Neutral Citation Number: [2025] EWCA Civ 22

Case No: CA-2023-002408

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
His Honour Judge Saunders
Claim No. K40CL070

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/01/2025

Before:

LORD JUSTICE NEWEY
LORD JUSTICE NUGEE
and
MR JUSTICE COBB

- -

Between:

AREF HUSSAINI	**Appellant**
- and -	
ISLINGTON LONDON BOROUGH COUNCIL	**Respondent**

- -
- -

Daniel Clarke (instructed by **Edwards Duthie Shamash**) for the **Appellant**
Catherine Rowlands (instructed by **Islington London Borough Council**) for the **Respondent**

Hearing date: 4 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Newey:

1. The question raised by this appeal is whether the appellant, Mr Aref Hussaini, has a "local connection" within the meaning of section 199 of the Housing Act 1996 ("the 1996 Act") with the district of the respondent, Islington London Borough Council ("the Council").

2. Mr Hussaini, who is now aged 26, is of Afghan origin. He has explained that his family suffered persecution both in Afghanistan and in Pakistan, to which it had fled. When Mr Hussaini was about 15 years old, he left Pakistan and he eventually arrived in the United Kingdom on 6 January 2020 and claimed asylum. In the intervening years, he spent time in Iran, Turkey and Greece. While living in a refugee camp in Greece, he met Dr Elena Isayev, a university lecturer who lives just outside the boundaries of the borough of Islington ("Islington").

3. Following his arrival in the United Kingdom, Mr Hussaini was given asylum support accommodation, which, from September 2021, was in the borough of Barking and Dagenham. In late 2020, Mr Hussaini was referred to the Baobab Centre for Young Survivors in Exile ("the Baobab Centre"), which is in Islington. As its name suggests, the Baobab Centre offers support to young survivors of human rights abuses seeking refuge in the United Kingdom. Mr Hussaini came to attend the Baobab Centre at least three times a week and has received therapy there for complex post-traumatic stress disorder.

4. Having been granted leave to remain in the United Kingdom, Mr Hussaini was required to leave his asylum support accommodation by 17 February 2022. On 28 January 2022, Mr Hussaini applied to the Council for assistance. The Council provided Mr Hussaini with temporary accommodation in the borough of Haringey, but in a letter dated 9 March 2022 the Council informed Mr Hussaini that, while it had decided that he was homeless and eligible for assistance, it had also decided that he had no "local connection" with Islington and so that his application should be referred to Barking and Dagenham London Borough Council ("Barking and Dagenham Council"), with the district of which he was considered to have a "local connection".

5. Writing to the Council on 16 March 2022, Mr Hussaini's solicitors, Edwards Duthie Shamash, disputed that the conditions for a referral were met. They argued that Mr Hussaini had a "local connection" with Islington for "special reasons" as he had "a real connection … by virtue of his support connection and the depth of the connection and dependency he has on his support network, such that it constitutes a specialist support service that he cannot access in any other borough". Edwards Duthie Shamash cited paragraph 10.11 of the *Homelessness Code of Guidance for Local Authorities* ("the Code") for the proposition that "special circumstances" "might include the need to be near special medical or support services which are available only in a particular district". They explained that attendance at the Baobab Centre was "central to Mr Hussaini's wellbeing, development and settlement into the UK" and that there was no equivalent service elsewhere. They also referred to Mr Hussaini's friendship with Dr Isayev. In this connection, Edwards Duthie Shamash enclosed a letter from Dr Isayev in which said that she was "writing in support of the absolute need for Aref Hussaini to have accommodation in the area of Highbury Islington or wider Finsbury Park and surrounding neighbourhoods, rather than being substantially far away from these areas". As well as referring to the Baobab Centre, Dr Isayev

explained that she and Mr Hussaini had "become close friends" and that it was "not an exaggeration that when [Mr Hussaini] is with us it is as a member of our family".

6. On 16 May 2022, the Council repeated that it had decided to refer Mr Hussaini's application to Barking and Dagenham Council and, on 22 June, the Council informed Mr Hussaini that Barking and Dagenham Council had accepted the referral. However, Edwards Duthie Shamash requested a review, in the course of which they made representations along the same lines as they had before. They commented that "[l]iving in the vicinity of the Baobab Centre and his support network has provided Mr Hussaini with the settled life he describes wishing for" and "[s]taying close to this support system is essential for his continued progress". A further letter from Dr Isayev was submitted, as was a detailed letter from a consultant psychotherapist with the Baobab Centre which concluded that Mr Hussaini "ideally needs to be based and housed in Islington where his one close support and friend lives and where he has easy access to the Baobab Centre and his friends". Mr Hussaini having by this point begun to work several hours a week for a charity called "We Belong" in Islington, Edwards Duthie Shamash relied on that, too.

7. In a letter dated 29 November 2022, the review officer, Ms Lisa Newman, told Mr Hussaini that she was confirming the decision that he did not have a "local connection" with Islington. After, however, Edwards Duthie Shamash had indicated an intention to appeal, the Council withdrew that decision. Thereafter, Edwards Duthie Shamash made representations in which they argued that the Council had misdirected itself "by focusing on whether it is necessary for Mr Hussaini to live in the district to access the Baobab Centre" rather than "whether he has a local connection to the borough because of his need to receive treatment from the centre". "[T]aken individually and/or collectively", Edwards Duthie Shamash said, Mr Hussaini's "involvement with the Baobab Centre, his relationship with Elena Isayev and his employment at We Belong … create a local connection to the borough".

8. In a letter dated 15 March 2023 ("the Review Decision"), however, Ms Newman again confirmed the decision to refer Mr Hussaini's application. She stated in paragraph 4:

> "I do not accept that you have a local connection to the London Borough of Islington either by way of family, residence or employment. I have considered whether you may have a local connection by way of special circumstance, however I am satisfied that this is not the case."

9. Ms Newman addressed Mr Hussaini's work for "We Belong" and his friendship with Dr Isayev in, respectively, paragraphs 6 and 7 of the Review Decision. With regard to the former, Ms Newman said that she was "satisfied that a contractor who only works 3.5 hours a week in our district, and sometimes not even that, does not have a connection to the district in real terms" and, hence, that she was "satisfied that [Mr Hussaini does] not have a local connection to Islington by way of employment". So far as Dr Isayev was concerned, Ms Newman said that Dr Isayev could not be considered a family member and that, while she accepted that Mr Hussaini had frequent contact with Dr Isayev, "this is not dependent on [his] location".

10. As regards "special circumstance", Ms Newman explained in paragraph 9 of the Review Decision:

> "a) I have considered the possibility that you have a local connection with this authority by way of a 'special circumstance.'
>
> b) I have considered the representations on file regarding your support in Islington. I have further considered that the Code of Guidance states that special circumstances might include the need to be near special medical or support services which are available only in a particular district.
>
> c) Your solicitors state that your involvement with the Baobab Centre equates to specialist support as envisaged within the Code of Guidance.
>
> d) The Baobab Centre is based in Islington and its services are provided within the borough. However, access to the Baobab Centre and its services is not dependent on living in or near the borough.
>
> e) I am further satisfied that the entirety of your engagement with the Centre has been whilst resident outside of Islington.
>
> f) I am therefore satisfied that there is no need for you to be near the Baobab Centre to access their services.
>
> g) I am further satisfied, that as per the Code of Guidance, there is no evidence of any 'need to be near special medical or support services which are available only in a particular district.'
>
> h) Your solicitors state that we have misdirected ourselves and should consider whether you have a local connection to the borough because of your need to receive treatment from the centre.
>
> i) As above, I am satisfied that I have correctly considered the Code of Guidance in this regard and the evidence on file shows that there is no need to be near support from the Baobab Centre because it is only available in a particular district.
>
> …
>
> o) Your solicitors state that your online engagement throughout the pandemic was far from appropriate for therapeutic services and that your experience of therapy improved greatly when you were able to access face to face sessions.

p) Whilst this may be the case, it does not demonstrate a need to be near the Centre or resident in Islington; you have never been so whilst accessing these services.

…

z) The evidence on file does not show that you are unable to receive your current treatment, support or engage in your studies if residing outside if Islington; the opposite is confirmed. I am therefore satisfied that there is no evidence of 'need' to reside in Islington to be near a specialist support service or other reason.

aa) Whilst I am sympathetic to your wish to live closer, I am not satisfied that this a need and can find no special circumstances that require you to live in the borough.

bb) Considering all the information provided, I am not satisfied that you have a local connection by way of special circumstance.

cc) Taking the above information into account, I am therefore satisfied that the conditions for referral are met under s198(2)(a)."

11. Ms Newman concluded in paragraph 13 of the Review Decision:

"a) I am aware of your previous links with Islington; however, as above, I do not accept that they provide a local connection with the borough, in real terms.

b) I have considered the Code of Guidance at 10.14 which states *'The overriding consideration should always be whether the applicant has a connection 'in real terms' with an area and the housing authority must consider the applicant's individual circumstances, particularly any exceptional circumstances, before reaching a decision.*'

c) I have considered whether your individual circumstances mean that you have a connection in 'real terms' and for the reasons provided above, even when considering your circumstances as a whole, I do not find this to be the case.

d) Having considered special circumstances, I am satisfied that there is no compelling reason that you reside in Islington rather than Barking and Dagenham or Haringey, where you have proven local connections.

e) I am further satisfied, having considered your solicitor's representations, that you have a local connection to Haringey by way of residence, as you have been resident in temporary

> accommodation in Haringey for at least 6 out of the past 12 months.
>
> f) I have therefore upheld the decision that you do not have a local connection to the London Borough of Islington but have varied the decision to refer your application under s198 Housing Act 1996, so the referral will now be to the London Borough of Haringey rather than to the London Borough of Dagenham and Redbridge."

12. Mr Hussaini appealed to the County Court, but without success. In a judgment dated 14 November 2023, His Honour Judge Saunders dismissed the appeal.

13. Mr Hussaini now challenges Judge Saunders' decision in this Court. Our focus has, however, to be on the Review Decision rather than Judge Saunders' judgment. As Neuberger LJ noted in *Danesh v Kensington and Chelsea Royal London Borough Council* [2006] EWCA Civ 1404, [2007] 1 WLR 69, at paragraph 30, on a second appeal such as this one "the primary question is normally not whether the tribunal deciding the first appeal was right but whether the original decision was right, or at least one the decider was entitled to reach".

Legal framework

14. Part VII of the 1996 Act, which is concerned with homelessness and comprises sections 175-218, imposes a number of duties on local housing authorities. Section 184 obliges an authority which has reason to believe that a person who has applied for assistance may be homeless or threatened with homelessness to make such inquiries as are necessary to satisfy itself "(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". As its heading indicates, section 189B provides for an "Initial duty owed to all eligible persons who are homeless". It applies where an authority is satisfied that an applicant is homeless and eligible for assistance. In such a case, the authority must take reasonable steps to secure that "suitable" accommodation becomes available unless it refers the application to another authority. The "main housing duty" arises under section 193. Where an authority concludes that an applicant is homeless, is eligible for assistance, did not become homeless intentionally and has a priority need, it is required by section 193(2) to "secure that accommodation is available for occupation by the applicant" unless, once again, it refers the application to another authority. Such accommodation must again be "suitable": see section 206(1).

15. Section 198 of the 1996 Act explains when a local housing authority can refer a case to another authority. So far as relevant, it states:

> "(A1) If the local housing authority would be subject to the duty under section 189B (initial duty owed to all eligible persons who are homeless) but consider that the conditions are met for referral of the case to another local housing authority in England, they may notify that other authority of their opinion.

> (1) If the local housing authority would be subject to the duty under section 193 (accommodation for those with priority need who are not homeless intentionally) but consider that the conditions are met for referral of the case to another local housing authority, they may notify that other authority of their opinion.
>
> (2) The conditions for referral of the case to another authority are met if—
>
> (a) neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom his application was made,
>
> (b) the applicant or a person who might reasonably be expected to reside with him has a local connection with the district of that other authority, and
>
> (c) neither the applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic abuse in that other district.
>
> …
>
> (5) The question whether the conditions for referral of a case which does not involve a referral to a local housing authority in Wales are satisfied shall be decided by agreement between the notifying authority and the notified authority or, in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order.
>
> **…**
>
> (6) An order may direct that the arrangements shall be—
>
> (a) those agreed by any relevant authorities or associations of relevant authorities, or
>
> (b) in default of such agreement, such arrangements as appear to the Secretary of State … to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate ….”

16. Section 199 of the 1996 Act deals with when a “local connection” exists. So far as material, it reads:

> "(1) A person has a local connection with the district of a local housing authority if he has a connection with it—
>
> (a) because he is, or in the past was, normally resident there, and that residence is or was of his own choice,
>
> (b) because he is employed there,
>
> (c) because of family associations, or
>
> (d) because of special circumstances.
>
> …
>
> (6) A person has a local connection with the district of a local housing authority if he was (at any time) provided with accommodation in that district under section 95 of the Immigration and Asylum Act 1999 (support for asylum seekers) …."

17. A local housing authority which notifies another authority that it considers the conditions for referral to be met may continue to owe an applicant a duty while a decision on the point is made. Thus, section 199A of the 1996 Act provides that, if an authority making a referral under section 198(A1) has reason to believe that the applicant may have a priority need, it "must secure that accommodation is available for occupation by the applicant until the applicant is notified of the decision as to whether the conditions for referral of the applicant's case are met". Similarly, by section 200(1) an authority making a referral under section 198(1) must "secure that accommodation is available for occupation by the applicant until he is notified of the decision whether the conditions for referral of his case are met". If in a case of that kind it is decided that the conditions for referral are not met, "the notifying authority are subject to the duty under section 193 (the main housing duty)": see section 200(3). If, in contrast, it is decided that the conditions for referral are met, the "main housing duty" will pass to the notified authority: see section 200(4).

18. Section 202(1) of the 1996 Act gives an applicant the right to request a review of, among other things:

> "(c) any decision of a local housing authority to notify another authority under section 198(1) (referral of cases),
>
> (d) any decision under section 198(5) whether the conditions are met for the referral of his case,
>
> (e) any decision under section 200(3) or (4) (decision as to duty owed to applicant whose case is considered for referral or referred)".

19. In *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413 ("*Holmes-Moorhouse*"), 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).

20. 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.

21. Section 182 of the 1996 Act requires local housing authorities to have regard to guidance issued by the Secretary of State. The Code, issued by the Secretary of State, addresses "local connection" in chapter 10. Referring to section 199(1)(d) of the 1996 Act, the Code states in paragraph 10.11 that "special circumstances" "might include the need to be near special medical or support services which are available only in a particular district". Paragraph 10.14 goes on to explain:

> "The overriding consideration should always be whether the applicant has a connection 'in real terms' with an area and the housing authority must consider the applicant's individual circumstances, particularly any exceptional circumstances, before reaching a decision."

22. Local authorities have agreed guidelines on procedures for referral: "Procedures for Referrals of Homeless Applicants to Another Local Authority: Guidelines for Local Authorities on Procedures for Referral" ("the Guidelines"). While stressing in paragraph 1.4 that the Guidelines are "without prejudice to the duty of local authorities to treat each case on its merits and to take into account existing and future case law", paragraph 4.3 comments on when a "local connection" may be established. Sub-paragraphs (i), (ii) and (iii) consider when residence, employment and family

associations may give rise to a "local connection" with a district. This is said in sub-paragraph (iv) about when "special circumstances" establish a "local connection":

> "This may be particularly relevant where the applicant has been in prison or hospital and his or her circumstances do not conform to the criteria in (i) – (iii) above. Where, for example, an applicant seeks to return to a district where he or she was brought up or lived for a considerable length of time in the past, there may be grounds for considering that the applicant has a local connection with that district because of special circumstances. An authority must exercise its discretion when considering whether special circumstances apply."

23. Section 199(1) of the 1996 Act is in similar terms to section 18(1) of the Housing (Homeless Persons) Act 1977. The House of Lords considered the meaning of that latter provision in *Eastleigh Borough Council v Betts* [1983] 2 AC 613. Lord Brightman, with whom Lords Fraser, Wilberforce, Edmund-Davies and Roskill agreed, said at 626:

> "What section 18 (1) does is to say that a reference to a person having a local connection with an area is a reference to his having such a connection *because* he is, or in the past was normally resident there, or because he is employed there, or because he has family associations with that area or because there are special circumstances. Section 18 specifies those factors alone upon which the local connection is to be founded. A local connection not founded upon any of the four stated factors is irrelevant. The fundamental concept of section 5 (1) (a) [which corresponded to section 198(2) of the 1996 Act] is local connection, not any local connection, but a local connection having any of the origins described in section 18 (1). The opinion which has to be formed by a notifying housing authority in a residence case is not whether the homeless person is now or was in the past normally resident in the area of the notifying authority, but whether the applicant has now a local connection with either area based upon the fact that he is now or was in the past normally resident in that area."

Lord Brightman went on at 627:

> "The fundamental question is the existence of a 'local connection.' In construing section 5 it is only to be expected that the emphasis falls on 'local connection,' and not on past or present residence or current employment, etc. The Act is one which enables a homeless person in certain circumstances to jump over the heads of all other persons on a housing authority's waiting list, to jump the queue. One would not expect any just legislation to permit this to be done unless the applicant has in a real sense a local connection with the area in question. I accept that 'residence' may be changed in a day, and that in appropriate circumstances a single day's residence may

> be enough to enable a person to say that he was normally resident in the area in which he arrived only yesterday. But 'local connection' means far more than that. It must be built up and established; by a period of residence; or by a period of employment; or by family associations which have endured in the area; or by other special circumstances which spell out a local connection in real terms."

The appeal

24. The grounds of appeal advanced by Mr Hussaini are to the following effect:

    i) The Council misdirected itself by focusing on whether it was necessary for Mr Hussaini to reside within its district in order to access the Baobab Centre rather than whether he had a "local connection" with its district because of it;

    ii) The Council failed to consider whether his work at "We Belong" and/or his relationship with Dr Isayev, taken in conjunction with his involvement with the Baobab Centre, meant that he had a "local connection" with Islington or, alternatively, failed to give reasons for finding that they did not;

    iii) The Council's conclusion that Mr Hussaini did not have a "local connection" with Islington because of "special circumstances" was unreasonable.

25. Mr Daniel Clarke, who appeared for Mr Hussaini, wisely concentrated on the first of these grounds in his submissions. He observed that it was that ground of appeal which raised the point of real legal substance and he recognised that he was unlikely to succeed with the third ground of appeal unless he also won on the first.

The first ground of appeal

26. Mr Hussaini's case on the first ground of appeal is essentially that Ms Newman erroneously approached matters on the basis that, for him to have a "local connection" with Islington, he needed to live there. That, Mr Clarke argued, involved a misdirection. Ms Newman, he said, was not entitled to impose any threshold requirement of "need" and, more specifically, was not entitled to make a need to live within the district such a requirement. In contrast, Ms Catherine Rowlands, who appeared for the Council, argued that it would have been proper for Ms Newman to adopt such a test but that she had not in fact done so.

27. Two questions therefore arise in this context. First, was Ms Newman entitled to impose a requirement of needing to live within the Council's district? Secondly, did Ms Newman impose such a requirement?

28. I shall take these points in turn.

Was Ms Newman entitled to impose a requirement of needing to live within the Council's district?

29. Mr Clarke relied in support of his submissions on *Ealing London Borough Council v Surdonja*, *Mohamed v Hammersmith and Fulham London Borough Council* [2001]

QB 97 ("*Mohamed* (CA)") and *Mohamed v Hammersmith and Fulham London Borough Council* [2001] UKHL 57, [2002] 1 AC 547 ("*Mohamed* (HL)").

30. In *Mohamed* (CA), the Court of Appeal heard two appeals raising "local connection" issues together. One of them concerned a Mr Mohamed, a refugee who was living in Hammersmith but whose wife and children, who had arrived in the United Kingdom earlier, were living in Ealing. When Mr Mohamed applied to Hammersmith London Borough Council for assistance with accommodation, it concluded that neither he nor his wife had a "local connection" with Hammersmith and referred the application to Ealing London Borough Council. The decision was confirmed on a review and an appeal to the County Court was dismissed. Mr Mohamed was, however, successful in the Court of Appeal.

31. Having quoted section 199(1) of the 1996 Act, Henry LJ, with whom Potter LJ agreed, said in paragraph 10:

> "Those listed causes of a local connection emphasise matters that go to having a place in the community: choice, employment, the continuity of support that family associations can give, and all special circumstances which can contribute to such a socially beneficial 'local connection'."

32. Turning to the point most directly relevant to the present appeal, Henry LJ said:

> "56 Secondly, complaint is made that the judge glossed the statute, and in so doing imposed too stringent a test on the establishment of a 'local connection'. On review, the LHA's reviewing officer said:
>
> > 'I have also considered the cumulative effect of all of these various factors, but I am not satisfied that the household's stated need to live in this borough *is an essential compassionate, social or support need* ... sufficient to have given rise to a local connection with this authority in real terms.' (Emphasis added.)
>
> 57 The applicant's case is that this is a misdirection. Proving a local connection is one thing: proving that you have an essential, compassionate social or support need is quite another. Forensic archaeology suggests that the source of this phrase is its use by Hammersmith in their 1996 decision letter in *R v Hammersmith and Fulham London Borough Council, Ex p Avdic*, 30 HLR 1 where it was quoted, without comment, at first instance and not referred to at all on appeal. In my judgment that is a clear misdirection in law. In so finding, I have gone back to Lord Brightman's speech in *R v Eastleigh Borough Council, Ex p Betts* [1983] 2 AC 613. I have already made the point that the queue for permanent housing is no

> longer 'jumped' as a result of section 193, and have already accepted that the local connection should be real and not illusory, and where real, should be rewarded. There is no 'purposive' construction case for requiring that the applicant show an essential compassionate, social or support need to live in the LHA's district. That is to put the test for a local connection too high."

33. The House of Lords affirmed the Court of Appeal's decision in *Mohamed* (HL). Lord Slynn, with whom Lords Steyn, Hoffmann, Hutton and Hobhouse agreed, said:

> "27. As already shown the reviewing officer took into account in his letter whether there had been an essential compassionate, social or support need. The Court of Appeal held that this was a clear misdirection in law. Requiring that the applicant must show an essential compassionate, social or support need to live in the district was putting the test for local connection too high.
>
> 28. The appellant authority contends that this was not a separate test but an overall review of all the other matters which had been considered as to whether local connection by reference to special circumstances had been shown and that accordingly there was no misdirection. There is some force in this but it seems to me that the reviewing officer was using this additional test as part of his consideration as to whether there was a local connection by reason of special circumstances. On that basis as I understand it the appellant authority accepts that there was a misdirection as the Court of Appeal held. I agree with the Court of Appeal on this matter."

34. For her part, Ms Rowlands cited a number of cases in which decisions that applicants did not have a "local connection" were upheld: *R v Vale of White Horse District Council, ex p Smith and Hay* (1984) 17 HLR 160 ("*White Horse*"), *R v Westminster City Council, ex p Benniche* (1996) 29 HLR 230 ("*Benniche*"), *R v Hammersmith and Fulham London Borough Council, ex p Avdic* (1996) 30 HLR 1 ("*Avdic*") and *Ozbek v Ipswich BC* [2006] HLR 777 ("*Ozbek*"). In the earliest of these, *White Horse*, Woolf J held that a review officer had been entitled to come to the conclusion that the applicants' involvement with a church within the district of the local housing authority did not, as a matter of fact, amount to "special circumstances" giving rise to a "local connection".

35. In *Benniche*, the applicant was a devout Muslim who attended the Central London Mosque in Westminster more than once a day, but Westminster City Council decided that he had no "local connection" with its district, on the basis that the applicant could travel from Elmbridge by public transport. Schiemann LJ, with whom Nourse LJ and Sir Ralph Gibson agreed, said at 235 that "the authority was manifestly entitled to

take the view that there was in the present case not a local connection with Westminster because of special circumstances, in the context in which that phrase is used in Part V of the Housing Act 1985". Earlier in his judgment, at 233, he had said:

> "The body which has the primary responsibility for coming to a conclusion as to whether a local connection has been established is the local authority to whom application is made. The statute clearly leaves what in other jurisdictions is often referred to as 'a margin of appreciation' to the local authority. When, as here, we are dealing with 'special circumstances', with no statutory indication as to what circumstances can be taken into account, how special, and special in what sense they are to be, one can see that the margin of appreciation by the local authority is a very substantial one."

36. In *Avdic*, the applicant challenged a decision to refer her case to Kirklees Metropolitan Council. She argued that she had a "local connection" with Hammersmith and Fulham on the basis of a need for medical treatment and the presence of a cousin in a neighbouring borough. Simon Brown LJ, with whom Aldous LJ agreed, said as regards medical treatment that any case in that regard "necessarily had to fail unless it could be established that treatment essential to the appellant's recovery was available to her only in the respondent's borough and not equally in Kirklees" and that "the presence of a relation in, or very close to, the borough in question and the presence of friends in this amongst other London boroughs" was "a quite impossible basis upon which to establish a local connection on the grounds of special circumstances": see 7. Staughton LJ said at 9:

> "I would not rest my decision on the fact that the cousin once removed lived in Kensington and Chelsea, rather than Fulham and Hammersmith to which Mrs Avdic applied. Even after living in this country for two years she could well be forgiven for believing that the Fulham Road where the cousin lived was in the borough of Fulham and Hammersmith instead of being partly in the borough of Kensington and Chelsea. But the local authority were entitled to find that there were no special circumstances."

37. In *Ozbek*, Ipswich Borough Council had referred the applicant's case to Portsmouth City Council. Chadwick LJ observed in paragraph 47 that, "in an exceptional case, the fact that the needs of the applicant can only be served by providing accommodation in the district of one local authority rather than in the district of another may lead to the conclusion that he has a local connection because of special circumstances". He noted, however, that that was "not, now, said to be this case", and he went on in paragraph 48:

> "The enquiry, in the present case, was whether the applicant had a local connection with Ipswich because of family associations. In the context of that enquiry, as it seems to me, the fact that the welfare of the applicant and his family might be better served by the help and support which would or might be provided by his extended family than by voluntary or

> statutory agencies had little or no relevance. The relevant question was whether, in the particular circumstances of the individual case, the bond between the applicant and one or more members of the extended family was of such a nature that it would be appropriate to regard those members of the extended family as 'near relatives' in the sense in which that concept is recognised in the Referral Guidelines."

In paragraph 49, Chadwick LJ said that the review officer had addressed this question and reached a conclusion that was open to him. Sedley and Arden LJJ agreed.

38. Drawing some threads together, a "local connection" exists where a person has a connection in "a real sense" or "real terms" with a local housing authority's district on account of one of the matters mentioned in section 199(1) of the 1996 Act. Those matters (viz. normal residence, employment, family associations and "special circumstances") relate to "having a place in the community". When considering whether on the particular facts a "local connection" has arisen as a result of "special circumstances", an authority can properly have regard to whether an applicant has a need to live in its district. The existence of such a need is likely to support a contention that the applicant has a "local connection", and the absence of one may be thought to make a "local connection" less probable. Paragraph 10.11 of the Code explains that "special circumstances" "might include the need to be near special medical or support services which are available only in a particular district". Were an applicant to be unable to access such services without living in the district, it is easy to see how the case for a "local connection" as a result of "special circumstances" could potentially be overwhelming. Where an applicant has to use such services frequently, that might possibly lead to the conclusion that there is a "local connection" even without the applicant needing to live within the district itself, but a "local connection" may be less likely.

39. While, however, the question whether an applicant needs to live in the district can be relevant to whether a "local connection" exists, I agree with Mr Clarke that a local housing authority is not entitled to impose a threshold requirement to that effect. As Lord Brightman said in *Betts*, the "fundamental question is the existence of a 'local connection'". The legislation nowhere states that such a connection cannot exist, whether as regards "special circumstances" or otherwise, without a need to live in the district, and there is no warrant for inferring such a condition. Nor does paragraph 10.11 of the Code suggest otherwise: it speaks of "special circumstances" including "the need to be *near* … services which are available only in a particular district" (emphasis added), implying that it can be enough to be *near* rather than *within* the district. In fact, it is easy to conceive of a situation in which "special circumstances" might create a "local connection" without an applicant having to live in the district: say, because a parent was over a prolonged period coming into Camden every day in order to spend it with a very sick child in Great Ormond Street Hospital. *Mohamed* (CA) and *Mohamed* (HL) show that it is a misdirection to require an applicant to have "an essential compassionate, social or support need" to live in a district. Likewise, in my view, an authority is not entitled to proceed on the basis that there cannot be "special circumstances" giving rise to a "local connection" unless the applicant has a need to live in the district.

40. In short, it seems to me that Ms Newman was not entitled to impose a requirement of needing to live in Islington.

Did Ms Newman in fact impose a requirement of needing to live within the Council's district?

41. As Mr Clarke stressed, Ms Newman referred in the Review Decision on multiple occasions to the fact that Mr Hussaini did not need to live in Islington to access the Baobab Centre. Thus, she said that such access "is not dependent on living in or near the borough", that "there is no need for you to be near the Baobab Centre to access their services", that "there is no need to be near support from the Baobab Centre", that "there is no evidence of 'need' to reside in Islington" and that "there is no compelling reason that you reside in Islington". Judge Saunders took such passages to mean that Ms Newman's decision was "based on 'need' … finding that, so far as they are concerned, there is none": see paragraph 48 of his judgment.

42. On the other hand, Ms Newman stated in general terms in both paragraphs 4 and 13 of the Review Decision that she was not satisfied that Mr Hussaini had a "local connection" as a result of "special circumstances". In paragraph 13(c), she explained that, "even when considering [Mr Hussaini's] circumstances as a whole", she did not find that his "individual circumstances mean that [he has] a connection in 'real terms'".

43. Further, it is important to remember what had been said in the representations to which Ms Newman was responding. These had referred, for example, to "the need to be near special medical or support services", to "the absolute need for Aref Hussaini to have accommodation in the area of Highbury Islington or wider Finsbury Park and surrounding neighbourhoods", to "[s]taying close" being "essential" for Mr Hussaini's progress and to his "ideally need[ing] to be based and housed in Islington". Against that background, the fact that Ms Newman commented in the Review Decision on whether Mr Hussaini needed to live in Islington does not mean that she imposed a requirement of needing to live there. Her remarks are explicable on the basis that she was addressing the points that had been made on Mr Hussaini's behalf. It having been argued that Mr Hussaini needed to live near the Baobab Centre (or Islington more generally), Ms Newman addressed the contention, rejecting the idea that there was "a need to be near the Centre or resident in Islington".

44. It is also right to remember that, as Neuberger LJ explained in *Holmes-Moorhouse*, "a benevolent approach should be adopted to the interpretation of review decisions" and that the Court "should be realistic and practical in its approach to the interpretation of review decisions".

45. In all the circumstances, I have not been persuaded that Ms Newman imposed a requirement of needing to live within the Council's district. She clearly regarded the fact that he did not need to live in Islington to access the Baobab Centre's services as relevant in deciding whether there was the requisite "local connection". I do not think, however, that she made need to live in Islington a necessary feature of "local connection" by reason of "special circumstances".

The second ground of appeal

46. The second ground of appeal is to the effect that Ms Newman did not consider whether, taken in conjunction with his involvement with the Baobab Centre, Mr Hussaini's work for "We Belong" and/or his relationship with Dr Isayev meant that he had a "local connection" on the basis of "special circumstance" or, alternatively, that Ms Newman failed to give reasons for rejecting that possibility. Mr Clarke recognised that Ms Newman commented in the Review Decision on whether the work for "We Belong" or the friendship with Dr Isayev gave rise to a "local connection" through being "employed" or "family associations", but he submitted that she did not address the question whether one or both of these matters, when taken together with the involvement with the Baobab Centre, amounted to "special circumstances" bringing about a "local connection".

47. In the section of the Review Decision dealing with "special circumstances", however, Ms Newman said that she was "not satisfied that [Mr Hussaini has] a local connection by way of special circumstance" "[c]onsidering *all* the information provided" (emphasis added). On top of that, as already noted, Ms Newman stated in general terms both in both paragraphs 4 and 13 of the Review Decision that she was not satisfied that Mr Hussaini had a "local connection" as a result of "special circumstances". The "benevolent approach" that should be adopted in relation to review decisions is also relevant once again.

48. In all the circumstances, the second ground of appeal seems to me to fail. I do not think that the Review Decision is open to challenge on the basis that Ms Newman did not consider whether Mr Hussaini's work for "We Belong" and/or his relationship with Dr Isayev, if taken together with his involvement with the Baobab Centre, meant that he had a "local connection" through "special circumstances". I also consider that Ms Newman adequately explained her decision.

The third ground of appeal

49. As I have mentioned, Mr Clarke realistically accepted that Mr Hussaini was unlikely to succeed on the third ground of appeal on its own, commenting that it was probably contingent on the first ground of appeal. In the event, I have not accepted the first ground of appeal and, in my view, the third ground of appeal also fails.

50. It may very well be that Ms Newman could properly have concluded that Mr Hussaini had a "local connection" with Islington. That, however, is not the point. The question is whether Ms Newman arrived at an unreasonable decision, and I do not think she did. A local housing authority has what Schiemann LJ called a "margin of appreciation", and Ms Newman does not appear to me to have exceeded it.

Conclusion

51. I would dismiss the appeal.

Lord Justice Nugee:

52. I agree.

Mr Justice Cobb:

53. I also agree.