

Housing Law Update

November 2024

1 Possession proceedings

Informal removal of tenant's name from joint tenancy did not amount to surrender and re-grant of tenancy

[**Rahimi v Westminster CC**](#)

[2024] EWCA Civ 73 5 February 2024

In 2005, the Council granted a secure joint tenancy of the property to K and his wife, Mrs H. In 2011, K left the property and took a secure tenancy of a ground floor flat in the same block due to mobility issues, leaving Mrs H in sole occupation. The council removed K's name from the tenancy records, but no new tenancy agreement was signed.

The Council's housing file contained an internal document on a standard form headed "Amendments to housing tenancy details" and dated 28 July 2011. Under the heading, "Parties and agreements", the housing officer had ticked the option "joint to sole", and a handwritten note stated "Please remove Mr AM Kazam from rent account". The form was signed by the housing officer and witnessed by the estate manager.

In 2017, Mrs H's grandson (R), who had been living in a refugee camp in Greece, was granted leave to enter the UK and came to live with Mrs H. She had supported his application and undertook to accommodate him, using the original tenancy agreement as evidence. R lived with Mrs H at the property until her death in July 2020. His subsequent application for a "discretionary succession" from the council was refused.

Westminster served NTQ on Mr K in 2021 on the basis that he had succeeded to the tenancy by right of survivorship, but as he was no longer in occupation the tenancy had ceased to be secure.

The Council claimed possession. R filed a defence and counterclaim seeking a declaration that he had succeeded to Mrs H's tenancy. The basis of the counterclaim was that the original tenancy had been surrendered by way of operation of law when K had left the property and the council had re-granted Mrs H a sole secure tenancy, to which R as Mrs H's grandson was entitled to succeed.

The district judge found that Mrs H was the sole tenant under a tenancy granted to her alone by Westminster by way of implied surrender and regrant, following Mr K's departure. The Council appealed to the High Court. They argued that the judge erred in law in finding that there had been a surrender of the joint tenancy in 2011. Mr Justice Lane allowed the appeal, on the basis that there was insufficient evidence of an agreement for a surrender by operation of law or of an agreement for the re-grant of a new tenancy. R appealed to the Court of Appeal.

Appeal dismissed by a majority of 2:1. Lord Justice Lewison accepted that if there was a grant of a new tenancy to Mrs H, then this would be sufficient to satisfy the requirement of unequivocal conduct. However, the real question here was whether there had been a new sole tenancy. In order for there to be a new tenancy, there would need to be interaction between the landlord and Mrs H supporting this. In this case however, there was nothing (even Mr K's rehousing) that was inconsistent with the continuation of the joint tenancy. There was no evidence that Mr K had relinquished legal possession, or sought to facilitate the tenancy being transferred to Mrs H alone. The removal of Mr K's name from the rent account was not something either were aware of. The tenancy start date had not been amended. Lewison LJ said:

“Everything that happened after Mr Kazam's departure can be explained on some other footing than that Westminster granted a new sole tenancy to Mrs Hussain.”

There was no proper basis upon which it could be inferred that Westminster had granted a new sole tenancy to Mrs H. Newey LJ concurred.

Macur LJ dissented, considering that there had been a basis on which the judge at first instance could infer the grant of a new sole tenancy, primarily the internal documentation, and would have allowed the appeal and remitted the case to the county court for rehearing.

Prescribed information: obvious errors and missing signatures

[Lowe v Governors of Sutton's Hospital In Charterhouse](#)

(2024) EWHC 646 (Ch) 21 March 2024

See [Nearly Legal](#)

Mr Lowe (L) took a written contractual tenancy of a flat within the Charterhouse, a historic settlement, for a fixed term of 12 months, commencing on 4 January 2010. He paid a deposit of £3,300. At the time, the tenancy could not be an assured tenancy if the rent exceeded £25,000 pa. (The rent was £2384 pcm.)

However, from 1 October 2010, the rent limit was increased to £100,000 pa. The tenancy therefore automatically became an assured shorthold tenancy from that date. Accordingly, Charterhouse took steps to protect the deposit in an authorised scheme. On 28 September 2010, their agent sent L a form containing prescribed information about the deposit and its protection, with a covering letter explaining that the deposit was now protected.

The fixed term of the tenancy expired on 3 January 2011, and a statutory periodic tenancy then arose. Subsequently, the parties thereafter agreed further fixed terms

In June 2021, after Charterhouse had served a notice seeking possession on him, L issued the current claim, seeking a payment of £120,888 covering a total of ten tenancies for breach of the tenancy deposit provisions (s.214, HA 2004). L argued

- that Charterhouse had failed to provide the prescribed information about “the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy”, since the information in the certificate contained an error (it referred to clause 6 of a tenancy agreement, and there was no clause 6 in the existing agreement);

- alternatively, that the prescribed information provided was unsigned, and so failed to comply with article 2(1)(g)(vii) of the 2007 Order; and
- that Charterhouse could not rely on section 215B could not be relied upon where the original deposit had not been received “*in connection with*” an assured shorthold tenancy.

Charterhouse argued that they had complied with all requirements. They had protected the deposit in September 2010, and the prescribed information and leaflet were provided under cover of the letter of 28 September 2010. The letter was signed by the agent, although the actual prescribed information form that had been enclosed with the letter had not been signed. If the claim was made out, they relied upon section 9 Limitation Act 1980 to limit it the period after 10 June 2015 (i.e. a limitation period of 6 years);

At first instance, L’s claim was dismissed by HHJ Luba KC. L appealed to the High Court.

Adam Johnson J dismissed the appeal for the following reasons:

- Although the prescribed information certificate contained an obvious error, it caused no real prejudice. A reasonable recipient of the certificate in these circumstances would have appreciated there was an error (as there was no clause 6), and would have seen that clause 5.3 set out the circumstances in which part of the deposit might be retained by the landlord. Although the test of ‘words substantially to the same effect’ did not apply, as this applies to forms rather than information, the Judge’s conclusion on the correct interpretation of the information provided remained correct. The issue was whether in substance the information had been provided, and HHJ Luba had clearly come to the view that it had.
- The requirement of a signature in article 2(1)(g)(vii) was a requirement of form. The provision of that information in an unsigned certificate, but under cover of a signed covering letter from the landlord’s agent was a in a form ‘substantially to the same effect’ within section 213(6)(a). The purpose of the certificate was to confirm that the landlord considered the information provided to be correct. That purpose was satisfied by its provision under a signed covering letter.
- Section 215B HA 2004 had been enacted to address the practical issues arising from the decision in *Superstrike v Rodrigues* [2013] EWCA Civ 669. Parliament clearly considered that if information was supplied at the outset of the parties’ relationship, it need not be supplied again. The words “*in connection with*” (an AST) were sufficiently flexible that they might apply to a contractual tenancy that had become an assured one.
- This was clearly a claim caught by section 9 Limitation Act 1980, and so had a limitation period of 6 years. L had argued that section 9 did not apply as his claim did not seek to ‘recover’ money in the sense of getting back something he had paid, and that a 12 year limitation period on a specialty’ applied under section 8. L sought to obtain monies via an entitlement that only arose under the provisions of statute (HA

2004). The word ‘recover’ or ‘recoverable’ is used throughout Part I Limitation Act 1980 to mean simply ‘obtain’ monies not previously paid.

The wider significance of the case lies in the application of principles concerning the interpretation of statutory notices to the requirements of the 2007 Prescribed Information Order:

- A certificate of information containing an obvious error should be construed in the same way as a statutory notice. If the reasonable recipient of that notice would understand the correct information to have been given, that would satisfy the requirements of the legislation.
- The lack of signature upon the certificate of prescribed information was not fatal to its validity. Here the certificate had been provided under a covering letter signed by the agent of the landlord. The information was thereby given in a form ‘substantially to the same effect’ as that required in the 2007 Order.

Prescribed information cannot be given before deposit is paid

[Siddeeq v Alaian](#)

Mayor's and City of London County Court 9 August 2024

Unreported except on Nearly Legal

The issue in this case was whether information given by the landlord concerning the tenancy deposit could be 'prescribed information' if it was given to the tenant before the deposit was paid.

The tenancy agreement, signed on 12 November 2021, contained a section setting out various items which purported to be the “tenancy deposit prescribed information”. There was also a statement to the effect that the landlord’s signature represented their certification of the information, and the tenant's signature represented their confirmation of its accuracy to the best of their knowledge. A Mydeposits scheme leaflet was provided with the tenancy agreement.

The deposit was paid by the tenant on 13 November and protected on about 19 November. The deposit protection certificate was provided to the tenant, but not signed by either landlord or tenant. The only signatures as to the accuracy of the prescribed information were those on the tenancy agreement, signed before the deposit was paid.

In 2022, the landlord served a section 21 notice and issued a possession claim. The tenant contended that the section 21 notice was defective because of the landlord’s failure to give full prescribed information after the deposit had been received. The District Judge held that the prescribed information could be given before the deposit was paid.

Allowing the appeal, HHJ Hellman held that the information required under the Prescribed Information Order 2007 had to be given after the deposit was received. Section 213(6) HA 2004 requires that the prescribed information is given to the tenant “within the period of 30 days beginning with the date on which the deposit is received by the landlord”. It was not contested that the information was given before the deposit was paid.

The landlord's argument that a s21 notice would not be invalid under s.215(2) so long as section 213(6)(a) Housing Act 2004 was complied with, even if the information was provided before the deposit was paid, was rejected. The Judge held that s213(6) cannot be “complied with” in these circumstances as information given before the deposit is paid is not “prescribed information”. Prescribed information is defined as information provided after the deposit has been paid.

Section 8 notice of seeking possession was invalid where identity of landlord unclear
Hickmet and Cheerz Express Limited v Dragos

Luton County Court, 19 January 2024

Unreported: see [Doughty Street](#) and [Nearly Legal](#)

Ms D had signed an assured shorthold tenancy agreement for a property in June 2017, paying a £1,100 deposit, Cheerz Express was named as the landlord. A statutory periodic tenancy began a year later in June 2018. A new tenancy began in August 2018, becoming statutory periodic in 2019. A notice seeking possession was served in 2021 on grounds 8, 10 and 12, and a possession claim started in 2022. The claimant was named as Mr H, the sole director of Cheerz Express, with Cheerz being added as a claimant at a later stage. Mr H claimed that he had a ‘tenancy by estoppel’.

Ms D defended on the basis that the NSP was invalid, and also brought counterclaims for failure to protect the deposit and relating to harassment and race discrimination, on the basis that the landlord had attempted to pressure Ms D into signing a tenancy agreement at a higher rent; attended the property without notice and late at night, pressuring her to leave; threatened to enter the property by force and eject her and her two children; shouted and sworn at her to pay the rent; and called her a foreigner who no-one would want to help.

The trial took place over 3 days and the judge sat with an Equality Act assessor.

The Court held:

- The section 8 notice was invalid as the identity of the landlord was unclear. There had been no application to dispense with notice, so the possession claim failed.
- Ms D had proved all pleaded allegations. The claimants had directly discriminated against her on the basis of race and had engaged in unwanted conduct relating to race that created a hostile, degrading, humiliating and offensive environment. There was also a course of conduct which amounted to harassment.
- The claimants had not protected or returned the deposit.
- Judgment on rent arrears of £10,495, to be set off against damages on the counterclaim.
- Damages were awarded in the sum of
 - £32,000 for discrimination and harassment
 - £1,100 for return of the deposit

- £8,800 penalty for failure to protect the deposit (3x deposit for initial tenancy, 1.5x for the 2018 statutory periodic, 2x for the August 2018 tenancy, and 1.5x for the 2019 statutory periodic)
- An additional 10% on damages as Ms D had beaten her Part 36 offer.
- 5% interest on damages for the period after the Part 36 offer had expired to £3,444
- Total: £49,534
- Claimants to pay defendant's costs, with costs on the counterclaim payable on the indemnity basis and with 5% interest, as Ms D had beaten her Part 36 offer.
- Both claimants were jointly liable as Mr H was either acting in his own capacity or as agent for Cheerz Express at all times.

Service of prescribed documents by post held to be good service

D'Aubigny v Khan and another

Central London County Court 1 December 2023

See [Nearly Legal](#).

D was an assured shorthold tenant of K, who brought a section 21 possession claim. D defended on the basis that she had not received the Energy Performance Certificate, Gas Safety Certificate or How to Rent booklet. In the absence of a contractual clause permitting service of the documents by post, she argued that K had to prove that they had come to her attention (*Wandsworth LBC v Attwell*).

K argued that the documents had been posted by recorded delivery; that the tenancy agreement did contain a provision as to service by post relating to service of "notices"; and that in any event, section 7 Interpretation Act 1973 applied.

The contractual clause provided that

"Any notice sent to the tenant under or in connection with this agreement shall be deemed to have been properly served if sent by first class post to the property."

Section 7 of the 1973 Act provides:

"Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

The district judge held that s7 applied, and therefore D was deemed to have received the documents even if they had not come to her attention as she stated, He also found that the clause in the tenancy agreement about service of notices extended to the documents.

D argued on appeal that s7 only applied where an Act expressly authorised or required service by post. The Judge below had erred in accepting that any reference in the legislation

to ‘giving’ or ‘serving’ documents amounted to authorising service by post. Further, that the documents were not a “notice” for the purpose of the contractual clause.

K argued that Housing Act 1988 made no reference to service by post, so if D were right this interpretation would apply to all section 8, section 13 and section 21 notices, but that interpretation would render the words in section 7 ‘unless the contrary intention appears’ pointless. *Attwell* concerned a notice to quit and the application of s.196 Law of Property Act 1925, and should be distinguished.

HHJ Baucher held that s7 did apply, and that the documents were properly served. As a matter of statutory interpretation of section 7, the wording ‘unless the contrary intention appears’ would be robbed of any meaning, unless the references ‘give’, ‘send’ or ‘serve’ included or authorised doing so by post, even where not expressly required by an Act.

In relation to the clause in the agreement, the Judge held that the word “notice” was not intended to refer only to formal notices, and if it were, there would be no purpose in the words “*or in connection with.*” She considered that “*any objective construction of the clause would include any documents which are required to be served prior to a section 21 notice being valid.*” In the Judge’s view, a reasonable person would have understood the clause to encompass documents such as the three in question, and this accorded with common sense.

Appeal dismissed. Permission to appeal to the Court of Appeal has been given.

Unsigned gas safety certificate was not valid

Barakzai v Fenech

Brentford County Court 19 September 2024

Legal Action Nov 2024 and see [Nearly Legal](#)

Under regulation 36(3)(c)(viii) of the Gas Safety (Installation and Use) Regulations) 1998, the gas safety certificate must include the name and signature of the engineer. In this case, the District Judge held that a typed name of a gas safety engineer at the bottom of a gas safety certificate was not sufficient to substantially comply with the regulation.

The court considered that the requirement of having a signature was not just to identify the engineer, but to authenticate the certificate, and the absence of a contemporaneous signature (which could potentially be typed) rendered it invalid. The subsequent section 21 notice was therefore also not valid.

Property may remain a person's only or principal home when there was a real intention to return, even if contingent on other events

Weintraub v LB Hackney

[2024] EWHC 845 (Ch) 16 April 2024

See [Nearly Legal](#)

Following his wife's death, Rabbi Weintraub was the sole secure tenant of his flat. Since he was nervous of being in the flat on his own overnight, W arranged for a succession of people to stay with him until 2017. After this, he spent most nights at his daughter's home nearby, staying with other friends when this was not possible. W visited the synagogue twice a day but the rest of his time was spent at his flat studying and praying. He kept very few possessions at the flat, which was practically empty.

In 2017 W applied for the right to buy. He planned to convert the basement into a self-contained unit where a family member could live, so that he would be able to live normally at the flat. In the meantime, he usually stayed overnight with his daughter, and otherwise with friends. During the day, the Rabbi studied and ate at the property.

The RTB was initially accepted, but later denied on the basis that the flat was no longer his only or principal home. The Council served a notice to quit in 2019. W, now in his late eighties, brought a claim against the council for a declaration that he had the right to buy.

The district judge dismissed the claim, finding that the property was not W's only or principal home, and that he only intended to return in the event that he became the owner of the flat; he had no intention to return as a tenant and therefore his intention as a potential owner was not relevant. W appealed to the High Court, on the basis that:

- the judge erred in law and/or fact when finding that the flat was not W's only or principal home. W argued that in order to make a finding that the flat was not W's only or main home, it was necessary for the judge to identify some other property which was his main home, which he failed to do; and
- the judge erred in law when holding that W's intention to return to living exclusively at the flat was not relevant because he only intended to return as an owner, not as a tenant.

On ground 1, Zacaroli J. agreed that it is necessary, when concluding that a property is not the only or principal home, to establish that there is a principal home elsewhere. However, the Court considered that although he did not say so in terms, the district judge had concluded that W's daughter's home was his principal home.

On ground 2, there was no authority on this point. Hackney's argument was that the intention to return was a conditional or contingent one, and that the condition or contingency was too uncertain. If the district judge had been referred to the case law on contingency and applied the correct test, he could only have held that W had a real hope to return, coupled with the practical possibility of its fulfilment within a reasonable time. The fact that W's intention to

return was contingent was not in itself a reason to conclude that he did not remain in occupation for the purposes of the tenant condition under the HA 1985.

Allowing the appeal, the Court concluded that W's intention to return to the flat as his only home, even though this would only happen once he has exercised the RTB, was sufficient to satisfy the test that the flat was still W's "only or principal home".

Can the mandatory serious ASB ground for possession be used when proceedings on discretionary grounds are already in existence?

Hajan v LB Brent; Kerr v Poplar HARCA

(2024) EWCA Civ 1260

See Nearly Legal write up [here](#).

In these cases, the Court of Appeal gave judgment in joined appeals concerning the correct procedure for landlords seeking to recover possession on grounds of serious ASB within existing possession claims initially brought on other grounds.

Hajan v Brent

H had a secure tenancy from Brent. In August 2022, H pleaded guilty to an offence under s1 of the Criminal Damage Act 1971. Brent served a NSP in November 2022 on grounds 1 and 2, relying on alleged rent arrears, noise nuisance, drug dealing, attempted arson, and possession of a weapon and the criminal damage conviction.

Proceedings were issued in December 2022. In May 2023, after receiving a certificate of H's conviction, Brent served a further NSP under s.83ZA, relying on the mandatory ASB ground and stating that court proceedings for possession would not be begun until after 5 June 2023.

Rather than commence new proceedings, on 6 June 2023 Brent applied to amend the Particulars in the existing proceedings to include that ground. The application was granted, and H appealed to the Court of Appeal.

The case turned on an argument over what it means for 'proceedings' to be 'begun' in the possession context. H argued that the natural reading of 'begun' and 'proceedings' in these provisions required new proceedings to be issued. Brent argued that the meaning was broader and that 'proceedings' were 'begun' when a landlord made an application to amend. Brent's Respondent's Notice also sought to amend the order granting permission to amend to state that the amendment should take effect 'from the date of this order'.

The Court of Appeal dismissed the appeal confirming that Brent were entitled to use the existing proceedings. It applied a purposive interpretation to ss. 83ZA and 83A:

"Overall, therefore, the purpose of section 83ZA is to inform the tenant of the landlord's decision (with reasons); to give him a fair opportunity to request a review of it and to ensure that the tenant is not subjected to proceedings based on a stale conviction. The purpose of section 83A(2) is to preclude the court from acting unless that process has been concluded..."

The Court accepted that 'proceedings' could refer to an amended claim.

The Court rejected the submission that such proceedings were ‘begun’ on the date of the application to amend. Such an application might not be granted or the amendment might not be made. The court decided that provided the amendment is granted and an effective date is specified on the order, ‘proceedings’ are ‘begun’ on the date when the amendment takes effect.

The effect of requiring fresh proceedings would be

“wasteful of costs and court time, and results in an unnecessary duplication of effort...It is also contrary to the policy of the CPR which encourages all issues between parties to be decided in the same action. The substantive protections given to the tenant by the statutory scheme (i.e. the time lapse between service of the notice and taking steps to recover possession on the mandatory ground, and the ability to apply for a review of the landlord’s decision to serve the notice) have been adhered to. The procedural tail should not be allowed to wag the substantive dog.”

Kerr v Poplar HARCA

K was an assured tenant of Poplar HARCA, who sought possession due to rent arrears. In February 2017, a suspended possession order was made on discretionary grounds relating to the arrears.

K’s son was subsequently convicted of possession of an imitation firearm. Poplar HARCA decided to seek possession under mandatory ground Ground 7A. Rather than initiate fresh proceedings, the landlord applied to the court in the existing proceedings for a variation of the suspended order, which it described as “converting the suspended order...into an outright possession order”. The District Judge found that she had jurisdiction to make the order under s.9 HA 1988 and varied the original order to an outright order for possession. K appealed.

HHJ Luba KC heard the first appeal. He found that s. 9 was not in play; rather, an SPO carried with it an implicit “liberty to apply”, and this gave the Court the power to vary the suspended order.

The issue on the second appeal was whether the court has the power to vary an SPO originally made on a discretionary ground by making an unconditional order on a mandatory ground, either in exercise of its powers under s.9 HA 1988 or under an implied “liberty to apply”.

The Court of Appeal considered the equivalent powers provided by s85 HA 1985 and derived 3 principles:

- On an application under s85 the court may consider matters that were not within the scope of the original proceedings.
- In the light of those matters, the court may reconsider any terms of suspension or postponement; and
- In the exercise of its powers under that section the court may vary a conditional order so as to turn it into an outright order.

K argued that s9 does not provide the court with an express power to vary an order for possession. This argument had been rejected in relation to the equivalent s85 cases on the

basis that a purposive construction to the Act was needed. K argued that this was obiter, and a purposive approach was inappropriate. The Court disagreed. It held that it was necessary to interpret s.9 in light of the purpose of mandatory grounds for possession being to expedite the eviction of the “most anti-social tenants” and bring faster relief to victims.

K also argued that although a court could discharge the conditions on which a suspended order was made, thus allowing it to be enforced and executed, this was not possible where the material relied upon to vary the order would have established a mandatory ground. This was said to be because s.9(6) prohibited the use of the s.9 power where the landlord was entitled to recover possession on a mandatory ground.

The Court did not agree. The function of s.9(6) is to remove the court’s power to stay, suspend or vary where the landlord is entitled to possession on mandatory grounds. S.9 only bites after an order for possession has been made under s.7. Where a possession order is made on discretionary grounds, the power to suspend is then engaged under s.9(2) and, if exercised, the power to impose conditions under s.9(3). Those powers implicitly include the power to vary or rescind any suspension conditions up until the order is executed – *“Since the power under section 9 includes the discharge of conditions originally imposed, the court may discharge conditions subject to which the order for possession was suspended and allow it to take effect as an immediately enforceable order.”*

K also argued in the Court of Appeal that ‘liberty to apply’ does not extend to the fundamental variation of a conditional or suspended order into an outright one. The Court found that the original possession order had not been rewritten, but rather that the conditions of suspension had been discharged using the s.9 power.

The outcome of these appeals is therefore that a landlord can both seek to amend existing proceedings and apply to vary an existing possession order where they are able to make out a mandatory possession ground.

Where an Equality Act assessor’s role is to assist the judge by evaluating the evidence, the nature of their advice need not be disclosed to the parties

Laidley v Metropolitan Housing Trust Limited

(2024) EWHC 2611 (Ch)

Copy of judgment on [Nearly Legal](#)

L had an assured tenancy from Metropolitan. There had been complaints of ASB and Metropolitan brought possession proceedings on this basis. This was the joined hearing of two appeals within the proceedings.

L was diagnosed with delusional disorder and lacked litigation capacity. The Official Solicitor was appointed as Litigation Friend. L defended on Equality Act grounds among other points. The County Court appointed an assessor to sit with the Judge at trial.

At the start of the trial, L applied for the Court to (a) set out the role of the assessor, and (b) to order that the assessor’s advice be given in open court. The application was refused, but the

trial was adjourned part heard. L appealed that decision. At the further trial hearing, a possession order was made. L also appealed that order.

Appeals dismissed. The High Court held that whether an assessor's advice needs to be disclosed depends upon the function of that advice. If the assessor is effectively providing evidence to the court, that advice and evidence should be disclosed to the parties. However, where the role of the assessor was to assist the Judge in evaluating or understanding the evidence, there was no duty to disclose the substance of their assistance under CPR 35.15, and so it would not be disclosed unless fairness demanded it.

In this case, the role of the assessor was to assist the Judge in the evaluation and assessment of evidence as to whether the possession claim was a proportionate pursuit of a legitimate aim. It did not require disclosure.

The Judge had correctly used the assistance of the assessor on the issue of proportionality, so it was likely the assessor had also advised on the Public Sector Equality Duty, but use of the assessor was within the discretion of the Judge.

The appeals were therefore dismissed. It is understood that permission to appeal to the Court of Appeal has been sought.

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2 Renters' Rights Bill

The previous Government's Renters (Reform) Bill fell when Parliament was dissolved owing to the General Election in July 2024. Subsequently, in accordance with the Labour Party's manifesto, the [Renters' Rights Bill](#) was introduced on 11 September 2024. It received its Second Reading on 9 October 2024 and has now completed its Public Bill Committee stage. It is now awaiting Third Reading before progressing to the House of Lords.

See Nearly Legal on the key proposals in two parts: [Part 1](#) and [Part 2](#) . See also the [House of Commons Library](#) Research Briefing on the Bill.

The Ministry of Housing, Communities and Local Government has published a [Guide to the Renters' Rights Bill](#) (September 2024).

Below is a summary of the important provisions as the Bill currently stands.

Part 1: Tenancy Reform

- **Abolition of assured shorthold tenancies (clauses 1 and 2)**

Clause 1 provides that when in force, all assured tenancies will be monthly periodic tenancies. It will not be possible to create a fixed term assured tenancy. Terms in tenancy agreements deviating from these requirements will have no legal effect.

The rent periods of a periodic assured tenancy must be either monthly or a period of 28 days or shorter. Assured tenancy terms which try to create any other length of period will be of no legal effect. A tenant wishing to terminate a tenancy will have to give the landlord a minimum of two months' notice.

Clause 2 would amend the Housing Act 1988 to omit reference to assured shorthold tenancies. All provisions of the 1988 Act, including section 21 notices, will be repealed.

- **Changes to the grounds for possession (clauses 4-6 and Schedule 1)**

Table 1 of the Government's [Guide to the Renters' Rights Bill](#) sets out all the revised grounds for possession under the Bill, the relevant notice periods and whether grounds would be mandatory or discretionary.

The most notable changes to the grounds and notice periods are as follows:

- **Revised mandatory ground 1: Occupation as principal home for landlord or family member**
 - The landlord must intend it to be their (or their family member's) only or principal home. A landlord cannot use this ground within the first 12 months of the tenancy. Four months' notice of seeking possession is required.
- **New mandatory ground 1A: Sale of property**
 - The landlord must intend to sell or to grant a long lease of the property for a term certain over 21 years. A landlord cannot use this ground within the first 12 months of the tenancy. Four months' notice is required.
- **Revised mandatory ground 2 (mortgagee exercising power of sale):**
 - Mortgage does not need to pre-date tenancy; notice need not be given at start of tenancy. Four months' notice is required.
- **Revised mandatory ground 6 (redevelopment):**
 - Landlord can use ground even if they purchased the property subject to the assured tenancy; ground cannot be used during first 6 months of tenancy. Four months' notice is required.
- **New mandatory ground 6A: To allow landlord to comply with enforcement action**
 - This ground covers a number of situations, namely:
 - Letting in breach of banning order
 - Improvement notice served because of overcrowding
 - Prohibition order
 - Landlord in breach of licensing requirements
 - Number of occupiers exceeds licensing maximum.
 - Four months' notice is required.
- **Ground 7A (mandatory serious ASB ground):** Landlord can start claim for possession immediately after notice is served.
- **Revised mandatory ground 8:**
 - The Bill amends ground 8 to increase the threshold for ground 8 so that eviction would be mandatory in cases where a tenant had at least **three months' rent arrears** (instead of the current two months' arrears) both at the time the notice is served and at the time of the possession hearing;

- and if a tenant's arrears have arisen only because a Universal Credit payment they are entitled to has not yet been paid, the relevant arrears do not count. Note that this protection does not apply to housing benefit claimants and it is unclear to what extent it applies to disputes over UC entitlement.
- Four weeks' notice is required.
- **Discretionary grounds 10 (rent arrears) and 1 (persistent delay):** four weeks' notice is required.
- **Discretionary ground 14 (Anti-social behaviour):** The Bill extends the factors that judges must consider when deciding whether to evict a tenant under the ground 14, to include the impact on other occupiers where the property is a house in multiple occupation (HMO) or is in a HMO; and whether the tenant had engaged with any attempt by the landlord to encourage the behaviour to cease (clause 5).

There will also be new or re-numbered mandatory grounds:

- to allow landlords renting HMOs to full-time students to seek possession ahead of each new academic year, facilitating the ongoing yearly cycle of short-term student tenancies (subject to a written statement to that effect before the tenancy began): Ground 4A;
- where accommodation is needed for an agricultural worker (Ground 5A)
- where accommodation is needed for an employee or tied to employment (Grounds 5B, 5C, 5D);
- for the supported housing sector (Ground 5E, 5F);
- in relation to temporary accommodation for homeless person (Ground 5G); and
- where tenancy was granted as 'stepping stone' accommodation (Ground 5H).

Landlords will be prevented from recovering possession if they have not protected a tenant's deposit or registered their property on the new private rented sector database. These restrictions will apply to all grounds *except* the anti-social behaviour grounds 7A and 14.

Rent increases

Clause 7 amends section 13 HA 1988 to provide that issuing a valid notice of increase under section 13 will be the only way that a private landlord can increase the rent. A tenant may challenge the validity of a section 13 notice in the First-tier Tribunal, not only in the county court as at present (new section 13B).

Rent can only be increased once a year. For increases under the amended section 13, the landlord must give at least **two months' notice**.

The rent set out in the notice of increase will then apply unless the tenant applies to the First Tier Tribunal before the date the increase is due to take place or the landlord and tenant agree to a different amount. The Tribunal will set a reasonable open market rent. Note that the Tribunal will not be able to determine a new rent that is higher than the landlord's proposed rent, unlike at present.

Rent review clauses in tenancy agreement will be unenforceable (except where the landlord is a social landlord). Landlords and tenants may agree a lower increase than the amount proposed in the notice (but higher than the previous rent level).

Note that tenants will still have the right to challenge the rent set within the first six months of the start of the tenancy if it is higher than a market rent.

- **Clauses 10 and 11 Permission to keep a pet**
 - The Bill will make it an implied term of an assured tenancy that a tenant may keep a pet with the landlord's consent, which must not be unreasonably refused. The landlord will be required to give or refuse consent in writing within 42 days of receiving a written request. The tenant's written request must describe the pet. As a condition of giving consent, a landlord will be able to require the tenant to take out insurance covering the risk of pet damage or to pay the landlord's reasonable costs of maintaining pet damage insurance.

- **Clauses 15 and 16** set out financial penalties and offences. Clause 15 adds new sections (16I to 16L) to the HA1988 setting out the financial penalties and offences that will apply where a landlord breaches the prohibitions in clauses 12 and 13, including those relating to the misuse of possession grounds and for not providing a written statement. Local authorities will be able to impose a financial penalty of up to £7,000 if satisfied "beyond reasonable doubt" of a contravention of clauses 12 or 13. More than one penalty may be applied for continued contravention.

- **Clause 19** amends section 5 of the Protection from Eviction Act 1977 to increase the amount of notice to quit that a tenant would need to give when ending an assured tenancy from four weeks to two months, unless the landlord and tenant had agreed a shorter period in writing.

- **Clause 25: Tenancy deposit requirements**
 - This clause amends the HA 2004 to continue the requirement for deposits to be protected in respect of all new assured tenancies and tenancies that were ASTs immediately before the commencement date. Landlords who take a deposit and do not comply with the statutory requirements will not be able to claim possession on any of the grounds for possession, apart from the ASB grounds 7A and 14.
 - However, there is no provision for defences for failure to issue the 'How to Rent' guide to the tenant; or to supply a current gas safety certificate and an energy performance certificate. Nor are there any restrictions arising from a breach of the Tenant Fees Act or a failure to license the property where required.

- **Clauses 32-41: Rental discrimination** Clauses 32 to 41 will prohibit landlords in England, Wales and Scotland from discriminating against tenants who receive benefits or who have children. This gives legislative force to the decision in *Tyler v Paul Carr Estate Agents* [2020] EW Misc 30 (CC), concerning 'No DSS' practices, and extends it so that there is no need to show a protected characteristic. The

prohibition also to policies which would exclude children. Clause 39 gives local authorities the power to impose a financial penalty of up to £7,000 for a breach of these provisions.

- **Clauses 55 and 56: Rental bidding** Clause 55 prohibits landlords and letting agents from inviting, encouraging or accepting a tenant's offer to pay rent at above the advertised rate. Again, local authorities will have power to impose a financial penalty of up to £7,000 for breach of these provisions
- **Clause 57: Penalties for unlawful eviction or harassment of occupier** This clause inserts a new section 1A into the Protection from Eviction Act 1977 to enable local authorities to issue fixed penalty notices for offences under section 1 of the 1977 Act up to a maximum of £40,000. Financial penalties may be imposed in lieu of prosecution. The burden of proof for levying a financial penalty would be 'beyond reasonable doubt'.
- **Clauses 59 and 60: Remedying hazards / Awaab's Law**

The Social Housing (Regulation) Act 2023 contains provision for what has become known as 'Awaab's Law', following the tragic death of two-year old Awaab Ishak due to prolonged exposure to mould in his social rented home. The Act inserted section 10A into the Landlord and Tenant Act (LTA) 1985, which implies a term into social housing tenancies requiring landlords to investigate and rectify prescribed hazards, such as damp/mould and fire safety, within specified timeframes. The nature of the hazards and the timescales involved are to be specified by the Secretary of State in regulations

In January 2024, the Conservative government consulted on Awaab's Law: see [Awaab's Law: Consultation on timescales for repairs in the social rented sector - GOV.UK](#). It is proposed that the hazards which are in scope of Awaab's Law should be those that pose a significant risk to the health or safety of the actual resident of the dwelling. A consultation response has not yet been published.

Clause 59 will amend the Landlord and Tenant Act 1985 to apply Awaab's Law to properties let under tenancies in the private rented sector. Clause 60 enables Awaab's Law to apply also to accommodation occupied under licence. The clauses rely on regulations to set out timeframes within which private landlords and licensors must make homes safe where they contain prescribed hazards. MHCLG's Guide to the Bill confirms that Government will consult on the best way to apply Awaab's Law to the private rented sector.

- **Clauses 96, 100, 101: Rent repayment orders** Clause 96 will extend the list of offences for which tenants could apply for a RRO, including misuse of a ground for possession; extend the period in which tenants and landlords can apply for a RRO from 12 to 24 months; and double the maximum repayment from 12 to 24 months' rent. Clauses 100 and 101 amend the Housing and Planning Act 2016 to extend rent

repayment orders to superior and intermediate landlords, thus overturning *Rakusen v Jepsen* [2023] UKSC 9, and to individual directors of landlord companies.

Part 2 Chapter 2: Landlord redress scheme

The Bill includes provisions to enable the government to approve or designate one or more redress schemes which all private landlords who rent out property in England will be required to join. The government intends to approve or designate only one scheme to act as Ombudsman for the sector.

The Ombudsman will investigate tenants' complaints about their landlord and provide impartial and binding resolutions. The types of complaint that the service will consider are not specified in the Bill. The Ombudsman scheme is intended to be quicker, cheaper, and less adversarial than the court system. It may provide mediation if appropriate. It will have powers to compel landlords to issue an apology, provide information, take remedial action, and/or pay compensation. Regulations will deal with the detailed working of the scheme and with implementation.

Landlords who fail to join the ombudsman scheme can be fined up to £7,000 by the local housing authority. If a landlord repeatedly breaches the requirement, they may be fined up to £40,000 and could face criminal prosecution. Tenants will be able to seek a rent repayment order if a landlord persistently fails to join the Ombudsman scheme

Part 2 Chapter 3: Private rented sector database

The Bill includes provisions to establish a publicly accessible private rented sector database. The purpose of the database will be to:

- help landlords understand their legal obligations and demonstrate compliance;
- provide information to tenants enabling them to make informed decisions when entering into a tenancy agreement and hold their landlord to account; and
- assist local authorities to target enforcement activity where it is most needed

All private landlords will be required to register themselves and their properties on the database. Landlords who fail to do so may be fined up to £7,000 by the local housing authority. If a landlord repeatedly breaches the requirement, or if they provide false or misleading information to the database, they may be fined up to £40,000 or could face criminal prosecution. It will be necessary to register any financial penalties imposed. A banning order must be registered.

Landlords in breach of the requirement to register on the database will not be able to obtain a possession order, except where possession is being sought under ground 7A (severe ASB) or ground 14 (ASB).

The Bill provides for regulations which will set out the detail, including how the database will be operated and overseen. The Bill also proposes a new digital database or property portal where each landlord and each "dwelling" will have an entry, and

unique identifiers. There must be active entries for both the landlord and the property before a property is marketed for letting.

Part 3: Decent homes standard (clause 98)

The Bill proposes a *Decent Homes Standard* for the private rented sector and provides local authorities with the power to enforce it. Clause 98 amends the Housing Act 2004 to give the Secretary of State the power to specify decent homes standard (DHS) requirements for the private rented sector, and for these standards to be enforced by local housing authorities. Subsection 98(5) provides that the DHS requirements may cover matters such as:

- the state of repair of the premises;
- things to be provided for use by, or for the safety, security or comfort of, persons occupying the premises; and
- the means of keeping the premises at a suitable temperature.

The DHS requirements may be split into two categories: type 1 requirements that a local housing authority has a duty to enforce; and type 2 requirements that a local housing authority has a power to enforce..

On 22 September 2024, MHCLG announced that it will consult as soon as possible on a new Decent Homes Standard for the rented sectors.

Part 4: Enforcement

Clause 104 would place a new duty on all local housing authorities in England to enforce the “landlord legislation” in their area. The landlord legislation is defined to include: the rental discrimination provisions in Part 1 of the Bill, Part 2 of the Bill (landlord redress schemes and the private rented sector database), sections 1 and 1A of the Protection from Eviction Act 1977, and Chapter 1 of Part 1 of the Housing Act 1988. See also clause 57 above relating to penalties for unlawful eviction or harassment.

Clauses 111 to 129 would substantially strengthen local housing authorities’ investigatory powers to require information and documents from landlords and from other parties in relation to particular offences.

Clause 123 provides a power of entry without a warrant at any reasonable time, by notice, by a specially authorised officer of a local housing authority into suspected residential tenancies, where the officer considers entry to the premises necessary for the purpose of investigating whether a breach or offence has occurred under the listed legislation. This could provide a means whereby a tenant who has been illegally evicted can be reinstated.

Compliance with the bill’s provisions which amount to criminal offences may be enforced by variable financial penalties of up to £40,000, imposed by the local housing authority. This includes gaining possession through falsely threatening to rely on a possession ground or letting a property within the ‘restricted period’ of one year after gaining possession under ground 1 or 1A. These, as well as certain breaches of the landlord redress scheme and PRS database provisions, may also be enforced through rent repayment orders (see above).

Commencement

The Government has indicated that it hopes to have the new tenancy system in place by summer 2025. It intends to introduce the new tenancy system for the private rented sector in one stage. Upon the commencement date, the new tenancy system will apply to all assured tenancies, whether new or already in existence. It appears that existing fixed term assured shorthold tenancies will become periodic assured tenancies, and will be governed by the new rules. There are limited exceptions, notably where possession proceedings have already begun; and where a valid section 21 or section 8 notice was served before commencement date, the notice will remain valid for three months.

MHCLG's guide to the Renters' Rights Bill explains the government's proposed approach to implementing the new tenancy regime:

“To end the scourge of section 21 evictions as quickly as possible, we will introduce the new tenancy for the private rented sector system in one stage. On this date the new tenancy system will apply to all private tenancies - existing tenancies will convert to the new system, and any new tenancies signed on or after this date will also be governed by the new rules. Existing fixed terms will be converted to periodic tenancies, and landlords will no longer be able to serve new section 21 or old-style section 8 notices to evict their tenants. This single date will prevent a confusing 2-tier system, and give all tenants security immediately.”

The new tenancy regime will be applied to social housing assured tenancies at a later date. The Government must first update and consult on its Direction to the Regulator of Social Housing, whereupon the Regulator can update its Tenancy Standard.

3 Disrepair / housing conditions

Claim for damages under s.4 Defective Premises Act 1972 for injuries resulting from the collapse of a wall

[Mann v Martin](#)

[2024] EW Misc 23(CC) 20 August 2024

See [Nearly Legal](#)

Ms Mann was the daughter of the tenant of a property owned by Ms Martin. The property had a garden with a dividing wall to the next door property. There was an adjoining section of fence, with a post next to the wall, which was found to have been replaced by the neighbour shortly after the tenant and Ms Mann moved in.

Ms Mann was leaning on the wall, talking to the neighbour, when the wall collapsed, causing serious injuries to her leg. Ms Mann brought a claim under section 4 of the Defective Premises Act 1972 against the landlord. At trial, the court was asked to decide the following issues:

- *Did the Defendant owe the Claimant a duty of care under s.4(4) of the DPA 1972, and if so, what was the scope of that duty?*

The court held that there was a prima facie duty of care under s.4(4), but rejected any attempt to suggest that this was broader than the section 4(1) duty to make safe. There must be an issue of maintenance or repair, not, for example, a latent defect in construction.

- *If so, did the Wall suffer from a relevant defect?*

On the evidence there was not a latent defect to the wall. The alteration to the adjoining fence panel and post had likely contributed to or caused fractures to the wall. There was no evidence of excessive force being applied by Ms Mann.

- *If so, did the Defendant know or ought she to have known about the defect?*

It was accepted that Ms Martin did not know of the defect to the wall. The issue then was whether she ought to have known about it.

The Court held that where the landlord, as in the present case, did not have actual knowledge then the question of whether s/he ought to have known of the defect will usually depend upon what steps s/he ought reasonably to have taken to inspect the premises; and where, as in this case, an inspection was carried out the issues are whether reasonable care was taken in carrying out the inspections and whether the defect was, or should have been, discovered as a result of the inspection...

The duty did not require the landlord to carry out a structural survey or examination of the wall: what was required was a reasonable visible examination for obvious defects. A pre-tenancy inspection had been carried out on the landlord's behalf which did not note any defects in, or disrepair to, the wall.

Ms Mann contended that the pre-tenancy inspection was inadequate as it did not mention the wall and defects in it should have been apparent. This was not decisive either way, but the tenant herself had not noted any disrepair or defect in respect of the wall after moving in, although she had complained about the missing adjoining fence. The tenant had herself leaned on the wall on a number of occasions while talking to the neighbour.

It followed that there were no obvious defects to the wall apparent at that time and that an inspection conducted with reasonable care prior to the tenancy would not have identified a defect. Nor was there anything in the evidence to fix the landlord with knowledge of any defect in the wall which arose as a result of work carried out to the adjacent fence post

As the landlord neither knew nor ought to have known of the defect to the wall, the claim was dismissed.

Fitness for habitation: measure of damages

The Homes (Fitness for Human Habitation) Act 2018 inserted section 9A into the Landlord and Tenant Act 1985, whereby a covenant that a dwelling is fit for human habitation is implied into most tenancies. The fitness covenant initially applied to tenancies that began on or after 20 March 2019, but also applies to tenancies that were in existence as of 20 March

2020. The question that has arisen is what measure of damages should be awarded where a property is unfit for human habitation. The issue has been considered in a number of county court cases. There are now three cases where damages equivalent to 100% of the rent has been awarded where the property has been found to be unfit.

Dezitter v Hammersmith and Fulham Homes

Central London County Court 7 November 2023
(Doughty Street and see [Nearly Legal](#))

DDJ Harris awarded damages for a period from 20 March 2020 onwards -- the period from the date from which implied condition of fitness for habitation applied to all tenancies in existence – at 100% of the rent. She considered that this was a binary decision: either a property was fit for human habitation or it was not; and where it was not, it cannot be said that the tenant has derived any value from her tenancy for this period.

Mason v Olivera & Santana

County Court at Clerkenwell and Shoreditch, 15th December 2023
(Garden Court and see [Nearly Legal](#))

DJ Naidoo also assessed damages for the period when the property was unfit for habitation at 100% of the rent. The judge also awarded 150% of the rent for a period during which the tenant had been decanted to interim accommodation and had suffered additional inconvenience due to its location and the fact that she had been liable to pay the rent for the original property in addition to the decant accommodation.

Engmann v LB Lambeth

Wandsworth County Court 17 April 2024
Doughty Street, and see [Nearly Legal](#)

DJ Daley considered that the above decisions only indicated that the court *may* award damages equivalent to 100% of the rent where a property is unfit, not that it must do so. However, the judge accepted that where the property was unfit, the court should award a considerable proportion of the rent, and as such, awarded damages equivalent to 90% of the rent for the relevant period.

For the period after the leak, the district judge considered that the property was unfit for human habitation. The judge was referred to the previous County Court judgments where 100% of the rent was awarded for unfitness, but noted that these decisions were not binding and only indicated that the court *may* award damages equivalent to 100% of the rent where a property is unfit, not that it must. totalling £6,437.20. Applying the *Simmons v Castle* uplift, general damages of £16,303.09 were awarded.

Godagam and Edirisinghe v Hanson

Mayors & City of London County Court. 3 May 2024
For judgment, see [Nearly Legal](#)

Mr Hanson’s tenancy began in 2016, as a ‘bed in a shed’, in the garden of a terraced house which had been turned into 9 separate units. The extensive disrepair and (from 20 March

2020) unfitness for human habitation had resulted in a prohibition order (though Mr Hanson remained in occupation)

Recorder Gavaghan rejected the proposition that unfitness was a binary decision. The judge considered that a claim for damages for the breach of the obligation to keep a property fit for habitation should be approached in the same way as a claim for the breach of the implied repairing covenants in section 11 and it would be wrong to depart from the usual approach in *Wallace v Manchester City Council* as to how to calculate compensatory damages. The most satisfactory approach to measuring general damages was by way of a notional reduction of rent. However, the failure to provide basic conditions fit for such occupation in a small flat was such that there was no or limited benefit to the tenant and therefore a 100% reduction in the rent would be appropriate to reflect the inconvenience and distress caused to Mr Hanson.

The tenancy agreement had a clause purporting to restrict the tenant's right to any set off against the rent. The claimants did not rely on this argument, which the Judge regarded as correct, since "such a provision would have been unfair in a lease such as this given the terms of section 62 of the Consumer Rights Act 2015."

Jillians v Red Kite Community Housing,

County Court at Oxford 24 September 2024

(unreported except on [Nearly Legal](#))

This appears to be the first case where a Circuit Judge (HHJ Melissa Clarke) has considered what amounts to unfitness for human habitation under sections 9A and 10 Landlord & Tenant Act 1985, and when the court can make such a finding.

Quantum of damages was not in issue here, but in relation to the test of unfitness for habitation, the Court accepted that the cases of [Bole v Huntsbuild Ltd](#) and [Rendlesham Estates v Barr](#), both decided under s1 Defective Premises Act 1972, were of assistance in assessing fitness for human habitation under s9A.

The judge rejected Red Kite's argument that a finding of unfitness could not be made in the absence of expert evidence on that point. The test of unfitness includes reference to a hazard under the Housing Health and Safety Rating System (s.2, HA 2004) and is about the risk of harm to health and safety, but not about measured or measurable harms which required expert evidence.

Note one of the key points from the judgment, that an expert's finding as to the hazard to health is not required for the Court to make a finding on unfitness.

4 Equality Act 2020: disability-related needs in occupying premises

Equality Act and adaptations: does a social landlord's obligations fall under Part 3 (provision of service or public function) or Part 4 (managing let premises) of the Act?

R (FG) v Royal Borough of Kensington and Chelsea

(2024) EWHC 780 (Admin). 9 April 2024

See Nearly Legal write up [here](#).

FG had a significant history of trauma and abuse throughout her life. She had been diagnosed with paranoid schizophrenia and depression. Her symptoms included auditory and olfactory hallucinations, and hypersensitivity to noise and smell. It was not disputed that she is disabled for the purposes of the Equality Act.

FG was granted a secure tenancy by RBKC in 2022. She complained of noise and smell in the flat, which affected her significantly. There were various inspections and reports, both by RBKC and FG's expert, which concluded that the minimum building regulations regarding sound insulation were just about met, and there was not a statutory nuisance. In relation to the smell, a dead rat was found in a stack pipe two floors below, and there was a gap to the stack pipe enclosure in FG's flat.

FG issued a claim for judicial review against RBKC, asserting discrimination under the Equality Act 2010 for RBKC's failure to make reasonable adaptations to her flat to meet her disability related needs. She argued that in failing to carry out the work in her surveyor's and acoustic expert's reports as reasonable adaptations (which would mean changes to the flat below), RBKC had discriminated against her in the exercise of a function (ss.20 and 21, EA 2010) and/or subjected her to a detriment in the provision of a service (s29(6) and/or s29(2)(c), EA 2010).

The key issue was whether, in their capacity as FG's landlord, RBKC were providing a service or public function for the purposes of Part 3 of the Equality Act, or whether they were managing or controlling let premises within the meaning of Part 4. The distinction was critical, because Part 3 demands reasonable adaptations to provisions, criteria or practice, plus the Second Requirement, namely, "*where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*" However, Part 4 excludes the Second Requirement, and only requires reasonable adaptations to provisions, criteria or practice.

Section 32(3) EA 2010 excludes the application of Part 4 from the function of providing accommodation where the provision is "*... for the purpose only of exercising a public function or providing a service to the public or a section of the public*";

Dismissing the claim, Murray J. held:

- The distinction between Part 3 and Part 4 was significant as to whether an anticipatory duty arose (Part 3) or a reactive one on the request of an individual prospective tenant (Part 4).
- A local housing authority does not provide housing accommodation "*for the purpose only of exercising a public function*". It provides housing accommodation in order to comply with its statutory obligation to do so, having exercised the public function of allocating that housing accommodation to a person. Its provision of housing accommodation has more than one purpose, including:
 - complying with its statutory obligation to make the accommodation available to the person to whom it is allocated in accordance with its housing allocation scheme;
 - managing its social housing stock in the public interest and

- in a case (such as this), where it is also the landlord of the relevant property, complying with its private law obligations under the tenancy agreement and its statutory obligations as a landlord.
- As such, RBKC's compliance with its obligations under the tenancy agreement was not a factor of its exercise of a public function. The entry into the tenancy agreement was one of a number of consequences of the exercise of the public function of allocating social housing in accordance with its allocation scheme. This fell under Part 4, and therefore the Second Requirement did not apply.
- Even if this was wrong, there was not an anticipatory duty to make reasonable adjustments under Part 3 in this case. The anticipatory duty imposed by the Second Requirement is to make reasonable adjustments by reference to the needs of disabled persons as a class and not by reference to an individual in a specific case. Since disabilities vary widely, the reference to "*disabled persons generally*" must be understood as meaning a set of disabled persons sharing a sufficient commonality of disability as a result of which they are at a substantial disadvantage.

If Part 3 had applied, then a duty to make reasonable adjustments would arise once on notice from FG. RBKC had considered the various works proposed in FG's acoustic expert's report and determined that these would be too costly and disruptive to implement, particularly as they would require structural work within and reduce the living space of another flat. The Council was entitled to conclude that it would not be reasonable to make the proposed adjustments. There was no failure to make reasonable adjustments, even if Part 3 applied, rather than Part 4.

5 Homelessness

A Housing needs assessments / suitability of interim accommodation

Council's failure to produce lawful PHP and housing needs assessment and to provide suitable accommodation

[UO v Redbridge LBC](#)

[2024] EWHC 1989 (Admin) 30 July 2024

See [Nearly Legal](#)

This is the second instalment of Ms UO's attempts to secure a lawful assessment of her housing needs and the provision of suitable accommodation.

UO is a single mother with 3 children. She applied as homeless to Redbridge Council in October 2022, shortly after her asylum application was granted and before she was evicted from her most recent NASS accommodation. At that time her children were at primary school in Tottenham, the eldest being in year 6 and preparing for SATS as well as scholarship exams for private schools. Redbridge took no action until the afternoon before the eviction, and then on the basis of a phone call where no questions were asked about the family's needs, placed the family in a hotel with no cooking or laundry facilities, 1½ hours' journey from the school.

After a housing needs assessment, the council originally provided UO with a series of hotel rooms, and later sought to discharge duty with an offer of accommodation in Peterborough. She challenged the lawfulness of this process in June 2023, and the High Court quashed the decisions involved ((2023) EWHC 1355 (Admin): see NWHLPA Housing Law Update, September 2023 and [Nearly Legal](#)) .

Subsequently, Redbridge prepared another housing needs assessment, which UO again challenged. This led to a revised ‘move on assessment’ in August 2023. This concluded that although the family had lived in Redbridge and UO worked and studied there, it was not “essential” for her to be accommodated within Redbridge or in a neighbouring borough as she did not fall within the Category 1 priority group (“Local accommodation only”) under Redbridge’s Placement and Resettlement Policy. Redbridge determined that UO fell within Category 2 priority (“Priority for local accommodation”) whereby it is “highly desirable” that a family be accommodated within Redbridge or neighbouring boroughs.

In October 2023, Redbridge offered UO accommodation in Enfield, which she accepted even though the eldest child had just started at a secondary school in Redbridge. UO requested a review of suitability, stating that being accommodated in Enfield meant hours of daily travelling during term time which placed an intolerable strain on her and her children.

In April 2024 Redbridge confirmed that they considered the accommodation to be suitable. They also concluded there was still no essential reason for the family to be in Redbridge.

UO requested a s202 review, and the Council again found the property suitable, on the basis that the Council considered that she had no essential reason to reside in Redbridge.

At this stage UO brought proceedings for judicial review challenging the authority’s Housing Needs Assessment (HNA) on the grounds that:

- the ‘move on’ assessment was unlawful for the purposes of section 189A Housing Act 1996 and s11(2) Children Act 2004
- the suitability decision failed in its requirement to review Ms UO’s housing needs, and
- the suitability decision was unlawful such that the defendant was in breach of its duty to provide suitable accommodation under s193 Housing Act 1996.

Allowing the application, Dexter Dias KC held that, on the first ground, the HNA and ‘move on assessment’ had stated that there was no known intervention from wellbeing teams within the children’s school. But the eldest child’s school had arranged counselling for her by a social worker/therapist, due to the perceived impact of multiple moves between hotels at an earlier stage. What is more, this had been recorded in the judgment in the previous judicial review. The judge said:

“[The housing officer] should have considered what the child’s history of well-being therapeutic support indicates about possible future risk from having to travel significant distances to reach her new school by being accommodated out of borough and how that impacts housing needs and priority. None of this was done and the documented history of therapy delivered to a plainly vulnerable child was ignored.”

Further, the move on assessment did not take sufficient account of the impact on UO as a single parent. Nor was there any consideration of the potential impact of out of borough accommodation on UO's education or the potential impact on her employment. The judge concluded:

"I am satisfied that [Redbridge] has not holistically assessed the impact of a relocation on the claimant's employment and education in the context of how that may impact her housing needs with the specific demands, that is the 'particular circumstances', of being a lone parent bringing up three minor children on her own and the likely increased additional demands resulting from out of borough accommodation. This was a significant misstep."

Nor had Redbridge complied with the section 11 CA 2004 duty to properly assess the likely impact of its decision on the welfare of the children and have regard to the promoting and safeguarding of their welfare. All of this was the very essence – the 'nuts and bolts'...of a lawful decision.

On ground 2, having found the August 2023 assessment unlawful, the judge considered that this "fatally infects" the April 2024 suitability assessment since the errors were largely replicated, including failure to make reasonable enquiries about educational needs in changing school mid-year, disruption to education, and the likely emotional impact of such changes on the children in the context of previous instability and trauma.

In addition, the decision rigidly applied Redbridge's policy view that children could move school if not at 'a critical stage of education' or with no SENDS in place, without taking account of the impact on the children. Redbridge had been wrong to conclude that since none of the children had special needs or were taking examinations there was no point in having any regard to what the headteacher said about access to school:

"This...is to elevate the defendant's policy into a rigid rule and to ignore the fact that the references to GCSEs and A levels, and to those with special educational needs, constitute examples of where particular consideration will be given to the needs of children, rather than an exhaustive list."

The review decision also failed to address Ms UO's position as a single parent, and whether travel times were reasonable in those particular circumstances:

"[The reviewing officer's] conclusion that the travelling demands were not unreasonable failed to take into account not just the actual travelling time involved, but the claimant's lone parent status and the strain that balancing the exclusive caring responsibilities for three minor children imposes. One cannot insensitively apply general indicative times in a policy document without examining the "particular circumstances" of the individual, which is what the Policy requires."

The April 2024 assessment's deficiencies included: lack of analysis of the claimant's lone parent status and its demands; failure to engage with the significance of the child's history of trauma, distress and need for well-being therapeutic support and the erroneous misstatement of the policy as to whether the child was 'in the middle' of examinations.

On ground 3, it followed from the findings on ground 2 that the suitability decision was unlawful.

For another case in which the Court held that the housing needs assessment and personal housing plan were unlawful, see [R \(SK\) v Royal Borough of Windsor & Maidenhead](#) [2024] EWHC 158 (Admin); summarised in *Legal Action*, March 2024, p.37. In this case, the HNA did not include an assessment of the needs of the children who were in foster care. Nor did it deal with the circumstances which had caused the family to become homeless, notably that the home was not suitable for SK's two profoundly disabled children.

B Eligibility for assistance

Persons fleeing Israel, Gaza and Lebanon

The Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) (No. 2) Regulations 2023 [S.I. 2023/1142](#) which came into force on 27th October 2023 covers eligibility for housing and homelessness services for persons who were residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon "*immediately before 7th October 2023 and who left [those territories] in connection with the Hamas terrorist attack in Israel on 7th October 2023 or the violence which rapidly escalated in the region following the attack*", and who has leave to enter or remain in the UK without any condition on having recourse to public funds.

UK nationals and others not subject to immigration control who are covered by this definition do not have to pass the habitual residence test to be eligible for housing or welfare benefits. Likewise, persons subject to immigration control who have leave given within the Rules and who are not subject to a restriction on recourse to public funds or a sponsorship undertaking are also exempt from the habitual residence test.

An EEA national with pre-settled status was not residing "on the basis of the Withdrawal Agreement" and was not eligible for assistance unless exercising a qualifying right to reside
[Fertre v Vale of White Horse DC](#)
[2024] EWHC 1754 8 July 2024

Ms F was an EEA national with pre-settled status. The Council rejected her homeless application on the basis she was ineligible for assistance, as although she had pre-settled status, she was not exercising a qualifying right to reside such as being a worker. That decision was upheld on review.

F brought a county court appeal. As a result of the wider issues the appeal was transferred to the High Court, with Shelter, The Independent Monitoring Authority, the 3million and the Secretary of State for Levelling Up Housing and Communities as intervenors.

At the hearing F noted that section 7A of the European Union (Withdrawal) Act 2018 confirmed that all domestic legislation was to be read and given effect in accordance with the Withdrawal Agreement (WA). She argued that she was eligible on the basis that pre-settled status was a “new residence status” under Article 18(1) of the Withdrawal Agreement (WA), which amounted to the grant of limited leave to remain for five years without further conditions. F therefore fell within the equal treatment provisions in Article 23(1) of the WA because she was “residing on the basis of the agreement”.

The judgment

Mr Justice Jay found that, when F applied for PSS, she fulfilled the conditions of Article 6 of the Citizens’ Rights Directive (CRD), and that her pre-settled status was granted pursuant to Article 13(1) WA. The Court found, however, that such rights were granted *‘in accordance with’* the conditions set out in Title II WA and were therefore conditional rights. When assessing what F’s rights were when she made her homeless application, the Court confirmed that *“The `rights conferred under Title II’ depend on what a person’s circumstances might happen to be at the relevant point in time.”* (para 72). As she was not exercising a qualifying right to reside under the CRD at this moment (i.e. as someone who was economically active) F could not have been eligible for homelessness assistance.

The Court also found that Article 18(1) WA (residence/settled status documents) was effectively a gateway to the rights in the WA via the conferring of status rather than the granting of rights themselves via Article 13 (4) WA. In respect of the equal treatment provisions in Article 23 WA, the Court found that Article 23 did not apply to all people granted status under Article 18. It applied to people residing on the basis of the Withdrawal Agreement, which the Court found was intended to reflect the wording of Article 24 CRD (Rights and benefits of workers). On this basis, therefore, a person had to be exercising free movement rights under the CRD, as they would have done pre-Brexit, in order to be able to rely on Article 23. F was not, accordingly, residing on the basis of the WA.

Additionally, although the Court accepted that a person could be legally granted status via Article 13(4), this did not mean that they then acquired all rights under the WA, since the rights under Title II are conditional and may only arise at a future date.

Finally, the Court also commented that treating someone with PSS less favourably than a British national was capable of being discrimination, but this was indirect discrimination and capable of being justified. There was insufficient evidence to enable the court to assess justification.

People with PSS can still rely on the EU Charter of Fundamental Rights following the ruling in *SSWP v AT* (AIRE Centre and IMA intervening) [2023] EWCA Civ 1307. Authorities are therefore required to consider whether the refusal of a homeless application would put a person with pre-settled status at risk of destitution, such that the refusal would be incompatible with human dignity under the Charter.

C Duties to the intentionally homeless

Council had failed to secure suitable accommodation in breach of s190 HA 1996 (limited duty to the intentionally homeless) and to conduct a lawful s17 Children Act 1989 assessment.

R (ZRR) v Bexley LBC

(2024) EWHC 2073 (Admin) 7 August 2024

See [Nearly Legal](#)

ZRR lived with her two daughters aged 16 and 14 and her partner (not the children's biological father). The older daughter suffered from mental health problems originating from trauma arising from sexual abuse, and the younger one had diagnoses of postural sclerosis and sensory processing disorder. The partner suffered from anxiety, depression, suicidal ideation and bi-polar disorder.

A full housing duty had initially been accepted by Bexley in 2012, and the Council provided accommodation in Belvedere. In 2023 the family were evicted because of rent arrears. ZRR again applied as homeless and Bexley concluded that they owed her the relief duty. The Council placed the family in interim accommodation in a B&B in Erith for 56 days, in the form of two inter-connected rooms with washing facilities shared with other households.

ZRR told Bexley that the Erith accommodation was unsuitable for the family's needs and that both the B&B manager and her children's CAMHS nurse agreed with this assessment. The accommodation was said to be unsuitable because: (i) the elder daughter having to share sleeping space with ZRR's partner was inappropriate in light of a history of sexual abuse of the daughter by her biological father; (ii) shared facilities were inappropriate in the light of the younger daughter's sensory processing disorder and severe social anxiety; (iii) delay in the correct support would lead to a deterioration of the younger daughter's mental health; (iv) the partner suffered from severe depression and anxiety and became withdrawn and anxious after viewing the B&B; and, (v) the B&B did not allow the family's support dog, which they needed for the children's social and mental health issues. The family instead moved in with ZRR's parents.

Bexley then made a decision that ZRR was intentionally homeless from the Belvedere accommodation, which was challenged. They offered s.190 accommodation at the same B&B for 14 days as accommodation to give ZRR an opportunity to find alternative accommodation, which ZRR refused..

Bexley also carried out a s.17 Children Act assessment and concluded that the children had no needs beyond housing. Social services offered to provide 3 bedroom accommodation in Manchester for one month, while ZRR sought a private rented letting, together with a deposit and one month's rent in advance.

ZRR applied for judicial review on the basis that

- 1) the decision that the B&B was suitable was irrational, and the Council had not therefor secured suitable accommodation in breach of its s.190 duty;

- 2) the Council was required to provide ZRR with a valid notice discharging its duty under s.190 and had not done so;
- 3) The Council had failed to have regard to ZRR's circumstances when determining what period of time would provide her with a reasonable opportunity to secure accommodation for occupation; and
- 4) the section 17 assessment of ZRR's children was unlawful for various reasons, notably that it did not address the children's education needs.

In relation to ground 1, Judge O'Connor said that, in considering whether it was open to Bexley to conclude that a room at the B&B was suitable accommodation, he had considered the transient nature of section 190 accommodation (in this case, 14 nights), article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2003 and the Code of Guidance on the impact of B&B accommodation on families. The Judge also noted the absence of any rationale for why Bexley considered the accommodation to be suitable.

Bexley had argued that the claim for judicial review should not be entertained at all as the suitability of s190 accommodation could be challenged by the statutory s.202 review/s.204 appeal process. However, the Judge noted that this point had not been considered when giving permission, and the Code of Guidance and correspondence from Bexley had indicated that there was no such right of review/appeal. In the circumstances, the Judge was willing to allow the judicial review to proceed.

The judge said that, given the family's circumstances including the children's ages and mental health,

"I conclude that no reasonable local housing authority could have found that room G5 of the Erith B&B was suitable to accommodate the claimant and her family, even for the limited 14 day duration proposed."

"In reaching this conclusion, I find the ages and mental health of the children to be highly relevant, with the mental health of the youngest child to be of particular significance...I further observe that there is no evidence before me from the [Council] seeking to justify how, taking account of the aforementioned matters, room G5 at the Erith B&B was found to be suitable accommodation."

The offer therefore did not discharge the Council's s.190 duty.

On ground 2, the Court held that a formal notice to discharge duty under s190 was not required under the terms of either s190 itself or s184 HA 1996.

Ground 3 was also rejected, since no evidence had been advanced by ZRR that Bexley had failed to have regard to her circumstances when determining what period of time would provide her with a reasonable opportunity to secure accommodation for occupation.

On Ground 4, the Judge accepted that Bexley had considered the children's general needs in the light of the family's "housing issues" and their current educational provision, but did not take proper account of the youngest child's education needs in light of the proposed move to Manchester:

“Whilst the Assessment should not be subject to an over-zealous textual analysis, and appropriate respect must be given to the judgements of the social worker undertaking the assessment, the decisions arising therefrom relate to vulnerable children and must be scrutinised with care. Having done so, I conclude that the analysis of whether to offer accommodation in Manchester for 28 days as a response to ‘concerns’ regarding the children, is flawed for failure to take lawful account of the youngest child’s education needs.”

Orders were made requiring Bexley to comply with its duty under section 190(2)(a) within 14 days, and complete a fresh assessment of the children’s needs within six weeks.

D Suitability of accommodation / discharge of duty

Extension of temporary Suitability Regulations

The [Homelessness \(Suitability of Accommodation\) \(England\) \(Amendment\) Order 2024](#) extends one of the ‘temporary’ changes relating to the suitability of accommodation made by the [Homelessness \(Suitability of Accommodation\) \(Amendment\) \(England\) Order 2022](#). This is the provision that local authorities do not have to consider location (except for limited caring needs) when providing accommodation out of area for those have arrived in the UK within two years prior to making a homelessness application. That exclusion will continue until 1 June 2025.

However, the provision which allowed local authorities to place such households in B&B accommodation for more than 6 weeks was not extended, and expired on 1 June 2024.

Matters relevant to the Court’s discretion concerning whether to make a mandatory order

R (Imam) v LB Croydon

[2023] UKSC 45 28 November 2023

In *Imam*, the Supreme Court had to determine whether limits on the financial or other resources of a local housing authority should affect the exercise of a court’s discretion as to the remedy to be granted when the authority was in breach of its duty under s193(2).

Ms I was a full-time wheelchair user with 3 children. Since 2014, Croydon had provided her with temporary accommodation under Part 7. It accepted that the property was not suitable (in light of I’s disability) and that it was in breach of s193(2) by not offering her suitable alternative accommodation.

Ms I issued JR proceedings seeking a mandatory order compelling Croydon to secure suitable accommodation under Part 7. The Court of Appeal found that the judge had wrongly taken into account the local authority’s budgetary constraints as an explanation for its non-compliance with its statutory duty.

Croydon appealed to the Supreme Court. The Council admitted breach of its duty but contended that, by reason of severe budgetary constraints and limits to the stock of properties

available for housing assistance, it ought not to be ordered to provide suitable accommodation for Ms I, suitable for her complex needs, with immediate effect.

The local authority was subject to a public law duty imposed by Parliament which was not qualified by reference to available resources. When it was established that there had been a breach of such a duty, it was not for a court to modify or moderate its substance by routinely declining to grant relief to compel performance on the grounds of absence of sufficient resources.

However, public law remedies were discretionary. A court should proceed cautiously in exercising its discretion to refuse to make a mandatory order and should take care to ensure that it did so only where that course was clearly justified. It should have regard to:

The court noted five factors which were relevant to the exercise of the court's discretion as to remedy:

- If the local authority had a general contingency fund to deal with unexpected calls for expenditure, it should explain why it could not be used to provide the respondent with suitable accommodation (para.67).
- The court could not provide encouragement for what would amount to a settled position of the authority to act in disregard of the duty imposed on it by Parliament. The longer an authority with notice of a problem concerning non-performance of its duty had sat on its hands, the more important it may be for the court to enforce the law by making a mandatory order (para.68).
- The less the impact on the individual, the less compelling would be the grounds for making an immediate mandatory order with potentially disruptive effect. A claimant should ordinarily adduce evidence about the impact on them. (para.69).
- If there was no sign that the authority was moving to rectify the situation and satisfy the individual's rights, that was a factor pointing in favour of the making of a mandatory order (para.70).
- In deciding whether to make a mandatory order, a court should take care not to create a situation which was unfair to others, by giving a claimant undue priority over others who may have an equal or better claim as compared to the claimant (para.71).

The case was remitted to the High Court for further consideration with fresh evidence from Ms I regarding the impact of the property. The court should 'approach the case on the basis that Croydon was in breach of duty, which it had admitted, and so the onus was on it to give reasons why it should not simply be ordered to comply with that duty' (para 72).

Council found to have breached 'B & B' order despite lack of available accommodation

[R \(Pickford\) v Sandwell MBC](#)

[2024] EWHC 756 (Admin) 12 April 2024

P applied to the Council as homeless following a flood in her private rented flat and Sandwell provided interim accommodation at a hotel in Birmingham, where P and her son C had their own bedroom and bathroom, access to communal cooking facilities and a microwave in their room. P said that the accommodation was unsuitable since C had various food allergies which

prevented them using communal cooking facilities. Sandwell considered that the communal cooking facilities were suitable.

In November 2023, P's solicitors sent a pre-action protocol letter to Sandwell arguing that the hotel was not suitable in light of the Homelessness (Suitability of Accommodation) (England) Order 2003 and Code of Guidance which specify that for applicants with family commitments, B&B accommodation is not suitable unless no other accommodation is available and even then, only for a maximum of six weeks. The letter also challenged the failure to make a s184 decision.

Judicial review proceedings were issued later that month on the grounds that the Council was in breach of its duties to:

- provide suitable interim accommodation under s188 HA, primarily due to the 2003 Order;
- have due regard to its obligations under the Equality Act 2010 s149 because of C's disability;
- to have due regard to its obligations under s11 Children Act 2004 by failing to safeguard and promote C's welfare.

Sandwell argued that the B&B accommodation was suitable for the period P and C were likely to occupy it, and was the only accommodation available. It had not accepted C had a disability and there was no risk to him at the hotel, while the Children Act s.11 "did not render unsuitable what was suitable".

HHJ Tindall, sitting as a Judge of the High Court, found Sandwell to be in breach of its duty to provide suitable interim accommodation but dismissed the other 2 grounds.

Sandwell argued that C could have gone to live with his father, whom he regularly stayed with for two nights of the week, and so he could not be reasonably expected to reside with P. She should not therefore be seen as someone with family commitments to whom the 2003 Order applied.

The judge held that P fell within the clear wording of the 2003 order. While the B&B may have been suitable on the facts for some time, and the judge accepted that the Council faced genuine difficulty in finding temporary accommodation, the provisions of the order meant that the B&B was deemed unsuitable after 6 weeks despite the absence of any other available accommodation. Accordingly, Sandwell had been in breach of its statutory duty under s188 HA to secure suitable accommodation for the family since November.

The Judge went on to consider when a mandatory order might be made to require an authority to provide 'non-B&B accommodation' following *Imam*, rehearsing the relevant factors. He stated that he would have made a mandatory order in this case, but since Sandwell had agreed to provide non-B&B accommodation from 22 April 2024 this was not needed.

The ground relating to disability was dismissed as because there was insufficient evidence to enable the Judge to be satisfied that C was disabled for the purposes of the Equality Act 2010. Ground 3, relating to the Children Act, "could not succeed on its own".

Interim relief ordered where the authority accepted that B&B temporary accommodation was unsuitable and the family had lived there for more than 6 weeks

R (AO) v LB Haringey

Central London Administrative Court 9 May 2024

Unreported, except on [Nearly Legal](#)

Ms AO and her two children had been staying in bed and breakfast accommodation provided by the Council since 25 March 2024. They were in a single room in a hotel which was around 1¼ – 1½ hours from the children’s school. Prior to approaching the Council for assistance, the family had already lived in a single room for around two years.

The interim relief hearing was initially listed for 2 May 2024, when the family had been in B&B accommodation for just under six weeks. The application for interim relief was adjourned to the following week and the judge ordered the Council to provide evidence as to the availability of accommodation. A further hearing took place on 9 May 2024.

Both parties relied on *R (Imam) v Croydon London Borough Council* (2023) UKSC 45.

For AO, it was argued that:

- the principles which could be derived from *Imam* applied equally to the s.188(1) interim accommodation duty;
- the s.188 duty is not qualified in any relevant way. Where a breach is established, the ordinary position is that relief should be granted and the court should proceed cautiously in exercising its discretion to refuse to make an order;
- a court should not make a mandatory order where it is impossible to comply with. But the onus is on the Council to provide a detailed explanation of why it would be impossible to comply and show it has taken all reasonable steps to perform its duty. It will not be sufficient to speak only in generalities;
- it is relevant to consider whether a mandatory order would require the Council to divert funding from its existing budget allocations. Where an authority has limited resources available, it must give priority to meeting its statutory duties over fulfilling its merely discretionary functions;
- Other relevant considerations included: whether the Council had been on notice in the past of a problem in relation to non-performance of its duty but failed to react in good time; the extent of the impact on the Claimant; whether the Council had shown signs of moving to rectify the situation; and whether making a mandatory order would create unfairness to others.

In response, Haringey argued that unlike *Imam*, where Ms Imam had been in unsuitable accommodation for 6 years, in this case the accommodation had only been deemed unsuitable for 3 days and there were no health conditions or disabilities within the family, and the impact of unsuitable accommodation was not significant. The Council urged the court to take a broad approach in exercising its discretion to refuse a mandatory order.

The Council’s evidence was that they used a range of types of accommodation to meet their responsibility to provide interim accommodation. They acquired nightly paid temporary accommodation via a Dynamic Purchasing System, called “Adam”, operated in partnership

with other boroughs. All suppliers must be accredited on the Adam system, with the process incorporating due diligence checks to ensure they are competent.

Haringey also gave evidence that they were committed to moving away from a reliance on hotels, and their plans to do so were contained in a “B&B Elimination Plan”. That plan was not disclosed; nor was there any summary of its content.

The Council also argued that although they were checking daily for new accommodation, they could not confirm when accommodation would become available, as the situation was “fluid”, but they hoped to move the family by the end of the week.

AO filed evidence in reply, identifying several units of self-contained accommodation in a suitable area which were available on a nightly/short let basis. Haringey responded that they could not use this accommodation, as the suppliers were not accredited on the Adam system. They could not be certain of the suitability of accommodation, and they could not pay by invoice outside the Adam system. Accreditation of any new supplier would take 4-6 weeks to process.

AO submitted that the evidence did not show that Haringey had taken all reasonable steps to comply with their statutory duty. In particular:

- There was no evidence to support any claim that the Council’s budget would be distorted if a mandatory order was made.
- The B&B Elimination Plan had neither been provided nor summarised.
- There was no evidence as to how many suppliers were accredited in the Adam system, nor of whether steps were being taken to increase the number of accredited suppliers.
- The duty under s.188(1) was to secure an outcome: that suitable accommodation was available to occupy. It was not a duty to set up a system. Although the Council was entitled to use a system, they must adopt a system that enabled them to comply with their statutory duties, or at least was sufficient to show they had taken all reasonable steps to do so.
- Haringey could not adopt a system which fettered their discretion as to how they would meet their duties, and then rely on that system to say it was impossible to meet their duties. It was not sufficient for them to say: (i) we only source accommodation from particular accredited suppliers of an unspecified number, (ii) even though other accommodation exists we will not access it, and (iii) therefore it is impossible to comply with our statutory duty. The Council had tied its own hands.
- It was possible for the Council to carry out checks of alternative properties for suitability outside the Adam system, or to pay outside the Adam system. They simply chose not to do so.

David Pittaway KC sitting as a Judge of the Administrative Court Office said he faced a “difficult decision”. He noted this was not a case where the Claimant or her children had any particular medical need, nor was the accommodation “particularly dire”. Nevertheless, he did consider the distance to the children’s school to be “unacceptable”. He was not satisfied that Haringey had taken all reasonable steps to perform its duty and made an order for accommodation to be provided within 2 days.

6 Allocations

Council's allocation policy in respect of reciprocal transfer applications by women fleeing violence was unlawful

[R \(AK\) v Westminster CC](#)

[2024] EWHC 769 5 April 2024

See [Nearly Legal](#)

AK and her child lived in social housing in a London borough bordering Westminster. The child was sexually abused by a neighbour. The abuse was discovered in 2021, but the perpetrator still lived next door to the family. The abuse had had a traumatic effect on the child, resulting in exclusion from school, drug use, self-harm, and a period of homelessness.

Since discovering the abuse, A had been trying to find alternative housing. Her housing association was unable to find safe and suitable alternative accommodation for her. To avoid encountering the neighbour, A decided to send her child abroad to stay with relatives until alternative safe and suitable accommodation was found. A and her child had now been separated for almost three years.

AK had close connections with Westminster, and so applied for a "reciprocal transfer" under which Westminster would provide her with accommodation and in return it would have access to equivalent accommodation in her current borough for one of its tenants. The Council refused, stating that the refusal was in line with its housing policy.

AK brought proceedings for judicial review. She submitted that the policy was unlawful because it discriminated indirectly against women without proper justification contrary to ss19 and 29 Equality Act 2010 and breached the Public Sector Equality Duty. She also argued that the Council had breached its duty under s11 Children Act 2004 by failing to have regard to the need to safeguard and promote the interests of children.

The application was granted. Simon Tinkler, sitting as a Deputy High Court Judge, held:

- *Public Sector Equality Duty*: Westminster had failed to provide evidence that it had complied with its general ongoing obligation to consider its PSED when reviewing its housing policy. That failure, together with the absence on the face of the policy of any consideration of the PSED or recent guidance, meant that it had failed to have regard to the factors to which it should have had regard in relation to the policy. It had therefore not complied with its PSED.
- *Indirect discrimination*: Section 5.1 of the policy, which dealt with transfers by existing tenants of Westminster, and section 5.3, which dealt with transfers requested by people who were not tenants of Westminster, were plainly different. Section 5.1 was significantly more advantageous to an applicant than 5.3 and the Council had provided no evidence that it operated the policy in a way that treated people from outside the borough in the same way as tenants from the borough. Section 5.3 effectively excluded people who were not from the borough from a housing transfer.

The cohort affected by 5.3 included people escaping violence who wished to have a reciprocal transfer. Women were more likely to need to move borough to escape violence than men. Therefore, women were put at a disadvantage in satisfying the effective requirement in 5.3 to be a Westminster tenant as compared with men, applying *R (Gullu) v London Borough of Hillingdon* [2018] EWHC 1937 (Admin). The Council had not supplied any evidence to attempt to justify that discrimination, which was therefore unlawful.

- *Section 11 Children Act 2004*: There was no evidence that the Council had considered the situation of AK's child. The decision referred only to the "demand from priority groups" and to "rehousing her over 10 years out of turn"; the clear implication being that the decision-maker considered the long waiting list and decided that as a matter of principle "queue jumping" was not permissible. Westminster had failed to ensure that it had had regard to the need to safeguard and promote the welfare of children.
- *Failure to follow policy and established principles*: The Council's policy referred to the "circumstances" in which it "may agree" to assist reciprocal tenants. One situation was "a crisis". However, there was no evidence as to whether the decision-maker considered AK's situation to be a "crisis", nor how that decision was made, nor how the decision interacted with other factors when the decision was made. On that basis, the decision was made without considering something which the policy required it to take into account, namely the "crisis" AK was in. Furthermore, the fact that the decision-maker twice referred to "queue jumping" implied that Westminster was operating an unofficial or semi-official policy that had queue jumping as the only criterion.

The Court held that section 5.3 of the Council's policy was unlawful insofar as it related to women who needed to move to escape violence. The Court would not quash that section as there were means by which the Council could make the policy lawful. In the meantime, the appropriate relief was for Westminster to address the unlawfulness by treating AK as if she were applying under section 5.1.

Council had failed to comply with duty of candour concerning its policy on back-dating applicants' entry to the housing register

[**R \(Montano\) v LB Lambeth**](#)

(2024) EWHC 249 (Admin) 11 February 2024

See [Nearly Legal](#)

Ms M had asked Lambeth Council to exercise a discretion to backdate her entry on the housing register to the date of her homeless application. The Council stated that under its allocation policy it had no discretion to do so.

M applied for judicial review. Lambeth's Summary Grounds asserted as a "*hard fact*" that there was no discretion to change the date of registration. It made no mention of cases where the date of registration had in fact been back-dated. M then filed evidence of other occasions

where Lambeth had in fact back-dated housing register entries. Lambeth then disclosed a previously undisclosed document "*Guidelines for Officers: Exercising Discretion under the Housing Allocation Scheme 2013*".

Jonathan Glasson KC, sitting as a Deputy Judge of the High Court, held:

- Lambeth's scheme did allow a discretion on the registration date.
- Lambeth had not complied with its duty of candour to the court. When M filed her detailed evidence Lambeth's duty of candour and co-operation meant that the Council should have filed evidence to assist the court with a "*full and accurate explanation*" in response. Instead, it responded simply by way of assertion in its Skeleton Argument. It did not answer any of the reasonable requests made by M for clarification of its position, and failed to serve the Guidelines until prompted to do so at a late stage in the proceedings. The Judge said: "*That a public authority is hard pressed and has scarce resources cannot excuse it from compliance with its duty of candour and co-operation*".

Claim allowed, and a declaration made that Lambeth had acted unlawfully in failing to consider their discretion in response to M's request.

7 Accommodation under the Care Act 2014

No power to assist under Care Act where assistance available under Housing Act

[R \(Campbell\) v Ealing LBC](#)

[2024] EWCA Civ 540 17 May 2024

See [Nearly Legal](#)

This case concerned the interaction between a local authority's obligations under the Care Act 2014 and under the Housing Act 1996. C was partially sighted and also suffered from OCD and depression. He had eligible care and support needs for the purposes of the Care Act and had been accommodated by social services since being evicted for rent arrears in 2016. In 2022, the Council noted that C had rejected a number of properties offered to him from the housing register. It decided that it would withdraw funding for the accommodation on the basis that C had not pursued opportunities to secure permanent alternative accommodation.

The Council argued that it did not owe C a duty to provide accommodation under the Care Act because he was eligible for housing under Parts 6 or 7 of the Housing Act 1996.

Section 23 of the Care Act provides that a local authority "*may not meet needs under section 18 to 20 by doing anything which it is required to do under the Housing Act 1996*".

C applied for judicial review.

His application was refused in the High Court. Housing needs, even if identified through the 2014 Act route, could not override the system of priorities within the 1996 Act schemes. In this case then, there was no duty or power for the social services to meet C's needs under the Care Act if the Council were otherwise required to meet his housing needs under the 1996

Act. The judge found that C was a qualifying person under Part 6, and might be homeless under Part 7. Therefore, Ealing were required to meet his needs under the 1996 Act and no duty could arise under the 2014 Act.

C appealed to the Court of Appeal, and the appeal progressed notwithstanding that C had by then moved to a housing association property. He argued that Ealing were not “*required*” to provide accommodation under either Part 6 or Part 7. The law allowed for the provision of “ordinary” accommodation under the Care Act when there were care needs.

Ealing argued that the scheme between the Acts prevented those with care needs from ‘queue jumping’ to secure accommodation under the Care Act, and the Act did not permit the provision of ordinary accommodation.

C’s appeal was dismissed. Section 23 expressly excluded from the ambit of Ealing’s care responses anything which it was required to do under the 1996 Act. There was an intention in s.23 to give priority to the general scheme of the 1996 Act over the specific scheme of the 2014 Act. C’s interpretation would deprive s.23 of almost any meaning.

It was very rare for a local housing authority to be required to provide accommodation to anyone under Part 6, which only required the authority to give reasonable preference to, among others, people who needed to move on medical or welfare grounds. But C’s arguments would risk turning social workers into housing officers and strain adult social care budgets.

Further, in non-unitary local authority areas outside London, where a county council was responsible for adult social care and a district council allocated housing, it would create an anomaly whereby an individual needing accommodation together with care and support could seek it from the county council, whereas an individual classified as needing to move because of illness or disability could apply under Part 6 to be placed on the district council’s housing allocation list with priority. C’s arguments could also give rise in other cases to gaming of the system. A private sector tenant with care and support needs who considered their accommodation unsatisfactory could withhold rent, be the subject of a claim for possession, be classified as intentionally homeless, then seek care and support of the “accommodation-plus” kind under the 2014 Act, even though excluded from support under Part 7.

What a local authority was “required to do under the Housing Act 1996” within the meaning of s23 was to allocate accommodation in accordance with its allocation scheme and to apply the provisions of Part 7, not to provide accommodation. The effect of s23 was that there was no duty under the 2014 Act to accommodate C. Ealing did not act improperly or irrationally in deciding to cease to fund his accommodation.

8 Ombudsman determinations and reports

The monthly Housing: Recent Developments articles in Legal Action by Liz Davies KC and Sam Madge-Wyld continue to publish helpful summaries of important Ombudsman decisions and reports.

Local Government and Social Care Ombudsman

Good practice guide on domestic abuse

The Local Government and Social Care Ombudsman has published a new [Good practice guide on domestic abuse and housing decisions](#), (October 2024) aimed at improving councils' awareness of their duties to victims when providing housing and homelessness support. The LGSCO has also published new [Guidance for local authorities on best practice when making decisions on people's housing needs based on medical assessments](#) (July 2024), incorporating case studies illustrating common issues, based on 20 investigations.

Note the following case, in which the Ombudsman decided that they would not investigate a complaint about the suitability of temporary accommodation because the complainant had the right to go to court to challenge the Council's decision: [Complaint no 23 020 221 against L.B. Lambeth](#) (5 August 2024). In any case, the Ombudsman considered that there was insufficient evidence of fault to justify their involvement. See Local Government Act 1974, section 26(6), which provides that the LGSCO cannot normally investigate a complaint where there is a legal remedy. However, it is open to the Ombudsman to decide to investigate if they consider it would be unreasonable to expect the person to go to court.

[Local Government Lawyer](#) has reported (13 November 2024) that Leicester City Council has refused to act on a recommendation that it should pay a victim of domestic abuse £1,300 after she and her family were forced to live in bed and breakfast accommodation for 13 weeks longer than the maximum six-week period.

Housing Ombudsman

The Housing Ombudsman publishes monthly [Learning from severe maladministration reports](#). The [report published on 19 September 2024](#) focuses on landlords' handling of temporary accommodation ('decants') during work on residents' property from cases involving temporary moves. Important learning points include the importance of empathetic communication with the resident, including awareness of the resident's individual circumstances, treatment of subsistence costs such as food and travel, and assessing the suitability of alternative accommodation.

**Shelter / Housing Law Practitioners' Association
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