



**Looking backwards to go forwards
Housing 2020 and 2021**

5 October 2020

**Cornerstone Barristers
Housing Week 2020**

Housing Week 2020



Monday 5 - 11AM - [Looking backwards to go forwards - Housing 2020 and 2021](#) Speakers: Andy Lane, Ruchi Parekh, Catherine Rowlands. Chair: Ranjit Bhose QC

Tuesday 6th - 3PM - [Dealing with defendants with mental health problems/capacity issues in ASB cases](#) Speakers: Jon Holbrook, Michael Paget, Peggy Etiebet, Tara O'Leary. Chair: Kuljit Bhogal

Wednesday 7th - 11AM - [Housing-Related Judicial Review](#). Speakers: Catherine Rowlands, Wayne Beglan, Alex Williams. Chair: Kelvin Rutledge QC

Thursday 8th - 3PM - [Public law and discrimination challenges to possession claims - where are we now?](#) Speakers: Andy Lane, Ryan Kohli, Riccardo Calzavara, Rowan Clapp. Chair: Dean Underwood

Friday 9th - 11AM - [Collection and Use of Personal Data: A guide for Landlords](#). Speakers: Kuljit Bhogal, Matt Lewin, John Fitzsimons. Chair: Matt Hutchings QC

The Speakers



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Housing in 2020

Ruchi Parekh

Catherine Rowlands



Possessions in a Pandemic (1)



Post-stay landscape (Practice Direction 55C)

**REACTIVATION
NOTICES**

**PARA.6
NOTICES**

**FIRST
HEARINGS**

Pre-action compliance
(social landlords)

Effect of pandemic on
D and dependents

Possessions in a Pandemic (2)



- Extended statutory notice periods
 - In place until 31 March 2021
- ‘Winter truce’ on evictions
 - 4 week ban over Christmas
- Backlog of possession claims
 - 55,000 claims based on last year’s figures
 - Doesn’t account for effects of pandemic

Courts during Covid-19



- Business as usual?
- Mix of virtual and in-person hearings
- Remote hearings:
 - Electronic bundles
 - Civil Justice in England & Wales: Protocol regarding remote hearings
 - Administrative Court office guide – COVID-19 measures

Licensing in Lockdown: recent cases (1)



Waltham Forest LBC v Marshall [2020] UKUT 35 (LC)

- How should FTT approach appeals against civil penalty notices?
- FTT should not entertain challenge to LA enforcement policy, but must usually apply it
- LA decision must be afforded “considerable” weight

R (Mohammed) v Waltham Forest LBC [2020] EWHC 1083 (Admin)

- Offence of failing to licence an HMO is a –
 - Strict liability offence
 - Continuing offence
- Magistrates’ Court informations stating bare elements of offence are sufficient

Licensing in Lockdown: recent cases (2)



Defence of “reasonable excuse”

- Burden of proof rests on Appellant (on a balance of probabilities): *IR Management Services Ltd v Salford CC* [2020] UKUT 0081 (LC)
- Appellants’ lack of knowledge that their building was an HMO and was licensable did not give a reasonable excuse for failing to licence it, even though they had relied on professional advice: *Sutton v Norwich CC* [2020] UKUT 90 (LC)

New pre-action protocols



- Back in January, new protocols for housing disrepair and possession claims came into force.
- Housing disrepair => housing conditions – fitness for human habitation

Al-Ahmed v LB Tower Hamlets



- 204 appeal: permission to appeal out of time
- What is a good reason for not appealing in time? Lack of legal representation can be, sometimes.
- *all* circumstances are to be taken into account, with no presumptions to be applied.
- the test of “good reason” is a gateway through which one must pass before the Court can consider the merits of your appeal, the test must be applied in such a way as to avoid unjust outcomes. The difficulty in obtaining legal advice was a crucial part of this picture.

McMahon and Kiefer: introduction and facts



- Both McMahon and Kiefer applied for housing assistance, which was refused as the applicants were homeless, eligible, but not in priority need (s.189(1) HA 96). Both appealed to the County Court.
- Test from *Hotak* - reviewing officer to focus very sharply on:
 - Whether the applicant is under a disability or has another relevant protected characteristic;
 - The extent of such a disability;
 - The likely effect of the disability (together with other features) on the applicant if made homeless;
 - Whether the applicant is as a result vulnerable.
- Mr Kiefer's medical conditions included a limp, severe wrist pain and diabetes, whilst Mr. McMahon had chronic back pain, and neck shoulder and arm pain.

McMahon and Kiefer: the dispute



- Challenge was to the extent to which decision maker needs to spell out whether A is disabled before applying the PSED
- Take-away points:
 - No need to make express findings
 - Don't confuse the two
 - Be practical. It's about how A lives with the condition – understanding how that affects ability to cope with homelessness
 - PSED does not change the HA96 duty

Clarity on some issues



- *Guiste*: there is no added requirement of functionality
- But there must be a causative link
- PSED applies with most force at the investigative and reporting stages of the review
 - Don't wait for A to self-report as disabled
- Different test to *Durdana* – possession proceedings – it's all about the function the local authority is performing

McMahon: the unresolved dispute



- Issue was whether section 31(2A) of the Senior Courts Act 1981 applies in appeals under section 204 HA96
- These are “akin to judicial review” but does the “highly likely” test carry over into s.204?
- Did not arise in this case as no breach of PSED so we await clarification.

Everyone In



- 26 March 2020: LAs asked by Government to accommodate all rough sleepers - £3.2m funding provided.
- MHCLG: 5,400 rough sleepers accommodated “safely” at the peak of the pandemic – apparently 90% of those known to LHAs at the start of the outbreak
- 2 May 2020: creation of Rough Sleeping COVID-19 Response Taskforce to “lead next phase of support for rough sleepers”
- 24 May 2020: £160m brought forward to provide 3,300 homes within next 12 months. Aiming for 6,000 in total.

Next steps



- Government figures suggest 14,600 people brought off the streets by July
- Next Steps Accommodation Programme to keep people off the streets
- 274 local councils - £91.5 million of government funding to cover property costs and support new tenancies
- Some queries will remain as to status of those accommodated

No DSS



- Shelter campaign to end discrimination against benefit recipients. Their research says 63% of private landlords say they don't let, or prefer not to let, to people who receive housing benefit
- Two cases to date, one in York (conceded), one in Birmingham (undefended, but heard by Presiding Judge)
- Both allege unlawful discrimination
 - First one a woman
 - Second one disabled man, 45% more likely to be in receipt of Housing Benefit

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Housing

The next 12 months

Andy Lane

Cases in the Courts (1)



LB Croydon v Kalonga [2020] EWHC 1353 (QB) - Tipples J
02/06/2020 – Kelvin Rutledge QC, Riccardo Calzavara

A flexible tenancy for a fixed term could not be determined before the expiry of the fixed term for a tenant's breach unless the landlord had the benefit of a forfeiture clause. In the absence of such a clause, the tenancy did not fall within the Housing Act 1985 Pt IV s.82(1)(b) and could not be determined under s.82(1A): **15 or 16 December 2020 Court of Appeal**

RLB Kingston UT v Derek Moss [2019] EWHC 3261 (Ch) Morgan J
29/11/19 – Ranjit Bhose QC, Ruchi Parekh

The result of an agreement between a local authority and a water utilities company was that the local authority was a "re-seller" for the purposes of the Water Resale Orders 2001 and 2006, made under the Water Industry Act 1991. The amount that the local authority had charged a council tenant for water and sewage services provided to his unmetered flat exceeded the maximum charge permissible under the Orders, and accordingly the tenant had a right to recover the overpayment of the charges: **20 or 21 October 2020 Court of Appeal**

Cases in the Courts (2)



Ohio Stanley v Welwyn Hatfield BC (2020) HHJ Bloom 15/01/20 – Andy Lane, Riccardo Calzavara

OS' appeal against the section 184 decision was struck out because the parties had agreed to extend the period of time within which the local authority had to notify its review decision. In the alternative, the review decision was validated because OS had elected to appeal that decision too: **13 October 2020 Court of Appeal**

Hussain v LB Waltham Forest [2020] H.L.R. 14 - Sir David Holgate, Judge Siobhan McGrath – 05/11/19 – Riccardo Calzavara

On a proper construction of the Rehabilitation of Offenders Act 1974 s.4, the First-tier Tribunal could receive and take into account in its determination of an appeal against a decision to refuse or revoke a property licence under the Housing Act 2004 Pt 2 or Pt 3, evidence and submissions dealing with relevant conduct of a rehabilitated person, including conduct which had been treated under the criminal law as an offence and resulted in a conviction which was now spent: **11 or 12 November 2020 Court of Appeal**

Cases in the Courts (3)



Z v LB Hackney & Anr [2019] EWCA Civ 1099 – Court of Appeal 27/06/19 – Matt Hutchings QC, Andy Lane

Can the Second Respondent (Agudas HA) lawfully restrict the provision of its social housing to members of the Orthodox Jewish community, and can the First Respondent (LB Hackney) lawfully maintain its housing nomination arrangements with the Second Respondent: **29/30 June 2020 Supreme Court**

TM v Metropolitan Housing Trust [2020] EWHC – Johnson J 30/01/20

A housing trust's decision to issue possession proceedings against a disabled tenant who had assaulted staff members did not breach the Equality Act 2010 s.15 or the housing trust's public sector equality duty. The decision was a proportionate response to a legitimate aim as the eviction would only take place if suitable alternative accommodation could be found so that the tenant would not be made homeless, any breach of the PSED in failing to re-assess had been rectified, and in any event if there had been a re-assessment the ultimate conclusion would have been the same: **Permission to Appeal and stay sought**

Bankole-Jones v Watford BC (2020) - Catherine Rowlands

A judicial review claim concerning the relationship of Covid-19 to questions of vulnerability in a homelessness case: **8 October 2020**

Legislation (1)



Domestic Abuse Bill 2019-21

- Government Bill
- Awaiting 2nd reading in House of Lords
- Will provide that all eligible homeless victims of domestic abuse automatically have 'priority need' for homelessness assistance

Rented Homes Bill 2019-21

- Private Members Bill (Baroness Greender)
- Awaiting 2nd reading in House of Lords
- A bill to amend the Housing Act 1988 to abolish assured shorthold tenancies; to extend the grounds upon which landlords of residential housing may recover possession; and for connected purposes
- Not waiting for Renters' Reform Bill, announced in Queen's Speech 2019 (see later slide)

Legislation (2)



Fire Safety Bill 2019-21

- Government Bill
- 2nd reading in House of Lords: 1 October 2020
- A Bill to make provision about the application of the Regulatory Reform (Fire Safety) Order 2005 where a building contains two or more sets of domestic premises; and to confer power to amend that order in future for the purposes of changing the premises to which it applies.

Building Safety Bill

- In draft form: July 2020
- Post-Grenfell Tower/Hackitt Review
- To make provision about the safety of people in or about buildings and the standard of buildings.

Minister of State for Housing



Renters' Reform Bill – when will it be introduced?

“We will do that at the appropriate time when there is a sensible and stable economic and social terrain on which to do it.” Christopher Pincher MP

Bill was to include the scrapping of Section 21 and the start of the concept of lifetime deposits transferable from one property to another when a tenant moves

Fixed-term, periodic or shared ownership



- Rise from Localism Act 2011
- Sanctuary, Thirteen, Stafford and Rural Homes, Optivo, London & Quadrant Housing Trust, Peabody scrapped fixed term tenancies
- New shared ownership model announced (August 2020)
 - Initial stake as low as 10% (not 25%)
 - 300,000 additional households can now afford SO
 - Increase by tranches of 1% (not 10%)
 - Restriction on administration fees
 - Restriction in repair costs for first 10 years
 - All shared ownership properties built under the Affordable Homes Programme 2021-26 will adhere to the new model, but those built using funds from the existing programme – which runs until March 2021 – will not
 - A further technical consultation on the implementation of the new shared ownership model will be produced

Housing Court?



- **October 2017:** Secretary of State committed to consult with the judiciary on whether a new, specialist Housing Court could make it easier for all users of court and tribunal services to resolve disputes, reduce delays and to secure justice in housing cases
- Call for evidence by the MHCLG in **November 2018 – January 2019**
- 4 options considered:
 - Specialist Housing Court
 - Structural changes to existing courts/tribunals
 - Changes to the enforcement process
 - Do nothing (save better guidance to users)
- Note Housing & Property Chamber system in Scotland

Planning reforms



- “Planning for the future” White Paper (August 2020)
- Section 106 agreements and the Community Infrastructure Levy will be replaced with a new Infrastructure Levy that will be a fixed proportion of the value of the development, above a set threshold, helping to deliver more affordable housing.
- The First Homes scheme will provide newly-built homes at a 30% discount for local people, key workers and first-time buyers. The discount will be locked into the home in perpetuity, ensuring future buyers can continue to benefit from it.

What's next?



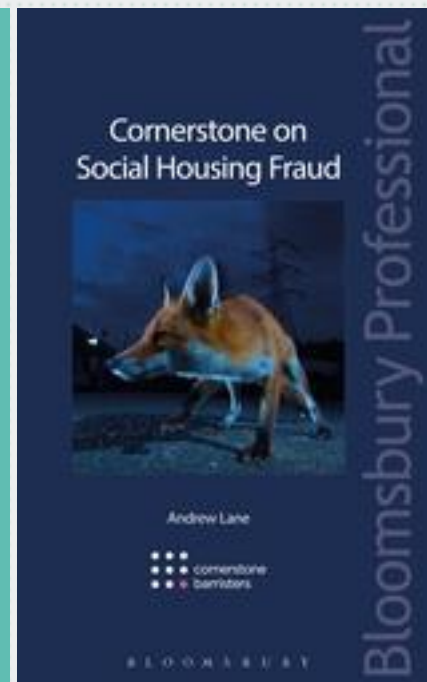
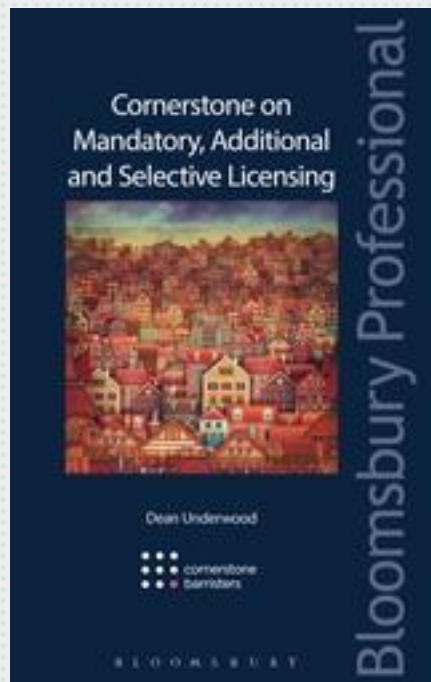
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Questions



Some Books



Contact details:

Cornerstone Barristers
2-3 Grays Inn Square
London
WC1R 5JH



Tel: 020 7242 4986

Fax: 020 3292 1966

Email: ranjitb@cornerstonebarristers.com
catheriner@cornerstonebarristers.com
andrewl@cornerstonebarristers.com
ruchip@cornerstonebarristers.com