




Annual Housing Day 2019
Welcome



The key developments in 2019
Kelvin Rutledge QC, Ranjit Bhose QC and
Tara O'Leary

Programme 

1. Roundup of events in the courts and Parliament
Kelvin Rutledge QC
2. Disrepair, fitness for habitation and cladding
Ranjit Bhose QC
3. Down the road: implementation of recent legislation
Tara O'Leary



A round-up of the last year in social housing law


Kelvin Rutledge QC

A round-up of the last year in social housing law 



2018 October to December

5

A round-up of the last year in social housing law 

- Secure tenancies. In *LB Haringey v Simawi* [2019] HLR 13 the High Court rejected the argument that the "one succession" rule in Part 4 of the Housing Act 1985 was incompatible with Arts 8 & 14 ECHR. An appeal to the Court of Appeal will be heard next month.
- Housing Act 1988, s.21 notices. In *Alkali Barrow v Isabel Kazim* [2019] HLR 14, the question arose who must serve a s.21 notice requiring possession when a head landlord brought the mesne tenant's tenancy to an end. The answer was that section [21\(1\)\(b\)](#) of the Housing Act 1988 was clear in requiring it to be the landlord at the time of service (here the mesne tenant). The assured shorthold tenants' appeal was therefore successful.
- Homelessness. In *Alibkhiat v LB Brent*, *Adam v City of Westminster* [2019] HLR 19 the Court of Appeal revisited out of borough placements in two post-*Nzolameso* challenges.

6

A round-up of the last year in social housing law



2019 January to March

7

A round-up of the last year in social housing law

- **Legislation.** The Homes (Fitness for Human Habitation) Act 2018 came into force on 20.3.19
- **Equality Act 2010.** PSED issues arose in the context of possession claims in *Dylan Powell v Dacorum BC* [2019] HLR 21 and, separately, in *Forward v Aldwyck Housing Group Ltd* [2019] HLR 20; [2019] EWCA Civ 1334, and issues of indirect discrimination arose in the context of social housing allocations in *R (Gullu) v Hillingdon LBC/R (Ward) v Hillingdon LBC* [2019] HLR 30.
- **Possession proceedings.** In *Salix Homes v Mantato* [2019] 1 WLR 3609 the Court of Appeal held that there was no cause of action estoppel against a landlord from obtaining an order for possession of property by reason of the tenant's non-payment of rent when there is an existing undischarged order for payment of earlier arrears and for possession for non-payment of those arrears.
- **Homelessness reviews.** *Godson v Enfield LBC* [2019] EWCA Civ 586.

8

A round-up of the last year in social housing law



2019 April to June

9

A round-up of the last year in social housing law



- **Code of Guidance.** In April the Homelessness code of guidance for local authorities was updated on suitability and reviews.
- **Local lettings schemes.** In *R(Z) v Hackney LBC & Agudas Israel HA* [2019] EWCA Civ 109 the Court of Appeal held that a housing association had not unlawfully discriminated against other applicants by allocating social housing only to members of the Orthodox Jewish community.
- **Homelessness.** In *Samuels v Birmingham CC* [2019] PTSR 1229, the Supreme Court looked in detail at suitability / affordability under Part 7 Housing Act 1996.

10

A round-up of the last year in social housing law



2019 July to October


11

A round-up of the last year in social housing law




- **Possession proceedings.** In *Yildiz v Hackney LBC* [2019] EWCA Civ 1331 the Court of Appeal held that, in issuing proceedings to seek possession of a property in reliance on Ground 15A, the local authority had failed to issue proceedings either within the currency of the notice itself or within 12 months of the relevant date specified in it.
- **Equality Act 2010.** In *Adesotu v Lewisham LBC* [2019] EWCA Civ 1405 the Court of Appeal held that an appeal against a homelessness decision based on disability discrimination and brought under section 204(1), Housing Act 1996 was not "a claim for judicial review" within the meaning of the Equality Act 2010, s.113(3)(a) and therefore had to be brought in accordance with s.113(1) of the 2010 Act.

12



Disrepair, fitness for habitation and cladding
Ranjit Bhose QC



Down the road: implementation of recent legislation
Tara O'Leary


Down the road 

1. Anti-social Behaviour, Crime and Policing Act 2014
2. Homelessness Reduction Act 2017
3. The Private Sector
 - Housing and Planning Act 2016
 - The end of s.21 Housing Act 1988?
 - Tenant Fees Act 2019



ASB: New Victims' Commissioner

- Vera Baird
- Former Police & Crime Commissioner for Northumbria
- Association of Police and Crime Commissioners's lead for supporting victims and reducing harm
- "...work with government and the Criminal Justice agencies to implement the Victims' Code ... bring national guidelines to local victim services ... and to make the justice system responsive to victim needs, whilst ensuring fair trials."



Victims' Commissioner Report on ASB



ASB HELP NOTTINGHAM TRENT UNIVERSITY

**Anti-Social Behaviour:
Living a Nightmare**

Victims' Commissioner for England and Wales,
ASB Help & Nottingham Trent University

April 2019

Victims' Commissioner Report on ASB



"Experience of ASB is on the rise. In the year ending December 2018 ... 37% of respondents had experienced or witnessed ASB in their local area ... this is the highest percentage recorded since this data was first collected"

"ASB types most likely to be experienced/witnessed were: street drinking/drunken behaviour (11.5% of those who reported experiencing/witnessing some form of ASB); groups hanging around (9.5%); inconsiderate behaviour (7.1%); and vehicle-related ASB (5.1%)"

Victims' Commissioner Report on ASB



"Recording of ASB has changed. Incidents are now recorded individually [by police] rather than being under the heading of ASB. This means that the focus has gone from the cumulative effect of multiple ASB incidents to the individual crime types. The public and political focus has switched to serious violence, forgetting that ASB can be its precursor and failing to recognise the impact on the communities and individuals affected by it."

Victims' Commissioner Report on ASB



Recommendations:

- Revising the Victims' Code of Practice so victims of ASB are afforded same entitlements as other victims of crime
- Reviewing the operation of the 101 police phone line to ensure it is fit for purpose
- Home Office to review how local performance on tackling ASB can be monitored and measured
- Consider strengthening police powers to issue warnings & fines, and enter properties
- All social housing providers to develop key performance indicators on ASB

Victims' Commissioner Report on ASB



Improving the "Community Trigger" - statutory requirements for local authorities, police & crime commissioners:

- Provide accurate and better information about the right to "trigger" on their websites
- Monitor and measure ASB cases and the use of Community Trigger, and produce annual reports
- Formal obligation to respond to recommended actions from ASB case reviews, including reasons when no action is taken
- Independent local Community Trigger panel leads and arbitrators
- Rights for victims to attend & address Community Trigger panel in person, and use Victim Personal Statements

Cornerstone on Anti-social Behaviour



Homelessness Reduction Act 2017



Homelessness Reduction Act 2017



- Still little case law from the higher courts on:
 - Prevention duty (s.179)
 - Assessments & personalised plans (s.189A)
 - Relief duty (s.189B)
 - 'Deliberate & unreasonable refusal to cooperate' (s.189B(9), 193B, 193C)
- *R (Laryea) v Ealing LBC* [2019] 8 WLUK 164, Aug 2019
 - *Mohammed* challenge pending s.202 review of the discharge of relief duty

Homelessness Reduction Act 2017



- Latest version of the Homelessness Code of Guidance – April 2019
- <https://www.gov.uk/guidance/homelessness-code-of-guidance-for-local-authorities>

You can also download a copy of the [Homelessness code of guidance \(PDF\)](#).

- From 6 February to 14 April 2019 this [version of the guidance \(PDF\)](#) was in force.
- From 1 November 2018 to 5 February 2019 this [version of the guidance \(PDF\)](#) was in force.
- From 20 June to 31 October 2018 this [version of the guidance \(PDF\)](#) was in force.
- From 3 April to 19 June 2018 this [version of the guidance \(PDF\)](#) was in force.


See also the [Local Government Association procedures for referrals to another local authority](#) (external link).

Homelessness Reduction Act 2017




- One-year review of the Act – April 2019
- Local Government Association evidence, May 2019:
 - 83% of LHAs had an increase in homelessness presentations
 - 60% had increased (a) numbers in TA and (b) time spent in TA
 - Said to be the result of increased TA provided by 'relief' duty
 - 97% said increased footfall led to significant unfunded costs, e.g. administrative and casework
 - LGA identified funding gap of £110mil in 2019-20
 - Spending focused on meeting duties rather than preventive work
- "Undermines assumption in Gov's assessment that costs to LHAs of providing TA would be neutralised by year two of the Act's implementation"

Housing & Planning Act 2016
- Rogue Landlords



- Sections 14-27:
 - allow LHAs to apply for a banning order, to prevent a landlord or letting agent continuing to operate, if they have committed certain housing offences.
- Sections 28-39:
 - create a 'rogues' blacklist' - a national database of rogue landlords and letting agents, maintained by LAs.
- Sections 40-52:
 - extend the scope of rent repayment orders, enabling tenants or LHAs to recover up to 12 months' rent if a landlord has committed certain offences.
- Section 126: Introduction of civil penalties as alternative to prosecution


Housing & Planning Act 2016
- Rogue Landlords



Banning orders

- *Borough of Telford & Wrekin v Beattie* – Case Ref. BIR/00GF/HSH/2019/0001, 16 August 2019
- Banning order (s15(2)) and rent repayment order (s.41 HPA 2016)
- Mr Beattie prosecuted for unlicensed HMO February 2019
- Only one conviction for "banning order offence" is required: s.15(1)
- BUT must be committed (not prosecuted) after 6 April 2018
- FTT must however consider earlier history of licensing infractions, amongst other matters: s.16(4)
- Included Mr Beattie's habit of giving tenants "excluded licence agreements" instead of tenancies

Housing & Planning Act 2016
- Rogue Landlords



National database of 'rogue landlords'

- Mandatory entry of persons subject to banning orders
- Discretionary entry if convicted of 1 BO offence, or if 2 BO offences subject to civil penalties within 12 months
- Live since April 2018 ... still empty in October 2018
- October 2018: PM promises to offer public access to database
- July 2019: public consultation on widening access to database (ends 12 October 2019)
- Mayor of London 'Rogue Landlord & Agent Checker'
- Voluntary scheme by all London LHAs & some info from LFB

Housing & Planning Act 2016
- Rogue Landlords



Civil penalties as alternative to criminal prosecution

- Entered into force April 2017, and applicable to offences committed after that date
- Statutory Guidance April 2018
- Many local authorities have now adopted policies on issuing CPNs and setting the appropriate level of penalty
- *Clark v Manchester CC* [2015] UKUT 129 (LC)
- *Marshall v LB Waltham Forest* – Upper Tribunal autumn 2019

Consultation on reform of HA 1988



The end of s. 21 “no fault” evictions?

- Consultation opened July 2019 – closes 12 October
- Includes specific Q on whether reforms should be extended beyond private sector to, e.g., housing associations

Unanswered questions:

- What about “starter tenancies” for housing associations?
- Enforcement mechanisms for failure to comply with formalities of new tenancies: e.g. gas certificates, protecting tenancy deposits and ‘prescribed information’?
- What improvements should (and realistically can) be made to s.8 procedure and court processes?

Tenant Fees Act 2019



- Bans most letting fees and caps tenancy deposits paid by tenants in the private rented sector in England: ss1-2
- Applies to new or renewed tenancy agreements signed on or after 1 June 2019
- Intention: tenants to see what a given property will cost them in the advertised rent with no hidden costs.

Tenant Fees Act 2019



From 1 June 2019, the only payments landlords/letting agents can charge to tenants in relation to new contracts (s.3(1) & Schs. 1-2):

- Rent
- Refundable tenancy deposit: max 5 weeks' rent where total annual rent is less than £50,000, or 6 weeks' rent if £50,000+
- Refundable holding deposit (to reserve property): max 1 week's rent
- Payments associated with early termination by tenant
- Max £50 (or reasonably incurred costs, if higher) for the variation, assignment or novation of a tenancy
- Payments for utilities, Wi-Fi, TV licence and Council Tax
- Default fee for late payment of rent and replacement of lost keys/security devices, where part of tenancy agreement

Tenant Fees Act 2019



• **NB** Schedule 2: regulates treatment of "holding deposits" – not previously covered by the rules on tenancy deposits per the Housing Act 2004 as amended by the Deregulation Act 2015

- Any terms of tenancy agreement in breach of the Act are not binding and of no effect: s.4
- Enforcement by civil penalties up to £5,000 in the event of breach – note for breaches inside AND outside LA's area: s. 8
- Criminal offence committed if there are repeated breaches by same person within 5-year period: s. 12
- Offence may be subject to civil penalty up to £30,000, or unlimited fine on prosecution

Tenant Fees Act 2019



- Local weights and measures authorities ("Trading Standards") – **must** enforce the Act in its area
- District councils – a district council that is not a local weights and measures authority **may** enforce.
- The "*lead enforcement authority*" – has power to take steps to enforce the relevant letting agent legislation where **necessary or expedient** to do so
- Lead enforcement authority – presently Bristol City Council
- Statutory Guidance for Enforcement Authorities, July 2019: s.6(4)

