



Neutral Citation Number: [2022] EWCA Civ 159

Case No: CA-2021-000600

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE AND PLANNING COURT
Judge Lickley QC (Sitting as a Deputy High Court Judge)
[2021] EWHC 211 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/02/2022

Before:

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE LEWISON
and
LADY JUSTICE MACUR

Between:

LEMARI MINOTT
- and -
CAMBRIDGE CITY COUNCIL

Claimant/
Appellant

Respondent

Toby Vanhegan and Stephanie Lovegrove (instructed by GT Stewart Solicitors) for the
Appellant
Nicholas Grundy QC and Elizabeth England (instructed by Cambridge City Council) for the
Respondent

Hearing date: 26 January 2022

Approved Judgment

Macur LJ:

1. Lemari Minott appeals against the order of HHJ Lickley QC, (“the judge”) sitting as a Deputy Judge of the High Court, which dismissed his claim for judicial review of the decision of Cambridge City Council (“CCC”) which refused to accept his second homelessness application on the basis that it revealed no “new facts”. The first instance decision is reported at [2021] EWHC 211 (Admin).
2. Regardless of the range of submissions made in this appeal, there is a single issue namely: did CCC evaluate the merits of Mr Minott’s second application so as to determine whether there was a new fact upon which the “fresh application” was based, and which would trigger CCC’s statutory duties pursuant to Part 7 of Housing Act 1996 (“HA 96”)? That is, did CCC elide a two-stage process; identification of whether there was a ‘new fact’ and then evaluation of its merit.
3. In my judgment, the judge fell into error in endorsing CCC’s rejection of Mr Minott’s application. The application did reveal a ‘new fact’. The application should have been accepted and then determined accordingly.
4. Therefore, subject to my Lords, I would allow the appeal for the reasons I give below.

The relevant statutory scheme

5. Part 7 of the HA 96 specifies the duties of Local Housing Authorities (“LHAs”) to people who make homelessness applications to them (“applicants”).
6. To summarise so far as is relevant to the issues in this appeal, upon receipt of a homelessness application, an LHA has a duty to make enquiries as to what substantive duty, if any, it owes to the applicant; see s.184(1).
7. Section 188(1) imposes an interim duty upon an LHA to accommodate an applicant if there is reason to believe that he/she may be homeless, eligible for assistance and have a priority need, pending its inquiries pursuant to s.184. This duty comes to an end if the LHA decides upon conclusion of its inquiries that the applicant does not have a priority need or that it does not owe a duty to assist the applicant under Part 7. However, the duty to provide interim accommodation arises irrespective of any possibility of the referral of the applicant's case to another local housing authority; see ss.198 to 200.
8. Where an applicant has no local connection with the district of an LHA to which s/he has applied but does have a local connection with another LHA, the recipient LHA may refer the applicant to that other LHA for the performance of any Part 7 duties even before it has determined the substantive duty that is owed to the applicant: see s.198(A1). However, it is possible for an applicant to have a local connection with more than one LHA, in which case the LHA to which they have applied and with which they have a local connection has no power to refer them to another LHA: see s.198(2).
9. A local connection is defined by section 199 and includes a person’s connection with the district of a local authority, “because he is, or in the past was, normally resident there, and that residence is or was of his own choice.”

10. The Homelessness Code of Guidance 2018 (“the 2018 Code”) was produced pursuant to the powers of the Secretary of State under s.182(2). An LHA in England “shall have regard to such guidance” in the exercise of their functions; see s.182(1).
11. Section 10 of the 2018 Code deals with issues of local connection and so far as relevant to this appeal provides as follows.

“10.5 ... ‘normal residence’ is to be understood as meaning ‘the place where at the relevant time the person in fact resides.’ Residence in temporary accommodation provided by a housing authority can constitute normal residence of choice and can contribute towards a local connection.

10.6 In the case of a person who is street homeless or insecurely accommodated (‘sofa surfing’) the housing authority will need to carry out a different type of inquiry to be satisfied as to their ‘normal residence’ than would be required for an applicant who has become homeless from more settled accommodation. If an applicant has no settled accommodation elsewhere, and from inquiries the authority is satisfied that they do in fact reside in the district, then there will be normal residence for the purposes of the 1996 Act.

10.7 The Local Authorities Agreement suggests that a working definition of normal residence sufficient to establish a local connection should be residence for at least 6 months in an area during the previous 12 months, or for three years during the previous five-year period.

...

10.13 The test regarding local connection, as set out in section 199(1) should be applied, ... The fact that an applicant may satisfy one of these grounds will not necessarily mean that they have been able to establish a local connection.

10.14 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.”

12. The local authority guidelines referred to in section 10.2 of the 2018 Code provide in para. 4.3 (i) that

“... It is suggested that a working definition of “normal residence” should be residence for at least 6 months in the area during the previous 12 months, or for not less than 3 years during the previous 5-year period. The period taken into account should be up to the date of the authority’s decision. This should include

any periods living in temporary accommodation secured by the authority under s.188 (interim duty pending inquiries);”

13. Sections 10.13 and 10.14 reflect the decision of the House of Lords in *R v Eastleigh BC Ex p Betts* [1983] 2 AC 613 in making clear that ‘normal residence’ of whatever length will not necessarily determine “local connection”; see Lord Brightman at p.627, C to E.
14. Sections 10.5 and 10.6 of the 2018 Code accurately reflects the decision of the House of Lords in *Mohamed v Hammersmith and Fulham LBC* [2001] UKHL 57, which held that interim accommodation provided by an LHA could, as matter of law, constitute an applicant’s normal residence for the purposes of s.199(1)(a): see Lord Slynn of Hadley at paragraphs 17 and 21.
15. Significantly, Lord Slynn at paragraph 18 of *Mohamed* re-considered the approach taken to ‘normal residence’ as discussed in *R v Barnet London Borough Council, Ex p Nilish Shah* [1983] 2 AC 309, 343, upon which *Betts* was based, and made clear that “the prima facie meaning of normal residence is a place where at the relevant time the person in fact resides.....and it is not appropriate to consider whether in a general or abstract sense such a place would be considered an ordinary or normal residence”. I agree with Mr Vanhegan, who represents Mr Minott, that *Mohamed* thereby departs decisively from Lord Brightman’s speech in *Betts* at p.628 B to D which suggests that the definition of normally resident “will take its colour” from residence which is only relevant if it is such as to establish a local connection with the relevant district. *R(N) v Lewisham London Borough Council* [2015] AC 1259, confirms this change of stance in that Lord Hodge, with whom the majority of the Supreme Court agreed, approved the lesser connotation of the word “residence” as opposed to “dwelling” which suggested a greater degree of settled occupation.”: see paras. 26, 44 and 45.
16. When a decision to make a referral on the ground of a local connection to another authority is made and communicated to the applicant, the notifying LHA ceases to be subject to the duty to provide interim housing to the applicant unless the LHA believes that s/he may have a priority need, in which case the LHA must secure accommodation for the applicant until notified as to whether the conditions for the referral are met.
17. If the conditions for a local connection referral are not met, is not accepted by the notified LHA, or otherwise determined in accordance with “such arrangements as the Secretary of State may order”, (see s.198 (5)), then the notifying LHA must resume its duties as appropriate to the applicant’s homelessness status.
18. If it is decided that the conditions are met then the applicant is to be treated as having made their homelessness application to the notified LHA on the date on which notice was given of the referral and from that date, the notifying LHA owes no duties to the applicant: s.199A (5) of HA 1996. Consequently, even if the applicant seeks a review of the decision, the obligation to provide interim accommodation ceases, although the LHA can provide the same in its discretion.
19. Section 202 gives the applicant a right to request a review of the LHA decision in respect of many notified decisions including as to Part 7 duties owed and referral to another LHA. Section 204 provides a dissatisfied applicant the right to appeal to the County Court on any point of law arising from the decision or the original decision.

20. However, s.193(9) provides that a person who is unintentionally homeless and eligible for assistance who ceases to be owed the duty by the LHA to secure their accommodation, which may arise after a local connection referral to another LHA has been made, may make a fresh application to the authority for accommodation or assistance in obtaining accommodation.
21. As to this, the LHA cannot avoid the necessity to go through the full statutory inquiries, unless the fresh application is identical to facts as found by the LHA in determining, or upon review of, the initial application. That is, the approach in *Reg. v Harrow LBC Ex p Fahia* [1998] 1 WLR 1396 which was interpreted by Neuberger LJ (as he then was) in *Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340 at [39] to mean that the “only relevant basis upon which a purported subsequent application may be treated as no application, according to *Fahia* at 1402D appears to be where it is based on “exactly the same facts as [the] earlier application”.”
22. Neuberger LJ held that the reasoning in *Fahia* in relation to the 1985 Housing Act was equally applicable to the HA 96: (see paragraph 48). There was no room to imply a further requirement that had to be satisfied, such as establishing a material change in circumstances: (see paragraph 50). Quite apart from the decision and reasoning in *Fahia* there were “other problems” with the contention that the applicant must show a material change of circumstances, namely: there was no statutory requirement to investigate whether there had been a material change in circumstances; there would be no interim duty to provide accommodation pursuant to s.188 (1) whilst determining whether there had been a material change of circumstances; there would be no right of review and appeal; and, “the apparently unqualified right” granted by s.193 (9) to make a “fresh application ... for section 183 purposes”: see paras. 51 and 52. Keene LJ agreed.
23. Pill LJ accepted “the major change achieved by *Fahia*” which did apply to the HA 96 but questioned whether Lord Browne-Wilkinson intended to go “quite so far” as to lay down that an application could only be rejected “unless it was based on precisely the same facts as an earlier application”. He noted in paragraph 90 that in concluding in *Fahia* that “it is impossible to say that there had been no relevant change in circumstance”, Lord Browne-Wilkinson was “keeping alive” the concept of a change of circumstances applied in other cases; see paragraph 89. In paragraph 91, Pill LJ went on to maintain “some entitlement” to make non statutory inquiries into the contents of the form with a view to deciding whether an asserted new fact was “realistic”, depending on the circumstances of the case. This reasoning is obviously at odds with the majority view and his approach therefore has no precedential value.
24. Prompted by Pill LJ’s observations and “the difficulties thrown up by the legislation, and the fact that the decision in *Fahia* has not always been correctly applied”, Neuberger LJ went on to proffer “such guidance as we can”. Consequently, it was advised that the applicant should identify the relevant changes in fact on the new application; see para. 59. If no new facts are revealed or the facts are, to the authority’s knowledge and without further investigation, “not new, fanciful, or trivial” then the purported application is “no application”. “The facts may not be new because they were known to, and taken into account by, the authority when it offered the applicant accommodation to satisfy the earlier application.” Whether new facts are fanciful or trivial must inevitably turn on the “particular circumstances of the particular case”: see para. 60.

25. Where the fresh application appears to reveal new facts, which are, in light of the information then available to the authority, neither trivial or fanciful, although they may turn out to be inaccurate or insufficient for the applicant's purposes on investigation, the LHA must treat the subsequent application as a valid application. The LHA are not entitled to investigate the accuracy of the alleged new facts before deciding whether to treat the application as valid: see para. 61.
26. The comparison was to be made between the facts as had been determined in the previous application or review, and the asserted facts of the new application and any other associated documentation: see paragraph 46.
27. A challenge to an LHA determination that a fresh application reveals no new fact, or that it is fanciful or trivial, can only be made by way of application for judicial review and upon public law grounds in the High Court, see, for example, *R (May) v Birmingham City Council* [2012] EWHC 1399 (Admin).

The relevant facts leading to the second homelessness application

28. On 26 March 2019 Mr Minott applied to CCC for homelessness assistance and was interviewed. A referral form was completed. He was provided with overnight accommodation in a hotel and then moved on 27 March 2019 to 27 Gilbert Close, Cambridge ("the property").
29. On 8 August 2019, CCC notified Mr Minott that although he was eligible to have his circumstances considered and homeless, his local connection was with Sandwell Metropolitan Borough Council ("Sandwell"). On 19 August CCC notified him that the conditions for a local connection referral were met and that Sandwell had accepted the referral.
30. Mr Minott requested a review of the referral decision on 22 August 2019. On 27 August he requested accommodation pending review. This was refused on 28 August and Mr Minott served with a notice to quit the property by 10am on 2 September 2019. Mr Minott refused to relinquish the property and actively resisted attempts to evict him, ultimately leading to CCC commencing possession proceedings. He did so aware that on 26 September 2019 he would have been present in the property for 6 months.
31. On 25 September 2019 CCC notified Mr Minott that the section 202 review upheld the decision that he did not have a local connection. The letter from the Reviewing Officer of CCC stated:

“For me it is clear that you started to reside in Cambridge on 26 March 2019 when the Council provided you with interim accommodation and you have not accrued six months residency in this area.

Given the above, I am not satisfied that you have been resident in the district of Cambridge for 6 out of the last 12 months or 3 out of the last 5 years.”

32. Rather than seek to appeal the review decision to the County Court pursuant to s.204, Mr Minott made a fresh homelessness application by a letter dated 17 October 2019,

on the basis that there had been “a material change in his circumstances [because] he has resided in the Cambridge area for more than six months” and now had a local connection.

33. CCC responded on 21 October 2019, stating that “a new application did not need to be taken” and that the “submission does not provide new information”. It appears from the statement of Simon Penn dated 18 August 2020, a senior housing adviser for CCC, that it was understood by reference to section 10.5 of the 2018 Code that since “[t]he local authority did not ‘provide’ the accommodation once the notice expired because we were actively trying to evict Mr Minott from the property”, his residence since 2 September did not count towards his normal residence in the district. Therefore, Mr Minott had not resided in the district for more than six months and the facts upon which he relied in his fresh application were exactly the same as those already determined. CCC have maintained this position thereafter leading to this appeal.

The Judgment below

34. The judge identified at the outset that “the short point in this matter [was] whether the Claimant acquired a local connection for the purpose of establishing that he was ‘normally resident’ having occupied temporary accommodation ...when that continued occupation was after any housing duty owed to him had expired, a referral to another Housing authority had been made and accepted, and after a right of occupation had been terminated and he occupied the accommodation without permission.” (Emphasis provided)
35. He ultimately determined that “other than the passing of time nothing had changed” and that the “simple passing of time and the unlawful occupation of the accommodation cannot amount to a new fact for the purposes of a new application under the Housing Act 1996”. Mr Minott’s new application was “wholly fanciful i.e., unrealistic given the circumstances”; his behaviour in resisting eviction was “tantamount to a manipulation of the homeless statutory regime.”

The appeal

36. The plain words of section 193(9) do not appear to me to place any restriction on the right of an unintentionally homeless applicant to make a fresh application for accommodation or assistance, even though the LHA to which s/he applies has made a successful local connection referral to another LHA. Mr Grundy QC acknowledges, rightly in my view, that *Fahia* will apply in such circumstances.
37. He also acknowledges, as he is bound to do, that the clear ratio in *Mohamed* is that temporary or interim accommodation provided by an LHA in accordance with its HA 96 Part 7 statutory duties may count towards normal residence. However, he maintains that ‘normal residence’ for the purposes of establishing a local connection may depend on an applicant’s security of occupation of particular premises or such places as parks and doorways. In this regard he relies upon Lord Brightman’s speech in *Betts* at p. 628 B to D (see above).
38. He submits that the period of time in which Mr Minott had been ‘normally resident’ according to *Mohamed* had ended with the notice to quit; his unlawful possession of the property and defiance of any attempts to evict him demonstrated the precariousness

of his situation and did not constitute normal residence capable of establishing a local connection with Cambridge. Therefore, the 6 month ‘gateway’ to normal residence provided in the 2018 Code and Local Authorities Agreement was not available, and yet Mr Minott asserted in his fresh application that he had established a local connection by virtue of his residence which exceeded 6 months. The previous review had confirmed that he had not established a local connection. CCC did not need to make any non-statutory investigations into the asserted ‘new fact’ to know that the application should be rejected.

39. It seems to me that Mr Grundy’s arguments mirror CCC’s decision that the application “need not be taken” having combined the two-stage process of fresh application and statutory inquiries into one. The peg upon which CCC hang their case is focused upon the property and whether this could be said to be ‘secured’ to precisely mirror the final sentence in paragraph 4(3) of the Local Authorities Agreement and not, as required by section 199, the district. That said, it is difficult to discern from the rejection letter whether CCC decided that the fresh application was not based upon a new fact, or that the new fact was fanciful or trivial. In similar vein, in one instance the judgment refers to there being no new fact, in another that it was a fanciful application.
40. Although by imputing the adjectives ‘fanciful’ or ‘trivial’, Neuberger LJ appears to have shaded the decision in *Fahia*, I do not think that he thereby intended to dilute the approach as he makes clear in paragraph 61. The LHA is not entitled to investigate the accuracy of the new facts, however “short and simple” that investigation may be. As Neuberger LJ said in paragraph 57, the burden imposed upon LHAs by successive applications can be exaggerated; the subsequent investigation may often be able to rely in many respects upon the results of their investigation into the previous application. In light of the reasoning in *Fahia* it seems to me that unless the new fact is patently fanciful or trivial on the face of the application, for example as my Lords suggested in discussion with Counsel, the application being made on a different day of the week or by a different method, then the LHA have no choice but to accept the application and investigate it. In many cases, that investigation may well be concluded very shortly but the implications of not doing so have already been stated in *Begum* (see above). Significantly, in my view, the applicant will have no right of review.
41. I do not accept that it is possible to say summarily that Mr Minott did not continue to ‘normally’ reside in the property. To find otherwise would fly in the face of the reasoning in *Mohamed* and *R(N)*. Mr Grundy’s arguments conflate the issue of the factual basis of Mr Minott’s fresh application and the pre-emptive qualitative assessment of whether the nature of his residence would suffice to establish a local connection. I consider them to demonstrate a process prohibited by *Fahia* as confirmed in *Begum*. They cannot draw any support from Lord Brightman’s speech in *Betts*, for the reasons I give in [15] above.
42. In my view, the judge fell into error in accepting and adopting Mr Grundy’s arguments on this point. The judge distinguished *Mohamed* on the basis that the Court “was not required to consider the lawfulness of the occupation”, but that does not meet the rationale of the House of Lords decision. Mr Minott’s actions were of much shorter duration than, for example, a squatter who has continued in ‘unlawful’ occupation and undisturbed for years, and there is no authority to which we have been referred which suggests that this situation could not amount to ‘normal residency’ with a view to establishing a local connection.

43. That the judge identified the issue as “whether the Claimant acquired a local connection for the purpose of establishing that he was ‘*normally resident*’” demonstrated that he placed the cart before the horse; that he viewed the viability of the asserted new fact based on his assessment of the merits. This approach runs entirely contrary to *Fahia*.
44. Mr Vanhegan explicitly relies upon the fact of Mr Minott’s actual residence crossing the 6-month threshold which is given as a working definition of normal residence in the 2018 Guidance and Local Authorities Agreement. He does not seek to argue that the mere passage of time between the September 25 review and the October 17 application would constitute a ‘new fact’ absent any consequences of the elapse of time. Nor does he argue that normal residence of whatever length will necessarily give rise in ‘real terms’ to a local connection, which is an evaluation to be made upon the ‘new fact’ once the application has been accepted.
45. I think Mr Vanhegan is right to limit his argument in this fashion. Logically, as Pill LJ made clear at paragraph 91 of *Begum*, the elapse of time means that the facts of later applications will never be precisely the same but, as Neuberger LJ said in paragraph 57, if there is no consequence to the passage of time then the application will be based on the same facts, and of no effect. Therefore, if in this case there had been no crossing of a time threshold then absent the occurrence of some other significant event in the interim, I would have classified Mr Minott’s application as being based on no ‘new fact’. But the ‘new fact’ of 6 months’ residence upon which Mr Minott relied, meets the working definition of ‘normal residence’ provided by the 2018 Code and local authority guidelines. This is a different factual basis to that upon which the review decision notified on 25 September 2019 had been made. It was irrational for CCC to suggest that there was no new fact upon which to proceed.
46. Finally, Mr Grundy’s back stop argument was to emphasize the adverse consequences of allowing Mr Minott’s defiance to the notice to quit being allowed to undermine the purpose of the local connection rules as identified in *Re Betts* at p. 627 C to D; that is to enable him to “jump over the heads” of all other persons on the housing list. This submission appears to have weighed significantly in the judge’s decision below. Whilst not condoning Mr Minott’s actions, I agree with Mr Vanhegan that these policy arguments have been effectively rejected by the House of Lords decision in *Mohamed*.
47. The House of Lords in *Fahia* expressed sympathy for the LHA involved in the case and suggested that it “may well be that legislation is required to lay down a streamline procedure for second or later applications”. This was not addressed in the successive Housing Acts or associated legislation. The Court of Appeal in *Begum* also recognised the difficulties created by the interpretation of the plain words used in the statute but noted also that the apparent indulgence was understandable in terms of the people it was designed to protect, namely the homeless. In any event, ultimately, as Neuberger LJ made clear, “as Lord Browne-Wilkinson said in *Fahia* ... any problem in this connection is for the legislature, not the judiciary to solve”.
48. It seems to me that the judge transgressed this line by his decision that Mr Minott’s application was fanciful by reference to his manipulation of the system rather than that the asserted new fact was itself fanciful.
49. I would allow this appeal.

Lewison LJ:

Introduction

50. I agree with Macur LJ that this appeal should be allowed, for the reasons that she gives. In view of the importance of the question, and its potential consequences for hard-pressed and cash-strapped local authorities, I have added this concurring judgment.

The facts

51. Mr Minott applied to Cambridge City Council as homeless on 26 March 2019. On that day Cambridge provided him with temporary accommodation under a weekly licence at 27 Gilbert Close. They did so in pursuance of their duty under section 188 of the Housing Act 1996, which applies where a housing authority have reason to believe that a person is homeless, eligible for assistance and has a priority need. Having made inquiries, Cambridge decided that Mr Minott had no local connection with Cambridge, but did have a local connection with Sandwell MBC. Accordingly, Cambridge referred his application to Sandwell under section 198 (A1) of the Act. On 9 August 2019 Sandwell accepted the referral.
52. Mr Minott asked for a review of that decision and also asked for temporary accommodation pending that review. Cambridge refused to provide that accommodation and terminated Mr Minott’s licence with effect from 2 September 2019. Mr Minott refused to vacate the property, but has remained living there. Cambridge made their review decision on 25 September 2019, and upheld the decision to refer Mr Minott’s application to Sandwell.
53. On 26 September 2019 six months elapsed since Mr Minott’s initial application to Cambridge. Although Mr Minott did not appeal against the review decision, he made what purported to be a fresh application on 17 October 2019. Cambridge refused to entertain that application on the ground that the application did not provide any new information. The reason for that was that Mr Minott did not have a local connection to Cambridge.
54. The sole issue for us to decide was whether Mr Minott’s application ought to have been considered on its merits.

The basic framework

55. Part 7 of the Housing Act 1996 contains the code of statutory responsibilities that a housing authority has towards the homeless. In the exercise of its functions, a housing authority must have regard to any guidance given by the Secretary of State: section 182. The guidance applicable to England is contained in the Homelessness Code of Guidance for Local Authorities.
56. Where a person applies to a housing authority for assistance with homelessness, that housing authority may refer the application to a different authority, if the conditions in section 198 are met. The relevant conditions, for present purposes, are that the applicant or any person who might reasonably be expected to reside with him has no “local connection” with the district of the authority to whom the application was made; but he

(or such a person) has a local connection with the authority to whom the referral was made: section 198(2).

57. Section 199 deals with a local connection:

“(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.”

58. The expression “normally resident” is not statutorily defined; but paragraph 10.5 of the Code of Guidance states:

“... “normal residence” is to be understood as meaning “the place where at the relevant time the person in fact resides”. Residence in temporary accommodation provided by a housing authority can constitute normal residence of choice and can contribute towards a local connection.”

59. That paragraph echoes the decision of the House of Lords in *Mohamed v Hammersmith & Fulham LBC* [2001] 1 AC 547. Housing authorities in England, Wales and Scotland entered into a nationwide agreement dealing with referrals. Paragraph 4.3 of that agreement stated:

“It is suggested that a working definition of “normal residence” should be residence for at least 6 months in the area during the previous 12 months, or for not less than 3 years during the previous 5-year period.”

60. That definition is endorsed by paragraph 10.7 of the Code of Guidance. Nevertheless, the fact that someone has been normally resident in a district for six months does not necessarily mean that they have a local connection with that district. Lord Brightman explained in *R v Eastleigh BC Ex p Betts* [1983] 2 AC 613:

“A local connection not founded upon any of the four stated factors is irrelevant. The fundamental concept of section [198 (2)] is local connection, not any local connection, but a local connection having any of the origins described in section [199]. 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.”

61. He went on to say:

“The fundamental question is the existence of a "local connection." In construing section [198 (2)] 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.”

62. In other words, satisfying one of the criteria in section 199 (supplemented by the working definition of “normal residence”) is no more than a gateway which entitles an applicant to have the question whether he has a local connection decided by the housing authority.

63. Where a housing authority (here Cambridge) have notified another housing authority in England (here Sandwell) that the conditions are met for referral of the applicant’s case, the notifying authority ceases to be subject to the interim duty to accommodate under section 188: section 199A (1). But if the notifying authority have reason to believe that the applicant has a priority need, they must secure that accommodation is available for the applicant until he is notified of the decision whether the conditions for referral are met: section 199A (2). If it is decided that the conditions for referral are met, then the applicant is to be treated as having made his application for assistance to the notified authority (here Sandwell); and from that date the notifying authority (here Cambridge) owes no duties to the applicant under Part 7 of the Act: section 199A (5). The relevant duties will, instead, be owed by the notified authority (here Sandwell).

Multiple and sequential applications

64. There is nothing in the Act to prevent an applicant from making simultaneous applications to more than one housing authority. This is recognised by paragraph 18.9 of the Code of Guidance which contains guidance about the sharing of responsibilities between authorities.

65. So far as sequential applications are concerned, there is nothing in the Act to prevent those either. On the contrary section 193 (9) positively contemplates a “fresh application” being made where a person ceases to be owed the duty under section 193. Although that is not this case, it recognises the possibility of making sequential applications.

What is a fresh application?

66. Case law has explained when a housing authority may refuse to entertain what purports to be a fresh application. The leading case is the decision of the House of Lords in *R v Harrow LBC ex p Fahia* [1988] 1 WLR 1396. Mrs Fahia had been provided with temporary accommodation by Harrow pending consideration of her application for assistance. Harrow decided that she was intentionally homeless. Nevertheless, she continued to live in that accommodation for another year. When she was threatened with eviction from that accommodation, she made another application to Harrow for assistance. Harrow refused to entertain the application on the ground that there made been no material change in circumstances. The House of Lords held that Harrow was wrong.

67. It is important to be clear about Harrow's argument that the House of Lords rejected. Lord Browne-Wilkinson summarised it thus:

“It is Harrow's case that a person making a second application must demonstrate a change of circumstances which might lead to the second application being successful and it is for the local authority to decide whether that test has been satisfied. So, it is said, in the present case Mrs Fahia had not shown any new circumstance which could lead to the conclusion that she was not intentionally homeless and that accordingly Harrow could refuse to go through the whole process of making statutory inquiries again.”

68. There are two strands to this argument, each of which was rejected. The first was that the relevant test was whether the alleged change of circumstances “might” or “could” lead to a different conclusion. The second was that it was for the local authority to decide whether that test was satisfied.

69. Lord Browne-Wilkinson continued (I have updated the statutory references):

“I have sympathy with Harrow's case on this point but I am unable to extract from the statutory language any sufficient justification for the suggested short cut. Under section [184] the statutory duty to make inquiries arises if (a) a person applies for accommodation and (b) “the authority have reason to believe that he may be homeless or threatened with homelessness.”... when an applicant has been given temporary accommodation under section [188] and is then found to be intentionally homeless, he cannot then make a further application based on exactly the same facts as his earlier application: see *Delahaye v Oswestry Borough Council*, *The Times*, 29 July 1980. But those are very special cases when it is possible to say that there is no application before the local authority and therefore the mandatory duty imposed by section [184] has not arisen. But in the present case there is no doubt that when Mrs. Fahia made her further application for accommodation she was threatened with homelessness. Moreover in my judgment her application could not be treated as identical with the earlier 1994 application.... It

is impossible to say that there has been no relevant change in circumstances at all.”

70. It will be seen that the only case in which a housing authority can refuse to entertain what purports to be a subsequent application is where there is “no application”. That would be the position where it is based on “exactly the same facts” as the previous application or is “identical with” it. Lord Browne-Wilkinson’s reference to “relevant change in circumstances” must be read in that light; and in view of his rejection of Harrow’s argument cannot be read as meaning a change of circumstances which “might” or “could” lead to a different outcome.
71. This court considered *Fahia in Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340, [2005] 1 WLR 2103. At [38] Neuberger LJ confirmed that *Fahia* had rejected a test of “material change of circumstances.” At [39] he said:
- “... on receipt of what purports to be an application, an authority are bound to make inquiries, if they have reason to believe that the applicant is or may be homeless, unless the purported application can be shown to be no application. The *only* relevant basis upon which a purported subsequent application may be treated as no application, according to *Fahia* at p 1402, appears to be where it is based on “exactly the same facts as [the] earlier application.” (Emphasis added)
72. That test is harder to satisfy than a test of “material change of circumstances”: [41]. The comparison is between the facts found by the housing authority on the first application and the facts asserted in the second application: [44] and [45].
73. Having made some general observations, Neuberger LJ then held that Ms Rikha Begum’s application was a fresh application and that the housing authority should have accepted it as such. That was enough to decide the appeal, and what followed was *obiter*.
74. Neuberger LJ went on to give what he described as “guidance”. He said at [60]:
- “Secondly, if the subsequent application document purports to reveal new facts which are, to the authority's knowledge, and without further investigation, not new, fanciful, or trivial then the same conclusion applies. The facts may not be new because they were known to, and taken into account by, the authority when it offered the applicant accommodation to satisfy the earlier application. It is not appropriate to expand upon what may constitute or are fanciful or trivial alleged new facts, because that must inevitably turn on the particular circumstances of the particular case.”
75. It is important to read these words in context. What the authority is doing is looking at the facts *alleged* by the subsequent application. It is only in that context that it is possible to make sense of the word “fanciful”. If, for example, Mr Minott had alleged that his home in Cambridge had been destroyed by a meteorite, a local authority would be entitled to regard that as a fanciful allegation. Whether a fact is or is not trivial is

perhaps open to debate; but a fact cannot be regarded as trivial merely because it could not affect the outcome of the second application. To read Neuberger LJ's observation in that sense would be inconsistent with *Fahia* and also inconsistent with the earlier reasoning in his judgment.

76. What, however, is clear to my mind is that when the housing authority receives what purports to be a subsequent application, their inquiry falls into two quite separate stages:
- i) **Stage 1:** it is an application at all? The answer will only be no if it is based on precisely the same facts as an earlier application (disregarding fanciful allegations and trivial facts);
 - ii) **Stage 2:** if it is an application, is it well-founded? That will require the housing authority to carry out the inquiries required by section 184. If an application passes stage 1, there is no available short cut.
77. The separation of the two stages is clear from *Rikha Begum* at [61]:
- “Thirdly, I turn to a case where the subsequent application document appears to reveal new facts, which are, in light of the information then available to the authority, neither trivial or fanciful, although they may turn out to be inaccurate or insufficient for the applicant’s purposes on investigation. In such a case, I consider that the authority must treat the subsequent application as a valid application, because that is what it is, in light of the reasoning of the House of Lords in *Fahia*.... In particular, I do not consider that in such a case the authority would be entitled to investigate the accuracy of the alleged new facts before deciding whether to treat the application as valid, even where there may be reason to suspect the accuracy of the allegations. Such an investigation would, in my view, fall foul of the manifest disapproval in *Fahia* of non-statutory inquiries. Even if an investigation to decide whether the application is valid is expected to be comparatively short and simple, it seems to me that it would transgress that disapproval, as well as running into the other difficulties I have referred to, based on the wording and structure of Part VII of the 1996 Act .”
78. The same separation of the two stages can also be seen in *R (Bukartyk) v Welwyn Hatfield BC* [2019] EWHC 3480 (Admin), [2020] HLR 19.
79. Mr Grundy QC correctly pointed out that the authority to whom the application was made could refer it to a different authority under section 198 (A1) on the ground that the applicant had a local connection to the district of that other authority. That referral could be made before the authority had completed its own inquiries under section 184. I agree. But such a referral does no more than identify the authority upon whom the making of the inquiries (and compliance with any ancillary interim or final housing duty) is placed. It does not mean that no inquiries need be made; whereas a rejection of a purported application as no application at all means that no one will carry out the inquiries. In addition, if a housing authority does make a reference under section 198 (A1), it is required by section 184 (4) to notify the applicant of that fact. That in turn

gives the applicant the right to request a review of the authority's decision to refer: section 184 (5); section 202. The review process is (unlike a claim for judicial review) a full merits review and not confined to a question of public law. It follows that to reject a purported application as no application at all deprives an applicant of that valuable procedure. Since the whole object of Part 7 of the Act is to protect the homeless, there is every reason to apply the strict test laid down by *Fahia* and *Rikha Begum*.

80. I should mention in passing that the test in Wales may be different, and more difficult for an applicant to satisfy. Section 62 (1) of the Housing (Wales) Act 2014 requires an assessment to be made unless section 62 (2) applies. Section 62 (2) provides:

“(2) This subsection applies if the person has been assessed by a local housing authority under this section on a previous occasion and the authority is satisfied that—

- (a) the person's circumstances have not changed materially since that assessment was carried out, and
- (b) there is no new information that materially affects that assessment.”

81. That sub-section does appear to lay down a test of “material change in circumstances” which is the test that both *Fahia* and *Rikha Begum* rejected.

Lapse of time

82. There was some debate about whether a lapse of time could amount to a new non-trivial fact. Indeed, on one view, in *Fahia* itself all that had happened since the housing authority's first decision was the lapse of time.
83. In my judgment, however, what matters most is not the lapse of time in itself, but what its alleged consequences are. For example, under the Homelessness (Priority Need for Accommodation) (England) Order 2002 certain children who are 16 or 17 automatically fall within the category of persons who have a priority need for accommodation. A lapse of time which results in a 15-year old becoming 16 thus has a consequence. The Code applicable to overcrowding states that a separate bedroom should be available to a child aged 10 or more (unless they share with other children of the same sex). So a lapse of time during which a child attains the age of 10 may also have the consequence that it is no longer reasonable for the family to occupy the accommodation that they have hitherto occupied. I think that Mr Grundy accepted that in such cases the lapse of time could be a new fact. But he said that the criterion of six months' normal residence could not be, because that was a working definition agreed between local authorities which had no statutory force.
84. Although Mr Grundy's point has some force, the fact remains that it is a working definition of widespread application. Moreover, it is endorsed by the Code of Guidance and the statute requires housing authorities to have regard to that guidance.

Stage 2

85. If a purported fresh application passes stage 1, the housing authority must embark on stage 2.

86. Part 7 of the Housing Act 1996 does not provide for a maximum time within which a local authority must complete its inquiries under section 184. Still less does it provide for a minimum time (although it would be usual for the authority to interview the applicant). But if a purported fresh application reveals new, non-trivial facts, there is nothing to prevent the authority from accepting it as a valid application and speedily determining it. That would, at least, give the applicant the option of a statutory review of the decision.

Previous cases

87. We were shown a number of previous cases in which the question arose whether a purported fresh application was validly made. In addition to *Fahia* and *Rikha Begum*, they were *R (May) v Birmingham City Council* [2012] EWHC 1399 (Admin) (Singh J); *R (Abdulrahman) v Hillingdon LBC* [2016] EWHC 2647, [2017] HLR 1 (Neil Cameron QC) and *R (Ibrahim) v Westminster City Council* [2021] EWHC 2616 (Admin) (Soole J). In all these cases it was held that a valid fresh application had been made.
88. The same result was reached in a number of other cases including (*Bukartyk*) (Sam Grodzinski QC), *R (Kensington and Chelsea RLBC) v Ealing LBC* [2017] EWHC 24 (Admin), [2017] PTSR 1029 (HHJ Walden-Smith), and *R (Hoyte) v Southwark LBC* [2016] EWHC 1665 (Admin), [2016] HLR 35 (Amanda Yip QC).
89. What is striking about all these cases is that in each of them the court decided that the housing authority had wrongly refused to entertain an application which did satisfy the test propounded in *Fahia* and *Rikha Begum*. That trend in the case law tends to confirm Lord Browne-Wilkinson's prediction in *Fahia* that cases in which a housing authority would be entitled to refuse to entertain a subsequent application would be confined to "very special cases". With the exception of the judge's judgment in this case, we were not shown a single example of a case in which it had been held that a housing authority was entitled to refuse to entertain what purported to be a fresh application. The authors of *Housing Allocation and Homelessness* (6th ed) para 8.93 footnote 7 guardedly say that the judge's decision in this case "must be treated with caution". In my judgment, however, it was wrong.
90. In *Fahia* Lord Browne-Wilkinson referred with apparent approval to the decision of Woolf J in *Delahaye v Oswestry DC*. That is not a case which was cited to us (although I have looked at the transcript on Lexis); but it is a case (perhaps the only case) in which a housing authority has been held to have been entitled to refuse to entertain a second application. The reasoning in parts of *Delahaye* is not easy to reconcile with the decision of the House of Lords in *Mohamed*. I note that in *Rikha Begum* Neuberger LJ at [38] reserved his opinion on whether *Delahaye* was also inconsistent with *Fahia*. But on the facts of *Delahaye* the housing authority had determined on the first application that the applicants were intentionally homeless, so it had no duty to provide accommodation for them at all. That fact had not changed (and was not asserted to have changed) between the first and the second application. But since no argument was addressed to us on *Delahaye*, I say no more about it.

Was Mr Minott's application a fresh application?

91. The answer to this question depends on comparing the facts as found by Cambridge in the original review decision, with the facts alleged in the fresh application. The legal

consequences of the facts alleged in the fresh application are matters for stage 2 rather than stage 1.

92. Cambridge rejected Mr Minott’s first claim to have a local connection with Cambridge in its original review decision of 25 September 2019. Although Mr Minott claimed to have been resident in Cambridge since November 2018, Cambridge decided that factual question against him; and found that he started to reside in Cambridge on 26 March 2019. The review decision went on to say:

“4. For me it is clear that you started to reside in Cambridge on 26 March 2019 when the Council provided you with interim accommodation and you have not accrued six months residency in this area.

5. Given the above, I am not satisfied that you have been resident in the district of Cambridge for 6 out of the last 12 months or 3 out of the last 5 years.”

93. The rejection of Mr Minott’s case thus depended (and depended solely) on the lack of six months’ residence in Cambridge. In other words, the gateway to a local connection with Cambridge remained shut.

94. The fresh application, on the other hand, asserted that:

“... our client has instructed us not to pursue an appeal in the County Court. This is because a material change in circumstances has occurred. This material change is that he has resided in the Cambridge area for more than six months. ... There can therefore be no doubt that our client now has a local connection with Cambridge.”

95. The material change asserted is six months’ residence in Cambridge. That is the sole change of fact alleged. It is true that the letter went on to assert that Mr Minott had a local connection with Cambridge; but that was the alleged legal consequence of the new fact, rather than the new fact itself. The alleged consequence may or may not be correct; but that is a question for stage 2 rather than stage 1.

96. In my judgment, given that Cambridge had rejected Mr Minott’s claim to have had a local connection on the sole ground that he had not accrued six months’ residence in Cambridge (with the result that the gateway was shut), an allegation that he had now accrued six months’ residence was a new fact (with the consequence that, if the asserted fact is true, the gateway to a local connection with Cambridge was now open). In my judgment that was a new fact which was neither a fanciful allegation nor trivial. It was not a fanciful allegation because it built on Cambridge’s own finding of fact in the original review decision. It was not trivial because the alleged consequence of the lapse of time was that, having failed to satisfy the working definition of “normal residence”, Mr Minott now satisfied it. In that sense it is not merely a lapse of time as the judge thought: it is a lapse of time which may have legal consequences. I do not consider that that conclusion is invalidated merely because the working definition is not itself a statutory test. The quality of Mr Minott’s residence may or may not be relevant to stage 2; but I do not consider that it is relevant to stage 1.

97. What went wrong in the present case was that on receipt of the fresh application, Cambridge went straight to the question whether Mr Minott had a local connection. But that is a stage 2 question rather than a stage 1 question. Having reached its conclusion on the stage 2 question, Cambridge then reasoned backwards to arrive at the answer to the stage 1 question. That was the wrong approach. The judge made the same error, right at the outset of his judgment, when he described the issue as whether Mr Minott had established a local connection. But that was a stage 2 question. The only question at stage 1 (and hence the only question for the judge to determine) was whether Mr Minott had made a fresh application.

Result

98. I, too, would allow this appeal. Whether Mr Minott can establish a local connection with Cambridge does not arise at this stage; and in any event is not for us to say.

Underhill LJ:

99. I agree that this appeal must be allowed. The dispositive reasoning of Macur and Lewison LJ is as I understand it the same, and I agree with it. Stripping it to its essentials:
- (1) Cambridge was only entitled to reject Mr Minott's application if it was identical to his previous application in the sense established by the decision of the House of Lords in *Fahia* and further explained by Neuberger LJ in *Rikha Begum*
 - (2) That condition was not satisfied in the present case because the new application relied on what was plainly a "new fact" which was neither fanciful nor trivial, namely that by the date that it was made Mr Minott had been resident in Cambridge for the six-month period referred to at para. 10.7 of the Code.
 - (3) It was not open to Cambridge to rely on the argument that in the particular circumstances of his case (including the unlawfulness of his continued occupation of his interim accommodation) Mr Minott's six-months' residence did not establish that he had a local connection. That is an argument that the change was not "material", which is precisely what was held in *Fahia* to be inadmissible. The argument could only be run at the next stage.
100. It follows from the foregoing that we need not express any view on the issue of whether Mr Minott was in fact normally resident in Cambridge at the date of the application or whether, if so, that established a local connection; and, like Lewison LJ, I prefer not to do so. I will only make two observations. First, in agreement with Macur LJ, I can see no reason why the fact that an applicant's residence is in some sense unlawful necessarily means that they cannot be "normally resident" for the purpose of section 199 (1) (a) of the 1996 Act. Second, I am not entirely persuaded that the speech of Lord Slynn in *Mohamed* represents a departure from the approach of Lord Brightman in *Betts*, as she says at para. 15 of her judgment.
101. The only other observation that I would make is that, although I agree that a decision by a local authority that a subsequent application is not a fresh application is only reviewable on public law grounds (as Macur LJ says at para. 27 of her judgment), it seems to me that typically the issue will be one to which only one answer is possible.