Neutral Citation Number: [2025] EWCA Civ 609

Case No: CA-2024-000257

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT PLYMOUTH
HH JUDGE MITCHELL
K00PL431

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/05/2025

Before:

LORD JUSTICE HOLROYDE, VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE STUART-SMITH
and
LORD JUSTICE NUGEE

- -

Between:

IVAN BEACH	**Appellant**
- and -	
SOUTH HAMS DISTRICT COUNCIL	**Respondent**

- -
- -

Toby Vanhegan and Kevin Brown (instructed by **G T Stewart Solicitors**) for the **Appellant**
Ms Catherine Rowlands (instructed by **Head of Legal Services South Hams District Council**) for the **Respondent**

Hearing date: 25 February 2025

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Approved Judgment

This judgment was handed down remotely at 10:30am on 9 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Holroyde:

1. Mr Ivan Beach ("the appellant") applied to South Hams District Council ("the respondent") for housing. The respondent accepted that it was under a duty to provide suitable accommodation for him, and a room in a hotel was provided. The appellant failed to remain in that accommodation, and the respondent found that he had become intentionally homeless. The appellant requested a review of that decision. Upon review, the decision was confirmed. The appellant appealed against the review decision to the County Court. By a judgment dated 12 January 2024 HH Judge Mitchell ("the judge") dismissed the appeal. With permission granted by Newey LJ, the appellant now appeals to this court.

The statutory framework:

2. It is convenient to begin by setting out the material parts of the relevant provisions in Part VII of the Act.

3. "Homelessness" is defined in s175. By subsections (1), (3) and (4) of that section:

> "**175 Homelessness and threatened homelessness**
>
> (1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he –
>
> (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
>
> (b) has an express or implied licence to occupy, or
>
> (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain on occupation or restricting the right of another person to recover accommodation.
>
> …
>
> (3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
>
> (4) A person is threatened with homelessness if it is likely that he will become homeless within 56 days."

4. By s176:

> "**176 Meaning of accommodation available for occupation**
>
> Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with –

> (a) any other person who normally resides with him as a member of his family, or
>
> (b) any other person who might reasonably be expected to reside with him.
>
> References in this Part to securing that accommodation is available for a person's accommodation shall be construed accordingly."

5. By s182(1), local authorities exercising their functions in relation to homelessness are required to have regard to guidance given by the Secretary of State. Pursuant to the power granted by s182(2), the Secretary of State has published the "Homelessness code of guidance for local authorities" ("the Code"), chapter 6 of which provides guidance on how to determine whether a person is homeless or threatened with homelessness.

6. By s184(1):

> "**184 Inquiry into cases of homelessness or threatened homelessness**
>
> (1) If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves –
>
> (a) whether he is eligible for assistance, and
>
> (b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part. … "

7. Subsequent provisions of Part VII of the Act define the duties which may be owed by a local housing authority. So far as is material for present purposes, they include the following:

> "**188 Interim duty to accommodate in cases of apparent priority need**
>
> (1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation. …
>
> **189 Priority need for accommodation**
>
> (1) The following have a priority need for accommodation - …
>
> (b) a person with whom dependent children reside or might reasonably be expected to reside …
>
> **189A Assessments and personalised plan**

(1) If the local housing authority are satisfied that an applicant is –

(a) homeless or threatened with homelessness, and

(b) eligible for assistance,

the authority must make an assessment of the applicant's case.

(2) The authority's assessment of the applicant's case must include an assessment of –

(a) the circumstances that caused the applicant to become homeless or threatened with homelessness,

(b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside ("other relevant persons") …

189B Initial duty owed to all eligible persons who are homeless

(1) This section applies where the local housing authority are satisfied that an applicant is –

(a) homeless, and

(b) eligible for assistance.

(2) Unless the authority refer the application to another local housing authority in England …, the authority must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least –

(a) six months, or

(b) such longer period not exceeding 12 months as may be prescribed. …

(4) Where the authority –

(a) are satisfied that the applicant has a priority need, and

(b) are not satisfied that the applicant became homeless intentionally,

the duty under subsection (2) comes to an end at the end of the period of 56 days beginning with the day the authority are first satisfied as mentioned in subsection (1). …

> **191 Becoming homeless intentionally**
>
> (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy. …
>
> **193 Duty to persons with priority need who are not homeless intentionally**
>
> (1) This section applies where –
>
> (a) the local housing authority –
>
> (i) are satisfied that an applicant is homeless and eligible for assistance, and
>
> (ii) are not satisfied that the applicant became homeless intentionally,
>
> (b) the authority are also satisfied that the applicant has a priority need, and
>
> (c) the authority's duty to the applicant under s189B(2) has come to an end. …
>
> (2) Unless the authority refers the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant. …
>
> (5) The local housing authority shall cease to be subject to the duty under this section if –
>
> (a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance, and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant … and
>
> (c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.
>
> (6) The local housing authority shall cease to be subject to the duty under this section if the applicant – …
>
> (b) becomes homeless intentionally from the accommodation made available for his occupation …"

8. By s202(1)(b), an applicant has the right to request a review of any decision of a local housing authority as to what duty (if any) is owed to him under the above provisions.

Where such a review is requested, and the applicant is dissatisfied with the decision on the review, s204 gives him a right of appeal to the County Court on a point of law.

9. By s214(2):

> "**214 False statements, withholding information and failure to disclose change of circumstances**
>
> …
>
> (2) If before an applicant receives notification of the local housing authority's decision on his application there is any change of facts material to his case, he shall notify the authority as soon as possible."

The facts:

10. The appellant and his wife or partner have six children, the oldest of whom was aged 16 at the material time. The couple separated, and the appellant left the family home. He initially found and paid for accommodation.

11. On 24 November 2022 the appellant applied to the respondent, seeking accommodation for himself and his children. At that time, all the children were living with their mother, although it appears there was a plan for two of them to live with the appellant at some stage.

12. On 13 January 2023 the respondent accepted that the appellant was eligible, homeless and had a priority need because he had dependent children who usually lived with him. The respondent therefore accepted an interim duty under s188.

13. On 27 January 2023 the respondent offered accommodation for the appellant and three children. The appellant declined that offer.

14. Although no clear account was provided to this court, it appears that there was some form of police involvement with the appellant on or about 21 February 2023. On 22 February the respondent again offered accommodation pursuant to its s188 duty, which the appellant again declined.

15. On 17 March 2023 the Family Court made a Child Arrangements order which provided for two of the children to reside with the appellant.

16. On 27 March 2023 the respondent accepted that it owed the appellant a duty under s193(2). The appellant was considered to be in priority need because children would be living with him.

17. Although the circumstances are again unclear, it appears that on 19 April 2023 the police became involved because the appellant was living with two children and his dog in a shipping container. The children were removed from his care.

18. The respondent offered accommodation at a Travelodge hotel with effect from 20 April 2023. The appellant occupied that accommodation for one night, but he was considered to be intoxicated when he arrived and the hotel would not extend his stay.

It appears that he was not accompanied by a dog when he went to that hotel, and did not say that he needed to have his dog with him.

19. On 21 April 2023 by phone and email, and on 24 April 2023 by letter, the respondent, pursuant to its main housing duty under s193(2), offered the appellant longer-term accommodation for one adult at the Seascape Hotel. The terms of the booking (which included that the hotel does not permit pets) were both read and emailed to him and the consequences of not using the accommodation were explained to him. Again, he made no mention of needing to have his dog with him.

20. The letter offering this accommodation stated that the appellant's children had been removed from his care by the police and were now resident with their mother, and that the accommodation was considered suitable "based on your household needs at the point of presentation".

21. The appellant did not take up that accommodation. He emailed the respondent on the evening of 24 April saying that the Seascape Hotel does not allow pets and he had a young dog "who I am very much reliant on for my psychological wellbeing and vice versa". He said he had therefore secured accommodation for himself at a Travelodge hotel in Paignton.

22. It appears that the appellant nonetheless spent the night of 24 April 2023 at the Seascape Hotel. On 25 April he was notified of the respondent's decision that the appellant had made himself intentionally homeless, by failing to occupy the room at the Seascape Hotel which had been provided for him, and that the respondent's duty under s193 to provide him with accommodation was therefore at an end.

23. On 12 May 2023 the appellant requested a review of that decision. The respondent exercised its discretion to provide accommodation pending the review, and on 15 May 2023 offered accommodation at the Seascape Hotel. The appellant declined that offer because it did not include accommodation for any of his children.

24. On 16 May 2023 the respondent by email informed the appellant that they would not be offering any further accommodation because he had not stayed at the Seascape Hotel. The appellant responded on the 17 May: he said he had not refused accommodation at the hotel but had been turned away because he had been accompanied by his 5 year old child when he went to the hotel. As I understand it, the child concerned was the youngest child, and not one of the two mentioned in the Family Court order of 17 March 2023.

The review decision:

25. The decision was reviewed and on 12 June 2023 was upheld. The appellant appealed.

26. On 22 June 2023 the Family Court made an order to the effect that the appellant's children should reside with their mother, not with him.

27. On 27 June 2023 the respondent withdrew its decision of 12 June, on the basis that the decision letter had not adequately explained the reasons for the decision, and that the appellant should have an opportunity to make further representations.

28. A further review was then conducted by a Housing Options Manager ("the reviewing officer"). She considered in detail the written and oral representations which the appellant and his solicitors had made.

29. By a letter dated 18 July 2023 the reviewing officer confirmed the original decision. She noted that the appellant had been provided with accommodation at the Seascape Hotel but had become intentionally homeless from that accommodation on 26 April –

> "… by way of absences from the accommodation and failure to occupy the accommodation as your main and principal home. These actions are expressly outlined in the accommodation rules as a breach of the terms of the booking."

30. The reviewing officer rejected each of the appellant's submissions, which she summarised as follows:

> "(a) The local authority implicitly permitted non-occupation of the accommodation provided to you on 21st April between the dates 21st April – 25th April 2023.
>
> (b) The argument that there was no occupation of the accommodation and therefore no cessation of occupation and that as a result of this argument you should not be considered intentionally homeless.
>
> (c) Failure to use the accommodation was outlined in the rules as a breach requiring a warning and not an automatic termination of the accommodation and discharge of the duty.
>
> (d) The assertion that the accommodation provided was not reasonable for you to continue to occupy."

31. As to (a), the reviewing officer stated that when accommodation at the Seascape Hotel was offered, the rules of the booking – including the requirement of occupation of the accommodation – and the consequences of failure to follow those rules were clearly explained to the appellant.

32. As to (b), the reviewing officer referred to an email of 24 April 2023 in which the appellant said that he now had somewhere to sleep. He had not, however, occupied the room at the Seascape Hotel on 21, 22, 23 or 24 April but had done so on 25 April. She stated that the appellant had understood the consequences of his not remaining in occupation of the accommodation provided to him, both because he had been warned on this occasion and because of his past experiences. She said she was, therefore, satisfied that the appellant's decision voluntarily to cease to use the accommodation provided to him was the deliberate action that caused the loss of the accommodation.

33. As to (c), the reviewing officer referred to the full terms of the rules provided to applicants as to the behaviour expected of them in temporary accommodation. She said that the appellant had only referred to an extract from those rules in advancing his submission, and that he –

> "… could not have been ignorant of the consequences of breaching the rules through non-occupation."

34. As to (d), the reviewing officer stated that the Devon County Council Children's Services department had confirmed that, notwithstanding the Family Court order of 17 March, the most appropriate temporary arrangement, to ensure that the children had stability and that their needs were met, was for the children to reside with their mother whilst the appellant remained homeless and in temporary accommodation. She further stated that the decision not to provide accommodation for the children with their father was never said to be permanent, and that the room provided for the appellant's sole use was suitable for the person reasonably expected to reside in the accommodation at that time. She added that in his email of 24 April 2023 the appellant had not indicated any concern about the suitability of the accommodation in relation to the children's needs: his primary concern had been for accommodation for his dog.

35. The reviewing officer concluded:

> "64 … it was not reasonable to expect the children to access temporary housing with their father as the disruption to the children's living situation was assessed to be detrimental to their health and development. The room for your sole use, provided under s193(2), was assessed as suitable for you to continue to occupy whilst working toward securing long term accommodation for the household as a whole. Had you used the accommodation made available to you, you would have continued to work with your housing officer to secure long term housing. In doing so, the household's requirement for stable long term accommodation could have been met and the children would have been able to make the transition into stable long term accommodation with you.
>
> 65 I am satisfied that the accommodation would have remained available to you had it not been for your deliberate act. Furthermore, I am satisfied that it was reasonable for you to continue to occupy."

The appeal to the County Court:

36. The appellant again appealed against the review decision. The appeal was heard by the judge on 3 January 2024.

The judge's decision:

37. Four grounds of appeal were argued before the judge, who summarised them as follows in his written judgment dated 12 January 2024:

    i) The review was carried out in breach of regulation 7(2) of the Homelessness (Review Procedure) Regulations 2018, because no lawful "minded to" letter had been served.

ii) The respondent wrongly decided that the hotel room was such that it was reasonable for the appellant to continue to occupy, without taking into account relevant matters.

iii) The respondent did not consider whether the appellant's occupation of the hotel room for only a very limited period was causative of his homelessness as opposed to whether he would have become homeless anyway.

iv) The review was carried out by a Housing Options Manager who was not one of the respondent's employees, there having been no valid delegation of authority.

38. The judge rejected each of those grounds, for the reasons which he explained in his judgment. In view of the limited grounds of appeal to this court, I need say nothing about grounds 1, 3 and 4. I note only that in relation to ground 3, the judge held that the offer of accommodation was not time-limited: it was on its face an indefinite offer, albeit of accommodation in a hotel. The judge further held that the appellant had caused his own homelessness by not occupying the accommodation offered. There was, said the judge, no evidence that the hotel had terminated the booking or would have done so anyway.

39. The judge focused on ground 2, which he regarded as underpinning the appeal. He referred to paragraph 6.39(b) of the Code, which states that some types of accommodation, for example women's refuges, direct access hostels and night shelters, are intended to provide very short-term, temporary accommodation in a crisis and should not be regarded as being reasonable to continue to occupy in the medium and longer-term. The judge also referred to case law relied on by the parties, including in particular *Birmingham City Council v Ali* [2009] UKHL 36 ("*Ali*") and *Kyle v Coventry City Council* [2023] EWCA Civ 1360 ("*Kyle*"). He summarised the submissions on behalf of the appellant as being, first, that the respondent had failed to take sufficient notice of the physical characteristics of the accommodation and its restrictions; and secondly, that the hotel room was never reasonable for the appellant to occupy, because his children could not stay.

40. As to the first submission, the judge acknowledged that the hotel room did not contain any cooking facilities; that items such as a fridge or a microwave were not permitted; that visitors were not permitted after 8pm; and that no pets were allowed. He therefore accepted that it would not be appropriate accommodation in the long-term. But, he said, the respondent's case was that the accommodation was only intended to be temporary. The judge concluded:

> "Leaving aside for one moment the position of the children, I do take the view that the hotel room, whilst clearly not ideal, did constitute accommodation which it was reasonable for Mr Beach to occupy in the relatively short-term or even the medium-term before he was more appropriately rehoused."

41. As to the second submission, the judge referred to the Family Court order of 22 June 2023 that all the children should reside with their mother. He reviewed the explanation given by the respondent of the way in which it had consulted the

Children's Services department about the position of the appellant and his children, and concluded:

> "59 … in essence, what the Council says is that it had accepted a main duty to house Mr Beach and two of the children, but it was not necessary or appropriate to take the children out of accommodation in which they were living, albeit not ideal, and disrupt them by moving them to temporary accommodation only to have to move them again later. The Council's preference in consultation with the family social worker was to temporarily house Mr Beach to prevent him from becoming street homeless whilst looking for more permanent accommodation for all three.
>
> 60 Looked at in that way, whilst the short-term position was undoubtedly difficult and frustrating for Mr Beach, it is difficult to see how the Council's position could be regarded as unreasonable."

42. The judge therefore concluded that the hotel room was accommodation that it was reasonable for the appellant to occupy.

The appeal to this court:

43. The appellant put forward, and was granted permission to argue, two grounds of appeal: first, that a room in a seaside hotel is not reasonable to continue to occupy; and secondly, that if such a room can generally be reasonable to continue to occupy, it was not on the facts of this case.

Relevant case law:

44. Before coming to the submissions of the parties, it is convenient to refer to some of the principal cases on which they rely.

45. In *R v Brent LBC, ex parte Awua* [1996] 1 AC 55 ("*Awua*"), which was decided under the corresponding provisions of the Housing Act 1985, the House of Lords held that accommodation which it would be reasonable for a person to continue to occupy did not have to be settled or permanent: the mere fact that accommodation was temporary therefore did not mean that a person could not reasonably be expected to occupy it. However, Lord Hoffmann (with whom the other Law Lords agreed) stated at p68B that a person will be "threatened with homelessness" if, notwithstanding that the accommodation is physically suitable, his tenure is so precarious that he is likely to have to leave within the 28 day period which was then relevant under the 1985 Act (now 56 days by virtue of s175(4) of the 1996 Act).

46. In *Muse v Brent LBC* [2008] EWCA Civ 1447 at [10] this court confirmed that a person who has been provided with temporary accommodation may become intentionally homeless from that accommodation. A decision to similar effect had previously been made in the High Court in *R v East Hertfordshire DC, ex parte Hunt* (1985) 18 HLR 51.

47. In *Ali* the House of Lords held that "suitability" for the purposes of s193(2) did not imply permanence or security of tenure, that a local housing authority could satisfy its duty under that subsection by providing temporary accommodation, and that accommodation which it might be unreasonable for a person to occupy for a long period might be reasonable for him to occupy for a short period.

48. In *Hodge v Folkestone and Hythe DC* [2023] EWCA Civ 896 ("*Hodge*") at [73] this court confirmed that whether the place occupied by a person is "accommodation" for the purposes of s191(1), and whether it is reasonable for a person to continue to occupy temporary accommodation, are questions of fact for the local housing authority, subject to *Wednesbury* unreasonableness.

49. In *Kyle* the local housing authority had provided accommodation comprising a bedroom, with shared facilities, in a house which was occupied by recovering drug addicts (such as the claimant) and in which support and advice could be provided as needed. The authority determined that its main housing duty was at an end because the claimant had made himself intentionally homeless by behaving in a way which led to his eviction. On appeal, the claimant argued that it was not reasonable for him to continue to occupy the accommodation because it was analogous to accommodation in a women's refuge, and because the accommodation had a 'no visitors' policy, restricted smoking and was only available for a short period.

50. Newey LJ (with whom Underhill and Baker LJJ agreed) reviewed previous case law (including *Awua* and *Ali*) and at [42] summarised the principles which emerged from those cases:

> "i) There is no need for accommodation to be so bad that a person could not be expected to stay there another night for there to be homelessness for the purposes of the 1996 Act. On the other hand, a person does not have to be entitled to remain in accommodation indefinitely, or for any particular period of time, for it to be 'reasonable for him to continue to occupy' it, and neither need he have accommodation which it be 'reasonable … to continue to occupy' for ever. In general at least, section 175(3) of the Act will be satisfied, and a person will not be 'homeless', if there is accommodation which it would be 'reasonable for him to continue to occupy' over the period which would elapse before the local housing authority re-housed him;
>
> ii) The physical characteristics of accommodation offered will often be of central importance in determining whether it is 'reasonable … to continue to occupy' it. Restrictions affecting the person's life in, and use of, the accommodation may also be relevant. Possibly, the length of time that a person has the right to remain in accommodation may sometimes be of significance, but that is much less likely to matter. Without attempting to be exhaustive, other factors that might be material, depending on the particular facts, include affordability, violence, abuse and threats."

The submissions to this court:

51. In their written submissions on behalf of the appellant, Mr Vanhegan and Mr Brown contended under ground 1 that "by its very nature, a room in a hotel is not reasonable to continue to occupy" because it is not a place to live, being akin to a refuge or night shelter; it is very short-term, so that the appellant was always homeless under s175(4) because he would have to leave within 56 days; the respondent could not control the length of his occupation, because they did not own the hotel; it was likely that the hotel would soon want the room back; there were no facilities for cooking; and the rules of the hotel (eg as to visitors) meant that it was impossible to live a normal life there and the appellant's occupation of the room would be "simply staying".

52. In his oral submissions to this court, however, Mr Vanhegan began by saying that he was not arguing that a hotel could never be used as temporary accommodation: his submission is that in the circumstances of this case it was not reasonable for the appellant to continue to occupy the hotel room.

53. Mr Vanhegan further concedes that the hotel room was "accommodation" for the purposes of the respondent's housing duty: he does not seek to equate it with a night shelter. Nor does he seek to argue that the room was not suitable: he accepts that the main duty can be satisfied by the provision of temporary accommodation whilst the local housing authority arranges more permanent accommodation. The real issues, he submits, relate to whether the accommodation was available, and whether it was accommodation which it was reasonable for the appellant to continue to occupy. Referring to *Rowe v Haringey LBC* [2022] EWCA Civ 1370 at [27] ("*Rowe*"), he emphasises the need to distinguish "suitable" from "reasonable to continue to occupy": the requirement of suitability may be met by the provision of temporary accommodation whilst more permanent accommodation is arranged, but the occupant can only be treated as intentionally homeless if the accommodation is such that it is reasonable for him to continue to occupy it. He acknowledges that, as was said in *Rowe* at [34], a fact-sensitive enquiry is involved when considering either suitability or "reasonable to continue to occupy".

54. As to ground 2, the following submissions are made on behalf of the appellant. First, that the respondent had accepted that the appellant had a priority need because he was residing, or may reasonably be expected to reside, with two of his children. By s176, therefore, the respondent's main housing duty required the provision of accommodation which could be occupied by the appellant and his children. No child could stay with him in the room at the Seaview Hotel and therefore, it is submitted, accommodation in that room was never in law available. It is accordingly submitted that there was an error in law in offering accommodation – even temporary – in which no child could live.

55. Secondly, even if the room was in law available to the appellant, the fact that none of his children could live there with him meant that it was not reasonable for him to continue to occupy the room. In this regard, it is submitted that reasonableness must be judged as at the date of homelessness in April 2023, when the Family Court order of 17 March 2023 was still in force: the judge was therefore wrong to rely on the later Family Court order of 22 June 2023 requiring the children to live with their mother.

56. Thirdly, it is submitted that it was not reasonable for the appellant to continue to occupy the accommodation because of the nature of the room and the rules restricting the use which could be made of it. Given that there was no kitchen available to the appellant, it is argued that the accommodation was even less suitable than bed and breakfast accommodation. In this regard, the circumstances in *Kyle* were significantly different, and it is submitted that the judge should not have relied on the decision in that case.

57. Fourthly, as a further argument in support of the submission that it was not reasonable for the appellant to continue to occupy the accommodation provided, reliance is again placed on s175(4): it is submitted that the booking of the hotel room was for 5 days, and there was no evidence that the appellant could have stayed there any longer.

58. Mr Vanhegan makes the point that the circumstances identified in s193(6) as bringing the authority's housing duty to an end do not include the cessation of what had been accepted as a priority need. He submits that once a priority need is accepted (as it was in this case), the Act provides no mechanism for ending it and it will continue indefinitely, though he accepts that the appropriate nature of the accommodation to be provided may change.

59. For all those reasons, it is submitted, it was not reasonable for the appellant to continue to occupy the accommodation provided, and the respondent was therefore wrong to treat him as intentionally homeless.

60. For the respondent, Ms Rowlands relies on the decision in *Rother DC v Freeman-Roach* [2018] EWCA Civ 368 in support of her submission that on appeal to the judge it was for the appellant to show an error of law by the reviewing officer, not for the respondent to show that the review decision was correct. She argues in support of the judge's decision, and submits that the decision in *Kyle* is determinative of this appeal.

61. Ms Rowlands submits that ground 1, if correct, would impose an intolerable burden on local housing authorities. She argues, however, that the ground is unsustainable in the light of *Kyle* at [42(i)], quoted at paragraph 50 above. She submits that the accommodation offered to the appellant was suitable for him in the short term, and it was reasonable for him to continue to occupy it for the time being as a staging post towards longer-term accommodation. She rejects the appellant's contention that the appellant would have had to leave the accommodation within 56 days, relying on paragraph 64 of the review decision (quoted in paragraph 35 above): the appellant would have been able to remain in the hotel room for as long as he needed to, provided that he obeyed the hotel's rules. She points out that the appellant's assertion that the hotel would want the room back within a short time was not argued at the review stage, when it would have been possible for the respondent to make appropriate findings of fact.

62. As to ground 2, Ms Rowlands submits that the suitability of the accommodation must be assessed at the time when it was offered and for the period for which it was required. As the judge found, the children were then residing with their mother, as the Children's Services department had advised the respondent that they should do. Ms Rowlands submits that it was therefore open to the reviewing officer to consider that it was not reasonably expected that the children would live with the appellant in the temporary accommodation initially provided to him. She points out that the appellant

accepted the offer, knowing that accommodation at the hotel would be for him alone. Even if the respondent had been under a duty to provide accommodation for the appellant to live with his children, it is submitted, the respondent would have been entitled as a temporary measure to offer the appellant a hotel room for himself alone whilst the children were safely residing with their mother. On that basis, Ms Rowlands argues that, even before the Family Court order of 22 June 2023, the reality was that the Children's Services department considered that the children should live with their mother.

63. In her oral submissions to this court, Ms Rowlands emphasises that the accommodation was ended, and the respondent's duty discharged, because of the appellant's deliberate act in failing to occupy the room provided for him. She points to the appellant's reference in April 2023 to his dog but not to his children, whom he did not mention until May. The evidence in this case shows, she argues, that at the time of the relevant decision, the children were expected to live with their mother and had safe accommodation with her. Ms Rowlands accepts that that fact did not detract from the finding of priority need, but submits that the respondent's performance of its housing duty to the appellant must be determined by what is needed by, and suitable for, him. She submits that s176 must be understood to refer to accommodation for anyone who is expected to reside with the person concerned for the purpose for which the accommodation was offered.

64. Ms Rowlands submits in summary that the respondent was entitled to take into account that the children were accommodated elsewhere and that the Children's Services department considered they should remain with their mother. Accommodation on a temporary basis for the appellant alone was therefore suitable and sufficient: he needed accommodation, whereas the children did not. Ms Rowlands accepts that it is not possible to predict in advance for how long it would be reasonable for the appellant to continue to occupy the accommodation which was provided; but, she suggests, it will become clear when it is no longer reasonable for him to do so.

The proposed reformulation of ground 1:

65. After the hearing, the appellant made written submissions seeking to reformulate his first ground of appeal, as follows:

> "The respondents erred in law in deciding that the type of accommodation which the appellant occupied was reasonable to continue to occupy and therefore that the appellant could become homeless intentionally from that accommodation."

66. In support of that proposed reformulation, the appellant seeks to rely on "the cumulative effect of the characteristics peculiar to this type of accommodation", including in particular the following:

i) neither meals, cooking facilities nor food storage facilities were provided;

ii) occupants were permitted only essential items because they might have to move rooms at short notice, and would in any event have to change rooms after 28 days so that deep cleaning could take place;

iii) "this was short term temporary accommodation intended only as a first stage towards more permanent housing, the initial booking was only for a few days, the accommodation was provided on a nightly basis, and offered no security of tenure";

iv) the appellant was required to occupy the room every night, and was not permitted any visitors after 8pm, any pets, smoking or any personal furniture.

67. The application is opposed by the respondent in written submissions.

Analysis:

68. I am grateful to counsel for all of the written and oral submissions. I have summarised the arguments quite briefly, but I have considered all of the points made on each side.

Ground 1:

69. Whether as originally presented, or in its proposed reformulation, ground 1 combines two distinct propositions: a broad contention that accommodation in a hotel, or at least in a seaside hotel, can never be accommodation which it is reasonable to continue to occupy; and a narrower contention that in the circumstances of this case, it was not reasonable for the appellant to continue to occupy a room at the Seaview Hotel.

70. As will be apparent from what I have said in paragraphs 51 and 65 above, the broad proposition was first argued; then apparently abandoned; and finally brought back, at least in part, in the proposed reformulation's reference to "the type of accommodation". Be that as it may, the broad proposition is in my view untenable. The reference to a "seaside" hotel (and its busy season during the summer) does not meaningfully qualify the proposition: any hotel, whatever its location, can be expected to have busy periods when its proprietors would wish to have rooms available to be taken by more profitable customers. I agree with Ms Rowlands that the appellant's argument is contrary to the case law which clearly establishes that fact-specific decisions are needed as to whether particular accommodation is suitable for a particular applicant and whether it is reasonable for him to continue to occupy that accommodation: see, for example, *Hodge* and *Kyle* at paragraphs 49 and 50 above. The reality, as it seems to me, is that the broad proposition, if accepted, would make it impossible for local housing authorities to provide hotel accommodation as even a temporary measure. I see no justification for such an outcome.

71. I therefore reject the argument that this case should be determined on the basis of a general proposition about hotel (or seaside hotel) accommodation. Mr Vanhegan was in my view wise to disavow reliance on any such proposition at the start of his oral submissions.

72. The narrower basis of ground 1 refers to features of the accommodation which are in some respects likely to be features of many hotels, and to features which are specific to the circumstances of the appellant and his children. I agree with Mr Vanhegan that they are all features which the respondent had to take into account in deciding whether the accommodation provided to the appellant was accommodation which it was reasonable for him to continue to occupy. That being so, the narrower basis of

ground 1 seems to me to be for all practical purposes the same as ground 2. I therefore focus on ground 2.

Ground 2:

73. As I have noted in paragraph 53 above, one of the appellant's submissions in support of ground 2 related, not to whether the accommodation was such that it would be reasonable for the appellant to continue to occupy it, but rather to whether the accommodation was ever "available" to the appellant and his children. That submission is not within the proper scope of the second ground of appeal. However, the underlying argument raises points which are relevant to ground 2 (see paragraph 54 above), and I therefore take it into account.

74. This court is concerned with whether the judge has been shown to have made any error of law in his decision. It is, nevertheless, important to be clear about the facts which provide the context for the decisions of the respondent and the actions of the appellant; and it is therefore unfortunate that some of the facts remain unclear even at this stage of proceedings.

75. I agree with counsel that in considering ground 2, the focus must be on the offer of accommodation made pursuant to the s193(2) duty on 21 and 24 April 2023 (see paragraph 19 above): that was the offer of the accommodation which the appellant failed to occupy, thereby committing the deliberate act which the respondent found to have rendered the appellant intentionally homeless.

76. Mr Vanhegan emphasises that, at that time, the respondent had accepted that the appellant had a priority need because children were expected to reside with him, and the extant order of the Family Court provided for two of the children to live with him. I see the force of his argument (summarised in paragraph 58 above) that the 1996 Act provides no mechanism for ending a finding of priority need, and that the duty to provide accommodation on the basis of that priority need must continue indefinitely. Nonetheless, I have to say that I find the submission a surprising one, capable of leading to highly anomalous consequences: it would seem to mean, for example, that if a priority need was accepted on the basis of dependent children living with the applicant, the local housing authority would be under a duty to treat that need as continuing even when the children had grown up and left the parental home. However, Ms Rowlands did not seek to argue against Mr Vanhegan's submission, and this court has not heard full argument on the issue. Exploration of the proper limits of the submission must therefore await another case.

77. I am in any event satisfied that the correct analysis is that the duty may continue unaltered, but the manner in which the duty can properly be performed may change as circumstances change. I agree with Ms Rowlands that the reality of the situation on 21 and 24 April 2023 was that the children had been removed from the appellant's care, and the Children's Services department had informed the respondent that it was their view that the children should remain with their mother. I also agree with Ms Rowlands that the respondent was entitled in those circumstances to offer the accommodation on the basis that the children were safely residing with their mother and did not need temporary accommodation. Even before the Family Court order of 22 June 2023 (which confirmed the reality of that situation), I cannot accept that the respondent was under a duty to expend public funds on providing temporary

accommodation suitable not only for the appellant, but also for two children who at that stage could not reasonably be expected to reside with him.

78. I am strengthened in that view by observations made by Lord Hoffmann (albeit in the context of a case in which the principal issue was whether there was a priority need) in *Holmes-Moorhouse v Richmond upon Thames LBC* [2009] UKHL 7. At [9], his Lordship reflected on the difference between the decisions which the Family Court may have to make with respect to the upbringing of a child, and the decisions which a local housing authority may have to make with respect to whether children can reasonably be expected to reside with a homeless parent. The latter has to decide whether it must provide accommodation suitable for both parent and child(ren), which –

> "… brings in considerations wider than whether it would be in the interest of the welfare of the children to do so. … The question of whether the children can reasonably be expected to reside with him must be answered in the context of a scheme for housing the homeless. And it must be answered by the housing authority, in which (subject to appeal) the statute vests the decision-making power."

79. His Lordship reiterated the point at [12], referring to the context of a scheme for allocating scarce resources and saying that –

> "It is impossible to consider only what would be desirable in the interest of the family if resources were unlimited."

80. The basis on which the accommodation was offered, and the rules to which it was subject, were made perfectly clear to the appellant. He accepted the offer, knowing it was of accommodation for himself only, in a single room. He did not raise with the respondent any concern that two of his children should be living with him. It is not clear whether there was any good reason why he was accompanied by a five year old child when he went to the hotel, but it had been made clear to him that he could have no visitors after 8pm and that no one could stay in his room overnight.

81. I therefore reject the submission that there was an error of law by the respondent in offering accommodation which was only suitable for the appellant alone, and by the judge in upholding the review decision.

82. I am not persuaded by the other submissions made in support of the appellant's case on ground 2. Of course, accommodation in a single room, and subject to the restrictions and rules which I have summarised, was far from ideal. But the key points, to which with respect the appellant's submissions give insufficient weight, are that this was an offer of temporary accommodation, as a step towards longer-term housing; and that, on the evidence, it was accommodation which would remain available to the appellant for as long as it was needed or for as long as it was reasonable for him to continue to occupy it. I accept that the circumstances in *Kyle* were different from those in the present case; but the factual differences do not affect the principles stated at [42] by Newey LJ (quoted at paragraph 50 above). Although initially booked for a short period, there is no basis for saying that the hotel accommodation could not be extended day by day. The fact that the hotel reserved

the right to move the appellant from one room to another seems to me to carry very little weight in support of his case. Still less weight is carried by the surprising complaint that he would have to change rooms after 28 days so that his previous room could be thoroughly cleaned.

83. In those circumstances, I can find no error of law in the judge's decision. I would therefore dismiss this appeal.

Lord Justice Stuart-Smith:

84. I agree that the appeal should be dismissed for the reasons given by Holroyde LJ and the detailed analysis provided by Nugee LJ. I agree with both judgments.

Lord Justice Nugee:

85. I also agree that the appeal should be dismissed, and am very grateful to Holroyde LJ for setting out the background and issues so clearly. But I have found this appeal very far from straightforward, and I have thought it appropriate to explain in my own words why in the end I have come to the same conclusion as him.

86. The question before the reviewing officer is summarised in paragraph 1 of her decision dated 18 July 2023 as follows:

> "On the 26th April 2023 the Council issued a decision that you had made yourself intentionally homeless. As a result they ended their duty towards you. You requested a review of their decision to find you intentionally homeless and to end their duty to provide you with accommodation."

87. Her conclusions are summarised by her at paragraphs 11 to 14. They are as follows (all references below to statutory provisions are to the relevant sections in Part VII of the Act):

(1) On 13 January 2023 the appellant was accepted as eligible, homeless and in priority need, and a relief duty decision was accepted (that is, under s188(1)).

(2) On 27 March 2023 a main duty was accepted (that is, under s193(2)).

(3) Accommodation was provided to the appellant pursuant to the main duty at the Seascape Hotel beginning on 20 April 2023.

(4) That accommodation came to an end on 26 April 2023 as a result of the appellant's absences from the accommodation and failure to occupy it.

(5) The appellant thereby became intentionally homeless from that accommodation.

(6) The s193(2) main duty comes to an end if the applicant "becomes homeless intentionally from the accommodation made available for his occupation" (s193(6)(b)).

(7) The main duty therefore came to an end and the respondent no longer had any duty to rehouse the appellant.

88. The key question therefore is whether the reviewing officer was right, or at least entitled, to conclude that the appellant became intentionally homeless from the room in the Seascape Hotel.

89. That requires consideration of s191(1) which defines the circumstances in which a person becomes intentionally homeless. It is set out by Holroyde LJ at paragraph 7 above but I repeat it here for convenience:

> "**191 Becoming homeless intentionally**
>
> (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy."

90. It can be seen that in order to decide if this applies to the appellant the following questions fall to be answered:

(1) Did the appellant deliberately do or fail to do something?

(2) Did he cease to occupy the room at the Seascape as a result?

(3) Was that room "accommodation"?

(4) Was it "available for his occupation"?

(5) Would it have been "reasonable for him to continue to occupy" the room?

91. Much of this is not now in dispute. As to (1) and (2) (deliberately failing to do something in consequence of which he ceased to occupy the room) the reviewing officer found that the room at the Seascape was first offered to the appellant on 21 April 2023 and accepted by him; but that he did not occupy it on 21, 22, 23 or 24 April (although he did occupy it on 25 April). That is not disputed. She also found that he was aware of the consequences of failure to accept and failure to occupy accommodation and was:

> "in full possession of a thorough understanding of the expectation to remain in occupation of accommodation provided to you, and the consequences of deciding not to."

She therefore concluded that:

> "the decision to voluntarily cease to use the accommodation provided is the deliberate action that caused the loss of the accommodation and the formal cessation of occupation."

None of that was challenged before us.

92. Nor was there any issue over (3) (whether the room was "accommodation"). Some places where people obtain shelter do not qualify as "accommodation" for the purposes of the Act. The question is whether the applicant "has what can properly be described as accommodation within the ordinary meaning of that word in the English language": see *R v Hillingdon London Borough Council ex parte Puhlhofer* [1986] AC 484 at 517F-G per Lord Brightman, where he gave the example of Diogenes' tub as something that could not be. That particular example seems quite far removed from anything likely to be encountered in practice in the modern world (although the appellant here at times slept in a shipping container which I suppose might be thought similar in some respects); in *Awua* at 67A Lord Hoffmann referred to the modern equivalent as being a night shelter in which "the applicant could have a bed if one was available but would have to walk the streets of Lowestoft by day". But Mr Vanhegan accepted at the outset of his submissions that it was no part of his case that the hotel room at the Seascape was not "accommodation".

93. That leaves two questions, namely (4) (was the room "available for his occupation"?) and (5) (would it have been "reasonable for him to continue to occupy" it?).

94. On the second of these questions, Mr Vanhegan submitted that a hotel room, or at any rate a hotel room with the characteristics of the Seascape room, could not, or did not, qualify as accommodation that it was reasonable for the appellant to continue to occupy. But I agree with Holroyde LJ that this argument should be rejected for the reasons that he gives above. In *Kyle* Newey LJ summarised the position at [42]. This is set out by Holroyde LJ at paragraph 50 above and establishes that the question is not whether it is reasonable for a person to continue to occupy the accommodation for ever but whether it is reasonable to do so over the period which would elapse before the local housing authority re-housed him. In the circumstances of the present case, I agree with Holroyde LJ that neither the characteristics of hotel rooms (or seaside hotel rooms) in general nor the particular characteristics of the room at the Seascape which were relied on by Mr Vanhegan meant that there was an error of law in the conclusion that the appellant's room was one that it would have been reasonable for him to continue to occupy: see his judgment at paragraphs 71 and 82 above.

95. What I have found far less straightforward is the remaining question, namely whether the room was "available for [the appellant's] occupation." As a matter of ordinary language it plainly was available for his occupation. But s176 (set out by Holroyde LJ at paragraph 4 above, and repeated here for convenience) provides as follows:

> "**176 Meaning of accommodation available for occupation**
>
> Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with –
>
> (a) any other person who normally resides with him as a member of his family, or
>
> (b) any other person who might reasonably be expected to reside with him.

> References in this Part to securing that accommodation is available for a person's accommodation shall be construed accordingly."

96. The final sentence suggests that what the draftsperson particularly had in mind were the duties in s188(1) (the interim duty) and s193(2) (the main duty). Under s188(1), where the duty applies, the local housing authority:

> "must secure that accommodation is available for the applicant's occupation."

Similarly, under s193(2), where the duty applies, the local housing authority:

> "shall secure that accommodation is available for occupation by the applicant."

But the provision in s176 must also apply for the purposes of deciding the question which arises on s191 as under that section a person only becomes intentionally homeless if he deliberately does or fails to do anything which causes him to lose accommodation "which is available for his occupation." The same point arises on the wording of s193(6)(b) which provides that the main duty comes to an end if the applicant becomes homeless intentionally "from the accommodation made available for his occupation".

97. In the present case the relevant facts are as follows. On 13 January 2023 the respondent accepted that the appellant was in priority need and that it owed him the interim or relief duty under s188(1). We have not in fact seen this letter but this is what is stated in the review letter.

98. On 27 March 2023 the respondent again accepted that the appellant was in priority need, and this time accepted that it owed him the main duty under s193(2). We have this letter. It was sent to the appellant by Ms Corinna Daymond, described as a Housing Options Officer. She does not expressly say on what basis she was satisfied that the appellant had a priority need, but there is no dispute that it was because he came within s189(1)(b) as a person "with whom dependent children reside or might reasonably be expected to reside"; and in a subsequent letter (that of 25 April 2023 notifying the appellant that the respondent had decided that he was intentionally homeless and no longer owed him any housing duty), Ms Daymond said:

> "You were considered to be in priority need for housing because you have dependent children who usually live with you. Children usually count as dependent if they're under 18 and living at home. This was based on the three children you claimed child benefit for."

99. By the time that the respondent came to offer the appellant temporary accommodation in the Seascape (that is initially on 21 April 2023, and again on 24 April 2023), however, he was only offered a room for himself and not for any of his children. That is not disputed, and is made clear in the offer of 24 April 2023 which says in terms that it is booked for 1 adult. The explanation given in that letter was:

> "We are satisfied that your children are safely residing with their mother via Devon County council Children's social care and therefore do not require temporary accommodation at this stage."

100. A rather fuller explanation was given in the review letter, including the following:

> "47. The council have been advised by children's services that your children should reside with their mother and not be accommodated with you whilst you remain homeless and in temporary accommodation. We are therefore mindful, in the context of our decision to have paramount consideration for the children's safety, welfare [sic] and therefore assess whether they can reasonably be expected to reside with you in the accommodation offered.
>
> 48. Whilst it is recognised that the accommodation occupied by the children and their mother at the time had been assessed as unsuitable in the long term, it has been assessed by children's services as the most appropriate temporary solution that ensures the children had stability and their needs met."

After reference to the Court Order that two of his children should reside with the appellant, it continued:

> "51. …I am satisfied that the deciding officer appropriately engaged in communication with Devon County Councils Children Services which clearly indicates their instruction, in spite of the courts arrangement, that it is in the best interests of the children for all to be accommodated with their mother whilst you remain homeless.
>
> 52. At no point was the decision not to provide accommodation to the children communicated to you as a permanent conclusion by any party involved. The long term housing need of the household remained recognised as inclusive of the children and the offer of temporary accommodation under S193 (2) was not reflected of a change in this position."

101. That last point is indeed reflected in the covering e-mail from Ms Daymond to the appellant which enclosed the offer of 24 April 2023 and which said that she thought that private rental would be the most proactive route to look into and that she would do some research on 3 bedroom properties in South Hams.

102. One of the points touched on in argument before us is what happens if a local housing authority correctly assesses an applicant as being in priority need but they cease to be in priority need before they are found permanent accommodation. That could happen in a number of situations. Under s189(1) there are 5 circumstances in which an applicant may be in priority need as follows:

> **"189 Priority need for accommodation**
>
> (1) The following have a priority need for accommodation -
>
> (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
>
> (b) a person with whom dependent children reside or might reasonably be expected to reside;
>
> (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
>
> (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster;
>
> (e) a person who is homeless as a result of that person being a victim of domestic abuse."

To take a simple example, suppose a woman who is pregnant when she applies to the local housing authority and is duly assessed by them to be in priority need, but who unfortunately loses her unborn child before she can be re-housed. Does this affect the duty owed to her by the authority?

103. Mr Vanhegan said that there was no mechanism in the Act under which a person once assessed as in priority need could be reassessed and lose that status. As Holroyde LJ has said (see paragraph 76 above), it does appear that this is not expressly provided for by the Act but if it were right it would appear to entail some quite striking anomalies. But we have not heard any real argument on the point and in any event it does not arise on the facts of the present case. As explained in the review letter, the respondent never decided, or purported to decide, that the appellant was no longer in priority need: they proceeded on the basis that the long term need of the household remained one for accommodation not only for the appellant but for (at least some of) his children.

104. So the question of law comes down to this. Where the respondent has assessed the appellant to be in priority need because he is a person with whom dependent children reside or might reasonably be expected to reside, can they nevertheless make temporary accommodation available to him alone, and not to his children, on the basis that although the children can be expected to reside with him once permanent accommodation is found, it is reasonable not to expect them to reside with him in temporary accommodation?

105. The Act does not provide any clear answer to this question. There is an undoubted logic in Mr Vanhegan's submission that once the authority has decided that an applicant is in priority need because his children reside or can be expected to reside with him, then their duty (under s188(1) or s193(2) as the case may be) is to secure

that accommodation is "available" for his occupation; and that accommodation is by s176 not "available" for his occupation unless it is also available for the children.

106. But as Ms Rowlands submitted, the Act has to be applied in the real world. In the real world, housing authorities are in practice forced to accommodate applicants, even those in priority need, in less than ideal temporary accommodation until a more satisfactory permanent solution can be found. As the facts of the present case illustrate, the fact that an authority accepts that in the long term accommodation should be made available for the applicant and his children (on the basis that they can reasonably be expected to live with him) does not necessarily mean that it is reasonable to expect them to live with him in temporary accommodation. We have no reason to doubt the statements in the review letter that Devon County Council Children's Services were aware of the situation and that their advice was that although it was not appropriate for the children to live with their mother in the long term, it was the most appropriate temporary solution for them while the appellant was in temporary accommodation. That seems an eminently realistic and sensible conclusion, as does the decision of the respondent as a result to offer the room in the Seascape to the appellant alone.

107. But if Mr Vanhegan is right the respondent could not lawfully do this. Its obligation under s193(2) was to make accommodation "available" to the applicant and if the effect of s176 was to require such accommodation to be available for his children as well, they were necessarily in breach of duty by offering the room to him alone. I am very reluctant to come to a conclusion which requires the respondent, in order to avoid being in breach of duty, to have provided sufficient temporary accommodation for not only the appellant but his children when either the children would in fact have stayed with their mother and not made any use of it (in which case the requirement to provide large enough accommodation for them would have been a complete waste of resources), or if they did, it would, in the professional opinion of Children's Services, have been detrimental to them. That seems a most unattractive result.

108. In those circumstances, I go back to the wording of s176 to see if it really has the result that Mr Vanhegan says it does. I repeat the relevant words here:

> "Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with –
>
> (a) any other person who normally resides with him as a member of his family, or
>
> (b) any other person who might reasonably be expected to reside with him."

109. This test must I think be applied each time that an offer of accommodation is made to an applicant, and it may produce a different answer at different times. Suppose for example an applicant is assessed to be in priority need because his partner is pregnant, and they are initially offered temporary accommodation together. But before they can be offered anything more long-term the relationship has broken down and she has left him. It would seem very odd if in considering whether a further offer of accommodation is made available to him it had to be available for occupation by him

and her together, and it is easy enough to read s176 as having to be applied afresh when a further offer is made. Assuming (as to which see above) that the applicant remained in priority need so that the main duty was still owed to him, it would be sufficient on this view to discharge the duty by making accommodation available to him alone on the basis that at the date when it was offered his former partner was no longer either someone normally living with him or that might be reasonably expected to do so.

110. That seems straightforward enough. But if it is right – and I think it is – then it seems a relatively small step from that to concluding that when what is in question is (as here) the offer of temporary accommodation to an applicant, s176 has to be applied in the context that only temporary accommodation was (then) on offer. So far as limb (b) is concerned, this would mean asking whether any other person could reasonably be expected to reside with the applicant in temporary accommodation. So for example if an applicant had children who had nowhere else to live, temporary accommodation would have to be made available for him and his children as they could reasonably be expected to live with him even in temporary accommodation. But on the facts of the present case, given the advice from Children's Services that it would be better for the children to reside with their mother for the time being, if one asks whether the children were "persons who might reasonably be expected to reside with" the applicant for the time being, the respondent could quite properly answer that No, even though it was accepted by the respondent that they might reasonably be expected to reside with him in the longer term.

111. That leaves the question whether the children came within limb (a) as "persons who normally reside with" the applicant. Here too I think this has to be tested at the time that the offer of accommodation was made, which was on 21 and 24 April 2023. At those dates did the children normally reside with him? Again I think that can properly be answered No. By then the children were living with their mother. That was admittedly not an ideal long-term solution. But it was where they were normally living at the time.

112. In those circumstances I have come to the conclusion, despite Mr Vanhegan's well-argued submissions, that the duty on the respondent to make accommodation available to the appellant did not require them on 21 or 24 April 2023 to offer him anything other than a room for himself. That means that it was accommodation that was available to him as well as reasonable for him to continue to occupy, with the consequence that when he caused it to be lost he did become intentionally homeless.

113. I therefore agree that the appeal should be dismissed.