Neutral Citation Number: [2014] EWCA Civ 877

Case No: B5/2013/2694

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE MAYOR'S & CITY OF LONDON COUNTY COURT
HIS HONOUR JUDGE BIRTLES
3CL40018l

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/06/2014

Before:

LORD JUSTICE JACKSON
LORD JUSTICE LEWISON
and
LORD JUSTICE CHRISTOPHER CLARKE

- -

Between :

MERAL TEMUR	**Appellant**
- and -	
LONDON BOROUGH OF HACKNEY	**Respondent**

- -
- -

Mr Iain Colville and **Mr David Cowan** (instructed by **Miles and Partners LLP**) for the **Appellant**
Mr Kelvin Rutledge QC and **Ms Sian Davies** (instructed by **London Borough of Hackney**) for the **Respondent**

Hearing date: 20th May 2014

- -

Approved Judgment

Lord Justice Jackson :

1. This judgment is in eight parts, namely:

Part 1. Introduction	paragraphs 2 to 8
Part 2. The facts	paragraphs 9 to 24
Part 3. The present proceedings	paragraphs 25 to 29
Part 4. The appeal to the Court of Appeal	paragraphs 30 to 31
Part 5. Did the reviewing officer have power to substitute an adverse decision on different grounds?	paragraphs 32 to 42
Part 6. Did the reviewing officer err in failing to carry out a hazard assessment under the 2004 Act?	paragraphs 43 to 58
Part 7. Did the reviewing officer fail to look to the future when considering whether the appellant was homeless?	paragraphs 59 to 71
Part 8. Executive summary and conclusion	paragraphs 72 to 73

Part 1. Introduction

2. This is an appeal by an applicant for accommodation under Part VII of the Housing Act 1996 ("the 1996 Act") against a review decision that she is not homeless. Two important issues arise. The first is whether on a review under section 202 of the 1996 Act the review officer is entitled to substitute a decision which is less favourable than the decision under review. The second issue is whether, when considering if the applicant's current accommodation is so unsatisfactory that he/she is homeless under section 175 (3), it is necessary to apply the tests set out in sections 206 and 210 of the 1996 Act. According to counsel, both these issues have potentially significant resource implications for local authorities.

3. The appellant is Meral Temur, a married woman who is separated from her husband. Her solicitors are Miles and Partners ("MP"). The respondent is the London Borough of Hackney ("the Council").

4. The following are the relevant provisions of the 1996 Act:

"**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 in occupation or restricting the right of another person to recover possession.

…

(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.

…

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 occupation shall be construed accordingly.

…

177. Whether it is reasonable to continue to occupy accommodation.

(2) In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.

…

182. Guidance by the Secretary of State.

(1) In the exercise of their functions relating to homelessness and the prevention of homelessness, a local housing authority or social services authority shall have regard to such guidance as may from time to time be given by the Secretary of State.

(2) The Secretary of State may give guidance either generally or to specified descriptions of authorities.

183. Application for assistance.

(1) The following provisions of this Part apply where a person applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he is or may be homeless or threatened with homelessness.

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.

(2) They may also make inquiries whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.

(3) On completing their inquiries the authority shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision.

…

193. Duty to persons with priority need who are not homeless intentionally.

(1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.

(2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.

…

202. Right to request review of decision.

(1) An applicant has the right to request a review of—

(a) any decision of a local housing authority as to his eligibility for assistance,

(b) any decision of a local housing authority as to what duty (if any) is owed to him under sections 190 to 193 and 195 and 196 (duties to persons found to be homeless or threatened with homelessness),

…

(4) On a request being duly made to them, the authority or authorities concerned shall review their decision.

...

206. Discharge of functions by local housing authorities.

(1) A local housing authority may discharge their housing functions under this Part only in the following ways—

(a) by securing that suitable accommodation provided by them is available,

(b) by securing that he obtains suitable accommodation from some other person, or

(c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person.

…

210. Suitability of accommodation.

(1) In determining for the purposes of this Part whether accommodation is suitable for a person, the local housing authority shall have regard to Parts 1 to 4 of the Housing Act 2004.

(2) The Secretary of State may by order specify—

(a) circumstances in which accommodation is or is not to be regarded as suitable for a person, and

> (b) matters to be taken into account or disregarded in determining whether accommodation is suitable for a person".

5. Section 203 of the 1996 Act sets out the procedure to be followed on review. The Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 ("the 1999 Regulations") make further provision as to procedure. The 1999 Regulations include the following:

> "**2. Who is to make the decision on the review**
>
> Where the decision of the authority on a review of an original decision made by an officer of the authority is also to be made by an officer, that officer shall be someone who was not involved in the original decision and who is senior to the officer who made the original decision.
>
> …
>
> **8. Procedure on a review**
>
> …
>
> (2) If the reviewer considers that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of the applicant on one or more issues, the reviewer shall notify the applicant –
>
> (a) that the reviewer is so minded and the reasons why; and
>
> (b) that the applicant, or someone acting on his behalf, may make representations to the reviewer orally or in writing or both orally and in writing."

6. Pursuant to section 182 of the 1996 Act the Secretary of State promulgated the Homelessness Code of Guidance for Local Authorities. I shall refer to this as "the Code of Guidance".

7. The Housing Act 2004 ("the 2004 Act") sets out in Part I a new system for assessing housing conditions. Under this system local authorities are required to assess what hazards are generated by housing. "Hazard" is defined as "any risk of harm to the health or safety of an actual or potential occupier of a dwelling". Such hazards may be classified by reference to defined categories. I shall refer to the exercise which local authorities carry out under Part I of the 2004 Act as "hazard assessment".

8. Having summarised the relevant statutory provisions, I must now turn to the facts.

Part 2. The facts

9. The appellant is a Turkish national, now aged 25, who has indefinite leave to remain in the UK. She is married with one daughter, Hevin, who was born on 1st October 2008. Hevin is now aged 5.

10. On 15th July 2011 the appellant left the matrimonial home as a result, it is said, of violence and abuse on the part of her husband. It is said that her father-in-law did not allow her to take Hevin with her.

11. Over the next few months the appellant stayed with various friends and relatives and at other times in a women's refuge. Hevin remained in the care of her father.

12. On 3rd February 2012 the appellant applied to the Council for accommodation as a homeless person under Part VII of the 1996 Act. The Council interviewed the appellant and considered her application.

13. On 10th February 2012 the Council sent its decision by letter to the appellant and her solicitors, MP. The decision was that the appellant was homeless and eligible for assistance, but not in priority need.

14. By letter dated 16th February 2012 MP requested a review of the Council's decision pursuant to section 202 of the 1996 Act. The principal argument which MP advanced was that the appellant was in priority need, because it was expected that her daughter would come to live with her.

15. On 10th March 2012 the appellant took an assured shorthold tenancy of Room 4, 2 Belgrave Road, London N16 ("Room 4"). This comprised a bed sitting room with a single bed and a small kitchen. Bathroom and lavatory facilities were shared with the occupants of other rooms in the property.

16. On 18th July 2012 a district judge made an interim shared residence order in respect of Hevin. As a result of this order Hevin lived with her mother in Room 4 for most of the time, but sometimes went to stay with her father at weekends.

17. On 14th August 2012 Mr Daniel-Lloyd Ferlance, the Council's reviewing officer, sent his review decision to the appellant. The decision was that the appellant was not homeless, because she had now acquired accommodation, namely Room 4.

18. The appellant and her solicitors were concerned that the Council had made its review decision without the benefit of any comments from themselves concerning the suitability of Room 4. In those circumstances the Council agreed to withdraw that decision and carry out a further review after MP had sent in their submissions.

19. MP sent a letter to the Council on 14th November 2012, arguing that the appellant and her daughter could not reasonably be expected to continue to occupy Room 4. They stated that the main room was very small and only had space for one single bed; the appellant and her daughter had to share the bed; the shared bathroom facilities were unsatisfactory; the other residents were noisy; there were no facilities to wash clothes. They made no complaint about the size or suitability of the kitchen.

20. MP also made complaint about a building defect. The landlord subsequently dealt with the defect. I need say no more about that.

21. On 27th December 2012 Mr Ferlance interviewed the appellant. He also made enquiries about the number of households in the Borough seeking one bedroom accommodation and the number of households seeking two bedroom accommodation.

22. On 23rd January 2013 Mr Ferlance sent a letter to MP pursuant to regulation 8 (2) of the 1999 Regulations. He said that he was minded to decide that the appellant was not homeless because she had obtained accommodation, namely Room 4. MP replied on 30th January, arguing that Room 4 was not acceptable accommodation for a mother and child.

23. On 11th February 2013 Mr Ferlance sent his review decision to MP. This was that the appellant was not homeless. His reasons were that the appellant had a tenancy of Room 4. Despite the various arguments advanced by MP, in Mr Ferlance's opinion it was reasonable for the appellant and her child to continue to occupy that accommodation.

24. The appellant was aggrieved by Mr Ferlance's review decision. Accordingly she commenced the present proceedings.

Part 3. The present proceedings

25. By an appellant's notice issued in the Central London County Court on 5th March 2013 the appellant appealed against the review decision pursuant to section 204 of the 1996 Act.

26. By her grounds of appeal, as amended, she argued that Mr Ferlance erred in law by substituting a decision that the appellant was not homeless for the original decision that she was homeless but not in priority need. She also argued that for a number of reasons Mr Ferlance had erred in concluding that it was reasonable for the appellant and her daughter to continue to occupy Room 4. She was critical of Mr Ferlance's reasoning and of his failure to make proper inquiries.

27. The proceedings progressed swiftly. His Honour Judge Birtles heard the appeal. He handed down his reserved judgment on 9th August 2013.

28. The judge dismissed the appeal. He held that the reviewing officer was entitled to substitute a decision that the appellant was not homeless, in place of the original decision that the appellant was homeless but not in priority need. He also rejected all of the appellant's criticisms of Mr Ferlance's approach and reasoning.

29. The appellant was aggrieved by the decision of the county court. Accordingly she appealed to the Court of Appeal.

Part 4. The appeal to the Court of Appeal

30. By a notice of appeal issued on 13th September 2013 the appellant appealed to the Court of Appeal against the decision of Judge Birtles. She advances three grounds of appeal, which I would summarise as follows:

i) The reviewing officer did not have power to substitute an adverse decision on different grounds, namely that the appellant was not homeless instead of a decision that the appellant was not in priority need.

ii) The reviewing officer failed to consider whether Room 4 was a health and safety hazard when assessed in accordance with Part I of the Housing Act 2004.

iii) The reviewing officer failed to look to the future when considering whether it was reasonable for the appellant and her daughter to continue to occupy Room 4 for the purposes of section 175 (3) of the 1996 Act.

31. Having set the scene, I must now turn to the first issue. This concerns whether the reviewing officer had power to substitute an adverse decision on different grounds.

Part 5. Did the reviewing officer have power to substitute an adverse decision on different grounds?

32. I can deal with this issue quite shortly, because I have read in draft the judgment of Lewison LJ and find myself in full agreement with his analysis.

33. If an applicant requests a review under section 202, he or she is requesting a review of the whole "decision". The reviewer will either confirm the decision or make a different decision. There is nothing in the wording of sections 202 or 203 which provides that the new decision must be more favourable to the applicant and cannot be less favourable.

34. The reviewer is required to reach his decision by reference to the state of affairs at the date of his decision: see *Mohamed v Hammersmith and Fulham London Borough Council* [2001] UKHL 57; [2002] 1 AC 547; *Banks v Kingston-Upon-Thames RLBC* [2008] EWCA Civ 1443; [2009] HLR 29; *NJ v Wandsworth LBC* [2013] EWCA Civ 1373; [2014] HLR 6. There is only one issue which calls for historical research by the reviewing officer. That concerns whether the applicant, if homeless, became homeless intentionally: see *Din v Wandsworth London Borough Council* [1983] 1 AC 657; *Haile v London Borough of Waltham Forest* [2014] EWCA Civ 792. That issue is of no relevance to the present appeal.

35. It is far from unusual for circumstances to change between the date of the original decision and the date of the review decision. Those changes may be for better or for worse. If the applicant becomes disabled or acquires more dependents, then he/she may secure a more favourable decision on review. On the other hand the applicant may enjoy good fortune, for example by marrying someone who owns a spacious property. In the latter case it would be absurd to say that a hard pressed local authority is obliged to treat such a person as still being homeless.

36. Mr Iain Colville for the appellant relies upon *R v Brent London Borough council ex parte Sadiq* (2001) 33 H.L.R 47 in support of his contention that the reviewing officer cannot substitute a less favourable decision on different grounds. The issue in *Sadiq* was whether the London Borough of Brent could reverse its own earlier decision under section 184 that it owed a duty to secure accommodation for the applicant. Moses J held that the London Borough of Brent could not reverse that earlier

decision. In my view, however, *Sadiq* does not assist Mr Colville's argument. *Sadiq* was a case about decisions under section 184, not about reviews under section 202 of the 1996 Act.

37. The next authority upon which Mr Colville relies is *Porteous v West Dorset DC* [2004] EWCA Civ 244; [2004] HLR 30. This establishes that a local authority can vary an earlier decision under section 184 if that decision resulted from a fundamental mistake of fact. The Court of Appeal also held in *Porteous* that in a review under section 202 the reviewing officer must consider circumstances as they exist at the date of the review. *Porteous* does not provide any support for the proposition that a reviewing officer cannot substitute a less favourable decision or an adverse decision on different grounds.

38. Mr Colville also places reliance on the following dictum of Buxton LJ in *Crawley BC v B* (2002) 32 HLR 636 at 651-2:

> "I would accept, also, that there could be circumstances in which a judge might properly take the view that an applicant ought not to be deprived, by events which had occurred between the date of the original decision and the date of the appeal, of some benefit or advantage to which he would have been entitled if the original decision had been taken in accordance with the law."

39. I respectfully agree with that statement. There may well be circumstances in which it would not be right to deprive a person of some accrued benefit by reason of subsequent events. But this is not such a case. If a person obtains accommodation between the date of the original decision and the date of the review, then provided that the new accommodation is satisfactory, it would be unrealistic to treat him or her as homeless.

40. There is nothing in the 1999 Regulations which prevents a reviewing officer from making a decision which is less favourable than the original decision. Nor do those Regulations prevent the reviewing officer from substituting an adverse decision on different grounds.

41. In the result therefore I reject the first ground of appeal. My answer to the question posed in this part of the judgment is yes.

42. I must now move on to the second ground of appeal, which concerns whether the reviewing officer erred in failing to carry out a hazard assessment under the 2004 Act.

Part 6. Did the reviewing officer err in failing to carry out a hazard assessment under the 2004 Act?

43. The appellant complains that Mr Ferlance did not carry out a hazard assessment of Room 4 under the 2004 Act before reaching his decision. If he had carried out such an assessment, he might have concluded that the overcrowding in that dwelling (namely the appellant and her daughter) constituted a category 1 hazard.

44. There is no dispute that, as a matter of fact, Mr Ferlance did not carry out a hazard assessment under the 2004 Act. The issue therefore becomes whether he was obliged to carry out such an assessment.

45. In order to address this issue, it is necessary to examine the statutory scheme. Part VII of the 1996 Act requires a local authority to consider whether housing accommodation is satisfactory at two different stages. First it has to consider the adequacy of any accommodation in which the applicant is currently residing, in order to determine whether or not he/she is "homeless". Subsequently it has to consider the adequacy of any accommodation which it proposes to provide for the applicant under section 193. I will refer to consideration at the first stage as "the stage 1 exercise" and consideration at the second stage as "the stage 2 exercise".

46. Parliament could have laid down identical tests for different stages, but for policy reasons it decided not to do so.

47. Sections 175 (3), 176 and 177 (2) of the 1996 Act set out the test to be applied in the stage 1 exercise. Essentially the Council must consider whether the existing accommodation is such that it would be "reasonable" for the applicant and anyone living with him/her to continue to reside there. In carrying out this exercise it can have regard to the general circumstances prevailing in its district.

48. Sections 206 (1) and 210 (as amended) of the 1996 Act set out the test to be applied in the stage 2 exercise. This is a more elaborate test, because it may involve carrying out a hazard assessment under the 2004 Act.

49. Counsel have taken us through the legislative history. In essence, what is now section 175 (3) of the 1996 Act was introduced by amendment into the Housing Act 1985 with effect from January 1987. This was in response to the House of Lords' decision in *Puhlhofer v Hillingdon London Borough Council* [1986] 1 AC 484. Ever since January 1987 the legislation has provided for the stage 1 and stage 2 exercises in broadly similar terms to those which now appear in the 1996 Act (as amended by the 2004 Act).

50. Mr Colville submits that we should construe the statutory provisions so that the stage 1 exercise and the stage 2 exercise involve applying the same standards. In other words, when considering whether it is "reasonable" under section 175 (3) of the 1996 Act for someone to continue to occupy accommodation, the local authority must consider whether that accommodation is "suitable" within section 206 (1). That in turn will or may involve carrying out a hazard assessment under the 2004 Act.

51. In support of this submission Mr Colville relies upon the decision of the House of Lords in *Birmingham City Council v Ali* [2009] UKHL 36; [2009] 1 WLR 1506. This well known "homeless at home" decision arises out of the large number of homeless applicants in Birmingham and the chronic shortage of housing accommodation in that city. Mr Ali and the other applicants were living in accommodation which it was reasonable for them to occupy in the short term, but not in the long term. The House of Lords held that the City Council was entitled to regard the applicants as homeless under section 175 (3) of the 1996 Act, but nevertheless to leave them there for a limited period. Thereafter the City Council had to move the applicants to accommodation which was "suitable" under sections 206 and 210 of the 1996 Act.

Baroness Hale gave the leading speech, with which the other members of the Appellate Committee agreed. She makes clear at paragraphs 47 and 48 that the tests to be applied under section 175 (3) and 206 are different. There is a period of time during which the applicants are characterised as homeless under section 175 (3), but their accommodation is characterised as "suitable" under section 206.

52. I therefore conclude that *Ali* does not support the appellant's case. On the contrary it supports the respondent's submission that the stage 1 exercise and the stage 2 exercise involve applying different standards.

53. When I stand back and look at the provisions of the statute, I can see that Parliament has established different sets of rules for the stage 1 exercise and the stage 2 exercise. There would be no point in doing this if the intention was that both exercises would assess accommodation in the same way.

54. This point is reinforced when one looks at the Code of Guidance. Chapter 8 tells councils how to carry out the assessments under sections 175 (3) and 177 (2). Chapter 17 tells councils how to carry out assessments under sections 206 and 210 of the 1996 Act, as well as under the 2004 Act. The whole statutory scheme and the statutory guidance proceed on the basis that the stage 1 exercise and the stage 2 exercise involve different processes as well as different criteria.

55. Mr Colville places reliance upon the Court of Appeal's decision in *Harouki v Kensington and Chelsea Royal London Borough Council* [2007] EWCA Civ 1000; [2008] 1 WLR 797. I accept that, for the reasons stated by Ward LJ in *Harouki*, the tests applied in the stage 1 exercise and the stage 2 exercise are related concepts. They will often lead to the same results. Nevertheless the fact remains that they are different tests. Also it is now necessary to read *Harouki* subject to the later decision of the House of Lords in *Ali*.

56. Let me now draw the threads together. The reviewing officer in this case was considering whether the appellant was homeless. This was a stage 1 exercise. The reviewing officer applied the tests set out in sections 175 to 177 of the 1996 Act, as he was required to do. He was not required to and did not carry out a hazard assessment under the 2004 Act.

57. My answer to the question posed in this part of the judgment is no. I therefore reject the second ground of appeal.

58. All that remains to be considered is the third ground of appeal. That concerns whether the reviewing officer failed to look to the future when considering whether the appellant was homeless.

Part 7. Did the reviewing officer fail to look to the future when considering whether the appellant was homeless?

59. The statutory test set out in section 175 (3) of the 1996 Act required the reviewing officer to consider not merely whether Room 4 was adequate in the short term, but whether it was reasonable for the appellant and her daughter to continue to occupy that accommodation.

60. In *Ali* Baroness Hale discussed the meaning of "reasonable … to continue to occupy" at [34] to [51]. She emphasised that this test involved looking to the future as well as the present. If a family is occupying unduly cramped accommodation, which they can be expected to endure in the short term but not indefinitely, then they are "homeless" within the meaning of section 175.

61. Mr Colville contends that in the present case Mr Ferlance concentrated principally on the present time and the short term position. He did not properly look to the future and consider whether it was reasonable for the appellant and her daughter to continue to occupy Room 4.

62. With these criticisms in mind I have carefully re-read the review decision letter dated 11th February 2013. There are a number of places where Mr Ferlance specifically discussed how and why it will be reasonable for the appellant and Hevin to continue occupying Room 4 in the future.

63. At paragraph 32 of the letter Mr Ferlance dealt with sleeping arrangements. He advised that the use of bunk beds would alleviate the problems which the appellant faced.

64. At paragraph 24 Mr Ferlance noted that the landlord had dealt with the defects which the appellant had reported. Mr Ferlance was satisfied that the landlord would respond equally constructively if asked to deal with the problem of other tenants causing noise. Also the Council's private sector housing team would be able to assist in that regard.

65. In relation to washing facilities, Mr Ferlance ascertained where local launderettes were. He explained this in paragraph 25 of his letter.

66. Mr Ferlance carefully considered the shared bathroom arrangements in paragraph 26 of his letter. He dealt with overcrowding at paragraphs 32 to 39. He considered the relevant authorities, including *Harouki* on which Mr Colville relies. He assessed Room 4 in accordance with the guidance set out in the Code of Guidance. He noted that under Annex 16 to the Code a child under ten was not to be counted as a separate person.

67. Mr Ferlance candidly accepted that the arrangements were not ideal. On the other hand, as permitted by section 177 (2) of the 1996 Act, he had regard to the general circumstances prevailing in relation to housing in Hackney. He noted that there were 5,499 households on the waiting list for two-bedroom properties and 2,027 households lacking one bedroom.

68. Having considered all relevant factors, including specifically arrangements for the future, Mr Ferlance concluded that it was reasonable for the appellant and her daughter to continue to occupy Room 4.

69. I have found the third ground of appeal to be the most formidable one. Nevertheless I have come to the conclusion that Mr Ferlance did properly look to the future and he reached a decision which was open to him.

70. As Hevin grows older the difficulties of the appellant and her daughter occupying Room 4 may increase. It will then be open to the appellant to make a fresh application to Part VII of the 1996 Act and the Council will have to consider it: see *Rikha Begum v Tower Hamlets London Borough Council* [2005] EWCA Civ 340; [2005] 1 WLR 2103.

71. Accordingly I reject the third ground of appeal. My answer to the question posed in Part 7 of this judgment is no.

Part 8. Executive summary and conclusion

72. The appellant applied for accommodation as a homeless person under Part VII of the Housing Act 1996 ("the 1996 Act"). The Council decided that she was homeless and eligible for assistance, but not in priority need. The appellant applied for a review of that decision. She then obtained a shorthold tenancy of a small property which she occupied with her young daughter. The Council's review officer decided that she was not homeless. The appellant appealed against that decision to the county court unsuccessfully and now appeals to this court.

73. In my view the review officer was entitled to substitute a less favourable decision than the original decision, because the circumstances had changed. He was not required to carry out a hazard assessment under the Housing Act 2004. He properly had regard to the future when carrying out his assessment, as required by section 175 (3) of the 1996 Act and the House of Lords' decision in *Birmingham City Council v Ali* [2009] UKHL 36; [2009] 1 WLR 1506. Accordingly, I would dismiss this appeal.

Lord Justice Lewison:

74. I agree, and add some observations of my own on the first ground of appeal, which is of some importance. Mr Colville's argument is that if an applicant requests a review of a decision the review can only confirm the original decision or arrive at a decision that is more favourable to the applicant. It is not open to the local housing authority to reach a decision that is less favourable to the applicant, even if circumstances have changed between the date of the original decision and the date of the review. In my judgment that argument is ill-founded.

75. If a local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness they have a statutory duty under section 184 (1) of the Housing Act 1996 to satisfy themselves whether he is eligible for assistance and, if so:

> "whether any duty, and if so what duty, is owed to him under the following provisions of this Part."

76. Section 184 (3) provides that on completing their inquiries the authority must notify the applicant of their decision and "so far as any issue is decided against his interests, inform him of the reasons for their decision."

77. As I explained in *Mitu v Camden LBC* [2011] EWCA Civ 1249; [2012] HLR 10 the legislation differentiates between the decision on the one hand, and issues that arise on the way to the making of the decision. The reasons that the authority is required to

provide are reasons for the decision: that is to say for the decision whether any and if so what duty is owed to the applicant under Part 7 of the 1996 Act. If the applicant is not homeless or threatened with homelessness, no duty arises at all. In other cases the nature of the duty varies according to the category or categories into which a homeless person falls.

i) If a person is intentionally homeless but does not have a priority need the duty is a duty to provide advice and assistance: section 190 (3);

ii) If a person is intentionally homeless and has a priority need the duty is a duty to provide advice and assistance and also to provide accommodation for a period to give him a reasonable opportunity to find accommodation: section 190 (2);

iii) If a person is not intentionally homeless and has no priority need, the duty is a duty to provide advice and assistance: section 192 (2). The duty is thus the same duty as arises where a person is intentionally homeless but does not have a priority need; but in this category of case that duty is coupled with a discretionary power to secure accommodation for him: section 192 (3);

iv) If a person is not intentionally homeless and has a priority need the duty is a duty to secure accommodation for him, unless the application is referred to another housing authority: section 193 (2).

78. Once the applicant has received notification of the authority's decision he has the right under section 202 to request a review. In the case of a decision such as the one in the present case that right is described by section 202 (1) (b) as a right to request a review of:

> "any decision of a local housing authority as to what duty (if any) is owed to him under sections 190 to 193 and 195 to 196 (duties to persons found to be homeless or threatened with homelessness)"

79. I take the word "review" as being, in this context, equivalent to "reconsider". Thus on a straightforward reading of section 202 (1) what the authority is being asked to do is to reconsider the question what duty (if any) is owed to him under those sections. I do not see this as in any way incompatible with section 202 (5) which requires the authority, on a request being made, to "review their decision". The authority will review their decision by reconsidering what duty (if any) is owed to the applicant.

80. Section 203 deals with some procedural aspects of the review. It includes the following:

> "(3) The authority … concerned shall notify the applicant of the decision on the review.
>
> (4) If the decision is—

> (a) to confirm the original decision on any issue against the interests of the applicant, …
>
> they shall also notify him of the reasons for the decision.
>
> (5) In any case they shall inform the applicant of his right to appeal to the county court on a point of law…"

81. The following points arise from these provisions. First, the outcome of the review is itself a decision. That ties in with the notion that what the authority is asked to do is to reconsider the question whether any duty, and if so what duty, is owed to the applicant. Having reconsidered, the authority must then make a decision. Second, reasons must be given only if the authority decides to confirm the original decision on any issue against the interests of the applicant. Mr Colville argued that this limited duty to give reasons also limited the range of decisions open to the reviewing officer on review. But that is an argument from silence. The scope of the review is, in my judgment, determined by section 202 (1) (b) and 202 (5), coupled with the obligation to notify the applicant of "the decision on the review". Ordinary principles of procedural fairness would normally require a public authority, conducting an exercise of this kind, to explain why they had reached the decision that they did. The final point is that in "any case" they must inform the applicant of his right to appeal. The phrase "in any case" suggests that there are cases other than simply confirming the original decision or accepting the applicant's case. If the reviewer accepts the applicant's case, then there seems little point in informing him of a right of appeal. What is there to appeal about? If, on the other hand, the review confirms the original decision, that case is already covered by section 203 (4) and notification of a right of appeal would more rationally have formed part of that sub-section. In my judgment, the way in which section 203 (5) is drafted supports the view that the decisions available on review are not limited in the way that Mr Colville argued.

82. The procedural aspects of the review are amplified by the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999. Regulation 2 provides:

> "Where the decision of the authority on a review of the original decision made by an officer of the authority is also to be made by an officer, that officer shall be someone who was not involved in the original decision and who is senior to the officer who made the original decision."

83. This regulation distinguishes between the original decision (i.e. the decision that is under review) and the decision on the review itself. It is quite plain that, contrary to Mr Colville's argument, the reviewing officer himself makes a decision. Regulation 8 (2) provides:

> "If the reviewer considers that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of the applicant on one or more issues, the reviewer shall notify the applicant—

> (a) that the reviewer is so minded and the reasons why; and
>
> (b) that the applicant, or someone acting on his behalf, may make representations to the reviewer orally or in writing or both orally and in writing."

84. Once again, regulation 8 (2) distinguishes between the original decision and the decision on review. Moreover it describes the latter in very general terms, including the use of the indefinite article. The regulation takes as its starting point a deficiency in the original decision. If the reviewer is of that view then it is clearly contemplated that he may make "a decision which is against the interests of the applicant". So the regulation contemplates a decision on review that (a) is against the applicant's interests but (b) differs from the original decision. I can see no warrant for limiting the issues referred to in that regulation to those which the applicant has chosen to raise.

85. First, as Mr Rutledge submitted, the description of the authority's duties is expressed in the present tense. The duties arise where the authority are satisfied that the applicant "is" homeless. Likewise the question for the authority on review is what duty (if any) "is" owed to the applicant under Part 7. Second, binding case law is to the contrary. In *Mohamed v Hammersmith and Fulham LBC* [2001] UKHL 75; [2002] 1 AC 547 the House of Lords held that events subsequent to the application could be taken into account on the review. As Lord Slynn put it the decision of the reviewing officer "is at large" as to the facts. Third, regulation 8 (2) is procedural only. It cannot dictate the scope of the review mandated by the statute. Fourth, policy considerations dictate the same result. Social housing is a valuable resource. If, after the original decision, but before the review, the applicant ceases to be homeless it would be extraordinary if the authority still had a duty which, in terms, is confined to those who are homeless or threatened with homelessness.

86. In *Banks v Kingston-Upon Thames RLBC* [2008] EWCA Civ 1443; [2009] HLR 29 this court decided that an original decision could become deficient by reason of supervening events. That case has been followed in subsequent decisions of this court: *Mitu v Camden LBC*; *NJ v Wandsworth LBC* [2013] EWCA Civ 1373; [2014] HLR 6; *Mohamoud v Birmingham City Council* [2014] EWCA Civ 227. In addition this court has also held that the reviewing officer has a statutory duty to consider whether the original decision was (or has become) deficient: *Lambeth LBC v Johnston* [2008] EWCA Civ; [2009] HLR 10. The cumulative effect of these two propositions, as I explained in *NJ v Wandsworth* at [71] is that:

    i) Where new facts emerge that relate to an important issue in the case the reviewing officer must consider whether those new facts expose a deficiency in the original decision.

    ii) They will expose a deficiency in the original decision if in the light of those new facts that issue was either not addressed or not adequately addressed.

87. Since the question whether the applicant "is" homeless is at the heart of the statutory scheme, the reviewing officer must consider whether the applicant remains homeless (or threatened with homelessness). Mr Colville sought to escape from this conclusion by arguing that *Banks v Kingston-Upon Thames RLBC* was decided *per incuriam*. He said that in *Banks* the court had not referred to regulation 2. That is true; but regulation 2 simply identifies who is to carry out the review. It does not (and could not) limit the scope of the review more narrowly than the statute itself provides for. *Banks* was not decided *per incuriam*. It and the cases that have followed it are binding authority.

88. Accordingly, for these reasons in addition to those explained by Jackson LJ I reject the first ground of appeal. On the remaining grounds, I agree with the reasoning and conclusions of Jackson LJ; and there is nothing that I can usefully add.

Lord Justice Christopher Clarke:

89. I agree with both judgments.