



Monthly Law Update |
Social Housing
March 2019

Introduction

This update shows the main legislative and case law developments and statutory guidance issued in connection with the Social Housing sector from the last month (February 2019) together with links to the relevant sources where you can obtain further information.

It is not intended to be exhaustive and is designed to give you an overview of important recent developments.

If you have any concerns about any of the developments outlined in this update, or if you require any advice on the effect of the developments or on how to respond appropriately, please contact:



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Charities

Charity Commission issues Official Warning to trustee of housing charity

(The Charity Commission | 6 February 2019)

Warning should signal a turning point says regulator, as new trustees are appointed. The charity, which operates to provide social housing accommodation and assistance, has been subject to a regulatory compliance case since August 2017 due to concerns about its governance and the viability of the charity.



Data protection

Guidance: using personal data after Brexit

(Department for Digital, Culture, Media & Sport | 6 February 2019)

When the UK leaves the EU there may be changes to the rules governing the use of personal data.

Blog: show you mean business by paying the data protection fee

(Information Commissioner's Office | 7 February 2019)

Paul Arnold, ICO Deputy Chief Executive explains to small businesses why they need to pay the data protection fee. Businesses that process personal data have to pay a fee to the data protection regulator, the Information Commissioner's Office. The requirement to pay a data protection fee was introduced under the Data Protection (Charges and Information) Regulations 2018 (SI 2018/480).

Data protection (continued)

Housing developer fined for ignoring data request

(Information Commissioner's Office | 7 February 2019)

Organisations have been reminded they could face a criminal prosecution if they fail to respect the public's legal right to access their personal information.

The warning came from the Information Commissioner's Office (ICO) after a housing developer was fined for breaching data protection laws. The company did not comply with an enforcement notice issued by the ICO and so the regulator prosecuted.

Poplar Housing Association and Regeneration Community Association (Poplar HARCA) v ICO

(BAILII | 4 February 2019)

This appeal concerned a request to a Housing Authority, Poplar Housing and Regeneration Community Association ('Poplar'), under the Environmental Information Regulations 2004 ('EIR'). Reversing the decision of the ICO, the court decided that Poplar is not a public authority for the purposes of the EIR and no action was therefore required.

Energy

UKGBC consults on net zero carbon buildings definition

(UK Green Building Council (UKGBC) | 4 February 2019)

UKGBC has published a consultation paper inviting feedback on a proposed definition for net zero carbon buildings in the UK. Its aim is to build consensus within the construction and property industry about the outcomes needed to achieve net zero carbon buildings, providing a consistent approach for building design and management, and informing the future development of voluntary initiatives and local and national policy.

Employment

New legal measures to protect workers from misuse of non-disclosure agreements

(Department for Business, Energy & Industrial Strategy | 4 March 2019)

The rules around non-disclosure agreements (NDAs) and confidentiality clauses are set to be tightened under new legal proposals. New proposals include legislating that workplace confidentiality agreements cannot be used to prevent people reporting harassment or discrimination to police. Measures also include extending the law to ensure the worker agreeing to confidentiality agreements receives independent legal advice on the limitations. The Consultation closes on 29 April 2019.

2019 increases to statutory maternity, paternity, adoption, shared parental and sick pay

(Legislation.gov.uk | 31 January 2019)

The draft Social Security Benefits Up-rating Order 2019 will increase the rates of statutory sick pay, maternity, paternity, shared parental and adoption pay from April 2019.



Health and safety

The government announces Technical Review of building regulations Association (Poplar HARCA) v ICO

(TLT Legal Insight | 13 February 2019)

In response to the Hackitt Review, the government has started mapping out its programme for implementing Dame Hackitt's recommendations. The government is pushing towards greater regulation of fire safety precautions. The implementation strategy follows on from separate proposals to revise Approved Document B and update guidance on the assessment of fire door performance, and the highly publicised ban on combustible cladding.

Housing

Joint Council for the Welfare of Immigrants, R (On the Application Of) v Secretary of State for the Home Department (2019) EWHC 452 (Admin)

(BAILII | 1 March 2019)

The High Court has ruled that the government's Right To Rent scheme breaches human rights law in a damning verdict on government immigration policy.

Direction on the rent standard from 1 April 2020

(Ministry of Housing, Communities & Local Government | 26 February 2019)

The direction requires the regulator of social housing to set a new rent standard for registered providers of social housing with effect from 1 April 2020.

Mortgagee protection clause – amended GLA version

(National Housing Federation | 20 February 2019)

The Greater London Authority has issued a new version of the model mortgagee protection clause, which has been revised following discussions with housing associations and sector specialists.

Rogerson v Bolsover District Council [2019] EWCA Civ 226

(BAILII | 26 February 2019)

The Court of Appeal held that a landlord was liable under the Defective Premises Act 1972 for injury caused by a defective inspection cover in the tenant's garden.

Housing association prosecuted after exposing employees to vibration

(Health and Safety Executive | 14 February 2019)

A housing association has been fined after failing to manage exposure to vibration, resulting in a diagnosis of Hand Arm Vibration Syndrome (HAVs) for one of its employees.

A housing association has been fined after failing to manage exposure to vibration



The Accounting Direction for social housing in England from January 2019

(Regulator of Social Housing | 20 February 2019)

The general requirements for the accounts of private registered providers of social housing. This direction applies to registered providers in terms of the preparation of their accounts and to profit-making registered providers only in so far as their accounts relate to social housing activities. It was agreed following a consultation in November – December 2018.

Letter to registered providers – Preparation for no-deal Brexit

(Regulator of Social Housing | 14 February 2019)

The regulator has written to large registered providers of social housing. The letter clarifies the Regulator of Social Housing's expectations of providers and shares what RSH has identified as the most significant potential risks facing the social housing sector. It also highlights the importance of stress testing and effective mitigations in the context of the increased uncertainty about the terms on which Britain will leave the EU.

Housing (continued)

Enforcement of possession orders and alignment of procedures in the County Court and High Court

(Civil Procedure Rules Committee | 14 February 2019)

One area in which the Civil Procedure Rules appear to be unsatisfactory is that of the enforcement of possession orders. There are two differing, and anomalous, systems in the High Court and in the County Court.

In the County Court, there is a system of administrative action and court-appointed bailiffs, involving substantial delays (to the detriment of property owners) albeit with limited costs, and a non-statutory informal procedure for occupiers to be given advance notice of evictions.

In the High Court, there is a system of judicial involvement and external High Court Enforcement Officers, with less delay, but more cost, and a more limited provision for occupiers to be given advance notice of proceedings.

The differences between the two systems and the weaknesses of each, particularly in terms of delay, cost and limited notice to those being evicted (and who may have rights to apply to the court), have been noted in a number of both historic and more recent judicial decisions and in recent reports, including The Final Report of The (Briggs) Civil Courts Structure Review which recommended that there should be at least harmonisation of the operation processes of the enforcing agents.

The CPR Rules Committee considers that the procedure in the High Court should be amended so as to bring it into line with that in the County Court. The consultation closes on 2 May 2019.

James Brokenshire heralds new law protecting tenants from unfair letting fees

(Ministry of Housing, Communities & Local Government | 12 February 2019)

On 12 February 2019, the Tenant Fees Bill 2017-19 received Royal Assent. The Tenant Fees Act puts a stop to unnecessary, costly fees imposed on tenants by landlords or letting agents. The new Act bans unfair letting fees and caps tenancy deposits at 5 weeks' rent, with ban on fees to take effect from 1 June 2019.

Buildings with smoke control systems: advice for owners

(Ministry of Housing, Communities & Local Government | 7 February 2019)

The MHCLG published an advice note for the attention of those responsible for residential buildings of 18 metres or over. The note covers issues around the maintenance of buildings with smoke control systems. The principles of the advice may also be applicable for other building owners who have, or should have, smoke control systems installed.

Claim against 'discriminatory' Jewish housing policy fails

(Law Society Gazette | 5 February 2019)

The High Court has refused an application for judicial review (JR) of a Jewish housing association's policy of allocating homes to Orthodox families over non-Jewish people. In *R v Hackney London Borough Council and Agudas Israel Housing Association (AIHA)*, published yesterday, the Divisional Court found in favour of AIHA.



Planning and environment

Government consults on conservation covenants scheme

(Department for Environment, Food & Rural Affairs | 22 February 2019)

A consultation on conservation covenants, voluntary agreements to protect nature, has been launched by the government. The government is seeking views on how best to introduce conservation covenants, fulfilling a commitment made in the 25 Year Environment Plan. They are voluntary but legally-binding agreements which enable landowners to leave a permanent conservation legacy on their land for future generations.

Changes to planning policy and guidance including the standard method for assessing local housing need

(Ministry of Housing, Communities & Local Government | 19 February 2019)

The Ministry of Housing, Communities and Local Government has published Government response to the technical consultation on updates to national planning policy and guidance. This document provides a summary of the consultation responses received. It also sets out the proposed changes the government is making to national planning policy and guidance in the light of its proposals and the consultation responses.

The High Court held that the UK's departure from the European Union will not have the effect of frustrating a commercial lease.

Real estate

Canary Wharf (BP4) T1 Ltd v European Medicines Agency [2019] EWHC 335 (Ch)

(Ministry of Housing, Communities & Local Government | 19 February 2019)

The High Court held that the UK's departure from the European Union will not have the effect of frustrating a commercial lease.

Government announces plans to tackle illegal traveller sites

(Ministry of Housing, Communities & Local Government | 6 February 2019)

The Home Secretary has announced plans to give police tough new powers to crackdown on illegal traveller sites. Sajid Javid set out draft measures aimed at making it easier for officers to intervene and remove travellers from land they should not be on. The Home Secretary will also consider making it a criminal offence to set up such camps. It is currently defined in law as trespassing, a civil matter. In addition, the Ministry for Housing, Communities and Local Government (MHCLG) announced it will provide local authorities with practical and financial support to handle unauthorised encampments.

Environmental considerations for SIPP and SSAS trustees in property transactions

(TLT Legal Insight | 7 February 2019)

In this update, we look at some of the environmental issues surrounding property acquisitions and management – and why they are of particular relevance for trustees of pension schemes that invest in property.

Fearn and others v The Board of Trustees of the Tate Gallery [2019] EWHC 246 (Ch)

(BAILII | 12 February 2019)

The High Court (Chancery Division) delivered its judgment on 12 February 2019 that a viewing platform not a nuisance or Article 8 ECHR breach of privacy.

Tax

New stamp duty land tax surcharge for non-UK resident homebuyers to be introduced

(HM Treasury, HM Revenue & Customs | 11 February 2019)

Proceeds of the new surcharge would be put towards measures to tackle rough sleeping. The Stamp Duty Land Tax: non-UK resident surcharge consultation will look at how a new 1% increase to stamp duty costs for non-UK residents buying residential property in England and Northern Ireland would work. This follows a commitment made by the Prime Minister and a subsequent announcement of the proposed rate at Budget 2018.

SDLT return filing and payment deadlines to reduce to 14 days

(TLT Legal Insight | 25 February 2019)

The time limit for filing a Stamp Duty Land Tax (SDLT) return and paying any SDLT due is being reduced by more than one half, from 30 days to 14 days, with effect from 1 March 2019.

If you have any concerns or require any advice on the implications of any of the developments reported in this update, please contact **David Isaacson** at:

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