**Housing Law Update 2014**

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**Introduction**

1. These notes address developments in the last twelve months in the following areas:

1. Homelessness;
   1. Eligibility;
   2. Priority need;
   3. Intentionality;
   4. Suitability;
   5. Review process;
2. Allocations;
3. Possession claims;
   1. Notices;
   2. Article 8;
   3. Public law;
   4. Equality Act 2010;
   5. Other;
4. Housing benefit & welfare reform;
5. A miscellany-at-law, of sorts;
   1. Public sector equality duty;
   2. Nuisance;
   3. Unlawful eviction;
   4. Adverse possession.

**Homelessness**

2. As is well known, the extent of the duty owed by a local housing authority to a homeless person under Housing Act 1996, Pt 7, depends on whether they are eligible for assistance, in priority need, and homeless intentionally.[[1]](#footnote-1)

Eligibility

3. *Hines v Southwark LBC* [2014] EWCA Civ 660; [2014] HLR 32:

3.1 H was a Jamaican citizen. She arrived in the UK in 2002. In October 2008, she gave birth to a son. The father had a permanent right of residence in the UK. In January 2009, H’s permission to remain in the UK expired. Her relationship with the child’s father broke down. The child lived with her but spent two nights a week with his father.

3.2 H applied to Southwark. Southwark decided that H was not eligible for assistance, because if she had to leave the UK, the child’s father could be expected to look after the child. She therefore did not have a right of residence under *Ruiz Zambrano v Office National de l’Emploi (ONEm) (C-34/09)* [2012] QB 265.

3.3 H appealed to the county court and Court of Appeal (Sullivan, Patten & Vos LJJ), arguing that Southwark’s decision should be subject to greater scrutiny than normally applies in s.204 appeals, because EU rights were engaged, and that Southwark had to consider whether it was in the child’s best interests for H to remain in the UK.

3.4 Vos LJ gave the only judgment in the Court of Appeal. He held that Southwark’s decision did not need to be subjected to any more intensive degree of scrutiny than normally applies in s.204 appeals (applying *Runa Begum v Tower Hamlets LBC* [2003] UKHL 5; [2003] AC 430; [2003] HLR 32).

3.5 Vos LJ also held that H only came within *Zambrano* if her child would be compelled to leave the country with her, which was not the position.

3.6 This case was therefore a challenge to the authority’s decision that someone was not a *Zambrano* carer. Accordingly it did not address the next problem, which is that even if someone is a *Zambrano* carer (as implemented in domestic law by Immigration (European Economic Area) Regulations 2006 (SI 2006/1003), reg.15A(4A)) they are nonetheless excluded from assistance under Pt 7, 1996 Act by Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006/1294), reg.6(1)(b).

4. The concept of *Zambrano* carers and the domestic regulations dealing with them have recently been the subject of argument before the Court of Appeal in the context of homelessness in the cases of *Sanneh v Secretary of State for Work and Pensions*; *R (HC) v Secretary of State for Work and Pensions* [2013] EWHC 3874 (Admin); *Merali v Birmingham CC*; *Scott v Croydon LBC*; *Sindimo v Nottingham CC*.

5. *Saint Prix v Secretary of State for Work and Pensions* Case C-507/12: In this case referred to the ECJ (by the Supreme Court: [2012] UKSC 49; [2013] 1 All ER 752; [2013] 1 CMLR 38), it was decided by the ECJ that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth, retains the status of ‘worker’ under EU law.

6. *Samin v Westminster CC* [2012] EWCA Civ 1468; [2013] HLR 7; [2013] 2 CMLR 6; [2013] Imm AR 375:

6.1 This case concerned an Austrian citizen who had travelled to England in 2005 and not worked since 2006. He had been diagnosed with clinical depression and chronic PTSD.

6.2 Westminster decided that S was not eligible for assistance because he was not temporarily unable to work as the result of an illness or accident and was therefore not a qualified person for the purposes of the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003). Westminster’s review officer considered whether the appellant’s inability to work was or was not temporary. She decided that it was not temporary and S was therefore not eligible for assistance.

6.3 An appeal to the county court was dismissed, as was a further appeal to Court of Appeal (Hughes, Etherton & Tomlinson LJJ) dismissed the appeal.

6.4 The Court of Appeal said that, in considering whether a person is temporarily unable to work as the result of an illness or accident, it is generally helpful to ask whether there is or is not a realistic prospect of a return to work. This would be a question of fact in every case.

6.5 Westminster’s review officer had asked herself the right question. S had scarcely worked at all during his time in the UK and it was wholly unrealistic to categorise him as a worker who was temporarily unable to work as the result of an illness.

6.6 An appeal from the Court of Appeal’s decision is to be heard by the Supreme Court in March 2015.[[2]](#footnote-2)

7. *R (Yekini) v Southwark LBC* [2014] EWHC 2096 (Admin):

7.1 Y was a *Zambrano* carer.[[3]](#footnote-3) Southwark accepted that she was owed the full housing duty. Y was provided with hostel accommodation, but she was evicted from that due to rent arrears, which arose because she was not eligible for housing benefit.

7.2 Y asked Southwark to provide her with housing on the basis of a nil or peppercorn rent, relying on s.206(2)(a).[[4]](#footnote-4) Southwark did not accept that s.206(2)(a) could be read so broadly.

7.3 Michael Fordham QC, sitting as a deputy High Court Judge, allowed Y’s claim for judicial review. It was within the power conferred by s.206(2)(a) for a housing authority to charge a nil or peppercorn rent. However, a housing authority should only do so if it was satisfied that it was appropriate in the exercise of its discretion and judgment in the individual case.

7.4 Permission to appeal was granted by the Court of Appeal on 14 October 2014, but the case is, apparently, currently stood out awaiting the decision in *Sanneh*, *et al*.

Priority need

8. *Hotak v Southwark LBC* [2013] EWCA Civ 515; [2013] HLR 32; [2013] PTSR 1338; [2013] BLGR 781:

8.1 H suffered learning difficulties which affected his ability to cope with daily living. He had self-harmed during a period spent in custody and had suffered symptoms of depression and post-traumatic stress disorder. H’s brother gave him personal support on a daily basis, including prompting him in relation to personal hygiene and changing his clothes, and helping to organise health appointments, meals and finances, etc.

8.2 Southwark decided that H was not in priority need as his brother provided support and assistance which was sufficient to overcome his various health problems.

8.3 H’s appeals to the county court and the Court of Appeal (Moore-Bick, Richards & Pitchford LJJ) were dismissed.

8.4 The Court of Appeal said that the assessment process under s.189(1)(c) is not purely theoretical, but was an intensely fact sensitive and practical process. If the support provided by H’s brother was ignored, the assessment would be conducted on a factual premise which was known to be untrue, which was not what was required by s.189(1)(c) required.

9. *Johnson v Solihull MBC* [2013] EWVA Civ 752; [2013] HLR 39:

9.1 J was a recovering heroin addict and a persistent offender. Following an application as homeless, Solihull decided that he was not in priority need. In the reviewing officer’s decision letter, she referred to Homeless Link’s *Survey of Needs and Provision* 2010, which found that 92% of homelessness services worked with people experiencing problems with drugs. She concluded that J was not vulnerable as a result of his drug use.

9.2 After an unsuccessful appeal to the county court, J appealed to the Court of Appeal (Arden, Jackson & McCombe LJJ), who dismissed the appeal.

9.3 The comparator used in *R v Camden LBC ex p Pereira* (1998) 31 HLR 317 CA , is an “ordinary homeless person” not an ordinary person who is homeless, which was a necessarily imprecise concept.

9.4 The question of who is an ordinary homeless person and what characteristics they have is to be assessed in the real world. It was said to be unsurprising that many homeless persons have drug issues or that many homelessness services are involved with dealing with those issues.

9.5 Furthermore, Solihull’s reviewing officer had been entitled to refer to the *Survey of Needs and Provision* to assist in determining the characteristics of an ordinary homeless person.

10. In *Kanu v Southwark LBC* [2014] EWCA Civ 1085; [2014] HLR 40, the Court of Appeal (Aikens, Kitchin & Underhill LJJ) allowed an appeal by the local housing authority, holding that where a disabled person applies for assistance under Pt 7, the authority are not required by the public sector equality duty (Equality Act 2010, s.149) to do more than they are required to do under 1996 Act. In particular, the PSED does not require an authority to secure accommodation for a disabled person in circumstances where his disability does not render him vulnerable.

11. *Hotak*, *Johnson* and *Kanu* are all to be heard by the Supreme Court on 15-17 December (by Lord Neuberger, Lady Hale, Lords Kerr, Clarke & Hughes).

12. *Ajilore v Hackney LBC* [2014] EWCA Civ 1273:

12.1 A had experienced a troubled childhood and youth. He had become involved with criminal gangs and was addicted to Class A drugs. He applied as homeless to Hackney and asserted that he was vulnerable because, if he were to be made street homeless, he would be at risk of committing suicide because he had suffered from depression. He also said that he would be at risk of relapsing to cocaine use. On the same day, Hackney decided that he was not in priority need.

12.2 Hackney’s review officer upheld this decision, concluding that (a) there would be a risk of self-harm and suicide if A became street homeless but that was not anything different from that which ordinary street homeless people might suffer from, and that (b) A would be at risk of relapsing to the use of drugs, if he were made street homeless but that did not necessarily differentiate him from the other ordinary street homeless. In relation to (a), the review officer relied, in part, on a report in the British Medical Journal, but the officer misunderstood the statistics in it. In relation to (b), the officer relied in part on the *Survey of Needs and Provision*.

12.3 A’s appeals were dismissed by the county court and by the Court of Appeal (Gloster, Underhill & Floyd LJJ). Before the Court of Appeal it was common ground that the reviewing officer had misunderstood the statistical evidence relating to self-harm in the homeless population. The Court of Appeal held that this did not, however, undermine Hackney’s decision, which was not based wholly or principally on the statistics.

Homeless intentionally

13. *Noel v Hillingdon LBC* [2013] EWCA Civ 1602; [2014] HLR 10:

13.1 N rented a three-bedroom property at a monthly rent of £1,350. He was unemployed and received benefits of just over £1,000 per month. Although his benefits included housing benefit, he did not pass this on to the landlord and fell into substantial rent arrears. The landlord proposed a payment plan but N did not comply with this, so the landlord commenced possession proceedings.

13.2 N’s partner moved in with him, but he did not apply for an increase in HB. In due course he was evicted. His rent arrears at that time were in excess of £14,000.

13.3 Hillingdon decided that N was homeless intentionally. The Court of Appeal. (Richards & Lewison LJJ & Coleridge J) dismissed an appeal. There had been two causes ofN’s homelessness, one of which was his failure to apply for an increase in housing benefit when his partner moved in with him. There was no challenge to Hillingdon’s conclusion that if he had done so he would have been able to resolve the problem of his arrears, so Hillingdon had been entitled to conclude that the property was reasonable for him to continue to occupy and that he was intentionally homeless from it.

14. *Viackiene v Tower Hamlets LBC* [2013] EWCA Civ 1764; [2014] HLR 13:

14.1 V held a joint AST. The rent was initially £1,560 per month, which was subsequently reduced by the landlord to £1,408 per month. V’s arrangement with the other tenant was that she would pay £1,000 per month and he would pay the remainder. The other tenant lost his job and stopped paying his share of the rent. The landlord’s agent suggested to V that they could help her find a replacement tenant to share the property with her, but she declined this offer. In due course she was evicted for rent arrears.

14.2 Tower Hamlets decided that she was intentionally homeless because rent arrears had accrued and she had rejected the landlord’s offer of assistance to find a new joint tenant. The Court of Appeal (Hallett & Sullivan LJJ & Arnold J) dismissed an appeal against this decision, holding that there was no reason to doubt the genuineness of the landlord’s offer to assist V. Her conduct had been deliberate, irrespective of whether it was categorised as an act, in that she refused that offer, or an omission, in that she failed to accept it.

14.3 Permission to appeal was refused by the Supreme Court on 30 October 2014, because the “decision ultimately turned on the facts as found by the officers”.

15. *Balog v Birmingham CC* [2013] EWCA Civ 1582; [2014] HLR 14:

15.1 B had lived in privately rented accommodation in Margate. He left that and applied to Birmingham as homeless. He said that he had left the Margate property because the landlord had told that he had to and because the property was in disrepair. Birmingham decided that he was homeless intentionally as their enquiries suggested that he had not been asked to leave and that any repairs that needed to be carried out were of a minor nature.

15.2 B requested a review. The review officer considered, amongst other things, that the property had been affordable for the appellant. Although the decision letter referred to various parts of the *Homelessness Code of Guidance for Local Authorities* (July 2006), it did not expressly refer to para.17.40.[[5]](#footnote-5)

15.3 An appeal to the county court was allowed, on the basis that that the reviewing officer had failed to have regard to para.17.40 of the Code of Guidance, because there was no express reference to it, and had failed to consider whether paying his housing costs would leave B with less than the amount that would be payable in respect of income-based job seekers’ allowance. Birmingham appealed to

15.4 The Court of Appeal (Sullivan, Kitchin & Briggs LJJ) allowed an appeal by Birmingham. The issue of affordability had been raised by the reviewing officer himself and it was reasonable to infer he had it at the forefront of his mind throughout the review. He had plainly had regard to the *Homelessness Code of Guidance for Local Authorities*. it was not surprising there was no express reference to para.17.40 of the Code of Guidance, given that B had never raised the issue of affordability.

15.5 Reviewing officers were not obliged to identify each and every paragraph of the Code of Guidance which had a bearing on their decision as that would impose a wholly unreasonable and unnecessary burden.

16. *Huzrat v Hounslow LBC* [2013] EWCA Civ 1865; [2014] HLR 17:

16.1 H lived with her husband and their two young children in privately rented accommodation. She received housing benefit, which left a shortfall of around £71.50 every four weeks. H failed to pay this shortfall and she was evicted when rent arrears accrued. She applied to Hounslow as homeless, but they decided that she was intentionally homeless, because she had not paid her rent.

16.2 H appealed to the county court, arguing that Hounslow had not discharged its duty under s.11, Children Act 2004, when deciding that she was intentionally homeless. That appeal was dismissed and she appealed to the Court of Appeal.

16.3. Moses, Beatson & Briggs LJJ dismissed the appeal, holding that the question that Hounslow had had to consider was whether anything was left for H to pay the rent after looking after her children reasonably. They had considered that question. Children Act 2004, s.11 did not add fresh criteria for determining whether an applicant was intentionally homeless.

17. *Farah v Hillingdon LBC* [2014] EWCA Civ 359; [2014] HLR 24.

17.1 F was was disabled and had three children. She received housing benefit and other welfare benefits. She fell into rent arrears and was evicted. She applied to Hillingdon. She completed an income and expenditure form which showed a weekly shortfall.

17.2 Hillingdon decided that F had become homeless intentionally. The decision letter acknowledged that her income did not meet her expenditure but stated that this included items which were not considered to be necessities, such as payments to a credit card and taking her children swimming. The decision letter also stated that some items in her expenditure were exaggerated but did not specify which items.

17.3 F asked for a review, which upheld the decision. An appeal to the county court was dismissed, but an appeal to the Court of Appeal was allowed by Longmore, Patten and Christopher Clarke LJJ, on the basis that Hillingdon’s review decision simply adopted the analysis in the original decision. It did not review any of the conclusions in that decision, nor did it give any reasons for reaching the same conclusion.

18. *Haile v Waltham Forest LBC* [2014] EWCA Civ 792; [2014] HLR 37.

18.1 The concept of “becoming homeless intentionally” is defined in s.191, 1996 Act. It has its origins in Housing (Homeless Persons) Act 1977, s.17. In *Din v Wandsworth LBC* [1983] 1 AC 657; (1981) 1 HLR 73, a majority of the House of Lords held that, for the purposes of s.17, 1977 Act, the relevant time for considering whether it was reasonable to continue to occupy accommodation was the moment when the applicant became homeless, even if they would have been unintentionally homeless later on in any event.

18.2 H had an AST of a bedsit in a hostel. It was a term of the tenancy agreement that only one person could occupy the room. H became pregnant. In October 2011, she moved out of the hostel, complaining about smells there. She applied to Waltham Forest as homeless.

18.3 In February 2012, H gave birth to a daughter. In August 2012, and then in January 2013 on review, Waltham Forest decided that H was intentionally homeless, as the smells had not been such that she had been justified in leaving the hostel.

18.4 An appeal to the county court was dismissed. H appealed again, arguing that *Din* should not be applied to the 1996 Act. The Court of Appeal (Jackson, Fulford & Christopher Clarke LJJ) disagreed. Jackson LJ gave the only judgment, in which he considered that *Din* remained binding. Waltham Forest had therefore been required to consider whether homelessness was intentional at the time that H left the bedsit, not at the date of either the s.184 or s.202 decisions.

18.5 Permission to appeal has been granted by the Supreme Court in *Haile*. The appeal is to be heard on 29 January 2014.

Suitability

19. *Slattery v Basildon BC* [2014] EWCA Civ 30; [2014] HLR 16.

19.1 In *Codona v Mid-Bedfordshire DC* [2004] EWCA Civ 925; [2005] HLR 1, it was held that in deciding whether accommodation is suitable for an applicant who is a gypsy or traveller, an authority must give special consideration to securing accommodation that will facilitate his traditional way of life.

19.2 In *Sheridan v Basildon BC* [2012] EWCA Civ 335; [2012] HLR 29, the Court of Appeal held that a suitability review does not require a general inquiry into the adequacy of provision of sites for gypsies and travellers in the authority’s district. Instead, a review of the suitability of an offer of accommodation is only concerned with whether the offer from within the authority’s resources adequately meets that applicant’s needs.

19.2 S was an Irish traveller who was lived with her son on an unauthorised caravan site in Basildon’s area. She applied as homeless and was offered a tenancy of a three-bedroom house. She rejected the offer and requested a review of the suitability of the accommodation. The review upheld the decision and S then appealed to the county court.

19.3 In the county court, the circuit judge held that he was bound by *Sheridan* to conclude that the Basildon were not prevented from relying on the absence of caravan sites in their area by their alleged failure to exercise their powers to provide sites for caravans under Caravan Sites and Control of Development Act 1960, s.24. He dismissed the appeal.

19.4 S appealed to the Court of Appeal, arguing that *Sheridan* was inconsistent with *Codona*.

19.5 The Court of Appeal (Sullivan & Briggs LJJ & Arnold J) dismissed her appeal. The decision in *Codona* was concerned with the situation where there was no accommodation available that could be considered to be suitable, applying a *Wednesbury* standard of reasonableness. It was not concerned with the prior question of whether any available accommodation met that standard. There was no inconsistency between *Codona* and *Sheridan*.

20. *Khan v Solihull MBC* [2014] EWCA Civ 41; [2014] HLR 33:

20.1 K applied to Solihull as homeless, saying that she was not able to live in certain parts of their area, including Chelmsley Wood, due to fear of reprisals from her husband and a gang with which he was associated. Solihull accepted that they owed the full housing duty. They investigated K’s claims that she was at risk from a gang but concluded that she was not at risk, because their community housing officers had no information about the alleged gang and she had not provided any details of any people associated with the gang. It was also noted that she had made unsuccessful bids for two different properties in Chelmsley Wood.

20.2 Solihull then offered K a property in Chelmsley Wood. She rejected the offer without viewing the property. Solihull then told her that the housing duty towards her had ceased. K requested a review, but the reviewing officer upheld the decision, concluding that the alleged gang did not exist.

20.3 An appeal to the county court did succeed, on the basis that Solihull should have told K that they were unable to find any evidence that the gang existed and that they had not accepted her reasons as to why parts of their area were unsafe for her before they made the offer of accommodation.

20.4 Solihull appealed to the Court of Appeal. K did not resist the appeal, as she had obtained accommodation elsewhere. Rafferty & Beatson LJJ & Sir Robin Jacob allowed Solihull’s appeal. They were not required to give reasons in the offer letter stating why they considered that the accommodation was suitable and that the offer was reasonable for the appellant to accept. If K considered that the offer had been made in error, the onus was on her to raise the point with the authority rather than simply to refuse the offer.

21. In *Nzolameso v Westminster CC* [2014] EWCA Civ 1383, N challenged an offer of out-of-borough accommodation. The Court of Appeal said that a housing authority was not obliged to consider only those factors relating to the particular applicant when deciding whether it was reasonably practicable to make an offer of accommodation within its own district, but was entitled to have regard to all factors that had a bearing on its ability to provide accommodation to an applicant person, including the demands made upon it and the pressures on its resources, whether of a financial or administrative nature.

Reviews

22. In *Tachie v Welwyn Hatfield BC* [2013] EWHC 3972 (QB); [2014] PTSR 662; [2014] BLGR 100, Jay J held that held that the authority did not lawfully contract out its homelessness review decisions because the relevant authorisation should have been given by the Cabinet and not the Council. Welwyn Hatfield, however, retrospectively ratified the authorisation so that its review decisions were not unlawful. A permission hearing in the Court of Appeal has been listed for 27 November.

23. *Mohamoud v Birmingham CC* [2014] EWCA Civ 227; [2014] HLR 22:

23.1 M applied to Birmingham for assistance. The authority accepted that they owed the full homelessness duty, and informed her that they would make one offer of accommodation in order to discharge that duty. It was explained that properties were advertised each week and that she would be able to bid for a maximum of three properties each week; alternatively, the authority could bid on her behalf. At the end of each week, the property would be offered to the person with the highest priority, which may or may not be her.

23.2 In due course, a final offer was made to her. She declined the offer because the flat was too small and she did not want to live in a high-rise flat. Birmingham decided that it was suitable and that, as a result, they had discharged their duty under s.193.

23.3 M requested a review. She said that she had misunderstood what she had originally been told by Birmingham and that she had thought that she would receive up to three offers of accommodation. She suggested that the confusion could have arisen because English was not her first language. The review officer upheld the original decision.

23.4 M appealed to the county court, contending that the authority’s knowledge of her confusion and limited command of English comprised matters which should have engaged Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999/71), reg.8(2). That argument failed in the county court, but succeeded on a further appeal to the Court of Appeal (Moore-Bick & McFarlane LJJ & Proudman J).

23.5 The Court of Appeal held that the essence of M’s case was that she had been confused and rejected the offer under a misapprehension. If that was true, and if it had been drawn to the attention of the original decision maker, it might have led to a different conclusion; the review officer should have accepted that there was a deficiency in the original decision and that reg.8(2) was engaged.

24. In *Temur v Hackney LBC* [2014] EWCA Civ 877; [2014] HLR 39, the Court of Appeal held that there was nothing in the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999/71) preventing a reviewing officer from making a decision which was less favourable to an applicant than the original decision, even if circumstances have changed between the date of the original decision and the date of the review.

**Allocations**

25. *R (Alansi) v Newham LBC* [2013] EWHC 3722 (Admin); [2014] HLR 25; [2014] PTSR 948:

25.1 Newham operated an allocations scheme, which included a system of priorities comprising three groups of applicant and a system of bidding for properties by way of choice-based lettings. The Priority Homeseeker group, which included homeless applicants, had the highest level of preference. The lowest level of preference was afforded to those in the Homeseeker group.

25.2 Newham also administered a Bond Scheme, under which they secured the provision of accommodation from private sector landlords, facilitated by the authority providing a bond to the landlord to secure the payment of rent and performance of the tenant’s covenants. The allocations scheme did not include any provision for retention of Priority Homeseeker status by applicants housed under the Bond Scheme who thereby had ceased to be homeless.

25.3 In January 2005, A applied to Newham as a homeless person. Newham accepted that she was owed the full duty under s.193(2), 1996 Act. She was provided with temporary accommodation and registered on the waiting list for an allocation of housing accommodation under Pt 6.

25.4 In January 2009, Newham told A that she would be nominated for a move to alternative temporary accommodation. She was also informed that, because there was a long waiting list for accommodation, she would be rehoused more quickly if she opted for the Bond Scheme, but that she would still retain the right to bid for permanent council accommodation and her Priority Homeseeker status.

25.5 A then accepted a tenancy of a house provided under the Bond Scheme. Newham subsequently told her that its duty under s.193(2) had come to an end, but that she retained her Priority Homeseeker status.

25.6 In 2012 Newham consulted on the introduction of a new allocations scheme. It was proposed that the circumstances of existing waiting list applicants housed under the Bond Scheme would be re-assessed. Newham said that this might mean the loss of their priority and that there were around 400 applicants in this category.

25.7 Newham’s Cabinet approved the adoption of a new allocations scheme, which contained seven categories of priority. Members or former members of the Armed Forces, who satisfied certain criteria, were given the highest priority, while those applicants in the Priority Homeseeker or Transfer groups who were in employment were given priority over other applicants, including those in the Homeseeker group.

25.8 Newham told A that, following the adoption of the new allocations scheme, she had been assessed as being in the Homeseeker group and no longer had a reasonable preference. A brought judicial review proceedings alleging that the authority had breached her legitimate expectation that she would retain Priority Homeseeker status.

25.9 Stuart-Smith J dismissed the claim for judicial review.

25.10 Contrary to Newham’s argument, the approach, set out in *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896, HL, to the interpretation of contractual documents prepared by persons who are intent on entering into contractual relations is not directly transferrable to the interpretation of statements by public bodies said to give rise to a legitimate expectation. Instead, the court should ascertain the meaning which a public body’s statements would reasonably convey to a claimant in the light of all of the background knowledge which they had in the situation that they were in at the time that the statements were made.

25.11 The representations and assurances made by Newham to A were clear and unambiguous, to the effect she would retain Priority Homeseeker status and would be entitled to bid for permanent accommodation. There was however, no assurance that Newham would not change A’s level of priority within the Priority Homeseekers category so that her prospects of obtaining permanent housing were significantly reduced.

25.12 Newham’s action had not bee an unlawful abuse of power. It was a proportionate response to a pressing and widespread social problem, which struck a proper balance between the competing claims of many different interests

25.13 Permission to appeal to the Court of Appeal was refused by Fulford LJ on 12 May 2014: [2014] EWCA Civ 786.

26. *R (Jakimaviciute) v Hammersmith & Fulham LBC* [2014] EWCA Civ 1438:

26.1 Hammersmith & Fulham adopted a new allocation scheme in April 2013. Under the scheme, only those who fell within s.166A(3), 1996 Act qualified for an allocation. Among the people who did not qualify for an allocation was a class under para.2.14(d) of the scheme, which included those who were in long-term suitable temporary accommodation under the main homelessness duty.

26.2 Hammersmith & Fulham introduced this class because such applicants were not in such high housing need as others by reason of the accommodation provided to them. After the scheme was adopted, an updated equality impact assessment by the local authority indicated that the majority of applicants falling within s.166A(3)(b) had been excluded under para.2.14(d) because they were in long-term suitable temporary accommodation.

26.3 J issued judicial review proceedings, arguing that para.2.14(d) of the scheme was unlawful because it was in breach of s.166A(3)(b). Permission to bring the claim was refused by the Administrative Court, but was granted by the Court of Appeal which also directed that it should hear the claim because of the importance of the issues.

26.4 At the substantive hearing, the Court of Appeal (Richards, Tomlinson & Bean LJJ) allowed the claim for judicial review. The discretion under s.160ZA(7) to decide what classes of person were, or were not, qualifying persons was subject to the duty under s.166A(3). Although the objectives of the scheme had not been subject to a rationality challenge, there had been a breach of the duty because para.2.14(d) was fundamentally at odds with it and the exclusion of the great majority of people within s.166A(3)(b) did not sit with Parliament’s decision to define the s.166A(3)(b) class as it did.

**Possession claims**

Notices

27. *Spencer v Taylor* [2013] EWCA Civ 1600; [2014] HLR 9; [2014] L&TR 21:

27.1 In this case, the Court of Appeal decided that there are three requirements for a valid notice under Housing Act 1988, s.21(1).

27.2 First, that the fixed-term assured shorthold tenancy had come to an end.

27.3 Secondly, that no further assured tenancy, other than a periodic assured shorthold tenancy was in existence.

27.4 Thirdly, that the landlord had given two months’ notice.

27.5 Although s.21(2) provides that a notice under s.21(1) may be given before or on the day on which the fixed-term tenancy comes to an end, the permissive terms of s.21(2) could not be read as prohibiting a notice under s.21(1) from being given after the fixed-term tenancy has come to an end.

27.6 The Supreme Court has refused permission to appeal.

28. *Masih v Yousaf* [2014] EWCA Civ 234; [2014] HLR 27; [2014] L&TR 18:

28.1 Y granted M an AST. M fell into rent arrears and Y served a notice under Housing Act 1988, s.8. Y’s notice relied on Ground 8 and set out the amount of rent said to be owed, but failed to state that for the purpose of ground 8 rent meant “rent lawfully due from the tenant”.

28.2 A DJ made a possession order. An application to set aside the order was dismissed. A CJ dismissed an appeal. M appealed to the Court of Appeal, arguing that a strict approach to the validity of notices had to be taken in cases where a mandatory ground was relied on.

28.3 The Court of Appeal (Hallet, Davis & Floyd LJJ) disagreed and dismissed the appeal.

28.4 First, they considered that there were no circumstances where rent is owed but is not lawfully due. A s.8 notice which stated that rent was owed was sufficient notice to enable a recipient to appreciate that it would be an answer to the claim to show that the rent was not lawfully due.

28.5 Secondly, there was no reason to take a stricter approach to the validity of the notice where a mandatory ground was relied upon than where a discretionary ground was relied upon.

Article 8

29. *Southend-on-Sea BC v Armour* [2014] EWCA Civ 231; [2014] HLR 23, concerned a second appeal against the dismissal of a possession claim against an Introductory Tenant. The Court of Appeal dismissed the appeal, saying that the question for an appellate court was not whether it would have reached the same decision as the trial judge but whether the decision was one that had been open to her. Where (as happened in this case) an introductory tenant’s behaviour improves over time, that improvement is capable of being a factor in deciding whether it is disproportionate for their landlord to continue to insist on recovering possession. The trial judge had therefore been entitled to come to the conclusion that it had become disproportionate to make a possession order.

30. In *Manchester Ship Canal Developments Ltd v Persons Unknown* [2014] EWHC 645 (Ch), the High Court accepted that an Art.8 defence was in principle available in a possession claim brought by a private landowner.

31. In *McDonald v McDonald* [2014] EWCA Civ 1049; [2014] 2 P&CR 20, however, the Court of Appeal disagreed. There was no line of clear and consistent jurisprudence from the ECtHR that the right to raise an Art.8 proportionality defence extended to tenants of private landlords. In particular, there was no Grand Chamber authority in support of this proposition.

32. *R (CN) v Lewisham LBC; R (ZH) v Newham LBC* [2014] UKSC 62:

32.1 This is not a pure Art.8 case – the first issue was whether the temporary accommodation occupied by the homeless applicants came within the remit of the Protection from Eviction Act 1977 because they occupied it as a dwelling for the purposes of s.3. On this point, the Supreme Court split 5-2.

32.2 Lord Hodge (with whom Lords Clarke, Wilson, Carnwath & Toulson agreed) held that the licences granted to ZH and CN were not licences to occupy premises as a dwelling. The statutory context required short term accommodation for a short and determined period. It would significantly hamper the operation of Pt 7, 1996 Act, if such temporary accommodation was within the terms of s.3, 1977 Act.

32.3 Lord Neuberger & Lady Hale dissented on this issue, holding that s.3, 1977 Act was provision was aimed at protecting anyone who had been lawfully living in premises which had been let as a dwelling. The words should be given a wide, rather than narrow meaning. Temporary accommodation under Pt 7 was a short term dwelling, but a dwelling nonetheless.

32.4 There was less disagreement on the second issue, Art.8. Contrary to the appellants’ arguments, Art.8 did not always require a public authority to obtain a possession order. Lord Hodge (with whom Lords Neuberger, Clarke, Wilson, Carnwath & Toulson agreed) considered that the statutory scheme had to be seen as a whole. In particular, an applicant would have been given reasons for an adverse decision and the opportunity for it to be reviewed and considered on appeal. Homeless children and families would additionally be likely to qualify for support from social services.

32.5 At [71] it was said that “it is necessary … to interpret section 204 of the 1996 Act as empowering that court to assess the issue of proportionality of a proposed eviction following an adverse section 184 or 202 decision (if the issue is raised) and resolve any relevant dispute of fact in a section 204 appeal. As there is no other domestic provision involving the court in the repossession of the accommodation after an adverse decision, the section 204 appeal, which reviews the authority's decision on eligibility for assistance, is the obvious place for the occupier of the temporary accommodation to raise the issue of the proportionality of the withdrawal of the accommodation.”[[6]](#footnote-6)

32.6 Lady Hale considered that it was not necessary to reach a conclusion on Art.8.

33. *Dacorum BC v Sims* [2014] UKSC 63:

33.1 Dacorum BC granted a joint tenancy of a three-bedroom house to Mr & Mrs S. The tenancy agreement permitted a joint tenant to serve notice to quit and determine it.

33.2 After alleged domestic violence, Mrs S left the property in 2010 with two of their four children. She sought to be re-housed by another authority, who told her that she would not be re-housed whilst she held a tenancy with Dacorum. She told Dacorum that she wanted to give up her tenancy and Dacorum suggested that she serve notice to quit, which she did.

33.3 Mr S asked Dacorum to let him stay in the property and transfer the tenancy into his sole name. They refused and subsequently issued possession proceedings. These were defended on the basis that the rule in *Hammersmith & Fulham LBC v Monk* [1992] 1 AC 478; (1991) 24 HLR 206, HL was incompatible with Art.8. A possession order was made by a Deputy District Judge. Mr S appealed to the Circuit Judge who granted permission for a leapfrog appeal to the Court of Appeal. That appeal was dismissed: [2013] EWCA Civ 12; [2013] H.L.R. 14.

33.4 Mr S appealed to the Supreme Court, contending that the rule in Monk was incompatible with Art.8 and/or A1/P1.

33.5 The Supreme Court (Lord Neuberger, Lady Hale, Lords Clarke, Wilson, Carnwath, Toulson & Hodge) dismissed the appeal. Lord Neuberger gave the only judgment.

33.6 The rule in I was not incompatible with A1/P1. It had always been the case that the tenancy could be determined by his wife giving notice to quit and Mr S had therefore lost his tenancy in circumstances and in a manner which was specifically provided for in the agreement.

33.7 There was also no violation of Art.8. Mr S had been entitled to raise a proportionality defence in the county court and had done so. The Deputy District Judge had considered all relevant factors and found it proportionate to grant a possession order.

34. Finally, in *JL v UK* App no 66387/10, the ECtHR has ruled inadmissible a challenge to the decision in *R (JL) v Secretary of State for Defence* [2013] EWCA Civ 449; [2013] HLR 27; [2013] PTSR 1014 (a case where the occupier had not been able to raise a proportionality defence to the claim for possession due to the state of domestic law prior to *Pinnock*, but had been allowed to raise issues of proportionality in judicial review proceedings before the order was enforced (although on the facts it did not assist her)).

Public law defences

35. *Leicester v Shearer* [2013] EWCA Civ 1467; [2014] HLR 8.[[7]](#footnote-7)

35.1 S’s husband was Leicester’s secure tenant. He had acquired the secure tenancy by succession (so there could not be a further statutory succession). S and her two children subsequently left the property due to domestic violence. Her husband later committed suicide. She moved back into the property with her children and told Leicester that she would like to stay there as a tenant. She also submitted an application to be accommodated by Leicester. Leicester’s allocations policy contained provision for direct lets to made to applicants in exceptional circumstances.

35.2 S was told, wrongly, that she could not be granted a tenancy of the property. She therefore did not provide the necessary documentation in support of her application.

35.3 Leicester issued possession proceedings, which were dismissed at trial. The Court of Appeal (Jackson & Floyd LJJ & Sir David Keene) dismissed Leicester’s appeal. S had been prevented from providing the necessary supporting evidence by the misleading advice that she had been given. It was not open to a public authority to rely upon an applicant’s non-compliance with procedural requirements, when the authority has caused that non-compliance.

35.4 Furthermore, the facts of the case constituted exceptional circumstances which merited consideration under Leicester’s allocations scheme, so that Leicester had acted unlawfully in commencing the possession proceedings without giving any proper consideration to the option of making a direct let to S.

Equality Act 2010

36. Equality Act 2010, s.15 introduced a new form of protection for disabled persons, discrimination arising from disability:

“(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B’s disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

37. The role of s.15 in possession proceedings has now been considered by the Court of Appeal in *Aster Communities Ltd v Akerman-Livingstone* [2014] EWCA Civ 1081; [2014] 1 WLR 3980.

37.1 The defendant suffered from prolonged duress stress disorder. In 2010, he applied to Mendip DC as homeless. They arranged for a housing association to provide him with temporary accommodation.

37.2 In 2011, Mendip offered A-L another property. He refused that property and Mendip decided that their duty towards him had ended. Aster commenced proceedings for possession. A-L applied to Mendip again and the possession proceedings were adjourned. Mendip made him an offer of another property. He failed to respond and Mendip decided that their duty towards him had come to an end again.

37.3 The possession proceedings were restored. A-L contended that he had not responded to Mendip’s offer of accommodation because of his disability and that Aster were unlawfully discriminating against him, contrary to Equality Act 2010, s.15, by seeking to evict him.

37.4 A circuit judge decided that the defendant did not have a seriously arguable case that A-L had breached s.15, 2010 Act, and made a possession order rather than give directions for a trial. An appeal to the High Court was dismissed. A-L appealed again. The Court of Appeal (Arden, Black & Briggs LJJ) dismissed the appeal.

37.5 In a claim for possession, the approach to a defence based on s.15, 2010 Act, is the same as that applied to a defence based on Art.8, ECHR. In most cases, the countervailing interests of a social landlord in obtaining possession will outweigh those of a defendant seeking to rely on s.15. The Court of Appeal considered that for such a defence to succeed, an occupier will need to show some considerable hardship which they cannot fairly be asked to bear.

37.6 Permission to appeal to the Supreme Court was refused by the Court of Appeal, but granted within a matter of hours by the Supreme Court. That appeal is now listed to be heard on 10 December 2014 (by Lord Neuberger, Lady Hale, Lords Ker, Clarke & Hughes).

Others

38. In *Northumberland & Durham Property Trust Ltd v Ouaha* [2014] EWCA Civ 571; [2014] HLR 31, the Court of Appeal held that the phrase “the surviving spouse” in Rent Act 1977, Sch.1, para.2, contemplated a person relying on a marriage ceremony that was valid in the country in which it took place. On the facts of the case, the evidence showed that there had not been a formal marriage ceremony recognised in England so the appellant was not the deceased tenant’s surviving spouse.

39. In *Birmingham CC v Beech* [2014] EWCA Civ 830; [2014] HLR 38, the Court of Appeal held that the relationship between the authority, through its housing officer, and one of its tenant was not inherently a relationship of trust and confidence so as to give rise to a presumption of undue influence (nor did any such relationship arise on the facts of the case). Instead, there was a contractual and property relationship under which each party had separate and distinct rights and obligations in relation to the other. In that context, the signing of a notice to quit by a former secure tenant, who was no longer able to reside in the property was not an unusual or unexpected transaction which, under the doctrine of presumed undue influence, called for an explanation.

40. *Scott v Southern Pacific Mortgages* [2014] UKSC 52 concerned the sale-and-leaseback scheme run by North East Property Buyers. The Supreme Court held that the vendor/occupier had acquired no more than personal rights against the nominee purchaser when she agreed to sell her house on the basis of promises that she would be entitled to remain in occupation. Her personal rights would only become proprietary and capable of taking priority over a mortgage when the purchaser acquired the legal estate. Applying *Abbey National Building Society v Cann* [1991] AC 56, HL, an interest that only arose on completion could not be asserted by the vendor/occupier against the purchaser’s mortgagee.

41. *Telchadder v Wickland (Holdings) Ltd* [2014] UKSC 57; [2014] 1 WLR 4004:

41.1 W owned a mobile home site known, which was a protected site for the purposes of the Mobile Homes Act 1983. In June 2006, T was granted a licence to site his mobile home on a plot on at that site. The terms of the licence agreement provided that he would not be a nuisance or cause annoyance, inconvenience or disturbance to the claimant, or other occupiers of the site.

41.2 T had a strong interest in martial arts and weapons, and liked to dress in camouflage clothing and wander in the woods near the site. While dressed in camouflage clothing the defendant approached other residents of the site and caused them alarm or distress.

41.3 Between July 2006 and August 2008, W sent a number of warning letters to T, including one in August 2006 which said W would apply to the court to have his licence terminated and his mobile home removed from the site.

41.4 In July 2009, T approached a resident and made threats to kill him and two other residents. W issued proceedings in September 2009.

41.5 The Supreme Court held that where an application to court to terminate a licence agreement with an occupier of a mobile home protected under the 1983 Act was based on an alleged failure to remedy a breach of a covenant against anti-social behaviour within a reasonable time and the mischief resulting from the breach was of a type which could be redressed by the person desisting from any repeat of the behaviour for a reasonable time, it was open to the court to find that the notice to remedy had lapsed once a reasonable time had passed without further incident. In this case, T redressed the mischief resulting from the 2006 breach by not committing a further breach prior to 2009.

42. Finally under this heading, the Court of Appeal is to consider the correct approach to discretionary possession orders where the tenant has not been responsible for anti-social behaviour in *Greenwich RLBC v Tuitt*, to be heard on 24 or 25 November.

**Housing benefit & welfare reform**

43. The two key welfare reforms affecting housing are the bedroom tax and the benefit cap. One challenge to the benefit cap (*R (SG) v SSWP*) has been heard by the Supreme Court and is awaiting judgment (to be handed down on 19 November). Numerous challenges to the bedroom tax have been launched and are at different stages (*R (MA) v SSWP*; *Rutherford v SSWP*; *R (Cotton) v SSWP*; and, *R (A) v SSWP*).[[8]](#footnote-8)

Benefit cap

44. Power to a “benefit cap” is contained in Welfare Reform Act 2012, s.96. In exercise of the power contained in 2012 Act, s.96. In exercise of that power the Benefit Cap (Housing Benefit) Regulations 2012 (SI 2012/2994) were made on 29 November 2012, coming into force on 15 April 2013.

45. The 2012 Regulations amended the Housing Benefit Regulations 2006 (SI 2006/213) to implement the benefit cap by reducing the housing benefit payable to a claimant if their total entitlement to welfare benefits exceeds the relevant amount so that the amount paid to them does not exceed that amount: reg.75D, 2006 Regulations. The relevant amount is £350 per week for single claimants and £500 per week for all other claimants: reg.75G.

46. *R (SG) v Secretary of State for Work and Pensions* [2014] EWCA Civ 156; [2014] HLR 20; [2014] PTSR 619; [2014] HRLR 10.

46.1 In each case, the claimants were a mother and child from a lone parent family. The mothers all received HB. Their HB payments were reduced when the benefit cap came into force.

46.2 For different reasons, each of the claimants said that they could not mitigate the effects of the cap by finding work or moving home. The claimants issued judicial review proceedings, arguing that the benefit cap was unlawful.

46.3 Their claim for judicial review was dismissed by the Divisional Court (Elias LJ & Bean J): [2013] EWHC 3350 (QB); [2014] PTSR 23.

46.4 On an appeal to the Court of Appeal, the Secretary of State conceded that the benefit cap had a disproportionately adverse effect on women, as women were more likely than men to be in receipt of benefits.

46.5 The Court of Appeal (Lord Dyson, Longmore & Lloyd Jones LJJ) nonetheless dismissed the claimants’ appeal.

46.6 The benefit cap discriminated against women when Art.14, ECHR was read with A1P1. The issue was whether that discrimination was justified. In that regard the cap was an aspect of social policy on the distribution of state benefits. The essential controversial issues were said to have been debated in Parliament. The 2012 Regulations had been approved by affirmative resolutions of both Houses. All of this pointed to the discrimination being justified as it was not manifestly without reasonable foundation.

46.7 Art.8 was engaged, but there was no breach of Art.8 taken with Art.14 for the same reasons. Nor, in the claimants’ circumstances, was there any breach of Art.8 taken on its own.

46.8 There had been no breach of Art.3(1), UNCRC as the rights of the child had been forefront of the decision-maker’s mind.

46.9 The principle of the cap, the detailed policy, and the level of the cap had all been subject to detailed Parliamentary scrutiny. It could not be said that the Secretary of State had failed to gather sufficient information to ensure that his decision was properly informed so as to render the scheme irrational.

46.10 An appeal has been heard by the Supreme Court. Judgment was to be handed down on 19 November. On 18 November, however, the Supreme Court announced that this was being postponed to allow further written submissions to be conceded.

Bedroom tax

47. On 1 April 2013, the Housing Benefit Regulations 2006 (SI 2006/213) were amended to introduce new regs A13 & B13. The effect of those is that a “maximum rent (social sector)” has to be determined for HB claimants in social housing. The maximum rent (social sector) is fixed by reducing a claimant’s eligible rent by 14% if they are under-occupying one bedroom and 25% if they are under-occupying two or more bedrooms: reg.B13.

48. *R (MA) v Secretary of State for Work and Pensions* [2014] EWCA Civ 13; [2014] HLR 19; [2014] PTSR 584:

48.1 All of the claimants had had their HB reduced following the application of reg.B13. All but one of them argued that they needed an extra bedroom because another member of their household was disabled. In the other case, the claimant suffered from obsessive compulsive disorder and had filled two rooms with papers. He argued that this meant that he could not move to smaller accommodation.

48.2 It was argued that reg.B13 constituted to unlawful discrimination contrary to art.14, ECHR, when read with A1P1 and that there had been a breach of the public sector equality duty (Equality Act 2010, s.149) when reg.B13 had been introduced.

48.3 The Divisional Court (Laws LJ & Cranston J) rejected these arguments: [2013] EWHC 2213 (QB); [2013] PTSR 1521.

48.4 The Court of Appeal (Lord Dyson, Longmore & Ryder LJJ) dismissed the claimants’ appeal.

48.5 First, when considered as part of a scheme, including the availability of discretionary housing payments, reg.B13 plainly discriminates against those disabled persons who have a need for an additional bedroom by reason of their disability as compared with non-disabled persons who do not have such a need. The central question, however, is whether that discrimination is justified; in that regard the test is whether it is manifestly without reasonable foundation (see *Humphreys v Revenue and Customs Commissioners* [2012] UKSC 18; [2012] 1 WLR 1545).

48.6 On that point, the discriminatory effect had been justified. The Secretary of State had been entitled to take the view that it was not practicable to add an imprecise class of persons - those who need extra bedroom space by reason of disability - to whom the bedroom criteria would not apply.

48.7 Furthermore, the nature of a person’s disability and disability-related needs may change over time (even over a period of a few weeks), which meant that, if disability-related needs for more accommodation were to be dealt with by additional housing benefit, this would increase the administrative time and costs significantly, while the greater flexibility of DHPs was more appropriate in some cases.

48.8 Secondly, while it is insufficient for a decision-maker to have a vague awareness of his legal duties in order to comply with the PSED, the history of the evolution of the policy behind reg.B13, including detailed memoranda and an Equality Impact Assessment, showed that the Secretary of State understood that there were some disabled persons who, by reason of their disabilities, had a need for more space than was deemed to be required by their non-disabled peers. The question of how this special need should be accommodated in the proposed new scheme had been the subject of wide consultation of interested parties and considered in great detail by the Secretary of State and Parliament. There had therefore not been a breach of the PSED.

48.9 An application for permission to appeal has been made to the Supreme Court. No decision has yet been made on that application, which is presumably awaiting the outcome of *R (SG)*.

49. In *Rutherford v Secretary of State for Work and Pensions* [2014] EWHC 1631 (Admin),[[9]](#footnote-9) Stuart-Smith J held that the bedroom tax scheme did not unlawfully discriminate against a family with a disabled child who required an additional bedroom where the shortfall between rent and housing benefit was covered by discretionary housing payments.

50. In *R (Cotton) v Secretary of State for Work and Pensions* [2014] EWHC 3437 (Admin), Males J held that the bedroom tax scheme also did not breach the Art.8 rights of single parents who looked after their children under shared care arrangements where they received discretionary housing payments to make up the shortfall.

51. Finally, *R (A) v Secretary of State for Work and Pensions*, on whether the bedroom tax has a disproportionate impact upon victims of domestic violence living in Sanctuary Schemes,[[10]](#footnote-10) is to be heard on 19 & 20 November.

**Miscellaneous**

Public sector equality duty

52. *Swan Housing Association v Gill* [2013] EWCA Civ 1566; [2014] HLR 18:

52.1 G was Swan’s tenant of a ground-floor flat in a converted house. Swan issued proceedings for an ASBI. G said in a witness statement that he had Asperger syndrome but did not file any evidence to support that claim. When giving his oral evidence, he said that his Asperger syndrome did not affect any of the issues in the case.

52.2 The District Judge raised the possibility that Swan might have breached the public sector equality duty in Equality Act 2010, s.149. Although the judge found that G had had been guilty of conduct capable of causing a nuisance and annoyance to others, he dismissed the claim for an ASBI because he was satisfied, however, that G had a disability and that, after Swan had received G’s witness statement, it should have reviewed its claim to see whether a different option was available.

52.3 Swan appealed to the Court of Appeal. G conceded that, in the absence of medical evidence, the judge had not been entitled to conclude that G had a disability. The judge’s decision was, nonetheless, said to be correct because Swan had been aware that it was likely that G had a disability and that likelihood was sufficient to engage the PSED.

52.4 The Court of Appeal allowed the appeal. Coleridge J said that, in light of G’s evidence of the limited effects of his Asperger syndrome and assuming that the likelihood of G having a disability did engage the PSED, it would have been a very brief exercise for Swan to comply with the PSED, which had no material bearing on the facts of the case.

52.5 Lewison LJ (with whom Richards LJ agreed on this point) said that the mere likelihood of having a disability did not engage the PSED and as there was no evidence to support the conclusion that G had a disability, Swan had not breached the PSED.

52.6 The Supreme Court refused permission to appeal on 30 October 2014, saying that “Coleridge J was right”[[11]](#footnote-11) and that G’s “own evidence was that his condition had no effect on his conduct”.

Nuisance

53. *Coventry v Lawrence* is not a typical housing law case, but across two judgments ([2014] UKSC 13; [2014] AC 822; [2014] HLR 21; [2014] PTSR 384; [2014] UKSC 46; [2014] 3 WLR 555; [2014] PSTR 1014), the Supreme Court made a number of important points regarding nuisance.

53.1 It is possible to obtain by prescription a right to commit what would otherwise be a nuisance by noise.

53.2 Where a claimant in nuisance uses his property for essentially the same purpose as that for which it has been used by his predecessors since before the alleged nuisance started, it is no defence to the nuisance claim to say that the claimant came to the nuisance. A defence may, however, arise if it is only because the claimant has changed the use of his land that the defendant’s pre-existing activity is claimed to have become a nuisance.

53.4 The fact that a landlord does nothing to stop a tenant from causing nuisance cannot amount to participating in the nuisance. Absent very unusual circumstances, the fact that a landlord takes steps to mitigate a nuisance cannot give rise to an inference that he has authorised it.

53.5 A landlord cannot be said to be participating in or authorising a nuisance by trying to fight off allegations of nuisance against his tenants

Unlawful eviction

54. *Loveridge v Lambeth LBC* [2013] EWCA Civ 494; [2013] 1 WLR 3390; [2013] HLR 31:

54.1 L was a secure tenant of Lambeth. In July 2009, L went to Ghana. In September 2009, Lambeth forced entry to the flat because they were concerned that he may have died. L’s possessions were then cleared out and the flat was prepared for re-letting. In December 2009, L returned from Ghana, three days before Lambeth let the flat to a new tenant. L attempted to contact Lambeth to let them know he had returned, but his message did not get through before the property was re-let.

54.2 L issued a claim for damages under Housing Act 1988, ss.27 & 28. Both parties obtained expert evidence on the amount of statutory damages under s.28.

54.3 Lambeth’s expert considered that a notional open market sale would result in the occupier becoming an assured tenant. In his view, a private purchaser would pay the same for the building with an assured tenant in the flat as he would pay for it with the flat vacant. He considered that there was therefore no difference in value.

54.4 L’s expert considered that the purchaser should be deemed to take the building subject to an on-going secure tenancy of the flat. In his opinion, the difference in value was therefore £90,500.

54.5 The trial judge held that L’s expert had valued the property on the correct basis and awarded him £90,500 pursuant to s.28.

54.6 The Court of Appeal (Arden & Briggs LJJ & Sir Stanley Burnton) allowed Lambeth’s appeal.

54.7 Two valuations of the landlord’s interest in the building, by reference to the date immediately prior to the eviction, were required by s.28. By virtue of s.28(3), both valuations must assume that the landlord is selling his interest on the open market to a willing buyer. Any prohibitions on the landlord’s power to sell the property or, as in the present case, any constraints on its power to sell to a private landlord are irrelevant.

54.8 In the case of an unlawful eviction of a secure tenant, the valuer must take into account the fact that, on the sale by a local authority of their interest to a private landlord, a secure tenancy becomes an assured tenancy. The vulnerability of a secure tenant to being downgraded to an assured tenant on an open market sale is inherent in his rights. This is particularly so given that, on an open market sale, the highest bidder is likely to be a private landlord rather than a local authority.

54.9 An appeal was heard by the Supreme Court (Lords Neuberger, Wilson, Sumption, Carnwath & Toulson) on 21 October and judgment is awaited.

Adverse possession

55. Finally, in this miscellany of sorts,[[12]](#footnote-12) in *Best v Chief Land Registrar* [2014] EWHC 1370 (Admin), Ousely J held that the chief land registrar had been wrong to refuse a squatter's application for adverse possession under Land Registration Act 2002, Sch.6, on the basis that his occupation of the property had constituted a criminal offence under Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.144. An appeal is due to be heard by the Court of Appeal on 19 & 20 November.

ROBERT BROWN

ARDEN CHAMBERS

18th NOVEMBER 2014

1. Assuming, for present purposes, that the applicant is actually homeless. The “full” housing duty is only owed to those who are eligible, in priority need and not homeless intentionally: s.193(2). [↑](#footnote-ref-1)
2. Along with *Mirga v Secretary of State for Work and Pensions* [2012] EWCA Civ 1952. [↑](#footnote-ref-2)
3. She was not excluded assistance under Pt 7 by Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006/1294), reg.6(1)(b), because her application was made before the 2006 Regulations were amended. [↑](#footnote-ref-3)
4. “(2) A local housing authority may require a person in relation to whom they are discharging such functions— (a) to pay such reasonable charges as they may determine in respect of accommodation which they secure for his occupation (either by making it available themselves or otherwise …” [↑](#footnote-ref-4)
5. Paragraph 17.40 recommends that authorities should “… regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseekers allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit”. [↑](#footnote-ref-5)
6. This point is of considerable potential significance; so much so, that one comment on the Supreme Court decision was simply called *Paragraph 71*: http://nearlylegal.co.uk/blog/2014/11/paragraph-71/. The only arguable improvement to that would have been to simply title it *[71]*. [↑](#footnote-ref-6)
7. The Court of Appeal’s decision was handed down on 19 November 2013 and therefore this case only qualifies for inclusion here by application of some sort of a year-and-a-day rule. [↑](#footnote-ref-7)
8. There is no space or time here for the many First-tier Tribunal decisions on the application of the bedroom tax to an individual case. Many of them have been collated at http://nearlylegal.co.uk/blog/bedroom-tax-ftt-decisions/. [↑](#footnote-ref-8)
9. The transcript records the neutral citation as [2014] EWHC 1613 (Admin), although this appears to have been subsequently corrected to [2014] EWHC 1631 (Admin). Something clearly went wrong, as there is another case with the citation [2014] EWHC 1613 (Admin) (*Sohal v Solicitors Regulation Authority*), in addition to a case with the citation [2014] EWHC 1613 (Ch) (*Lindum Construction Co Ltd v Office of Fair Trading*), contrary to *Practice Direction (Judgments: Neutral Citations)* [2002] 1 WLR 346. [↑](#footnote-ref-9)
10. See, *e.g.*, DCLG, *Sanctuary Schemes for Households at Risk of Domestic Violence: Practice Guide for Agencies Developing and Delivering Sanctuary Schemes* (2010). [↑](#footnote-ref-10)
11. Without commenting on whether this meant that Lewison & Richards LJJ were wrong insofar as their reasoning was slightly different. [↑](#footnote-ref-11)
12. And saving *Best* for last. [↑](#footnote-ref-12)