Neutral Citation Number: [2019] EWCA Civ 486

Case No: B5/2018/1732

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CENTRAL LONDON COUNTY COURT
HHJ Roberts
E40CL0005

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/03/2019

Before :

LORD JUSTICE LEWISON
and
LORD JUSTICE NEWEY

- -

Between :

GODSON	**Appellant**
- and -	
LONDON BOROUGH OF ENFIELD	**Respondent**

- -
- -

Mr Stephen Godson the **Appellant**
Mr David Lintott (instructed by **Legal Services, Enfield Council**) for the **Respondent**

Hearing dates : 14 March 2019

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Approved Judgment

Lord Justice Lewison:

The issues

1. The principal issues on this appeal are:

   i) If a local housing authority purports to discharge its duty to a homeless person such as to terminate that duty, and the homeless person does not appeal against an unsuccessful review of that decision; is he entitled to challenge the lawfulness of that review decision on a subsequent application for assistance as a homeless person?

   ii) If so, was the housing authority entitled to terminate its duty in the manner in which it purported to do?

   iii) If the termination of the housing duty and the homeless person's consequent eviction was caused by the homeless person's refusal of an offer of temporary accommodation, is he thereby rendered intentionally homeless?

The facts

2. Mr Godson applied to Enfield LBC for assistance with homelessness on 12 July 2012. Enfield provided him with emergency accommodation at 21c Bury Street on the same day, while it investigated his claim. Mr Godson was entitled to live there by virtue of a licence granted to him by Enfield. On 28 August 2012 it accepted that it owed Mr Godson the full housing duty described in section 193 of the Housing Act 1996. On 25 July 2013 Enfield made him an offer of a tenancy at 28B Church Street. He was told by Enfield that if he refused, the consequence would be that Enfield's housing duty under that section would cease. Despite that, Mr Godson refused the offer of the tenancy. As a result of that refusal, Enfield purported to terminate its duty to Mr Godson on 5 August 2013. Mr Godson sought a review of that decision. On 4 October 2013 the review decision confirmed the original decision. Mr Godson could have appealed to the county court against the review decision; but he did not. On 21 January 2014 Mr Godson and his family were evicted from 21c Bury Road.

3. On the night of his eviction, Mr Godson found bed and breakfast accommodation for himself and his family at Railway Inn, which was also in the London Borough of Enfield. They continued to live in that accommodation until 2016 when he made another application to Enfield for assistance. Enfield originally took the view that the accommodation at Railway Inn was suitable, and therefore that Mr Godson was not homeless; but later accepted that it was not. So on 9 August 2016, Mr Godson was once again provided with emergency accommodation at 55B Friern Barnet Road, while Enfield investigated the merits of his claim.

4. On 15 September 2017 Enfield decided that Mr Godson was intentionally homeless. He requested a review of that decision. The review decision was issued on 29 November 2017 and upheld the original decision.

5. Mr Godson appealed against that decision to the county court. But on 13 July 2018 HHJ Roberts dismissed the appeal. This, therefore, is a second appeal. In an appeal of this nature our focus must be on the original decision: that is to say the review

decision under challenge, rather than on the judge's reasons for dismissing the first appeal.

Statutory framework

6. The statutory provisions relating to homelessness have gone through a number of iterations since they first made their appearance in the Housing (Homeless Persons) Act 1977. This must be borne in mind in considering authorities decided on previous versions of the statutory code.

7. The statutory framework at the time of Enfield's decision was contained in Part 7 of the Housing Act 1996, as amended by the Localism Act 2011; but before its further amendment by the Homelessness Reduction Act 2017. The duties owed to the homeless are set out in Part 7. Section 175 provided, so far as material:

> "(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he—
>
> (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
>
> (b) has an express or implied licence to occupy, or
>
> (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
>
> …
>
> (3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy."

8. The emergency accommodation that Enfield provided at 21c Bury Street was originally provided pursuant to the duty under section 188; as is the accommodation at 55B Friern Barnet Road. Section 188 provided:

> "(1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation."

9. The duty under section 188 came to an end "when the authority's decision is notified to the applicant", even if he requested a review of the decision. But thereafter the authority had the power (as opposed to the duty) to secure accommodation pending the review: section 188 (3).

10. As I have said, back in 2012 Enfield accepted that it owed Mr Godson the full housing duty under section 193 of the 1996 Act. It provided, so far as material:

> "(1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.
>
> (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.
>
> (3) The authority are subject to the duty under this section until it ceases by virtue of any of the following provisions of this section."

11. Whether the authority is discharging its duty under section 188 or its duty under section 193, the accommodation provided must be "suitable": section 206.

12. Section 193 provided for a number of ways in which the authority's duty ceased. It ceased, for example, if the applicant ceased to be eligible for assistance. One specific way in which the duty would cease was contained in section 193 (5) which provided:

> "(5) The local housing authority shall cease to be subject to the duty under this section if—
>
> (a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,
>
> (b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and
>
> (c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section."

13. I should explain that accommodation under Part 6 is, in effect, the grant of a secure tenancy of council accommodation; and a private rented sector offer is the offer of an assured shorthold tenancy for a term of at least 12 months. Section 193 (5) applies to offers of accommodation which are not those kinds of offer. Clearly, then, section 193 (5) is dealing with offers of accommodation falling short of a final offer or a private rented sector offer. Section 193 (6) provides for other ways in which the duty may cease. These include acceptance of permanent council accommodation under Part 6, or an assured tenancy (other than an assured shorthold tenancy). But under section 193 (6) (b) the duty also ceases if the applicant:

> "… becomes homeless intentionally from the accommodation made available for his occupation."

14. Section 193 (9) provided:

> "A person who ceases to be owed the duty under this section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation."

15. It will be seen that one of the conditions that triggers the full housing duty is that the authority is not satisfied that the applicant became homeless intentionally. Intentional homelessness was dealt with by section 191. It provided:

> "(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.
>
> (2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate."

16. So in 2012 Enfield were not satisfied that Mr Godson was intentionally homeless; but in 2017 they were. I will examine in due course the reasons for that change.

17. If a housing authority makes a decision adverse to an applicant, he has the right to request a review of the decision. Section 202 (1) (b) confers a right to a review of a decision as to what duty (if any) is owed to him under sections 190 to 193 and 195 and 196. Section 202 (1A) provided:

> "An applicant who is offered accommodation as mentioned in section 193(5), (7) or (7AA) may under subsection (1)(f) or (as the case may be) (g) request a review of the suitability of the accommodation offered to him whether or not he has accepted the offer."

18. But section 202 (2) provided:

> "There is no right to request a review of the decision reached on an earlier review."

The review decision under challenge

19. The essence of the reviewing officer's reasoning was this:

    i) At the time when Mr Godson was offered accommodation at 28B Church Street, he was occupying 21c Bury Street.

    ii) The accommodation at 21c Bury Street was suitable accommodation that was available to Mr Godson; and it was reasonable for him to continue to occupy that accommodation.

    iii) His refusal of the offer of a tenancy at 28B Church Street was a deliberate act; and he was aware of the consequences of a refusal: namely that Enfield's duty under section 193 (2) would cease.

iv) Because of his refusal, Enfield's duty under that sub-section ceased, with the consequence that he lost the accommodation at 21c Bury Street, thereby becoming homeless.

v) His refusal of the offer of a tenancy of 28B Church Street was the operative cause of his homelessness.

vi) His subsequent stay at the Railway Inn was not settled accommodation, and therefore did not break the chain of causation.

20. The decision does not, of course, mean that Enfield owe Mr Godson no duty at all. Enfield will still owe him a duty; but it will be the much more limited duty owed to a person who is intentionally homeless.

Can Mr Godson challenge the reasoning of the first review decision?

21. Mr Godson wishes to argue that the offer of a tenancy at 28B Church Road was an unlawful offer; with the consequence that his refusal of it could not have been a deliberate act which caused his homelessness; and therefore that Enfield's full housing duty is still operative. That argument is, in substance, a challenge to Enfield's first review decision of 4 October 2013, by which Enfield decided that its full housing duty had been discharged.

22. The first question is whether that argument is open to Mr Godson in this appeal. He could, of course, have appealed to the county court against the review decision of 4 October 2013. His ground of appeal would have been that the offer of a tenancy of 28B Church Road was unlawful; and that he was within his rights to refuse it. But he did not.

23. In *Tower Hamlets LBC v Rahanara Begum* [2005] EWCA Civ 116, [2006] HLR 9 Neuberger LJ (with whom Ward and Tuckey LJJ agreed) said:

> "[32] Part 7 of the 1996 Act requires a housing authority to be the initial decision-maker on questions concerning a person's homeless status and housing rights, and it includes a tolerably clear appeals procedure, with relatively short and fairly strict time limits, for the benefit of a person dissatisfied with any decision of the authority. Where, as here, possession proceedings are brought by the authority, and the defence involves impugning a decision of the authority under Pt 7 of the 1996 Act, which could have been, but was not, appealed, and the time for appeal has long since expired, it appears to me to be wrong in principle that the court hearing the possession action should be able freely to reconsider, and if necessary to reverse, the authority's decision with regard to its duty.
>
> [33] Where a statute provides that the entitlement to a right is to be determined by a particular entity, and further provides for a specific appeals procedure, including time limits, in relation to any such determination, I consider that it would be wrong in principle, at least in the absence of exceptional circumstances,

> to permit the determination to be challenged by a different procedure much later. To hold otherwise would effectively enable a person such as the respondent to have the benefit of the statutory provisions, in this case s.193, without taking the concomitant burden, namely the procedure and time limits in ss.202–204."

24. It is debatable whether that statement was *ratio* or *obiter*, but in my judgment it is plainly right. It is reinforced by that fact that on the second review, conducted in 2017, the reviewing officer could not have carried out a second review of the decision made in 2013: section 202 (2). Since this appeal is concerned with the question whether there is any legal error in the *second* review decision, the fact that the second reviewing officer could not review the decision of the first reviewing officer is a powerful pointer to the conclusion that it is not open to Mr Godson to challenge the first review decision.

25. Mr Godson saw the force of this analysis; but argued that it did not apply in this case, because the lawfulness of the offer of the tenancy at 28B Church Street was not capable of being the subject of a review decision under section 202. I disagree. Enfield's decision was that it ceased to be under the duty contained in section 193 (2) in consequence of Mr Godson's refusal of the offer of the tenancy at 28B Church Road. That was a decision that no duty under that sub-section was owed to him. The decision therefore fell within section 202 (1) (b) which applies to a decision whether the authority owes any duty under section 193. If the offer of the tenancy had been unlawful, Enfield could not, in my judgment, have lawfully decided that its duty had come to an end. The lawfulness of the offer was a matter that could have been decided on the review and, if necessary, appealed to the county court.

26. It follows, therefore, that this argument is not open to Mr Godson on this appeal.

Was the first review decision lawful?

27. But even if the argument were open to Mr Godson, I do not consider that it could succeed. The first step in Mr Godson's argument is that the duty to house him under section 188 ceased when Enfield accepted that he was not intentionally homeless and in priority need. At that point the duty under section 193 (2) took over. The duty arising under section 193 (2) was triggered by the satisfaction of the conditions in section 193 (1). Once Enfield had continued to house him temporarily at 28c Bury Street pursuant to its duty under section 193 (2), he was no longer homeless. Thus, the duty under section 193 (2) had been discharged. Since the duty had been discharged, there was no further duty on Enfield; unless and until the duty under section 193 (2) was triggered again. That could only happen if the conditions in section 193 (1) were satisfied once again. In order for that to happen, Enfield would have to have considered that Mr Godson was once again homeless (for example, because the accommodation at 21c Bury Street had ceased to be suitable). In addition, section 193 (1) requires an "applicant". Unless a person asks the council to make another offer, it has no power to do so. Since Mr Godson did not ask to be offered further temporary accommodation (whether at 28B Church Street or elsewhere) he was not an applicant; and Enfield had no power to make the offer. It follows that Enfield's duty under section 193 (2) was not re-triggered. In those circumstances, Enfield was not entitled to make an offer of alternative accommodation. Because Enfield was not entitled to

make the offer of the tenancy at 28B Church Street, Mr Godson was within his rights to refuse it. It would be irrational to conclude that that refusal was a deliberate act which caused his current homelessness.

28. I agree with Mr Lintott, for Enfield, that there is a distinction to be drawn between discharging a duty (in the sense of bringing to an end) and performing it. Section 193 (3) is explicit. Once the duty is triggered by section 193 (1), Enfield remained subject to the duty until it ceased under the remaining provisions of that section. There is no other way in which the duty may be brought to an end.

29. In *R (Awua) v Brent LBC* [1996] AC 55 the House of Lords considered the meaning of "accommodation" for the purposes of the equivalent duty under the legislation then in force. Lord Hoffmann (with whom the other Law Lords agreed) held at 69-70 that "accommodation" meant:

> "a place which can fairly be described as accommodation …and which it would be reasonable, having regard to the general housing conditions in the local housing authority's district, for the person in question to continue to occupy…. There is no additional requirement that it should be settled or permanent."

30. Later in his speech, however, he considered the position of a person who had applied for assistance with homelessness. At 71 he said:

> "An unintentionally homeless person, on the other hand, cannot be required to leave the accommodation provided under section [193 (2)] unless either he is provided with alternative accommodation or there is a reason why his consequent homelessness will not give rise to a further duty under section [193 (2)]. In this sense the duty to accommodate is indefinite, but it is not in my view legitimate to construe it as a duty to provide permanent accommodation."

31. Translated to the facts of this case:

> "[Mr Godson] cannot be required to leave the accommodation provided under section [193 (2)] [i.e. 28c Bury Street] unless either he is provided with alternative accommodation [i.e. at 28B Church Street] or there is a reason why his consequent homelessness will not give rise to a further duty under section [193 (2)] [i.e. his refusal of the offer of a tenancy at 28B Church Street]."

32. That, in my judgment, is this case in a nutshell. It must also not be forgotten that the legislation under consideration in *Awua* did not contain either express provisions equivalent to section 193 (3); or the detailed statutory description of the circumstances in which the duty could be brought to an end. Section 193 (3) was not part of the statutory scheme until introduced by the Homelessness Act 2002; which replaced the fixed period of two years that had previously been the temporal extent of the duty (and even that legislative change post-dated the legislation considered in *Awua*).

33. Mr Lintott's point was argued in *Muse v Brent LBC* [2008] EWCA Civ 1447, [2009] PTSR 680. In that case, Mrs Muse was unintentionally homeless and in priority need. Brent LBC accepted that it owed her the full housing duty; and secured temporary accommodation for her and her family. As her family grew, that accommodation became overcrowded. Brent offered her alternative temporary accommodation, which she declined. Brent decided that the refusal brought their duty to an end; and took steps to secure possession of the temporary accommodation. This court held that Brent had acted lawfully. Arden LJ described at [30] what she called the "wider proposition". She summarised it as follows:

> "Once a duty arises, it continues until it ceases. It does not go into abeyance or become dormant. If the applicant is in temporary accommodation she can at any time be asked by the housing authority, in this case Brent, to move to other accommodation."

34. At [35] she said that it was unnecessary to decide whether the wider proposition was correct. Pill LJ appears to me to have accepted it. He said at [56]:

> "The procedure may, as in this case, be prolonged but it was triggered … by the defendant local authority's finding under section 193(1). The duty thereupon is capable of persisting unless and until the local housing authority is no longer subject to it by reason of the provisions in section 193(5) and (6)."

35. It is true that at [30] Arden LJ said that when Mrs Muse was originally provided with suitable temporary accommodation "the duty owed by Brent was discharged and she ceased to be homeless." But she went on immediately to qualify that by saying that: "It is a nice point whether the correct legal analysis is that the duty is then fully discharged."

36. She returned to the point later in her judgment:

> "[39] No submissions were made to us on *Ex p Awua*… but it would appear to be the case from *Ex p Awua* that the duty owed to Mrs Muse was discharged in law on the provision of temporary accommodation, but arose again when Brent decided that it was not reasonable for Mrs Muse to continue to occupy 42 Press House. If, however, the duty accepted to her in 2002 had been never fully discharged in law … because only temporary accommodation was provided, it remained in being and became operative again at the latest when Brent decided that it was not reasonable for her to continue to occupy 42 Press House, as it did when Mr Rees accepted that she should be offered alternative accommodation. None of the specific events that under section 193 discharged the duty occurred. It is common ground that 42 Press House was not suitable for Mrs Muse and her family.
>
> [40] On either basis Brent was obliged to, and did, offer alternative suitable accommodation. Brent complied with

> section 193(5). Accordingly, the offer was on terms that Brent's housing duty would be discharged if Mrs Muse declined to accept the alternative accommodation. If Miss Roberts's submission on section 193(5) were correct, there would be an extraordinary internal inconsistency in the position in law of somebody like Mrs Muse. That person would be in a position to say that she was homeless and that Brent owed her a full housing duty, but that she was not homeless at the point in time when she made an application for transfer. An interpretation of section 193 that does not produce this basic inconsistency is clearly preferable."

37. Mr Godson's argument entails the proposition that Enfield's duty was "fully discharged" once he had been accommodated at 28c Bury Street. *Muse v Brent LBC* does not give any support to that argument. Nor does the argument sit comfortably with the observations of Lady Hale in *Birmingham CC v Ali* [2009] UKHL 36, [2009] 1 WLR 1506. She said at [42]:

> "Given that an authority can satisfy their "full" housing duty under section 193(2) by providing temporary accommodation (which must of course be followed by the provision of further accommodation, so long as the section 193(2) duty survives), these observations clearly do not only apply to section 188. They emphasise 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. 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." (Emphasis added)

38. It is plain from this that even though a person is temporarily housed, the authority has a continuing duty under section 193. That is wholly inconsistent with the notion that once a homeless person is temporarily housed the duty has been discharged, in the sense of brought to an end.

39. Nor do I consider that Mr Godson is right in contending that section 193 (1), in referring to "the applicant," is to be read as requiring a fresh application for a transfer from one set of temporary accommodation to another. The word "applicant" is defined by section 183 (2) as a person making "such an application": that is to say an application under section 183 (1). The application under section 183 (1) is made when a person applies to a local housing authority for accommodation or assistance in obtaining accommodation. In other words, it is the initial approach to the housing authority that makes a person an applicant. In my judgment they remain an applicant until the whole process has come to an end.

40. At the root of the argument is whether a housing authority, in performing its duty under section 193 (2), is entitled to choose how to perform it. In particular whether it is entitled to require an applicant to move from one set of temporary accommodation to another, even if the applicant would prefer to stay where they are. The answer to this question has a number of strands. First, where a person is placed under a duty that can be performed in several different ways, as a matter of principle it is up to them to choose how to perform it. Second, I do not consider that it is correct to regard an applicant as having a right to be housed in any *particular* accommodation, provided that the accommodation is suitable; and it is reasonable for them to occupy it.

41. Mr Godson argued that he was entitled to "waive" the offer of accommodation at 28B Church Street. This argument was based on *obiter* observations of Arden LJ in *Muse v Brent LBC*, building on earlier *obiter* observations she had made in *R (Aweys) v Birmingham CC* [2008] EWCA Civ 48, [2008] 1 WLR 2305. What she said in the latter case was this:

> "This subject arose in the course of argument. A person who is accepted to be homeless at home may be offered alternative accommodation on a temporary basis: see *Ex p Awua* [1996] AC 55. He may, however, in practice prefer to stay where he is until some more permanent accommodation is available for him. I see no difficulty in law in an applicant, if he chooses, opting to stay where he is while the local authority seeks more permanent accommodation which it is reasonable for him to occupy, but as he would be giving up his statutory right to be accommodated in that temporary accommodation, and on general principle, he would have to give a fully-informed and free consent."

42. The precise status of these observations is not entirely clear. In *Aweys*, Smith LJ agreed with Arden LJ's judgment. But the decision itself was reversed in part by the House of Lords in *Ali*, and this point was not discussed in the course of the speeches in the House. In *Muse*, Pill LJ did not subscribe to those observations; but Aikens LJ agreed with both Arden and Pill LJJ.

43. The principle of waiver in this context derives from a Latin maxim: "*Quilibet potest renunciare juri pro se introducto*." This is translated in Broom's Legal Maxims (10th ed. p. 477) as:

> "Anyone may, at his pleasure, renounce the benefit of a stipulation or other right introduced *entirely in his own favour*." (Emphasis added)

44. Accordingly, in order to be capable of renunciation, the right in question must have been created *entirely* in favour of the person who renounces it. If the right has a public interest element to it then the principle does not apply. It is for that reason that mutual set-off in bankruptcy cannot be varied by agreement (*National Westminster Bank Ltd v Halesowen Presswork & Assemblies Ltd* [1972] AC 785); and one of the reasons why a tenant cannot contract out of the security of tenure which existed under the Agricultural Holdings Act 1948 (*Johnson v Moreton* [1980] AC 37). As Alderson B

put it in *Graham v Ingleby* (1848) 1 Exch 651: "an individual cannot waive a matter in which the public have an interest."

45. In a case like this one, there is in my judgment an obvious public interest. Quite apart from the public interest in reserving emergency accommodation for genuine emergencies, in order to keep a homeless person in accommodation, someone has to pay. If it is the local authority that pays, whether directly or by way of housing benefit, the payment comes out of public money. As the reviewing officer explained in the 2013 review decision, the emergency accommodation at 28c Bury Street was nightly paid and extremely expensive. A move to 28B Church Street would have saved the authority approximately £180 per month. I do not consider that it is open to an individual, by purporting to "waive" the right to temporary accommodation, to impose additional financial burdens on an authority which would be compelled to use public money to fund them. The situation that Arden LJ was discussing in in *Aweys* and *Muse* did not, apparently, engage this additional aspect.

46. In addition, as I have said, I do not consider that Mr Godson had a right to be accommodated at 28B Church Street that he was entitled to waive.

Was Mr Godson intentionally homeless?

47. The question for the reviewing officer was whether Mr Godson's current homelessness (i.e. his precarious position at the Railway Inn) was caused by intentional conduct on his part: *Haile v Waltham Forest LBC* [2015] UKSC 34, [2015] AC 1471 at [25]. Accordingly, the question is whether the reviewing officer could lawfully conclude that the operative cause of Mr Godson's current homelessness was his refusal of the tenancy at 28B Church Street.

48. Since Mr Godson had a licence to occupy 21c Bury Street, he satisfied section 175 (1) (b). So, the next question is: was that accommodation that it was reasonable for him to continue to occupy?

49. The key point, in my judgment, is the reviewing officer's conclusion that at the time of the offer the accommodation at 21c Bury Street was suitable accommodation that was available to Mr Godson; and that it was reasonable for him to continue to occupy that accommodation. Whether it is reasonable for someone to continue to occupy accommodation depends, at least in part, on how long they are expected to stay there. But there is nothing in the Act to preclude an authority from deciding that it is reasonable for an applicant to continue to occupy accommodation which is temporary: *R (Awua) v Brent LBC* at 68 per Lord Hoffmann, approved in *Birmingham CC v Ali* [2009] UKHL 36, [2009] 1 WLR 1506 at [41], and followed in *Muse v Brent LBC* at [8]. Equally, accommodation may be suitable for temporary occupation even if it is not suitable for more permanent accommodation: *Birmingham CC v Ali* at [47]. A person who is entitled to occupy suitable temporary accommodation is not homeless: *R v Brent LBC ex p Awua* at 67; *Muse v Brent LBC* at [35]; *Haile v Waltham Forest LBC* at [48]. The question under section 191 (1) is whether it was reasonable for Mr Godson to stay in the temporary accommodation at 21c Bury Street while Enfield considered his application and, if appropriate, looked for more suitable accommodation: *Haile v Waltham Forest LBC* at [21]. It was, therefore, open to the reviewing officer to conclude that it was reasonable for Mr Godson to continue to

occupy the temporary accommodation at 21c Bury Street until such time as the accommodation at 28B Church Street was made available to him.

50. When Mr Godson was required to leave 21c Bury Street he was threatened with homelessness; and when he actually left he became homeless: *R v Brent LBC ex p Awua* at 68. His homelessness was not interrupted by temporary accommodation in bed and breakfast accommodation at the Railway Inn. He therefore remained homeless; and had been homeless ever since he left 21c Bury Street. Indeed, the foundation of Mr Godson's second application to Enfield was that he *was* homeless; despite having a roof over his head at the Railway Inn. So, the next question for the reviewing officer was: what caused him to lose the accommodation at 21c Bury Street, thereby becoming homeless? The immediate or most proximate cause may be the effective cause; but that need not be so: *William v Wandsworth LBC* [2006] EWCA Civ 535, [2006] HLR 42 at [17], approving *R (Ajayi) v Hackney LBC* (1998) 30 HLR 473.

51. In this case the immediate cause of Mr Godson's homelessness was the council's decision to evict him from 21c Bury Street. But causation does not necessarily stop there. It is necessary to go on to ask: what caused the council to take that step? The answer is: because Mr Godson deliberately refused the temporary accommodation at 28B Church Street.

52. I do not consider that the reviewing officer can be faulted in concluding that the operative reason why Mr Godson was living in bed and breakfast accommodation at the Railway Inn was the result of his refusal of the tenancy at 28B Church Street. The reviewing officer was, in my judgment, entitled to conclude that that refusal was the effective cause of Mr Godson's homelessness. Since the refusal was a deliberate act, he was intentionally homeless.

53. Indeed, in my judgment this case is on all fours with *Awua* in which the applicant was living in temporary accommodation and refused an offer of a tenancy of a flat. In consequence of her refusal of that offer, she lost the temporary accommodation. On the making of a fresh application under section 193 (9) to a different housing authority, she was held to have become intentionally homeless.

54. Moreover, it would produce an inconsistency in the scheme of Part 7 if an expressly provided way in which an authority can discharge its duty under section 193 (2) is rendered ineffective as a result of a refusal by an applicant of an offer of accommodation that complies with the statutory scheme. That is unlikely to have been Parliament's intention: compare *Muse v Brent LBC* at [40].

Result

55. For these reasons, I would dismiss the appeal.

Lord Justice Newey:

56. I agree.