Settling down in temporary accommodation for two years (by mistake)

Can accommodation provided to an intentionally homeless person under s. 190(2) HA 1996 (i.e. for such period as the local authority considers will give him a reasonable opportunity of securing other accommodation) ever become "settled accommodation"?

In Huda v Redbridge LB [2016] EWCA Civ 709, the Appellant had, by reason of an administrative error on the part of the local authority, never been evicted from the temporary accommodation provided under s. 190(2) HA 1996 and remained there for two years. Having accrued rent arrears, he became threatened with eviction and made a further application for assistance. His application was rejected on the basis that his accommodation had not been "settled" so as to break the chain of causation with the previous finding of intentional homelessness.

In a decision which will provide comfort to any local authority which finds itself in a similar position, the Court of Appeal upheld the reviewing officer's decision and found that it was open to the officer to conclude "as a matter of fact and degree" in accordance with Din v Wandsworth [1983] 1 AC 657 that the accommodation was "precarious (and therefore not settled) because:

- A had remained in the accommodation because of an administrative error. Failure to evict A was not indicative of a decision to allow him to remain;
- Although A had lived in the accommodation for two years, this was not determinative;
- A, having been provided with accommodation under s. 190(2), was a licensee not a tenant, did not enjoy exclusive possession and the Protection from Eviction Act 1977 did not apply (Desnousse v Newham LBC [2006] QB 831). Although the s. 190(2) power may have come to an end, this did not mean that the nature of the Appellant's occupation had changed from licensee to attract a greater degree of security of tenure and there was nothing on the facts to suggest that this had happened. The Appellant could have been evicted by the local authority at any time;

The reviewing officer went onto find that, even if the Appellant had become an assured shorthold tenant by reason of the effluxion of time, the nature of the Appellant's occupation taken as a whole was precarious because the administrative error which led to the Appellant continuing to occupy the accommodation could have been discovered at any time. The Court of Appeal, having found that it was open to the reviewing officer to conclude that the Appellant was a licensee, declined to express a view on this aspect of the decision letter. It would perhaps be unusual, in light of the suggestion in Knight v Vale RBC [2004] HLR 106 that the grant of a 6-month AST would usually lead to accommodation being settled, that an AST did not give rise to settled accommodation but as the Court of Appeal noted, everything depend on the particular circumstances.

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