Neutral Citation Number: [2017] EWHC 2094 (QB)

Case No: QB/2017/0031

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**On Appeal from the County Court at Watford**

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10/08/2017

**Before** :

**THE HON. MR JUSTICE POPPLEWELL**

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**Between :**

**DACORUM BOROUGH COUNCIL** — **Claimant (Respondent)**

**- and -**

**MS CHENALEE BUCKNALL**

**(formerly known as Ms Chenalee Acheampong)** — **Defendant (Appellant)**

**Toby Vanhegan & Riccardo Calzavara** (instructed by **ARKrights Solicitors**) for the **Defendant/Appellant**
**Matt Hutchings QC & Jack Parker** (instructed by **Dacorum Legal Department**) for the **Claimant/Respondent**

Hearing date: 27 June 2017

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# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON MR JUSTICE POPPLEWELL

**The Hon. Mr Justice Popplewell :**

## Introduction

1. The Defendant ("Ms Bucknall") appeals from an order made in the County Court at Watford in favour of the Claimant local authority ("the Council") for possession of 29 Ninian Road, Hemel Hempstead, Hertfordshire ("the Property"). The issue in the appeal is whether at the time of the notice to quit, she was occupying the Property "as a dwelling" within the meaning of s. 5(1A) of the Protection from Eviction Act 1977 ("the PEA"). The Judge decided that Ms Bucknall did not occupy the Property as a dwelling. He also found against her on a number of other grounds upon which she challenged the Council's claim to possession, in respect of which there is no appeal. She continues to reside at the Property pending the outcome of the appeal.

## Narrative

2. Ms Bucknall was born on 11 March 1992. She is a single mother of a daughter born on 9 February 2014. On 9 August 2013 she applied to the Council for homelessness assistance under Part VII of the Housing Act 1996 ("the 1996 Act"). As a result of the application the Council granted her a non-secure licence of temporary accommodation at the Property by letter of 30 January 2014 enclosing a written licence agreement which she signed, pursuant to which she went into occupation of the Property on 3 February 2014. In providing such accommodation the Council was fulfilling its interim housing duty pursuant to s.188(1) of the 1996 Act.

3. On 18 September 2014 the Council wrote to Ms Bucknall notifying her that her application for homelessness assistance had been successful and recognising that the Council had a full housing duty. Such duty arose under s.193(2) of the 1996 Act. The letter explained that she would be offered suitable private sector accommodation but that there was a low supply of such accommodation available to the Council, with many competing demands, and that it was not possible to make an accurate prediction of when such an offer would be made; in the meantime she should continue to pay the charges and abide by the conditions of her agreement to occupy the "temporary accommodation you will be provided with". This meant, and would have been understood to mean, that she could continue to occupy the Property for the time being.

4. In the event it was a little under six weeks before the Council found what it regarded as suitable accommodation for her. By letter dated 27 October 2014 the Council offered her a tenancy of 20 Aragon Close, Hemel Hempstead, Hertfordshire ("the Offered Property"). On 2 February 2015 Ms Bucknall viewed the Offered Property. On 3 February 2015 she wrote to the Council refusing the offer on the grounds that it was unsuitable as a result of the problems she had with her sight. It is not clear why there was a delay between the offer in October and

the viewing in February, but it is not suggested that Ms Bucknall was at fault for any such delay.

5. The Council treated Ms Bucknall's letter as a request for a review of the decision to offer the Offered Property as suitable alternative accommodation. By letter dated 11 February 2015 the Council notified Ms Bucknall of the outcome of the review which was that the Offered Property was suitable alternative accommodation. The letter averred that the Council's full housing duty under s.193(2) of the 1996 Act had come to an end as a result of the offer.

6. In the meantime on 9 February 2015 the Council served Ms Bucknall with a notice to quit the Property, stating that the licence would terminate on 9 March 2015.

7. On or about 30 September 2015 the Council brought the possession action in the County Court. The trial took place on 4 October 2016. Judgment was reserved and handed down on 20 January 2017.

## The statutory framework

8. The statutory framework is set out in paragraphs [11] to [20] of Lord Hodge's judgment in ***R (N) v Lewisham London Borough Council*** [2015] AC 1259. A brief summary is all that is necessary.

9. The regime for local authorities housing homeless persons is now contained in Part VII of the 1996 Act. As Lord Hope explained in ***Hounslow LBC v Powell*** [2011] 2 AC 186 at [9], most residential occupiers of houses and flats owned by local authorities are "secure tenants" under Part IV of the Housing Act 1985 ("the 1995 Act"). In those cases the tenant cannot be evicted unless the landlord establishes that one of the grounds for possession listed in Schedule 2 to the 1985 Act applies, and except in some specified categories of case where suitable alternative accommodation is available, unless the court is satisfied that it is reasonable to make the order. Certain types of tenancy, however, are excluded from this regime. Amongst them are those identified in paragraph 4 of Schedule 1 to the 1985 Act which (as substituted by s.123 of and paragraph 3 of Schedule 17 to the 1996 Act) provides that a tenancy granted in pursuance of any function under Part VII of the 1996 Act, dealing with homelessness, is not a secure tenancy unless the local housing authority concerned chooses to treat it as such.

10. The protection from eviction legislation stemming from the abuses by private sector landlords in the 1950s and 1960s is now contained in the PEA. Section 3 of the PEA provides that in respect of premises "occupied as a dwelling" under a tenancy or (since 1998) a licence, the owner may only enforce its right to possession by obtaining a court order (save for certain excluded tenancies and licences which are not here relevant). Section 5 of the PEA requires that in the case of properties let or licensed for occupation "as a dwelling" a notice to quit must be served giving at least 28 days' notice and containing particulars prescribed by the Notices to Quit etc (Prescribed Information) Regulations 1988. The particulars required are advice to the tenant or licensee that they cannot be evicted without a possession order by the court; and that if they are unsure whether they are entitled to remain in possession after the notice to quit expires they can obtain advice from a solicitor; that help with the cost may be available

under the Legal Aid Scheme; and that they should also be able to obtain information from a Citizens' Advice Bureau, a Housing Aid Centre or a rent officer.

11. The upshot is that although tenancies granted under Part VII of the 1996 Act are not secure tenancies (unless the local housing authority has notified the tenant that the tenancy is to be regarded as a secure tenancy), so that the local authority is not required under domestic law to establish any particular ground for the termination of the tenancy when seeking possession from a tenant, there are procedural protections in the requirement under s.3 and s.5 of the PEA that an order of the court must be obtained in order to recover possession, and that notice to quit must be given with adequate notice and in the form stipulated by the Act and regulations. As already observed, those procedural protections apply equally where occupation is as a licensee as they do if under a tenancy, but in either case they only apply where the property is let or licensed "as a dwelling".

12. Although the notice to quit served on Ms Bucknall gave 4 weeks' notice, it did not contain the prescribed advice; accordingly the notice would be deficient in not containing the particulars required by s.5(1A) of the PEA if at the time Ms Bucknall were occupying the Property "as a dwelling".

## Interim and full housing duty

13. Where a local authority has reason to believe that an applicant may be homeless or threatened with homelessness it must make inquiries as to whether the applicant is eligible for assistance and whether it is under a duty to provide accommodation to the applicant: s. 184 of the 1996 Act. As Ms Bucknall's case illustrates, this can take some time. In the meantime the local authority may be obliged to find accommodation for those in priority need pending the outcome of the investigation under s. 188(1) of the 1996 Act which provides:

    > "If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part."

    This is often referred to as the interim housing duty.

14. In ***R (N) v Lewisham***, the Supreme Court held that so long as an applicant was being housed pursuant to the interim housing duty, he or she was not occupying premises provided by the local authority "as a dwelling". I shall return to the reasoning in due course.

15. There are a number of possible results of a s. 184 investigation. If the local housing authority is satisfied that the applicant is homeless, eligible for assistance but homeless intentionally, its duty, if the applicant has a priority need, is (a) to secure that accommodation is available for a period to give a reasonable opportunity of securing accommodation for occupation and (b) to provide advice and assistance in attempts to secure accommodation: section 190(2). If not

satisfied that the applicant has a priority need, the authority's duty is confined to (b) above: section 190(3). If the authority is satisfied that the applicant is homeless and eligible for assistance, not satisfied that he or she is intentionally homeless, but also not satisfied that he or she has a priority need, the duty is to provide advice and assistance as in (b) above: section 192. If the authority is satisfied that the applicant is homeless, eligible for assistance and has a priority need and is not satisfied that he or she became homeless intentionally, it is under a duty to secure that accommodation is available for occupation by the applicant pursuant to section 193(2). This is often referred to as the full housing duty.

## The Judgment

16. The Judge referred to ***R(N) v Lewisham*** and quoted the headnote. He said that in accordance with that guidance he had taken particular note of the purpose of the written licence granted to Ms Bucknall when she was first accommodated in the Property. He set out the terms of that licence which made clear that it was temporary interim accommodation provided whilst the Council were making inquiries as to whether she was eligible under Part VII of the 1996 Act; that it was excluded from the PEA; and that she might be required to move to alternative accommodation at any time and without notice. He held that when the Council sent the letter of 18 September 2014 nothing had changed in the nature or status of her occupation of the Property; it remained interim accommodation provided to her under s. 188 and was not provided as a dwelling. Its nature did not change merely because the Council had accepted that it had a full housing duty under s. 193.

## Submissions

17. On behalf of Ms Bucknall, Mr Vanhegan submitted that as soon as the Council notified her of its decision by letter of 18 September 2014 that it owed her the full housing duty, she was being accommodated pursuant to that full housing duty under s. 193. The interim housing duty had ceased by reason of s. 188(3) and she can only have remained in the Property pursuant to the Council exercising its full housing duty. Indeed the continued provision of the Property not only performed the s. 193 full housing duty but brought it to an end. He went on to submit that:

    (1) any occupant accommodated pursuant to the full housing duty is necessarily occupying the property as a dwelling; alternatively

    (2) in the circumstances of this case, in which Ms Bucknall was told she would remain there for an indefinite period which amounted to some 4½ months before she refused the Offered Property offer, her occupation was as a dwelling as at the date of the notice to quit; he relied on the decision of Elias J, as he then was, in ***Rogerson v Wigan Metropolitan Borough Council*** [2005] 2 All E R 1000 to that effect on what he submitted were analogous facts.

18. On behalf of the Council, Mr Hutchings QC accepted that a person housed pursuant to the full housing duty was occupying the relevant property as a dwelling, but submitted that in this case Ms Bucknall's continued occupation of the Property was not pursuant to the full housing duty because:

(1) the "as a dwelling" test concerns the purpose of the letting or the licence when first granted; where the lease or licence contains an express provision for its purpose, this is determinative unless by the time of the service of the notice to quit it has been superseded by a subsequent contract providing for a different purpose, which had not occurred in this case; and/or

(2) the content of the full housing duty is to secure the availability of suitable accommodation within a reasonable period of time: ***Codona v Mid-Bedfordshire*** [2005] EWCA Civ 925; [2005] H.L.R.1; and in any event that was the common practice of most local authorities; accordingly whilst a local authority allows licensees to hold over during a period when more permanent accommodation is being sought, which was what occurred in Ms Bucknall's case, the accommodation is temporary and is not occupied as a dwelling.

## Analysis and conclusions

19. There are two separate questions which require examination. The first is whether on 6 February 2015 when the notice to quit was served Ms Bucknall was being provided with the accommodation at the Property in fulfilment of the interim or full housing duty. The second is whether at that time the Property was being occupied by her as a dwelling, which may or may not be determined by the answer to the first question.

## Which duty?

20. It is necessary to consider in a little more detail the wording of the 1996 Act and its predecessors, as interpreted by a number of authorities.

21. Section 188(3) of the 1996 Act provides:

> "The [interim housing] duty ceases when the authority's decision is notified to the applicant, even if the applicant requests a review of the decision (see section 202). The authority may secure that accommodation is available for the applicant's occupation pending a decision on a review."

22. The "decision" referred to in the subsection is the s. 184 decision as to the duty owed to the applicant, if any, under sections 190, 192 or 193.

23. The local authority performs its full housing duty under s. 193(2) by ensuring that suitable accommodation is made available either by itself or some other person: s. 193(2) and s. 206(1). There is no requirement that this accommodation to relieve homelessness be settled, permanent or secure in order to come within the meaning of the subsection; a local authority can fulfil its full housing duty by providing temporary accommodation: see ***R v Brent London Borough Council, ex parte Awua*** [1996] 1 AC 55 and ***R (Aweys) v Birmingham City Council*** [2009] 1 WLR 1506. This is because the local authority's duties to unintentionally homeless persons in priority need differ from their more general duties as a housing authority. Part VII is concerned to assist persons who are homeless, not to provide them with permanent homes. It is intended to give the homeless a lifeline of last resort, not to enable them to make inroads into the local authority's waiting list of

applicants for housing: see ***R v Hillingdon London Borough Council, ex parte Puhlhoffer*** [1986] AC 484 per Lord Brightman at p. 517, and ***ex parte Awua*** at p. 72B. Part VII of the 1996 Act is generally concerned with securing for those who are homeless speedy accommodation, which may be temporary, by contrast with Part VI of the 1996 Act, containing the local authority's general housing duties, which makes provision for allocating secure housing accommodation, sometimes after an introductory period: see sections 159ff and ***Griffiths v St Helens Metropolitan Borough Council*** [2006] 1 WLR at [6].

24. To comply with the full housing duty the accommodation must be suitable (s. 206(1)), which is a concept which may be influenced by how long the applicant has to stay there: accommodation which it may be unreasonable for a person to stay in for the long term may be reasonable for him to occupy in the shorter term (***Awua*** at 68C, ***Aweys*** at [41]-[42] and [47]); but subject to those considerations the only requirement as to the degree of permanence is that if the tenure is so precarious that the person is likely to have to leave within 28 days without any alternative accommodation being available, then he or she remains threatened with homelessness and the local authority has not fulfilled its duty: see ***Awua*** at p. 68A-B.

25. Section 193(3) provides that the local authority is subject to the full housing duty until the duty ceases by virtue of any of the provisions of the subsections of s. 193 which follow subsection (3). These include:

    (1) the applicant ceasing to be eligible (subsection (6)(a));

    (2) further intentional homelessness by the applicant (subsection 6 (b)); and

    (3) the offer and/or acceptance of accommodation, depending on the category of accommodation offered or accepted. Broadly speaking there are four categories:

        (a) If the applicant is offered secure accommodation from allocation of housing stock under Part VI, the duty ceases if the offer is accepted (subsection 6(c)) or, subject to certain conditions, if it is refused (subsection (7) and (7A)).

        (b) If the applicant is given a private rented sector offer, that is to say an offer of an assured shorthold tenancy of at least 12 months from a private landlord approved by the local authority as intended to fulfil its full housing duty, then the duty comes to an end if it is accepted or refused, provided certain notification requirements have been met: subsections (7), (7AA), (7AB) and (7AC).

        (c) If the applicant receives an offer of an assured tenancy other than an assured shorthold tenancy from a private landlord, the duty ceases if it is accepted (subsection (6)(cc)) or if it is unreasonably refused (subsection (5)).

        (d) If the applicant is offered any other accommodation which is suitable and unreasonably refuses it, the duty comes to an end: subsection (5). This

covers accommodation other than Part VI housing allocation or private rented sector accommodation as defined: see ***Griffiths v St Helens MBC***. It follows from ***Awua*** and ***Aweys*** that it covers the offer of any temporary accommodation which is suitable, which need not be an offer of permanent accommodation.

26. Subsection (5) does not provide that *acceptance* of temporary accommodation falling within this last category, namely suitable temporary accommodation, brings the section 193(2) full housing duty to an end. There are plainly some circumstances where it would not do so. If, for example, the local authority were immediately to indicate an offer of alternative accommodation, which the applicant would have a reasonable time to consider whether to accept as suitable, accommodation in the existing property in the meantime would be performance of the full housing duty but not a discharge of it. If, to take another example, the local authority indicated that the applicant could only stay for 21 days, the applicant would remain threatened with homelessness and the s.193(2) duty would continue, albeit being performed for that period. ***Aweys*** was a case in which the duty continued because the temporary accommodation was overcrowded and in disrepair, such that it was suitable on a short term basis, but its occupation did not prevent the applicants from remaining homeless, which is a prospective concept.

27. Mr Hutchings submitted that it was the settled understanding amongst practitioners that acceptance of an offer of temporary accommodation falling within subsection (5) of the 1996 Act *never* discharges the full housing duty, and drew my attention to the judgment of Lewis J in ***R (Brooks) v Islington London Borough Council*** [2016] PTSR 389 at [41] and that of Moses J in ***R v Brent London Borough Council ex parte Sadiq*** (2001) 33 HLR at [36]. Mr Vanhegan agreed with this proposition. Whilst I have some reservations as to whether it is correct, it is not necessary to decide the point in this case and I will assume that acceptance of accommodation falling within subsection (5) never brings the full housing duty to an end. What matters for present purposes, however, is that the duty may be being performed whilst continuing to exist, as Baroness Hale made clear in ***Aweys*** at [42].

28. It follows from the above analysis that when the Council offered Ms Bucknall the opportunity to continue to reside at the Property on 18 September 2014 pending any offer of alternative accommodation, and she accepted by staying there, the Council was performing its full housing duty. It was suitable accommodation, albeit avowedly temporary. It was for what was averred to be an indefinite but potentially lengthy period of time, and not such as to threaten homelessness.

29. Mr Hutchings' argument that a local authority may take a reasonable period to fulfil its full housing duty does not undermine this analysis. That there is such a principle is clear from Auld LJ's judgment in ***Codona,*** approved in ***Aweys*** by Lord Hope at [3]-[4] and Lord Scott at [5], but it is concerned with cases in which it is impossible for a local authority immediately to perform its duty because of the absence of *any* suitable accommodation; the rationale was expressed to be that the law would not require the local authority to do the impossible. That principle has no application to the present case in which the Council did have suitable accommodation in which to house Ms Bucknall after 18 September 2014, namely the Property. The fallacy in Mr Hutchings' argument is to treat the delay in

finding her permanent accommodation as necessarily being a delay in fulfilling the full housing duty. Such an argument assumes that the duty requires the provision of permanent or secure accommodation, which it is clear from ***Awua*** and ***Aweys*** is mistaken. Once it is recognised that the Property fell within the definition of suitable accommodation for the purposes of the full housing duty, there is no reason to treat it as being provided otherwise than in performance of that duty. Such accommodation can be provided in performance of the full housing duty without discharging it, as is clear from ***Aweys*** at [42].

30. Nor is it relevant that if the local authority decides that there is no full housing duty, it may have a power and duty to allow the applicant to remain in the property for a brief period, whether ancillary to its s.188 duty or as a freestanding public duty to act reasonably in terminating statutory housing rights: see ***R v Newham London Borough Council, ex parte Ojuri (No 5)*** (1999) 31 HLR 631, upon which Mr Hutchings relied. The issue here under consideration is what duty is being performed when the decision is to accept the existence of a full housing duty, not to reject it.

31. I have not overlooked the fact that the 18 September 2014 letter was framed in terms which assumed that there would be a continuing full housing duty until Ms Bucknall were offered private rented accommodation in due course. That does not affect the substance of the offer that was being made as to Ms Bucknall's occupation of the Property, which was an offer for her to continue to stay there for an indefinite period until she were offered private rented sector accommodation; nor does it affect the fact that accommodation at the Property was being provided pursuant to the full housing duty.

32. Mr Hutchings also argued that if this was the effect of s. 193, housing authorities would be hamstrung because they would not be able to move homeless people swiftly from temporary housing stock when they wished to. However this assumes that the fact that a local authority is continuing to house an applicant pursuant to the full duty necessarily determines that the occupation is as a dwelling, an assumption which I reject for the reasons explored below. The inquiry is fact specific.

## Occupied as a dwelling

33. The expressions "let as a dwelling" in s. 3(1) and 5(1) of the PEA, and "occupied as a dwelling under a licence" in s. 3(2B), and "licence to occupy premises as a dwelling" in s. 5(1A), look to the purpose of the lease or licence rather than the use of the premises by the occupier. The court looks to the purpose of the original lease or licence, unless the licence is superseded by a later contract, either express or inferred from the parties' actions, which provides for a different user: see ***R (N) v Lewisham*** at [24].

34. However the Council is not assisted in this case by the terms of the written licence agreement of 30 January 2104, pursuant to which Ms Bucknall first went into occupation, because the terms of the letter of 18 September 2014 and Ms Bucknall's continued occupation clearly changed the purpose of her occupation. It is obvious that Ms Bucknall was not still occupying the property on the original terms when she was there between 18 September 2014 and the service of the

notice to quit on 9 February 2015. Those terms had made clear, both in the covering letter and paragraph (a) of the agreement itself, that the Property was to be occupied pursuant to the interim housing duty and pending a determination of whether there was a full housing duty. That was no longer the case after the decision had been made and notified on 18 September 2014. Thereafter she was occupying under a licence whose terms were those set out in the letter, namely that she could continue to occupy for an indefinite period pending an offer of alternative accommodation which the letter stated would be private rented sector accommodation.

35. The 18 September 2014 letter also included the wording "In the meantime please ensure that you pay the charges and abide by the conditions of your agreement to occupy the temporary accommodation you will be provided with". Ms Bucknall was provided with no further licence agreement, and this must be taken to be a reference to an obligation to continue to pay the rent and charges set out in the letter of 30 January 2014. It does not, however, follow that the terms of the licence continued unaltered: they could not do so because they were expressed, in terms, to be applicable pending the Council's housing duty decision. The terms included a provision that the PEA did not apply, but that is a question of statutory law, not private rights.

36. This is therefore a case in which the purpose for which a property is first occupied has been overtaken by a subsequent agreement and it is therefore no longer appropriate to look to the purpose for which the Property was originally occupied. The focus is on the purpose for which the Property was occupied as a result of the Council's offer of continued occupation in its letter of 18 September 2014 and Ms Bucknall's acceptance of those terms by staying at the property.

37. In ***R (N) v Lewisham***, Lord Hodge examined the authorities on what was meant by a "dwelling" in this context at paragraphs [26] to [29]. He observed that dwelling was not a word with a fixed meaning and could have different shades of meaning. In the PEA it included the concept of a degree of settled occupation by way of establishment of a home, but the relevant statutory context and policy was always important. He gave three reasons for treating accommodation provided pursuant to the interim housing duty as being occupied other than "as a dwelling". First, the important statutory context was the provision of short term accommodation at one or more locations and in one or more forms of accommodation for a determinate period pending the s. 184 decision. Such short term accommodation was not intended to provide a home, but merely a roof over the applicant's head. Secondly and consistently with that statutory context, the licences granted by local authorities when providing interim homelessness accommodation recognise that the local authority may require the applicant to transfer to alternative accommodation at short notice. Thirdly, the imposition of the requirements of the PEA would hamper the operation of the statutory scheme because it would take months to move or remove those who were housed on an interim basis, even when an adverse decision had been made under s.184, thereby inhibiting the local authority's ability to provide homelessness accommodation to others in priority to those whom it had determined were not entitled to it.

38. None of those considerations apply in Ms Bucknall's case to her continued occupation of the Property after 18 September 2014. It was offered for an

indeterminate period which might be lengthy and was in the event four and a half months. It was provided pursuant to the acknowledged full housing duty. The Council was not thereafter under a duty to make any offer of any other accommodation, although it avowed an intention to do so; if it had accommodated her there permanently it would have fulfilled its full housing duty. There is no evidence that in taking this course the Council was hampered or inhibited in how it used housing stock available to it to perform its statutory functions under Part VI or VII of the 1996 Act; nor that the requirement to comply with the PEA protections did so. On the contrary, the Council did not think it appropriate or necessary to seek to evict Ms Bucknall without giving 28 days' notice to quit and seeking a court order. The only reason it has failed to get a possession order is that it failed to include the statutory particulars in the notice to quit. The Council was not inhibited in providing accommodation to others in priority need because it had accepted the full housing duty towards Ms Bucknall.

39. In all the circumstances Ms Bucknall would reasonably have described the Property as her home. It was provided to her by the Council for occupation as a dwelling.

40. This is a conclusion which depends upon the terms of the offer in the 18 September 2014 letter and the continued occupation. I do not accept Mr Vanhegan's submission, conceded by Mr Hutchings, that if accommodation is being provided pursuant to the full housing duty it is automatically to be treated as occupied as a dwelling. In her dissenting judgement in ***R (N) v Lewisham***, Baroness Hale expressed puzzlement that that appeared to be the generally accepted view. She rejected the notion that merely because the duty had changed, the purpose for which the accommodation was occupied must necessarily change. She treated the apparent consensus in relation to the full housing duty as supporting the view that accommodation pursuant to the interim housing duty was for occupation as a dwelling. In this she was in a minority, but the underlying premise is in my view sound: the change in the duty does not necessarily change the dwelling/non-dwelling status of occupation, which depends on the purpose of occupation, not the duty itself. If, for example, the local authority were to accompany the decision notification with an immediate offer of Part VI secure accommodation, which it would be reasonable for the applicant to accept within 7 days, I very much doubt that it could be said that continued occupation for 7 days would be occupation as a dwelling, notwithstanding that it would be being provided in performance of the s. 193 full housing duty. But it does not follow, as Mr Hutchings argued, that there can be no change of purpose in allowing the applicant to remain in the accommodation. Each case will be fact specific.

41. Mr Vanhegan argued that this would give rise to uncertainty. I doubt whether that need be so in practice, given that the critical factor will be the purpose for which the applicant is permitted to continue to occupy the property. This will depend primarily on the terms which will accompany the notification of the s. 184 decision, not the length of occupation which in fact continues thereafter. If the occupant is permitted to stay in the accommodation for an indefinite further period, that is likely to lead to the conclusion that the continued occupation is as a dwelling, notwithstanding any avowed intention by the local authority to offer him or her another property at some uncertain point in the future. If the occupier is

told that he or she can stay in the property for the time being pursuant to the local authority's acceptance that it must house them, they are justified in treating it as their home if they stay for more than a short period. It is the indefinite nature of the period of continued occupation offered which matters. It might be very lengthy, because it need not in fact be followed by an offer of other accommodation in order to fulfil the full housing duty, even if there is an avowed intention to do so. In such cases, the purpose of occupation has changed by reason of the terms offered following the s.184 decision because unlike occupation pursuant to the s. 188 duty, it is indefinite and is not to be brought to an end by the operation of the s. 184 investigation. That is what entitles the occupant to treat it as having the degree of settled residence as a home which makes it a "dwelling".

42. In ***Rogerson v Wigan*** Elias J, as he then was, had to consider a similar issue in relation to an applicant who had been provided with accommodation pursuant to the interim housing duty and was allowed to remain in it after the full housing duty decision pending an offer of further accommodation "as soon as [the local authority] have a vacancy". The period for which he remained in occupation after the full housing duty decision before being served with a notice to quit was some two months shorter than in Ms Bucknall's case. ***Rogerson*** was decided before the House of Lords decisions in ***Awua*** and ***Aweys***. At the time, it was the most recent decision of the Court of Appeal in ***Mohamed v Manek*** (1995) 94 LGR 211 which was authority for the principle that accommodation provided pursuant to the interim housing duty was not occupied as a dwelling. Elias J said:

> "[32] That still leaves the question whether Judge McMillan was right to say that the effect of *Manek's* case was that the accommodation provided to the appellant was not a dwelling. The appellant submitted that even if the accommodation was not originally properly described as a dwelling, since he was only allowed to be there pending the determination of his housing rights, the position altered as soon as the council determined that they had a duty to house him pursuant to s 193 of the 1996 Act. Thereafter, he submits, the council is no longer housing him for this limited purpose and the principle in *Manek's* case is no longer applicable.
>
> [33] I do not accept that the position is quite as stark as that. As Judge McMillan said, that would compel the authority either to remove him immediately it had made its determination or risk a claim that as a result of any delay in transferring him to more permanent accommodation, he had obtained rights under the 1977 Act. However, in my view if the council permits the occupier to remain in the premises for a period which is no longer reasonably referable to the decision to accommodate him temporarily pending the decision as to whether there is a duty to house him, then *Manek's* case is no longer applicable. The fact that it was originally intended that he should only be temporarily accommodated would not determine the nature of his residence. That may change over time depending on how relations between the licensor and licensee develop. In my view

the question whether the accommodation is properly to be described as the licensee's dwelling has to be judged as at the time when the notice to quit is given. That is consistent with the approach adopted in similar circumstances when the court has to determine whether premises constitute a dwelling (see the observations of Lord Bingham of Cornhill in the *Uratemp Ventures* case [2002] 1 All ER 46 at [11], following the earlier decision of the House of Lords in *Baker v Turner*[1950] 1 All ER 834, [1950] AC 401).

[34] It follows that in my judgment the judge was wrong to focus on the original purpose for which the accommodation had been provided. Had he considered the nature of the residence at the time the notice was given, then in my view he would have had to conclude on the facts of this case that the accommodation had by then become the appellant's dwelling. It was plainly the council's intention that he and his partner should occupy it on more than a merely transient basis, even although the letter actually sent to the appellant misrepresented the position. More significantly, whatever the original intention, it can not in my view be said that the provision of the accommodation was so transient as to prevent it from being described as the appellant's dwelling, nor do the policy considerations which influenced the court in *Manek's* case warrant such a conclusion. This case provides an example of the situation referred to by Nourse LJ in *Manek's* case where the occupant is permitted to occupy the premises on a basis which can no longer justify the conclusion that it is for a brief transient period."

43. This passage was cited with apparent approval by Lord Hodge in ***R(N) v Lewisham*** at [24]. What was said by Elias J is supported by the subsequent guidance in ***Awua*** and ***Aweys*** and its reasoning is equally applicable to Ms Bucknall's case.

44. Accordingly the appeal will be allowed.