

## Nicholas Nicol

**Call:** 1986

**LinkedIn:**

<https://www.linkedin.com/pub/nicholas-nicol/b7/778/127>

**Twitter:** <https://twitter.com/NikNicol63>



**Specialist in:**

- Housing & Community Care
- Civil Law
- Dispute Resolution
- Direct Access
- Direct Access Trained
- Qualified Mediator

## Experience

Nicholas Nicol is an experienced barrister, tribunal judge, mediator and legal trainer. Full details can be found at [www.nicholasnicol.uk](http://www.nicholasnicol.uk).

“I see poverty, disadvantage, vulnerability, homelessness, disability, discrimination; suffered by children, single parents, families, the aged; and caused by ineffective government, incompetent local authorities, housing and care providers which have forgotten their mission, landlords who avoid their obligations, companies that rip you off. I don't fight those problems because I have to. I became a lawyer because I want to. I am a barrister so that I can”.

Called to the Bar at the Inner Temple in November 1986.

CEDR Accredited Mediator from 2002. I have conducted or taken part in more than 40 mediations, mostly as part of the scheme for parties with cases before the First Tier Tribunal Property Chamber (see further below).

Tribunal Judge (1999-date) at the First Tier Tribunal Property Chamber (Residential Property) which, from 1st July 2013, took over from Leasehold Valuation Tribunals, Rent Assessment Committees and Residential Property Tribunals.

Public Law Project Director of Policy & Research 1997. Projects included Lottery-funded research into the NHS complaints system and a major conference on ADR.

Southwark Law Centre caseworker (1988-91) in housing and employment.

## What the directories say

“Nik is very good at dealing with complex matters and obtaining a good result every time.”

“He knows his law and has excellent knowledge and experience. He is organised and gets work back by an agreed deadline.”

“He can be relied on to provide excellent advice and representation.”

Chambers & Partners (2026) Social Housing (Band 4)

## Memberships

ALBA

CEDR Exchange

HLPAs

HRLAs

LAG

PBA

## Cases

### Cherry v LB Tower Hamlets

Recorder Hollington QC; Central London County Court; 11 January 2018; unreported but transcript available.

In a statutory homelessness appeal on whether a homeless applicant was vulnerable and so in priority need, NowMedical applied the wrong test of “unable to cope” rather than whether



the homeless person is “less able than an ordinary person to cope with homelessness”. NowMedical’s psychiatrist, Dr James Wilson, has been an expert rather than a treating psychiatrist since 2012 which puts him at a disadvantage relative to a practising psychiatrist. The only reasonable conclusion was that the appellant was vulnerable and so in priority need so the decision was varied to state that.

## **Bank of Ireland v Shah and Dubash**

**[2015] EWCA Civ 1018**

Failure to give notice of an application for a transfer from the county court to the High Court or to serve the transfer order did not render the order a nullity (*Craig v Kanssen* [1943] KB 256 distinguished). Sentence for committal reduced from 10 months to immediate release, taking into account the judge’s failure to enquire about representation or invite mitigation (*Brown v LB Haringey* [2015] EWCA Civ 483 applied).

## **Resources**

Related article

## **LB Islington v Uddin**

**[2015] EWCA Civ 369; [2015] HLR 28**

The mere fact that rising damp is caused by an inherent defect does not of itself absolve the landlord from liability.

## **Resources**

Related article

## **Solihull MBC v Hickin**

**[2012] UKSC 39; [2012] 1 WLR 2295**

A non-occupying joint tenant succeeds to a secure tenancy on the death of the other joint tenant by the common law rule of survivorship ahead of anyone entitled to succeed under the Housing Act 1985.



## Resources

Related article

### **Friendship Care and Housing Association v Begum**

**[2011] EWCA Civ 1807; [2013] HLR 11**

The county court judge had correctly taken the interests of the children into account as a primary consideration in making a possession order against their parents.

## Resources

Related article

### **Akhtar v Birmingham CC**

**[2011] EWCA Civ 383; [2011] HLR 28**

#### Background

Birmingham accepted that the Appellant was homeless, eligible for assistance, in priority need and not intentionally homeless so that they owed a duty to secure that accommodation becomes available for their occupation – s.193(1) and (2) of the Housing Act 1996 (“the Act”). The duty continues until it ceases by virtue of any of the exhaustive list of provisions in the rest of s.193, including where the applicant is refused a final offer of accommodation under Part VI of the Act – s.193(7).

The local housing authority may not make such an offer unless they are satisfied that the accommodation is suitable and that it is reasonable to accept the offer – s.193(7F) of the Act. There must be a proper inquiry into suitability before a determination is made that particular accommodation is suitable and the question of suitability must be addressed at the time when the accommodation is provided – *R (Best) v Oxford CC* [2009] EWHC 608 (Admin).

The Act imposes a duty on a local housing authority to provide reasons for decisions under ss184(3), 203(4)(a) and 203(4)(b) of the Act but not as to why an authority regards offered accommodation as suitable or reasonable to accept in accordance with s.193(7F).

The governing principle as to when the common law will impose a requirement to give



reasons was set out by Lord Bridge in Lloyd -v- McMahon [1987] AC 325 at 702-703, quoted by Lord Donaldson MR in R -v- Civil Service Appeal Board ex p Cunningham [1992] ICR 816 at 826E-G:

“the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.”

#### Facts

Birmingham accepted a duty to secure suitable accommodation for the Appellant and her 7 children. They made five offers, the first four of which they accepted on review were not suitable. The last of those first four offers was in the Kingstanding area of Birmingham. The Appellant had objected to the location and assumed that that was at least part of the reason why her review was successful. In fact, Birmingham had decided that the offer was too small for her large family but they did not tell her that at that time. When the fifth offer was also in Kingstanding, the Appellant thought she could refuse it for the same reason. It was only after the offer was no longer open that Birmingham informed her of the true reason why they had upheld the previous review. By that time, it was too late to correct her mistake. She argued this was unfair and Birmingham should have given reasons:-

- a. In the letter upholding the review on the fourth offer. The true reasons for upholding the review had been recorded in a very brief file note which could easily have been put in the letter.
- b. In the letter making the fifth offer which also stated that Birmingham regarded the offer as suitable and reasonable to accept. Birmingham had a duty to assess suitability at this point and so could have put their conclusions from that assessment in their letter. HHJ Worster held in the County Court that Birmingham had actually failed to comply with this duty and so had not carried out the relevant assessment.



The county court appeal was rejected and the Appellant appealed to the Court of Appeal.

Held

The Court of Appeal rejected the appeal. Etherton LJ gave the sole judgement:-

1. Counsel for the Appellant made five propositions that counsel for the Respondent (and, by implication, the court) accepted [26]:-

- a. there is no general duty to give reasons for administrative decisions;
- b. in an appropriate case, a duty to give reasons will be implied at common law where necessary to ensure fairness;
- c. the categories of case in which the common law will imply such a duty are not closed or fixed;
- d. there is no general principle other than fairness to determine whether reasons should be given; and
- e. it is necessary to look at the features of each case to see whether there is a duty or not.

2. This appeal was a second appeal. It raised issues of sufficiently wide significance to warrant permission to appeal pursuant to CPR 52.13. [38]

3. The only issue on the appeal was whether the facts of the present case were such that the omission of reasons from the two relevant letters of was so unfair as to be in breach of the Respondent's duty at common law. The Court of Appeal agreed with the County Court judge, substantially for the reasons he gave, that the facts of the present case were incapable of giving rise to such a duty. [39 & 40]

4. A favourable review decision which fails to address adequately or at all one of the grounds submitted for the review is not capable of appeal to the county court under s.204 of the Act because:

- a. the review officer is not obliged to deal with every objection to the property [42],
- b. there is no authority on the subject [43],
- c. it is trite that an appeal is against an adverse order [44],
- d. s.203(4)(b) of the Act (duty to give reasons when confirming a previous decision to refer an applicant to another authority) refers to the resolution of a review against the applicant, not to the confirmation of a decision which plays no part in the resolution of the review in favour of



the applicant [45].

5. It would serve no purpose to require every offer letter to give reasons explaining why the offered property is considered to be suitable and reasonable for the applicant to accept. [46]

6. The particular features of the present case did not require a specific explanation as to why the offered property was considered suitable. The Appellant's assumption that she had been successful in all of her objections to the previous property was not a reasonable one. [47]

7. Any unfairness to the Appellant was avoided by the prominent warnings in various letters of the consequences of refusing a final offer and by notification of her ability to accept the offer and still challenge it on review. [48]

## Resources

Related article

### **Makisi v Birmingham CC**

[2011] EWCA Civ 355; [2011] HLR 27

Homeless applicants have a right to an oral hearing on a review of their case by a local housing authority.

## Resources

Related article

### **Lynch v Kirby**

[2010] EWHC 297

Whether a tenancy commenced when the tenant moved in or when housing benefit began.

## Resources

Related article



## **Birmingham CC v Qasim**

**[2009] EWCA Civ 1080; [2010] HLR 19**

The unlawful nature of an allocation does not void the subsequent grant of a tenancy. The Supreme Court refused Birmingham permission to appeal on the basis that the Court of Appeal's decision was "plainly right".

### **Resources**

Related article

## **Holmes-Moorhouse v LB Richmond**

**[2009] UKHL 7; [2009] 1 WLR 413; [2009] HLR 34**

Whether children who were the subject of a shared residence order could reasonably be expected to reside with both parents.

### **Resources**

Related article

## **LB Islington v Uckac**

**[2006] EWCA Civ 340; [2006] 1 WLR 1303**

The Housing Act 1985 provides a complete code for the termination of a secure tenancy so the common law remedy of rescission is not available.

### **Resources**

Related pages

## **Muscat v Smith**

**[2003] EWCA Civ 962; [2003] 1 WLR 2853**

Following the transfer of a landlord's interest to a new landlord, if the new landlord sues the tenant for rent arrears which arose under the old landlord, the tenant may set off against the claim any counterclaim they had against the old landlord, e.g. for damages for breach of covenant to repair.



## Resources

Related article

## Publications

### **Public Law Defences in Possession Proceedings’, [2010] JR 85**

The availability and use of defences based on public law in county court possession proceedings.

### **Getting past the Gatekeeper’, [2007] JHL, 40**

How the unlawful local authority practice of “gatekeeping” homeless applications was successfully challenged in *Aweys v Birmingham CC* [2007] EWHC 52

### **Defining Vulnerability’, [2007] JHL, 76**

The definition of “vulnerable” being used by local authority medical advisers for homeless applicants is wrong.

### **Applying the Right to Housing’, [2002] JHL 11**

How the human right to housing contained in international human rights instruments may be applied in English courts

### **The Other Human Rights’, [2001] Human Rights, 156**

How social, economic and cultural human rights contained in international human rights instruments may be applied in English courts

### **Halsbury’s Laws Vol.19(1) section on Gas, LexisNexis Butterworths**

Basic text on the law relating to gas supply.

### **Medical Mishaps: Pieces of the Puzzle, Chap 21, Open University Press**

Public law remedies for medical mishaps.



**Economic, Social and Cultural Rights: Their Implementation in UK Law, Chap 6, University of Nottingham Human Rights Law Centre**

How social, economic and cultural human rights contained in international human rights instruments may be applied in English courts

**Fuel Rights Handbook 8th-11th editions (CPAG)**

The handbook on the rights of consumers of gas and electricity.

