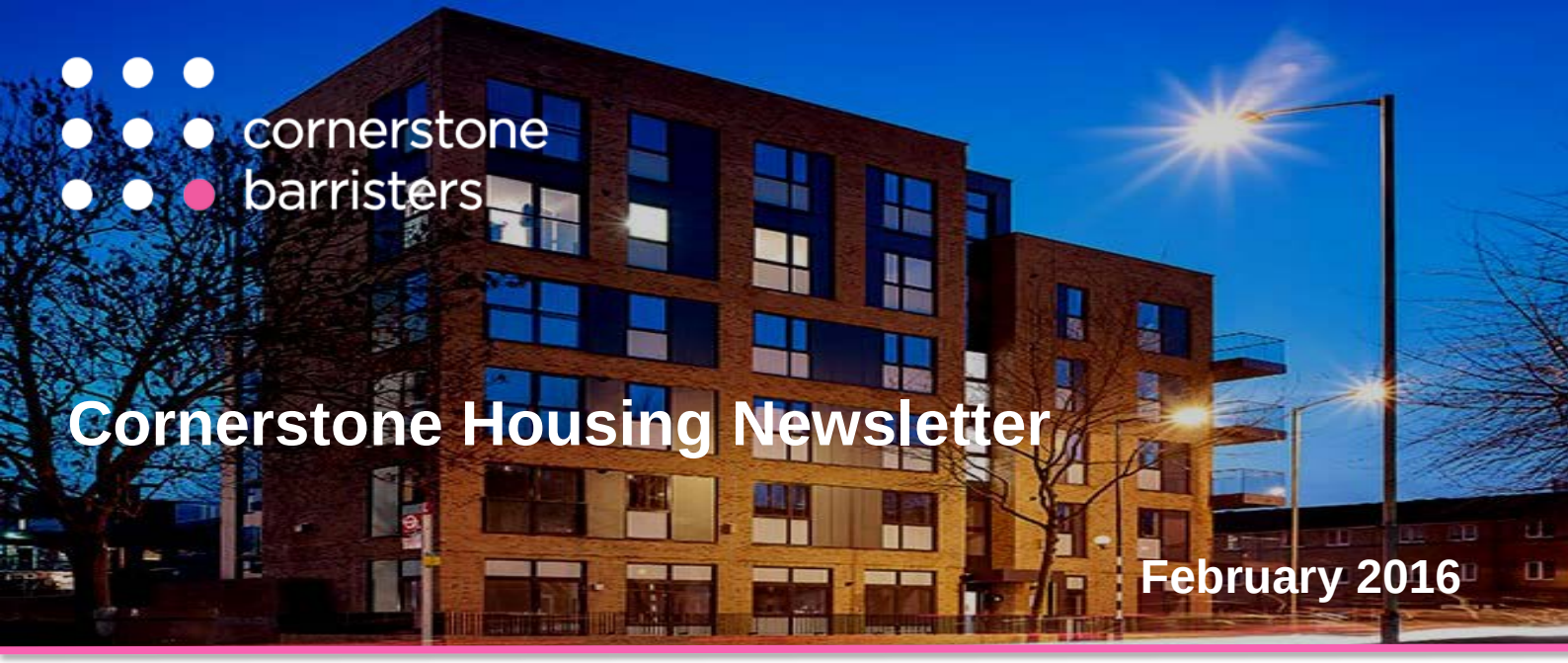

cornerstone barristers

Cornerstone Housing Newsletter

February 2016

Contents

Welcome to the first housing newsletter of 2016

Last year was an important year for housing with several cases reaching the Supreme Court and having nationwide implications. Housing was also high on the political agenda during the run up the general election and beyond.

A major theme for 2016 will be further belt tightening whilst still meeting statutory obligations. Many will be faced with finding imaginative ways of meeting the ever increasing demand for housing demand and of providing integrated housing services to those with health and social care needs. It promises to be a challenging year for those in the sector.

So what is in store for the first half of the year?

In January we had the Supreme Court's judgment in Samin v Westminster [2016] UKSC 1 concerning eligibility for housing. In the last few days we have also had judgment from the Court of Appeal on the bedroom tax in the cases of Rutherford, Todd and A v SoS for Works and Pensions [2016] EWCA Civ 29, click here for our e-flash. The Supreme Court will hear an appeal when it considers bedroom tax from 29 February 2016 in MA and Others.

From 1 **February** landlords will be required to carry out 'right to rent' checks to ensure their tenant is legally entitled to rent a property.

In **March** the Supreme Court is due to hear two important housing cases, MA & Others concerning disability discrimination and the bedroom tax and McDonald v Macdonald on the human rights decisions in section 21 possession proceedings. The spring budget will take place on 18 March and is likely to result in further reductions in local government and welfare budgets.

In **April** the reduced benefit cap comes into effect with the potential to impact rent arrears and to trigger transfer applications from properties that are no longer affordable. Housing associations will see rental income drop by 1% and many will face a challenge to balance the books. We are already seeing discussions on possible mergers and ways improving efficiency.

The London Mayoral election takes place on **5 May** and the shortage of housing in the capital is likely to feature prominently in the election campaign.

In terms of legislation, the **Housing and Planning Bill** will continue to make its way through the parliamentary process. The Bill includes measures for mandatory fixed term secure tenancies, requirements for councils to sell high-value council homes once they become vacant and higher rents for those council tenants with a high income ('pay to stay'). There are also provisions relating to the voluntary extension of the right to buy to housing association tenants.

The Cornerstone Housing team will keep you up to date with all of these developments through its e-flashes and seminar programme.

Dates for your diaries

Please also note that our hugely popular annual conference will take place on **Tuesday 4 October**. Details of how to book a place, including early bird discounts, will be published soon.

The team's seminar programme for London for 2016 can be accessed on this link. The programme for Birmingham is in the process of being finalised and will be published shortly.

As ever we will endeavour to keep you up to date with all the latest developments in social housing.

Happy reading.

Kuljit Bhogal
Joint head of Housing Team

Recent Housing Developments

Andy Lane provides another of his whirlwind tours of the some of the issues facing the Housing Sector in the last 3 months…

Anti-social Behaviour

Is the success of the Troubled Families Programme exaggerated? The Centre for Crime and Justice Studies reports...

Surveillance Camera Commissioner calls on government to widen scope of organisations covered by code to include Housing Associations.

Statutory Guidance issued by the Home Office in December 2015 on the new offence of controlling or coercive behaviour in intimate or familial relationships (section 76 of the Serious Crime Act 2015).

ONS statistical bulletin show police recorded ASB incidents down 9% to 1.9 million for the year ending September 2015 (pages 117-120).

The Government sets out the 6 priorities of the new cross-government approach to ending gang violence and exploitation.

Council Tax

An independent review of council tax support schemes - as required by section 9 of the Local Government Finance Act 2012 - was announced in December 2015.

Briefing paper on council tax support and the Local Government Finance Act 2012 statutory review recently announced.

Homelessness

Helpful Commons Library briefing on the use of temporary accommodation by local authorities in England.

Housing & Planning Bill 2015-16

A House of Lords Library briefing (January 2016) provides an overview of the provisions of the Housing and Planning Bill.

Licensing

The government consulted in November/December 2015 on extending the mandatory licensing of HMOs.

The London Borough of Ealing is consulting on selective and borough-wide additional licensing schemes, affecting 20,000 properties.

Borough-wide selective licensing scheme rejected by the Secretary of State.

Possession Claims

The Ministry of Justice produced its July to September 2015 possession statistics.

An application for permission to appeal to the Supreme Court has been made in *Mohamoud v RBKC* (s.11 Children Act 2004 & possession).

Private Sector

On 11 November 2015 the Communities Secretary announced new funding "to crack down on rogue landlords and tackle beds in sheds".

In the same month the government published its response to the technical discussion paper 'Tackling rogue landlords and improving the private rental sector'.

Magistrates send out a message on fire safety in prosecution for breach of the Management of HMO Regulations 2006

Regulation

The Homes and Communities Agency to challenge Housing Association's efficiencies via in depth assessments.

'The Economist' warns against major reforms of housing associations.

On 15 December 2015 Brandon Lewis (Minister of State for Housing & Planning) announced to the Communities & Local Government Select Committee proposals to deregulate the housing association sector.

The HCA announces that its chief executive, Andy Rose, is to leave his position after almost 3 years in the role.

Rent

On 12 November 2015 'The Guardian' ran an article by Denise Hatton (chief executive of YMCA England) warning of the impact of the 1% social rent cut on vulnerable people.

Lord Freud has responded to the National Housing federation on the impact of introducing local housing allowance caps to supported housing.

All supported housing as currently set out in the rent standard guidance will be exempt from the rent reduction for a period of 1 year.

The 'Right to Rent' has been rolled out across England affecting many private tenancies starting on or after 1 February 2016.

Right to Buy

Interesting short legislative history lesson on the right to buy.

A Commons Library Briefing Paper on the extended Right to Buy.

5,200 Housing Association tenants registered interest in the right to buy in the first month (November 2015).

The Department for Communities & Local Government has announced the start of the extended RTB pilot scheme with 5 Housing Associations, ahead of the national roll out next year.

The London Borough of Haringey return right to buy receipts to the government, because they were unable to build replacement homes within the required 3 years…not the only authority.

The establishment of housing companies by local authorities gains greater interest because of the proposed right to buy reforms.

The Charities (Protection and Social Investment) Bill has been amended to remove a clause aiming to protect Housing Associations from RTB.

Welfare Reform and Work Bill 2015-16

House of Lords Library Note produced on 10 November 2015.

Miscellaneous

The House of Lords has voted to keep income-related child poverty measures by 290 votes to 198.

The Renting Homes (Wales) Act 2016 has been given Royal Assent

The Commons Library has produced a briefing note on "Empty Housing (England)"

Andy Lane

The Death of the Social Rented sector? Selective thoughts on the Housing and Planning Bill

Introduction

The Housing and Planning Bill was introduced into the House of Lords this month following completion of its Commons stages, with the second reading debate having taken place last week. The Bill has been committed to a Committee of the whole House for line by line examination.

This process is unlikely, however, to result in close and anxious scrutiny of the Bill's social housing provisions. In keeping with much modern legislation, most of the important detail will be found in yet-to-be-published criteria, determinations, regulations, and agreements. As and when they see the light of day they will be far removed from the prying eyes of legislators; beyond the reach of serious opportunity to influence and change.

This is a matter of real concern because the Bill contains the most radical changes to social housing ever seen, far more radical than the Housing Act 1980 which, although introducing the 'right to buy', also introduced statutory security of tenure for local housing

authority ("authority") tenants for the first time, in the guise of the shiny-new secure tenancy. The default secure periodic tenancy was designed to, and has, provided a home for life for millions of tenants and their families in the 35 years following that Act's commencement, the majority being tenants for whom home ownership was, and remains, a financially unattainable dream. The Bill sets about ending this.

The main provisions in the Bill concerning social housing are:

- The extension of the 'right to buy' to housing association ("association") tenants, based not on a binding legal requirement but on an agreement reached with the National Housing Federation (NHF) in October 2015 which will provide for voluntary sales with similar discounts as under the statutory 'right to buy'.

- New duties on authorities:

    - To make payments to the Secretary of State assessed in accordance with the value of their interest in "high-value housing" likely to become vacant in any one year. These payments are designed to fund, in whole or in part, reimbursements to associations whose properties have been sold at a discount.

    - To consider selling their interests in "high-value housing".

- The phasing out of the periodic secure tenancy 'for life' and the requirement that all new secure tenancies will be for fixed terms of between 2 and 5 years only.

- The introduction of market rents for higher-income tenants in social housing – the so-called "pay to stay" principle. This is to apply, it is presently thought, where the tenant's household income if £30,000 p.a. or more, or £40,000 p.a. or more in London (July 2015 Budget).

- Measures intended to reduce social housing regulation.

The Bill has some laudable aims, for instance in reducing unnecessary regulation on associations and incorporating new restrictions on insolvency etc. So too is it hard to argue with the fact that if there are social tenants who can properly afford to, they should be encouraged to move to the private rented sector or embrace home ownership, or else be required to pay a market rent for what is a valuable and limited resource. These provisions are not considered further. It is the other main provisions, the first three bulleted above, that this note is concerned with.

Implementation of the Voluntary Right to Buy

The Conservative Party's 2015 Manifesto contained a commitment to "extend the Right to Buy to tenants in Housing Associations to enable more people to buy a home of their own". Subsequently, the 2015 Queen's Speech announced that a Housing Bill would be introduced to "dramatically extend the Right to Buy to the tenants of Housing Associations – putting home ownership within the reach of 1.3 million more families". In response to this, in September 2015, the NHF and its members made an offer to Government of a potential agreement that would give all 2.3 million association tenants the opportunity of home ownership through 'right to buy' discounts. The offer was expressed as enabling the following:

- Every association tenant would have the right to purchase a home at 'right to buy' level discounts, subject to the overall availability of funding for the scheme (the presumption being that associations would sell the tenant the property in which they live).

- Associations would have discretion not to sell, for example where a property is in a rural area and could not be replaced, or where it is adapted for special needs tenants. In that event, associations would offer tenants the opportunity to use their discount to buy an alternative home from either their own or another association's stock.

- The Government would compensate the association for the discount offered to the tenant and housing associations would retain the sales receipt to enable them to reinvest in the delivery of new homes.

- Associations would be able to use sales proceeds to deliver new supply and would have flexibility to replace rented homes with other tenures, such as shared ownership.

Under the terms of this offer, the NHF was also seeking the implementation of deregulatory measures to support associations in their objectives to support tenants into home ownership and deliver additional supply of new homes. This would include removing any regulatory barriers to associations disposing of their homes to tenants.

On 7 October 2015 the Prime Minister announced that agreement had been reached with associations and the National Housing Federation on the voluntary extension of the right to buy. The Bill was published just 6 days later.

Chapter 1 to Part 4 of the Bill, 'Implementing the right to buy on a voluntary basis', contains just five short clauses. The main substantive one, clause 62, simply provides that the Secretary of State may make grants to associations in respect of 'right to buy' discounts, on any terms and conditions that he considers appropriate. Clause 63 gives similar powers to the GLA for dwellings in London.

These broad enabling clauses provide the carrots for the voluntary sales programme. The stick (of sorts) is located in clause 64. This empowers the Regulator of Social Housing, if requested by the Secretary of State, to monitor compliance with the "home ownership criteria", and then entitles the Secretary of State to publish information about an association that has not met those criteria. It is a power to 'name and shame'.
That is as much as the clauses say and do. The "home ownership criteria" - as yet unpublished – will be such criteria as the Secretary of State may set which are related to the voluntary sale of dwellings by associations. Little is unknown. For instance:

- What are the criteria to be?
- Will, or can, the criteria include ones which permit or require the clawbacks of discount upon early sale, or is that a matter for the association's discretion?
- Will, or can the criteria, specify required terms of leases or freehold transfers, or is that again a matter of discretion?
- What exceptions to the voluntary right will the Secretary of State permit?
- How will aggrieved tenants' challenges be determined?
- Will the grant to the association be 100% of the discount that it has allowed in every case, or will there be exceptions?
- Will the permitted discounts be identical to the statutory right to buy or different and, if so, in what ways?

In the absence of any of this detail, there is not much scope for debate by the House of Lords.

Two further points occur. First, depending on what the home ownership criteria are, and the extent to which associations' voluntary policies require them to exercise discretion, a number of judicial review challenges to denials of the right to buy can be expected. Second, if there is a good take up, there will be extra new pressures on association's leasehold management teams.

High value local authority housing

To fund these grants to associations, Chapter 2 to Part 4 of the Bill requires authorities to make annual payments to the Secretary of State. These payments are also proposed to fund a new 'Brownfield Regeneration Fund' worth £1 billion over 5 years.

These payments are to be based on determinations made by the Secretary of State, with their amount

assessed as the market value of the authority's interest in "any high value housing that is likely to become vacant during the year" less any costs of other deductions as may be prescribed: clause 67.

Again, there is not much detail in the Bill. "High value" is not defined but will, we are told, be defined in regulations: clause 67(8). So too, we are reliably told, will the determination set out the method for calculating the amount of the payments, including what assumptions may, and may not be made. Clause 69 does provide for consultation before clause 67 determinations are made but, as any public lawyer knows well, consultation in a context such as this brings no real expectation of influencing the substantive outcome.

How then, are authorities to raise the money to make these payments to the Secretary of State? Although the Bill stops short of imposing a duty on authorities to sell any of their high value housing, it achieves much the same result by requiring the payment to be made in the first place, and by imposing a new statutory duty which requires an authority that keeps an HRA "to consider selling" any high value properties that have become vacant: clause 74(1). For good measure, there will be guidance on this duty to which authorities are required to have regard: clause 74(4).

The Government's intention, as expressed in the Explanatory Notes to the Bill, is to: "encourage the more efficient use by local authorities of their housing stock through the sale of their high value housing so that the value locked up in high value properties can be released to support an increase in home ownership and the supply of more housing." (para.167)

The one glimmer of hope for authorities comes in the form of clause 72. This provides for the possibility of agreement between the Secretary of State and an individual authority. Where an agreement is reached, it will reduce the amount the authority will otherwise have to pay, requiring the authority to use that reduction on providing housing or other things facilitating the provision of housing: clause 72(2). For Greater London authorities, any agreement "must require the authority to ensure that at least two new affordable homes are provided for each old dwelling".

The end to secure tenancies for life

The Localism Act 2011 already allows social landlords to offer fixed term 'flexible' tenancies, normally for periods of 5 years, unless there are special circumstances. The rationale is that social housing should be "focused on those who need it most, for as long as they need it" (Local Decisions: A Fairer Future for Social Housing, DCLG 2010). In 2013-14, 12% of new social tenancies in England were let on a fixed-term basis, taking the total number of fixed-term tenancy agreements made in 2012-214 to around 20% of the social housing stock (Social housing in England: a survey, IFS Briefing Note BN 178, page 7).

The Bill as amended in committee stage in the House of Commons, seeks to take this further. Schedule 7 contains detailed amendments to both the Housing Acts 1985 and 1996. The broad effect of these provisions is to prevent an authority granting a new secure tenancy save for a fixed-term tenancy of between two and five years. The proposed amendments will not have any impact on existing tenants, including in cases where those tenants are required by the landlord to move. However, and save for cases to be contained in yet-to-be-drafted regulations, no new tenancies will be periodic tenancies capable of running on until death (and thereafter, following a statutory succession).

As would be expected, the provisions build in requirements for the authority to carry out a review as to what to do at the end of the fixed term: paragraph 11 of Schedule 7, inserting a new section 86A Housing Act 1985. The alternatives include to grant a new tenancy of the same or a different property or to seek possession. There are detailed provisions requiring an authority to reconsider and revise decisions: section 86C. Where it decides not to do so, proposed new section 86E Housing Act 1985 provides a mandatory

basis for possession. The Court will be expressly empowered to refuse an order for possession if it considers that a decision of the landlord under sections 86A or 86C is "wrong in law", i.e. wrong in public law terms or incompatible with Convention rights.

Conclusion

There are many reasons to applaud a drive to increase home ownership among association tenants by allowing them to buy their own homes. But there is a substantial financial cost - a cost Government intends to be borne by hard pressed authorities who, particularly in London and the South East, have already experienced decades of dwindling stocks because of the 'right to buy'. Between 1980 and 2013, more than 2.5 million properties have been sold under the 'right to buy'. But, given the restrictions in place since 1990 which have meant authorities could only retain 25% of receipts, a tiny fraction of these properties have been replaced by authorities. The result has been an ever-shrinking local authority sector striving to cope with increasing demand.

Government now intends to add to these pressures by, in effect, requiring authorities to sell their higher value properties as well. These will often be the large family sized homes which, as any allocations officer will tell you, are like gold dust. It is hard to see how requiring authorities to do this actually will help in dealing with the realities of social housing shortage. Indeed, when one also bears in mind the July 2015 Budget announcement of a 1% annual reduction in social rents in England for the next four years (which represents a real cut of 8% over those four years, IFS, supra, page 12), the outlook for authorities is decidedly bleak. For decades, the proportion of social tenants accommodated by authorities has been reducing so that, today, only about half of all social renters are tenants of local authorities. This decline is likely to continue; authorities may need to re-examine their roles as local housing authorities.

But local authorities are not the only losers from this Bill. The other big losers are those tenants or prospective tenants who are in low paid work and/or in receipt of benefits, in ill health or disabled. There remain millions of people for whom home ownership, even in a 'starter home' or on shared ownership terms, remains as much, if not more of a pipe-dream than it was 20 or 30 years ago. These are many members of society whose only hope of a stable, affordable, secure home in which to bring up their families, is by renting in the public sector. Indeed:

- Only 60% of social tenants are of working age (16-64) compared with 64% of the population as a whole.
- Among the working age population, just 49.2% of social tenants are in work, compared to 72.4% of the population as a whole.
- The median wage of social renters in paid employment is £276 per week as against £403 per week for the population as a whole. This is less than 70%. (IFS, supra, page 15). The differences are clear.

What does the future of social housing hold for them? There cannot be much confidence that the Government's projections for new association housebuilding will be borne out in reality. For example, completions of new social housing fell from almost 150,000 per year in the 1970s to around 33,000 per year in the 1990s and 25,000 per year in the 2000s (IFS, supra, page 9). And, whilst the previous Coalition Government made a commitment for a 'one for one' replacement when increasing 'right to buy' discounts in 2012 and (in London) in 2013, completions to date do not bear this out. Whilst 26,188 homes were sold under the 'right to buy' between April 2012 and December 2014, work had started in just 2,627 new properties, funded with the proceeds. That is a replacement rate of 1 in 10 (IFS, supra, page 13).

But even if more homes are built, what confidence can there possibly be that these new homes (or large numbers of them) will be for social rent, rather than for shared ownership schemes or other products which

instantly rule out many hundreds of thousands of people on grounds of affordability. Even 'affordable rents' in London can be out of reach of those on limited incomes. Indeed, in the House of Commons an Opposition amendment on 12 January 2016 to require associations to spend the equivalent of the market price of a property sold under the right to buy on the provision of affordable housing (on a one for one basis) was defeated by 297 votes to 212. The future lies entirely in the hands of the various associations, with their individual business plans. Whilst it is hoped and expected that many will continue to build social housing for rent, subsidising this by other parts of their businesses, there can be no guarantees.

In the absence of new properties coming on-line, the risk will be of increasing numbers of people – shut out from the private sector because of expense - chasing after an ever dwindling pool of tenancies for social rent, all to be granted on fixed terms which provide no guarantee or security for the future, and irrespective of the occupiers' personal circumstances.

It will be fascinating to see what happens to the social housing sector in the next decade and whether it is transformed for the better, or for worse.

Ranjit Bhose QC

Private registered providers: back to the private sector?

Introduction

1. On 30 October 2015, the Office of National Statistics ('ONS') announced that private registered providers of social housing ('PRPs') would henceforth be classified as "public non-financial corporations" for the purposes of national accounts and economic statistics. PRPs had previously been classified as "private non-financial corporations", but the ONS had carried out a review following changes brought about by the Housing and Regeneration Act 2008, and triggered by policy announcements around the time of the 2015 Budget.

2. The ONS' announcement provided a new economic perspective on an ongoing legal debate around the status of PRPs, which came to prominence following the case of Weaver v London and Quadrant Housing Trust [2010] 1 WLR 363, [2009] EWCA Civ 587. That judgment confirmed that, at least in respect of decisions to terminate tenancies, L&Q was exercising public functions and was subject to the Human Rights Act 1998 and to the general standards of public law (enforced by judicial review).

3. In December 2015 Brandon Lewis, housing minister, announced that the Government would be bringing forward "a package of amendments to the Housing and Planning Bill to deregulate the social housing sector". He was explicit that one of the Government's main intentions was "to enable the Office for National Statistics to return the sector entirely to private".

4. This article sets out the context for the proposals and summarises the main planks of the deregulation package, before reviewing how it has been received by the sector and other commentators.

Background: from Weaver to the ONS

The Weaver case

5. In Weaver L&Q had served a notice seeking possession relying on ground 8, schedule 2 to the Housing Act 1988. The tenant issued a judicial review claim arguing that the decision to serve the notice was in breach of a legitimate expectation (generated by guidance issued by the Homes and Communities Agency to the effect that housing associations should pursue all other reasonable alternatives to recover rent arrears before using the mandatory ground for possession) and contravened her rights under Article 8 ECHR. The Court was required to determine as a preliminary point the issue of whether L&Q were subject to the Human Rights Act 1998 and to judicial review.

6. The Court concluded that L&Q's overall function of allocating and managing social housing was a public function, because:

   a. L&Q were significantly reliant on public finance and there was substantial public subsidy enabling it to achieve its objectives, by way of significant capital payments.
   b. In its allocation of social housing L&Q operated in very close harmony with the local authority it, assisting it to achieve its statutory duties, as the result of a statutory duty to co-operate. In practice L&Q's freedom to allocate properties was severely circumscribed.
   c. The provision of subsidised housing (as opposed to housing per se) could properly be described as governmental, because the provision of subsidy to meet the needs of the poorer section of the community was typically a function which government provides. L&Q could properly be described as providing a public service.
   d. L&Q was acting in the public interest and had charitable objectives, placing it outside the traditional area of private commercial activity. The regulation to which it was subjected was at least in part, to ensure that government policy objectives were achieved and that low cost housing was effectively provided to those in need of it. The regulation was intrusive on various aspects of allocation and management, and even restricted the power to dispose of land and property.

7. The Court further held that even though the specific act of terminating a tenancy involved the exercise of a contractual power, it was not a private act. It was "bound up with the provision of social housing" and "part and parcel of determining who should be allowed to take advantage of this public benefit" (para 76). As such, the tenant was able to challenge L&Q's decision on both human rights and judicial review grounds.

8. The Weaver judgment confirmed what many housing associations had feared, and caused great concern within the sector. There were fears about what this could mean for PRP's finances, particularly in terms of borrowing, and about the burden of having to face more costly legal challenges in relation to individual decisions and broader policy issues.

9. Following the judgment in Weaver there were some attempts to distinguish the case and carve out exceptions: see e.g. R (McIntyre) v Gentoo Group Ltd [2020] EWHC 5 (Admin) where the High Court held that a decision to grant consent to a mutual exchange subject to a precondition that historic and unenforceable rent arrears be paid was amenable to judicial review, the decision in Weaver being "directly applicable" and not distinguishable). However, the dreaded barrage of litigation which was anticipated in the immediate aftermath of the judgement did not necessarily materialise.

10. Understandably, PRPs have not been keen to put their heads above the parapet to test the outer limits of Weaver. Uncertainty remains in the sector as to how far the judgment applies. Although certain functions have been considered by the courts, the concept of 'housing management' is a broad one and there may be scope for further argument. There is also an unresolved issue over whether the test for amenability to judicial review should be the same as that which applies to the question of whether a function/act is public for the purposes of the Human Rights Act 1998.

The ONS review and the decision to reclassify

11. The ONS review commenced in September 2015, following the Government's announcements about introducing the right to buy (on a mandatory basis) to PRPs.

12. Although the ONS did not examine the implications of the RTB proposals, they were widely seen as having been a trigger for the review. Readers will recall that the 2015 Conservative manifesto included a commitment to extend the RTB to housing association tenants; a controversial announcement which led to threats of a legal challenge based on Article 1, Protocol 1 ECHR (the right to peaceful enjoyment of possessions).

13. This was subsequently resolved in October 2015 when the National Housing Federation agreed a deal with the Government which would see the RTB being offered on a voluntary basis, rather than being imposed through primary legislation.

14. The ONS' decision to reclassify PRPs as public sector corporations was based on similar kinds of considerations to those taken into account by the Court of Appeal in Weaver and in other cases such as R v Servite Houses ex p. Goldsmith (2001) 33 HLR 35, where the Court held that a charitable housing association was not exercising a public function when it terminated a residential care home placement. The ONS focussed in particular on the extent to which PRPs were integrated within a system of statutory regulation, and the extent of state control over the running of PRPs.

15. The ONS was persuaded by the following provisions of the Housing and Regeneration Act 2008:

a. Powers to refuse consent for, or set conditions on, the disposal of PRPs' assets (ss. 172-178).
b. Powers to direct PRPs as to the use of proceeds from assets disposals (ss. 177-178).
c. Power to refuse consent over disposals of housing stock even following de-registration of a PRP (s. 186).
d. Powers to refuse consent for the voluntary winding-up, dissolution, and restructuring of a PRP (ss. 160-166).
e. Powers over the management of PRPS, in particular the power to appoint managers and officers (ss. 151-157, 246-252, 261(3) and 269).

16. Each of the above powers are exercised via the Homes and Communities Agency, which the ONS continues to classify as part of central government given its regulatory function and the fact that the Government directly controls all funding, appoints and removes all board members and key personnel.

17. The reclassification decision has had two important consequences.

18. First, it has created significant uncertainty in the sector. This acts as a powerful disincentive to investment; with knock on ramifications for PRP budgets and future plans for development and expansion. This is highly unfortunate at a time when the Government is seeking to boost the supply of new housing, including affordable housing.

19. Secondly, the reclassification of PRPs to the public sector has implications for the Government's own budgets. The ONS' decision has the effect of transferring all PRP assets and more importantly, debts, onto the Government's balance sheet. This has resulted in the sudden addition of £60bn of extra Government debt, or an overnight increase of 4%. This is equivalent to 3.2% of GDP. Furthermore, the decision will result in bank and bond debt being retrospectively added back to 2008.

20. Little wonder, then, that the Government is keen to reverse this change as soon as possible. Indeed, DCLG's immediate response to the ONS decision was to issue a statement that the Government would "bring forward measures that seek to allow housing associations to become private sector bodies again as soon as possible."

The Housing and Planning Bill

21. The opportunity to bring forward measures seeking to reverse the ONS decision arrived very quickly via the medium of the Housing and Planning Bill.

22. At the time of writing, the Bill has passed through the House of Commons and will shortly be having its second reading in the House of Lords, which will be the first opportunity for the Lords to debate all aspects of the draft legislation.

The deregulation package

23. The deregulation package announced by Brandon Lewis in December 2015 can be found in clause 90 and schedule 4 to the Bill. These proposals aim to remove the aspects of governmental control which were considered by the ONS to be indicative of the public nature of PRPs. Schedule 4 addresses each offending aspect of the Housing and Regeneration Act 2008, and therefore includes provisions to:

- Remove the requirement for PRPs to obtain consent for disposals of land, replacing this with a requirement to notify the HCA when a disposal takes place (repealing ss. 172-175 of the Housing and Regeneration act 2008 and replacing s. 176);
- Remove requirements to obtain consent for voluntary arrangements under the Insolvency Act (winding up) and restructuring, replacing these with a notification requirement (replacing ss. 16, 161 and 163 of the Housing and Regeneration Act 2008);
- Remove the requirement to obtain consent to registered society rules, charitable objectives or company articles, or changes of name and registered office, replacing these with notification requirements (repealing ss. 211-214 of the Housing and Regeneration Act 2008 and inserting new ss. 169A-C);
- Abolition of the disposal proceeds fund (repealing ss. 177-178 of the Housing and Regeneration Act 2008); and
- Amend powers which currently exist to appoint new officers to ensure 'proper management' of PRPs so that they are restricted to situations where this is necessary for compliance with any legal requirements (amending ss. 269 and 275 of the HRA 2008).

24. There are no exceptions or conditions applicable to the removal of the requirement for consent to dispose of land. This means that PRPs will have the same freedom to dispose of any land, regardless of its origin. In other words it will make no difference whether the land was originally transferred from local authority or other public ownership or whether it was acquired by the PRP on the open market.

Other aspects of the Bill which apply to PRPs

25. In addition to the deregulation package, there are a number of other parts of the Housing and Planning Bill which will apply to PRPs, and these are set out below for completeness.

26. Introduction of the Right to Buy for PRP properties on a voluntary basis (clauses 62-66). The proposal to extend the right to buy to PRP tenants was

controversial from the outset. There was much talk of potential legal challenges based on the interference with property rights under Article 1, Protocol 1 the European Convention on Human Rights. The stand-off between the Government and PRPs was later resolved when the Government accepted an offer made by the National Housing Federation which would involve a 'presumption' that PRP tenants would have the RTB, subject to the Government providing compensation for the discount. PRPs would have the freedom to replace properties sold via RTB with "alternative tenures such as shared ownership where this is more appropriate".

27. The Bill contains the machinery to facilitate the voluntary extension of the right to buy, providing a power for the Secretary of State (or, in London, the GLA) to pay grants in respect of right to buy discounts given by the PRP "on any terms and conditions the Secretary of State considers appropriate". The intention is that grants would be funded from receipts generated by the sale of 'high value local authority housing': see clauses 67-77. The Secretary of State may request the regulator to monitor compliance with any 'home ownership criteria'.

28. It has been observed that, had the NHF waited until the ONS reclassification decision, the introduction of the RTB might have been avoided without the need for any counter offer. The Government was very keen to reverse the classification, and this would hardly be assisted by the introduction of powers to force PRPs to sell their assets. It is hard to think of a clearer illustration of the level of state control over the sector.

29. Introduction of 'pay to stay' on a voluntary basis (clauses 87-88). The Bill contains detailed provisions which will require local authorities to charge mandatory rent levels for tenants who are deemed to have a 'high income' (current indications are that this will be defined as a household income over £30,000 or £40,000 in London; although much detail regarding the calculation of income and rent levels is left over to secondary legislation). However, consistently with the objective of de-regulating PRPs and 'returning them to the private sector', the concept of 'pay to stay' is optional for PRPs. The Bill simply says that "a [PRP] … that has a policy about levels of rent for high income social tenants in England must publish that policy", and that any such policy "must include provision for requesting reviews of, or appealing, decisions under the policy". As such, it will be entirely up to PRPs whether they decide to introduce mandatory rent levels for high income tenants. The Bill makes provision for PRPs operating such a policy to obtain information from HMRC to enable them to assess a tenant's income levels.

30. New insolvency regime for PRPs (clauses 92-112 and schedules 5 and 6). The Bill introduces new provisions, including the concept of a "housing administration order", to deal with failures of larger or more complex PRPs in England. The provisions are a response to the perceived weaknesses in the system which were revealed by the insolvency of Ujima Housing Association in 2007 and the rescue of Cosmopolitan Housing Association by the Sanctuary Group in 2013. The details of this special scheme are beyond the scope of this article, but the proposals seek to provide a more flexible framework for the regulator to intervene to prevent PRPs failing and to ensure that social housing of insolvent PRPs remains in the sector.

How has the bill been received?

31. It is fair to say that the Bill as a whole has received a mixed reception. However, much of the attention to date has been on the more controversial aspects relating to starter homes, the sale of high value local authority housing, and the proposed changes to secure tenancies to end the idea of a 'home for life'.

32. The deregulation proposals are likely to lead to a sector-wide review of business structures, asset holdings and regulatory position. The Bill presents new opportunities for PRPs. For example, it has been suggested that PRPs may be keen to take advantage of the freedoms on disposals to create new entities

outside the scope of what remains of the HCA's regulation, and to dispose of assets to those new entities, which would then operate in the private sector.

33. Others have suggested that the deregulation measures proposed in the Housing and Planning Bill are likely to have an effect on the value of PRP's assets. The consent requirements and restrictions on disposals which currently exist have the effect of depressing the market value of social housing units; once these are removed and there are no restrictions on disposals then the market value may well increase. It has been suggested that PRPs might seek to take advantage of the potentially higher disposal receipts to mitigate the adverse impacts of the 1% rent reduction and other restrictions which may follow on from the ONS reclassification. Clearly, the removal of these restrictions will make sale on the open market a more attractive commercial proposition than a discounted sale to an existing tenant via the voluntary RTB.

34. However, some commentators have questioned whether the Government's deregulation package will actually be sufficient to reverse the ONS' classification decision of October 2015. It has been pointed out that the ONS is an independent body which is not beholden to the Government's will, and any future review of the sector will take into account the legal framework then existing, including measures in the Housing and Planning Bill when it becomes law.

35. Although RTB and pay to stay will no longer be forced on PRPs, there remains a clear expectation, backed up with statutory machinery for paying grants and obtaining information which suggests that these elements of the Bill are somewhat less 'voluntary' in reality than would first appear to be the case. Furthermore, the Government intends to fund the voluntary RTB via receipts from the disposal of local authority-owned 'high value housing', and concerns have been raised as to the extent to which this has been fully and accurately costed. The link between the new policy and the availability of funding to pay the grants foreshadowed in the further emphasises the extent Governmental control over the sector, contrary to the intentions of other parts of the Bill.

36. In addition, the Government continues to exercise significant control over PRPs via subsidy measures and will continue to do so despite the deregulation proposed in the Housing and Planning Bill. Most recently the Government has imposed a requirement (in the 2015 budget) for PRPs to reduce rents by 1% each year for the next four years in a bid to reduce the housing benefit bill. This amounted to a reversal of the previous Government's 10 year rent formula, intended to promote certainty for landlords, which only came into effect in 2015. This level of Governmental control over the activities of 'private' bodies might legitimately be seen as being equally indicative of public sector status as some of the provisions of the Housing and Regeneration Act 2008 which the Government is seeing to relax. On the other hand, this aspect of Governmental control does not seem to have been material to the ONS' classification decision.

Conclusion

37. As a result of the October 2015 ONS reclassification, the treatment of PRPs for public accounting purposes is brought into line with the courts' assessment of their status for the purposes of judicial review and the Human Rights Act.

38. This 'public' status has been unwelcome for PRPs from a legal perspective because of the increased exposure to the financial and public relations costs of litigation. It is now unwelcome for the Government as well, in light of the sudden increase in public debt.

39. The deregulation proposals are likely to go a long way towards reversing the ONS' decision (although this is not guaranteed), but they are very unlikely to have any impact on the legal position. As can be seen from the above summary of the Weaver judgment, the level of regulation was only one factor leading to the conclusion that PRPs were exercising

public functions. Factors relating to public subsidy and the connection with local authority allocation powers were arguably of greater import, and the Bill does not make any changes in these areas.

40. It will also be noted that the proposals in the Bill do not do away with regulation completely. There is a clear reduction in oversight, but regulation still remains in respect of governance and financial viability. In addition, those PRPs which are charitable institutions remain subject to regulation by the Charity Commission. That regime also contains disposal consent requirements which will reduce, if not negate, the new freedoms to be found in the Housing and Planning Bill for those PRPs subject to that regime.

Emma Dring

The new Chair of SHLA writes …

At the end of his first month as Chair of the Social Housing Law Association, ***Dean Underwood*** *looks forward to another busy and promising year.*

This newsletter marks the end of my first month as Chair of the Social Housing Law Association ('SHLA') – a month in which I have already had the privilege to work with a dedicated committee of housing lawyers and professionals to plan for SHLA's future, long-term and short. I'll share more about SHLA's long-term objectives in future newsletters. For now, let me give you an inkling of what's coming up in the shorter term.

The **first members' meeting** of 2016 – *Leasehold issues (but not service charges!)* - will take place in London on Thursday, 25th February 2016 and will provide the SHLA membership with an opportunity to debate issues that so often - undeservedly perhaps - take second place to service charges. Doug Rhodes of Trowers & Hamlins LLP and Thelma Thornton of Network Housing Group will lead the discussion, covering the construction of leases, leaseholders' rights, breach of obligations and forfeiture. As ever, it promises to be an interesting and informative evening; and if you're involved in any way in leasehold management, you won't want to miss it. So, if you haven't yet signed up, click here to register now.

While you're doing that, save the dates of the **next two members' meetings**: 21st April and 30th June 2016. Further details about these events will follow closer to the time, so that their themes are as topical as possible. If you're a member of SHLA, I would be interested to hear your views about the theme of future meetings. As the extended right to buy and Universal Credit roll out, housing fraud and welfare reform are sure to remain hot topics; and you can expect to see one or both of these issues feature at a future members' meeting or the annual conference. There are, of course, other topics of current interest, not least those arising from the Housing and Planning Bill. So, let me know which concern you most: you can reach me at deanu@cornerstonebarristers.com.

As for the annual conference, feedback from the 2015 conference - at which Deputy President of the Upper Tribunal (Lands Chamber), Martin Rodger, gave the keynote address - was overwhelmingly positive: a fitting tribute to the hard work of my predecessor, Nick Billingham of Devonshires Solicitors. Thank you to all those who attended and helped make the conference so successful.

I now look forward to this year's main event. The seminar and conference sub-committee is already busy organising our **11th annual conference**, which will take place at The Hatton on 11th November 2016. So, if you haven't yet saved that date, do so now. The conference is a landmark event in the social housing calendar, attracting leading professionals from across

the housing and housing law community. In short, it's not an event to be missed, so avoid double-booking at all costs.

In summary, this year promises to be as busy and successful as 2015 and another opportunity for housing lawyers and professionals to network and celebrate what is, after all, a fascinating area of law. So, if you haven't yet joined SHLA or haven't yet renewed your **SHLA membership**, now is the time to do so. Join online by clicking here; and I will look forward to welcoming you to a SHLA members' event in the very near future.

Dean Underwood, Barrister and Chair of the Social Housing Law Association

Bedroom tax challenge succeeds in the court of appeal

On 27 January 2016 the Court of Appeal handed down judgment in the conjoined bedroom tax appeals of *R (on the application of Susan Rutherford, Paul Rutherford and Warren Todd (a child, by his litigation friend Susan Rutherford)) v Secretary of State for Work & Pensions; R (on the application of A) v Secretary of State for Work & Pensions and Equality and Human Rights Commission (Intervener)* [2016] EWCA Civ 29.

The headline is that the appeals of the individuals subject to the bedroom tax succeeded, and the Court of Appeal declared that "the Appellants have suffered discrimination contrary to Article 14 of the ECHR on the basis set out in the judgment of the court".

The judgment of the Court of Appeal is of an importance not restricted to the appellants' own circumstances (indeed A was not in fact suffering financially because of the award of discretionary housing payments (DHPs)), albeit it does not merit the somewhat simplistic "bedroom tax declared unlawful" headlines that have already started appearing.

That is because it was not a challenge to the bedroom tax per se, rather the appellants argued that the "defined Regulation B13 is unlawful insofar as it does not include them within a defined class of persons whose position has to be taken into account for the purposes of the reduction in Housing Benefit…"

A is a female victim of domestic violence living in accommodation adapted under the Sanctuary Scheme whilst SR and PR are overnight carers of a disabled child (W). They contended that Regulation B13, as it applied to the appellants, fell foul of Article 14 of the European Convention on Human Rights and the Secretary of State had further (it was argued in *A*) breached his public sector equality duty (PSED).

Previous Authorities

The Court acknowledged that it was bound by *R (MA and others) v the Secretary of State for Work & Pensions* [2014] EWCA Civ 13, [2014] PTSR 584 as regards the bedroom tax "scheme" as a whole, and that judgment's analysis of *Burnip v Birmingham City Council* [2012] EWCA Civ 629, [2013] PTSR 117 (a case where the Secretary of State had failed to establish objective and reasonable justification for the discriminatory effect of the statutory criteria, and it was held that DHPs could not be held up as a complete answer to that), which was distinguished in *MA*. It therefore did not seek to consider whether either of these decisions were correct.

Article 14 and Justification

The fact that the offending Regulation B13 constitutes *prima facie* discrimination was accepted in both appeals and the case turned on whether the Secretary

of State could show that there was "objective and reasonable justification for that discrimination which was not manifestly without reasonable foundation".

It was noted that the Secretary of State was placing special reliance on DHPs such that the scheme as a whole – comprising HB **and** DHPs - was not discriminatory in its overall effect. (As an interesting aside, the Court had wondered if that was the case why the Secretary of State did not deny discrimination, though acknowledged the difficulties he would encounter in the form of *Burnip* and *MA* where the discrimination findings were made in relation to the bedroom tax regulation itself (B13), and not the scheme as a whole).

It was also noted that the class of persons of which A formed part was precise, limited and easily identifiable (unlike in MA where a broad class was in issue), therefore the Secretary of State could not simply rely on *MA's* distinguishing of *Burnip* to demonstrate justification:

"Burnip obliges us also to decide that the Secretary of State was not entitled to decide that the better way of providing for A and those in a similar position was by way of DHPs, even though that would be a more flexible approach."

As for SR, the problem with the justification argument for the Secretary of State was the fact of the difference in treatment found in Regulation B13 between accommodation needed for carers of disabled adults and accommodation needed for carers of disabled children:

"…it seems to us very difficult to justify the treatment within the same regulation of carers for disabled children and disabled adults, where precisely the opposite result is achieved; provision for the carers of disabled adults but not for the carers of disabled children..."

The Court found that the discrimination in each case was not justified by the Secretary of State.

Public Sector Equality Duty

The PSED argument - that in A's case there had been no regard to the impact of Regulation B13 on female victims of domestic violence - was rejected despite there being no mention in the Equality Impact Assessment undertaken by the Secretary of State in June 2012 about women who were the subject of domestic violence or those within Sanctuary Schemes:

"It is clear that the Secretary of State did address the question of gender based discrimination. Those within the Sanctuary Schemes who would be adversely affected by Regulation B13 were in fact few in number…When the group was identified, the position of those in Sanctuary Schemes that were adversely affected was addressed by the provision of DHPs. Those so affected were those with the need for a safe room and those in accommodation which had been adapted and from which it was not reasonable to move."

Is that the end?

The simple answer is 'no'. Permission to Appeal was given to the Secretary of State and, in A, on the PSED issue to the appellant and EHRC, with a view to it being heard with *MA* in March 2016 (though that is a matter for the Supreme Court).

Click here to read the judgment in full.

Andy Lane

What now for selective licensing? The '20/20 rule' and the end of borough-wide schemes

On 21 December 2015, LB Redbridge announced that the Secretary of State had recently refused permission to implement a borough-wide selective licensing scheme, approved by its members in June 2015. It is believed that this was the first application for approval of a borough-wide licensing scheme since the requirement for ministerial consent was introduced in April 2015.

The refusal has underlined the Government's stated intention to increase scrutiny of any selective licensing scheme which covers more than 20% of a local authority's geographical area or 20% of the private rented sector ("PRS") housing in its district. It also poses broader questions about the future of selective licensing and the extent to which local housing authorities can target rogue landlords in their area.

Selective licensing: the legal framework

Selective licensing schemes are a creature of the Housing Act 2004 ('the Act'), introduced as a discretionary tool for local housing authorities to improve the management of privately rented properties which accommodate single households.

Selective licensing is therefore distinct from the mandatory licensing requirements established by Part 2 of the Act, which apply to all large houses in multiple occupation ('HMOs'). It is also distinct from 'additional licensing' powers (s56 of the Act) which enable local housing authorities to extend licensing over additional categories or description of HMOs in its area.

Under s80 of the Act, local housing authorities have the power to designate either the whole or part of their district area as subject to selective licensing, subject to two prerequisites. Firstly, s80(9) requires the housing authority to have taken reasonable steps to consult persons likely to be affected by the designation and to consider any representations made in response. Secondly, s80(2) requires that the proposed licensing scheme must satisfy one or more of a number of specified statutory conditions, set out in ss80(3) and (6) of the Act:

A. That the area is, or is likely to become, an "area of low housing demand"; and that the proposed designation will contribute to the improvement of the social or economic conditions in the area when combined with other measures taken in the area by, or in cooperation with, the local authority;

B. That the area is experiencing a "significant and persistent problem" caused by ASB; that some or all of the private sector landlords letting premises in the area have failed to take action which it would be reasonable for them to take to combat the problem; and that the proposed designation will, when combined with other measures, lead to a reduction in or elimination of the problem.

In March 2015 the Government extended the conditions for designation of selective licensing in England. The Selective Licensing of Houses (Additional Conditions) (England) Order 2015/977 came into force on 27 March 2015, and permits licensing where:

C. The area contains a high proportion of properties in the PRS, being properties which are occupied under assured tenancies or licenses to occupy, and one or more of specified further conditions also apply:

- Housing conditions: the local housing authorities considers it appropriate and intends to carry out inspection of a significant number of properties to determine the existence of category 1 and 2 hazards, with a view to taking any necessary enforcement action;
- Migration: the area has "recently experienced or is experiencing an influx of migration into it"; a significant number of properties are occupied by migrants; and the designation will assist the local

housing authority to preserve or improve conditions in the area, ensure properties are properly managed, or prevent overcrowding;

- Deprivation: the area is "suffering from a high level of deprivation, which affects a significant number of the occupiers of [the] properties" and the designation will contribute to a reduction in deprivation;
- Crime levels: the area "suffers from high levels of crime"; criminal activity affects persons occupying the properties; and the designation will contribute to a reduction in crime levels "for the benefit of those living in the area".

Separate conditions have been introduced in Wales, per the Selective Licensing of Houses (Additional Conditions) (Wales) Order 2006/2825.

Amended General Approval – April 2015

The Secretary of State has power to give general approvals for selective licensing designations, meaning that any licensing scheme compliant with the statutory tests would come into force subject only to compliance with any further conditions specified in the approval. The first General Approval was issued in March 2010, and required only that consultation on selective licensing take place for a minimum of ten weeks.

However on 1 April 2015 an amended General Approval was issued. The Secretary of State's consent is now required for implementation of any selective licensing scheme which covers more than 20% of a local housing authority's geographical area, or more than 20% of the PRS homes in the district area. Nicknamed 'the 20/20 rule', the new Approval significantly curtails the scope of established consent for selective licensing schemes.

Ministerial guidance was also issued to explain the implementation of these provisions: "Selective licensing in the private rented sector: A Guide for local authorities" ('the Guide').

The new landscape

The reforms to selective licensing in March 2015 were expressly interlinked, insofar as the expansion of conditions in which selective licensing can be imposed has been traded against the new presumption in favour of licensing smaller areas within local authority areas. It seems almost inevitable that the 2015 General Approval will encourage use of licensing powers on a more localised and targeted basis. As such, it could be argued that the reforms focus attention onto the quality and efficiency of licensing designations. However, it is also clear that the reforms shift a significant burden of proof onto local housing authorities whenever they identify problems involving more than a small minority of their landlords or PRS stock.

It is not entirely clear what went wrong for Redbridge, because the Secretary of State's decision is not available publicly available. However, Redbridge issued a press statement reporting that the Minister did not find that the link between ASB and private rented homes had been demonstrated throughout the borough. The Minister did, however, agree that there was a case for selective licensing in parts of the district.

This reasoning seems to reflect the Government's stated impetus for the March 2015 reforms. The Minister had previously expressed his concern that "the blanket licensing approach adopted by some local authorities has major drawbacks", specifically that such schemes generated a disproportionate burden and unnecessary costs for reputable landlords who were compliant with their obligations.

So what can local housing authorities expect from the new landscape?

Firstly, authorities who wish to introduce licensing above the 20/20 threshold will obviously need to focus on obtaining evidence demonstrating a clear correlation between housing-related problems in their area and both the existence and mismanagement of PRS properties. Specifically, ministerial approval will likely require data illustrating a concentration of

housing-related problems in areas with high percentages of PRS properties, or clusters of problems and complaints associated with particular types of private rented properties.

LB Southwark – whose scheme did not exceed 20/20 and therefore did not require approval – seems to provide an example of this approach. Described as "one of the most complex licensing schemes" implemented to date, it was based upon findings that ASB was predominantly associated with privately rented flats above shops and commercial premises on main thoroughfares and high streets.

Secondly, and a related point, local authorities should begin to think more creatively about how the new selective licensing conditions introduced in March 2015 interact within its overall licensing scheme. Whereas authorities were previously required to demonstrate a link to either ASB or low housing demand specifically, they can now explore links between private rented housing and a much broader range of housing-related problems. As such, local authorities can consider implementing a network of designations across their borough, in which licensing is intended to address different housing-related problems in different wards and areas around the district. For example: crime in a particular housing estate, migration into a particular neighbourhood, deprivation above flats on the high street, and perhaps ASB in all three areas.

Take note however that this approach does not provide a means to circumvent the General Approval. The Guide (at para. 2) makes clear that where housing authorities make more than one designation, designation will need approval where they cumulatively cover more than 20% of the area or private rented stock. This includes new designations concurrent to an existing scheme.

Further, local authorities must bear in mind their obligations under s81 of the Act to coordinate licensing schemes with their overall housing strategy and, in particular, to consider whether there were other or lesser options which might have achieved the same results.

Thirdly, it is important to take note of the procedure for gaining the Secretary of State's consent, which is set out in detail in the Guide. The Redbridge decision illustrated that the approval process poses a risk of significantly delaying implementation, even if permission is granted. Although the Guide states that the Secretary of State aims to respond within eight weeks, over six months elapsed between the approval of the Redbridge scheme by its members and the Secretary's ultimate decision.

Finally, it remains to be seen how the new Approval will impact concerns about the 'overflow effect' of existing licensing schemes on neighbouring boroughs. In R (Regas) v LB Enfield [2014] EWHC 4173 (Admin) the Court expressly recognised that the class of persons likely to be affected by licensing designation plainly includes residents, businesses, landlords and agents who live or operate in immediately adjoining parts of other local authority areas, because of the risk that licensing would displace rogue landlords and tenants to nearby areas.

Although the new preference for smaller, targeted licensing areas may help to minimise 'overflow' into neighbouring boroughs, the 2015 General Approval fails to address the very real concerns expressed by Enfield in Regas, that designating only parts of the borough would result in bad landlords as well as bad tenants simply moving to an unlicensed area within the district. The answer may unfortunately require local authorities to continue monitoring PSR housing around the borough, and to add new areas of designation to their schemes if or when the need arises – including an application for approval when schemes grow to exceed the 20/20 threshold.

There are currently at least four borough-wide licensing schemes in place in London (Barking & Dagenham, Croydon, Newham and Waltham Forest), and Liverpool City Council introduced city-wide

selective licensing on 1 April 2015. Their neighbouring boroughs will no doubt be closely monitoring implementation for signs of 'overflow effect'. Meanwhile, other authorities which are reportedly considering or consulting on the introduction of selective licensing will watch these developments with interest: this includes Ealing, Hammersmith and Fulham and Lewisham, among others.

Tara O'Leary

Housing crisis at centre of proposed changes to NPPF

***Josef Cannon** considers the proposals set out in the Government's consultation document on the National Planning Policy Framework.*

Introduced with minimal fanfare (save for in the Daily Telegraph, which called it '*the biggest relaxation to planning protections for 30 years*'), in December the Government published a consultation on their proposed changes to the NPPF, the central policy statement to which planning decision-makers must have regard as a material consideration.

The proposals place 'the housing crisis' at the centre of proposed changes, with a series of measures proposed which, it is hoped, will ease the problem of too few houses being built in the country, with the associated issue of affordability also being front and centre. Headline proposals are:

1. A **broader definition of 'affordable housing'**: to include "products that are analogous to low cost market housing or intermediate rent, such as discount market sales or innovative rent to buy housing";

2. **Increasing density around 'commuter hubs'**: no minimum density is proposed but instead a proposal to 'require' higher densities around commuter hubs where it is 'feasible'. A commuter hub is said to be a public transport interchange where at least one service is 'frequent' (i.e. one every 15 minutes);

3. A fairly vague proposal to **increase support for authorities planning new settlements**;

4. **Affording 'substantial weight' to the use of brownfield land**; and to the provision of housing on 'small sites' (less than 10 units) where they are within settlement boundaries; and, if they are sustainable, where they are immediately adjacent to settlement boundaries. This latter suggestion seems to add little to the existing 'presumption in favour of sustainable development' in any event;

5. A promise of **'taking action' where delivery of housing falls below the relevant target**: in what seems to be a development of the '20% buffer' provision presently used when calculating 5-year housing land supply, the suggestion is that this will be monitored on a two-year cycle to avoid distortion of 'short-term fluctuations'. The action to be taken is not specified but the suggestion is made that such under-delivery might trigger the release of additional sites.

6. Further encouragement to **release unviable or unused commercial land**: unless significant and compelling evidence to retain it as employment land; and

7. Various proposals in **support of the provision of starter homes**: including:
    a. Encouraging starter homes within mixed-use developments;

b. Including starter home provision within rural exception sites, as affordable housing;
c. Enabling Neighbourhood Plans to allocate small sites in the Green Belt for starter homes;
d. Supporting the reuse of brownfield land in the Green Belt where it 'contributes to starter homes' by making such reuse 'not inappropriate development' for Green Belt purposes.

The reforms are equally notable for what they do not propose to address. There are numerous areas of uncertainty keeping planners and planning lawyers busy and this consultation does not seek to resolve any of them. Some examples of where further guidance/clarity could have been offered are:

- What 'policies for the supply of housing' in paragraph 49 in fact means (or is intended to mean) in light of the ongoing debate amongst judges of the Planning Court;

- The proper role of affordable housing need in calculation of the OAN: does it need to be met in full? Is increasing supply to meet (or help to meet) affordable housing needs arising part of an OAN calculation or a policy-on 'requirement' response?

- How should C2 residential institutions be dealt with in housing land supply terms: should bedspaces be counted as units?

- Are the paragraphs of the NPPF relating to the protection of heritage assets such that they are caught by footnote 9 to paragraph 14, in that they are policies that indicate development should be restricted?

- Does paragraph 119 exclude the paragraph 14 'presumption in favour' in every case involving Habitats Regulations assessment or only where a screening decision (as they used to be called) indicates that full AA is required?

- Does the omission of open air changes of use from the list of 'not inappropriate' development in paragraph 90 mean that they are all, inevitably, inappropriate development in the Green Belt?

That opportunity having been missed, developers, local authorities and their advisers will continue to have to grapple with these questions and the inevitable result that different takes on them will continue to emanate from different Judges, Inspectors, consultants, planning officers and advisers.

The consultation policy document can be viewed here.

Josef Cannon

Housing Cases of Interest

***Andy Lane** has put together the recent Housing cases of interest over the last 3 months…*

Anti-social Behaviour

JOSHUA JAMES MURRAY v CHIEF CONSTABLE OF LANCASHIRE [2015] EWCA Civ 1174

A judge had been entitled to refuse to discharge or vary an interim injunction imposed on an alleged member of a gang under the Policing and Crime Act 2009 s.34. Once the threshold issue was established, namely that there was a "serious question to be tried" as to whether the individual was a member of the gang responsible for violence as outlined in the evidence,

the judge was not confined to restraining particular conduct attributed to the individual but was entitled to impose or continue orders restraining him from engaging in conduct attributable to the gang as a whole.

R v MOHAN UDDIN & 8 ORS [2015] EWCA Crim 1918
Anti-social behaviour orders imposed on nine men following their convictions for affray or violent disorder were flawed in several respects. Among other things, the men had come to court not knowing the case they had to meet.

R (on the application of JOHN CARNEY) v NORTH LINCOLNSHIRE COUNCIL QBD (Admin) (Lloyd Jones LJ, Supperstone J) 27/01/2016
A judge had been entitled to find that an anti-social behaviour order prohibiting an appellant from engaging in any behaviour likely to cause harassment, alarm or distress to any local authority employee for five years was necessary and proportionate. Local authority employees should be able to carry out their functions without being subjected to threatening behaviour.

Bedroom Tax

R (on the application of (1) SUSAN RUTHERFORD (2) PAUL RUTHERFORD (3) WARREN TODD (BY HIS LITIGATION FRIEND SUSAN RUTHERFORD) v SECRETARY OF STATE FOR WORK & PENSIONS : R (on the application of A) (Appellant) v SECRETARY OF STATE FOR WORK & PENSIONS (Respondent) & EQUALITY & HUMAN RIGHTS COMMISSION (Intervenor) [2016] EWCA Civ 29
The court considered the lawfulness of the scheme under the Housing Benefit (Amendment) Regulations 2012, which reduced housing benefit for those who were under-occupying their homes. The Housing Benefit Regulations 2006 reg.B13 discriminated against families with disabled children who required an additional bedroom for overnight carers. It also discriminated against female victims of domestic violence living in accommodation adapted under the sanctuary scheme. There was no objective justification for that discrimination.

Council Tax

R (on the application of MARK LOGAN) v HAVERING LONDON BOROUGH COUNCIL [2015] EWHC 3193 (Admin)
The defendant local authority's council tax reduction scheme, under which those eligible for council tax support because of a lack of resources had their council tax reduced by 85 per cent, did not breach ECHR art.14 taken in conjunction with Protocol 1 art.1.

TERENCE EWING (Claimant) v HIGHBURY CORNER MAGISTRATES' COURT (Defendant) & LONDON BOROUGH OF CAMDEN (Interested Party) [2015] EWHC 3788 (Admin)
An order for the costs of obtaining a liability order to enforce payment of unpaid council tax charges was quashed where there had been no evidence before the magistrates' court that the costs claimed represented costs reasonably incurred by the local authority in obtaining the liability order.

HARMINDER SINGH SOOR v REDBRIDGE LONDON BOROUGH COUNCIL [2016] EWHC 77 (Admin)
Court allow appeal by way of case stated as suspended committal order allowed for council tax payments over too long a period

Disrepair

MANSING MOORJANI v DURBAN ESTATES LTD [2015] EWCA Civ 1252
Where a residential lessee claimed to have suffered loss arising from the lessor's breach of its repairing and insuring obligations, which had caused disrepair to his flat, the loss lay in the impairment of the amenity value of his proprietary interest in the flat, of which discomfort, inconvenience and distress were only symptoms. Therefore, the fact that he had chosen to live elsewhere for reasons unconnected with the disrepair was not fatal to his claim.

Homelessness & Allocation

R (on the application of A) v EALING LONDON BOROUGH COUNCIL (2015) QBD (Admin) (Patterson J) 16/12/2015

Local housing authority decisions refusing to put an applicant on the housing register were quashed as they had been based on a housing allocation policy that had been held to be unlawful. There had been no grounds to stay the judicial review of those decisions pending an application for permission to appeal against the decision that the policy was unlawful; an interim policy could be introduced and there would be no irremediable harm if no stay was granted.

R (on the application of OMAR) v WANDSWORTH LONDON BOROUGH COUNCIL (2015) QBD (Admin) (Ouseley J) 11/11/2015

A local authority had not erred by refusing to provide interim accommodation to a homeless woman suffering from asthma who was challenging an adverse housing decision. Her condition did not make her a vulnerable person or significantly worse off than others in a similar situation.

TERRYANN SAMUELS v BIRMINGHAM CITY COUNCIL [2015] EWCA Civ 1051

When assessing whether accommodation had been affordable for the purpose of determining whether a tenant had become intentionally homeless by accruing rent arrears, there had to be an assessment of income and relevant expenses as a whole. Benefits income had no special status in that assessment.

MIRGA v SECRETARY OF STATE FOR WORK AND PENSIONS : SAMIN v WESTMINSTER CITY COUNCIL [2016] UKSC 1

The denial of income support and housing assistance to two economically inactive EU citizens, resulting from the application of domestic legislation, did not give rise to a breach of their rights under the Treaty on the Functioning of the European Union.

R (on the application of TANUSHI) v (1) CITY OF WESTMINSTER (2) HILLINGDON LONDON BOROUGH COUNCIL QBD (Admin) (Timothy Dutton QC) 22/01/2016

An individual was granted a continued order for temporary accommodation where two local authorities agreed that there was a duty to house her, but disagreed as to which of them had accepted that duty.

Licensing

LONDON BOROUGH OF NEWHAM v OSMAR [2015] EWHC 3800 (Admin)

A magistrates' court's refusal to recall a witness to give live evidence in a Part 3 Housing Act 2004 licence case on matters which had only arisen during the course of the trial was unsatisfactory and potentially led to a substantial injustice.

THANET DISTRICT COUNCIL v GRANT (2015) DC (Beatson LJ, Wilkie J) 29/10/2015

A magistrates' court had been wrong to find that the obligation on a local housing authority under the Housing Act 2004 s.85(4) to take all reasonable steps to secure that applications for licences were made in respect of houses in a designated additional licensing area was a duty owed to an individual landlord, and that a failure to comply with that duty gave rise to a reasonable excuse under s.95(4) for his failing to obtain a licence.

Possession

GARWOOD v BOLTER & ANOR [2015] EWHC 3619 (Ch)

A judge had been entitled to dismiss a trustee in bankruptcy's application in accelerated possession proceedings for orders for vacant possession and sale of three houses in the bankrupt's estate where, although notices to terminate the tenancies had been given under the Housing Act 1988 s.21, the trustee

had not brought separate pleaded possession claims against the occupiers.

Rent Assessment

GRAHAM FRANCIS BACON v MOUNTVIEW ESTATES PLC [2015] UKUT 588 (LC)

A tenant who signed up to a new tenancy in 1993 after enjoying a continuous series of periodic or statutory tenancies over a 10-year period in various properties belonging to the same landlord continued by virtue of the Housing Act 1988 s.34(1)(b) to be a regulated tenant protected by the Rent Act 1977. On the evidence, that was how the landlord had treated him. The First-tier Tribunal had been wrong to assume that he was an assured tenant and had had no jurisdiction to assess his rent under s.13 of the 1988 Act.

Social Security

MIRGA v SECRETARY OF STATE FOR WORK & PENSIONS : SAMIN v WESTMINSTER CITY COUNCIL [2016] UKSC 1

The denial of income support and housing assistance to two economically inactive EU citizens, resulting from the application of domestic legislation, did not give rise to a breach of their rights under the TFEU.

Miscellaneous

BOKROSOVA v LAMBETH LONDON BOROUGH COUNCIL [2015] EWHC 3386 (Admin)

A local authority which had decided to redevelop a housing estate had acted unlawfully when it stopped consulting with the residents about the alternative option of refurbishing the properties.

Andy Lane

Samin v Westminster CC and Mirga v Secretary of State for Work and Pensions [2016] UKSC 1

These linked cases concern the rights of non-economically active EEA nationals to social assistance in the UK – income support in Ms Mirga's case and homelessness assistance under Part 7 Housing Act 1996 in Mr Samin's.

Facts

Ms Mirga came to the UK from Poland and worked while the Accession (Immigration and Worker Registration) Regulations 2004 governed the access to the UK employment market of "A8" nationals during the accession period. She was a "registered worker" under the scheme for less than a year with the result that, under the 2004 Regulations, she did not qualify for "full" worker status and when she ceased work and claimed income support her claim was refused because she did not have a "right to reside" in the UK as she did not meet the qualification criteria under the Immigration (European Economic Area) Regulations 2006.

Mr Samin, an Austrian national, sought assistance from Westminster as a homeless person under Part 7 Housing Act 1996. He was found to be ineligible for assistance (s.185 HA 1996) because he had worked for less than 12 months before he permanently ceased work and therefore did not retain worker status (Reg. 6(2) of the Immigration (European Economic Area) Regulations 2006) and was not a "qualified person" for the purposes of the 2006 Regulations.

Arguments

Ms Mirga's argument was that because she had a protected right to respect for family and private life under article 8 of the European Convention on Human Rights, and as she had been a worker, albeit not for the required period under the 2004 Regulations she could not be removed from the UK. In light of that she argued that her right of residence under article 21.1 TFEU ("citizenship") could not be curtailed by

restricting entitlement to income support to those with a "right to reside". In the alternative, she argued that on examination of the proportionality of the restriction, it was disproportionate and therefore unlawful.

Mr Samin argued that refusal of homelessness assistance to him constituted unlawful discrimination contrary to article 18.1 TFEU because such assistance would have been granted to a UK national or an EEA national who met the criteria to be a "qualified person".

The Supreme Court's judgment

The Court unanimously held in Mirga that as art.21 TFEU was qualified by the words "subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect" those limitations and conditions included the Accession Treaty and the 2004 Regulations and as the conditions laid down in the latter had not been met, Ms Mirga was not exercising a community law right and was properly disentitled to social assistance.

The proportionality argument was rejected. An analysis of case law, including *Pensionsversicherungsanstalt v Peter Brey* (Case C-140/12) and Baumbast v Secretary of State for the Home Department (**Case C-413/99)**, did not support the proposition that an examination of proportionality was required in every case: the judgment and reasoning in *Dano v Jobcenter Leipzig* (C-333/13) , supported by the judgment in Jobcenter Berlin Neukölln v Nazifa Alimanovic (Case C-67/14) are to the contrary. Further, it would undermine the scheme of the 2004 Citizenship Directive if every case not falling within the categories of residence right established therein had nonetheless to be examined for proportionality, and such examination would impose a burden on host Member States.

Similarly, in Samin, the article 18 right is limited to "the scope of the Treaties": it comes into play where there is discrimination in connection with a Treaty right and is without prejudice to any special provisions contained in the Treaties. The failure to qualify as a "worker" (or for a right to reside on any other basis) meant that Mr Samin's situation fell outside that scope and art.18 was not applicable. The discrimination argument failed.

Comment

Although the Court left open the possibility that there might be a category of exceptional case in which proportionality would require examination, it was satisfied that if such a category existed, neither Mirga nor Samin would fall within it. If Baumbast is an example of an exceptional case (the requirements for a right to reside as self-sufficient were satisfied, save for emergency medical insurance in the UK), it is likely to be very small minority of cases, if any, in which proportionality analysis is required.

Sian Davies

Ooh Aah Cantona

On 4 December 2015 the Court of Appeal handed down judgment in Mansing Moorjani v Durban Estates Limited [2015] EWCA Civ 1252, a case concerning the availability of damages for a lessor's breach of repairing obligations where the lessee has chosen to live elsewhere during the affected period for reasons unrelated to the condition of his flat. ***Andy Lane*** *considers the judgment and its impact, if any, on the established approach to damages awards in disrepair cases concerning periodic tenancies.*

The title to this article perhaps needs some explanation before I go on to consider the substantive issue. Firstly, I am writing this after another woeful Manchester United performance and am remembering better times in the past. Secondly, if you ask most housing lawyers what their favourite cases are,

disrepair is unlikely to feature strongly amongst them, despite its importance to both tenants and landlords.

As for the question of damages and appropriate quantum, it is to say the least an inexact science, subject to the vagaries and whims of county court judges. This makes advising on settlement difficult to do with any degree of precision, and means there is considerable pressure on legally aided litigants in particular to accept offers below what they or their lawyers deem strictly appropriate because in many respects "one never knows" and the costs risk of taking the matter to a final hearing is simply not worth taking.

General damages

The object of damages for breach(es) of a landlord's contractual repairing obligation is to restore the tenant to the position she/he would have been in had there been no breach[1].

The Court of Appeal considered this issue further in the leading case of *Wallace v Manchester City Council* (1998) 30 HLR 1111 at 1119 where Lord Justice Morritt approved earlier authorities[2] in remarking:

"…where the tenant wishes to remain in occupation of the property the diminution in value occasioned by the landlord's failure to repair for which he is entitled to be compensated is the personal discomfort and inconvenience he has experienced as a result of the want of repair."

Quantum – general damages

In trying to work out what is the monetary value to be put on such loss of comfort and convenience Lord Justice Morritt went on to say in *Wallace* at [1121], in considering three different approaches previously adopted by the courts[3]:

"Such sum may be ascertained in a number of different ways, including but not limited to a notional reduction in the rent. Some judges may prefer to use that method alone (McCoy v Clark[4]), some may prefer a global award for discomfort and inconvenience (Calabar Properties Ltd v Stitcher[5] and Chiodi v De Marney[6]) and others may prefer a mixture of the two (Sturolson v Mauroux[7] and Brent LBC v Carmel Murphy[8]). But, in my judgment, they are not bound to assess damages separately under heads of both diminution in value and discomfort…a judge who seeks to assess the monetary compensation to be awarded for discomfort and inconvenience on a global basis would be well advised to cross-check his prospective award by reference to the rent payable for the period equivalent to the duration of the landlord's breach of covenant[9]."

Whilst not expressly approving the "unofficial tariff" put forward counsel for Ms Wallace of between £1,000 per annum at the bottom and £2,750 per annum at the top (now £1,627 to £4,474) the Court of Appeal used it in *Wallace* to help confirm that the trial judge's award was within the tariff and indicated no error of principle.

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[1] *Hewitt v Rowlands* (1924) 93 L.J.K.B. 1080, CA – e.g. the cost of alternative accommodation if the tenant is forced to move out and the unpleasantness of living in deteriorating premises prior to this

[2] Such as *Calabar Properties Ltd v Stitcher* [1984] 1 WLR 287

[3] Approving all 3 with the recommended proviso that there be a cross-check by reference to the rent payable for the disrepair period

[4] (1982) 13 HLR 87, CA

[5] See footnote 2

[6] (1988) 21 HLR 6, CA

[7] (1988) 20 HLR 332, CA

[8] [1995] 28 HLR 203

[9] In *Shine v English Churches Housing Group* [2004] EWCA Civ 434, [2004] HLR 42 at [105] Lord Justice Wall, in delivering the judgment of the court, said that *"…the reason for the awards being modest is, it seems to us, related to the fact that the tenant in a secure weekly tenancy has the benefit of occupying premises at a rent, which is well below that which the same premises would be likely to command in the open market."*

Incidentally, the impact of the *Simmons v Castle*[10] 10% uplift in damages – a potentially harsh judgment given the fact that rents generally rise each year with the result that disrepair damages similarly rise – has been limited in many cases, in my own practical experience, given not only the aforementioned lack of precision in damages calculation, but also the fact that any proposed award should be compared with the actual rent in any event[11].

Moorjani

The factual conundrum before the Court of Appeal in *Moorjani* was that the lessee chose not to live in his flat during the initial period of disrepair despite it being habitable (he in fact was living, rent-free, with his sister). HHJ May QC had dismissed his claim for this period:

"Despite its being habitable, Mr Moorjani at the time lived elsewhere, on the basis that he did not wish to live in his flat. In the event, therefore, he did not suffer loss by reason of living in less comfortable circumstances, as he was not there, having gone to live with his sister. That being so, I do not think he can show that he has suffered a loss of amenity or inconvenience by reason of living in the flat"

Whilst some commentators have suggested (and ultimately I believe correctly) that *Moorjani* must inevitably led to a rethink about the approach to general damages in disrepair cases – and it is important to record that Lord Justice Briggs effectively confirmed that the authorities he was reviewing had application across the board and were not restricted, for example, to long leases[12] - it should be appreciated that Lord Justice Briggs declined to overturn the trial judge's assessment of damages in respect of common parts (after Mr Moorjani had returned to live at the flat in 2008), not least because she had cross-checked the figures against a notional reduction of rent assessment[13].

He did however prefer, as a "tentative conclusion", to use different language to describe the basis of damages:

"35…the better view is that the loss consists in the impairment to the rights of amenity afforded to the lessee by the lease of which discomfort, inconvenience and distress…are only symptoms."

It followed from that that a lessee could in principle claim damages for disrepair even if she/he has chosen not to enjoy the rights given by their lease. In such cases it could certainly be of relevance as a mitigation of loss[14] but:

"39…it will not wholly cancel out the loss constituted by the impairment of amenity, for which the tenant has paid rent…even if he lives elsewhere."

On the facts the Court allowed awards of between 2.5% and 10% of the notional rental value for the periods when Mr Moorjani was voluntarily out of occupation.

Conclusion

So what can we deduce from the *Moorjani* judgment in so far as it concerns periodic tenancies? Like most issues concerning disrepair and quantum it is difficult to be overly precise about the fall-out but I would, to use the judicial parlance, "tentatively" suggest the following:

(1) Such impact on periodic tenancies as is claimed is strictly speaking obiter but persuasive nonetheless.

[10] [2012] EWCA Civ 1288; [2013] 1 WLR 1239

[11] I do acknowledge that at paragraph 20 of the original judgment in *Simmons v Castle* – [2012] EWCA Civ 1039 - it was said by the Lord Chief Justice that *"the proper level of general damages in all civil claims for…(ii) loss of amenity, (iii) physical inconvenience and discomfort…will be 10% higher than previously"* but the *Wallace* "cross-checking" approach still has application

[12] At paragraph 31 of the Judgment

[13] At paragraph 20

[14] The converse factually, with the same result, of a tenant not taking all reasonable steps to mitigate his loss leading to a reduction in the damages award: *Minchburn v Peck* (1987) 20 HLR 392, CA

(2) Whilst it certainly "extends" the compensatory principle to those long lessees who have stayed away from the demised premises during the period of disrepair for reasons unrelated to its condition (or otherwise suffer no discomfort or inconvenience from the disrepair), the same cannot necessarily be said, at least to the same extent, for periodic tenants[15].

(3) Discomfort and inconvenience remain the main symptoms of the loss of amenity attracting the higher rates of damages (and in most instances will remain the main measure), though their absence does not necessarily shut off altogether an award.

(4) Lack of discomfort or inconvenience will necessarily lead to a significant reduction in the award of damages, though it would be wrong to simply assume the 50% reduction applied by Lord Justice Briggs is the correct rate in all non-discomfort cases[16].

(5) Notice of matters within the demise is still required.

(6) The extent of use of demised premises – e.g. ranging, for example, as just a place to sleep at night to a fully functioning and active "family home" – is less of an issue in assessing damages (effectively confirming the approach of the court in *McCoy v Clark* (1982) 13 HLR 87).

(7) The advice to landlords must remain the same – if there is any breach of repairing obligation do the works as a matter of priority and expedition, and seek settlement of any damages claim at as early a stage as possible, not least given the costs consequences of the matter reaching trial.

Please visit:
https://www.youtube.com/watch?v=h2WmwUiwttY

Andy Lane

[15] See paragraph 35 of the Judgment, with reference being made to the lessee paying *"a premium for the assignable right to the enjoyment of occupation of a specific property for a period usually longer than his own lifetime"*, and *Earle v Charalambous* [2007] HLR 8 at [32] per Lord Justice Carnwath (as was) – *"…I do not think an analogy can be drawn with awards in relation to protected periodic tenancies…a long-lease of a residential property is not only a home, but is also a valuable property asset."*

[16] See paragraph 40 of the Judgment, though 50% was the reduction applied in *Earle* too

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Cornerstone Housing News

Chambers & Partners 2016

The Cornerstone Housing team has been ranked as a Band 1 set for Social housing for a third consecutive year, with 15 members of the team recognised as leading individuals. Full details on the rankings can be found here.

Dean Underwood of Cornerstone Barristers appointed Chair of SHLA

Dean Underwood has been appointed Chair of the Social Housing Law Association, with effect from 1st January 2016. As Chair, Dean will be responsible for overseeing the growth and progress of SHLA at a time of widespread legal change and economic austerity.

Dean Underwood speaking at a seminar for Lawyers in Local Government

Cornerstone Housing Seminar Programme 2016

The Cornerstone Housing team has now announced its seminar programme for 2016. Event details are available on our website.

The first seminar in the series on *Selective/additional Licensing and HMOs* will be presented by Dean Underwood on 26th February.

This seminar, aimed at local authorities and private landlords, will provide training on additional and selective licensing, its legal framework, the pitfalls and lessons to be learned from the courts. Click here to book a place.

Care Act Seminar in Gray's Inn

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