The purpose of the Legal Action Group is to promote equal access to justice for all members of society who are socially, economically or otherwise disadvantaged. To this end, it seeks to improve law and practice, the administration of justice and legal services.

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editorial
Back to a cuts agenda?

Things, it seems, can only get worse for legal aid. Over the past year, the number of organisations abandoning legal aid has caused – for the first time – audible consternation from the Legal Services Commission (LSC), the National Audit Office and even the Public Accounts Committee. There have been deepening concerns about the ability of the reformed legal aid scheme to provide access across the country and the phenomenon of 'advice deserts' is becoming widespread.

On top of this, a £100 million overspend and a negligible Spending Review settlement from the Treasury have plunged the legal aid scheme into further crisis. Increases in the number of orders made in the magistrates' courts, a jump in expenses related to high cost criminal cases, a huge growth in expenditure on immigration cases and an overall increase of 15 per cent in the average cost of cases have all contributed to the overspend. But the LCD seems to be in deep denial that there is anything wrong: Baroness Scotland, in a recent parliamentary debate, said that the situation of firms withdrawing from legal aid was being 'monitored'. No mention was made of the overspend or the possible impact on the future of legal aid.

Privately, however, Steve Orchard, the LSC's outgoing chief executive, has been making it clear that there can be no guarantees that legal aid eligibility and scope will not be cut in the near future. It goes without saying that an increase in remuneration is highly unlikely, despite the Legal Aid Practitioners Group's spirited demand for a five per cent increase. So, despite all the changes and upheaval of the Access to Justice Act 1999 and the introduction of contracts, we may be about to see the government return to using cuts in essential entitlements as a method of controlling the legal aid budget.

This is a depressing reflection of the government's attitude that legal aid is little more than 'outdoor relief' for lawyers, rather than an essential public service that contributes to helping individuals and communities out of poverty and disadvantage, and protects some of the most vulnerable people in our society. Legal aid has been constantly ignored by the social exclusion and regeneration agendas, and has been left to fight its own corner. The Lord Chancellor is the only 'champion' legal aid has in the cabinet and in relation to the Treasury, but he seems more concerned to spend his department's budget on expensive corporate consultants and special advisers. Steve Orchard has, to give him credit, been a doughty fighter for legal aid, but he has been hampered by being answerable to a department that seems to be singularly lacking a long term strategic vision.

None of the factors contributing to the rising legal aid budget have come out of the blue. Neither the rise in the costs of criminal cases nor increasing average costs of cases is surprising news. Much of this could be and was predicted by LAG and others, as was the danger to a cash-limited civil legal aid budget of a growing criminal one. Contracts, it seems, have not delivered the costs controls anticipated; again, this was to be expected, given that contracting did not tackle the problem of rising costs.

For many years now, the LCD has known that the average cost of cases rises at a rate above that of inflation. However, little has been done to identify why this happens. Many anecdotal reasons have been put forward for these escalating costs, for example, the growing complexity of the law and more demanding clients – but until the causes are identified, fully analysed and understood – this year on year increase cannot be justified to an eagle-eyed Chancellor of the Exchequer or any solutions devised.

This government claims to be committed to evidence based policy making, but in the field of legal aid, we seem constantly to deal with guesswork, supposition and blame. The LCD has too little concrete information about the factors that drive up the legal aid budget, which, in turn, makes it difficult to argue for more money from the Treasury. LAG believes that the LCD must now start funding serious, ongoing research that would enable proper predictions to be made about the impact of new legislation, policy changes and legal culture on the legal aid budget. If the policies of other government departments are driving up the legal aid budget, then they should make money available to ensure that those people affected by changes in legislation are not denied access to justice. It is time for legal aid to be resourced properly and for ad hoc cuts to scope, eligibility and remuneration to stop.

news

LAG calls for statutory tenancy deposit scheme

Legal Action Group has given its support to proposals from the Office of the Deputy Prime Minister (ODPM) for a statutory scheme to handle deposits paid by tenants in private rented accommodation, and provide a swift means of adjudicating disputes. Responding to options for change suggested in *Tenancy money: probity and protection*, a recent consultation paper from the ODPM, LAG favoured the idea of a single custodial scheme, similar to the one that has operated successfully in New South Wales for many years. This model would require tenants' deposits to be placed in a single fund held by an independent third party.

LAG accepted that there is a well-established tradition of deposit taking by landlords, but argued that the time for regulation had now come. There was widespread evidence of landlords withholding deposits unfairly and, at present, tenants' only means of redress is through the lengthy process of a county court claim – which is of little use to a person who needs the deposit to secure a tenancy on alternative accommodation.

LAG argued against allowing landlords to opt out of a custodial scheme by using insurance-based alternatives. This would be confusing, and problems would arise if landlords defaulted on their premiums. Investment interest on the custodial scheme would also be undermined if landlords could use other options.

Nony Ardill, LAG's policy director, commented: 'Regulation of tenancy deposits would break the cycle of landlords worrying about tenants defaulting on their last month's rent because of tenants, in turn, worrying about landlords unreasonably withholding deposits. In the end, everyone wins.'

Many other organisations, including Shelter, Citizens Advice and the Law Society, have submitted responses in support of a statutory scheme. The idea is also supported by the Independent Housing Ombudsman, which is currently running a voluntary tenancy deposit scheme on a pilot basis. Shelter is seeking to persuade the government to include legislation on deposits in the forthcoming draft Housing Bill. An early day motion (EDM) on this issue, EDM 843, has been tabled in the House of Commons.

Tenancy money: probity and protection, November 2002, is available from the ODPM website: www.odpm.gov.uk, and tel: 0870 1226 236. For a copy of LAG's response e-mail: nardill@lag.org.uk.

LCD to revamp tribunal system

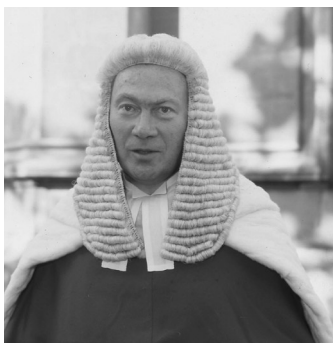
A unified tribunals service, bringing together the ten largest such bodies across central government, is to be established as part of the programme to modernise the justice system (see box). The new service, which will combine tribunal administration, has been proposed in response to Sir Andrew Leggatt's recommendations in *Tribunals for users – one system, one service*, published in August 2001.

The new service will be accountable to the Lord Chancellor's Department (LCD) as a distinct part of the justice system; the changes will offer an opportunity for more flexible use of tribunal judiciary, allowing them to sit in different jurisdictions. The framework adopted for the service will form the basis of more detailed proposals from the LCD, on which it plans to consult. These will be set out in a white paper, which is expected in the summer, and will address the need to increase tribunals' accessibility, raise customer standards, and improve administration.

The Council on Tribunals has welcomed the new service as a 'major step forward'. LAG has also given the proposed changes an enthusiastic welcome, expressing the hope that, in time, they will deliver a 'demonstrable improvement' in accessibility for tribunal users.

The ten tribunals and their sponsoring departments

- The Appeals Service (Department for Work and Pensions)
- Immigration Appellate Authority (LCD)
- Employment Tribunals Service (Department for Trade and Industry)
- Criminal Injuries Compensation Appeals Panel (Home Office)
- Mental Health Review Tribunal (Department of Health)
- Office for Social Security and Child Support Commissioners (LCD)
- Tax tribunals (LCD)
- Special Education Needs and Disability Tribunal (Department for Education and Science)
- Pensions Appeal Tribunal (LCD)
- Lands Tribunal (LCD)



Sir Andrew Leggatt

Joint committee makes case for a human rights commission

The Joint Committee on Human Rights has come out strongly in favour of a human rights commission. Its report, which marks the culmination of a two year enquiry, argues that a commission could help achieve a 'new relationship' between the citizen and the state, and would help promote a human rights culture in this country – a project that urgently needs driving forward. Through lack of leadership, public bodies tended to do 'enough to avoid litigation but no more', rather than putting human rights at the heart of their policies.

On balance, the committee favours integrating all strands of the human rights and equality agenda within a single body, although a separate human rights commission would be a 'viable alternative'.

The case for a Human Rights Commission (HL paper 67-I/HC paper 489-I), TSO, and see: www.parliament.uk.

news

Law Society introduces client's charter

The Law Society has launched a plain language charter setting out what clients can expect from solicitors and how to complain if they do not receive it. The *Client's charter* leaflet, which is backed by the Plain English Campaign, also says that solicitors should put clients' interests first, be polite and considerate and explain what the costs of the case are likely to be. The society has also circulated a new series of 'customer guides' to give advice in a number of areas of law, for example, on buying a home, getting divorced or making a will.

The society acknowledges that the number of complaints about solicitors has been rising in recent years. And its chief executive Janet Paraskeva, said, 'By improving the service solicitors offer, the charter should eventually help cut the number of complaints that reach the Law Society in the first place.'

Copies of the client's charter and customer guides are available at: www.lawsociety.org.uk. Solicitors may order additional free copies of both types of leaflet via e-mail: customerguides@lawsociety.org.uk or telephone: 020 7316 5605.

LAG supports merger of land and housing tribunals

LAG's response to the Law Commission's latest consultation paper on land, valuation and housing tribunals gives support to the proposal that these tribunals be amalgamated (see March 2003 *Legal Action* 9). In particular, LAG welcomed the suggestion that tribunal members should be 'ticketed' to hear different types of case, allowing career progression and optimum flexibility in allocation of cases. The commission's final report is due to be published in July 2003.

Copies of the consultation paper are available at: www.lawcom.gov.uk and from TSO bookshops.
For a copy of LAG's response e-mail: nardill@lag.org.uk.

Social Exclusion Unit to focus on mental health and employment

Two new projects aimed at tackling social exclusion will examine the barriers to opportunity faced by people with mental health problems, and what more can be done to reduce unemployment levels in the most deprived areas of the country. The Social Exclusion Unit, which is charged with the task of finding 'joined up' solutions to problems and is now based in the Office of the Deputy Prime Minister, will be consulting on both these topics over the summer, and is expected to report back within a year.

However, in choosing these issues, the unit rejected a shortlisted option to examine the role of legal and advice services in promoting social inclusion. Nony Ardill, LAG's policy director, commented: 'From our point of view, this is very disappointing news. A report from the Social Exclusion Unit could have made a big difference to government thinking. Sadly, the fact that this issue was not selected shows there is still a long way to go in making out the case for legal and advice services.'

LCD committee work programme begins

Among the first tasks being carried out by the select committee on the Lord Chancellor's Department are inquiries into the immigration and asylum appeals process, and into the work of the Children and Family Court Advisory and Support Service. The committee has also held the final part of its public evidence sessions on the Courts Bill, which is currently progressing through parliament, and will shortly question the Lord Chancellor, Lord Irvine, on his department's work, his constitutional role, and the judicial appointments system.

The committee has invited written submissions on any aspect of the immigration appeals process, but it will have particular regard to:

- the extent to which the latest reforms have produced any significant efficiency savings and/or improved the quality of the appeals process;
- the costs to public funds of supporting new appeals structures, such as the Asylum Support Adjudicators, and of supporting the extension of legal aid;
- the extent to which the immigration appellate authorities could be made more efficient, without sacrificing fairness;
- whether the relevant procedure rules properly balance fairness and justice with efficiency;
- whether there is sufficient availability and provision both of legal advice and representation and of interpretation facilities for appellants in asylum and immigration cases; and
- the extent to which 'non-suspensive' appeals provide an adequate right of appeal.

Submissions should be sent, by 4 April 2003, to Huw Yardley, Clerk of the Committee on the LCD, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. E-mail: lcdcom@parliament.uk. Guidance on the submission of evidence can be found at: www.parliament.uk/commons/selcom/witguide.htm.

Increase in family visit visa refusal rates

There has been a marked increase, since August 2002, in the overall refusal rate for family visit visa applications, according to government figures revealed in response to a parliamentary question asked earlier this year.

In the period from 1 August to the end of November 2002, the refusal rate was 27.5 per cent, compared with 20.2 per cent in the period from 1 January 2001 to 31 July 2002, and 10.7 per cent in October to December 2002, the first three months of the scheme's operation.

Citizens Advice, in its latest report on the issue, has suggested that entry clearance officers have now hardened their decision-making – a suggestion that, in correspondence with the organisation, the government has denied. LAG shares the concern of Citizens Advice and other consultees that the government has not yet published the report on family visitor visas from the interdepartmental review team: its publication was promised 'by December 2002'.

* *Hansard* HC Written Answers cols 569–70, 27 January 2003.

LEGAL SERVICES

Legal education in the community

It is a common complaint within the not for profit (NFP) sector that casework pressures have limited the scope for community legal education. **Nony Ardill**, LAG's policy director, examines how this work has evolved, particularly in law centres, and looks at its potential for development. This article is based on a presentation to a workshop at the recent Law Centres Federation (LCF) conference.

It is largely through the activities of law centres and independent advice centres that community legal education (CLE) has emerged in this country. Few definitions of this work have been attempted; it could perhaps be described as an interactive form of public legal education that is targeted towards the community, or a section of it, ideally integrated into a range of other, local, legal services. At its simplest, CLE can involve leaflet or poster campaigns that encourage people to visit a local advice agency for further information on a particular issue. At a more sophisticated level, it can involve community training courses on legal rights, or role-play and theatre. All these approaches share the aim of making individuals within a community aware of how the law directly affects their lives, and empowering them to exercise their legal rights.

Neighbourhood law firms

In the mid 1960s, as part of the 'war against poverty', pioneering work in the US led to a number of groundbreaking approaches to legal services. The most important of these was the growth of 'neighbourhood law firms'– lawyers' offices located in 'poverty areas', staffed by salaried lawyers who served their clients in traditional ways, but also embraced a broader approach to legal services – incorporating law reform, and community action and education. Within these firms, community education was seen as a means of breaking down barriers of ignorance about the law and lawyers, and giving real meaning to legal rights. The methods that the firms used included lectures and debates, discussions in local clubs and associations, talks in schools, promotion though local television and radio, and the use of leaflets and wallet-sized cards giving information about legal rights.

The idea of neighbourhood law firms crossed the Atlantic and was promoted enthusiastically in the UK by the Society of Labour Lawyers. In 1968, the society published its influential pamphlet, *Justice for all*, with the aim of suggesting new ways of meeting the unmet need for professional legal services for the poor. The pamphlet described the work of neighbourhood law firms in the US, documenting the firms' pioneering approach to CLE.

CLE within law centres

Despite the efforts of the society to promote to the Lord Chancellor's Department salaried civil legal services to complement the work of private practice, it was local initiatives rather than any change in government policy that led to the birth of the law centres' movement in this country. The first law centre opened in North Kensington in 1970 and, from 1973 onwards, the movement gathered pace.

Without doubt, another early influence on the development of law centres was the work of the Community Development Projects (CDPs) in the early 1970s. These projects, run by the Home Office in partnership with local authorities, were an action research experiment seeking better solutions to the problems of deprivation. Half of the CDPs employed lawyers, and used CLE to help tackle deprivation. For example, Coventry CDP employed a community lawyer and welfare rights adviser, who collaborated in organising legal education for key representatives of community associations and trade unions so that they could deliver basic rights information to their members. This work was accomplished through training events – or 'teach-ins' – and backed up with leaflets giving information on legal rights.

Although most law centres gave a high priority to casework, there was a widespread recognition that the movement should encourage and develop other ways of meeting legal need. In 1974, the Law Centres Working Group – the precursor of the LCF – published its report, *Towards equal justice*, which argued that law centres should help create community organisations and work with these organisations to promote awareness of legal rights. In the 1970s and early 1980s, many law centres and other advice agencies secured funding from the Urban Aid programme, a regeneration funding stream that accepted the value of CLE as part of the overall provision of legal services to communities suffering multiple deprivation.

By the early 1980s, many law centres had begun to complement their casework with community-based approaches, and a number of them employed community or outreach workers. The LCF began to assert more strongly that education on legal rights should be recognised as part of law centres' activities. The LCF's 1983 pamphlet, *The case for law centres,* stated: 'It is an integral part of a law centre's work to spread knowledge of legal rights, remedies and duties.' The pamphlet listed 100 booklets, news-sheets and posters produced by law centres, and gave examples of good practice. These included Small Heath Law Centre's 'rights game kit', which used role-play games to educate young people about the law. The same law centre also published a school leavers' handbook and a resource handbook for pensioners. South Manchester Law Centre ran community-based training sessions on matrimonial breakdown, leading to the production of an advice pack. Many law centres had undertaken extensive training and publicity on the impending changes to nationality law, encouraging Commonwealth citizens to register as British while they still could.

A second edition of *The case for law centres,* published in 1985, reaffirmed law centres' commitment to CLE. It described, for example, how Hammersmith and Fulham Law Centre had given 18 talks to an estimated 220 local people on housing rights, welfare benefits and discrimination; it also documented the work of Stockton Law Centre in running a 12-week adult education course on welfare law. But the third edition of the pamphlet, published in 1989, was extensively rewritten – no doubt as a reflection of the political climate of the time. References to CLE and training were reframed as 'encouraging self-help and providing sufficient information to reduce dependence on lawyers', thus removing potentially unpopular references to 'community' at the same time as emphasising personal self-reliance.[1]

A new funding climate

By the early 1990s, law centres and other advice agencies were fighting a rearguard action against cuts to their funding, particularly from local authorities. Many organisations, forced to operate with reduced numbers of staff, found that community-based work, including legal education, was being squeezed out by the pressures of casework, and perhaps by a suspicion that they should present themselves as less 'political' in order to survive. The LCF's annual report for 1991/1992 remarked: 'In the face of a growing push from funders and other institutions to force law centres to do more and more individual casework, the community workers in law centres have joined together to promote a better

understanding of their strategic and valuable role in law centres.'

Pressure on NFP agencies to shift towards a greater emphasis on casework continued unabated throughout the last decade. More recently, the advent of contracting for legal help work has – indirectly – made matters worse, having provided some local authorities with an excuse to make further cuts to the advice sector. Unless organisations have access to dedicated funding, or at least funding that is not ring-fenced for casework, their ability to carry out CLE is severely curtailed. Nonetheless, fundraising efforts have enabled some law centres to continue with non-casework legal services, including CLE work; for example, Carlisle Law Centre obtained funds from the Community Fund to provide a mobile legal education unit for the whole of Cumbria. Thamesmead Law Centre raised money from the same source for a policy and development worker – who undertakes outreach work including CLE. The second round of the Legal Services Commission's (LSC) Partnership Initiative Budget (PIB) will focus partly on CLE work, but the PIB is limited to £2 million per year and projects are time-limited. In the present funding climate, pro bono initiatives may be seen as the only option. Recently, the College of Law, in partnership with the Citizenship Foundation and solicitors firm Eversheds, has launched a 'Street Law' legal education project – an idea that has been imported from the USA.

Measuring outcomes

Another factor that has contributed to the pressures on CLE is the quality assurance model adopted by legal aid franchising and subsequently by the Specialist Quality Mark. Under this model, the quality of casework is assessed largely by management proxies; arguably, this has fostered an expectation that all legal services should generate outputs that can be easily and mechanically measured. Clearly, CLE does not lend itself to this sort of assessment. On the other hand, concerns about the lack of agreed measurable outcomes for this work perhaps have some validity. Research published in 1996 on alternative methods of delivering legal services highlighted the danger of information work and leaflets being poorly targeted, and raised general concerns about the lack of defined quality assurance mechanisms.[2]

So, how can CLE projects be evaluated appropriately? Baseline figures need to be available for the target community group, and significant variables – such as age, sex and language – should be taken into account to allow 'before' and 'after' comparisons. There may be difficulties if outcomes are defined too narrowly or if qualitative methods are ignored in favour of purely quantitative approaches, such as the number of cases avoided or resolved. Measuring the effect of CLE on social capital or inclusion, for example, may best be achieved by qualitative assessment.[3] It may also be helpful to draw on the evaluation of work in other professional disciplines, such as community development.

The LSC accepts that evaluation of PIB-funded work on CLE should be both qualitative and quantitative, and should be tailored for individual projects.[4] It remains to be seen whether projects will have the skills or resources to assess less obvious results, for example, the positive impact of personal or collective confidence gained from legal knowledge. Members of the community may also reinforce each other's knowledge of rights, especially once this information is put to practical use. The full impact of CLE work may only become apparent after a period of time; outcomes may need to be measured over the full length of a project – or even beyond – in order to be meaningful. There is also potential for CLE projects to provide valuable insights into areas of legal need within the community.

The information age?

The availability of rights information on the internet from governmental and other sources has perhaps served to eclipse the value of CLE. However, the two have distinct functions. The internet can provide access to a wide range of legal knowledge, can be easily updated and for the most part is available free of charge, but it has limitations. Those on the receiving end need to have a reasonable level of literacy to understand it and, for access to be effective, they also need to be self-motivated, and have a level of IT skill and access to such facilities. As with any legal information delivered outside an interactive advice setting, there will be problems engaging people who do not have a basic level of 'legal literacy' on which they can build.

The current trend for government departments and other statutory agencies to develop their role as information providers should be welcomed. But it would be a mistake to see these resources as a substitute for CLE – still less as replacing independent legal and advice services. Regardless of accuracy or accessibility of style, information that is offered passively is less likely to reach its target audience. Even when information succeeds in reaching its audience, it will probably just prompt the need for advice or – worse still – leave people confused. Citizens advice bureaux have found that benefit take-up campaigns aimed at older people are more successful when there is face-to-face contact with advisers.[5] Whether legal information is delivered through the internet or by more conventional means, for socially excluded communities there is a strong argument for complementing it with CLE, delivered on the ground by local organisations.

Conclusion

At a time when the very future of legal aid is being subjected to close scrutiny, there is an opportunity to reappraise the value of CLE as part of an integrated, holistic approach to legal services. The contribution that it can make to tackling social exclusion, building social capital and supporting the government's citizenship agenda needs to be more widely promoted. Its role in providing feedback on how communities experience legal need, and how that need can best be met, also needs to be examined. Traditionally, the NFP sector has had a monopoly on this work, but, in principle, there is no reason why it could not also be undertaken by private practice firms or even by other bodies.

Although the history of CLE has been characterised by innovation – and often inspiration – its ad hoc nature and the lack of consistency in measuring quality and outcomes has been problematic. The current round of PIB-funded projects could provide a useful starting point for developing evaluation techniques, and could also provide an opportunity for sharing good practice – and even for training. One option would be to use a lighter touch for assessing projects that adopt established and proven approaches to this work. If properly evaluated, CLE stands a stronger chance of attracting much needed funding from sources outside the LSC.

1 Nonetheless, the pamphlet described how two law centres had produced and distributed 1,600 Christmas cards to shop workers in London informing them of their holiday rights.
2 *Alternative methods of delivering legal services*, Bull and Sergeant, Policy Studies Institute, 1996.
3 Social capital has been described as the networks, norms, sanctions and levels of trust that shape social interaction.
4 *Partnership Initiative Budget: post-consultation summary report:* LSC, September 2002.
5 *CAB campaigns for benefit take-up among older people*, NACAB, 2002.

HOUSING

Possession cases and defendants' experiences

Caroline Hunter, senior lecturer in housing law at Sheffield Hallam University, discusses findings from research into the experience of ethnic minorities in housing possession cases conducted for the Lord Chancellor's Department's (LCD) Courts and Diversity research programme.

Introduction

In spring 2001, in response to the report of the Stephen Lawrence inquiry, the LCD launched a research programme specifically dedicated to examining whether, and to what extent, the court system deals fairly and justly with the needs of a diverse and multi-cultural society. One of the elements of the programme was to examine the experience of people from ethnic minorities in housing possession cases. In particular, the study sought to explore the perceptions, experiences and understanding of the court functions and processes among black and minority ethnic (BME) defendants, and more widely within their communities. It also sought to examine the experience of BME defendants of the possession process, as compared with those of white defendants. This article summarises the outcomes of that research and seeks to draw some conclusions for those involved.[1]

Getting into arrears

The experience of the defendants of getting into arrears of both mortgage and rent was similar to that of those in earlier studies,[2] with problems caused by low and fluctuating incomes. Respondents were therefore generally 'can't payers' rather than 'won't payers'. For tenants, the problems of housing benefit now perhaps seem more pervasive and overwhelming than in earlier studies of rent arrears. As noted below, this affects their view of the whole possession process. The reasons for getting into arrears did not appear to differ between white and BME households, although it might be suggested that the problems of dealing with housing benefit may be aggravated for those for whom English is not a first language. There was also some evidence that the need to support family members abroad, and to travel in order to do this, may in some circumstances impact particularly on the abilities of some BME tenants to pay rent.

The response of landlords to the arrears was perceived as largely bureaucratic. For those with housing benefit problems whose landlord was also the administering local authority, it was difficult to understand why the issue could not be 'sorted out.' The experiences with local authority staff were variable, but generally negative, as they were felt not to offer a sufficiently personal approach. There were some perceptions that there was racism in the way that people were treated. This arose generally from comparisons with how others had been treated, and involved not just those from BME respondents feeling that they had been treated worse, but also those white respondents comparing their treatment unfavourably with those of BME tenants.

Advice and assistance

While advice and assistance may be important in ensuring that housing possession cases are dealt with properly and with all the necessary information, it is clear that many defendants experienced barriers to obtaining such help. Some of these barriers, such as the practical difficulties of accessing advice services (eg, phone lines engaged, opening hours not convenient, or location not accessible), impact across all communities. For those who do not have English as a first language and for particular ethnic minorities, however, there may be greater barriers to seeking advice and assistance than for other defendants. These are related to both the difficulties in finding help from those speaking the relevant language and also cultural barriers which may lead to a reluctance to seek help because of the stigma and shame attached to the court process.

Going to court

The level of debt at the date of the summons was variable, although substantial amounts were generally owed by the time one was issued. There was some evidence of higher levels of arrears at this stage among Asian tenants. The institution of effective ethnic monitoring would enable further studies to analyse whether there were differences in the practices of landlords and lenders which were affecting the levels when action is taken, and whether there is any form of ethnic bias in practices. Given that the outcome of cases will be affected by the level of arrears at the date of hearing, it is important to gain a greater understanding of what affects this level, including whether it varies in relation to different BME defendants and how housing benefit problems impact on this. Thus, any monitoring would have to include not just the final outcome of cases, but also the levels of arrears when landlords/lenders institute the proceedings and whether there are housing benefit issues impacting on the case.

The experience of receiving a summons is clearly very stressful, whatever the ethnicity of defendants. Responses to the summons may, in some circumstances, be affected by whether housing benefit is an issue or not. For those who were 'battling' over housing benefit, the court process seemed almost irrelevant, and simply added to the anger and frustration felt. The importance of responding through the reply form was recognised, with a majority of respondents (20 out of 38) completing and returning them. For a small number of defendants, completing the reply form presented difficulties.

Complex views were expressed about the perception of the court proceedings and illustrate that there is no simple perception of the fairness of civil justice proceedings; these views are entangled with those about the criminal system. While the views of the focus groups illustrate that there is, among BME communities, a general perception of the fairness of judges, this is tempered by their own experiences of racism, and a belief that it is deep-rooted in society. The views of African-Caribbean defendants living in London were particularly negative, and based on their previous experiences of being involved in a range of criminal and civil matters. Views of potential disadvantage because of race were intertwined with a perception that class also provided a barrier to participating successfully in any court proceedings.

The decision to attend court or not for those faced with such proceedings, seems largely influenced by the interactions that defendants have with claimants, with some landlords clearly encouraging a view that the court process was not important. One defendant, who did not attend the hearing, reported the following interchange with his housing officer:

With my situation at that moment, he [the housing officer] said that there isn't really anything I could do to stop it. He said: 'it's just best to let it run its course'.

Unsuccessful efforts to deal with problems such as housing benefit may lead to emotional fatigue, with defendants resigned to accept whatever decision the court may make. The (mis)perception of the court process interacts with this, reinforcing the decision that it is not worthwhile to attend.

For those defendants who chose to attend, however, the experience of their day in court is no doubt influenced by the physical surroundings and the arrangements for the hearing. The physical design and layout of court buildings, the lack of clarity about simple procedures and the general, confused atmosphere in court waiting areas contributed further to defendants' state of anxiety; so too did the seemingly random way in which defendants arrive at the appropriate chamber, and do, or do not, obtain advice from the duty desk. Defendants' experiences point to a number of issues which require further reflection and consideration, for example, court design and layout, including signposting, clarity about procedures and the availability of court personnel.

Although judges may, on the whole, be white and male (and are certainly expected as likely to be such by focus group participants and defendants), there is no evidence that this affects their treatment of different defendants. Although some respondents felt that the ethnicity of judges would affect their view of the fairness of the process, more sophisticated views were also expressed, with the important matter being respect and an understanding of cultural issues. None of the defendants felt that they had been treated unfairly and this was generally reinforced by the views of advisers and court staff.

Different patterns of initial outcomes (adjournment, suspended possession or outright possession) were evident at the various courts, possibly reflecting several levels of problems with housing benefit. Although there were slightly different patterns of outcomes for some ethnic groups, without a much larger scale study it is impossible to state whether these are of any significance. It was, however, clear that defendants, whatever their ethnicity, had difficulty understanding the meaning of any court decision and, not surprisingly, this was especially true for those who did not attend the court hearing.

Themes

A number of themes ran through the research. Perhaps the most pervasive, but of no surprise to those working with tenants, was that of problems with housing benefit. For the majority of tenants, this affects their whole view of the housing possession process and can be a cause of disengagement with the court proceedings. It also affects outcomes in court, with district judges having to institute procedures to deal with it. While these problems affect all tenants, irrespective of race, it should not be forgotten that some ethnic minority groups are disproportionately dependant on benefit and may be more affected than others by these problems.

A second theme was the barrier of language for those who do not have English as a first language. This affects the whole process: from dealing with landlords/lenders through to understanding the summons and being able to communicate in court. While there are no easy answers to this problem, there are some easy changes, eg, signage in court in significant community languages, which could have an immediate impact.

Finally, there is a confusion about the whole court process. It is clear that many people are confused about the difference between criminal and civil proceedings. Not only the focus group members, but also defendants made frequent reference to features of the criminal courts when talking about the county court. When non-attenders were asked what, if anything, would have made them feel more confident about attending the court hearing, most people agreed that there was a need for greater information about the court process which could help demystify it and reduce peoples' fears and anxieties about appearing at hearings.

The research showed that for some there was a deep-rooted fear of official processes, which in part appeared to be exacerbated by a failure in communication. The fear that prejudice may occur within the civil court system was expressed by virtually all the focus group respondents. This fear that differential treatment may occur as a result of not having an English sounding name or being white was often based on anecdotal evidence and the experience of discrimination in other areas of life, most specifically employment opportunities and racist media portrayals of different communities. Addressing such fear was seen as being very important in terms of developing and building a sense of trust in the essential fairness of the civil judicial system.

Conclusions

The report illustrates that there is much that can be done by the LCD and the Court Service to improve the experience of defendants in housing possession cases. Some of these, such as better court signage, including in minority languages, are relatively easy to implement. Ethnic monitoring is more problematic, and has been addressed in a separate report,[3] but there is room for further development here. The start made by the research programme shows a willingness to address the issues, which will hopefully be carried into action.

However, there is also much that can be done by others. The problems of housing benefit stand out, and need a concerted effort from both local authorities and central government to ensure that the service is improved. It is important that the problems of housing benefit do not simply become a brick wall against which tenants finally give up battering their heads, and simply disengage from the possession process. Social landlords and large lenders, in so far as they have not already done so, could usefully develop monitoring systems which look at how their actions around eviction impact on different BME groups.

For advisers and representatives and the Community Legal Service there are also lessons about accessibility, particularly for BME groups, which need to be addressed, for example, how can BME groups be reached more effectively?

The whole legal and advice community also needs to address how a better understanding of the legal system, and its demystification, can reach those who are currently technically users of it, but are excluded, through fear and misunderstanding, from being effective users.

1 The full report, Sarah Blandy, Caroline Hunter, Diane Lister, Lisa Naylor and Judy Nixon, *Housing possession cases in the county court: Perceptions and experiences of black and minority ethnic defendants*, 2002, LCD Research Series No 11/02, is available from Research Unit, Lord Chancellor's Department, Selborne House, 54–60 Victoria Street, London SW1E 6QW, tel: 020 7210 8520 or e-mail: research@lcdhq.gsi.gov.uk. Details of the methodology, which included focus groups with different communities and interviews with tenants, can be found in Appendix 2 of the report.

2 See Janet Ford and Jenny Seavers, *Housing associations and rent arrears: attitudes, beliefs and behaviours*, 1998, Chartered Institute of Housing, and Judy Nixon, Caroline Hunter, Benita Wishart and Yvonne Smith, *Housing cases in the county court*, 1996, Policy Press.

3 Sara Candy and Vanessa Stone, *The introduction of a question on ethnic background into the civil justice system*, 2001, LCD Research Series 1/01, available from the above address.

law & practice

CRIMINAL LAW

Police station law and practice update

Ed Cape begins a new series, to be published every six months, which will cover developments in law and policy affecting police station practice. This article is devoted to the revised Codes of Practice A to E to the Police and Criminal Evidence Act (PACE) 1984, which came into force on 1 April 2003.

On 1 December 1999, the Home Office announced that it was about to begin a review of the PACE Codes of Practice A to E, which had last been revised in April 1995. The revised codes have finally been implemented in April 2003. In the meantime, there have been at least half a dozen major pieces of legislation affecting police station practice, and the Criminal Justice Bill is rapidly passing through parliament. In addition, a new PACE Code F has been implemented in certain police stations, modifications have been made to Codes C and D, which apply in various areas of England and Wales, and temporary modifications were made to Code D in April 2002 (see August 2002 *Legal Action* 24).

The revised codes may not last long. The joint Home Office/Cabinet Office review of PACE, published in November 2002, recommended that by early 2004 the codes should be 'reworked into a framework of key principles with the more detailed guidance moving to National Standards', partly because detailed codes can 'be used by [defence] solicitors to undermine cases'.

Code A – Code of Practice for the exercise of statutory powers of stop and search

Home Office statistics on the use of stop and search powers show wide variation in the use of the powers by different police forces, and unjustifiable differences in the use of the powers as between people of different ethnic origins – a black person is eight times more likely to be stopped and searched than a white person. The revisions to Code A are, in part, designed to tackle these issues and it now includes a statement that the powers must be used 'fairly, responsibly, with respect for people being searched and without unlawful discrimination', together with a reminder that the police are now covered by the Race Relations (Amendment) Act 2000 (para 1.1).

In a major change, para 1.5 now provides that a search must not be conducted, even with a person's consent, unless there is a legal power to do so. The only exception to this is where a person is searched as a condition of entering a sports ground or other premises. The code distinguishes between searches that require reasonable grounds for suspicion in relation to the person to be searched (eg, PACE Part 1 or Terrorism Act (TA) 2000 s43), and searches that do not require such suspicion (eg, searches authorised under Criminal Justice and Public Order Act (CJPOA) 1994 s60 or under TA s44(1) and (2), and powers to search a person who has not been arrested in the exercise of a power of search of premises (see Code B Note for Guidance 2C).

Searches requiring reasonable suspicion

Paragraphs 2.2 to 2.11 contain yet another attempt to define reasonable grounds for suspicion, the highlight of which is para 2.2:

> *Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind or, in the case of searches under section 43 of the TA, to the likelihood that the person is a terrorist. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned …*

However, paras 2.3 and 2.6 water down this strong description of reasonable grounds.

Searches not requiring reasonable suspicion

These provisions are updated to take account of:

- The insertion of s60AA into the CJPOA by Anti-terrorism, Crime and Security Act (ATCSA) 2001 s94, which permits a police constable in uniform to demand the removal of, and to seize, any item which s/he reasonably believes is being worn wholly or mainly for the purpose of concealing identity. This power is only available where an authorisation has been granted under s60 or s60AA(3).
- The powers to stop and search under TA s44, which are largely a re-enactment of the powers under Prevention of Terrorism (Temporary Provisions) Act 1989 ss13A and 13B.
- The power under Criminal Justice Act 1988 s139B (inserted by Offensive Weapons Act 1996 s4) to enter school premises and search those premises, or any person on those premises, for an offensive weapon or pointed or bladed instrument.

Recording requirements

The draft revised Code A, published for consultation in March 2002, incorporated a requirement that whenever a person was required to account for him/herself to a police officer, a record of the encounter was to be made at the time and a copy given to the person. This was to give effect to recommendation 61 of the Macpherson report into the death of Stephen Lawrence. However, this requirement has been dropped and the Home Office has indicated that it is now to be piloted by seven police forces commencing in April 2003.

Where a search is carried out under a power to which the code applies, a record must be made at the time 'unless there are exceptional circumstances which would make this wholly impracticable' (para 4.1). This is a stronger requirement than under the former code which exempted an officer from making a record at the time if it was not practicable to do so. If a record is not made at the time, an officer must do so as soon as practicable afterwards. The record must be given to the person concerned immediately (para 4.2).

Monitoring and supervising the use of stop and search powers

The Macpherson report was concerned about the disproportionate use of stop and search powers, and, in addition to the recording requirement, recommended that stop and search should be monitored and supervised properly. Code A gives effect to this recommendation by requiring supervising officers to monitor the use of stop and search powers, who 'should consider in particular whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations' (para 5.1). Any apparently disproportionate use of such powers by particular officers, or groups of officers, or in relation to specific sections of the community must be identified and investigated (para 5.3), and arrangements must be made for the records to be scrutinised by representatives of the community, and to explain the use of the powers at a local level (para 5.4).

Code B – Code of practice for the searching of premises and the seizure of property found on persons or premises

The main changes to Code B relate to the 'search and sift' provisions of Criminal Justice and Police Act (CJPA) 2001 Part 2, which were introduced following the case of *R v Chesterfield Jus-*

tices and another ex p Bramley [2000] 2 WLR 409 (see below) Code B para 1 places search and seizure within the context of the right to privacy under article 8 of the European Convention on Human Rights ('the convention') and states that 'Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy.' There is no similar reference to convention rights in Codes A or C.

Essentially, Code B covers all statutory powers of entry, search and seizure by police officers (para 2.3), except those granting a power of entry or inspection in circumstances where there is no requirement for the existence of grounds for suspecting that an offence may have been committed (para 2.5). Furthermore, Code B does not affect any directions of a search warrant or order, lawfully executed in England and Wales, that any item or evidence seized be handed over to a police force, court, etc outside of England and Wales (para 2.6). The relevant provision of the Code also applies to immigration officers acting under powers granted by Immigration Act 1971 Part III and Schedule 2 (Note for Guidance 2D).

Seizure and retention of property

Generally, PACE Part 2 only permitted the police to seize (and thus remove from the premises) anything covered by a warrant, or anything which an officer had reasonable grounds for believing was evidence of an offence, or had been obtained in consequence of the commission of an offence (reflected in former Code B para 6.1). Property not coming within that description, and property subject to legal privilege, could not be seized. The *Bramley* case made it clear that the PACE powers did not entitle the police to seize material for the purposes of sifting it elsewhere.

Part 2 of the CJPA permits the police to remove material where it is not reasonably practicable, as a result of time or technology, to determine whether it is subject to seizure, or where it is comprised in something else that is not seizable. This is reflected in Code B s7 and para 7.7, which require officers in such cases to consider carefully whether removing copies, or images, or relevant material or data would be a satisfactory alternative to removing originals. Where originals are taken, the police must be prepared to facilitate the provision of copies or images for the owners where this is reasonably practicable.

Where 'mixed' material is seized, it must be stored securely and separately from other seized material, and an examination of the material, in order to determine which elements may be retained, must be carried out 'at the earliest practicable time, having due regard to the desirability of allowing a person from whom the property was seized, or a person with an interest in the property, an opportunity of being present or represented at the examination' (para 7.8). Where an examination is carried out in the absence of an interested person who asked to attend, s/he must be given a written notice of the reason (para 7.9). Legally privileged, excluded or special procedure material that cannot be retained must be returned as soon as reasonably practicable, without waiting for the whole examination to be completed (para 7.9B).

Code C – Code of practice for the detention, treatment and questioning of persons

The 1995 version of Code C was modified with effect from 20 May 2002 to facilitate the drug testing powers incorporated into PACE by Criminal Justice and Court Services Act (CJCSA) 2000 s57. In particular, s17 was added to Code C setting out the procedure for drug testing after charge. These provisions apply only to the police areas of Bedfordshire, Devon and Cornwall, Lancashire, Merseyside, the Metropolitan Police district, Nottinghamshire, South Yorkshire, Staffordshire, North Wales, Avon and Somerset, Greater Manchester, Thames Valley and West Yorkshire.[1] These modifications have not been incorporated into the revised Code C as the pilots are still continuing. Presumably, when the pilot phase is completed, consideration will be given to applying the modifications nationally, with a permanent revision to Code C being made.

A number of provisions have been included or amended in an effort to improve the treatment of vulnerable suspects. In particular, special care must be taken in respect of those who are 'mentally disordered or otherwise mentally vulnerable' and the latter term applies to 'any detainee who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies' (Note for Guidance 1G). This would appear to include a person whose mental state is affected adversely by drink or drugs since the expression is not confined to persons whose mental state is affected by some kind of clinical disorder.

Custody records

Code C para 2.4 provides that a solicitor or appropriate adult must be permitted to consult the custody record of a client 'at any other time whilst the person is detained', and not just after arrival at the police station (which was the case in the 1995 version).

Initial action

Code C paras 3.1 and 3.2 set out the information that must be given to an arrested suspect at the police station, and are almost identical to the provisions in the same paragraphs of the former code. Paragraph 3.2 provides that the written notice to be given to a suspect must set out 'the caution in the terms prescribed in *section 10*'. However, this caution may not be the one that is eventually given since, as a result of restrictions on the drawing of inferences imposed by CJPOA ss34(2A), 36(4A) and 37(3A) (inserted by Youth Justice and Criminal Evidence Act (YJCEA) 1999 s58), a different caution must be administered where a person has asked for legal advice at the police station, but has not been permitted access to a solicitor (see below). Thus, suspects (in a minority of cases) may be positively misled about the consequences of failing to mention relevant, facts, etc.

One of the criticisms made of the former Code C was that while the obligation to determine whether a suspect was vulnerable and, therefore, in need of an appropriate adult was imposed on all police officers dealing with him/her, it did not place specific responsibility on a custody officer to do so. Code C para 3.5 now requires a custody officer to consider whether a suspect is vulnerable, and paras 3.6 to 3.10 require a custody officer to initiate a structured risk assessment of whether a detainee is likely to present specific risks to custody staff or him/herself, and to respond appropriately if such risks are identified. Guidance on risk assessments is set out in Home Office Circular 32/2000 (not 23/2000 as indicated in the draft Note for Guidance 3E), and this requires a risk assessment to be carried out in respect of all persons entering police custody and the results entered in the custody record.

Right to legal advice

Changes to the wording of para 6.6, which concerns the ability of the police to interview a suspect who has requested legal advice without him/her having received such advice, mean that solicitors must be more careful about being available to attend the police station and agreeing the time of attendance with the custody officer. Section 58 of PACE sets out the right to legal advice, and provides that, in limited circumstances, access to legal advice may be delayed. Where a suspect has requested (and is permitted to have) legal advice,

s58(4) provides that s/he must be allowed to consult a solicitor 'as soon as is practicable'. Paragraph 6.5 (of the former and revised Code C) provides that unless delay is permitted by Annex B (which refers to the powers to delay under PACE s58 and TA s41 and Schedule 8) a custody officer must act without delay to secure the provision of such advice. However, there is nothing in PACE that prevents an interview from proceeding in the absence of legal advice.

Paragraph 6.6 provides that where a suspect wants legal advice s/he must not be interviewed, or continue to be interviewed, unless certain conditions are satisfied, broadly:

- Annex B applies (ie, the police have power to delay access under PACE s58 or TA s41 and Schedule 8. A superintendent or above has reasonable grounds for believing that the consequent delay *might* [emphasis added] lead to one of a number of consequences (generally, the same as the relevant conditions under PACE s58(8)), or for believing that awaiting the arrival of a solicitor who has been contacted would cause unreasonable delay to the process of the investigation (this waters down the former para 6.6(b) which used the word 'will').
- The solicitor(s) nominated cannot be contacted or will not attend, and the suspect refuses a duty solicitor.
- A suspect changes his/her mind about wanting legal advice.

Thus if a solicitor is contacted, but cannot attend the police station in the near future, it is important that s/he checks that the police would not attempt to proceed with an interview under para 6.6(b) before s/he has had the chance to give advice to the client. This is also relevant to the right of a suspect to have a solicitor present during the course of a police interview (para 6.8).

If a suspect who has requested legal advice is interviewed, or continues to be interviewed, without being given the opportunity to obtain such advice, it will not be possible to draw inferences from his/her failure to mention relevant facts, etc (on implementation of the amendments to CJPOA ss34, 36 and 37 by YJCEA s58) and the appropriate caution must be administered (Code C Annex C). This includes situations where delay in access to a solicitor has been authorised under PACE or the TA, and where a superintendent authorises an interview to proceed in the absence of legal advice under para 6.6(b). If attempts to contact a solicitor(s) nominated by a suspect are unsuccessful, and s/he declines the offer of a duty solicitor, or changes his/her mind about wanting legal advice, the restriction on drawing inferences does not apply, and the usual caution is to be administered (para 6.6 (c) and (d) and Annex C).

Care and treatment of detained persons

The role of members of the medical professions in relation to detained suspects is ambiguous – they may be involved because a suspect is in need of medical attention, but they are often involved to assist the police in deciding on detention or in obtaining evidence. In a new departure, Code C para 9.1 states that nothing in Code C s9 'prevents the police from calling the police surgeon [or other health care professional] to examine a detainee for the purposes of obtaining evidence relating to any offence in which the detainee is suspected of being involved'.

In a departure from the former code, the term 'appropriate health care professional' is generally used rather than 'police surgeon'. A health care professional means a 'clinically qualified person working within the scope of practice as determined by their relevant professional body' (Note for Guidance 9A). Whether a health care professional is appropriate 'depends on the circumstances of the duties they carry out at the time'.

Paragraph 8.10 of the 1995 Code provided that a suspect who is drunk must be visited at least every half an hour, and should be roused and spoken to on each visit. The approach of para 9.3 of the revised Code is more sophisticated, relating action to the risk assessment which must be conducted by the custody officer under para 3.6. Detainees who are suspected of being intoxicated through drink or drugs, or whose level of consciousness causes concern must, subject to clinical directions given by an appropriate health care professional, be visited and roused every half an hour and their condition must be assessed using an observation list set out in a new Annex H (the results of which must be recorded in the custody record (see para 9.15)).

A concern of many defence practitioners had been that there was confusion between whether a suspect is fit to be detained, and whether s/he is fit to be interviewed. The scope for this should be reduced in future since para 9.13 requires a custody officer to ask a health care professional who has been called to see a suspect both about the risks or problems associated with continued detention, and about 'when to carry out an interview', as well as any safeguards that are required. Furthermore, there is a new Annex G entitled 'Fitness to be interviewed', which provides guidance on assessing whether a detainee might be at risk in an interview. 'Risk' here means not only whether conducting an interview could significantly harm the detainee's physical or mental state, but also whether 'anything the detainee says in the interview about their involvement or suspected involvement in the offence about which they are being interviewed *might* [emphasis added] be considered unreliable in subsequent court proceedings because of their physical or mental state' (Annex G para 2(b)). Annex G goes on to set out specific factors that must be considered in determining fitness for interview, and requires the health care professional to advise on the need for an appropriate adult.

A further concern of many defence lawyers is that the police are often unwilling to disclose the medical findings of the police surgeon. The former code was unhelpful in this respect, Note for Guidance 9C providing merely that if a medical practitioner does not record his/her clinical findings in the custody record, the record must show where they are recorded. This is repeated in para 9.16 of the revised Code, but para 9.15 provides that a record must be made in the custody record of, inter alia, the injury, ailment or condition or other reason that made it necessary to call in a health care professional (although not necessarily the cause of any injury, etc (see Note for Guidance 9G)), and any clinical directions and advice given to the police concerning the care and treatment of a detainee.

Cautions

The circumstances in which a person must be cautioned remain generally the same in the revised code. The caution that was introduced following the CJPOA remains the one that must usually be administered on arrest, and on all other occasions before a person is charged or informed that s/he may be prosecuted (Code C para 10.5). However, in view of the amendments to the CJPOA made by YJCEA s58, this caution is not to be used where inferences are not possible under the CJPOA as a result of those amendments. In those circumstances, the caution is 'You do not have to say anything, but anything you do say may be given in evidence', which is the same caution that must be administered where a person is (exceptionally) questioned after charge (Code C Annex C para 2). The circumstances in which the latter rather than the former form of caution must be given are set out in a new Annex C, and are broadly where a person in police detention has requested legal advice, but has not been allowed an opportunity to consult a solicitor before being interviewed, or where (exceptionally) s/he is interviewed after charge.

The provisions regarding special warnings under CJPOA ss36 and 37 remain substantially the same except to take account of the fact that, as a result of the amendment of ss36 and 37 by YJCEA s58, inferences cannot be drawn if a person has not been given the opportunity to obtain legal advice. A new Note for Guidance 10F points out that ss36 and 37 do not apply to questions that are put to volunteers.

Interviews

One of the most contentious issues in the 1995 version of Code C was the point at which interviewing must cease. The former para 11.4 provided that as soon as an officer believes that a prosecution should be brought against a suspect and there is sufficient evidence for it to succeed, s/he shall ask if the person has anything further to say. If a suspect indicates that s/he has nothing more to say, the officer must stop questioning the suspect about the offence. This had to be read in conjunction with para 16.1, which provided that when an officer considers that there is sufficient evidence for a prosecution to succeed and that a suspect has said all s/he wishes to say about the offence, an officer must take a suspect to a custody officer without delay, who must then decide whether to charge him/her.

Paragraph 11.6 of the revised code gives the police more latitude in continuing to interview a suspect even if there is sufficient evidence to charge. It permits interviewing to continue until an officer is satisfied that all the questions s/he considers relevant to obtaining accurate and reliable information about the offence have been put to a suspect, and the officer in charge of the investigation or, in the case of a detained suspect, the custody officer reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence if a person was prosecuted for it.

The recording requirements for interviews remain more or less the same, but note Codes E and F.[2] The provisions on urgent interviews at police stations of vulnerable suspects have been transferred from Annex C in the 1995 code to paras 11.18 to 11.20 in the revised code. The provisions remain broadly the same except that, in authorising an urgent interview, the superintendent (or above) must be satisfied that such an interview would not harm a suspect's physical or mental state significantly, and in doing so, s/he should have regard to the guidance on fitness for interview contained in Annex G.

Interviews in police stations

The provisions on rest periods and interruption of rest periods are more or less the same as under the former code except that para 12.2 provides that while such a period should usually be at night, in determining when it is to be, account should be taken of when a person last slept or rested. In line with the enhanced provisions on the care and treatment of detained persons, there is a new provision requiring the custody officer, in consultation with the officer in charge of the investigation and, if appropriate, the relevant health care professional, to assess a detainee's fitness for interview prior to any proposed interview (para 12.3).

Reviews and extensions of detention

This section has been restructured and re-written to take into account a number of developments. Broadly, the provision concerning who must conduct a review (which is governed by PACE s40(1)) remains the same. If a person is detained under TA s41 (on suspicion of being a terrorist), a review officer is an inspector or above for reviews within 24 hours of arrest, or a superintendent for all other reviews (Schedule 8 Part II para 24 and Code C Note for Guidance 15A). Note that reviews under these provisions must be carried out as soon as reasonably practicable after arrest, and then at 12-hour intervals (TA Schedule 8 Part II, para 21).

The review provisions apply only to a person who is in police detention, ie, who has been brought to the police station under arrest for an offence, or under TA s41, or a person who is arrested at the police station having originally attended voluntarily (PACE s118(2) or (2A) and Code C para 1.10). A new Note for Guidance 15B states that persons not subject to a statutory review requirement should still have their detention reviewed as a matter of good practice, and lists common examples of those not subject to statutory review.

Generally, a review officer must be present at the police station holding a detainee (Code C para 15.1). However, PACE s40A (inserted by CJPA 2001 s73 (2)) permits a review before charge to be conducted on the telephone if it is not reasonably practicable for the officer to be present and the video-conferencing facilities provided for under PACE s45A (inserted by CJPA s73(3)) are not available or it is not reasonably practicable to use them. This does not apply to decisions to extend detention beyond 24 hours, which must be in person (see Code C Note for Guidance 15F).

Charging detained persons

Paragraph 16.1 has been amended so that it reflects the realistic prospect of conviction test in para 11.6. However, there is some inconsistency since para 16.1 states that the officer in charge of an investigation must, if s/he reasonably believes that there is a realistic prospect of conviction, notify the custody officer without delay. Paragraph 11.4, on the other hand, seems to permit an interview to continue until an officer is satisfied all relevant questions have been asked irrespective of whether s/he believes there is sufficient evidence for there to be a realistic prospect of conviction. Furthermore, para 11.6(c) states that it is the custody officer who should apply the realistic prospect of conviction test in the case of a detained suspect, whereas para 16.1 indicates that responsibility for applying the test rests with the officer in charge of the investigation. The caution to be given on charge remains the same as under the 1995 code, except that para 16.2 makes provision for the alternative caution to be given in circumstances where inferences cannot be drawn as a result of denial of access to legal advice. The alternative caution is set out in Annex C.

Code D – Code of practice for the identification of persons

The modifications to Code D introduced, in April 2002, by Police and Criminal Evidence Act 1984 (Codes of Practice) (Temporary Modifications to Code D) Order 2002 SI No 615, which placed video identification on the same level as identification parades, and also made it easier for the police to justify not holding an identification procedure, have been incorporated into the revised Code D, although in a restructured form.

Where a suspect's identity is unknown

As in the 1995 version, where a suspect's identity is not known, witnesses can be taken to a particular neighbourhood, etc to see whether they can identify the person they saw. Paragraph 3.2 provides that while the conditions of an identification in these circumstances cannot be controlled, 'the principles applicable to the formal [identification] procedures' must be followed as far as practicable, and sets out examples of appropriate procedures. The procedure for the showing of photographs in Annex D of the original Code D are now in Annex E, but the provisions are substantially the same.

Where a suspect is known and available

Paragraph 3.4 distinguishes between cases where a suspect is known and available and those

where s/he is known, but unavailable, and defines both terms. The provisions in the 1995 version of Code D on when holding a parade was mandatory led to a number of conflicting Court of Appeal decisions, culminating in the House of Lords decision in *R v Forbes* [2001] 1 All ER 686 which decided that where the condition was satisfied a parade was mandatory irrespective of its perceived utility.

Paragraph 3.12 now sets out the circumstances in which an identification procedure must be held, the key difference being the reference to an identification procedure serving 'no useful purpose' (see *R v H* [2003] EWCA Crim 174 and *H v DPP* [2003] All ER (D) 220 (Jan)). Code D does not indicate who has responsibility for taking this decision, but, presumably, since an identification officer will not have been appointed at this stage, it will be the officer in charge of the investigation. Where, as a result of para 3.12, an identification procedure is to be held, a suspect must initially be offered a video identification unless such an identification is not practicable, or an identification parade is both practicable and more suitable, or the officer in charge of the investigation considers that a group identification is more suitable than either that of video or parade, and the identification officers consider it practicable to arrange (para 3.14). If a suspect refuses the identification procedure first offered, s/he must be asked to state his/her reason(s), but an identification officer can proceed with another form of identification if that suggested by a suspect is not suitable and practicable (para 3.15).

Where a suspect is known but unavailable

If a suspect is known but unavailable, an identification officer may make arrangements for a video identification (if necessary, using still rather than moving images) or a group identification (para 3.21). If video identification, identification parade or group identification is not practicable, a confrontation may be arranged (para 3.23).

Destruction and retention of photographs and images taken or used in identification procedures

Section 92 of the ATCSA, which came into force on 14 December 2001, inserted a new s64A into PACE giving statutory powers to take photographs of suspects detained at police stations, and retain them for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions. As a result, para 3.31 of Code D provides that photographs of suspects who are not detained, or moving images of suspects whether or not detained, which have been taken for the purposes of, or in connection with, an identification procedure must be destroyed unless they are charged, summonsed, cautioned, reprimanded or warned for a recordable offence,[3] or give consent, in writing, to their retention. Note that in view of PACE s64A(4), a photograph taken of a detained suspect does not have to be destroyed whether or not s/he is charged or informed that s/he may be prosecuted.

Identification by fingerprints

A person detained at a police station who has not been charged can have his/her fingerprints taken without consent if such action is authorised by an inspector (reduced from superintendent by CJPA s78(2)). The inspector must have reasonable grounds for suspecting that a person is involved in a criminal offence, and for believing his/her fingerprints will tend to confirm or disprove such involvement, or assist in establishing his/her identity (within the meaning of PACE s54A (inserted by ATCSA s90, which came into force on 14 December 2001). These and other powers to take fingerprints are reflected in paras 4.3 and 4.4. Note, in particular, the power to take fingerprints from a person who has answered to bail, where there are reasonable grounds for believing that s/he is not the person who was bailed originally (PACE s61(4A) inserted by CJPA s78(4)). Paragraphs 4.10 to 4.15 set out powers to take fingerprints in immigration cases.

The provisions regarding speculative searches of fingerprints are the same as before except that they may be checked against those kept by police forces and any 'law enforcement authority'. As a result of amendments to PACE s64 by CJPA s82, fingerprints taken in connection with the investigation of an offence do not have to be destroyed unless they are taken from a person who is not suspected of having committed an offence (s64(3)). Even if the latter applies, the fingerprints do not have to be destroyed if they were taken for the purposes of the investigation of an offence of which a person has been convicted, and fingerprints were also taken from such person for the purposes of the investigation (s64(3AA)). In either case, however, the fingerprints cannot be used in evidence where a person is entitled to their destruction unless s/he has consented, in writing, to their retention (s64 (3AB) and (3AC) and see Code D Annex F paras 1 and 2 and Note for Guidance F1).

If fingerprints are retained and have been used for the purpose for which they were taken, they may not be made use of again except for reasons related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution (s64(1A)). For an unsuccessful challenge to these provisions, see *R (S) v Chief Constable of South* Yorkshire and *R (Marper) v Chief Constable of South Yorkshire* [2003] 1 All ER 148. The provisions on speculative searches and destruction, and relevant procedures, are set out in a new Annex F.

Examinations to establish identity and the taking of photographs

Code D s5 is a new provision reflecting PACE s54A and s64A. Section 54A (inserted by ATCSA s90) enables an inspector or above to authorise the search and/or examination of a person in police detention to establish:

- whether s/he has any marks, features or injuries that would tend to identify him/her as a person involved in the commission of an offence, and to photograph any identifying marks (s54A (1)(a); or
- his/her identity (s54A(1)(b)).

If an examination and/or search involves the removal of more than a person's outer clothing, it must be conducted in accordance with Annex A of Code C (Code D para 5.10). References to 'identity' include references to showing that a suspect is not a particular person (s54A(11)). A 'mark' includes features and injuries, and is an identifying mark if its existence facilitates the ascertainment of a person's identity or his/her identification as a person involved in the commission of an offence (s54A(12)).

Authorisation can only be given under s54A(1)(a) if appropriate consent has been withheld, or it is not practicable to obtain consent (s54A(2)). Authorisation under s54(1)(b) can only be given if a person has refused to identify him/herself, or an officer has reasonable grounds for suspecting that a person is not who s/he claims to be (s54A(3)). Note for Guidance 5D gives examples of circumstances where it may not be practicable to obtain consent. Any identifying mark found can be photographed either with appropriate consent or without consent if it is withheld, or it is not practicable to obtain such consent (s54A(5)). An intimate search cannot be conducted under these powers (s54A(8))

Any photograph taken may be used for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution. This includes conduct that is an offence in or outside the UK or is, or corresponds to, conduct that would be an offence if it took place in the UK (s54A(10)). After such use the photograph can be retained, but may only be used for purposes

related to the prevention of crime, etc (s54A(9)). Examples of such purposes are set out in Note for Guidance 5B.

Section 64A of PACE (inserted by ATCSA s92, which came into force on 14 December 2001) gives the police power to photograph a person in police detention either with appropriate consent, or without consent if it is withheld, or it is not practicable to obtain such consent (s64A (1)). Note for Guidance 5E gives examples of where it would not be practicable. A photograph may only be taken by a constable or a designated person (who may use reasonable force) (s64A(3)). The photographer may require a person to remove any item or substance worn on or over the whole or part of the face or head, and may remove it him/herself if the requirement is not complied with (s64A(2)).

There are similar provisions regarding the use and retention of photographs as for photographs taken under PACE s54A, and for the recording in the custody record of the process. Examples of purposes related to the prevention of crime, etc are set out in Note for Guidance 5B.

If a person is a volunteer, none of the powers to search, examine or take photographs can be carried out by using force (Code D para 5.21). Any photograph must be destroyed unless a volunteer is charged with, or informed that s/he may be prosecuted for, a recordable offence, or is prosecuted for a recordable offence, is cautioned, reprimanded or warned in respect of a recordable offence, or gives written consent (Code D para 5.22).

Identification by body samples and impressions

The main changes to this section of Code D reflect the amendments to PACE ss62, 63, 63A, 64 and 65 made by CJPA ss78, 80, 81 and 82. The changes to PACE ss63A and 64, concerning the retention and use of samples, came into force on 11 May 2001. The other amendments come into force on 1 April 2003.

Code D para 6.1 sets out the definitions of intimate and non-intimate samples (and see PACE s65). These remain the same as before except that non-intimate samples now include skin impressions, which means any record (other than a fingerprint) which is evidence (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of the foot, or of any other part of the body (PACE s65 as amended by CJPA s80).

The power to take an intimate sample is the same as before except that it may now be authorised by an inspector rather than a superintendent (PACE s62(1)(a) and (1A)(a) as amended by CJPA s80(1)) and it may be taken by a registered nurse as well as a registered medical practitioner (PACE s62(9) as amended by CJPA s80(2)).

The power to take a non-intimate sample is the same as before except that where authorisation is required, that authorisation may be given by an inspector rather than a superintendent (PACE s63(3)(b) as amended by CJPA s80(1)). The provisions for speculative searches and destruction of samples are the same as for fingerprints.

Annex A – Video identification

The provisions in Annex A are substantially the same as those in Annex B of the 1995 version except that para 3 permits the video to show a suspect and the comparators in conditions that are not identical, if the identification officer reasonably believes that, because of the suspect's failure or refusal to co-operate, it is not practicable for the conditions to be identical and any difference would not direct a witness's attention to any individual image.

Annex B – Identification parades

The provisions in Annex B are substantially the same as those in Annex A of the former code except for the following:

- Paragraph 10 provides explicitly that if a suspect has an unusual physical feature that cannot be replicated on other members of the parade, steps can be taken to conceal the location of the feature on a suspect and on other members of the parade, provided the suspect and his/her solicitor or appropriate adult agree (see *R v Marrin* [2002] EWCA Crim 251). However, if a witness requests the removal of anything used to conceal the location of such a feature, that person *may be asked* [emphasis added] to remove it (para 19).
- Despite the problems associated with using a parade arranged primarily for the purpose of visual identification also for voice identification, para 18 continues to permit witnesses to request members of the parade to speak, and for those taking part to be asked to comply with the request.[4]
- The former Code D requires a colour photograph or a video film of the parade to be taken. Paragraph 23 of the revised code provides that a parade should usually be video recorded unless this is impracticable, in which case a colour photograph must be taken. If a suspect is in police detention, such a photograph can be retained whether or not s/he is prosecuted. If a suspect is not in police detention, or a video recording is made (whether or not s/he is in police detention), the photograph or video image must be destroyed unless s/he is charged or informed that s/he may be prosecuted for a recordable offence, or is prosecuted, reprimanded, warned or cautioned for a recordable offence, or gives written consent for its retention (Code D Annex B para 24 and Code D paras 3.30 and 3.31).

Annex C – Group identification

The provisions of Code D Annex C are substantially the same as those in Annex D of the 1995 version. If a photograph or video recording taken of a group identification includes a suspect, the same provisions regarding retention apply as for identification parades (Annex C para 43).

Annex D – Confrontation by a witness

The provisions of Code D Annex D are substantially the same as those in Annex C of the 1995 version. Paragraph 3 makes it clear that force cannot be used to make a suspect's face visible to the witness.

Annex E – Showing photographs

The provisions of Annex E are substantially the same as those in Annex D of the 1995 version. A new provision requires a witness who is viewing photographs to be told that s/he should not make a decision until s/he has viewed at least 12 (Code D Annex E para 5). The 1995 version provided that where a witness makes a positive identification then, unless the person identified has been eliminated from the enquiries, other witnesses should not be shown photographs. Annex E para 6 now permits other witnesses to be shown photographs if the person identified is not available for an identification procedure.

Code E – tape recording of interviews with suspects

The revised version of Code E is substantially the same as the 1995 version. The main difference is that the earlier version excluded interviews with persons suspected of certain offences connected with terrorism, or of an offence under Official Secrets Act 1911 s1. These exclusions no longer apply. However, Code E does not apply to interviews of those arrested under TA s41 (on suspicion of being a terrorist) or TA Schedule 7 (examination of a person in a port or border area to determine whether s/he is or has been concerned with terrorism) (Revised Code E para 3.2). Such interviews are covered by a separate Code of Practice issued under TA Schedule 8. If a suspect is interviewed in his/her cell under Code C para 12.5, the interview may be recorded using

portable recording equipment or, if that is not available, in writing (para 3.4).

Conclusion

The revisions to the codes are a curious mixture. There has been a significant improvement in style and clarity, although the end result is a much more complex set of codes, particularly as a result of the frequent and incremental changes to police powers to take and retain fingerprints, photographs and samples and the new cautioning provisions. Some changes, like those to Code A and the more sophisticated approach to vulnerable suspects in Code C, appear to be genuinely motivated by a desire to improve police performance, although it might be argued that they are too little, too late. It is ten years since the Royal Commission on Criminal Justice called for a comprehensive review of the appropriate adult provisions, and the disproportionate use of stop and search powers against ethnic minorities has got worse since Macpherson reported in 1999. Other revisions appear to be lifted directly from the Association of Chief Police Officers' agenda. In particular, the provisions on when interviewing must cease and a decision to charge made reinforce the inquisitorial powers of the police at the expense of suspects' rights. Nevertheless, the codes continue to represent an important, if flawed, attempt at transparency and accountability, and it is to be hoped that the recommendations of the Home Office/ Cabinet Office review concerning the future of the codes are not implemented.

■ Ed Cape is Professor of Criminal Law and Practice at the University of the West of England and author of *Defending suspects at police stations*. The 4th edition of this book is due to be published by LAG in the autumn.

1 Police and Criminal Evidence Act 1984 (Codes of Practice) (Modifications to Code C and Code D)(Certain Police Areas) Order 2002 SI No 1150, which was further amended by Police and Criminal Evidence Act 1984 (Codes of Practice) (Modifications to Code C and Code D) (Certain Police Areas) (Amendment) Order 2002 SI No 1863.

2 Code F came into force in May 2002, but at present, only applies to certain police stations. See Police and Criminal Evidence Act 1984 (Visual Recording of Interviews) (Certain Police Areas) Order 2002 SI No 1069 and Police and Criminal Evidence Act 1984 (Visual Recording of Interviews) (Certain Police Areas) (No 2) Order 2002 SI No 2527.

3 'Recordable offences' are listed in the National Police Records (Recordable Offences) Regulations 2000 SI No 1139.

4 For cases on voice identification see *R v Hersey* [1998] Crim LR 281; *R v Gummerson and Steadman* [1999] Crim LR 680; *R v* Roberts [2002] Crim LR 183; *R v Chenia* [2002] EWCA Crim 2345; *R v O'Doherty* [2002] Crim LR 761. See also articles by D Ormerod, [2001] Crim LR 595 and [2002] Crim LR 771.

LOCAL GOVERNMENT

Local taxation update

Alan Murdie summarises cases and regulations dealing with various aspects of local taxation liability and enforcement over the past year.

POLITICS AND LEGISLATION

Committal to prison – figures since 1992

Lord Morris, in a parliamentary question, asked in how many cases people have been committed to prison by magistrates' courts for local tax default since the poll tax was introduced, and how many such committals were subsequently declared unlawful by the High Court.

Replying on behalf of the government, the parliamentary secretary at the Lord Chancellor's Department (LCD), Baroness Scotland, provided figures indicating that a total of 5,814 people were jailed between 1992 and 2001. The figures do not include those who have received suspended warrants and do not include figures for committal for uniform business rates. However, the last three years show a marked decline in the numbers jailed with 137 people in 1999, 49 in 2000 and 40 in 2001.

As regards the number of warrants actually quashed, Baroness Scotland stated that information concerning the number of committals subsequently declared unlawful by the High Court is not collected centrally and could be provided only at a disproportionate cost.* However, the likely figure is well in excess of 1,000 jailings which have been declared unlawful since 1992. The number of suspended warrants drawn up against local tax debtors is unknown, but is likely to be much higher.

New national standards for enforcement agents

New national standards for bailiffs have been issued by the LCD and may be viewed at: www.lcd.gov.uk.

The guidelines aim at a comprehensive standard for enforcement for the seizure of goods and for the execution of civil arrest warrants. Copies of the new national standards are required to be available from enforcement offices and wherever possible from creditors. Recommendations are made about how creditors and bailiffs should deal with defaulters, particularly with respect to people on low incomes and vulnerable groups including the elderly, the recently bereaved, single parent families and pregnant women. Wherever possible, enforcement agents should also have translation services and provision for information in braille available.

A number of the guidelines reflect what is in essence the common law with respect to levies for distress for rent. For example, levies are not to be attempted on Sundays, bank holidays, Good Friday or Christmas Day unless a court orders otherwise or legislation permits. Included among guidelines are requirements that if police are called to a dwelling to restrain a breach of the peace during the course of a levy, the debtor must be given reasons for their presence. It must not be implied that the police are there to assist with the levy of distress, which is a civil process.

The need for better standards in enforcement were illustrated by a story from Scotland that a disabled woman in receipt of disability allowance had been told to eat less by debt collecting agents acting in respect of council tax owed to Highland Council (*Scotsman*, 9 December 2002). Unfortunately, there are no specific sanctions or complaints procedures for breach of the guidelines although, in cases where distraint is levied on behalf of a local authority in respect of local taxes, complaints may be taken to the local government ombudsman. The ombudsman has upheld complaints involving the misbehaviour of bailiffs levying for council tax distress in the

past and breach of the guidelines may arguably amount to maladministration (see Local government ombudsman report 96/B/2122).

Local Government Bill

The Local Government Bill, which will become the Local Government Act 2003, makes a number of proposals which alter the calculation and enforcement of council tax. These include a general revaluation of domestic dwellings in 2005 with the introduction of new bandings which will come into effect on 1 April 2007. Future revaluations will be at 10 year intervals thereafter. Clause 84 proposes a new right to challenge liability orders issued in error (see below).

Unfortunately, scrutiny of clause 84 suggests that the right to apply to a magistrates' court will only be available on the application of the local authority – there is no corresponding right to the council taxpayer to commence such an application. In practice, it is highly unlikely that local authorities will be prone to making applications to magistrates' courts on behalf of debtors to quash liability. Apart from the fact that it is notoriously difficult to obtain an admission from a local authority that it has acted in error, it is highly unlikely that a billing authority will choose to engage in a procedure which will result in a loss to the local authority both in terms of revenue and the cost of time and effort which will be expended. The new clause makes no provision about either the procedure to be adopted or the question of costs and, unless detailed provision is made, magistrates' courts will be very much 'feeling their way'. Although a refusal by a local authority to act may be amenable to judicial review, it will be appreciated such a prospect only ensures the continuation of the mischief that the proposed legislation purports to solve.

The bill also proposes minor changes to enforcement including the removal of joint and several liability from students, and provision for obtaining attachment of earnings orders against persons in employment after distress and committal have been attempted. It is also proposed that a local authority may apply for a charging order against the home of a debtor where several liability orders have been obtained.

Changes are also in store for valuation tribunals which hear appeals over liability, calculations of the amount of tax made by a local authority and decisions about property banding, under Local Government and Finance Act (LGFA) 1992 ss16 and 24. The current system of valuation tribunals is descended from the local valuation courts first established for domestic rating in 1948, and which underwent a brief transformation into valuation and community charge tribunals in the early 1990s. Clause 111 establishes a new Valuation Tribunal Service which will centralise tribunal administration with respect to staffing, equipment and training for clerks and panel members. However, the government has stated that centralisation is designed to increase the independence of local tribunals (Office of the Deputy Prime Minister news release 5, 12 June 2002) and the new tribunal service will be open to investigations by the ombudsman.

CASE-LAW

Suicide of council taxpayer linked to local council maladministration

■ **Complaint against Southwark LBC**

00/A/19293, [2002] RVR 289

The local government ombudsman, Jerry White, considered Southwark council's treatment of a council taxpayer who committed suicide after receiving a summons for non-payment of council tax while his benefits were still awaiting determination. Ordering publication of the report, the ombudsman had concluded that a three and half month delay in restoring council tax benefit (CTB) to the claimant, sending out a summons when the authority failed to process the relevant benefit claim and the inappropriate official response to relatives following the suicide of the claimant, amounted to maladministration.

The complaint was brought by Mr and Mrs Fry, the brother-in-law and sister of the council taxpayer, Alan Watson (each was given a pseudonym by the ombudsman). Mr Watson was a single man with learning difficulties. He was in receipt of jobseeker's allowance (JSA) and was receiving full CTB. Southwark council had delegated the determination of benefits to a private company, CSL Group Ltd, but retained statutory responsibility for administration of housing benefit (HB) and CTB. In October 2000, Mr Watson's CTB was cancelled and he was sent a fresh form to complete. Four days later, he was sent a demand for £235.10 payable in instalments. He had visited the authority's office and submitted a CTB claim form. In December 2000, the authority issued a reminder notice for the unpaid instalments and he again visited the offices, made a second benefit application and provided information on his entitlement to JSA. On 12 January 2001, a summons was issued against Mr Watson in respect of £235.10 and costs for a hearing on 9 February 2001. The summons was accompanied by an additional sheet informing the recipient that enforcement measures including distress and committal to prison could follow the granting of a liability order.

Mr Watson was not seen or heard of again by his relatives after 13 January 2001. His sister-in-law came to his flat on 16 January and found his body. Police were called to the scene and they found the opened court summons, a piece of paper with threats of enforcement action and a suicide note by the deceased referring to his debt problems. Relatives confirmed that his only other debt was £200 on a credit card, but payments appeared to be up to date and there was no correspondence from the credit card company which would have been a cause of concern. Mr and Mrs Fry complained to the authority, but were not satisfied with the responses they received in light of the failures of the council to process Mr Watson's benefit claim.

Reviewing the case, the ombudsman found there had been nothing complex about the determination of Mr Watson's benefit which could have justified the delay, and there was no reason why it should not have been processed immediately. It was found that 'a significant number of people passed the claim between them in December 2000 and the date of Mr Watson's death, but no one took the decision which would apparently have been so easy'. The ombudsman found that the failure to check records before issuing a reminder notice was maladministration and that, on balance, the issue of a summons was also maladministration contributing to the distress and anxiety of Mr Watson which triggered his suicide. Criticism was also made of the way in which the authority had responded to the family of the deceased. As a settlement, the ombudsman approved a payment of £3,200 to the family and £1,000 payment to a charity of their choice.

Comment: A tragic case that reflects the problems which have arisen in a number of local authorities due to their failure to process CTB: those in receipt of CTB may receive reminder notices and then court summonses. A visit to an average, inner city magistrates' courts on the day the local authority seeks to obtain liability orders may, typically, reveal 100 or more people attending in response to summonses, many of whom will be entitled to or in receipt of CTB. In many cases, disputes over entitlement to benefit will be longstanding, but local authorities prefer to try to obtain liability

orders (together with costs) and then begin a process of negotiation with council taxpayers. When challenged, local authorities seek to rely on the case of *R v Bristol Magistrates' Court ex p Willsman and Young* [1991] RA 292, which held that the local authority could obtain a liability order for community charge default even where there was an outstanding claim for benefit (see April 2002 *Legal Action* 18 and below).

Given the widespread nature of errors in the administration of CTB and its prevalence in certain authorities, one may be forgiven for raising certain questions. For instance, are such delays being caused by sheer inefficiency or the result of a deliberate policy in the adoption of accounting practices which tolerate the slow processing of CTB? If such a policy is indeed being practised, it may be open to judicial review since it will amount to a breach of duty under CTB (General) Regulations 1992 SI No 1814 reg 66(3) which requires a council to determine a claim for benefit within 14 days of receiving all the information required for it so to do. Arguably, there might even be a case for misfeasance in a public office if the deliberate adoption of such a practice could be shown which resulted in damage as in this case.

In other cases, the suspension of benefit may initially be triggered by a mistake by the Department of Social Security (DSS) in processing social security benefits. In turn, this frequently leads to a suspension of HB and CTB by the local authority although neither benefit is dependent on receipt of income support. As noted in May 2000 *Legal Action* 28, the local government ombudsman has issued reports in respect of mistakes in suspension of HB that may result in the eviction of families. The system is far too dependent on computers, and local authority officers can fail to exercise the discretion available to them about the issue or continuance of recovery proceedings in the magistrates' court. The lodging of a complaint with the ombudsman may be a ground to request an adjournment of the liability order hearing; the practice varies between courts. Where evidence points to an initial error by the DSS, a complaint to the parliamentary ombudsman must also be initiated because each ombudsman enjoys a different jurisdiction.

Liability order hearings – failure to serve notice of proceedings

■ **R (Clark-Darby) v Highbury Magistrates' Court**

[2002] RVR 35

The applicant, Maureen Clark-Darby, was a chartered accountant who had received no notice of a liability order hearing when the magistrates' court had issued a liability order against her for £644.75 for Camden LBC. The applicant feared that the existence of the order would cause personal and financial embarrassment, and after failing to resolve the matter amicably with the local authority she applied for judical review. The magistrates were not represented but the local authority contested the right.

Sir Richard Tucker held that a breach of natural justice had occurred in that the claimant was not aware of the date of the hearing and was deprived of the opportunity of appearing and opposing the making of an order. Although the court indicated that an appeal by way of case stated might have been preferred, authority in *R v Hereford Magistrates' Court ex p Rowlands and others* [1998] QB 110, meant that the court could exercise its jurisdiction over magistrates' courts and it would be unjust to allow the order to stand. The court rejected the claim of the local authority that a delay of seven months precluded the granting of judicial review.

Comment: The case is a welcome extension of principles of natural justice and civil law in general to the recovery of local taxation. A large number of liability orders have been made for local taxes in the absence of the debtor, and a number of these include cases where no summons was ever received. Mistakes by local authorities which result in liability orders can arise in wide range of circumstances. For example, as was revealed recently in *Information Commissioner v Islington LBC* [2002] EWHC 1036 (Admin), [2002] RVR 316, a case involving the Data Protection Act 1984, the local authority had entered the name of a client as liable to council tax at the office of his solicitor. This resulted in demands and ultimately a summons being wrongly issued.

Of even greater concern are cases where council taxpayers have first learned of the issue of a liability order by a letter or visit from bailiffs or even a summons to a committal hearing for council tax arrears. On raising the matter with the local authority, the council taxpayer may be told that there is nothing to be done about the order once bailiffs have been instructed: *R (Clark-Darby)* establishes a clear principle which can be used to rebut such an assertion.

If an order is quashed by way of judicial review, any enforcement action undertaken on the strength of it becomes unlawful. Although judicial review remains a discretionary remedy, the flexible approach taken to time limits in this case shows the importance given by the Divisional Court to the requirement of notice of proceedings.

The problem of erroneously issued liability orders has been acknowledged in clause 84 of the Local Government Bill, although the proposed solution, unless amended, is likely to pose major problems in practice (see above).

No set off available to council taxpayer

■ **R (Turton) v Sheffield Magistrates' Court and Sheffield City Council**

[2002] RVR 327

The applicant sought to set off claims made against the local authority against his council tax liability. The applicant maintained that if the local authority would pay his claims then he would pay his council tax. Applications for leave for judicial review were made in February and October 2000, but leave was refused by the different courts (Elias J and Sullivan J) with the latter judge observing, 'Whatever complaints we may have against our council they do not relieve us of the obligation to pay council tax.' The applicant appealed the refusal of leave by Sullivan J. His appeal before Simon Brown LJ on 8 February 2001 was rejected, Simon Brown LJ stating: 'As a matter of law there is simply no basis upon which whatever grievances he may have against the council, he is entitled to cease making payments of his annual council tax.'

The applicant then commenced further proceedings in respect of the issue of a liability order by Sheffield magistrates, appealed the decision again by way of judicial review and also sought to challenge the earlier decisions.

Schiemann LJ rejected the application for leave for judicial review holding that parliament had not made provision for set off of other claims against council tax. The court also stated it had no power to set aside the earlier decision of a Lord Justice on the principle that 'one cannot eat the same pudding again and again … [the applicant] will understand that in relation to puddings; but it is equally true in relation to legal cases'. While observing that the applicant appeared 'a friendly and nice man', Schiemann LJ referred to the court's jurisdiction to refuse further applications on the same point and its power to declare a person a vexatious litigant under Supreme Court Act 1981 s42. However, the court declined to exercise the power at this stage.

Benefit disputes and liability order proceedings

■ **R (Williams) v Pontefract Magistrates' Court and Wakefield DC**

[2002] RVR 259

The applicant was in receipt of a small pension, a war disability pension and attendance allow-

ance, and had claimed CTB for the year 2000–2001. The claim for benefit was rejected and the applicant took his case to the local government ombudsman. The local authority sought a liability order for £342.67 in respect of council tax for the financial year 2000–2001 on 24 August 2000. The initial application for a liability order had been adjourned with the agreement of both the applicant and the council pending an investigation into entitlement to CTB. Investigations were undertaken and the ombudsman found in favour of the council on the basis that the applicant had failed to provide proof of receipt of benefits and pensions, which had resulted in cancellation of the benefit. A further liability order hearing was held on 13 February 2001. At the hearing, a witness for the council gave evidence of the failure to pay and the ombudsman's report, and argued that the court was bound to make the liability order. The applicant was refused an adjournment in order to obtain what he considered relevant documentation and witness evidence from the council which supported his claim to benefit. The applicant also wanted to call the local government ombudsman to challenge what he maintained was an unfavourable conclusion. The court cut short his submissions and issued a liability order which the applicant then sought to challenge on the basis that his human rights had been breached. At an initial hearing for judicial review on 5 February 2002 (where the applicant was represented by counsel), Munby J granted an adjournment and ordered the lodging of bundles of documents and a skeleton argument, together with extracts of all relevant primary and secondary legislation and judicial decisions. The applicant failed to lodge the necessary bundles and copies of the legislation.

In the absence of the full enforcement regulations, Ouseley J examined the provisions of LGFA Sch 4 para 3. The court considered that the determination of liability by a magistrates' court does not involve the magistrates entering into an examination of whether a person was entitled to CTB. As a consequence, the points that the applicant wished to raise with regard to council records, witness statements and the local government ombudsman's presence were legally irrelevant. The court further considered that the applicant had failed to appreciate that the procedures for an award of CTB were separate to enforcement, and that he may or may not have exhausted ways of challenging the assessment of benefit having preferred to pursue a complaint to the ombudsman followed by judicial review. In the circumstances, the magistrates were not obliged or entitled to consider issues and evidence relating to benefit.

Comment: A decision which takes a narrow approach to the liability order hearing, albeit one made without reference to the detailed law and in circumstances where the facts were not altogether clear. Ouseley J observed that, 'It has not been entirely easy to sort out the factual background to this matter' and, clearly, the rejection of the case by the local government ombudsman did not assist the applicant, the court stating that, 'if the truth is indeed that he cancelled his own claim as the ombudsman found then the scope for sympathy for him has to be reduced'.

The failure of the applicant to lodge bundles or authorities left the court in the position of examining only the regulation making powers contained in the LGFA rather than the actual regulations themselves. As a result, the court was unable to review the relevant law. For instance, Council Tax (Administration and Enforcement) Regulations 1992 SI No 613 reg 34(2) states that the person is summonsed to court to show why s/he has not paid the sum which is outstanding. Arguably, a failure by the local authority to award benefits might provide a reason why a person has not paid. Furthermore, the Magistrates' Courts (Hearsay Rules in Civil Proceedings) Rules 1991 SI No 681, introduced in part as a response to problems with evidence at local taxation hearings in the early 1990s, provide a system (albeit a technical one) whereby an alleged debtor may introduce otherwise hearsay evidence in civil cases in magistrates' courts. If a person summonsed to a liability order hearing is prohibited from calling evidence, the procedure of issuing a liability order is reduced to a 'rubber-stamping' operation rather than a judicial hearing.

Nor was the court able to hear argument that the effect of *R v Bristol Magistrates' Court ex p Willsman and Young* [1991] RA 292, might only be confined to community charge cases, and that parliament could not have intended that persons who may technically owe nothing in local tax should, nonetheless, have to endure liability order proceedings and additional costs. Whereas under community charge all persons (except for exempt categories) were liable for at least a minimum of 20 per cent of the charge, the LGFA clearly established that persons either in receipt of income support or prescribed low incomes receive 100 per cent benefit and pay nothing. Arguably, parliament could not have intended that liability orders and costs should be pursued against persons on low incomes. Furthermore, seeking liability orders against persons before benefit entitlement has been determined now appears to amount to maladministration as in *Complaint Against Southwark LBC* (above).

The question of the discretion that justices may enjoy (for example, to grant adjournments pending an appeal to the valuation tribunal or social security appeal tribunal) was not examined. Unfortunately, a case seeking to raise exactly this point, *R (Walker) v Ealing LBC and Ealing Magistrates' Court* CO/452/02 (see April 2002 *Legal Action* 18), was refused leave for judicial review on the basis that the magistrates' court did not wish to contest the case, and the local authority was prepared to resolve the question of benefits and not to enforce the liability order. As a result, the relevant argument was consequently not addressed by the Divisional Court and awaits a definitive ruling.

Arguably, an appeal by way of case stated from a liability order hearing may provide an alternative route to the Divisional Court. A case stated appeal must be commenced within 21 days of the making of a liability order, under the time limits in Magistrates' Courts Act 1980 s111. However, much will depend on the willingness of the magistrates' court to hear argument on the point. In the event that a magistrates' court refuses to state a case, a judicial review may be undertaken to reassess the refusal to state a case as well as challenging the liability order. In practice, the Divisional Court might review the substantive point of law at this stage, rather than face duplication of proceedings, the two applicatons being joined.

Commitment to prison

■ **R v Highbury Corner Magistrates' Court ex p Uchendu**

CO/4305/97, 29 March 2000

The applicant sought to quash a warrant of arrest for council tax arrears to bring him to a means inquiry. The applicant contended that the justices had failed to give proper consideration to the question of whether the arrest warrant should be issued.

Moses J dismissed the application, holding that it was reasonable for justices to have circumvented the issue of liability to tax given the failure of the applicant to contest liability order proceedings and an offer to pay tax at a later date.

Comment: This appears to be the first attempt to challenge the issue of an arrest warrant to bring a person before a means inquiry for unpaid taxes, as

opposed to challenging findings made at a means inquiry and decisions to imprison council taxpayers. Like many other decisions made by an inferior tribunal, the discretion to issue an arrest warrant may be considered to be amenable to judicial review. It should be noted that there is no power to force entry to a dwelling to effect a civil arrest warrant for local taxes (see *Broughton v Wilkinson* (1880) 44 JP 781; *Southam v Smout* [1964] 1 QB 308).

■ **R (Allen) v Wirrall Justices**
CO/1405/2000
A judicial review of a postponed committal order for imprisonment for 21 days in respect of community charge and council tax arrears and subsequent activation by magistrates.

Henriques J, reviewing the decision, found that the magistrates had failed to consider an attachment of earnings order as an alternative way of recovering the money. Both the postponed and activated term of imprisonment were quashed and the matter was remitted to the justices for a fresh hearing.

Comment: The need for justices to consider an attachment of earnings order as an alternative to committal was first established in *R v Highbury Corner Justices ex p Edis* (1994) CO/789/92. The same principle has also been applied recently in another unreported decision, *R v Tunbridge Wells Justices ex p Ede* (2000) CO/4563/98, 22 February 2000, and noted in *R v Maidstone Justices ex p Martyn* (below).

■ **R v Warley Justices ex p Taylor**
CO/2819/96,
[2002] RVR 263
This was an application to challenge a warrant of commitment for non-payment of community charge. Justices had activated a suspended warrant of committal for 26 days in prison in the absence of the debtor. The applicant maintained in an affidavit that she had not received notice of the hearing at which the warrant was activated.

Laws J quashed the warrant of commitment. There was no evidence beyond a letter from the justices stating that they were satisfied that the applicant had received notice of the hearing. Neither the local authority nor the magistrates' court had submitted sworn evidence. Elementary principles of fairness required that the applicant knew of the hearing and had an opportunity to attend.

Comment: Another decision emphasising the importance that a debtor must have received notice of any proceedings to activate a suspended warrant of committal. The case also provides an example of the rule that an uncontested statement in a sworn statement from an applicant must be accepted by the court if not contradicted by other evidence.

■ **R v Maidstone Justices ex p Martyn**
CO/4014/97,
[2002] RVR 261
The applicant sought judicial review of two decisions of Maidstone justices in respect of community charge arrears. The applicant was a single woman in receipt of £46.65 per week in JSA. In September 1994 (while the applicant had been in work), the justices imposed a suspended term of imprisonment of 14 days in respect of community charge arrears on condition that they were paid at the rate of £30 per month. Subsequently, the applicant lost her job and, in 1997, the warrant was activated.

Collins J quashed the suspended warrant of committal to prison, emphasising that the power of committal was a coercive not a punitive measure. The court had failed to examine the applicant's means prior to September 1994, and had thus failed to consider the period relevant to wilful refusal or culpable neglect, the finding of which is the essential prerequisite to committal (*R v Leeds Justices ex p Kennett* [1996] RVR 53, applied). The initial offer to pay the arrears at the rate of £10 by the applicant had become unrealistic once she lost her job. The court expressed surprise that the justices had not considered an attachment of earnings order while the applicant had been in work and deductions from benefits when she was made redundant. As a consequence of the quashing of the suspended warrant, the decision to activate it was also set aside and the matter remitted to the justices.

■ Alan Murdie is a barrister who co-founded the Poll Tax Legal Group in 1990. He has been involved with many test cases concerning the community charge and has wide experience of liability order applications in the magistrates' courts. He is also co-author of *Enforcement of local taxation: an advisers' guide to non-payment of council tax and the poll tax*, LAG, £15.

* *Hansard* HL Written Answers col 111, 4 December 2002.

Correction

In the article entitled 'Local authority housing allocation – the new regime' (February 2003 *Legal Action* 33), under the heading 'Reasonable preference categories', we stated that 'under Housing Act 1996 s167(2), additional preference has to be given within these groups who are identified as having urgent housing needs'.

In fact, the local authority has discretion to identify those to whom an additional preference is to be given. Once such a scheme has been adopted, the authority must apply it.

HOUSING

Owner-occupiers: recent developments

In this annual review, **Derek McConnell** looks at the changes and developments in the law regarding owner occupation. Readers are invited to send relevant case notes to LAG or direct to the author.

Repossession statistics

In 2002, members of the Council of Mortgage Lenders (CML) repossessed 11,970 properties (this compares with 18,280 in 2001). At the end of 2002 the number of mortgage borrowers more than six months in arrears was 50,150: see CML press release, 29 January 2003. Figures released by the Lord Chancellor's Department (LCD) show that, in 2002, 61,735 mortgage possession actions were commenced in England and Wales resulting in 39,748 possession orders (including suspended orders) being made: see LCD press release, 29 January 2003. The figures for 2001 were 64,966 and 45,723 respectively.

CASE-LAW

Mortgage possession proceedings

■ **Barclays Bank plc v Alcorn**

11 March 2002, ChD

The claimant obtained a possession order in relation to a security that comprised two dwellings, only one of which was occupied by the borrowers. The defendants applied to suspend the warrant arguing that Administration of Justice Act (AJA) 1970 s36 allowed the court to suspend the warrant over part of the property, namely the house occupied by the borrowers, permitting either the borrowers or the claimant to sell the remainder. After reviewing the valuation evidence, the court was not satisfied that the borrowers would be able to discharge the mortgage debt if allowed to sell the unoccupied part. The judge also doubted whether, in any event, there was jurisdiction under s36 to suspend enforcement of a warrant in relation to part of the security. The court felt it unnecessary, given the findings on the valuation evidence, to consider whether article 8 of the European Convention on Human Rights added anything to the powers already available to the court under s36.

■ **State Bank of New South Wales v Carey Harrison III**

8 March 2002, CA

On appeal from a master, the judge ordered a stay on enforcement of a possession order obtained by the claimant pending an appeal in litigation in which the defendant was involved as a 'Name' at Lloyds. The claimant's mortgage had been obtained to secure the defendant's liabilities to Lloyds. The judge noted that the security had been the defendant's home for many years; it was his main source of income, as he rented out a flat in the basement, and also that there was substantial equity. The judge expressly did not stay enforcement under AJA s36 (as, on the facts, the borrower could not meet the requirements of the section) but, purportedly, did so under the court's general power to order a stay of execution of a judgment. The Court of Appeal allowed the bank's appeal rejecting the defendant's argument that CPR 3.1(2)(f), which enables the court 'to stay the whole or any part of the proceedings either generally or until a specified date or event' or CPR 3.1(2)(m), which enables it to 'take any other step or make any other order for the purpose of managing the case and furthering the overriding objective', applied in the circumstances. The court held that it had no jurisdiction, either under the Civil Procedure Rules or under the inherent jurisdiction, to grant the stay in question. The court endorsed observations in *Cheltenham & Gloucester plc v Krausz* [1997] 1 WLR 1158 that the very specific delimitation of the power given by AJA s36 made it clear that parliament did not intend that the court should have any wider jurisdiction to curtail the lender's right to possession.

■ **United Bank Ltd v Akhter**

13 February 2002, ChD

Where the mortgagee of property has obtained a possession order, which it has subsequently executed, any goods remaining on the premises have to be removed in order for the lender to have vacant possession and for the borrower to have complied with the order.

Consumer credit

■ **Broadwick Financial Services Ltd v Spencer**

30 January 2002, CA

The defendants took out a secured loan with the claimant, in 1991, by way of remortgage to pay off a previous secured loan that had been taken out two months previously. The APR was 29.6 per cent with the loan repayable by 240 monthly payments of £147.58. The claimants sent a 'concession letter' indicating that a reduced payment of £134.75 would be payable each month, which would be withdrawn if the reduced payments were not made on the due date. Arrears built up and a suspended possession order was obtained in 1992. In 1997, the defendants made an application to reopen the agreement as an extortionate credit bargain. The defendants appealed the judge's refusal to reopen the agreement. The court rejected the argument that the 'concession letter' amounted to a term of the agreement that, in view of its non-inclusion in the credit agreement, rendered the agreement unenforceable. It was no more than a non-contractual concession. While the fact that the claimant did not enquire about the defendants' reasons for remortgaging so quickly infringed the non-status guidelines issued by the Office of Fair Trading in 1997, this conduct did not amount to gross contravention of the ordinary principles of fair trading within Consumer Credit Act (CCA) 1974 s138. The court observed that there were agents involved who, under the usual principles of agency, were agents of the borrowers and would be taken to have given appropriate advice to them. The court rejected the argument that the claimant's failure to reduce the interest rate over the period of the loan amounted to an extortionate credit bargain and approved *Nash v Paragon Finance plc* [2001] EWCA Civ 1466. None of the points taken by the defendants, either individually or cumulatively, rendered the agreement an extortionate credit bargain. The court observed that it came to this conclusion with regret noting how 'non-status' borrowers fail to be protected by the existing provisions of the CCA.

Undue influence and misrepresentation

■ **Royal Bank of Scotland plc v Etridge (No 2)**

[2001] 4 All ER 449, HL

This case remains obligatory reading for advisers required to consider when an occupier can apply to the court to set aside a transaction where security is given for another person's debts. The flow of litigation continues.

■ **National Westminster Bank plc v Amin**

[2002] UKHL 9

The defendants came to the UK from Uganda in 1972. They spoke only Urdu and were unable to understand English. In 1980, they bought a house in joint names where they both lived. In 1988, the defendants' son needed to raise business finance and agreed with the claimant that his parents' home would act as security. The claimant instructed a firm of solicitors to ensure, among other things, that the defendants were 'fully aware of the terms and conditions of the mortgage document'. A solicitor from the firm visited the defendants at home in the son's presence. Subsequently, the firm wrote to the bank confirming that it had explained the terms and conditions of the mortgage document to the defendants, and that the charge had been signed by them. On the son's default to

make payments, possession proceedings were brought. The claimant applied to strike out the defendants' defence, which argued that the bank had not taken reasonable steps to bring home to them the risk they were running in executing the legal charge. In dismissing the bank's strike out application, the court observed that the defendants' evidence was that they did not speak English, the solicitor did not speak Urdu, and that nothing had been explained to them. In these circumstances, the court accepted the observation that the bank should have sought not merely confirmation of the explanation of the charge, but also confirmation that the surety understood its effects. The case would, therefore, have to proceed to trial in the county court.

■ **UCB Corporate Services Ltd v Williams**

(2002) Times 27 May

Where it was found that a wife's execution of a legal charge was procured by her husband's equitable fraud (in terms of both undue influence and misrepresentation) that fact was sufficient to found a right for the wife, as against the husband, to have the legal charge set aside. It was not necessary for the wife to establish that without the equitable fraud she would not have executed the charge. It would not be right for a husband to be able to avoid the consequences of his wrongdoing by establishing that had he not acted fraudulently, and had his wife had the opportunity to make a free and informed choice, that she would have acted in the same way. The wife's equity to set aside was based on the husband's fraud, which deprived her of the opportunity to make such a choice.

■ **Hammond v Osborn**

27 June 2002, CA

The donor, an elderly bachelor who lived alone, was befriended and became dependent on the donee for his daily needs. Following a stay in hospital, without being put under pressure by the donee, but without taking advice, he realized assets and transferred £297,000 to her. He was left with his home, an annual pension and substantial tax liabilities. The donor died intestate. The claimant, the donor's cousin, applied to have the gift set aside.

The Court of Appeal allowed the claimant's appeal and held:

■ that there was a relationship of trust and confidence between the donor and donee, and that a gift so large gave rise to the presumption of undue influence;

■ although the doctrine in *Etridge No 2* (above) was well-settled, there continued to be misconceptions about the circumstances in which gifts would be set aside;

■ that in order to rebut the presumption, proof was required that the gift had been made only after full, free and informed thought by the donor; and

■ that since he had taken no independent advice before realising assets and making the transfer, the presumption was not rebutted and the gift would be set aside.

The House of Lords in *Etridge No 2*, laid down, in some detail, the issues to which solicitors must have regard when called on by prospective sureties and lending institutions to advise in relation to relevant transactions. In particular, solicitors would do well to consider the article, 'Undue influence – solicitors' duties', LS Gaz 30 May 2002, p24, for a short analysis of some practical issues.*

Sale

■ **Freeguard v Royal Bank of Scotland plc**

(2002) Times 25 April, ChD

The claimant acquired an option to purchase land, but the option was never registered. The owners of the land subsequently charged it in favour of the defendant. Similarly, the legal charge was never registered. The claimant then exercised her option to purchase. Her option and the bank's charge were competing equities. Proceedings to determine priority were resolved in the bank's favour. As a result, the claimant was presumed to have acquired the property subject to the defendant's charge. The land was subsequently sold by the bank in exercise of its power of sale as mortgagee. The claimant issued proceedings alleging that the bank had sold at an undervalue.

The court allowed the claimant's appeal against an order striking out the claim, on the basis that the bank did not owe her a duty of care. It held that the approach in *Downsview Nominees Ltd v First City Corporation Ltd* [1993] AC 295, where it was held that a mortgagee owed duties not just to the mortgagor, but any subsequent encumbrancer, was equally applicable on the present facts.

■ **Deakin v Corbett and Halifax plc**

[2002] EWCA Civ 1849

The borrowers remortgaged with the benefit of a loan from the Halifax. On default, the lender obtained possession and instructed estate agents to sell on the usual terms of engagement, which expressly provided that no member of Halifax staff could purchase the property. The defendant was a Halifax employee and deceived the lender into selling the property to him for £140,000 by using a nominee who immediately entered into a back-to-back transfer. Prior to the sale, another buyer offered £145,000. However, this bid was rejected as the Halifax had a rule that, in order to displace an existing, firm offer, any subsequent offer had to be at least five per cent better. On appeal, it was accepted that the sale was at an undervalue, although the purchasers were not aware of this. The borrowers issued proceedings after discovering the existence of the higher offer and that the defendant was the lender's employee. The judge set aside the sale.

On appeal, it was held that the defendant's deception did not confer a right on the mortgagors to set aside the sale. A buyer was required to have knowledge of, or participation in, an impropriety on the part of the lender in the exercise of the power of sale, to be able to set aside a sale by a mortgagee in possession. If there was no such impropriety, as in this case, the borrowers were limited to a remedy in damages.

Beneficial interests

■ **Goodman v Carlton**

[2002] EWCA Civ 545

In 1993, a sitting tenant bought a property from his landlord. The defendant, who lived elsewhere, but had a long-standing relationship with the tenant, agreed to assume liability for a loan as joint mortgagor. The property was registered in joint names. She made no contribution towards the mortgage payments and there was no declaration about beneficial interests. The ex-tenant died and the defendant moved into the property. The defendant appealed against a decision that she held the property on resulting trust for the ex-tenant's estate absolutely.

Dismissing the appeal, the Court of Appeal held that the issue was whether the defendant, having made no mortgage payments had, by providing security for the loan, made a contribution entitling her to a beneficial interest. Although, in principle, such an agreement might be treated as a contribution, in the circumstances and in the absence of any declaration of intention, the joint mortgage gave rise to the property being held on resulting trust for the sole benefit of the deceased's estate. The court again reminded conveyancers of the need to define the nature and extent of beneficial interests in properties when they are purchased in order to avoid similar problems in the future.

Negligence

■ **McKinnon v e.surv Ltd (formerly known as GA Valuation & Survey Ltd**

14 January 2003, ChD

In June 1999, the claimants bought a house for £185,000. They relied on a valuation from the defendant, which noted that the property had, in the past, suffered from minor structural movement, but that it appeared to be long-standing and unlikely to be progressive. The claimants were advised later that the risk of further movement was far greater than had been advised and issued proceedings. In April 2002, judgment was entered for the claimants with damages to

be assessed. At the hearing it was agreed that, in 1999, a competent surveyor would have advised that the possibility of movement needed to be assessed over a period of time and required monitoring. Pending this, the house would be unmortgageable and its value no more than £90,000. The possibility of further movement had, in fact, been ruled out allowing a retrospective valuation, to June 1999, of £148,000. The claimants contended that damages should be assessed on the basis of the difference between the purchase price and £90,000. The defendants contended that the difference should be based on the retrospective valuation. It was held that while the proper measure of damage was the difference between the value of the property in its assumed good condition and its value in the bad condition that should have been reported to the claimant, the case should be looked at in the light of the principle that an injured party should only be compensated to the extent needed to put it in the same position it would have been had it not sustained the wrong in question. An award of the full £95,000 would overcompensate the claimants.

Charging orders

■ **Wells v Pickering**

[2002] EWHC 4540 (Ch), LS Gaz 27 June 2002, p38

After obtaining a charging order, the claimant sought an order for sale under RSC Ord 88. The defendant and her three children occupied the property. An order for sale was granted. On appeal, it was argued that the master, in the exercise of his discretion, had failed to give adequate weight to the interests of the children. It was argued that the relevant provisions of RSC Ord 88 required the claimant, in its witness statement in support of the claim, to identify every person who was in possession of the property. Accordingly, the interests of those persons were a relevant factor when considering an application for an order for sale.

Dismissing the appeal, the court held that the purpose of that part of RSC Ord 88 was to ensure that the court had notice of any competing proprietary interests before enforcing a charging order. The fact that there was no specific provision in the rule protecting interests of minors, led to the conclusion that the ordinary rule prevailed when Trusts of Land and Appointment of Trustees Act 1996 ss14 and 15 (which expressly allow the interests of children to be taken into account) did not apply, as in this situation. This was consistent with the policy that creditors were entitled to be paid debts due to them.

This case deals with the position under the previous framework under RSC Ord 88. The current procedure for the enforcement of charging orders by sale is in CPR Part 73. It is worth noting that PD 73 para 4.3 does not even require the existence of occupiers to be mentioned in the evidence to be filed in support of an order for sale.

■ **Clarke v Coutts & Co**

17 June 2002, CA

The respondent bank obtained a judgment and subsequently a charging order nisi over the appellant's house. The appellant obtained an interim order under Insolvency Act 1986 s252(2) precluding other proceedings against the appellant or his property without permission from the court. The respondent was not advised of this order. The charging order was made absolute at a subsequent hearing at which the appellant was neither present nor represented. Six years later, the appellant applied to have the charging order absolute set aside as amounting to the continuation of proceedings. The appeal was allowed.

It was held that obtaining the charging order absolute was a continuation of the execution process and permission was required when an interim order was in force. An absolute order, obtained where an interim order was in force, fell into the class of order that the appellant could have set aside as of right, although it remained in force until set aside. The court did have discretion, on an application by the creditor, to cure the procedural error by granting permission retrospectively, but in this case the bank's application had been made too late. An order nisi was only valid until a decision was made about whether to grant the order absolute. It could not stand alone, so once the order absolute was set aside the order nisi fell away and the bank could not rely on it.

Insolvency

■ **Whitehead v Household Mortgage Corporation plc**

14 November 2002, CA

The claimant took out a mortgage, the benefit of which was transferred to the defendants. In 1988, following an individual voluntary arrangement entered into by the claimant, the defendant made a claim for and received £37,000 representing the difference between the total owed on the principal sum plus arrears of interest and the amount at which it was valued at that date, namely, £65,000. In 2000, a second mortgagee obtained possession and sold the security. The defendant prepared a redemption statement showing the amount to redeem at £118,000. The claimants unsuccessfully asserted that, in consequence of the £37,000 payment received by the defendants, they had agreed to extinguish such part of the mortgage debt corresponding to that amount. On appeal, it was held that where a mortgagee claimed under an individual voluntary arrangement as an unsecured creditor, and accepted a dividend in respect of that claim, it was not to be treated as having elected to abandon its security for any part of the mortgage debt which was secured, or as having agreed that it would not rely on its security for the sum of the mortgage debt that exceeded the amount at which it valued its security at the time of acceptance. A mortgagee was entitled to insist that its security be redeemed for the full amount of the mortgage debt.

■ **Mountney v Treharne**

8 August 2002, CA

In February 2000, the appellant issued a divorce petition against her husband. On 6 July 2000, a district judge made a property adjustment order in favour of the appellant in relation to the husband's beneficial interest in the matrimonial home, which was registered in his sole name. The order required the husband to sign the appropriate transfer within 14 days and, in default, provided for the district judge to do so in his place. The transfer form was not signed. On 13 July, the decree absolute was pronounced and on, 14 July 2000, a bankruptcy order was made against the husband on his own petition. The only asset available to satisfy the husband's creditors was the former matrimonial home.

In an expansive judgment, which allowed the wife's appeal, it was held that the transfer order conferred on the appellant an equitable interest in the property at the moment the order took effect, ie, on the making of the decree absolute. She was in a better position than a purchaser of the property under a specifically enforceable contract because in making the order under the matrimonial legislation, the court had, in effect, already made a decree of specific performance in her favour. The trustee in bankruptcy took the property subject to the appellant's equitable interest under the order and the order was enforceable against the trustee.

Limitation Act and mortgage lenders

For some years there has been considerable debate on the question of whether the limitation period for lenders to issue proceedings in relation to a shortfall on sale of a repossessed property is six or 12 years. The Court of Appeal has now answered this question.

■ **Bristol & West plc v Bartlett; Paragon Finance plc v Banks; Halifax plc v Grant**

[2002] 4 All ER 544, CA

In these three conjoined appeals, borrowers whose properties had been repossessed and sold at a loss sought to argue that the lenders' claims for money judgment in respect of the shortfall were statute barred because they were issued more than six years from the date of sale. It was contended that the six-year limitation period applicable to simple contract debts applied as the mortgage deed had been cancelled when the security was sold. Rejecting this argument, it was held that the claim to such a shortfall lay under the mortgage document by which the mortgage was created and was, therefore, governed by the 12-year limitation period specified in either Limitation Act (LA) 1980 s20 for money secured by a mortgage, or in LA s8 for a document under a seal or a 'speciality'. Other than in exceptional cases, claims for a mortgage debt would be governed by s20 even if the mortgagee had exercised its power of sale before the issue of proceedings. As a result, the mortgagee has 12 years from the accrual of the cause of action to sue for the principal of the debt, but only six years to sue for interest. Following this case, advisers will need to be alert about the date when the cause of action accrued, which may well be before the date of the sale of the repossessed property, and also must assess what amount of the debt being claimed may represent an element of interest which is statute barred.

■ **Scottish Equitable plc v Thompson**

6 February 2003, CA

Following the delivery of the judgment in *Bartlett* (see above), the claimant appealed to the Court of Appeal against a decision that the limitation period for the recovery of principal was six years. The borrower sought to argue that *Bartlett* was distinguishable as that case involved a mortgage where there was a specific covenant to repay the principal, whereas in this case there was no such covenant. The claimant's appeal was allowed.

The claimant had sought to recover the principal sum as money, which had been secured by a mortgage. It had been secured when the right to recover had accrued, and the fact that the property had been sold had not made the principal sum any the less a sum secured by the mortgage. The reasoning that had led the court to its conclusion in *Bartlett* applied equally where there was no covenant to repay the principal sum.

■ **West Bromwich Building Society v Crammer**

23 October 2002, ChD

The defendant applied to set aside a statutory demand served on him by the claimant on 9 January 2002. The sum claimed in the demand comprised the principal loan, interest on that figure and a further sum comprising 'arrears fees'. From this total were deducted payments made, the proceeds obtained on the sale by the claimant of the security in August 1992, and a sum received by the claimant following proceedings against surveyors engaged when the defendant's mortgage was taken out. Prior to the judgment in *Bartlett*, a district judge set aside the demand on the basis that the correct limitation period was six years.

On appeal, the borrower sought to argue that, while the claimant was not, following *Bartlett,* statute barred in relation to the claim for the principal debt, the receipt of the monies by the claimant from the borrower, the proceeds of sale and the damages from the surveyors should have been appropriated or treated as appropriated against the capital and not, as the claimant was arguing latterly, against interest. Before the case reached the Court of Appeal neither party had considered the distinction to be relevant. The borrowers' argument was dismissed. Reviewing the authorities and in construing the terms of the legal charge, the court accepted that the lender was either entitled to appropriate the receipt as and when it sought fit or, alternatively, was deemed to have appropriated the monies received towards arrears of interest. The court did, however, observe that it would have been uncomfortable about not setting the demand aside if the validity of the statutory demand had to be considered by reference only to the 'arrears fees' element.

POLICY AND LEGISLATION

On 1 October 2002, the CML published the second edition of *CML lender's handbook for England and Wales*. This handbook 'provides comprehensive instructions for solicitors and licensed conveyancers acting on behalf of lenders in conveyancing transactions'. On 1 April 2003, further amendments were made in relation to newly built and newly converted properties. The handbook is only available at: www.cml.org.uk/handbook.

The Law Commission has issued three relevant consultation papers:

■ *Unfair terms in contracts* (CP 166), August 2002, proposes to replace the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1989 SI No 3159 and 1999 SI No 208 with a single piece of legislation. The closing date for comments was 8 November 2002.

■ *Towards a compulsory purchase code: (1) Compensation – consultative report and overview* (CP 165) and *Towards a compulsory purchase code: (2) Procedure* (CP 169) were also issued in June 2002. The closing dates for comments were 2 October 2002 and 18 February 2003 respectively. For further details see: www.lawcom.gov.uk.

On 12 August 2002, the Financial Services Authority (FSA) 'reconsulted' on a Treasury decision that new FSA rules and guidance regulating both mortgage advice and general insurance brokerage will be in place by October 2004: FSA press release, 12 August 2002 (see also: www.fsa.gov.uk/pubs). The introduction of regulation by the FSA under Financial Services and Markets Act 2000 and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 SI No 544 is intended to complement the voluntary mortgage code operated by the CML.

The Land Registration Act 2002 and subordinate land registration rules are to be brought into effect in October 2003. These will introduce obligatory electronic dealings with land, which will result in the 'dematerialisation' of title deeds. The ultimate, long term proposals are, however, regulated by a 10-year business strategy plan. In August 2002, the Land Registry consulted concerning the implementation of the new regime. See: www.landreg.gov.uk for details of the proposals. The Land Registry also announced that the value of the average home in England and Wales increased by 22 per cent over the last 12 months to an average £145,250: Land Registry press release, 10 February 2003.

■ Derek McConnell is a solicitor with SouthWest Law in Bristol and co-author of *Defending possession proceedings*, LAG, 5th edn.

* For recent academic discussion of the *Etridge No 2* case, see M Thompson 'Wives, sureties and banks' [2002] 66 Conv 174, March/April, and G Andrews 'Undue influence – where's the disadvantage?' [2002] 66 Conv 456, September/October.

HOUSING

Recent developments in housing law


Nic Madge and **Jan Luba QC** continue their monthly series. They would like to hear of any cases in the higher and lower courts relevant to housing. Comments from readers are warmly welcomed.

POLITICS AND LEGISLATION

Assured tenancy rent increases

The rent for an assured tenancy may be increased by a contractual rent review clause or, in the absence of such a clause, by service of a Housing Act (HA) 1988 s13 notice. The Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 SI No 259 significantly amends s13 in respect of notices served on or after 11 February 2003. Its purpose is to enable landlords of weekly or fortnightly periodic tenancies to set a fixed day each year (eg, the first Monday in April) for annual rent increases. The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003 SI No 260 prescribe a new form of s13 notice for England. The new form (4B) has been available for use since 11 February 2003. The old form (4A) is also effective if served before 12 April 2003.

These changes are intended to allow landlords (particularly registered social landlords) to bring annual rent increases into line with their own annual budgeting arrangements, and to stop 'the forward drift of rent increase dates': Office of the Deputy Prime Minister (ODPM) news release 22, 11 February 2003. See also 'Preparing for the rent rule change' *Inside Housing* 7 February 2003, p10.

Anti-social behaviour orders

From April 2003, it is possible for an anti-social behaviour order to be made in the county court on the application of a local authority or a housing association: Crime and Disorder Act 1998 s1B(4). *Practice Direction – Anti-social behaviour*, introduced as part of the 30th set of amendments to the CPR, sets out how an application is to be made depending on whether the applicant is the claimant or defendant to the main proceedings before the court or is seeking the order in proceedings between other parties.

Possession claims by social landlords

While the number of possession claims brought by mortgage lenders has been falling, claims by social landlords have been increasing (see 'Who's counting' *Roof* March/April 2003, p18). In February 2003, Citizens Advice published *Possession action – the last resort?* (available from: www.citizensadvice.org.uk.) demonstrating that many possession claims were brought without taking reasonable preliminary steps to recover arrears – such as resolving pending housing benefit claims. The report recommends that the ODPM publishes a new statement of practice on rent arrears and that housing associations should cease taking action under HA 1988 Sch 2 Ground 8 against assured tenants. Shelter's parallel report *House keeping: preventing homelessness through tackling rent arrears in social housing* (available from: www.shelter.org.uk) calls for social landlords to be debarred from claiming possession unless appropriate earlier action has been taken to tackle arrears.

Housing allocation in Wales

In Wales, the allocations provisions of the Homelessness Act 2002 were brought into force on 27 January 2003. The statute must be read together with the Allocation of Housing (Wales) Regulations 2003 SI No 239 which came into force on 29 January 2003.

Homelessness

The Audit Commission's review of homelessness services, *Homelessness: responding to the new agenda* (£25, tel: 0800 502030) was published at the end of January 2003. It reviews the readiness of local councils to implement the changes introduced by the 2002 Act. The commission's research manager provides a useful summary in 'A roll of the dice', *Inside Housing* 7 February 2003, p22 and the full report is available at: www.audit-commission.gov.uk/reports.

Local Government Bill

Part 7 of this bill contains provisions to enable local authorities to bring together all their disparate strategies concerned with housing (ie, the local homelessness strategy, house renewal policy, etc) in a single overall strategy document. The bill, which follows the white paper *Strong local leadership – quality public services,* had its second reading on 7 January 2003.

PUBLIC SECTOR

Secure tenancies

Sub-letting of the whole of premises

■ **Delson v Lambeth LBC**
[2002] EWCA Civ 1894, 19 November 2002

Lambeth served a notice to quit and brought possession proceedings on the basis that Ms Delson, who was originally a secure tenant, had sub-let the whole of the premises and so lost security of tenure. She sought judicial review, claiming that HA 1985 s93(2), which provides that if a secure tenant '… sublets the whole [of the dwelling house] … the tenancy ceases to be a secure tenancy and cannot subsequently become a secure tenancy', is incompatible with article 8 of the European Convention on Human Rights ('the convention') and article 1 of the First Protocol.

The Court of Appeal refused permission to appeal against a decision of Maurice Kay J which declined a renewed application for permission to apply for judicial review. It was common ground that s93(2) is an anti-abuse provision. Kay LJ accepted that, in deciding how to deal with questions of abuse of this kind, parliament has to be given a wide measure of discretion about the proper manner of dealing with the situation. It was wholly impossible for the court to conclude that s93(2) was not within the range of measures available to parliament.

Demolition and the right to buy

■ **Liverpool HAT v Pettit**
9 August 2002, Liverpool County Court[1]

The defendant was a secure tenant. In September 2000, he submitted a right to buy application. His solicitors were sent a draft lease for approval. In January 2001, the HAT made a decision in principle to demolish the tower block in which his flat was situated. In July 2001, the HAT began possession proceedings under HA 1985 Sch 2 Ground 10 on the basis that the block would be demolished in 2004. Mr Pettit defended, contending that the landlord did not intend to demolish within a reasonable period of time. In March 2002, he sought an injunction under HA 1985 s138 to compel the landlord to convey the flat.

After considering *Bristol CC v Lovell* [1998] 1 WLR 446, HL, HHJ George held that, as the landlord had an important public duty for the general condition of tenants in Liverpool, the claim for possession should be considered before the application for the injunction. He found that the landlord did intend to demolish within a reasonable period of time. However, he was not satisfied that suitable alternative accommodation was available. Neither accommodation in a tower block in a different area where Mr Pettit had no ties nor in

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another block which was due to be demolished was suitable. Other options (tenancies of new houses which were to be built to replace the tower block) were not suitable because their value would be very different. The claim for possession was, accordingly, dismissed and HHJ George held that Mr Pettit was entitled to an injunction under s138. Mance LJ gave permission to appeal, but the landlord withdrew the appeal immediately before the hearing.

Introductory tenancies

■ **R (Forbes) v Lambeth LBC**
[2003] EWHC 222 (Admin), (2003) Times 10 March
On 3 March 2000, Lambeth granted Mr Forbes, a 62-year-old vulnerable homeless person, an introductory tenancy which commenced on 20 March 2000. On 28 September 2000, the police raided the property and found drugs. On 13 October 2000, Lambeth served a HA 1996 s128 notice indicating that it intended to apply to court for possession because the premises were being used for selling drugs and immoral purposes. Mr Forbes requested a review. After the review, the council wrote stating that it had 'decided not to proceed with terminating your tenancy but will be monitoring your tenancy for a period of 12 months and then will review the situation and advise you'. On 9 March 2001, the council wrote stating that in view of continuing complaints of noise nuisance, it had 'no alternative but to continue the legal proceedings commenced when the Notice of Proceedings for Possession was served'. A possession claim was issued on 14 March 2001. Recorder Atkins adjourned the possession claim to enable Mr Forbes to apply for judicial review.

Crane J heard the application for judicial review and Lambeth's appeal against the decision to adjourn. He held that, in the light of *Cardiff CC v Stone* [2002] EWCA Civ 298; (2002) *Times* 19 February, a council may uphold a notice, but suspend or defer the actual taking of proceedings. However, the letter sent to Mr Forbes after the review did not have the same effect as the letter in *Stone*, which made it clear that the decision was being upheld. Here the original decision was not confirmed. There was, in reality, a decision to reverse or quash the original decision, albeit with a warning about future conduct. That conclusion was supported by the absence of any reasons, which would have been required if the decision had been confirmed (s129(5)). Additionally, in a case such as this, where the reasons for the decision have changed, the tenant ought at least to be given an opportunity to seek a review, not only to question the alleged facts, but also, crucially, to argue that it was not reasonable to require possession. If that were not done, the scheme of the Act would not be convention compliant. The possession claim was dismissed.

PRIVATE SECTOR

Long leases

Forfeiture

■ **Smith v Spaul**
[2002] EWCA Civ 1830, [2003] 03 EG 125 (CS)
The Halifax Building Society obtained possession of a flat from a lessee who had defaulted under the terms of a mortgage. Smith, the freeholder of the block, served a notice on Halifax under Law of Property Act 1925 s146 as a result of alleged breaches of covenant to keep the property in repair. Spaul subsequently bought the flat at auction from Halifax.

The Court of Appeal held that even if a mortgagee is in possession it is not the appropriate recipient of a notice under s146(1). Although the expression 'the lessee' is defined in very wide terms by s146(5)(b), the lessee required to be served under s146(1) is the person who, vis-à-vis the lessor, is bound to remedy a breach or to make compensation in money. The relationship of lessor and lessee is unaffected by the mortgage, even if the mortgagee takes possession. *Target Home Loans Ltd v Izza Ltd* [2000] 1 EGLR 23 was disapproved.

Service charges

■ **Villatte v 38 Cleveland Square Management Ltd**
[2002] EWCA Civ 1549, 16 October 2002
Service charges in a block of flats were payable to a management company. A dispute arose about payment of service charges by one lessee and the company made an application to the Leasehold Valuation Tribunal (LVT). The lessee challenged the validity of the application by arguing that the resolutions of the company authorising the application and instructing lawyers were invalid because they were taken by a board of directors which was not properly constituted – the appointment of two temporary directors had lapsed without reappointment at the relevant time. The lessee in question had held himself out as a director of the company and had not challenged the validity of the appointments of directors over some eight years.

The Court of Appeal held that the lessee was barred by the doctrine of laches from contending that the company had not been properly constituted at the relevant time. It would be a gross injustice to the other lessees to allow him to challenge the validity of appointments of directors when he had failed to do so previously.

Management of blocks of flats

■ **Metropolitan Properties Co Ltd v Wilson**
[2002] EWHC 1853 (Ch), 27 August 2002
The claimant landlord sought injunctions restraining the defendant tenants from preventing it from carrying out works of maintenance, repair, redecoration or renewal to the exterior and common parts of the building and to restrain two defendants from trespassing on the landlord's land by causing or permitting scaffolding to remain on the building. The tenants' case was that there was a long history of the landlord failing to carry out repairs in accordance with its obligations under the lease, and that when it had carried out such works in the past, there had been 'gross and exorbitant' overcharging. As a result, the tenants engaged their own contractors who erected scaffolding on the exterior of the building. The tenants contended that the landlord should be left to its remedy of damages in trespass in lieu of an injunction, but that even damages should not be awarded as the tenants were merely availing themselves of their right of self-help.

Etherton J held that the remedy of self-help might, in appropriate circumstances, entitle a tenant to the benefit of an implied licence to enter onto a landlord's premises in order to effect repairs that the landlord should have carried out under its repairing obligations. However on the facts of this case, the tenants had no prospect of establishing that they had been acting under such a licence. No sustainable criticism of the landlord's proposed works had been made out. It followed that the tenants had committed a trespass in relation to both the exterior and the common parts. The landlord was entitled to the relief sought.

Enfranchisement

■ **West Hampstead Management Co Ltd v Pearl Property Ltd**
[2002] EWCA Civ 1372, [2002] 45 EG 155
West Hampstead Management was set up by three lessees to be the nominee purchaser of the freehold reversion of a block of flats. A dispute arose about the date for valuation of the freehold. The company argued that it should be 5 May 1999, the date when a consent order was made in the county court which provided that the nominee purchaser was entitled to acquire the freehold. The landlord argued that it should be 22 February 2000, the date when the terms of lease-backs of two flats were agreed.

The Court of Appeal held that it was the latter date. Leasehold Reform Housing and Urban Development Act (LRHUDA) 1993 Sch 6 para 1, defines the valua-

tion date as the date on which it is determined by agreement, or by the LVT, what freehold interest in the specified premises is to be acquired. Freehold interest means the quality of such interest, and includes questions about whether it is encumbered or not. There had been no agreement about what freehold interest was to be acquired until 22 February 2000.

Right to a new lease

■ **Latifi v Colherne Court Freehold**

[2002] EWHC 2816 (QBD), 15 November 2002

The claimant long lessee served a notice under LRHUDA s42 claiming to exercise the right to acquire a new lease. Solicitors acting for the competent landlord served what purported to be a counter-notice, but was in fact invalid. The claimant did not notice the error and applied to the LVT to determine the premium. The claimant then noticed the error, and on the basis that the notice was invalid, applied to the county court under s49 to determine the terms of the lease. A consent order was made referring all matters to the LVT. However, the claimant subsequently applied to the county court under s49 for a declaration that he was entitled to a new lease on the basis that the notice was invalid. A recorder held that the claimant had waived the invalidity and dismissed the application.

Cooke J dismissed his appeal. The requirement in s45 for a valid counter-notice can be waived. Furthermore, the requirements for such notices are procedural and there is no reason why parties should not be able to contract out of them.

HOMELESSNESS

Definition of 'homelessness'

■ **R (O'Donoghue) v Brighton and Hove City Council**

[2003] EWHC 129 Admin, 15 January 2003

The claimant and her family were living in a caravan. She had 30 days' temporary permission to occupy a site on council land. When that expired, the council took no action to move her on. The council accepted and began to investigate her homelessness application, but when it failed to provide interim accommodation under HA 1996 s188, the claimant sought permission and an injunction in judicial review proceedings.

Jackson J dismissed the application. A pre-condition for the operation of the interim duty was a finding that the claimant 'may' be homeless. Here the claimant was occupying a 'moveable structure' and accordingly was homeless 'if there is no place where he is entitled or permitted both to place it and reside in it': s175(2)(b). The expiry of the claimant's licence demonstrated that she no longer enjoyed an 'entitlement' to stay, but the council's inaction in the face of her trespass amounted to 'permitting' her to remain. It followed that she was not a homeless person.

Priority need

■ **Higgs v Brighton & Hove City Council**

5 February 2003, Brighton County Court[3]

Mr Higgs lived in a caravan. He parked it without legal authority in Hove Park. On 19 March 2002, the council served notice directing him to move it but he did not do so. On 28 March 2002, the council issued magistrates' court proceedings against him under the Criminal Justice and Public Order Act 1994 for trial on 2 April 2002. On 30 March 2002, Mr Higgs returned to find that his caravan (and all his possessions which had been inside it) had gone. On his application for accommodation under HA 1996 Part 7 (homelessness), the council decided on review that he was homeless, but that he had no priority need. He appealed, contending that he had priority because he was 'homeless … as a result of an emergency such as a flood, fire or other disaster': HA 1996 s189(1)(d).

Recorder Morris-Cole dismissed the appeal. He held that although the disappearance of a caravan was a 'disaster' for Mr Higgs, it could not be shown that the bizarre sudden disappearance of the caravan was an emergency which caused the homelessness for the purposes of s189(1)(d): see *R v Bristol CC ex p Bradic* (1995) 27 HLR 584, CA.

■ **Ghaznavi v Kensington & Chelsea RLBC**

10 January 2003, Mayor's & City of London County Court[4]

Mr Ghaznavi fled from Afghanistan where his wife had been killed and he had been tortured. In support of his application for assistance as a homeless person, he produced a letter from a GP to whom he had recently transferred. The letter described him as suffering from 'severe reactive depression and post-traumatic stress disorder'. His previous GP had completed a form recording the depression as 'moderate'. To resolve this difference of view, the council's medical adviser telephoned the new GP who said that she was awaiting transfer of the medical records from the old GP. By its review decision, the council found that the depression was no more than any ordinary homeless person might be expected to experience. HHJ Simpson quashed the decision. No reasonable authority would have reached a conclusion on 'vulnerability' without waiting for the new GP to receive the transferred medical notes and produce a considered report. The judge described it as 'wholly unsatisfactory' that the council relied on the advice of a medical adviser without disclosing his/her name or qualifications.

Intentional homelessness

■ **Demirtas v Islington LBC**

21 February 2003, Mayor's & City of London County Court[5]

The appellant assaulted his wife and as part of his bail conditions was not allowed to return to the matrimonial home. He was later convicted, fined and placed on probation, but the sentence did not restrict him from returning home. He did not return, but applied for housing as a homeless person. The council confirmed on review a decision that he had become intentionally homeless as a result of his deliberate act (the assault).

HHJ Simpson quashed the decision. The appellant had had a right to return to the matrimonial home since the ending of the bail conditions. The cause of his present homelessness would need to be reconsidered by the council.

■ **Quinton v East Herts DC**

(2002) 122 Housing Aid Update 5, 16 September 2002, Luton County Court

The appellant was a sole secure council tenant. Her partner refused to contribute towards the rent. She could not claim benefits to help her pay the rent as her partner was working. In March 2001, the council was granted a suspended possession order on arrears of £1,500 to be cleared at £15 per week. In May 2001, the partner left and the appellant claimed income support and housing benefit. She did not know that she could apply to have the payment order varied and tried to comply with it. By March 2002, she had reduced the arrears to £503 but, relying on breaches of the strict terms of the order, the council obtained and executed a warrant. On review, the council decided that she had become intentionally homeless.

HHJ Viljoen varied the decision to a finding that the appellant was not intentionally homeless. She had been guilty of no deliberate act nor deliberate omission to pay. She had not acquiesced in her partner's refusal to pay. Once he left, the instalments had not been affordable for a person on benefits, as the council would have known given its experience of dealing with households on

income support. There had been a lamentable failure to investigate the affordability issue.

Local connection

■ **Al-Ameri v Kensington & Chelsea RLBC; Osmani v Harrow LBC**

[2003] EWCA Civ 235, 28 February 2003[6]

The Al-Ameri and Osmani families came to the UK seeking asylum and were dispersed to National Asylum Support Service (NASS) accommodation in Glasgow where they lived for many months. The NASS accommodation was withdrawn when their asylum claims succeeded. They chose to make their housing applications under HA 1996 Part 7 to two London boroughs. The boroughs accepted that the families were unintentionally homeless and in priority need. However, they decided that the families had no connection with their areas but did have local connections with Glasgow by residence. They made local connection referrals to Glasgow. Neither family wished to return to Glasgow, but the referrals were affirmed on review. Glasgow refused the referrals, but the families' county court appeals against the referral decisions brought under HA 1996 s204 were unsuccessful.

Allowing their appeals, a majority in the Court of Appeal held that the statutory definition of local connection through residence could not be met: 'a connection because he was in the past normally resident there and that residence was of his own choice' (HA 1996 s199(1)(a)). That was because a NASS claimant was allocated accommodation on a 'no choice' basis. NASS had done the choosing not the families. Buxton LJ, dissenting, held that even if the alternative to travelling to Glasgow was destitution and/or detention the families had made the 'choice' to go there as directed. Permission to appeal to the House of Lords was granted.

Discharge of duty: suitability of accommodation

■ **Akhtar and Naeem v Manchester CC**

5 February 2003, Manchester County Court[7]

The appellants were made an offer of permanent HA 1996 Part 6 accommodation that they rejected as 'unsuitable'. The council said the offer 'was to stand' and would discharge the council's duty under s193. The notification letter advised of the right to review, but failed to explain that the appellant could both accept and request a review. The appellants did not accept the offer and, on review, the council confirmed its decision that the refusal discharged its s193 duty.

The grounds of appeal were:

■ failure to inform the appellants of their rights both to accept and seek a review, contrary to the Code of Guidance (para 13.2); and

■ giving a notification which conveyed the impression that the appellants had to choose whether to accept or seek a review.

The council conceded that the review decision should be quashed and submitted to an order (HHJ Tetlow) that the appeal be allowed with costs.

Challenging homelessness decisions

■ **Runa Begum v Tower Hamlets LBC**

[2003] 2 WLR 388, [2003] UKHL 5, [2003] 1 All ER 731

The House of Lords has upheld the Court of Appeal's conclusion ([2002] HLR 29, April 2002 *Legal Action* 31) that the review and appeal provisions of HA 1996 Part 7 are compatible with article 6 of the convention. Although the scheme of internal officer review (s202) was non-compliant, the availability of appeal to the county court on a point of law produced an overall scheme which was compliant. The county court judge was not required to adopt any special approach of 'anxious scrutiny', if that meant anything more than applying ordinary judicial review principles with the care called for in a matter as serious as the homelessness of an appellant.

■ **Akhtar and Naeem v Manchester CC**

5 February 2003, Manchester County Court[8]

The council notified a review decision by letter dated 12 November 2002. The appellants, who did not speak or read English, had no recollection of receiving the letter. They were later told of the adverse decision but not of the 21-day time limit for any appeal. They eventually obtained advice and filed an Appellant's Notice on 23 January 2003. They applied for an extension of time under HA 1996 s204(2A)(b). The grounds relied on included:

■ the above facts;

■ the merits of the appeal;

■ the consequences for the appellants if they were deprived of an opportunity to challenge the decision; and

■ their promptness in acting as soon as advised of the right to appeal.

The council conceded that the appeal should be entertained and submitted to an order (HHJ Tetlow) that the appeal be allowed with costs (see above).

HOUSING AND HUMAN RIGHTS

■ **Donnelly v Northern Ireland Housing Executive**

29 January 2003, High Court Northern Ireland[9]

The claimant suffered many years of harassment and intimidation from a neighbour who was a secure tenant of the executive. When the claimant asked the executive to enforce the tenancy agreement and evict the neighbour it declined. It said that to take such action would expose its own staff to danger. The claimant sought judicial review and damages for breach of article 8 of the convention.

Weatherup J dismissed the claim. The executive was entitled to take into account the health and safety of its own staff in deciding what action (if any) to take. Risk of injury to its own staff could not be a determinate of whether action was taken, but was a relevant consideration which the executive was entitled to weigh in the balance. Weighing that balance in the context of article 8 required: '… consideration of the alternatives through a complete investigation based on adequate information concerning the relevant public interest and the relevant private interest'.

If the decision maker had undertaken that exercise 'a wide discretionary area of judgement ought to be accorded to the decision-making authority'. The executive had consulted with the police and had offered to address the problem by moving the claimant to any area of his choice. Its decision not to pursue possession proceedings could not be described as irrational even when subject to a 'higher intensity of review'. The 'wider setting' included the facts that the claimant had secured his own injunction against the neighbour and that yet another criminal prosecution of the neighbour was underway.

■ Nic Madge is a district judge and a recorder. Jan Luba QC is a barrister at 2 Garden Court Chambers, London EC4.

1 Jackson and Canter, solicitors, Liverpool and Nazmun Ismail, barrister, Manchester.
2 Elaine Robinson, Carlisle Community Law Centre and Adam Fullwood, barrister, Manchester.
3 David Watkinson, barrister, London.
4 Daniel & Harris, solicitors, London and Edward Fitzpatrick, barrister, London.
5 Percy Short & Cuthbert, solicitors, London and Nik Nicol, barrister, London.
6 Stephen Reeder and Liz Davies, barristers, London.
7 John Stringer, Platt Halpern, solicitors, Manchester and James Stark, barrister.
8 John Stringer, Platt Halpern, solicitors, Manchester and James Stark, barrister.
9 Housing Rights Service, Belfast.

IMMIGRATION CASE NOTE

Points to be followed by immigration appellate authorities when considering refugee convention cases

Ullah v Special Adjudicator and Do v SSHD [2002] EWCA Civ 1856, 16 December 2002

Background

In these recent cases, the Court of Appeal has laid down important principles to be followed by the immigration appellate authorities in deciding issues of law under the Geneva Convention relating to the Status of Refugees 1951 ('the refugee convention') about which doubts had existed. *Ullah v Special Adjudicator* and *Do v SSHD*, two joined appeals, raised undecided issues under the Human Rights Act (HRA) 1998. *Ullah* was an appeal to the Court of Appeal on an application for judicial review of a decision of an immigration adjudicator refusing to permit the appellant to remain in the UK on human rights grounds. It appears, although this is not clearly stated in the judgment, that the challenge was to the decision of an adjudicator in a certified case, that is, one in which there is no right of appeal to the Immigration Appeal Tribunal (IAT).

Do was an appeal against a human rights decision of the IAT. In both appeals, the issue was the same: does the HRA together with articles of the European Convention on Human Rights ('the convention'), require the UK to give refuge to immigrants who fall short of showing a 'well-founded fear of persecution' under the refugee convention, but who can show that one or more of those articles are likely to be breached by the state to which it is proposed to return them?

Facts: In the two joined cases, the factual issue raised concerned article 9 of the convention – freedom of thought, conscience and religion. Mr Ullah was an Ahmadi Muslim from Pakistan; Ms Do was a Catholic from Vietnam. Both claimed that their rights under article 9, a qualified provision, would be infringed if they were returned to their countries of origin. Asylum claims by each appellant were dismissed and it was not in dispute that such decisions were correct. It was argued that the convention was engaged if the act of returning the appellants would lead either to a flagrant breach of their convention rights or, alternatively, to a real risk of such a breach. The Strasbourg jurisprudence establishes that even though article 1 of the convention states that it applies in the territory of member states, it will be engaged where removal of an individual creates a real risk of exposure to breaches of article 3 – prohibition of torture and inhuman or degrading treatment. The leading case is *Soering* v *UK* (1989) 11 EHRR 439. This concerned the extradition of an offender to the United States where he would face the death penalty, and the long delays and stresses associated with 'death row' in that country. The European Court of Human Rights (ECtHR) held that the convention would be engaged by a member state taking action in relation to someone within its jurisdiction which carries a real risk that such action would expose that person to infringement of his/her article 3 rights outside the jurisdiction.

Strasbourg case-law

This principle is sometimes called the 'extra territorial effect' of the convention. In *Soering*, the act of extradition would not itself constitute such breach. It is the foreseeable consequences of the act which were held to infringe article 3. The Court of Appeal in *Ullah* had difficulty in seeing why such a principle should not be applied to any right under the convention whether absolute (such as article 3) or qualified. One possible basis for the exception or principle in *Soering* was the severity of the foreseeable consequences of extradition. This is reflected in other Strasbourg cases where article 6 – the right to a fair trial – might be infringed by removal to countries with very different or non-existent legal systems.

The question was, therefore, whether potential breaches of other convention articles would engage state responsibility either where such a breach would either be flagrant or only where the article in question was absolute in nature. The precise basis of the doctrine in *Soering* was further discussed by the ECtHR in *Chahal* v *UK* (1996) 23 EHRR 413. The UK accepted that the deportation of a Sikh separatist to India would probably expose him to the risk of torture, or inhuman or degrading treatment.

However, this had to be balanced against the risk to national security inherent in allowing him to remain in the UK. This argument failed. The court held that article 3 was absolute in nature and expressed a fundamental value of democratic society. No derogation from its terms was ever permissible. It followed that the protection given by article 3 was superior to that provided by the refugee convention, which requires a reason for persecution set out in that convention to be established. It also allows for exceptions based on the personal conduct of the applicant for asylum.

In *Ullah*, the Court of Appeal found it very difficult to find a rationale for *Soering* and *Chahal* that reconciled the sovereignty of states that are party to the convention in matters such as extradition, and the necessary implied extension of responsibility under the refugee convention to which states party to the convention were also signatories. The court also had difficulty in understanding the basis for the extension of state responsibility to acts that would occur outside its territory given the declaration that the convention is engaged on, and arguably only on, a territorial basis.

The Court of Appeal finally resolved its difficulties by noting that the convention was a living instrument and that it would offend the humanitarian principles that underlie its affirmation not to recognise that article 3 has a role in expulsion and removal cases. It also noted that there was some suggestion in the Strasbourg case-law that article 8 – the right to private and family life – might be engaged in such cases. However, the Strasbourg court had been reluctant to extend formally the scope of other articles where the applicant's likely treatment in the state of return would fall short of a breach or breaches of article 3.

Domestic law

The Court of Appeal referred to Immigration and Asylum Act 1999 ss65 and 77(3). These require article 3 of the convention to be considered in asylum and human rights appeals, but no specific reference is made in that statute to other articles of the convention. The court then considered some case-law in the asylum context where effect had been given to article 8 both in terms of the impact on the individual of removal to a foreign state by reason of the situation that would be found on such return, and of the effect on family and private life that had arisen in the UK during the course of making an asylum claim. Some of those cases were decisions of the IAT. The court reasoned that none of the cases it cited were conclusive on the issue of whether the expulsion of an alien would or might engage articles other then article 3.

Decision: The court's conclusions have the merits of clarity. Articles 3 and 8 are the only articles that are engaged in the case of the expulsion of an alien. Article 3 applies where the situation in the foreign state amounts to a reasonable risk of torture or inhuman or degrading treatment. Article 8 applies where family life has been enjoyed in the UK, and any breach created by an expulsion would be disproportionate to the recognised aim of immigration control. This is not recognised

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expressly in article 8(2) of the convention, but the Strasbourg case-law recognises this as a legitimate aim of article 8, which is qualified and not absolute. Neither article 9 nor any other article except article 3 was engaged by an expulsion unless, perhaps, (and this may be an *obiter* remark) any breach that can be established is flagrant in nature. In such an instance, there may well be a breach of article 3. On the facts, both appellants lost their appeals. Leave was given to appeal to the House of Lords. If the result is the same in the highest domestic court an attempt will, undoubtedly, be made to take the cases to Strasbourg.

Since judgment was given in this case, permission has been given by Keene LJ in *R (Ay) v SSHD* [2002] EWCA Civ 1922, 17 December 2002, to challenge before the High Court the expulsion of an alien where there was evidence that the act of expulsion itself might infringe article 8 of the convention rather than the state of affairs or the treatment that the individual would face on return. It remains to be seen whether such challenge will succeed.

Comment: The consequence of *Ullah* and *Do* is to limit the scope for arguing convention points for asylum-seekers whose claims fail under the refugee convention and for deportees under immigration law. In most cases, only a future breach of article 3, proved to the same standard as a breach of the refugee convention, will suffice.

■ Charles Blake is a solicitor and a part-time immigration adjudicator. The views expressed in this article are his alone.

HEALTH

National Health Service funding for long term care

In this article, **Stephen Cragg** explores the process by which health authorities should decide a person's eligibility for long term care provided by the NHS, and reviews the latest report on the issue from the Health Service Ombudsman, which was published in February 2003.

Dissatisfaction caused by the failure of the NHS to provide free, continuing healthcare to people discharged from hospital has been a source of concern for many years. Despite three sets of guidance from the Department of Health (DoH) and an authoritative decision of the Court of Appeal in the *Coughlan* case,[1] the Health Service Ombudsman, Ann Abraham, has felt it necessary to publish a special report, *NHS funding for long term care*,[2] criticising both central government and individual NHS bodies in relation to their approach to the issue, and upholding a number of specific complaints from members of the public denied free NHS care.

The legal position

The NHS has a general duty to provide healthcare services to the population as whole (see National Health Service Act (NHSA) 1977 ss1–3). This includes the provision of health services in accommodation other than hospitals (see NHSA s3(b)). The duty has been described as a 'target' duty and in a number of cases the courts have declined to order that the NHS provide a specific service to an individual, deciding instead that it is for the NHS itself to decide how and to whom services will be provided (see, for example, *R v Secretary of State for Social Services ex p Hincks* [1980] 1 BMLR 93). Once a decision is taken to provide a service, then it is free to the service user at the point of delivery.

The situation for local authorities is somewhat different. The main provision for continuing care is to be found in National Assistance Act (NAA) 1948 s21. If a person is assessed as needing 'care and attention' not otherwise available to them, then there is a duty on a local authority to provide accommodation to meet that need (see *R v Kensington and Chelsea RLBC ex p Kujtim* [1999] 4 All ER 161; (1999) 2 CCLR 340, CA). By NAA s21(5), other services can also be supplied in connection with the provision of that accommodation, and to the extent defined by the *Coughlan* judgment (see below) these can include nursing care. Unlike the NHS, local authorities are under a duty to charge for services provided under NAA s21 and for service users this can mean that life savings and property (including a person's home) will be taken into account in assessing their contribution (see also NAA s22).

The Court of Appeal in the *Coughlan* case defined the extent to which local authorities are able to provide nursing care in the exercise of their s21 functions, stating that it was only lawful to do so where the provision of nursing services was ancillary to the provision of accommodation. In other cases, the care required was primarily healthcare to be provided by the NHS. Such 'health service' nursing care might be recognised by the quantity of nursing care required (for example, if a person needed around the clock care), or the quality of the care needed (for example, if specialist nursing was required). However, each case had to be considered on its own facts and there can be 'no precise legal line drawn between those nursing services which are and those which are not capable of being treated as included in a [social services'] package of care …'(see *Coughlan* judgment at para 30(d)).

The guidance

Grappling with these distinctions, both before and after the *Coughlan* judgment, the DoH has issued a series of circulars and guidance to health authorities and local authorities to assist with drawing up criteria by which decisions about which side of the line an individual case should fall can be made. Importantly however, the DoH has never issued criteria to be applied nationwide.

The original guidance, in 1995, on NHS responsibilities for meeting continuing healthcare needs issued as circular Health Service Guidance (95)98 listed a number of conditions which might indicate that a person was in need of continuing NHS care. These included the complexity or intensity of his/her medical or nursing care needs, the presence of rapidly degenerating or unstable medical symptoms, and the routine need for specialist healthcare equipment.

In 1996, further guidance was issued (EL(96)8), stating that some health authorities were interpreting the guidance too restrictively and, for example, requiring the presence of multiple criteria before a person would qualify for NHS continuing care. National health service bodies were urged not to adopt a restrictive approach to their criteria.

Following the *Coughlan* judgment in July 1999, authorities were advised the following month by circular Health Service Circular (HSC) 1999/180, to review their criteria and take their own legal advice in the light of the case, and to await further guidance later in that year. Many authorities did nothing, preferring to wait for the new guidance. However, this was not issued until June 2001 as HSC 2001/015 and in many ways was as vague and unspecific as the 1995 guidance, although clearly advising where a person's need is primarily for health care rather than accommodation, then the service should be provided by the NHS. Health and local authorities were due to have reviewed their continuing care criteria and to have any amendments in place by 1 October 2002. The author's experience is that many local authorities still remain unhappy about the restrictive interpretation of continuing care criteria insisted on locally by NHS bodies. Finally, although seemingly separate

from the continuing care issues, it should be mentioned that under further guidance HSC 2001/17, by 1 April 2003, the NHS will supply free of charge all nursing care provided by a registered nurse to residents of care homes.

The Health Service Commissioner's report

Against this background, and faced with a growing number of complaints about the imposition of restrictive criteria by health authorities, Ann Abraham, the Health Service Commissioner ('the ombudsman'), issued her recent report for the express purposes of highlighting first, the weaknesses of the government's guidance in this area, and second, to assist those who have suffered injustice to obtain redress.

Although the report sets out in detail four complaints about potentially unlawful criteria (that is, not in line with the guidance and/or the *Coughlan* judgment) adopted by health authorities where individuals have been denied NHS care, the ombudsman notes a pattern of NHS bodies failing to comply with the law, and indications that the problems may be widespread. She refers to the substantial financial injustice to individuals denied free NHS care. Also of concern is the lack of information provided to individual service users about important decisions involving continuing care, especially at the point of discharge from hospital to a care home, and the unreasonable application of criteria even where these comply with the law.

Many service users and social services departments will be heartened by the ombudsman's recognition of the ongoing problems with implementing continuing care by the NHS lawfully or fairly. However, it is in the recommendations of the ombudsman that the impetus for change seems most promising.

First, and most importantly, the ombudsman criticises the DoH's role in contributing to the current situation. She recommends that the DoH should review the national guidance on eligibility for continuing NHS healthcare:

> *... making it much clearer in new guidance the situations in which the NHS must provide funding and those where it is left in the discretion of the NHS bodies locally. This guidance needs to include detailed definitions of terms used and case examples of patterns of need likely to mean NHS funding should be provided.* (HSO para 40)

Second, the ombudsman would like to see the DoH taking a more proactive role in checking whether criteria used, since the 1995 guidance onwards, by NHS bodies has been in line with official advice and case-law, and to check in future whether such advice complies with any new guidance. The ombudsman's clear view is that the DoH has done less than it should have, in the past to ensure that the NHS has funded all those eligible for continuing care.

Third, the ombudsman sets the NHS bodies currently responsible for continuing care policy and delivery (ie, the strategic health authorities and the primary care trusts) the task of reviewing their predecessors' criteria (and the application thereof) since 1996 taking into account the guidance, the *Coughlan* judgment and the ombudsman's findings in the cases covered by her report. The aim of this exercise is to identify individual service users who may have suffered financial injustice and to make 'appropriate recompense' to them.

Remedies for local authorities and individuals

The tasks set for the DoH and the NHS bodies may have considerable financial implications if the ombudsman is correct that the problems she has identified are widespread. For any individual user who feels s/he has been unfairly denied NHS care in the past, the first step must be to apply for a review of the situation to the present NHS bodies on the basis that the present or past criteria are or have been unlawful, or have been wrongly applied, with the possibility of pursuing the complaint to the ombudsman if such an approach is not successful.

If the DoH acts on the ombudsman's recommendations then it should be hoped that a full scale review of criteria adopted and applied since 1996 will be undertaken. There is nothing to stop individuals referring criteria thought to be overly restrictive to the DoH with a request for review. Local authorities may also have a significant role to play. It has been surprising that there have been no judicial review challenges by local authorities (so far as the author is aware) of continuing care criteria adopted by NHS bodies given that it is the local authorities which have endured greater demands on their resources to fund service users wrongly denied an NHS service. The ombudsman's report should encourage local authorities to be more forceful in their negotiations with NHS bodies over criteria, and more willing to refer potentially unlawful criteria to the DoH or to threaten judicial review proceedings.

■ Stephen Cragg is a barrister at Doughty Street Chambers, London WC1.

1 *R v North and East Devon Health Authority ex p Coughlan* [2001] QB 213; (1999) 2 CCLR 285, CA.
2 For more information or copies of the report, telephone: 020 7217 4077/3943 or see: www.ombudsman.org.uk.

CHILDREN

Children's law review


Nicola Wyld and **Bridget Lindley** continue their six-monthly series, keeping readers up to date with legislation, practice matters and case-law relating to children. Readers are invited to submit summaries of significant unreported cases.

POLICY AND LEGISLATION

Adoption and Children Act 2002

The Adoption and Children Bill finally received royal assent on 7 November 2002. During its passage through parliament, a number of key amendments were incorporated into the bill and, therefore, the Adoption and Children Act (ACA) 2002, as it is now, is different from the bill's clauses as described in April 2002 *Legal Action* 11.[1] Therefore, the authors propose to summarise again the key provisions in the ACA, but will do this in stages, in future articles, to coincide with the implementation of those provisions. However, some of the ACA's provisions concern amendments to the Children Act (CA) 1989 which, although not yet implemented, are worth highlighting at this stage since they received much attention during the lobbying process, for example:

Advocacy services

Following extensive lobbying throughout the passage of the bill for the introduction of a legal right to independent advocacy for looked after children who make a complaint under the CA, the government introduced its own amendment at report stage in the House of Lords, which inserts a new s26A into the CA. This section requires local authorities to make arrangements for the provision of advocacy for children who qualify under the Children (Leaving Care) Act 2000, or are entitled to make a complaint under CA s26 because they are looked after and/or are in need. Curiously, while the heading of this amendment refers to advocacy services, its substance refers to the provision of assistance (including by way of representation), but those lobbying are assured that regulations will refer to advocacy and specify what is involved in the role.

While the principle of this amendment is welcome, its failure to acknowledge the need for advocacy services to be independent of the local authority is of great concern. Independence is critical to the effectiveness of advocacy and the child's confidence in it as a service. A further amendment concerning choice and independence was tabled at the bill's third reading. Lord Hunt, former minister of health, for the government was concerned that the wording of the amendment would force local authorities to dismantle their existing children's rights services and prevent children and young people from working with local advocates with whom they had built up a good relationship. However, he acknowledged the purpose of the amendment by indicating that regulations would provide for the child or young person to be allowed choice in who to appoint as his/her advocate.

The challenge for me is to ensure that this will work. If I am insisting that local authorities be shown some discretion, I must assure this House that we shall make sure that that works out okay for young people. The National Advocacy Standards will build on the regulations to inform the way in which independence works in practice ... We want to ensure that the child or young person knows that the service will not be influenced. We want children and young people to be fully confident that advocates are acting exclusively on their behalf and have no potential or conflicting interest. We will ensure that local authorities implement this provision in a sensible way, according to the standards that we set out, and we shall performance-manage them. (HL Debates col 236, 30 October 2002).

Children's separate representation in private law proceedings

There is no clear provision in the CA for the separate representation of children in private law proceedings. This is contrary to article 12 of the UN Convention on the Rights of the Child ('the UN convention') and has received criticism from the UN Committee on the Rights of the Child. It may also be contrary to articles 6 and 8 of the European Convention on Human Rights ('the convention'). Family Law Act 1996 s64 made provision for separate representation, but this has never been implemented. Amendments reproducing s64 were laid at the bill's House of Lords report stage and went to a vote, which the government lost. The amendment, in a reworded form, was brought back by the government at third reading in the House of Lords in clause 122 of the bill with the following effect:

- The making or revocation of placement orders is to be included in the range of specified proceedings for the purposes of CA s41.
- There will be discretion for specified proceedings under CA s41 to be extended to include the making, varying or discharge of s8 orders.
- Section 93 of the CA will be amended to enable court rules to be made regarding the separate representation of children in relevant proceedings.

These provisions now allow, in principle, not only for separate representation, but also for a public law tandem model of representation by solicitor and children's guardian. With the enormous problems besetting the Children and Family Court Advisory and Support Service (CAFCASS) and the shortage of experienced children's guardians and family court reporters, it is hoped that the government will honour its intention to implement this important provision.

Implementation

The latest information on the government's timetable for implementation is available at: www.doh.gov.uk/adoption. It shows that the main provisions, which establish the new framework for adoption law and the introduction of special guardianship, will not be implemented until late 2004. The reason for the delay is not just that practitioners and agencies need to be trained on the ACA, but also because it cannot be implemented until new court rules, regulations and guidance provided for in it, are finalised. Throughout the debates in parliament, the government repeatedly pledged its commitment to detailed consultation on the court rules, etc, which obviously will take time, hence the delay in implementation of most of the ACA. However, there are some provisions that have already been implemented, or are due to be, this year:

Provision of accommodation for children and families

Section 116 of the ACA amends CA ss17 and 24 to the effect that local authorities now have a statutory power to provide accommodation for children and their families, in exceptional circumstances, as part of the range of services they can provide to families with children in need. This provision came into force on royal assent, and resolves any lingering uncertainty about whether local authorities have such powers, as highlighted in several cases in 2002 (see, for example, *A v Lambeth LBC* [2001] 2 FLR 120 and *R (W) v Lambeth LBC* [2002] 2 FLR 327 (October 2002 *Legal Action* 13)).

At third reading in the Lords, an amendment to this provision was introduced to prevent local authorities from providing accommodation to children and young people *alone* under CA s17. This was an attempt to prohibit a prevalent current practice among local authorities of housing young people (especially unaccompanied asylum-seeking children) in bed and breakfast accommodation without offering any other kind of assistance. The argument in support of this amendment was that if children and young

people were not able to live in their home environment, whether here or abroad, or for whatever reason, they should be accommodated under CA s20. These young people would therefore have full 'looked after' status and all the attendant support and protection, otherwise no one is ultimately responsible for them, despite their being minors. It was argued that it was unacceptable that this already vulnerable group of children, who are dislocated from their communities and may not even have English as their first language, are left to navigate the system alone. The government opposed the amendment, but stressed that a full assessment of a child's needs should be carried out in such circumstances. Baroness Andrews, said on behalf of the government, that:

The assessment framework specifically refers to the special needs of asylum seekers, so we say that that framework, which takes into account the full needs of the child, should be applied to them as generously and as thoughtfully as it applies to any child in the country and to his family circumstances. That is what we would want to see. I understand that there are concerns about practice and about whether local authorities are applying the framework as they should. (HL Debates col 1384, 23 October 2002).

However, it is not clear how such assessments will be monitored and enforced. Readers may wish to look out for examples of the current practice and report them to the Department of Health (DoH) where they consider that this power is being used inappropriately.

Other provisions

■ Provisions concerning restrictions on overseas adoptions will be implemented in mid 2003.

■ Phase one of the independent review mechanism, which will cover prospective adopters turned down by the adoption panel, will be implemented in late 2003.

■ Advocacy services described above are expected to be implemented in spring 2004, with relevant draft regulations and guidance to be issued in the summer.

Consultation on regulations and guidance

As mentioned above, court rules, regulations and guidance need to be issued before the main provisions of the ACA can be implemented, and these will be subject to a period of consultation before being finalised. This has already occurred in relation to phase one of adoption support (as described below). It is understood that the remaining consultation will take place throughout this year according to the following themes: adoption support, placement for adoption, intercountry adoption, and access to information.

Adoption support

The government intends to implement its programme for adoption support in two phases, the first will occur, in October 2003, under existing legislation as a transitional arrangement pending the implementation of the main provisions of the new ACA (at which point phase two will be implemented). As a precursor to phase one, draft Adoption Support Services Regulations 2003 and accompanying guidance were issued for consultation in late 2002, setting out the proposed transitional provisions for adoption support under the Adoption Act (AA) 1976. Although the text of these documents has not yet been finalised, they outline a proposed framework for support services to be available to adopters and their children, but not for birth parents (or other relatives), whose entitlement to support in the AA and the National Adoption Standards is unequivocal. This omission caused concern among many agencies in the adoption field because the exclusion of one group of people in the 'adoption triangle' from support provision would create a fundamental imbalance, and potentially fatal flaw, in the government's programme for adoption support.

A number of agencies involved in the Adoption Law Reform Group submitted a joint response to the DoH, in February 2003, arguing that a failure to include birth families in phase one will mean that adoption support services will be established on a lopsided basis, and will be hard to change at a later stage when phase two is implemented. Specifically, the group argued that adopted children, especially those who are placed when they are older, may need to have ongoing links, and even direct contact, with members of their birth family in order to maintain important relationships and attachments.

Research suggests that a key factor in the success of such contact arrangements is that all the adults involved accept and respect each other's new roles in the child's life.[2] Yet, birth family members often find it extremely hard to make this crucial adjustment especially when they are grieving the 'loss' of the child and, as frequently happens, do not agree with the adoption placement. In these circumstances, birth family members' need for access to support services is inescapable in order to help them overcome their grief, and understand why they should make this adjustment. Without such services, a child may have to lose the relationship with his/her birth family, which otherwise s/he might be able to retain, albeit within new family circumstances.

In the same response, there was also a collective view that the financial implications of providing support to children who are placed in another authority area needed to be explored further. Specifically, a fair solution needs to be found where one authority might assess and identify the need for adoption support services in a particular case, but another authority might have to pay for such services when the child is subsequently placed outside it. One proposal was that there could be a centrally administered 'pot' to which each placing authority could contribute on placement of a child, and on which each receiving authority could draw to fund the provision of support services. At the time of going to press, it is not known whether the final versions of the regulations and guidance will be changed to take account of these concerns.

The Victoria Climbié Inquiry

The long awaited report of this inquiry, which was chaired by Lord Laming, former chief inspector of the Social Services Inspectorate, catalogues and analyses the appalling events of this case, concluding in broad terms that there was a total failure of the system with tragic results.[3] The report is thorough, as was expected, and makes 108 recommendations. Some of these will require changes in the law (including the requirement to regulate private foster carers), but the vast majority could be implemented immediately, and around 82 of the recommendations should be effected within six months.

The recommendations are addressed to the government, social and health care authorities and to the police. Many of the proposals concern the reinforcement of existing good practice, and operational changes are needed to effect these. Perhaps the most significant changes concern those to the structure of services that support children and families. Lord Laming recommends a fundamental change in the way that such services are organised and managed. In doing so, he has perhaps missed the opportunity for more far reaching structural reform, and has confused the functions of some of these new structures with initiatives such the campaign for a Children's Rights Commissioner for England, which has been advocated for a number of years by a broad alliance of organisations concerned with children.

The main recommendations

A Children and Families Board

This should comprise ministers from all government departments and be chaired by a minister of cabinet rank. This board should be charged with ensuring that all initiatives that have a bearing on the well-being of children and families are considered within this forum. The board should report annually to parliament on the state of services for children and families.

A National Agency for Children and Families

This agency should be responsible to the Children and Families Board. It should:

- assess, and advise the board about, the impact on children and families of proposed policy changes;
- scrutinise new legislation and guidance issued for this purpose;
- advise on the implementation of the UN convention;
- advise on setting nationally agreed outcomes for children and how they might best be achieved and monitored;
- ensure that policy and legislation are implemented at a local level and are monitored through its regional office network;
- report annually to parliament on the quality and effectiveness of services for children and families, in particular, on the safety of children;
- at its discretion, conduct serious case reviews or oversee the process if this task is carried out by other agencies.

Lord Laming suggests that the chief executive of this agency could have the functions of a Children's Commissioner. However, this proposal confuses the necessity for the agency to be independent from government to ensure its effectiveness in promoting and protecting children.

Committees for Children and Families

Those local authorities with social services responsibilities should establish a Committee for Children and Families, with members drawn from their appropriate departments, the police authority, and relevant boards and health service trusts. This committee would oversee the work of a Management Board for Services to Children and Families.

Management Board for Services to Children and Families

In each local authority, the chief executive should chair a Management Board for Services to Children and Families, made up of chief officers from the social services, education and housing departments, the police, relevant health services, and the probation service. This board will be required to appoint a director of children and family services at local level, who will be responsible for ensuring inter-agency service delivery. Each board must also establish a local forum to obtain the involvement of voluntary and private agencies and service users, including children.

A National Children's Database

The establishment of such a database would ensure that every new contact with a child by a member of staff from any of the key services would initiate an entry which would build up a picture of the child's health, development and education needs.

Clarification of children in need and child protection procedures

The DoH should amalgamate its *Working together to safeguard children* and *Framework for assessment of children in need and their families* documents into one, simplified text. In particular, the new document should address the following:

- the establishment of a 'common language' for use across all agencies to help identify whom they are concerned about, why they are concerned, which of them is best placed to respond to those concerns, and what outcome is being sought from any planned response;
- dissemination of a best practice approach for social services in receiving and managing information when a referral is made;
- clarification in cases that fall short of an immediately identifiable CA s47 threshold that the seeking or refusal of parental permission must not restrict the initial information gathering and sharing (including, where necessary, talking to a child);
- consistency in the application of CA ss17 and 47 and the prescription of a clear step-by-step guide on how to manage a case through either route with built-in systems for case monitoring and review;
- replacement of the child protection register with a more effective system with the focus at case conferences not on whether to register, but on establishing an agreed and effective child protection plan.

Guidance on confidentiality

The government should issue guidance on the Data Protection Act 1998, the Human Rights Act (HRA) 1998, and common law rules on confidentiality, focusing particularly on how these apply to the sharing of information between professional groups in circumstances where there are concerns about the welfare of children and families.

The government's main response to these proposals is awaited in a green paper, which is due to be published imminently, and will address issues affecting all children at risk. Meanwhile, the DoH has delivered an audit document to local authorities about how they will be expected to meet those recommendations of the inquiry that can be implemented within six months. Authorities are expected to respond to the audit document within three months of the publication of the report on 28 January 2003.

National standards for the provision of children's advocacy services

Following a long gestation period, these standards were published by the DoH in November 2002. They provide a framework to plan, develop and review the practice of independent advocacy services and local authority children's rights services. The standards have been issued under Local Government Act 1970 s7 and so constitute statutory guidance to local authorities when commissioning advocacy services, and an audit tool for advocacy providers. The ten standards comprise the following:

1 Advocacy is led by the views and wishes of children and young people.
2 Advocacy champions the rights and needs of children and young people.
3 All advocacy services have clear policies to promote equalities issues and monitor services to ensure that no young person is discriminated against due to age, gender, race, culture, religion, language, disability or sexual orientation.
4 Advocacy is well-publicised, accessible and easy to use.
5 Advocacy gives help and advice quickly when requested.
6 Advocacy works exclusively for children and young people.
7 The advocacy service operates to a high level of confidentiality and ensures that children, young people and other agencies are aware of its confidentiality policies.
8 Advocacy listens to the views and ideas of children and young people in order to improve the service provided.
9 The advocacy service has an effective and easy to use complaints procedure.
10 Advocacy is well-managed and gives value for money

Overall, the standards are welcome in identifying clear and detailed principles of good practice to provide an effective, child-centred service. However, there are two major concerns. First, while recognising the need for children to be confident that advocates have no conflicting interests or pressures, and stating that 'as far as possible' advocacy services should be managed and funded in a way that ensures independence, standard number six does not require advocacy services to be independent of the child's care authority (see the discussion above re the ACA's advocacy services).

Second, standard number seven is weaker than that promoted by the Children's Advocacy

Consortium, which represents the major advocacy providers including children's rights officers. There is an issue about what constitutes the appropriate threshold at which confidentiality may need to be breached in order to ensure the child's protection. While the standard states that advocacy services should 'demonstrate to children and young people that the service is separate and distinct from social services …', it nonetheless goes on to confirm that a confidentiality policy should be grounded in the concept of significant harm. While this does not require that advocacy services comply with CA s47 and allows for professional judgment in deciding whether to maintain or breach confidentiality, it raises the potential for uncertainty and lack of consistency between advocacy services. It also raises the very real concern that children will not feel able to talk about their problems for fear of a breach of their confidentiality which is outside their control.

UN convention

Last autumn, the UN Committee on the Rights of the Child gave its second report on the government's implementation of the UN convention. It recognised that improvements had been made, but expressed concern that a number of its previous concluding recommendations had not been implemented. Included among its recommendations are the following:

General measures of implementation

- The UN convention should be incorporated into domestic law.
- A permanent government body should be established for co-ordinating implementation of the UN convention.
- A Children's Rights Commissioner for England should be established urgently.

General principles

- The best interests of the child as paramount consideration should be incorporated in all legislation and policy, particularly within the youth justice system and in immigration practices.
- Further steps should be taken to promote effective participation for all groups of children in society, including in all aspects of school life.
- Legislation governing court procedures and administrative proceedings, including divorce and separation proceedings, and decisions and procedures concerning school exclusions, should ensure that a child capable of forming his/her own views has the right to express those views and that they are given due weight.

Civil rights and freedoms

- Introduce consistent legislative safeguards for all children in alternative care, including those who are privately fostered.
- Prohibit all corporal punishment in the family.
- To take all necessary measures to the 'maximum extent of … available resources' to accelerate the elimination of child poverty including addressing youth homelessness and benefits for 16- to 18-year-olds.

Special protection measures

Unaccompanied asylum-seeking minors

- Avoid detention as a matter of policy and undertake efforts to expedite the procedure for dealing with asylum applications.
- Accommodate children as 'children in need' under child care legislation rather than in temporary accommodation and take all necessary measures to prevent children who have settled in a particular area being forced to leave when they reach the age of 18 years.

Youth justice

- Considerably raise the minimum age of criminal responsibility.
- Ensure that detention of children is used as a measure of last resort and encourage the use of alternative measures to detention.
- Ensure that all children deprived of their liberty have statutory rights to education, health and child protection equal to those of other children.[4]

CASE-LAW

Human Rights Act 1998 cases and local authority decision-making

Since the last 'Children's law review' article (see October 2002 *Legal Action* 9), there have been further cases reported in which the HRA has continued to impact on local authority decision-making:

- **Re: L (Care: Assessment: Fair Trial)**

[2002] EWHC 1379, [2002] 2 FLR 730

This case concerned a mother whose previous child had died, probably of suffocation, having also sustained a variety of non-accidental injuries. When the baby in this case was born, the infant was placed on the Child Protection Register, and when the local authority commenced care proceedings, the child was placed with foster carers. The threshold conditions were met, and a consultant child and family psychiatrist was then instructed to determine whether the mother should be assessed for rehabilitation.

After an initial evaluation, which was not very positive, he conducted a three-day residential assessment to determine whether a longer appraisal of both mother and baby would be worthwhile. He found that it would, and after various communications with the local authority and the guardian, he had a meeting with the latter. The mother knew about this meeting, but was not invited: she was not told of the outcome and no minutes were taken. Yet, the psychiatrist subsequently filed a new report in which he recommended that a residential assessment was not appropriate as there was no reasonable possibility that the baby could be placed in the mother's care. The local authority then drew up a care plan that the baby should be placed for adoption. The mother opposed this proposal, arguing that various breaches of good practice had denied her any, or adequate, involvement in the decision-making process, and any proper or fair opportunity to present her case in court.

Munby J dismissed the mother's application for a further assessment, made the care order approving the care plan for adoption, and adjourned the local authority's application for an order terminating direct contact. He, nevertheless, held that there was unfairness in the earlier part of the decision-making process, although it was subsequently overcome by later events in the case. Regarding this unfairness, he decided that the right to a fair trial in article 6 of the convention was not confined to the purely judicial part of the proceedings. Unfairness at any stage of the litigation process might involve breaches not merely of article 8, but also of article 6. He added that article 6 rights are absolute and cannot be balanced against any rights under article 8. In order to avoid any risk of breaching convention rights he held that:

- documents produced at, and minutes of, meetings should be made available to those who attended them, including family members; and
- crucial meetings, at which a family's future was being decided, must be conducted openly and with the parents if they wished, either present or represented.

In order to avoid such unfairness in local authority decision-making in the future, Munby J said that social workers should, as soon as practicable:

- notify parents of material criticisms of, and deficit, in their parenting or behaviour and of the expectations of them;
- advise them about how they may remedy or improve their parenting or behaviour;
- all professionals involved should keep clear accurate notes;
- local authorities should, at an early stage in the proceedings, make full and frank disclosure of all key documents in their possession or available to them;
- where social workers/guardians meet with experts

(ie, a professionals' meeting), among other things, parents should have an opportunity to make representations to the experts prior to and/or at the meeting on the documents they have received; and

- parents or other parties should have the right to attend and/or be represented at the professionals' meeting (see pp771–2 of the judgment).

The key point to note in this long and interesting judgment is that there is an increasing requirement of procedural fairness within internal local authority decision-making, which has already been established in a number of other cases (see, for example, *T P and KM v UK* [2001] 2 FLR 549, *Re M (Care: Challenging Local Authority Decisions* [2001] 2 FLR 1300, [2001] Fam Law 868 (see October 2002 *Legal Action* 11). However, this case stops short of saying that there is an absolute right to representation for parents within local authority decision-making processes.

- **P, C and S v UK**

[2002] 2 FLR 631

This was a case involving Munchausen's by proxy syndrome, in which the mother had been convicted in the US of deliberately causing her child's numerous illnesses through the administration of laxatives. The mother received treatment for her condition, and subsequently met and married a social worker who was researching the condition.

When she was pregnant with their child, the English authorities found out about her conviction and held a child protection conference to discuss the unborn baby's future. Immediately after birth, the baby was removed from the mother under an emergency protection order, and was placed with foster carers. Care proceedings followed. The father withdrew from the case, but the mother's legal team refused on the basis that her instructions on the conduct of the case were unreasonable. The mother represented herself with the assistance of a McKenzie friend. Subsequently, the court made a care order, and the baby was eventually adopted against the parents' wishes, with no order for direct contact. The parents alleged that the removal at birth and the way that the care and freeing proceedings were conducted breached article 8 of the convention, and that the procedures which followed were in breach of article 6.

The European Court of Human Rights (ECtHR) upheld these alleged violations of article 6 and 8 (but judged that no separate issues arose under article 12). It found that:

- The complexity of the case, the emotive subject matter and the importance of the issues at stake meant that, according to the principles of effective access to court and fairness, the mother required the assistance of a lawyer. The hearing should not have proceeded without her being represented, despite the delay that this would cause and, therefore, there was a breach of article 6. This ruling is important because, although there is no absolute right to representation, this case suggests that the assistance of a lawyer was indispensable where the consequences were as crucial as they were in this case.
- The local authority had to be able to take appropriate steps to prevent harm to a child and, therefore, the local authority's decision to apply for an emergency protection order after birth was necessary in a democratic society to safeguard the child's health and rights. However, in this case, the newborn's removal from her mother was not supported by relevant and sufficient reasons, because the local authority could have provided adequate supervision in hospital to protect the baby in the mother's care, as she did not show any life-threatening conduct straight after the birth. The court, therefore, held that there was a breach of article 8 on the basis that the protective action taken could not be regarded as 'necessary in a democratic society', the exemption which legitimises the state intervening in breach of the right to family life under article 8(2). This case reiterates the principle established in *K and T v Finland* [2001] 2 FLR 707 that the removal of a newborn into care at birth must be regarded as a very harsh measure.

- **C v Bury MBC**

[2002] EWHC 1438 (Fam),
[2002] 2 FLR 868,
[2002] Fam Law 810

This case concerned a boy who was subject to a care order, and whose mother had parenting and drug problems. He was placed in a children's home close to where his mother lived as a short-term measure pending long-term planning for his future. The local authority planned to move the boy to a residential school 350 miles away from his mother. She had neither been present at all the meetings when the care plan was discussed nor had she been informed that the local authority would not assess her for rehabilitation. She applied under the HRA both on her own and her son's behalf arguing that their article 8 rights had been breached. Lady Justice Butler-Sloss dismissed the violations of article 8 and ruled that:

- The proposal to place the child in a residential school had been considered carefully. It was a lawful interference with his rights, was proportionate, and in his interests.
- The procedural flaws in the management of the case had had no detrimental affect on the mother's case and the boy's rights had not been affected.
- The bringing of a case under the HRA does not fall within the responsibilities of a guardian.
- Human rights cases should be heard in the Family Division, preferably by judges with experience in administrative law.

This case highlights the continuing and contradictory development of the law following the decision in the House of Lords judgment in *Re S (Minors) (Care Order: Implementation of Care Plan)* [2002] UKHL 10, [2002] 1 FLR 815 (see October 2002 *Legal Action* 12), in which it was held that the court had no power to review starred milestones in the care plan. While all cases turn on their particular facts, this judgment would appear to suggest that where the substantive decision has been carefully thought through and is considered to be in the best interests of the child, this will outweigh matters of procedural fairness. This decision is in striking contrast to *Re: L* (above).

Welfare and protection of young people in Young Offender Institutions

- **R (Howard League for Penal Reform v the Secretary of State for the Home Department and Department of Health)**

29 November 2002, Mumby J

In this case brought by the Howard League, the court explored whether the CA applies to young people remanded or sentenced in Young Offender Institutions (YOIs). It looked at the provisions of the CA, the HRA, and material emanating from the Youth Justice Board and the Prison Service (the service), in particular, Prison Service Order (PSO) 4950: *Regimes for prisoners under 18 years old*, which was issued in 1999.

The case was brought on an issue of policy and did not require the court to adjudicate on particular facts. The judge was careful to make this distinction in the decisions that he made, and was also careful not to give a definitive exposition of how the law might be implemented. In addition to hearing arguments about law and policy, he heard from the former and present chief inspector of prisons concerning conditions in YOIs.

The key features of the judgment are as follows:

- The CA does not apply to the running of a YOI – this is a matter for the service set out under the Prison Act 1952 and prison rules. Neither the service nor the Home Office have any CA duties towards the detained young people. Therefore, young people on remand or sentenced in YOIs do not acquire looked after status in any circumstances. However, the service has clear duties towards all young people detained in YOIs under the HRA (see below).

■ The duties that local authorities otherwise owe to children in their area under CA ss17 (children in need) and 47 (child protection enquiries) apply also to children in YOIs, but are subject to the necessary requirements of imprisonment.

■ Because a local authority cannot override the duties of the Home Office or the service, which are conferred by statute in relation to a child lawfully detained in a YOI, it would not be possible, following a child protection enquiry, for a young person to be moved from a YOI to open local authority accommodation. It is unclear whether, with the agreement of the Youth Justice Board, a young person could be moved to a local authority secure unit.

■ Furthermore, the judgment states that the impact of needs' assessments under CA s17 are likely to be limited. The judge accepted that while all young people in YOIs are in clearly in need, they are not necessarily 'in need' as defined by the CA. Section 17 does not require a global assessment of need to be prepared – the CA requires that any needs be met by the provision of services by the local authority. The local authority may be in a better position than the service to provide certain facilities, such as psychological assistance, but it would be lawful to take into account the availability of resources in doing so.

■ The statement made in PSO 4950, that the CA does not apply to under-18-year-olds in prison establishments, is wrong in law. Otherwise, this guidance complies with the principles of the CA and DOH statutory guidance in the *Framework for assessment of children in need and their families* and *Working together to safeguard children*. This guidance also complies with human rights law.

■ However, having read the reports of the current and former chief inspector of prisons, the judge expressed grave concern about whether or not this guidance is being properly and consistently implemented across the juvenile estate. Reports before the court demonstrated that the 'state appears to be failing, and in some instances failing very badly, in its duties to vulnerable and damaged children'.

■ The judge identified general principles of human rights law 'teased out' from the convention, the UN convention and the Charter of Fundamental Rights of the European Union together with relevant case-law concerning children and those in prison.

■ Articles 3 (prohibition of inhuman and degrading treatment and punishment) and 8 (right to respect for private and family life) of the convention protect children in YOIs from those actions of staff that constitute inhuman or degrading treatment or punishment, or impact on their physical or psychological integrity.

■ These articles, read in light of UN convention articles 3 (primacy of child's welfare) and 37 (treatment of children deprived of liberty with dignity and respect), impose positive obligations on the service to take reasonable steps to ensure that children in YOIs are treated by staff and fellow inmates with humanity, respect for their inherent dignity and personal integrity as human beings, and that they are not subjected to torture, or inhuman or degrading treatment or punishment, or other behaviour by fellow inmates which impacts adversely and disproportionately on their physical and psychological integrity.

■ These measures must strike a fair balance between the rights of the particular child and the general interests of the community as a whole, but always with regard to the following:

– The principle that the best interests of the child are at all times a primary consideration;

– The inherent vulnerability of children in a YOI; and

– The need for the service to take effective, deterrent steps to prevent, and to provide children in YOIs with adequate protection from, ill-treatment (from staff or other inmates) of which it has or ought to have knowledge.

This case is highly significant for two reasons. First, because it clarifies that local authorities' duties under CA ss17 and 47 apply to young people in YOIs, and by extension to those in secure training centres. These duties could also extend to other institutions where children are placed, but which are not regulated by the CA or associated care standards, such as psychiatric hospitals. Equally important is the exposition by the judge of human rights law as it applies to the service. The Howard League is proposing to open a helpline for Youth Offending Team workers and others working with young people in prison. With the endorsement of other children's organisations and those concerned with youth justice, the Howard League has tabled an amendment to the Criminal Justice Bill, which is currently going through parliament, providing a statutory duty on YOIs to safeguard and promote the welfare of young people aged under 18.

■ Nicola Wyld is a solicitor and works as legal and policy officer at Voice for the Child in Care and as a family mediator Hertfordshire Family Mediation Service.

Bridget Lindley is a solicitor and is a socio-legal researcher at the Centre for Family Research, University of Cambridge. She is also legal adviser at Family Rights Group and a family mediator at Cambridge Family and Mediation Service.

1 A full copy of the ACA and the accompanying explanatory notes are available at: www.doh.gov.uk/adoption/adoptionact.htm.

2 J Fratter, J Rowe, J Sapsford and J Thoburn, *Permanent family placement: A decade of experience*, BAAF, 1991.

3 *The Victoria Climbié inquiry – report of an inquiry by Lord Laming*, TSO, £42.50 and at: www.victoria-climbie-inquiry.org.uk. A free summary of the report is available from: DH Publications, PO Box 777, London SE1 6XH. Fax: 01623 724 524. E-mail: doh@prolog.uk.com.

4 See: www.unhchr.ch/hchr-un.htm.

SOCIAL SECURITY

Tax credit reforms

Two major changes to the social security system take place during 2003: tax credit (TC) reforms in April 2003, following the Tax Credits Act (TCA) 2002, and the introduction of pension credit in October 2003. In this article, **Steve Johnson** gives a brief summary of the April 2003 reforms. The rule changes will affect all people who wish to claim financial help with the cost of children, and/or wish to top up low pay as an employee or self-employed person.

The reforms – key aspects

The April 2003 reforms introduce two new kinds of TC:

- Child Tax Credit (CTC) – aimed at families (lone parents or couples) (TCA s8); and
- Working Tax Credit (WTC) – aimed at single people, couples, and lone parents who work (TCA s10).

CTC and WTC are annual awards of financial assistance, based on the tax year cycle (6 April to 5 April). At its most simple, the annual maximum TC needs of a claimant are calculated and then his/her annual taxable income is compared with a fixed threshold. Any excess income over the threshold reduces the maximum TC needs figure via a means testing formula.

The main points to note are as follows:

- CTC and WTC are administered by the Inland Revenue (IR).
- CTC helps with the cost of children and WTC helps support adults. It is possible to claim CTC and WTC at the same time.
- CTC and WTC are both means tested by taxable income, not capital.
- CTC replaces child additions in welfare benefits (but not housing benefit (HB) or council tax benefit (CTB)).
- CTC replaces Children's Tax Credit (a tax allowance).
- WTC replaces working families' tax credit (WFTC) and disabled person's tax credit (DPTC) and extends help so that some people who do not have children or disabilities can claim.
- Child benefit (CB), HB and CTB remain payable.
- TCs of both kinds are not available to people who are 'subject to immigration control' (social security law definition).

Two examples of how the April 2003 changes affect benefits are set out in Boxes 1 and 2:

Box 1

What the change means in weekly cash terms for a couple with a young child on income support (IS)

The 'old' system		The new system	
IS adult allowance	£85.75	IS adult allowance	£85.75
IS child allowance	£38.50	CTC child and family elements	£38.20
IS family premium	£15.75		
Total needs	£140.00	CB (disregard as income for IS and CTC purposes)	£16.05
CB deducted from the applicable amount	(£16.05)		
Total income	**£140.00pw**	**Total income**	**£140.00pw**

Box 2

What the change means in weekly cash terms for a working lone parent with a child aged three and a gross income of £10,000 per annum

(WFTC is at 2002/2003 rate due to abolition. Other rates are 2003/2004)

The 'old' system		The new system	
Net wage	£163.42	Net wage	£163.42
WTFC	£62.70	CTC and WTC	£73.27
CB	£16.05	CB	£16.05
Total income	**£242.17**	**Total income**	**£252.74**

Box 3

CTC constituent elements	Annual value *(2003/2004 rates)*
Family element (must have at least one child)	£545 per claim
Family element (baby addition) (must have a child less than one year old)	£545 per claim
Child element (payable for each child)	£1,445 per qualifying child
Disabled child element (must be on any rate disability living allowance (DLA) or registered blind, etc)	£2,155 per qualifying child
Severely disabled child element (child must be on highest rate care DLA)	£865 per qualifying child

Child Tax Credit

Who can claim CTC?

CTC claimants must:

- be at least 16 years old (no upper age limit);
- be responsible for a child/young person;[1] and
- be on a low income (see below).

When does CTC start?

This is slightly complicated because CTC applies to people in or out of work.

CTC for those not in work

CTC takes over child related elements of new IS/minimum income guarantee (MIG)/income-based jobseeker's allowance (IBJSA)/non-means tested benefit claims from 6 April 2003.

CTC takes over child related elements of pre-existing MIG claims from October 2003 (MIG converts to pension credit at the same time).

CTC takes over child related elements of pre-existing IS/IBJSA claims from April 2004. Some pre-existing IS/IBJSA claimants may be better off switching to CTC earlier than April 2004. However, the absence of IS/IBJSA may then result in the loss of passporting. Detailed advice on this will be necessary.

Transitional protection for those receiving child additions for non-means tested benefits applies. Those in receipt prior to 6 April 2003 retain entitlement. There are no child additions for new claims.

CTC for those in work

The new system operates from 6 April 2003 and the potential maximum CTC award is the same as for those not in work.

Composition and value of CTC

This is determined under CTC Regs reg 7. See Box 3 for different elements.

Working Tax Credit

Who can claim WTC?

All WTC claimants must:

- be at least 16 (no upper age limit);
- qualify through at least one of the four routes for working people defined below;[2] and
- be on a low income.

If the claimant satisfies one of the following four routes, s/he is deemed to be in 'qualifying remunerative work':

- Claimants (or either claimant in a couple) who work at least 16 hours per week, and are responsible for a child/young person;
- Claimants (or either claimant in a couple) who work at least 16 hours per week, have a disability which puts them at a disadvantage in getting a job, and currently are or recently have been in receipt of certain benefits, etc;
- Claimants (or either claimant in a couple) who are aged at least 25, and work at least 30 hours per week; or
- Claimants (or either claimant in a couple) who are aged at least 50, work at least 16 hours per week, have started work within the last three months, and have been in receipt of certain benefits, etc for at least six months before starting work.

Box 4

WTC constituent elements	Annual value *(2003/4 rates)*
Basic element (all claims)	£1,525 per claim
Second adult element (for couples)	£1,500 per claim
Lone parent element	£1,500 per claim
30-hour element (couples with children can add their hours together, as long as one works 16 hours or more per week)	£620 per claim
Disability element (complicated entitlement rules. Must pass 'disability' and 'benefit' conditions)	£2,040 per qualifying claimant
Severe disability element (highest care component DLA)	£865 per qualifying claimant
Age 50 plus element	
Working between 16 and 29 hours per week	£1,045 per qualifying claimant
Working 30 hours or more per week	£1,565 per qualifying claimant
Authorised childcare element	
Maximum eligible cost for one child (up to 70 per cent of these values)	£7,040
Maximum eligible cost for two or more children (up to 70 per cent of these values)	£10,430

When does WTC start?

WTC starts from 6 April 2003.

Composition and value of WTC

This is determined under WTC* (EMR) Regs regs 4, 9–15, 17, 18, 20 and Sch 2. See Box 4 for different elements.

How TCs are calculated

Those on IS or IBJSA do not have to go through the following means test. They are automatically entitled to the maximum CTC for each day of entitlement to IS/IBJSA. They will not be able to get WTC because of the hours of work rule. There are five parts to the TC calculation:

Step 1 – Calculate the maximum TC entitlement

The maximum TC award is determined by adding up all the constituent parts of CTC and WTC that the claimant is entitled to.

The 'relevant period' is the length of time that the maximum TC remains unaltered.[3] A change to the relevant period means that the entire TC calculation has to be pro rated for the lifetime of the relevant period within the financial year. This can lead an annual entitlement made up of a number of smaller calculations. Calculation software is available.

Step 2 – Calculate the 'relevant' income

Which year to use?

It is part of TC folklore that the previous year's income is always used. This is not always so.

- If current tax year's income is less than (or likely to be less than) the previous tax year's, the current year's income figure is used as the relevant income figure.
- If the current tax year's income exceeds or will exceed the previous year's by more than £2,500, the current year's income figure is used as the relevant income figure, minus £2,500.
- In all other cases, the previous year's income figure is used as the relevant income figure. This means effectively that the previous year's income figure is only used if the claimant's current tax year's income has or will only increase by a modest amount compared with last year.

Claimants may not know what their income will be for the rest of the financial year. An incorrect estimate could mean an overpayment (see below).

How income is calculated

The following income streams are among those counted: gross earnings (but net of all occupational and private pension contributions, etc), all taxable benefits, income from certain investments, certain rental income from property, students are entitled to tax credits, but some income is counted. There is a £300 per annum disregard on the combined total of certain income (eg, investment income, pensions, etc). There is no tariff income system. In the case of couples, their joint taxable income is added together.

If there are changes to the maximum TC during the claim period (ie, before the end of the tax year), pro rating of the income figure is necessary.

Step 3 – Determine the threshold

Where a claimant is entitled to WTC (or WTC and CTC), the threshold is £5,060 per annum. If the claimant is entitled to CTC alone, the threshold is £13,230 per annum.

A 'second threshold' of £50,000 per annum applies solely against the family element of CTC (the last to be tapered away (lost) – see below). Therefore, only when income exceeds £50,000 per annum is the family element of CTC not awarded in full. Then a taper of 6.67 per cent applies to any income over £50,000 per annum.

The threshold may need to be pro rated if the relevant period is other than a full tax year.

Step 4 – Compare income with threshold

Step 5 – Calculate actual entitlement

If income is at or less than the threshold, the maximum TC is payable. If income is greater than the threshold, the maximum TC is reduced by 37 per cent of the excess of income over the threshold (unless the 'second threshold' for family element CTC applies, see above). This system is similar to the WFTC/DPTC calculation sequence.

If the taper applies, the effect will be the higher the income, the less the TC award. If so, the TC elements are tapered away in a specified order (TC (ITDR) Regs regs 7 and 8). The last to go is family element CTC. There are two worked examples at the end of this article.

Changes in circumstances

There are three kinds of change in circumstance that can affect a TC award:[4]

- ***Changes that must be reported within three months*** These include changes in the number of adults in the household (changes from lone parent to couple etc) and eligible childcare costs ceasing or reducing to a designated degree. Failure to report these kinds of changes within three months may result in a penalty.
- ***Changes that affect the maximum TC entitlement*** These include changes in entitlement to a disability element, changes in the number of qualifying children, changes in the number of working hours, changes to/cessation of employment, the commencement of approved childcare liability, significant changes to childcare costs, etc.

In these cases, any increase in entitlement takes effect from the date of the change if this is reported within three months. If a change is reported outside the three-month limit, it takes effect from the date of the report. A reduction in entitlement to an award is always backdated to the date of the change (see below).

- ***Changes in income*** If income falls during a claim period, the IR should be informed if the income is expected to be less than the previous year (which may prompt a higher, current TC award). If, because of a change, income increases so that the financial year to base income on changes (see Step 2 above), the IR should be notified immediately.

There is no three-month rule when reporting changes in income, because the final reconciliation done by the IR at the end of the tax year will take all income changes into account.

Notifying changes of circumstances

Claimants can report changes by telephone or in writing. Needless to say, good practice suggests all

notifications should be put in writing and copies kept.

Claiming the new TCs

Couples

Couples (married or otherwise) must make a joint claim. Only male and female couples count for TC purposes. If a couple makes a joint claim, but later split up, the claim ends and a new one is necessary to continue TC entitlement.

Making the claim

The same claim form (TC600) is used for both CTC and WTC. All claims must be in writing or such form accepted by the IR. There is a commitment to the eventual use of the internet to make full claims. The date of claim is the date it is received (TC(CN) Regs reg 5(6), subject to backdating, see below). Claimants can telephone the Tax Credit Helpline: 0845 300 3900, for assistance with the claim form.

Information needed

It is important that claimants keep copies of key financial records (P60, P45, record of taxable social security received, details of pension and investment income, etc). Those claimants who keep all this information for the last and current tax years in a ring binder may expect a relatively trouble free claim. Not everybody will do this.

The TC claim form only asks for information about the previous year. If the financial circumstances require current year income to be used, this is achieved by an immediate revision, following the issue of a notice to the claimant, after receipt of the claim. TCs can be backdated up to three months by the 'automatic' route (no need for good cause for a late claim etc).

Overpayments are recoverable from a single claimant, and are jointly and severally recoverable from each member of a couple if the overpayment was made in respect of a joint claim. However, the IR may decide to recover a specified part of an overpayment (from one of the couple etc) in these circumstances (TCA s28 (1)). There is a power to offset against an overpayment, up to the point where a final decision has been made.

Box 5

	CTC	WTC
By the IR into a bank account	All CTC is paid into the bank account of the 'main carer'. Couples choose who this is, or the IR decides.	WTC child care element. WTC for self employed workers.
By [note to author: 'via'?] the employer	No CTC is paid via the employer.	All WTC elements for employees (other than child care element) If both members of a couple work, they choose who is to receive the WTC.

Example 1

Lone parent on IS as from May 2003. Two children aged one and four.

Maximum TC

	Per annum	Per week
CTC family element	£545	£10.45
CTC child element	£1,445	£27.75
CTC child element	£1,445	£27.75
Total	***£3,435***	***£65.95***

No further means testing needed because claimant is on IS. No need to pro rate because when claimant is on IS/IBJSA, simply award maximum weekly CTC.

Claimant entitled to £65.95 per week CTC, plus CB of £26.80, plus IS (adult component only) of £54.65, comes to £147.47 per week.

Example 2

Part 1

A couple. The working partner gets DLA mobility component and works 40 hours per week. They satisfy the disability condition. The partner does not work. They have a baby aged 11 months. Salary this year will be £26,000, which is £3,000 up on last year.

(i) Maximum TC

	Per annum
CTC family element	£545
CTC baby addition	£545
CTC child element	£1,445
WTC basic	£1,525
WTC second adult	£1,500
WTC disability element	£2,040
WTC 30+ hours	£620
Total	***£8,220***

(ii) Income Use current year, but deduct the £2,500 disregard, so income is £23,500.

(iii) Threshold £5,060.

(iv) Comparison Excess income of £18,440.

(v) Tax Credit entitlement The maximum TC is £8,220. Thirty seven per cent of the excess income is £6,822. TC entitlement is £8,220 minus £6,822, comes to £1,398. This figure is above the CTC family element (includes baby addition) of £1,090 (full year basis), so the 37 per cent taper holds. £1,398 divided by 366 and multiplied by 7, comes to TC of £26.74 per week.

Part 2

The baby reaches its first birthday on 6 June 2003. There is much rejoicing, but the event leads to a change in the maximum TC, and therefore a change to the relevant period. Pro rating is needed. The new relevant period runs from 6 June 2003 to 5 April 2004 (unless there is another change later). This means the new relevant period is 305 days out of 366.

(i) Maximum TC This is reduced by the value of the CTC baby addition to £7,675. Divide by 366 and multiply by 305, comes to £6,396.

(ii) Income On a full year basis this is £23,500. Divide by 366 and multiply by 305, comes to £19,583.

(iii) Threshold On a full year basis this is £5,060. Divide by 366 and multiply by 305, comes to £4,216.

(iv) Comparison £19,583 minus £4,216, comes to an excess of £15,367.

(v) TC entitlement The maximum TC is £6,396. Thirty seven per cent of the excess is £5,686. TC entitlement is £6,396 minus £5,686, comes to £710 over the life of the relevant period. The value of the CTC family element is less than the full year amount because (i) the relevant period is only 305 days, and (ii) the baby addition is no longer included. £545 family element is divided by 366 and multiplied by 305, which comes to £454.16. The 37 per cent taper holds because it produces an award of £710 per annum. Divided by 305 and multiplied by 7, this gives TC of £16.30 per week.

Method of payment

Payment methods (in most cases) are set out in Box 5.

The need for a bank account

When the IR has the responsibility to pay directly, it requires that the claimant has a bank account. A Post Office Card Account is in development for those without bank accounts, but it will not be ready for April 2003. Giros are to be used in the meantime, if necessary.

Generally, if a claimant does not have a bank account, the IR will pay TCs by other means for up to eight weeks.[5] If the IR has not received the information necessary to set up the direct payments by then, the TC payments will stop unless good reasons for needing more time or exceptional circumstances apply.[6]

If a bank account is later notified, TC entitlement can be

reinstated and arrears of up to three months paid.

The beginning and end of a claim

Tax credit award decisions are made at the beginning of the tax year, but are provisional (the 'initial award'). Established awards can be revised if a relevant change of circumstances is notified.

At the end of the claim period, the IR sends the claimant a 'final notice' (TCA s17). This defines how the hitherto award was calculated, by setting out the income and all the circumstances the IR is aware of, and invites renewal information.

The end of year reconciliation may result in the income year shifting from current to previous, or vice versa (and so possible over or underpayments).

Passporting

The passporting effect of the old DPTC is retained by disabled people claiming WTC for the purposes of higher pension premium and disability premium IS and IBJSA. The passporting effect to certain aspects of the Social Fund are available to disabled people claiming WTC, and some people claiming CTC (when CTC is payable beyond the family element rate). Other passporting (eg, free school meals and milk tokens) will be the job of CTC, rather than IS/IBJSA, etc (but some CTC claimants on higher incomes will not qualify).

Revisions and appeals against TC decisions

Revisions

A revision is an internal IR reconsideration of an earlier decision by it. It is possible to seek a revision of a decision initially, or at any time during its lifetime, as well as a revision of a final decision (TCA ss15 and 16).

Appeals

The following decisions can be appealed against: initial decisions and revisions, final decisions, enquiry decisions and decisions on discovery, revisions for official errors, etc.

Appeals must be in writing and give grounds for it. The appeal must be signed by the appellant.

The appeal letter should be as comprehensive as possible. It is not possible to add new grounds for the appeal at the tribunal if the failure to specify these additional grounds in the appeal letter was 'wilful or unreasonable' (TCA ss38, 39(5)).

Time limits to appeal

A 30-day time limit applies, not a calendar month, as with social security appeals (TCA s39(1)).

The 30-day period starts on the day that the decision letter is given or sent to the client. This is the day it was posted to the client's last known address (TC (CN) Regs reg 2B).

Late appeals

The absolute time limit is 1 year and 30 days.[7] The same criteria are used as for social security appeals.

Appeals to the commissioners

Leave must be sought from the tribunal's legally qualified panel member (it is possible to apply direct to the social security commissioners if leave is refused etc. This is due to change to the tax commissioners at some point). Applications are to be made within one month of notice of the tribunal decision. It is possible to seek a late appeal ('special reasons' are needed) (TC (A) (No 2) Regs reg 27(4)).

■ Steve Johnson is manager of Walthamstow Citizens Advice Bureau.

1 CTC Regulations 2002 SI No 2007 (CTC Regs) regs 3–5.
2 WTC (Entitlement and Maximum Rate) Regulations 2002 SI No 2005 (WTC (EMR) Regs) reg 4(1)(b).
3 TCs (Income Thresholds and Determination of Rates) Regulations 2002 SI No 2008 (TC (ITDR) Regs) regs 7 and 8.
4 TCs (Claims and Notifications) Regulations 2002 SI No 2014 (TC (CN) Regs) Part 3.
5 TCs (Payments by the Board) Regulations 2002 SI No 2173 (TC (PB) Regs) reg 14(1) and (4).
6 TC (PB) Regs reg 14(3).
7 TCs (Appeals) (No 2) Regulations 2002 SI No 3196 reg 5.

SOCIAL SECURITY

Benefit rates from April 2003

New weekly rates of benefits are specified in Social Security Up-rating Order 2003 SI No 526. They apply from the week beginning 7 April 2003.

* denotes no change from last year's figure.

Adoption

Statutory adoption pay	
Earnings threshold	£77.00
rate	£100.00

Bereavement

Widow's benefit	
Widowed mother's allowance	£77.45
Widow's pension (standard rate)	£77.45
Bereavement benefits	
Bereavement allowance (standard rate)	£77.45
Bereavement payment (lump sum)	£2,000*
Widowed parent's allowance	£77.45

Children

Child benefit	
Eldest or only child (couple)	£16.05
(lone parent)	£17.55*
Other children	£10.75
Child's special allowance (see note 1 below)	£11.35*

Disability

Attendance allowance	
higher rate	£57.20
lower rate	£38.30
Disability living allowance	
care component	
higher rate	£57.20
middle rate	£38.30
lower rate	£15.15
mobility component	
higher rate	£39.95
lower rate	£15.15
Industrial injuries disablement pension	
18 or over, or under 18 with dependants and 100% disabled	£116.80
under 18 and 100% disabled	£71.55
Carer's allowance (formerly invalid care allowance	£43.15

Incapacity

Incapacity benefit	
long-term	£72.15
Short-term (under pension age)	
lower rate	£54.40
higher rate	£64.35
Short-term (over pension age)	
lower rate	£69.20
higher rate	£72.15

Invalidity allowance (transitional)

higher rate	£15.15
middle rate	£9.70
lower rate	£4.85

Maternity

Statutory maternity pay	
Earnings threshold	£77.00
standard rate	£100.00
Maternity allowance	
Standard rate	£100.00
Maternity allowance threshold	£30.00*

Paternity

Statutory paternity pay	
Earnings threshold	£77.00
rate	£100.00

Retirement

Retirement pension	
Category A or B	£77.45
Category B (lower) (husband's insurance)	£46.35
Category C or D	£46.35
Category C (lower) (non-contributory)	£27.70
Age addition (80+)	£0.25*
Pension credit (from October 2003)	
Standard minimum guarantee	
single	£102.10
couple	£155.80
Additional amounts for severe disability	
single	£42.95
couple (one qualifies)	£42.95
couple (both qualify)	£85.90
Additional amount for carer	£25.10
Savings credit threshold	
single	£77.45
couple	£123.80

Capital

Amount disregarded	£6,000
Amount disregarded – care homes	£10,000

Deemed income £1.00 for each complete £500 or part thereof over above amounts

Housing costs

Deduction for non-dependants: as for income support

Severe disablement allowance

Basic rate	£43.60
adult dependant	£25.90
age-related addition	
higher rate	£15.15
middle rate	£9.70
lower rate	£4.85

Unemployment

Jobseeker's allowance (contribution based)	
Personal rates	
Under 18	£32.90
18–24	£43.25
25 or over	£54.65

Income support and jobseeker's allowance (income-based)

Personal allowances: income support

Single person aged under 18, usual rate	£32.90
Under 18, higher rate payable in specific circumstances	£43.25
18–24	£43.25
25 or over	£54.65

Personal allowances: jobseeker's allowance

Single person aged under 18, usual rate	£32.90
18–24	£43.25
25 or over	£54.65

Personal allowances for both IS and JSA

Lone parent	
under 18, usual rate	£32.90
under 18, higher rate payable in specific circumstances	£43.25
18 or over	£54.65
Couple, both under 18	£32.90
both under 18, one disabled	£43.25
both under 18, with responsibility for a child	£65.30
one under 18, one 18–24	£43.25
one under 18, one 25+	£54.65
both 18 or over	£85.75
Dependent children	
From birth to September following 16th birthday	£38.50
From September following 16th birthday to day before 19th birthday	£38.50

Premiums for both IS and JSA

Family	£15.75
Family (lone parent)	£15.90*
Pensioner (under 75)	
Single	£47.45
Couple	£70.05
Pensioner (enhanced) (75–79)	
Single (IS only)	£47.45
Couple	£70.05
Pensioner (higher)(80+)	
Single	£47.45
Couple	£70.05
Disability	
Single	£23.30
Couple	£33.25
Enhanced disability premium	
Single rate	£11.40
Disabled child rate	£16.60
Couple rate	£16.45
Severe disability	
Single	£42.95
Couple (one qualifies)	£42.95
Couple (both qualify)	£85.90
Disabled child	£41.30
Carer	£25.10
Bereavement	£22.80

Housing costs

Deduction for non-dependants

Aged 25 or over, in receipt of income support or income-based jobseeker's allowance, aged 18 or over, not in work or gross income less than £92	£7.40*

Aged 18 and over, in remunerative work and gross income

£92–£136.99	£17.00*
£137–£176.99	£23.35*
£177–£234.99	£38.20*
£235–£292.99	£43.50*
£293 or more	£47.75*

Capital

Upper limit	£8,000*
Amount disregarded	£3,000*
Upper limit (claimant/partner 60 or over)	£12,000*
Amount disregarded (claimant/partner 60 or over)	£6,000*
Child's limit	£3,000*

Tariff income

£1.00 for every complete £250 or part thereof between amount of capital disregarded and capital upper limit

Housing benefit and council tax benefit

Personal allowances: housing benefit

Single person	
16–24	£43.25
25 or over	£54.65
Lone parent	
under 18	£43.25
18 or over	£54.65
Couple	
both under 18	£65.30
one or both 18 or over	£85.75

Dependent children
- From birth to September following 16th birthday £38.50
- From September following 16th birthday to day before 19th birthday £38.50

Pensioner (from October 2003)
Single person
- 60–64 £102.10
- 65 or over £116.90

Couple
- one or both 60–64 £155.80
- one or both 65 or over £175.00

Premiums: housing benefit

Family	£15.75
Family (lone parent)	£22.20*
Pensioner (under 75)	
Single	£47.45
Couple	£70.05
Pensioner (enhanced) (75–79)	
Single	£47.45
Couple	£70.05
Pensioner (higher)(80+)	
Single	£47.45
Couple	£70.05
Disability	
Single	£23.30
Couple	£33.25
Enhanced disability premium	
Single rate	£11.40
Disabled child rate	£16.60
Couple rate	£16.45
Severe disability	
Single	£42.95
Couple (one qualifies)	£42.95
Couple (both qualify)	£85.90
Disabled child	£41.30
Carer	£25.10
Bereavement	£22.80

Non-dependent deductions: housing benefit

Aged 25 or over, in receipt of income support or income-based jobseeker's allowance, aged 18 or over, not in work or gross income less than £92	£7.40*

Aged 18 and over, in remunerative work and gross income

£92–£136.99	£17.00*
£137–£176.99	£23.35*
£177–£234.99	£38.20*
£235–£292.99	£43.50*
£293 or more	£47.75*

Personal allowances: council tax benefit
As for HB, except that personal allowances are not payable for young people aged 16 and 17

Premiums: council tax benefit
As for HB

Non-dependent deductions: council tax benefit

Aged 18 and over, in remunerative work and gross income	
£293 or more	£6.95*
£235–£292.99	£5.80*
£137–£234.99	£4.60*
less than £137	£2.30*
others, aged 18 or over (and not in receipt of income support)	£2.30*

Capital

Upper limit	£16,000*
Amount disregarded	£3,000*
Upper limit (claimant/partner 60 or over)	£16,000*
Amount disregarded (claimant/partner 60 or over)	£6,000*
Child disregard	£3,000*
Upper limit of residential care/nursing home	£16,000*
Amount disregarded of residential care/nursing home	£10,000*

Tariff income
£1.00 for every complete £250 or part thereof between amount of capital disregarded and capital upper limit

Working tax credit (per annum unless otherwise stated)

Threshold	£5,060
Elements	
basic element	£1,525
30-hour element	£620
couples and lone parent element	£1,500
disability element	£2,040
severe disablity element	£865
50-plus return to work element (16–29 hours)	£1,045
50-plus return to work element (30 hours or more)	£1,565
childcare element:	
70% of weekly cost for 1 child up to costs of £135	
70% of weekly cost for 2 or more children up to costs of £200	

Child tax credit (per annum unless otherwise stated)

Threshold (entitled to child tax credit but not working tax credit)	£13,230
Second threshold	£50,000
Elements	
family element	£545
baby element	£545
child element (per child)	£1,445
disability element	£2,155
severe disability element	£865

Other benefits

Statutory sick pay	
Earnings threshold	£77.00
Standard rate	£64.35
Guardian's allowance (see note 1 below)	£11.55

Dependency increases

Adult dependants: for spouse or person looking after children, where claimant receiving:
- retirement pension or own insurance £46.35
- long-term incapacity benefit or unemployability supplement £43.15
- severe disablement allowance £25.90
- invalid care allowance (carer's allowance from April 2003) £25.80
- short-term incapacity benefit (over pension age) £41.50
- Short-term incapacity benefit (under pension age)/maternity allowance £33.65

Child dependants: claimant receiving
- retirement pension, widowed mother's allowance, widowed parent's allowance, short-term incapacity benefit (higher rate) and long-term incapacity benefit, invalid care allowance (carer's allowance from April 2003), severe disablement allowance, industrial death benefit (higher rate), unemployability supplement or short-term incapacity benefit (over pension age) £11.35* (see note 1 below)

1 This is reduced by £1.80 for any child for whom claimants receive the higher rate of child benefit.

LEGAL AID

CLS and CDS – eligibility limits from April 2003

Please note that, at the time of going to press, the information set out below was in draft. Any changes will be reported in May 2003 *Legal Action*.
The draft Community Legal Service (Financial) (Amendment) Regulations 2003 provide for the following changes in financial eligibility rates. These changes will apply to all applications for funding made on or after 7 April 2003. The Legal Services Commission (LSC) will also apply these rates when it reassesses certificates under Community Legal Service (Financial) Regulations 2000 SI No 516 reg 15. This uprating represents a 1.7 per cent increase. In addition to this uprating, existing tax credits will be replaced by new tax credits (NTCs) for people in work from April. The LSC's policy relating to the treatment of NTCs is also discussed below.

CIVIL ELIGIBILITY LIMITS

Legal Help, Help at Court, legal representation before immigration adjudicators or Immigration Appeal Tribunal

Gross income limit
increased from £2,250 per month to £2,288 per month*
Disposable income limit
increased from £611 per month to £621 per month
Capital limit remains £3,000

Clients in receipt of income support (IS) or income-based jobseeker's allowance (JSA) will continue to be automatically eligible on income, but their capital will still need to be assessed.

These levels of service remain non-contributory. Clients are ineligible if their income or capital exceeds the above limits.

* A higher limit applies for families with more than four children (see table below).

No of children in family not to exceed	Gross monthly income
0–4	£2,288
5	£2,433
6	£2,578
7	£2,723
8 or more	add £145 to above figure for each additional child

All other levels of service

Gross income limit
increased from £2,250 to £2,288 per month
Disposable income limit
increased from £695 per month to £707 per month
Capital limit remains £8,000

Clients in receipt of IS or income-based JSA will continue to be automatically eligible on both income and capital and their means will not need to be assessed.

There continues to be no contribution system for either family mediation or help with mediation.

For legal representation in specified family proceedings, general family help, support funding and full legal representation other than set out above, a client with disposable income of £267 or below per month and capital of £3,000 or below will not need to pay any contributions. A client with disposable income in excess of £267 and up to £707 per month will be liable to pay a monthly contribution of a proportion of the excess over £263. Such contributions will be assessed in accordance with the bands in the table below depending on the level of the assessed income.

So if disposable income is £303 per month, the contribution will be in band A, the excess income is £40 and, therefore, the monthly contribution will be £10 per month.

Band	Monthly disposable income	Monthly contribution
A	£268 to £393	¼ of income in excess of £263
B	£394 to £522	£32.50 + ⅓ of income in excess of £393
C	£523 to £707	£75.50 + ½ of income in excess of £522

If the disposable income was £408 per month, the contribution would be in band B, the excess income would be £15 (£408 – £393), and the monthly contribution would, therefore, be £37.50 ie, £32.50 + £5.

If the disposable income was £542 per month, the contribution would be in band C, the excess income would be £20 (£542 – £522), and the monthly contribution would, therefore, be £85.50, ie, £75.50 + £10.

A client whose disposable capital exceeds £3,000 is required to pay a contribution of either the capital exceeding that sum or the likely maximum costs of the funded service whichever is the lesser.

Dependants allowances

Following amendments to the Income Support (General) Regulations 1987 SI No 1967, the following increases to the allowances for dependants will apply to applications for funding for all the above levels of service made on or after 7 April 2003.

Partner
increased from £133.40 to £135.14 per month
Child aged 15 or under
increased from £160.77 to £167.29 per month
Child aged 16 or over
increased from £164.25 to £167.29 per month

New tax credits

Working Tax Credit (WTC) and Child Tax Credit (CTC) will replace Working Families' Tax Credit (WFTC) and Disabled Person's Tax Credit (DPTC) from 6 April 2003 (see also page 38 of this issue). People receiving these NTCs will not be entitled automatically to Community Legal Service (CLS) funding (ie, 'passported') for any level of service under the CLS scheme. This represents a continuation of the policy of not passporting tax credits. Clients in receipt of NTCs will be assessed for CLS funding against the financial limits for those levels of service where financial eligibility criteria apply.

A Tax Credit Award Notice is issued to clients on determining the claim for tax credits. Where the client does not have a partner, it is likely that a single award notice will provide the necessary details covering all entitlements to the NTCs. Couples must make a joint tax credit application, ie, they cannot decide to apply as a single person. However, separate award notices may be issued. For example, in the case of a married couple, the husband may be awarded WTC while CTC is awarded to the wife as the main carer of the children. The client must, therefore, provide a copy of all notifications about his/her financial circumstances including those issued to a partner.

Satisfactory evidence

In accordance with r2.5 of the General Civil Contract, satisfactory financial evidence will need to be supplied. A copy of the Tax Credit Award Notice issued to the client should be accepted as satisfactory evidence of the claim. Otherwise, any relevant correspondence from the paying agency in the client's possession would be acceptable. Evidence must also be obtained of the client's other income, ie, salary, child benefit, maintenance payments.

CRIMINAL ELIGIBILITY LIMITS

The draft Criminal Defence Service (General) (No 2) (Amendment) Regulations 2003 provide for the following changes in financial eligibility. These changes will apply to all applications for funding made on or after 7 April 2003. (New passporting arrangements will apply from 6 April 2003.)

Changes to the passporting arrangements on income following the introduction of NTCs which replace existing tax credits from April.

An uprating of financial eligibility limits representing a 1.7 per cent increase in line with welfare benefit provision. These changes are set out below.

New tax credits

Working Tax Credit and CTC will replace WFTC and DPTC from 6 April 2003. Passporting arrangements on income only will apply to the NTCs where these are claimed as follows:

WTC claimed together with CTC where gross annual income is not more than £14,213; and

WTC with a disability element or severe disability element (or both) where the gross annual income is not more than £14,213.

A client will be deemed to qualify automatically on income grounds where WTC is claimed together with CTC or the award of WTC includes a disability/severe disability element, subject to the gross income limit of £14,213. Disposable capital will need to be assessed in each case to determine whether the client's means fall within the capital limit. A Tax Credit Award Notice will be issued to the client by the Inland Revenue on determining his/her NTC claim and, as appropriate, will confirm entitlement to the relevant tax credit(s) and provide a detailed breakdown of the award. This notice will therefore contain the information necessary to determine whether the client is passported on income or will require a full assessment.

It will no longer be necessary for suppliers to obtain details of the abatement figure from the award as was previously the case under the old passporting arrangements for WFTC and DPTC.* The new passporting arrangements represent a positive step forward in the LSC's continuing efforts to simplify the assessment process and improve the transparency of passporting arrangements.

* a person directly or indirectly in receipt of WFTC or DPTC on or after 6 April 2003 shall be treated as if draft reg 5 (ie, passporting arrangements for NTCs) had not come into force. For these cases, the client continues to be passported for funding if the abatement from the award is £70 per week or less.

Satisfactory evidence

In accordance with r2.6 of the General Criminal Contract, satisfactory financial evidence will need to be supplied. A copy of the Tax Credit Award Notice issued to the client should be accepted as satisfactory evidence of the claim. Otherwise, any relevant correspondence from the paying agency in the client's possession would be acceptable. Evidence must also be obtained of the client's other income, ie, salary, child benefit, maintenance payments.

The introduction of a gross income cut-off set at £14,213 will ensure that the global numbers entitled to remission from court fees are maintained and the current passported client groups are protected. The gross income cut-off is specific to the passporting arrangements for NTCs only, it is not applicable to the claims passported on the basis of IS or income based JSA entitlement. Similarly, the £14,213 limit is not to be otherwise factored into the full income assessment for non-passported cases. An updated keycard providing a step by step guide to assessment will be distributed shortly.

Advice and assistance

Disposable income limit
- increased from £89 per week to £91 per week

Capital limit
- remains £1,000 for those with no dependants
- remains £1,335 for those with one dependant
- remains £1,535 for those with two dependants with £100 increase for each extra dependant

Clients in receipt of IS, income-based JSA, WTC and CTC* or WTC with a disability element* continue to be automatically eligible on income, but their capital will still need to be assessed.

* gross income not to exceed £14,213 for passporting.

This level of service remains non-contributory. Clients are ineligible if their income or capital exceeds the above limits.

Advocacy assistance

Disposable income limit
- increased from £189 per week to £192 per week

Capital limit
- remains £3,000 for those with no dependants
- remains £3,335 for those with one dependant
- remains £3,535 for those with two dependants with £100 increase for each extra dependant

Clients in receipt of WTC and CTC or WTC with a disability element* will be automatically eligible on income, but their capital will still need to be assessed.

* gross income not to exceed £14,213 for passporting.

Clients in receipt of IS and income-based JSA will continue to be automatically eligible on income and capital.

This level of service remains non-contributory. Clients are ineligible if their income or capital exceeds the above limits.

Dependants allowances

Following amendments to the Income Support (General) Regulations 1987 SI No 1967, the following increases to the allowances for dependants will apply to applications for funding for all the above levels of service made on or after 7 April 2003.

Partner
- increased from £30.70 to £31.10 per week

Child aged 15 or under
- increased from £37.00 to £38.50 per week

Child aged 16 or over
- increased from £37.80 to £38.50 per week

updater

LEGISLATION UPDATER

CHILDREN
Child Support, Pensions and Social Security Act 2000 (Commencement No 12) Order 2003 SI No 192
Brings into force, on 3 March 2003, provisions of Child Support, Pensions and Social Security Act 2000 Part I, which amend the child support scheme as provided for by the Child Support Act 1991.

Adoption and Children Act 2002 (Commencement No 2) Order 2003 SI No 288
Brings into force, on 3 February 2003, Adoption and Children Act 2002 Sch 3 para 53 and Sch 4 para 4(1) which enable certain regulations to be made.

CRIME
Proceeds of Crime Act 2002 (Commencement No 4, Transitional Provisions and Savings) Order 2003 SI No 120
Brings into force, on 24 February 2003, provisions of the Proceeds of Crime Act 2002, including:
- Part 5 Chapter 2, which creates a new scheme for the civil recovery of the proceeds of unlawful conduct in the High Court or the Court of Session;
- Part 7, which creates new money laundering offences;
- Part 8, which creates new powers of investigation;
- Part 10, which provides for the disclosure of information to and by the director of the Assets Recovery Agency;
- s451, which enables the Commissioners of Customs and Excise to start proceedings for the money laundering offences and the offence of prejudicing an investigation; and
- s452, which gives the secretary of state power to make regulations applying the money laundering offences and the offence of prejudicing an investigation to Crown servants.

Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003 SI No 333
Brings into force, on 24 March 2003, the following provisions of the Proceeds of Crime Act 2002:
- Part 2, which replaces the existing scheme of criminal confiscation in England and Wales;
- Part 4, which replaces the existing scheme of criminal confiscation in Northern Ireland;
- Part 9, which makes provision about the interaction of insolvency proceedings and criminal confiscation proceedings in England, Wales, Northern Ireland and Scotland;
- Part 10, which provides for the disclosure of information to and by the director of the assets recovery agency (so far as it relates to the disclosure of information to and by the Lord Advocate in connection with the exercise of any of his functions under Part 3); and
- ss444, 445 and 447 which give power to make Orders in Council about external requests, orders and investigations; certain minor and consequential amendments in Sch 11, together with entries in the repeals schedule, Sch 12.

IMMIGRATION
Immigration (Designation of Travel Bans) (Amendment) Order 2003 SI No 236
Amends the Immigration (Designation of Travel Bans) Order 2000 by adding Common Position 2002/831/CFSP of 21 October 2002 (Burma) in the list of Instruments made by the Council of the European Union in Part 2 of the Schedule to that order.

The effect of the amendment is to ensure that the definition of 'excluded person' accurately reflects the council's present position about which Burmese nationals are subject to travel restrictions imposed by member states and what restrictions are in place. In force 8 February 2003.

Asylum Support (Amendment) Regulations 2003 SI No 241
Provide for additional weekly payments to be made, as a general rule, to pregnant women and in respect of children aged under three, for whom asylum support is provided. The weekly payments are made in the form of vouchers redeemable for cash. In force 3 March 2003.

Nationality, Immigration and Asylum Act 2002 (Commencement No 3) Order 2003 SI No 249
Brings Nationality, Immigration and Asylum Act 2002 ss94(5) (appeal from within UK: unfounded human rights or asylum claim), 112 (regulations), 113 (interpretation) into force on 10 February 2003.

PRACTICE AND PROCEDURE
Civil Procedure (Amendment) Rules 2003 SI No 364
Amend the Civil Procedure Rules 1998 by inserting a new Section II of Part 54, containing rules about applications to the High Court under Nationality, Immigration and Asylum Act 2002 s101(2). That section provides that a party to an application to the Immigration Appeal Tribunal for permission to appeal against an adjudicator's determination may apply to the High Court for a review of the tribunal's decision on the ground that it made an error of law. The title of Part 54 is changed to 'Judicial Review and Statutory Review' and consequential amendments are made to the existing rules in Part 54.

Court Funds (Amendment) Rules 2003 SI No 375
Amend the Courts Funds Rules 1987 SI No 821 so that payments into court under Civil Procedure Rules 1998 Parts 36 and 37 in claims proceeding in district registries and county courts are treated in the same manner as payments into court in claims proceeding in the Royal Courts of Justice. Payments will no longer be made to the court but direct to the Court Funds Office. The only exception is where a litigant in person without a current account is making the payment. In these exceptional circumstances, cash may be paid into the appropriate district registry or county court and it will then be forwarded to the Court Funds Office within one working day. Where an enactment directs payments to be made into a county court these payments may still be made at the appropriate court office, in cash or otherwise. In force 1 April 2003.

Civil Procedure (Modification of Enactments) Order 2003 SI No 490
Amends Access to Justice Act 1999 (Destination of Appeals) Order 2000 SI No 1071 art 4 to provide that:
- where a claim is allocated to the multi-track under any provision of those rules, an appeal will lie to the Court of Appeal; and
- with the exception of proceedings under the Companies Acts 1985 and 1989, specialist proceedings are now contained in CPR Part 57 Sections I, II and III and Parts 58–63. In force 1 April 2003.

SOCIAL SECURITY
Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003 SI No 455
Amend the Income Support (General) Regulations 1987 SI No 1967 and the Jobseeker's Allowance Regulations 1996 SI No 207 so as to remove, in accordance with Tax Credits Act (TCA) 2002 s1, the special amounts and premia in income support and jobseeker's allowance for those with responsibility for children and young persons.
Amend these and other regulations to make further consequential provision and transitional arrangements in connection with the introduction of child tax credit and working tax credit by the TCA.

Social Fund Maternity and Funeral Expenses (General) Amendment Regulations 2003 SI No 471
Amend the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 SI No 481 insofar as those regulations relate to claims for payment of funeral expenses. In particular, increase the amount of the cap on the residuary category of funeral expenses which may be met out of the social fund from £600 to £700 in respect of deaths which occur on or after 7 April 2003.

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