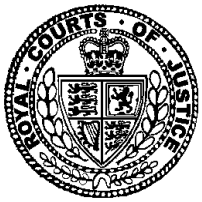

Neutral Citation Number: [2020] EWCA Civ 439

Case No: B5/2019/0566

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
HHJ Gerald
E40CL228

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/03/2020

Before:

LORD JUSTICE McCOMBE
LORD JUSTICE FLOYD
and
LORD JUSTICE COULSON

- -

Between:

LB	**Appellant**
- and -	
LONDON BOROUGH OF TOWER HAMLETS	**Respondent**

- -
- -

Jamie Burton and Daniel Clarke (instructed by Miles & Partners) for the Appellant
Genevieve Screeche-Powell (instructed by Legal Services, London Borough of Tower Hamlets) for the Respondent

Hearing date: 5 March 2020

- -

Approved Judgment

Lord Justice McCombe:

1. This is the appeal of Ms LB ("the Appellant") from the order of 4 March 2019 of HH Judge Gerald, sitting in the County Court at Central London. The judge dismissed the Appellant's appeal from the decision of 7 August 2018 of the Review Officer ("RO") of the London Borough of Tower Hamlets ("the Respondent"), affirming the decision of the Respondent's Housing Officer of 12 December 2017. The housing officer had refused the Appellant's application for assistance under Part VII of the Housing Act 1996 ("the Act") on the ground that she had rendered herself homeless intentionally.

2. The background to the case holds two essential features: 1) the Appellant was in arrears with her rent at the privately rented property from which she was evicted, for that reason, on 3 November 2016; and 2) there was evidence that she had been subjected to domestic violence/harassment from her former husband ("C").

3. The question for the judge in the County Court was whether the RO had erred in law in the decision that she had taken, the test being in substance that applied by the High Court on judicial review: see *Begum (Runa)* v *Tower Hamlets LBC* [2003] UKHL 5 at [7] per Lord Bingham of Cornhill.

4. S.191(1) of the Act provides:

> "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."

Section 177(1) and (1A) state:

> "(1) It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence or other violence against him, or against:
>
> (a) a person who normally resides with him as a member of his family, or
>
> (b) any other person who might reasonably be expected to reside with him.
>
> (1A) For this purpose "violence" means:
>
> (c) violence from another person; or
>
> (d) threats of violence from another person which are likely to be carried out;
>
> and violence is "domestic violence" if it is from a person who is associated with the victim."

5. The provisions are relatively easy to apply in cases where a person leaves property intentionally, when there is no other reason why he or she should vacate, for the single

purpose of avoiding apprehended violence. In such cases, there is intentional homelessness, but it is not reasonable for him or her to continue occupation. On the other hand, improper non-payment of rent, leading to eviction, is treated as intentional homelessness, but it becomes more difficult to assess the reasonableness or otherwise of hypothetical continued occupation in such a case where there is also some evidence of domestic violence before/after eviction and before the decisions on housing assistance are taken by the housing authority and/or by an RO.

6. The question in this case was whether, with the background of rent arrears and the Appellant's eviction from her former accommodation for that reason, it would not have been reasonable for her to continue to occupy that property because it was probable that occupation would lead/have led to domestic violence or other violence against her and/or her children.

7. The RO found that it would have been reasonable for her to continue to occupy the old property in all the circumstances and the judge affirmed that decision. She now appeals with permission granted by Flaux LJ by his order of 3 July 2019.

Background Facts

8. The Appellant resided at her old property, with her husband, C, and their three children (one of whom was an adult at the material times), under a tenancy granted to her alone on 24 June 2013. The Appellant and C had married in 2000. The marriage broke down in 2015; there had been some domestic violence at that stage and C vacated the property. C went for a time to the United States, but he returned not long afterwards. On 5 May 2015 he returned to the property and barricaded himself in with the children. The police were called; they forced entry and removed C from the premises. A non-molestation order ("the First NM Order") was made against C on 6 May 2015 for a period of 12 months. The order prohibited C from using or threatening unlawful violence towards the Appellant or coming within 100 metres of the premises or the school/nursery which the children attended; he was also restrained from communicating with the Appellant by letter, text message or otherwise, except through solicitors. The order was varied in August 2015 to permit visits to the school, within certain limited parameters.

9. The review decision indicates that the Appellant first approached the Respondent's housing department in April 2016, during the currency of the First NM Order, saying that she was in arrears with her rent owing to a change in her housing benefit. She had received notice from the landlord requiring her to leave the property for failure to pay the rent. A possession order was made on 5 August 2016 to take effect on 2 September 2016; the order was executed on 3 November 2016. She had informed the Respondent on 5 September that she intended to stay in the property until forced to leave by bailiffs. It seems that at that stage there was no indication that she would leave because of domestic violence and that she was attempting to make a payment arrangement with the landlord. In a note dated 3/11/2016 in the Respondent's housing file it is stated that the Appellant had mentioned the First NM Order, but with the comment that she was "… not in fear now … D[omestic] V[iolence] was in Tower Hamlets, however not in fear …". She was given temporary accommodation pending enquiries.

10. In a letter of 9 December 2016 to the Respondent the Appellant said that she was seeking assistance with "renewal of [the] non-molestation order" but that she wished to remain in Tower Hamlets keeping her children at the same schools. A second order

("the Second NM Order") was made on 24 January 2017, reciting that the Appellant had appeared in person before a District Judge (C not appearing) and that evidence had been given to the effect that C had continued to threaten and abuse the Appellant and had tried to see the children at school, contrary to their wishes, and causing them distress. C was further restrained (for a period of 12 months) from threatening and abusing the Appellant and was ordered not to go within 100 metres of the children's schools without prior written invitation from the school authorities.

11. There was a complaint by the Appellant that, in May 2017, C had attended the school of one of the children without invitation and in breach of the order. C was interviewed by the police, but the Crown Prosecution Service declined to charge "as it was not in the public interest". It seems that shortly thereafter C sought to appeal against the Second NM Order. Permission to appeal was refused by a Circuit Judge on 5 July 2017, at a hearing which C did not attend, and a new order ("the Third NM Order") was made in essentially similar terms to the previous one. This third order was also to last for 12 months.

12. On 12 December 2017 the Respondent made its initial decision on the Appellant's housing application; it decided that the Appellant was intentionally homeless. It is clear that the focus of the decision was whether the Appellant had intentionally given up an affordable property by not applying her resources properly to ensure that the rent was paid. Any question of domestic violence centred upon whether this had rendered her less able to manage her affairs, including payment of her rent, rather than any question of whether violence made it unreasonable for her to have continued in occupation of the old property. The nine-page decision letter said this about C's behaviour and the court orders:

> "You also advised that you were dealing with so many things at the same time, you are a victim of DV and your ex-husband was harassing you, he was in the US for some time but he had returned and moved in with you and his abuse started again. You had to call the police and get him out and go to court to get an injunction out against him. You advised that you are on the third injunction at the moment, you did not want to move, and you did not want to unsettle the children. He was stalking you and following the children from school. He would just turn up at school wanting to see the kids etc.
>
> You advised that you had to take days off due to the trouble your ex-husband was causing you and this meant that you got paid even less money some months.
>
> You advised that you felt that you had to change jobs as your partner knew where you worked and your schedule. You advised that the dental nurse job would give you more flexibility with your hours and would be stress free."

13. By letter of 27 December 2017 the Appellant (apparently with assistance from advisers, Island Advice Centre) wrote to the Respondent expressing a wish to "appeal" against the decision. The arguments raised by the Appellant at that stage again centred on the issue of affordability of the old property. Domestic violence was only raised as having

relevance to the Appellant's mental state at the time when she fell into rent arrears. It was not being suggested that the prospect of further violence had rendered it unreasonable for her to continue to occupy the premises. The only significant passages in the letter dealing with C's conduct were these:

> "7. Furthermore, the caseworker did not take account of my mental state at the time. I was in an abusive relationship for many years. I only managed to report my ex-husband after years of abuse and with the help of friends who called the police on my behalf. After, he was removed from the property he was still harassing me and the kids. During this time I was in contact with Latin American Women's Rights Services (LAWRS) who were assisting me with further non-molestation orders as I could not afford a solicitor. This information was not considered, and it should have been as it influenced my actions and my decision making ability.
>
> 8. I was forced to change jobs as my ex-husband was following me. I was also advised by the Family Court to do so. Given the urgency of the matter undertaking a dental nurse course was the only course of action I saw fit at the time. It was what I needed to do for my safety and that of my children. Not only was this the first job offer I received, but it also provided long term job security. …
>
> 12. When I called the police on my husband on 05 May 2017 [sic], they had to break the door down as he locked himself in the property with the children. The cost of replacing the door was estimated to be £1,000 which I could not afford. After this incident the letting agents attitude changed. They, on numerous occasions, attempted to convince me to go to the Council and ask for help to move from the property. They wanted me to move out at any cost. I feel that this influenced their stance when it came to negotiating a payment plan."

The letter was treated by the Respondent as a request for a review under s.202 of the Act.

14. In March 2018, the police advised the Appellant of the CPS decision not to charge C in respect of the May 2017 incident at the children's school. The Appellant wrote to the police officer expressing her disappointment at this and referring to a further incident on 16 January 2018 when C had appeared at one of the schools – Supplementary Appeal Bundle ("SB") pp 69-70. (I refer to this now, but the relevant message appears only to have been passed to the Respondent in June 2018 – SB/64.) The Appellant did not report the matter formally to the police as she had been advised to do.

15. On 11 April 2018, the Respondent issued a decision on the s.202 Review. This affirmed the original decision. The decision letter referred to the issue of C's conduct in this way:

> "12. I note that [the Appellant] has stated that she was under a considerable amount of stress as she was in the process of filing

> a non-molestation order against her ex-husband. She advises that she feels that her mental state at the time was not taken into consideration. Whilst I understand that this process would have caused her a considerable amount of stress, there is nothing to suggest that as a result [the Appellant] suffers from a mental health condition or a cognitive impairment that would have affected her abilities to manage her affairs. It is also clear that even if [the Appellant] needed assistance in managing her affairs she was more than capable of seeking this out or approaching necessary agencies. Therefore whilst I sympathise with [the Appellant's] difficulties I am not satisfied that they would have precluded her from managing payment for her rent and engaging with her landlord regarding a repayment plan.
>
> 13. I am satisfied that this accommodation was reasonable for [the Appellant's] family to occupy in terms of space and amenity. There were no reported issues of significant disrepair. I have noted [the Appellant's] assertions that the front door was broken at her accommodation after the police had to force entry in May 2015. She stated that she was advised that the manging agents informed her that she would have to undertake the cost herself which was confirmed by the notes provided by the management agent. However I also not [sic] that [the Appellant] was resident in this property for over a year after this incident happened. This suggests to me that she was able to ensure that the door was fixed and that this was no longer an issue of disrepair. I also note that this was a significant time before [the Appellant's] final arrears began therefore I am not satisfied that this affected [the Appellant's] ability to pay the rent. As previously stated I am also satisfied that this property was affordable for [the Appellant]."

16. The review decision prompted an immediate response on 16 April 2018 from solicitors on the Appellant's behalf. The solicitors took issue with the Respondent's approach to the question of domestic violence, asserting for the first time on the Appellant's behalf that the decision was inadequate in this respect and referring to s.177 of the Act. They invited withdrawal of the decision so as to avoid an appeal being brought in the County Court. The Respondent, by letter of 24 April 2018 to the Appellant, did withdraw its decision; it stated that the review would continue and invited any further representations. These were provided, not by the solicitors but by Island Advice once more.

17. On 22 May 2018, the RO sought information from the police, asking for information about breaches of the NM Orders and stating that she was "trying to determine whether there was a continued risk to [the Appellant] to her children at her [former] accommodation…". There followed a number of e-mails between the RO and the police officer responsible, including the note from the Appellant referring to the January 2018 incident to which I have referred above. A note on the Respondent's file indicates that the officer informed the RO that the Appellant had been advised to report that matter at the police station, but that she had failed to do so. The RO's note concluded as follows:

> "She [the Police Officer] stated that with regards to the risk to [the Appellant] at the previous accommodation she is aware that [C] has breached the non-molestation order in attending her children's school and writing letters to her. She stated given this fact there is a possibility that he would attend her accommodation however she is unable to determine the level of risk. There was historically an assault on [the Appellant] and her children and whilst he is aware of her address there would always be a possibility that he could attend. However if [the Appellant] moves house and tells him where she's living then there is not much that can be done.
>
> She surmised by saying that she believes that there would always be a risk to [the Appellant] in relation to [C], but she cannot confirm the level of risk to her [at the former property]."

18. On 19 July 2018, the RO wrote to Island Advice stating that she was minded to uphold the Respondent's original decision and to find that the Appellant had caused her homelessness intentionally. The letter addressed the affordability of the former property and the domestic violence question. The letter noted the absence of specific incidents, either at the old property or the temporary accommodation, and that there was no absolute prohibition of C having contact with the children. This drew a further response from the same advisers who, on the issue of violence, wrote this:

> "Our client's ex-partner did come to [the former property]. He came on the 5th of May 2017 [sic] and barricaded him in her property. The police had to break the door and remove him.
>
> Our client was continuously subjected to abuse and intimidation by her ex-partner whilst she was living in [the former property]. There have been may violent incidents where her ex-partner has been physically abusive. He has stalked her. He has visited the children's school. There were incidents where the school had to call the police as our client's ex-partner tried to remove her children from school. At one time our client was nearly strangled because she refused to give her ex-partner her mobile phone.
>
> Our client has had to obtain 3 non-molestation orders against her ex-partner. He has breached all 3 of them.
>
> The most recent non-molestation order was obtained in January 2018. Our client's ex-partner promptly breached that when he attended the children's school on the 16th of January 2018."

The Review Decision

19. The final review decision was issued on 7 August 2018. The Respondent's original decision was upheld. Again, the decision stated extensively the RO's findings as to the affordability of the old accommodation for the Appellant and on the question of violence. On the violence issue, the decision (responding to the specific representations on the point that had been made in the letter of 3 August 2018) said this:

> "In your letter dated 03/08/18 you argue that [C] has breached all three molestation orders that [the Appellant] has obtained and has previously been physically violent towards her. I note that you have highlighted an instance in which [C] barricaded himself in the property at [the former property] and the door had to be broken down by the police. I note that you have advised that this took place in May 2017 however from the information available to me from [the Appellant] this incident took place in 06/05/15. I note that [the Appellant's] first non-molestation was issued on 12/05/15 after this incident. Following this instance there is no evidence to suggest that [C] attended [the former property] again. I note that you have advised of several instances of violence committed by [C] against [the Appellant], however you have not stated whether these took place prior to the non-molestation orders being issued. There is nothing to corroborate that [the Appellant] has been a victim of violence or threats from her ex-partner since the non-molestation orders have been issued. I find it difficult to believe that [the Appellant] would have failed to report such an instance of physical violence to the police considering the historical violence. As noted from my correspondence with Detective Jo Varley, the only breaches reported were [C's] attendance at his children's school and letters [the Appellant] states he wrote to her at her current temporary accommodation.
>
> In consideration of the above I am not satisfied that there was a risk to [the Appellant] at her [the former property]. There is nothing to suggest that following the issuing of the non-molestation orders [C] threatened [the Appellant], or physically assaulted her or her children at this property. I also note the reason [the Appellant] left her accommodation at [the former property] was due to rent arrears and not as a result of the risk of violence to her at this accommodation. She resided at [the former property] until she was evicted in November 2016. Prior to her eviction upon her initial approach to our service she was working with our service to not only look for alternative accommodation but attempt to negotiate with her landlords to remain at [the former property]. You have in your representations argued that [the Appellant] was open to a repayment plan, which would again go to confirm that she would have been happy to remain in this property. Therefore I am not satisfied that [the Appellant] was at risk of continued violence at her property … or that it was unreasonable for her to reside in."

20. The Appellant appealed to the County Court, under s.204 of the Act against that decision and the judge dismissed her appeal.

The Present Appeal

21. The appeal to this court is brought on the following ground(s):

> "The learned judge was wrong to reject the Appellant's ground of appeal that the Respondent misdirected itself in law by assessing only the probability of domestic violence occurring at the Appellant's former home had she continued to live there. The learned Judge's dismissal of the said ground of appeal was based on a further misdirection, namely that the test in s.177(1) Housing Act 1996 is whether the risk of domestic violence was probable on the day that the applicant left her former home or was in any event plainly wrong."

22. While the grounds and skeleton argument criticise the judge's reasons for dismissing the appeal to the County Court, our focus has to be on the lawfulness of the Respondent's decision on the s.202 review. In considering that question, however, I will also deal (as I probably must) with the question of the date at which probability of violence is to be assessed for the purposes of s.191, together with the "deeming" provision in s.177 of the Act.

23. I have set out above the important provisions of the Act for present purposes. In the course of his helpful argument, Mr Burton reminded us of the structure of the statute and how these particular provisions fit within other material provisions.

24. In my judgment, before looking at authority, as a matter of language of the provisions, it is clear that s.191 is directed to the time when the relevant person does or fails to do something with the result that he or she ceases to occupy accommodation and then to whether it would have been reasonable for him or her then to continue in occupation. Naturally, the section directs the reader to the time when the act is done or is not done which results in the applicant leaving the premises. One is answering the same question when applying the deeming provision in s.177. In applying this section, the applicant will be held to have been reasonable in ceasing to occupy if, when he or she does or fails to do the act, continued occupation would probably lead to domestic or other violence.

25. In *Denton v Southwark LBC* [2008] EWCA Civ 623, Arden LJ (as she then was) (with whom Dyson LJ (as he then was) and Mummery LJ agreed) said (at [25]) that it was "in general correct" that reasonableness of continued occupation was to be determined at a point of time before the deliberate act which led to the loss of accommodation took place (adopting the approach of Schiemann J (as he then was) in *R v Hammersmith and Fulham LBC, Ex p. P* (1990) 22 HLR 21 (at 29)). In making this assessment, said Arden LJ, what the authority has to do is

> "…to determine whether it is reasonable for the applicant to occupy premises *ignoring* the acts or omissions for which the applicant himself or herself is responsible".

26. Mr Burton urged upon us the fact that *Denton's* case was not dealing with the deeming provision in s.177. That is true: see Arden LJ's judgment at [4]. However, it was very much concerned with the primary provision, namely s.191(1). S.177 only assists in the determining that primary question whether continued occupation is reasonable or not. The s.191 question of reasonableness of continued occupation was the question to be determined in *Denton*, as it is in the present case. In our case, s.177 provides a steer as

to how to answer that question; it did not do so in *Denton*. The principle, however, remains the same.

27. In making the assessment on a review decision, however, high authority suggests that the reviewing officer should not limit the review by reference to circumstances existing at the date of the deliberate action or inaction alone, but by reference to all the circumstances before that date and matters thereafter up to the date of the review. That seems to me to be the thrust of the decision in *Mohammed v Hammersmith and Fulham LBC* [2001] UKHL 57.

28. That case concerned the question whether or not an applicant for housing had "a local connection" with the borough in question. The Court of Appeal and the House of Lords held that a period spent by the applicant in interim accommodation within an authority's district, up to the date of the review, had to be taken into account. Lord Slynn of Hadley (with whom the other members of the Appellate Committee agreed) said at [26]:

> "26. The decision of the reviewing officer is at large both as to the facts …and as to the exercise of the discretion to refer. He is not simply considering whether the initial decision was right on the material before it at the date it was made. He may have regard to information relevant to the period before the first decision but only obtained thereafter and to matters occurring after the initial decision."

29. The decision in *Mohammed* was concerned with the application of s.198(2) on the referral of a housing application from one authority to another. However, in reaching their conclusion, the House followed the approach of Turner J in *R v Southwark LBC, ex p. Hughes* (1998) 30 HLR 1082 at 1089 in a case which was concerned (like our case) with the assessment of homelessness, and found that all circumstances up to the time of the review decision were relevant.

30. In a case, much pressed on us by Mr Burton – *Haile v Waltham Forest LBC* [2015] UKSC 34 - the Supreme Court held that in assessing whether a deliberate act had *caused* homelessness, there had to be a continuing causal connection between the act and the homelessness existing at the date of the inquiry; the authority had to consider that question by reference to facts that had occurred after the deliberate act in question.

31. The combination of these decisions indicate to me that, while the question of whether it was reasonable for a person to continue to occupy premises which he or she had ceased to occupy deliberately is to be assessed at or about the time of the act in question, the assessment needs to be informed by all relevant matters, including events that may occur up to the date of the authority's review decision.

32. In the present case, therefore, in deciding whether or not it was reasonable for this Appellant to have continued to occupy her old accommodation, instead of ceasing to do so deliberately by not paying the rent (and ignoring the non-payment of rent for this purpose), the authority had to consider whether it was probable that this would have led to violence. It could not ignore evidence from events up to the time of review, informing it as to whether violence would have been probable or not.

33. Mr Burton accepted that, in this case, if one were simply to review the evidence as at 3 November 2016 when the Appellant was evicted from her old home, it could not be said that continued occupation would have probably led to further domestic violence nor, therefore, that it was not reasonable for her to continue to live there. On the facts, there had been violence in 2015 and the First NM Order had then been made; there was no evidence of violence (even in the necessarily broad sense of that word) between that date and the eviction. Further, the Appellant had told the authority expressly, at that very date in November 2016, that she was not in fear of violence. Indeed, she had been endeavouring to secure with the landlord a negotiated basis on which she could stay where she was. At that date, therefore, it would have been reasonable for her to continue to occupy the old property.

34. The authority, therefore, had to consider whether what it learned about subsequent events should lead to a decision that her continued occupation of the old property would have made it probable in fact that further violence would follow. It is to be noted that s.177 directs attention to whether the continued occupation ("this") will lead to violence. Did the RO ask herself the right questions in determining the Appellant's case?

35. Mr Burton's submission was that the RO simply did not give enough attention to the post-eviction events and assessed the question of the reasonableness of continued occupation solely by reference to the likelihood of violence at the old property and ignoring "off-site" events, such as distress caused to the children at school.

36. I recall that it is not for the court to make its own decision on the facts of the case and that a benevolent approach is to be adopted to the interpretation of review decisions (on the latter point, see *Holmes-Moorhouse v Richmond-upon-Thames LBC* [2009] UKHL 7 at [49] to [51] per Lord Neuberger of Abbotsbury (with whom Lord Hoffmann and Lord Walker of Gestingthorpe expressly agreed)).

37. In my judgment, it is quite clear that in making the enquiries leading to the review decision the RO tried to find out from the police as much as she could about events following the eviction and about the observance (or otherwise) of the NM Orders by C, whether at the old property or otherwise. She had knowledge of the Second and Third NM Orders. She discovered the breach alleged to have occurred in May 2017, concerning attendance at the school and the decision of the CPS not to prosecute. She heard about the Appellant's complaint of a further breach in January 2018 and was told that the Appellant had failed to report that matter at the police station as advised. She was told by the police officer responsible that there was always a risk from C but that it was not possible to assess the level of the risk either at the old property or at the temporary accommodation provided by the Respondent. The Island Advice Centre in its last letter referred to other incidents, but without any specific details or dates. The only specifics mentioned were those of May 2017 and January 2018 relating to C's attendance at the school, the second of which had not been pursued by the Appellant herself. In considering the arguments raised by Island Advice, the RO saw that they had understood that the incident of May 2015 had occurred in May 2017. This error was pointed out in the review decision letter.

38. Giving the review decision a fair reading, I consider that the RO was endeavouring to express her assessment of the risk to the Appellant *as a result* of continuing to live at the old property. She was not confining herself solely to incidents that might occur

physically *at the old property*. Any such impression is countered by the extent of her enquiries with the police and the contents of the "minded to" letter of 19 July 2018. She was also having proper regard to the nature of the events which were said to have occurred and the absence of evidence of further significant breaches of the NM Orders pursued by the Appellant. That is not to ignore the complaints actually made about the two attendances by C at the school.

39. I agree with Ms Screeche-Powell's submission for the Respondent that it was for the Respondent to reach a decision on these questions. The question of how much weight is to be attached to particular elements of the evidence was for the Respondent to decide. Absent an error of principle or logic in reaching that evaluative decision, it cannot be said that the review decision as a whole was unlawful. It was for the Respondent to assess the case for review that had been presented to it and it did address the specific submissions made by Island Advice in its letter of 3 August 2018, and the other materials, in the final decision letter itself.

40. I do not think that Mr Burton was suggesting that the RO fell into the error, identified in *Bond v Leicester City Council* [2001] EWCA Civ 1544, of assessing the case by making value judgments as to what the Appellant should or should not have done to avoid further violence. It seems to me clear that she did not make that error. She was assessing the probability of further violence resulting from continued occupation in the light of the history of the case overall, including the NM Orders and the breaches alleged and identified.

41. In short, I do not find that the RO assessed only the probability of violence *at* the old property had the Appellant continued to live there, as is submitted in the grounds of appeal. Nor do I think that the judge erred in any material way, on the facts of this case, as to the date at which reasonableness of continued occupation had to be tested. However, it is the RO's decision on this latter question that matters and, in the light of the authorities considered above, I do not find that the RO erred in this respect either. Looked at overall, I consider that the RO reached a decision which she was entitled to make on all the relevant material and on the review case as advanced by the Appellant.

Conclusion

42. For these reasons, I would dismiss this appeal.

Lord Justice Floyd:

43. I agree.

Lord Justice Coulson:

44. I also agree.