



# Housing Management Brief

## Issue 21

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## Welcome

I guess it was only a matter of time before HHJ Jan Luba started to make his influence on housing law felt following his promotion to the Bench at Central London County Court. In this edition of our HM Brief we focus on two of Judge Luba's recent decisions: one relating to service of NTQs on the Public Trustee (following the tenant's death); and a second dealing with the Deregulation Act 2015 and service of Gas Safety Certificates on assured shorthold tenants. Highly technical issues, but ones which can catch out the unwary quite easily and with potentially very expensive costs consequences. In the same vein, we take a look at the changes to the N5B Court Form. Get that wrong and your supposedly accelerated proceedings could be severely delayed. You have been warned!

Other nasties include the proposed Fitness for Human Habitation Bill which threatens to introduce a new cause of action in disrepair claims.

Not a very upbeat edition this time around, I am sorry to say, but from time to time housing law inevitably brings us bad news as well good.

Peruse at your leisure and, as always, if you have any questions, do give us a call using our free Advice Line – details at the back.

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# Accelerated Possession Proceedings: Recent Changes to Claim Form N5B



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*Housing Associations need to be aware of changes to the N5B form for Accelerated claims for possession when seeking possession of an assured shorthold tenancy. Two new forms have been produced, one for England and one for Wales, which reflect the different requirements in each jurisdiction.*

**In summary the changes for the form in use in England are as follows:**

- Paragraph 5 – the landlord is asked for more detail about service, i.e. to confirm how, when and by whom the Notice of Seeking Possession was served.
- Paragraph 7 – the part concerning the deposit asks for fuller particulars concerning the deposit as well as asking when the fixed term came to an end and whether a deposit has been repaid to the tenant. This will not be applicable if a deposit is not taken.
- Paragraph 8 – this section requests information on whether a relevant notice in relation to the condition of the property or common parts under s.11 or 12 or 46(7) of the Housing Act 2004 has been served.
- Paragraph 9 – this asks the Landlord to confirm that a valid Energy Performance Certificate (“EPC”) has been given to the tenant and the date that the EPC was provided.
- Paragraph 10 – asks the Landlord to confirm (a) whether there is any relevant gas fitting serving the premises. If yes, then the Landlord is asked to confirm that the gas safety certificate has been provided to the tenant and the date this was provided. If there is no relevant gas appliance in any room occupied by the tenant, then the landlord is asked to confirm that they have displayed in a prominent position in the premises a copy of the gas safety record with a statement endorsed on it that the tenant is entitled to have their own copy of the gas safety record on request.

- Paragraph 11 – asks private landlords to confirm that they have provided a copy of the current guidance “How to Rent; the checklist for renting in England”. This obligation does not apply to Registered Providers.
- Page 7 – provides a checklist of documentation to be attached to the form. Note that the checklist does not require a copy of the EPC or Gas Safety Certificate to be attached.
- Note that paragraphs 8 – 11 are not presently relevant for assured shorthold tenancies which commenced before 1 October 2015, we propose that a way around this would be to cross out those paragraphs and add a further paragraph stating words to the effect: “Paragraphs 8, 9, 10 and 11 have been deleted as this tenancy is a pre-October 2015 tenancy and these paragraphs do not relate to these tenancies.” An application for homelessness to the relevant LA.

This is the latest in a number of changes to the prescribed forms which are available on HM Court and Tribunal form finder located on the Government’s Justice website. If you have any questions about the form or any other prescribed form and are unsure if you have the latest version, do contact us.

For further information on the Accelerated Possession Proceedings or any questions, please contact **Mark Foxcroft** on **020 7065 1861** or [mark.foxcroft@devonshires.co.uk](mailto:mark.foxcroft@devonshires.co.uk).



Landlords: Are you aware of the risks  
associated with covert recordings?



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*Many individuals, including tenants, have started to use their smartphones to record telephone conversations and face-to-face meetings. There is currently no law that prohibits this activity.*

In civil proceedings, the court does not have a specific power to exclude evidence on the ground that it was improperly or unlawfully obtained. However, the court has discretion to exclude evidence in order to ensure that cases are dealt with justly, which includes ensuring that the parties are on an equal footing. The court will not automatically exclude evidence obtained secretly, but instead will balance whether the public interest in discouraging the conduct by which the evidence was obtained outweighs establishing the true position.

In *Vaughan v London Borough of Lewisham and Others* [2012] UKAT 0534/12, the Employment Appeal Tribunal held that although the practice of covert recording is distasteful, it did not necessarily render that evidence inadmissible.

In the recent case of *Singh v Singh and Ors* [2016] EWHC 1432 (Ch) the High Court decided that covert recordings of conversations between business partners were admissible as evidence at trial (but should be treated with caution).

In *Jones v University of Warwick* [2003] EWCA Civ 151, the court decided to admit the evidence, but impose a costs penalty on the party that covertly recorded, as a measure of its disapproval.

As described above, landlords must be aware of the risks associated with covert recordings made by tenants unbeknownst to their staff. Case law has suggested that it is likely that such recordings will be admissible in court proceedings. While it is not possible to prevent such recording practices, landlords should be extra-vigilant

when meeting with tenants to ensure they are complying with their policies, procedures and the relevant legislation, in order to avoid any inadvertent liability that could be later uncovered.

For further information, please contact [Hetal Ruparelia](mailto:hetal.ruparelia@devonshires.co.uk) on 020 7880 4254 or [hetal.ruparelia@devonshires.co.uk](mailto:hetal.ruparelia@devonshires.co.uk).

A photograph of a modern multi-story brick building. The building features prominent stone pillars at the corners and balconies with black metal railings. The windows are large and dark-framed. The overall aesthetic is contemporary and urban.

## Gas Safety Certificates and Section 21 Notices: Make sure you get it right

*We regularly receive enquiries in relation to the content and form of section 21 notices and the legal requirements to ensure they are valid, in particular the changes introduced by the Deregulation Act 2015. We are focused in this article on assured shorthold tenancies granted on or after 1 October 2015.*

The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulation 2015 (“the Regulations”) provide details of the prescribed requirements for the form and content of section 21 notices.

There has recently been legal commentary on the requirements contained within the Regulations regarding provision of certain documents to tenants and specifically when these documents must be provided to ensure any section 21 notice served on that tenant is valid. Aside from the usual deposit requirements (which are beyond the scope of this article), there are a number of requirements, failure to adhere to which will result in the inability to serve a valid section 21 notice - these include:

**(a)** Provision of an energy performance certificate (“EPC”) to the tenant free of charge as per regulation 2(1)(a) of the Energy Performance of Buildings (England and Wales) Regulations 2012;

**(b)** Provision of a gas safety certificate (“GSC”) as per Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015, regulation 2(1)(b); Gas Safety (Installation and Use) Regulations 1998, regulation 2(1)(b) (the 28-day compliance requirement in the gas safety regulations is disapplied);

**(c)** Provision of the booklet “How to rent: the checklist for renting in England” as per Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015, regulation 3(1)(2) – note that Registered Providers are not required to provide this document.

In short, a mandatory claim for possession can only be sought by way of the section 21 procedure once the above prescribed requirements have been complied with. It is of course important to ensure a written record is kept of doing so along with copies of the same as evidence of the fact the requirements have been complied with.

In respect of the EPC and GSC, these should be physically served on the tenant prior to the commencement of the tenancy and, indeed, a written file/record should be retained with copies of the cover letter and the EPC/GSC doing so.

There has been a recent County Court appeal (before Circuit Judge HHJ Luba QC) in relation to the GSC requirement which, in short, decided that if the current GSC for a premises was not given to a new tenant before they occupied the premises (as required by regulation 36(6)(b) of the Gas Safety (Installation and Use) Regulations 1998) then this would be an irremediable breach of the Regulations. In practical terms, this means a section 21 notice could never be validly served on the premises (at least during the period of that tenancy).

The issue is one which has attracted much debate, not least in light of the Explanatory Memorandum to the Regulations which states:

*“4.4...Therefore as long as the landlord has carried out a safety check and provided a certificate, they are not prohibited from using the no fault eviction procedure (although they may be subject to sanction under the 1998 Regulations for failure to comply with them). No section 21 notice may be given where a landlord has failed to comply with either of these requirements.”*

It is expected that this issue will almost certainly be revisited by the courts but, until so, it is certainly best practice to ensure GSCs are provided to tenants prior to the commencement of the tenancy (and a record is retained of doing so). Failure to do so will mean landlords will be exposed to an argument that any section 21 notice served is invalid where they did not provide the gas safety certificate before the tenant moved in to an assured shorthold tenancy (which began post 1 October 2015) at least for the duration of that tenancy.

For further guidance or advice on Gas Safety do contact [Aston Kazlauskas](mailto:aston.kazlauskas@devonshires.co.uk) on 020 7880 4292 or [aston.kazlauskas@devonshires.co.uk](mailto:aston.kazlauskas@devonshires.co.uk).



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## Maxine Pavey v London Borough of Hackney: Focus on valid service of NTQs after death

*The recent judgement of His Honour Judge Luba QC puts a Landlord's procedure for terminating a tenancy upon the death of a tenant firmly into the spotlight. Although at present a county court appeal (and therefore not binding), it is likely to hold significant persuasive effect.*

### The Facts

The appeal to the Circuit Judge followed a first instance District Judge decision on a claim for possession of a property let under a secure tenancy by the Local Authority to Mr Pavey who had died.

The Local Authority was of the view that no person was qualified to succeed the tenancy and therefore sought to determine the unprotected contractual tenancy which it had turned into upon the tenant's death by giving 28 days' notice. They did so by delivering a Notice to Quit at the property addressed to the Personal Representatives. The

notice gave a specific expiry date and had a commonly used saving provision – "or the day on which a complete period of your tenancy expires next after 28 days from the service of this notice".

Some four months later the Local Authority took steps to send a copy of the notice to the Public Trustee.

Hackney proceeded to issue possession proceedings relying upon the NTQ which was found in the first instance District Judge decision to be valid on the basis that the savings provision was operated upon serving the NTQ on the Public Trustee (i.e. the tenancy had been determined on completion of the four week following service on the Public Trustee).

The problem Hackney had was that they had issued a near identical possession claim heard only a few weeks later

in which they lost before a different Deputy District Judge who found that the savings provision ran from the date the notice to quit was left at the property (i.e. not the date on which there had been service on the Public Trustee). The Deputy District Judge went further saying that even if the savings provision operated differently it would fail to meet the common law requirement of clarity.

### The Law

Upon the death of a tenant (where there is no successor) Section 18 of the Law of Property (Miscellaneous Provisions) Act 1994 states: Notices affecting land: service on personal representatives before filing of grant.

**(1)** A notice affecting land which would have been authorised or required to be served on a person but for his death shall be sufficiently served before a grant of representation has been filed if—

(a) it is addressed to 'The Personal Representatives of' the deceased (naming him) and left at or sent by post to his last known place of residence or business in the United Kingdom, and

(b) a copy of it, similarly addressed, is served on the Public Trustee."

In short, the appeal had to decide whether or not the saving clause ran from the date of service of the notice at the property or the date on which a copy of it was sent to the Public Trustee and whether the notice would be sufficiently clear if it was the latter.

In short, HHJ Luba QC decided:

a) The NTQ saving clause only ran from when the notice had been served on the Public Trustee – i.e. not from when it was served at the property; and

b) The delay in serving the notice to quit on the Public Trustee made the date that the notice to quit took effect unclear and therefore invalid.

### What does this mean in practice?

It is likely that you will need to review your procedure following the death of a tenant with no successor. Landlords will be exposed to an argument that any notice to quit is invalid where it has been served on the Public Trustee later than the notice to quit served on the property.

If you follow these steps then it should stand you in good stead:

a) The notice to quit should be served at the property (personal representatives) and the Public Trustee at the exact same time – we would recommend serving both by posting (in first class post) on the exact same day and if a further notice is to be hand delivered to the property in addition to the one posted then it should be marked as a copy only;

b) the actual notice goes to the property addressed to the personal representatives and only a copy to the Public Trustee;

c) in both notices there is set out the same date for termination of the tenancy, or the same mechanism for determining it;

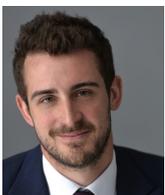
d) it is important that the notices be clear not just to the person who receives it but to any other person who may legitimately have an interest in the validity of it (i.e. sub-tenants of the true tenant, those with other interests contingent on the true tenant, the legal advisers of the true tenant etc.).

For further information, please contact [Lee Russell](#) on 020 7880 4424 or [leerussell@devonshires.co.uk](mailto:leerussell@devonshires.co.uk).



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An introductory look at the Homes  
(Fitness for Human Habitation and Liability for  
Housing Standards Bill) 2017-19



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### What is it?

This is a Private Member's Bill currently progressing through Parliament which intends to amend the Landlord and Tenant Act 1985 (LTA 1985) to extend and expand an existing implied term. This will have the effect of imposing on most residential landlords an obligation to maintain let property as fit for human habitation, and to give tenants a corresponding right of action, with specific performance as a statutorily mandated remedy.

### Who is supporting it?

The bill was introduced by Labour MP Karen Buck and was supported by her party, Shelter and the Residential Landlords Association. Government support unexpectedly came on 14 January 2018. Its passage into law, and unamended, is not certain. It was successfully given a second reading in the House of Commons on 19 January 2018 and will be scrutinised by a Commons committee at a date yet to be announced.

### How does it do it?

It amends ss8-10 LTA 1985. The existing provisions contain an implied term that a house is fit for human habitation and will be kept as such, but only applies to tenancies with annual rents at commencement of £52 (or £80 in London). Such rent limits have not been revised since 1957 and so this implied term has fallen out of use.

The new s8 introduces an implied covenant to ensure the let dwelling is fit for human habitation at the time of grant and is kept in this condition throughout the tenancy. Specific performance is provided as a remedy by the new statute, notwithstanding any rule of equity. There are limited exemptions from the duty, including where such unfitness arises from a natural disaster or the tenant's failure to use the dwelling in a tenant-like manner.

The new s8A defines which tenancies this duty applies to, namely tenancies granted or renewed after this bill has been brought into force, which are mainly for human habitation and are either (i) for a term of less than 7 years or (ii) a secure, assured or introductory tenancy for a fixed term of 7 years or more. The new implied term will

also apply to existing periodic or secure tenancies after a period of 12 months after the new s8 comes into force, allowing landlords time to ensure their existing let housing stock is fit for human habitation.

The Bill would also amend the list of factors to be considered in assessing whether a dwelling is reasonably suitable for habitation to include any prescribed hazard under the Housing Act 2004. This is particularly significant because, if the bill is passed into law in its current form, this may represent a sea-change in approach to disrepair liability for residential landlords. The focus of the current s11 is on questions of whether disrepair forms part of the structure of a building, with chartered surveyors providing expert opinion. The new s8 will focus much more on questions of habitability and hazard, where environmental health expertise may be of greater relevance. Existing case-law under s8 provides that the landlord's duty is limited to premises that can be made fit at reasonable expense (*Buswell v Goodwin* [1971] 1 WLR 92, CA) but it remains to

### Where will it apply?

The Bill applies to the law of England and Wales, but would only affect tenancies in England. This is because similar provisions are already in place in Wales through the Renting Homes (Wales) Act 2016. Complementary provisions exist in Scotland and Northern Ireland.

### Why is this bill going ahead now?

The Grenfell Tower fire has refocused attention on housing standards in the social housing sector and across the wider rental market. Particular lacunae identified include the patchwork nature of enforceable rights on the part of tenants and the inapplicability of the HHSRS enforcement system to local authorities. When giving support for this bill, the government has cited its commitment to public safety and protection of tenants from a minority of landlords who let unsafe and substandard accommodation.

For further information or any questions, please contact [Mark Foxcroft](mailto:mark.foxcroft@devonshires.co.uk) on 020 7065 1861 or [mark.foxcroft@devonshires.co.uk](mailto:mark.foxcroft@devonshires.co.uk)

## ***Faces behind the Devonshires Team: What we've been up to***

**Chloe Byer** - Managing a busy case load focusing on possession claims and liaising with courts, clients and Counsel in preparing pleadings and trial bundles.

**Maninder Bassan** - Issuing fixed fee rent arrears claims and recently organised 'Flashback' themed firm drinks with karaoke'

**Portia Guidotti** has been busy managing various possession claims and enjoying her new-found freedom, having recently completed the LPC.

**William O'Brien** - Building relationships with courts across the country to get results for clients and closely following the progress of the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill.

**Kerri Harrison** - Running multiple seminars on tackling social housing fraud and preparing to skydive for the Devonshire's Foundation in support of our three amazing charities: Action for Kids, Friends of the Elderly and Theatre Royal Stratford East.

**Charlotte Collins** - Has been doing presentations on the Homelessness Reduction Act, Tenancy Fraud and Mental health and housing.

**Donna McCarthy** - Is busy putting together presentations for the HM update and mental health and housing seminars.

**Harry Petrou** is working on a range of disrepair and ASB cases, all the while dreaming of warmer climates ahead of his holiday to Dubai next month.

# Meet Our Team

## Spotlight - Ben Tarbard



### How did I get into housing law?

My journey has been different from that of your usual Paralegal! After leaving Shenfield High School following GCSEs, I decided that my best course of action was to get a job, preferably in London, and take the route of experience over studying.

I successfully applied for the role of General Office Clerk at Devonshires in February 2007 and Housing Management or Litigation was not in my mind in terms of direction for my career at that time. However, in January 2010, the role of Outdoor Clerk within the Housing Management department became available and it was a role that immediately peaked my interest. The opportunity for me to progress and become part of a well-established team was too good to miss. The role provided me with great insight into housing law and gave me invaluable experience of how the court system works in practice.

The next step came in May 2012 when I was promoted to become a Paralegal within the Housing Management Department providing support to the Solicitors and eventually running my own caseload. After 3 years as a Paralegal, I decided that it was a great time to get back into studying and become qualified. I am now 2 years into a 4 year course with CILEX (the Chartered Institute of Legal Executives), following which I will be qualified as a Chartered Legal Executive.

### What interested me about housing management?

For me, housing law provides a great variety of day-to-day problem solving as the legal issues that arise in housing law are constantly developing. Having worked in housing now for 8 years, I have seen it develop in real time and seen how this impacts both on the public in general and for us as a firm of Solicitors. It is these challenges that I find exciting and working on matters that deal with issues that have such a large impact on society today is something I take great pride in.

### What skills did I pick up in my time Clerking that has helped in my career as Paralegal?

Working on the 'front line' of the Legal Team in Housing Management was a great way to get to quickly learn how the matters that housing lawyers deal with day-to-day work in practice. As a clerk, my duties were to interact directly with tenants and courts which taught me how fast-paced and pressured housing law can be. I was at court on a daily basis, issuing urgent injunction applications in West London one minute and serving papers in East London the next.

Interacting with tenants, court staff and barristers daily meant I was able to observe every aspect of a case which has benefited me as a Paralegal and will continue do so throughout my career. I believe this has given me a great advantage in understanding cases having gathered that first-hand knowledge over a number of years.

### ...and finally tell us something interesting

A PhD student at Cambridge University spent two months analysing British Laws. He was surprised to see a number of laws still in force simply due to British law being a product of centuries' worth of laws, some of which were clearly never revised or reviewed. One of those more peculiar laws is that it remains illegal in the UK to "handle a salmon in suspicious circumstances". I'm not sure what would be considered to be suspicious so all I will say is be careful how you handle your salmon out there!

# Housing Management Training Programme 2018

Devonshires Solicitors offers a comprehensive training programme on all aspects of housing management to their clients. Topics covered include:

## Seminar Programme

### Tackling ASB and Nuisance Conduct

26 September 2017

Half day session

### HM Update

12 October 2017

Half day session

### Tips and Tricks: Dealing with the Courts and the effective instruction of Lawyers

23 November 2017

Half day session

### Tackling Non Occupation, Subletting and Disputed Succession Claims

24 January 2018

Half day session

### Mental Health and Housing

28 February 2018

Half day session

### HM Update

28 March 2018

Half day session

### Tackling Tenancy Breach

25 April 2018

Half day session

### Local Authority Enforcement and the HHSRS: A practical guide for Landlords

10 May 2018

Half day session

### Defending Actions for Disrepair and Claims under Environmental Protection Act 1990

14 June 2018

Half day session

Devonshires seminars are CPD accredited by the Solicitors Regulation Authority

## How to Book

Invitations outlining programme and speaker details will be issued for each event with a registration link. Places are issued once the flyer for the individual seminar is sent out. All sessions are free to attend.

Look out for our responsive Webinars and Breakfast Briefings announced throughout the year

To sign up to our mailing list please email [seminars@devonshires.co.uk](mailto:seminars@devonshires.co.uk)

## Help is at hand Housing Management Helpline



Devonshires is pleased to offer a free Housing Management helpline. Gain instant access to qualified housing lawyers throughout the business day. Get direct legal advice on specific issues and a quick response to an immediate problem.

### Housing Management Helpline

**0800 0854 529**

Monday to Friday 9am - 5pm

## Leasehold Management Help is at Hand



Devonshires is pleased to offer a free Leasehold Management helpline. Gain instant access to qualified Leasehold Management Lawyers throughout the business day. Get direct legal advice on specific issues and a quick response to an immediate problem.

### Leasehold Management Helpline

**0845 994 0091**

Monday to Friday 9am - 5pm

[www.devonshires.com](http://www.devonshires.com)

30 Finsbury Circus, London EC2M 7DT

# Legal updates and seminars

Devonshires produce a wide range of briefings and legal updates for clients as well as running comprehensive seminar programmes.

If you would like to receive legal updates and seminar invitations please visit our website on the link below.

<http://www.devonshires.com/join-mailing-list>

**Employment Brief**  
Summer 2011

**Construction & Maintenance Brief**  
Professional Negligence Special – Spring 2011

**Housing Management Training Programme 2011/12**

Devonshires' Housing Management Team is pleased to present the 2011/12 training and seminar programme, featuring our most popular training courses and a new addition. Booking discounts are available for multiple sessions and delegate bookings. Invitations outlining programme and speaker details will be issued for each event. Please see overhead for booking instructions.

**In this issue**  
The Agency Workers Regulations 2010  
Firmness to pay  
Government announces reforms to the Disadvantaged form and sign  
Quick update

**In this issue**  
The section conductor: What to expect?  
Claiming against a professional: The rough guide  
No contract? No duty if you have no contract with the wrongdoer on you recover?  
Net contributor clauses: A case update  
Valuers: Does the method used for the valuation matter when proving negligence?

**Seminar Programme**

A Practical Guide to Leasehold Management	8 September 2011	Half day session - £75 (VAT)
Housing Law Update	13 October 2011	Half day session - £75 (VAT)
Housing Law for Beginners	15 November 2011	Full day session - £150 (VAT)
Successfully Tackling Anti-Social Behaviour: All You Need to Know	19 January 2012	Half day session - £75 (VAT)
Dealing with Capacity in Housing Management	6 February 2012	Half day session - £75 (VAT)
Housing Law Update	14 March 2012	Half day session - £75 (VAT)
A Practical Guide to Rent Possession Claims for Housing Officers	19 April 2012	Half day session (pm) - £75 (VAT)
Practical Advocacy: A Step by Step Guide on How to Present Cases in the County Court	19 April 2012	Half day session (pm) - £75 (VAT)
Dealing with Disrepair: A Practical Guide for Social Landlords	26 June 2012	Half day session - £75 (VAT)

**CPD hours**  
Devonshires seminars are CPD accredited by The Solicitors Regulation Authority.

Devonshires Solicitors has taken all reasonable precautions to ensure that information contained in this document is materially accurate however this document is not intended to be legally comprehensive and therefore no action should be taken on matters covered in this document without taking full legal advice.

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