Neutral Citation Number: [2023] EWCA Civ 1360

Case No: CA-2023-000443

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT COVENTRY
Deputy Circuit Judge Gregory
Claim No. J00CV450

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/11/2023

Before:

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE NEWEY
and
LORD JUSTICE BAKER

- -

Between:

JOSEPH KYLE	**Appellant**
- and -	
COVENTRY CITY COUNCIL	**Respondent**

- -
- -

Zia Nabi and David Cowan (instructed by **Central England Law Centre**) for the **Appellant**
Catherine Rowlands (instructed by **Coventry City Council**) for the **Respondent**

Hearing date: 25 October 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. In April 2022, the respondent, Coventry City Council ("the Council"), concluded that the appellant, Mr Joseph Kyle, had become "homeless intentionally" within the meaning of section 191(1) of the Housing Act 1996 ("the 1996 Act"). That decision was confirmed on review and, on 17 February 2023, Deputy Circuit Judge Gregory ("the Judge") dismissed an appeal. Mr Kyle now, however, appeals to this Court.

2. The core issue is whether it was "reasonable for [Mr Kyle] to continue to occupy" within the meaning of sections 175(3) and 191(1) of the 1996 Act accommodation which the Council had secured for him. It is the Council's case that it was and hence that, when his behaviour there resulted in his eviction, he became intentionally homeless. Mr Kyle, on the other hand, contends that it was not "reasonable for [him] to continue to occupy" the accommodation and so that there can be no question of conduct leading to his eviction from it rendering him intentionally homeless. For the purposes of the 1996 Act, Mr Kyle maintains, he was "homeless" even when living in the accommodation that the Council had found for him.

Basic facts

3. As the Judge explained in paragraph 4 of his judgment ("the Judgment"), in November 2020 Mr Kyle was "48 years of age, and had a history of drug abuse to such an extent that he had been addicted to class A drugs, presumably heroin, and either then or during the period with which I am concerned was being assisted to break that addiction through a methadone script".

4. On 3 November 2020, the Council accepted that section 188 of the 1996 Act applied and, accordingly, that it had a duty to secure that accommodation was available for Mr Kyle's occupation. Initially, he was found a room at 18 Wren Street in Coventry, but on 19 May 2021 he was instead provided with a room at 133 Terry Road, Coventry. At that stage, the Council wrote to Mr Kyle saying that it had been told that his behaviour at 18 Wren Street had not been in line with the rules and warning him that, if he did not follow the rules of the accommodation, the duty to provide him with accommodation would end. In August 2021, Mr Kyle relocated again, to a room at 79 St Margaret Road, Coventry, after other residents at 133 Terry Road had complained about his conduct. On this occasion, the Council informed him that it had been agreed that it would move him to alternative accommodation with a final warning. The Council also said, in a letter dated 20 August 2021, that "[a]ny placement given is done so on an emergency basis so you may be asked to move to more suitable accommodation during this stay" and that its duty to Mr Kyle would be discharged if, among other things, he was "evicted from the accommodation for such things as anti-social behaviour, smoking in the property, having guests and not abiding to the establishment rules".

5. The Judge said this about 79 St Margaret Road in paragraph 5 of the Judgment:

> "That property is a multi-occupation house, which provides accommodation for a number of people (how many, I do not know, but I suspect more than two and less than 10) where the occupants each have their own bedroom but share some facilities in common, such as the kitchen. It is intended to

> provide accommodation for people such as Mr Kyle, who are recovering drug addicts, and it is a place where they can be offered support and advice on an as-needs basis. It seems clear in those circumstances that how long anybody will spend in that particular type of occupation is very unpredictable. It may be relatively short, it may be relatively long in terms of many months."

In paragraph 20 of the Judgment, the Judge said:

> "The accommodation provided for Mr Kyle by Coventry City Council, through another provider, was in effect bespoke. It is sometimes described as a halfway house. It is intended to help somebody in Mr Kyle's position get back upon their feet. It is intended to provide support for recovering drug addicts. It may last for a significant period of time. Alternatively, it might be possible for such a person to move on in a relatively short time. By its very nature, it is entirely necessary for there to be flexibility in relation to this type of accommodation if the council is to fulfil its purpose of providing accommodation for somebody who is homeless and assisting that person in their future life."

6. In a letter dated 2 March 2022, the Council accepted that it owed Mr Kyle the "full housing duty" under section 193 of the 1996 Act, explaining that it had decided that he was homeless, had a priority need and had not become homeless intentionally. The Council said in the letter that it "now [had] a duty to provide [him] with ***one suitable offer*** of accommodation", that the offer had to be "suitable for [his] housing needs" and that he required "a property with 1 bedroom". The letter also included this:

> "**Temporary accommodation provided under s.193 whilst you are waiting for your property offer**
>
> **How does this affect my current temporary accommodation?**
>
> As you have been provided with emergency housing by Coventry City Council under s.188 then by virtue that the main housing duty has been accepted towards you, your accommodation … will now become your accommodation under s.193.
>
> As your accommodation is now being provided under s.193, the main housing duty to you will be discharged if:
>
> - You have not been staying at the accommodation provided without good reason to explain your absence, or
>
> - By act or omission you cause the accommodation to be withdrawn by being evicted from the premises due to

> unreasonable behaviour or behaviour that would cause harm to others."

7. On 31 March 2022, the provider of the accommodation at 79 St Margaret Road made a request to the Council for Mr Kyle's eviction on the basis that he had broken into, and stolen from, other rooms there. Having referred to the fact that another resident was highly vulnerable, the author said, "I do not want to keep [Mr Kyle] in that house with him."

8. On 4 April 2022, the Council sent Mr Kyle a letter (dated 2 April 2022) with the heading "Re: End of main housing duty because you have become intentionally homeless from accommodation made available for your occupation". The Council explained that it had decided that Mr Kyle had "become intentionally homeless from the accommodation that the Council made available to meet its main housing duty to [him]". Under the heading "Whether the accommodation was reasonable to continue to occupy", the Council said:

> "There are no facts in your case suggesting that the accommodation you lost was not reasonable to continue to occupy. There was no suggestion that you or any household member would suffer violence or abuse or that there was any risk of violence or abuse occurring.
>
> We are satisfied the accommodation was affordable ….
>
> We are not aware of any other factors suggesting that the accommodation may not have been reasonable to continue to occupy, in the context of homelessness."

9. Mr Kyle promptly requested a review of the Council's decision, and Central England Law Centre ("the Law Centre") made representations on his behalf. The Law Centre advanced a number of arguments in a letter dated 8 June 2022. In part, these were based on the proposition that section 3 of the Protection from Eviction Act 1977 had applied. The Law Centre also said this in a section headed "Reasonableness to continue to occupy":

> "We would further submit that the accommodation at the Property was not reasonable to continue to occupy.
>
> It is important to note that there is no simple test of reasonableness; the Council can and indeed should consider all relevant circumstances when reaching a conclusion as to whether accommodation is reasonable to continue to occupy and these may include the nature of the accommodation, its condition, the position of any other occupants and indeed any other relevant circumstances.
>
> We would refer the council to the enclosed emails from Housing Network and the continued reference to requesting an eviction and the reference 'I do not want to keep JK in that house' in the email dated the 31st of March 2022.

> In this case, we would submit that such an observer would conclude that there was a real possibility that the Housing Network was biased against our client, in the sense that it had reached the decision already that it would take all possible steps to exclude him from the accommodation, and also that there had been a relationship breakdown between our client and the housing provider and it was therefore not reasonable to continue to occupy."

10. In a subsequent section of the letter, headed "Warnings", the Law Centre noted that the warnings which Mr Kyle had been given had been provided to him "while he was occupying the accommodation under s188(1) rather than the subsequent s193(2) duty, and between 6 and 12 months prior to the date of the end of accommodation". The Law Centre "submit[ted] that applicant who is occupying under the interim (s188(1)) duty cannot be considered homeless intentionally from accommodation owed under this duty" and that, "[h]aving had the main duty accepted subsequently on 03rd March 2022 [Mr Kyle] was … entitled to assume that he was entitled to further warnings in the event of allegations of breaches of occupancy rules following acceptance of the main duty".

11. On 8 July 2022, the review officer sent the Law Centre a "minded to" letter so that it had an opportunity to respond to issues on which she was minded to hold against Mr Kyle. In the course of this letter, the review officer said:

> "I have been provided with no evidence as to why the property was not suitable for you. There is no evidence that the landlord is biased towards you and only reported to us incidents that caused them concern – such as damage to property, your aggressive and threatening behaviour towards other residents and theft of items from other rooms."

12. The Law Centre responded in a letter dated 3 August 2022. It "reiterate[d] previous submissions that the accommodation at the Property was not reasonable to continue to occupy" and further submitted that the Council "should have sought to provide additional support to our client". With regard to "Warnings", the Law Centre said, among other things:

> "In addition given the conditions that can apply for interim accommodation such as 'no visitors' and 'no smoking rules' which might perhaps be reasonable in interim accommodation provided under s188(1) Housing Act 1996 (which is not occupied as a dwelling) but would be unlikely to be reasonable when applied to accommodation which is indefinite in duration and is provided as a dwelling, we would reiterate our initial submissions that the previous warnings given during the relief period should be disregarded given the different duties owed to the client and the different consequences of such warnings. While under s188 our client is still considered homeless. Having had the main duty accepted subsequently on 03rd March 2022 he was, in our submission, entitled to assume that he was entitled to further warnings in the event of allegations of

> breaches of occupancy rules following acceptance of the main duty. This is particularly so, given that the first warning our client received was related to having visitors and was given many months before on 19th May 2021."

13. The review officer notified Mr Kyle of her decision in a letter dated 24 August 2022. She explained that she had upheld the Council's original decision "by deciding that, while you are eligible for help (on immigration and nationality grounds), you are intentionally homeless from your s193 accommodation". The review officer made, among others, the following comments on submissions from the Law Centre:

> "4. With regards to the property not being reasonable for you to occupy, I have been provided with no evidence as to why the property was not suitable for you or reasonable to occupy. I have seen no evidence that the landlord is biased towards you and only reported to us incidents that caused them concern - such as damage to property, your aggressive and threatening behaviour towards other residents and theft of items from other rooms. They are obliged to protect their property and the safety of other residents and are obliged to notify us of any concerns that cause them concern.
>
> 5. With regards to the submissions regarding the warnings – The warning that were issued to you whilst being provided with accommodation under s188, as stated by your legal team, are not to be disregarded when the main housing duty is awarded and this does not re-start the clock. Any and all behaviour that is a direct breach of the rules of providing you with TA is taken into consideration when considering the discharge of the main housing duty, whether this be under s188 or s193 or even APR."

14. Mr Kyle appealed to the County Court pursuant to section 204 of the 1996 Act, but the appeal was dismissed by the Judge on 17 February 2023. In paragraph 23 of the Judgment, the Judge explained that he had come to the conclusion that "this property was not occupied by [Mr Kyle] as a dwelling house, and therefore did not attract the protection of the Protection from Eviction Act for the reasons I have already outlined, that is to say, the nature of the accommodation, the terms upon which he occupied it, and how he came to be placed there". The Judge then moved on to consider a submission that "this was not accommodation which it would have been reasonable for [Mr Kyle] to continue to occupy, and therefore it is not possible for him to become intentionally homeless by reason of his deliberate conduct in relation to that accommodation": see paragraph 24. Having referred to, and cited from, the decision of the House of Lords in *R (Aweys) v Birmingham City Council; Moran v Manchester City Council*) [2009] UKHL 36, [2009] 1 WLR 1506 ("*Aweys/Moran*"), the Judge said this:

> "33. I have already expressed my assessment of the type of accommodation provided to Mr Kyle and how that can

> plainly last for a relatively long period of time, and indeed that is amply demonstrated by the fact that he had been there for six months at the time that his licence to occupy was terminated.
>
> 34. Popplewell J commented that cases of this nature are 'fact-specific' at paragraph 40 of his judgment in [*Bucknall v Dacorum Borough Council* [2017] EWHC 2094 (QB)]. In my judgment, the facts of this case are very different from the facts of the *Moran* case. There is an obvious and necessary distinction between the victim of domestic violence with the care of two young children being housed in a refuge, and a recovering drug addict being housed in accommodation which is intended to assist him for as long as he needs assistance into the future.
>
> 35. … In my judgment, it was perfectly open to the decision-maker to conclude that it was reasonable for Mr Kyle to continue to occupy his room at 79 Margaret Road for the purposes of section 191(1) of the Housing Act. I am also satisfied that it was not only reasonable but entirely appropriate for the housing review officer to come to the conclusion that he ceased to occupy that accommodation as a consequence of his own deliberate acts, specifically the breaking into of another room and theft from it, as recorded on the closed circuit television."

The statutory framework

15. Homelessness is the subject of Part VII of the 1996 Act, comprising sections 175-218. By section 184, where a local housing authority has reason to believe that a person who has applied for accommodation, or for assistance in obtaining it, may be homeless or threatened with homelessness, it is required to make such inquiries as are necessary to satisfy itself whether the applicant is eligible for assistance and, if so, whether any, and if so what, duty is owed to him under the 1996 Act. Section 184(3) stipulates that, on completing its 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".

16. In certain circumstances, a local housing authority will be obliged to secure that accommodation is available for an applicant while it makes the inquiries which section 184 of the 1996 Act requires. By section 188(1), headed "Interim duty to accommodate in case of apparent priority need", if a local housing authority has reason to believe that an applicant may be homeless, have a priority need and be eligible for assistance, it "must secure that accommodation is available for the applicant's occupation".

17. Where a local housing authority arrives at the conclusion that an applicant is homeless, did not become homeless intentionally, is eligible for assistance and has a

priority need, it is obliged by section 193(2) of the 1996 Act to "secure that accommodation is available for occupation by the applicant" unless it refers the application to another local housing authority in accordance with section 198. The local housing authority will, however, cease to be subject to the duty for which section 193 provides ("the main housing duty") if, among other things, the applicant "becomes homeless intentionally from the accommodation made available for his occupation": see section 193(6)(b).

18. By section 206 of the 1996 Act, a local housing authority may discharge its housing functions under Part VII:

> "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".

Accommodation secured pursuant to either section 188 or section 193 must therefore be "suitable".

19. Section 191 of the 1996 Act explains when someone "becomes homeless intentionally". By section 191(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."

20. Section 175 of the 1996 Act, which deals with when someone is "homeless" or "threatened with homelessness", is in comparable terms. Under it, a person is "homeless" if he has "no accommodation available for his occupation" and, by section 175(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". Section 175(4) provides that a person is "threatened with homelessness" if "it is likely that he will become homeless within 56 days". In *Aweys/Moran*, Baroness Hale described section 175(3) and section 191(1) as "counterparts": see paragraph 20.

21. Section 175 of the 1996 Act replaced section 58 of the Housing Act 1985 ("the 1985 Act"), which in turn superseded section 1 of the Housing (Homeless Persons) Act 1977 ("the 1977 Act"). The 1977 Act did not include anything to the same effect as section 175(3) of the 1996 Act, and neither originally did the 1985 Act. A subsection in the same terms as section 175(3) of the 1996 Act was, however, inserted into section 58 of the 1985 Act in the light of the decision in *R v Hillingdon London Borough Council, ex p. Puhlhofer* [1986] AC 484. The House of Lords had there held

that "accommodation" had to be capable of being "properly … described as accommodation within the ordinary meaning of that word in the English language", but that there was no requirement for it to be "appropriate" or "reasonable": see especially per Lord Brightman, at 517.

22. Section 202 of the 1996 Act confers on an applicant a right to request a review of various decisions of local housing authorities. Such decisions include, by section 202(1)(b) and (f), "any decision of a local housing authority as to what duty (if any) is owed to him under sections 189B to 193C and 195 (duties to persons found to be homeless or threatened with homelessness)" and "any decision of a local housing authority as to the suitability of accommodation offered to him in discharge of their duty under any of the provisions mentioned in paragraph (b) or (e)".

23. In *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, in a passage endorsed by the Supreme Court in *Poshteh v Kensington and Chelsea Royal London Borough Council* [2017] UKSC 36, [2017] AC 624, Lord Neuberger said this about review decisions at paragraph 50:

> "a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions."

On the other hand, "[i]t must be clear from the decision that proper consideration has been given to the relevant matters required by the Act and the Code" (*Nzolameso v Westminster City Council* [2015] UKSC 22, [2015] PTSR 549, at paragraph 32, per Baroness Hale, with whom Lords Clarke, Reed, Hughes and Toulson agreed).

24. By section 204 of the 1996 Act, a person dissatisfied with a review decision may appeal to the County Court on "any point of law arising from the decision or, as the case may be, the original decision". "Although the county court's jurisdiction is appellate, it is in substance the same as that of the High Court in judicial review" (*Runa Begum v Tower Hamlets London Borough Council* [2003] UKHL 5, [2003] 2 AC 430, at paragraph 7, per Lord Bingham). The grounds of challenge can include "procedural error, the extent of legal powers (vires), irrationality and inadequacy of reasons": see *James v Hertsmere Borough Council* [2020] EWCA Civ 489, [2020] 1 WLR 3606, at paragraph 31, per Peter Jackson LJ, and also *Abdikadir v Ealing London Borough Council* [2022] EWCA Civ 979, [2022] PTSR 1455, at paragraph 8, per Lewison LJ.

The present appeal

25. In excellent submissions, Mr Zia Nabi, who appeared for Mr Kyle with Mr David Cowan, argued that Mr Kyle could not have become "homeless intentionally" within the meaning of section 191(1) of the 1996 Act as 79 St Margaret Road had not been accommodation "which it would have been reasonable for him to continue to

occupy". In other words, Mr Kyle cannot have become homeless in consequence of his conduct at 79 St Margaret Road because he already was.

26. 79 St Margaret Road, Mr Nabi said, was analogous to the women's refuge in which, as had been held in *Aweys/Moran* (as I explain at paragraphs 29-30 below), Ms Moran had remained "homeless". If, Mr Nabi argued, the review officer had directed herself correctly on the basis of *Aweys/Moran*, she would have concluded that Mr Kyle had likewise still been "homeless". In the alternative, the review officer had failed to give adequate reasons for 79 St Margaret Road being accommodation which it would have been "reasonable for [Mr Kyle] to continue to occupy" when it had a no visitors policy, restricted smoking and was only available for a short period as a half-way house while other accommodation was being secured.

27. Mr Nabi confirmed at the beginning of his oral submissions that it was not contended that Mr Kyle had not had "accommodation" at 79 St Margaret Road, nor that it can never be "reasonable … to continue to occupy" a room in a hostel. Mr Kyle's position, Mr Nabi explained, was that the Council erred in finding Mr Kyle to have become "homeless intentionally" on the specific facts of this case. It is also to be noted that Mr Nabi accepted that, following the Council's acceptance of the "main housing duty" in its letter dated 2 March 2022, the accommodation at 79 St Margaret Road was provided in pursuance of that duty rather than under section 188 of the 1996 Act.

***Aweys/Moran* and its implications**

28. Before addressing *Aweys/Moran* itself, it is relevant to refer to an earlier case, *R v Brent London Borough Council, ex p. Awua* [1996] AC 55 ("*Awua*"). There, the appellant contended that she had not become homeless intentionally because the flat in the "'short life' house" in which she had been housed ("Flat B") had not been "accommodation … which it would have been reasonable for [her] to continue to occupy". The House of Lords rejected that suggestion. Lord Hoffmann, with whom Lords Goff, Jauncey, Slynn and Taylor agreed, said at 67-68:

> "If the accommodation is so bad that leaving for that reason would not make one intentionally homeless, then one is in law already homeless. But there is nothing in the Act to say that a local authority cannot take the view that a person can reasonably be expected to continue to occupy accommodation which is temporary. If, notwithstanding that the accommodation is physically suitable, the occupier's tenure is so precarious that he is likely to have to leave within 28 days, then he will be 'threatened with homelessness' within section 58(4). But I find it hard to imagine circumstances in which a person who is not threatened with homelessness cannot reasonably be expected to continue to occupy his accommodation simply because it is temporary.
>
> On the other hand, the extent to which the accommodation is physically suitable, so that it would be reasonable for a person to continue to occupy it, must be related to the time for which he has been there and is expected to stay. A local housing

> authority could take the view that a family like the Puhlhofers, put into a single cramped and squalid bedroom, can be expected to make do for a temporary period. On the other hand, there will come a time at which it is no longer reasonable to expect them to continue to occupy such accommodation. At this point they come back within the definition of homeless in section 58(1) [of the 1985 Act]."

On the facts, Flat B had been "accommodation available for [the appellant's] occupation and which it would have been reasonable for her to continue to occupy until such time as 10, Jellicoe House was ready for her": see 72. In the course of explaining why a rival interpretation of the legislation was unsatisfactory, Lord Hoffmann asked rhetorically at 71:

> "What happens if a person in temporary accommodation behaves so badly that he has to be asked to leave? Can he say that the duty under section 65(2) [i.e. the predecessor of section 193(2) of the 1996 Act] remains undischarged and that he is still entitled to be found permanent accommodation?"

29. The judgments in *Aweys/Moran* dealt with two appeals. One concerned Ms Moran, who had gone to a women's refuge because of domestic violence but then been evicted from it. Baroness Hale, with whom Lords Hope, Scott, Walker and Neuberger expressed agreement, said this in paragraph 29 about the basis on which Ms Moran had been accommodated in the refuge:

> "She signed a licence agreement which did not entitle her to any particular room but allowed her to stay there 'as long as you need it while you decide what to do'. Because it was a safe house for women and children escaping domestic violence, there were some special rules—such as not to bring any men into the refuge or the surrounding area, not to have any visitors or to give the address to anyone, and not to have contact with the neighbours or disclose the nature of the building. Breach of the rules could lead to withdrawal of the licence, as could failure to pay the accommodation charge, violence, threatening behaviour, harassment or any behaviour which caused nuisance or annoyance to residents, visitors or staff. All members of staff had authority to ask her to leave immediately."

30. Manchester City Council took the view that Ms Moran had become homeless intentionally, but the House of Lords decided otherwise on the basis that Ms Moran had remained homeless. "[I]n most cases," Baroness Hale said in paragraph 65, "a woman who has left her home because of domestic (or other) violence within it remains homeless even if she has found a temporary haven in a women's refuge."

31. In the other case before the House of Lords in *Aweys/Moran*, Birmingham City Council had left families in overcrowded accommodation despite accepting that the main housing duty was owed. The House of Lords held that it was "lawful for [the Council] to decide that an applicant is homeless because it is not reasonable for him to remain in his present accommodation indefinitely but to leave him there for the short

term", while adding that the accommodation might become unsuitable long before houses became available under Birmingham's allocation scheme: see paragraph 64.

32. Baroness Hale explained in paragraph 9 that both appeals raised an issue as to the meaning of the phrase "accommodation which it would be reasonable for him to continue to occupy" in section 175(3) of the 1996 Act. She went on in paragraph 9:

> "Does this mean that a person is only homeless if it would not be reasonable for him to stay where he is for another night? Or does it incorporate some element of looking to the future, so that a person may be homeless if it is not reasonable to expect him to stay where he is indefinitely or for the foreseeable future?"

Returning to the subject in paragraph 34, Baroness Hale posed the questions:

> "Does section 175(3) mean that a person is only homeless if she has accommodation which it is not reasonable for her to occupy another night? Or does it mean that she can be homeless if she has accommodation which it is not reasonable for her to continue to occupy for as long as she would occupy it if the local authority did not intervene?"

33. In paragraph 37, Baroness Hale noted that section 175(3) of the 1996 Act had been " introduced for a case like the Puhlhofers … , who could no doubt have been expected to stay a little while longer in their cramped accommodation, but not for the length of time that they would have to stay there if the local authority did not intervene". In the Birmingham case, Baroness Hale said in paragraph 38, an interpretation which looks to the future as well as to the present "has the advantage that the council can accept that a family is homeless even though they can actually get by where they are for a little while longer". In paragraph 42, Baroness Hale observed that "accommodation which may be unreasonable for a person to occupy for a long period may be reasonable for him to occupy for a short period" and continued:

> "Accordingly, there will be cases where an applicant occupies accommodation which (a) it would not be reasonable for him to continue to occupy on a relatively long-term basis, which he would have to do if the authority did not accept him as homeless, but (b) it would not be unreasonable to expect him to continue to occupy for a short period while the authority investigate his application and rights, and even thereafter while they look for accommodation to satisfy their continuing section 193 duty."

In paragraph 46, Baroness Hale explained that:

> "it is proper for a local authority to decide that it would not be reasonable for a person to continue to occupy the accommodation which is available to him or her, even if it is reasonable for that person to occupy it for a little while longer, if it would not be reasonable for the person to continue to

> occupy the accommodation for as long as he or she will have to do so unless the authority take action".

34. With regard to women's refuges, Baroness Hale noted in paragraph 43 that a refuge "is a safe haven in which to find peace and support", but "is not a place to live" and has "rules which are necessary for the protection of residents but make it impossible to live a normal family life": it is "a place to gather one's strength and one's thoughts and to decide what to do with one's life". Women in a refuge, Baroness Hale said in paragraph 52, "will be homeless while they are in the refuge and remain homeless when they leave": a woman "who loses her place there, even because of her own conduct, does not become homeless intentionally, because it would not have been reasonable for her to continue to occupy the refuge indefinitely". As for Ms Moran, "[a]lthough there may be circumstances in which it is reasonable to continue to occupy a place in a refuge indefinitely, there is nothing to suggest that it was so in this case": paragraph 65.

35. In the course of her judgment, Baroness Hale mentioned *Awua* a number of times: in paragraphs 14, 41, 55 and 56. While she did not comment on the decision in any detail, she did not voice any criticism of it.

36. One of the points that emerges from *Aweys/Moran* is that reasonableness and suitability are distinct concepts. Accommodation can be "suitable" even though it would not be "reasonable for [a person] to continue to occupy" it. What matters in the context of the present case, however, is not as such the relationship between reasonableness and suitability but, more specifically, the light that *Aweys/Moran* casts on the meaning of "reasonable … to continue to occupy".

37. I touched on one aspect of this in paragraph 47 of my judgment in *R (Ahamed) v Haringey London Borough Council* [2023] EWCA Civ 975 ("*Ahamed*"), with which Sir Geoffrey Vos MR and Underhill LJ agreed. I said there:

> "[Counsel for the appellant] pointed out that Baroness Hale used the word 'indefinitely' a number of times in [*Aweys/Moran*]: see paragraphs 9, 47, 48, 52, 64, 65 and 66. There is no question, however, of Baroness Hale having meant that accommodation had to be available 'indefinitely' for it to be reasonable for a person to continue to occupy it. Her concern, reflecting section 175(3) of the 1996 Act, was with whether a person could be expected to *put up with* accommodation indefinitely (or 'for so long as he or she will have to do so unless the authority take action', to quote from paragraph 46), not with ensuring that the person would be able to *remain* there indefinitely. She was not suggesting that, for it to be reasonable for a person to continue to occupy accommodation, the person had to be able to stay there indefinitely, or even for any particular period of time."

38. An example might bring out the point. Suppose that I had been the tenant of a delightful flat in an excellent location at a low rent for an extended period, but the tenancy was now to expire in three months. Notwithstanding the fact that I would not be able to stay in the flat "indefinitely", or any longer than three months, there could

be no question of my being deemed to be homeless already. If, later, it appeared "likely that [I would] become homeless within 56 days" as my tenancy ended, I would at that stage be "threatened with homelessness" under section 175(4) of the 1996 Act.

39. Nor, I think, did Baroness Hale mean that, for it to be "reasonable for [a person] to continue to occupy" accommodation, it must be such that the person could be expected to *put up with* it for ever. The word "indefinitely" can, of course, signify "without a limitation as to time". While, however, "indefinitely" featured at a number of places in Baroness Hale's judgment, she also spoke of "for the foreseeable future" (paragraph 9), "for as long as she would occupy it if the local authority did not intervene" (paragraph 34), "the length of time that they would have to stay there if the local authority did not intervene" (paragraph 37), "for a long period" (paragraph 42), "on a relatively long-term basis, which he would have to do if the authority did not accept him as homeless" (paragraph 42) and "for as long as he or she will have to do so unless the authority take action" (paragraph 46). Baroness Hale contrasted such periods with "another night" (paragraphs 9 and 34), "a little while longer" (paragraphs 37, 38 and 46), "a short period" (paragraph 42), "a short period while the authority investigate his application and rights, and even thereafter while they look for accommodation to satisfy their continuing section 193 duty" (paragraph 42) and "a little while" (paragraph 48).

40. That accommodation need not be such as could be tolerated for ever is also indicated by *Awua*. It can be seen from the passages from his judgment quoted in paragraph 28 above that Lord Hoffmann considered that there could be circumstances in which it would at present be "reasonable for [a family] to continue to occupy" accommodation even though there would "come a time at which it is no longer reasonable to expect them to continue to occupy such accommodation". Had it been the case that accommodation must be such as could reasonably be endured permanently, the fact that such a family could be "expected to make do for a temporary period" would not have sufficed to render the accommodation such that it would be reasonable to continue to occupy it.

41. It is also noteworthy that, in *Awua*, Lord Hoffmann primarily attached significance to physical suitability, finding it hard to imagine circumstances in which a person "cannot reasonably be expected to continue to occupy his accommodation simply because it is temporary". On the other hand, there is of course no question of the potentially relevant matters being limited to the physical characteristics of accommodation. *Aweys/Moran* provides an illustration of that. The licence agreement which Ms Moran signed did not entitle her to any particular room (see *Aweys/Moran* at paragraph 29), but Baroness Hale also appears to have attached importance to the refuge's "special rules" (such as "not to bring any men into the refuge or the surrounding area, not to have any visitors or to give the address to anyone, and not to have contact with the neighbours or disclose the nature of the building"), which were "necessary for the protection of residents but [made] it impossible to live a normal family life": see *Aweys/Moran* at paragraph 43. The overall result was that the refuge was a "safe" or "temporary" "haven", but not "a place to live" or one that it was "reasonable for [Ms Moran] to continue to occupy".

42. To draw some threads together, it seems to me that:

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 would be "reasonable … to continue to occupy" for ever. In general at least, section 175(3) of the 1996 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 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.

43. For completeness, I should add that a person remains "homeless" when in accommodation secured under section 188 of the 1996 Act. In *Aweys/Moran*, Baroness Hale explained in paragraph 54 that it was "no longer suggested that a person who has been provided with interim accommodation under section 188(1) is no longer 'homeless' for the purpose of section 175(1)". Likewise, in *R (N) v Lewisham London Borough Council* [2014] UKSC 62, [2015] AC 1259, Lord Hodge (with whom Lords Wilson, Clarke and Toulson agreed) noted that "a person who is given temporary accommodation under Part VII of the 1996 Act does not cease to be homeless" and, more specifically, that "under the 1996 Act a person remains homeless while he or she occupies temporary accommodation provided under sections 188(3), 190(2), 200(1) or 204(4) of the 1996 Act so long as the occupation is properly referable to the authority's performance or exercise of those statutory duties or powers": see paragraphs 33 and 45. This, however, is because to hold otherwise "would defeat the whole scheme of the Act" rather than as a matter of interpretation of the words "reasonable … to continue to occupy": see Baroness Hale's judgment at paragraph 54 and Lord Hodge's at paragraph 33. It is also to be noted that a local housing authority which had secured accommodation for a person in accordance with section 188 might not necessarily be bound to secure alternative accommodation in circumstances in which the first accommodation had been lost as result of the person's own conduct: compare *R (Brooks) v Islington London Borough Council* [2015] EWHC 2657 (Admin), [2016] PTSR 389.

The present case

44. As the Judge explained, 79 St Margaret Road could be called a "halfway house" "intended to provide support for recovering drug addicts". Mr Kyle had his own bedroom there and the use of shared kitchen and other facilities. There is no suggestion that the accommodation was unaffordable or deficient in its physical characteristics (too small, say) and, by the time the provider of the accommodation asked for his eviction, Mr Kyle had lived there for more than seven months. Once, moreover, the Council had accepted in its letter dated 2 March 2022 that it owed the

"main housing duty", Mr Kyle could have expected to receive an offer of alternative accommodation in the reasonably near future.

45. In those circumstances, common sense suggests that the review officer was entitled to conclude that, when at 79 St Margaret Road, Mr Kyle had accommodation which it was "reasonable for him to continue to occupy". As I have indicated, Mr Nabi argued that 79 St Margaret Road was analogous to the refuge to which Ms Moran had gone and, hence, that Mr Kyle should similarly have been seen as "homeless". However, it seems to me, as it also did to the Judge, that Ms Moran's refuge was significantly different from 79 St Margaret Road. Refuges such as that to which Ms Moran had resort have a particular character as "temporary" "safe haven[s]" and are not "place[s] to live". Not only did Ms Moran have no right to any specific room, but, for very understandable reasons, the refuge had "special rules" which had no parallel at 79 St Margaret Road. The refuge forbade visitors, and 79 St Margaret Road had a prohibition on at least overnight guests. Ms Moran was, though, also barred from bringing any men into "the surrounding area", from giving the address to anyone, from having any contact with the neighbours and from disclosing the nature of the building. There was nothing comparable at 79 St Margaret Road.

46. Mr Nabi further submitted that the review officer's decision was flawed because she had failed to explain why she considered it "reasonable for [Mr Kyle] to continue to occupy" 79 St Margaret Road when "it had a no visitors policy, restricted smoking and was only available for a short period as a half-way house whilst other accommodation was secured". However, it had not been suggested to the review officer that these matters meant that it was not "reasonable for [Mr Kyle] to continue to occupy" 79 St Margaret Road. It is true that the Law Centre had referred to "no visitors" and "no smoking" rules in its response to the review officer's "minded to" letter, but it did so in the context of a contention that earlier warnings should be disregarded. The basis on which it was said that it was not "reasonable … to continue to occupy" 79 St Margaret Road was bias on the part of the provider of the accommodation, and the review officer addressed (and rejected) that point.

47. In *Cramp v Hastings Borough Council* [2005] HLR 48 ("*Cramp*"), Brooke LJ, with whom Arden and Longmore LJJ agreed, said in paragraph 14:

> "[T]he review procedure gives the applicant and/or another person on his behalf the opportunity of making representations about the elements of the original decision that dissatisfy them, and of course they may suggest that further inquiries ought to have been made on particular aspects of the case …. Given the full-scale nature of the review, a court whose powers are limited to considering points of law should now be even more hesitant than the High Court was encouraged to be at the time of [*R v Kensington and Chelsea London Borough Council, ex p Bayani* (1990) 22 HLR 406] if the appellant's ground of appeal relates to a matter which the reviewing officer was never invited to consider, and which was not an obvious matter he should have considered."

48. That the matters that a review decision must address are to an extent determined by what has been said in the course of the review can also be seen from *Alibkhiet v Brent*

London Borough Council [2020] EWCA Civ 1522, [2021] PTSR 477 ("*Alibkhiet*"). It had there been argued that it was not clear from a review decision relating to a Ms Adam why the local housing authority had decided to make an offer of accommodation at the particular time that it did (see paragraph 87). Lewison LJ responded:

> "88. The answer to [counsel's] first point is that the question he now posits was not squarely raised during the course of the review. The focus of the representations in support of the review was on suitability; not on impugning the timing of the decision to make the offer. The closest that Ms Adam's solicitors came to raising it was to say:
>
> > '[Westminster] has failed to explain why a move from the available temporary accommodation to the current accommodation was justified when taking into account the children's best interest.'
>
> 89. But this was in the context of the children's needs; and the review decision dealt with that at length. As Lord Brown made clear in [*South Buckinghamshire District Council v Porter* [2004] UKHL 33, [2004] 1 WLR 1953], reasons need only address the main issues. In my judgment the reviewing officer was simply not required to explain why [the housing authority] had chosen to make the offer when it did."

49. Mr Nabi pointed to Brooke LJ's reference in *Cramp* to "an obvious matter [the review officer] should have considered" and argued that the fact that 79 St Margaret Road "had a no visitors policy, restricted smoking and was only available for a short period as a half-way house whilst other accommodation was secured" was of obvious significance to whether it was "reasonable for [Mr Kyle] to continue to occupy" his accommodation there. In my view, however, the present case is in this respect comparable to *Alibkhiet*. Here, as in *Alibkhiet*, the matters relied on were not squarely raised during the course of the review, and it was not incumbent on the review officer to address in her decision every potential sub-issue, regardless of whether the Law Centre had referred to it. The review officer said in terms that she had been provided with "no evidence as to why the property was not … reasonable to occupy", and she dealt specifically with the question of bias. On top of that, I find it hard to see how the "no visitors" and "no smoking" rules (whatever their scope, which is not clear) or 79 St Margaret Road's role as "as a half-way house whilst other accommodation was secured" could have detracted from the reasonableness of continued occupation. To the contrary, the prospect of Mr Kyle being re-housed relatively soon will, if anything, have tended to confirm that it was "reasonable for [Mr Kyle] to continue to occupy" it: Mr Kyle was not going to have to put up with any deficiencies in the accommodation for all that long. It is to be remembered, too, that a "benevolent approach", and not a "nit-picking" one, is to be adopted when considering review decisions: see paragraph 23 above.

50. In all the circumstances, it seems to me that the review officer was amply entitled to conclude that it had been "reasonable for [Mr Kyle] to continue to occupy" 79 St Margaret Road and, hence, that he had become homeless intentionally. I do not

consider that *Aweys/Moran* dictated a different conclusion, nor that the review officer's decision can be impugned for failure to give adequate reasons.

Conclusion

51. I would dismiss the appeal.

Lord Justice Baker:

52. I agree.

Lord Justice Underhill, Vice-President of the Court of Appeal (Civil Division)

53. I also agree.