Neutral Citation Number: [2023] EWCA Civ 896

Case No: CA-2022-001996

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CANTERBURY COMBINED COURT CENTRE
HHJ Parker
H00CT647

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 July 2023

Before:

THE PRESIDENT OF THE FAMILY DIVISION
LORD JUSTICE ARNOLD
and
LADY JUSTICE ELISABETH LAING

- -

Between:

MICHALA HODGE	**Appellant**
- and -	
FOLKESTONE AND HYTHE DISTRICT COUNCIL	**Respondent**

- -
- -

Iain Colville (instructed by **Holden & Co Solicitors**) for the **Appellant**
Matt Hutchings KC and Tara O'Leary (instructed by **Folkestone and Hythe District Council - Legal Services**) for the **Respondent**

Hearing date: 4 July 2023

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Approved Judgment

This judgment was handed down remotely at 11.00am on 27 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Elisabeth Laing:

Introduction

1. The Appellant ('A') appeals, with the permission of Arnold LJ, against a decision of HHJ Parker ('the Judge') to dismiss her appeal from a decision of Folkestone and Hythe District Council ('the Council'), after a review dated 23 September 2021 ('the Decision'), that she was intentionally homeless for the purposes of section 191(1) of the Housing Act 1996 ('the 1996 Act'). The decision reviewed by the Council was dated 17 August 2021 ('the Original Decision').

2. In 2016, A had left 15 New Town, Canterbury. She had lived there in a room in a hostel run by a charity, Porchlight ('the Room'). She had occupied the Room under the terms of a licence. In paragraphs 53-56, below, I summarise the Judge's fuller findings about A's history, and how she came to be homeless.

3. Part VII of 1996 Act imposes duties on local housing authorities towards homeless people. The question on this appeal is what constitutes 'accommodation' for the purposes of section 191(1). As that is the question, it is convenient to start with a summary of the statutory scheme and of the relevant authorities. I will then summarise the Decision, the Judge's judgment, and the parties' arguments. Finally, I will give my reasons for concluding that the Council was entitled to decide that the Room was 'accommodation' within the meaning of section 191(1), that A's homelessness was a consequence of her decision to leave the Room, and that she was therefore intentionally homeless.

4. On this appeal Mr Colville represented A. Mr Hutchings KC and Ms O'Leary represented the Council. I thank counsel for their written and oral arguments. Paragraph references in this judgment are to the relevant documents, or, if I am considering a judgment, to the paragraphs of that judgment, unless I say otherwise.

An outline of the statutory scheme

5. Part I of the Housing Act 1985 ('the 1985 Act') makes provision for local housing authorities ('LHAs') and for their districts. Part II of the 1985 Act is headed 'Provision of housing accommodation'. Section 9 confers on LHAs a wide power to provide housing accommodation, by building such accommodation, or by converting buildings into houses on land which they own, and to alter, enlarge, repair or improve such housing accommodation. An LHA may provide other things in connection with housing accommodation (see sections 10, 11, 11A, 12 and 13). Section 17 gives LHAs power to acquire land for housing purposes, and section 19, a power to appropriate land for such purposes. Section 21 gives LHAs general powers of management. Part III of the 1985 Act, now repealed, was entitled 'Housing the Homeless'.

6. Part IV of the 1985 Act is a code dealing with secure tenancies, which are granted by LHAs and the other bodies listed in section 80. Such tenancies can only be brought to an end by a court order (section 82). If the court makes a demotion order under section 82A, that also brings a secure tenancy to an end. Sections 107A-107E and 115 make provision for flexible tenancies, which are a species of secure tenancy. They are for a term certain of not less than two years, and must meet other specified conditions. Part

V of the 1996 Act is headed 'Conduct of Tenants'. It makes provision for a further type of tenancy, the introductory tenancy, if an LHA choses to adopt the relevant regime (sections 124-125). It also makes provision, among other things, for possession proceedings in relation to secure tenancies.

7. Part VI of the 1996 Act is headed 'Allocation of Housing Accommodation'. Section 159 has the same heading. Subject to section 160, section 159(1) obliges an LHA to comply with the provisions of Part VI when it allocates 'housing accommodation'. Section 166A(1) requires an LHA to have an allocation scheme 'for determining priorities, and as to the procedure to be followed, in allocating housing accommodation'. Section 166A(3) requires an LHA's scheme to be framed so as to 'secure that reasonable preference' is given to the five classes of people listed in section subsection (3). The first listed class is 'people who are homeless (within the meaning of Part 7)'. Section 166A(4) permits an LHA to frame its scheme so as to give 'additional preference to particular descriptions of people within one or more of paragraphs (a)-(e) being descriptions of people with urgent housing needs'. The scheme must be framed so as to give additional preference to those listed in sub-paragraphs (i)-(iv). Section 166A(14) forbids an LHA to allocate housing accommodation 'except in accordance with' its allocation scheme.

8. Part VII is headed 'Homelessness: England'. Section 175(1) defines a person as homeless if he has 'no accommodation available for his occupation, in the United Kingdom or elsewhere', which he has a right to occupy. The relevant rights are listed in paragraphs (a)-(c). Section 175(2) supplements that definition. Section 175(3) is a deeming provision: 'a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy'. Subsections (4) and (5) describe the circumstances in which a person is 'threatened with homelessness'.

9. Section 177(1) describes some of the circumstances in which it will not be reasonable for a person to continue to occupy accommodation. Section 177(2) provides that in deciding whether it would be, or would have been, reasonable for a person to continue to occupy accommodation an LHA may have regard to 'the general circumstances prevailing in the district of the LHA to whom he has applied for accommodation or for assistance in obtaining accommodation'.

10. Section 188 is headed 'Interim duty to accommodate in case of apparent priority need'. If an LHA has 'reason to believe' that a person may be 'homeless, eligible for assistance, and have priority need, it must secure that accommodation is available' for him to occupy (section 181(1)). Section 181(1ZA) and (1ZB) explain how the interim duty ends.

11. Section 189B imposes an 'Initial duty owed to all eligible persons who are homeless'. The LHA must take reasonable steps to help the applicant to secure accommodation. Section 190 is headed 'Duties to persons becoming homeless intentionally'. If the LHA is satisfied that the applicant is homeless and eligible for assistance, but became homeless intentionally, that he has a priority need and that the initial duty has come to an end, the LHA must secure that accommodation is available for him to occupy 'for such period' as it considers will give him a reasonable opportunity of securing

accommodation for his occupation and provide him with help to secure such accommodation.

12. Section 191(1) of the 1996 Act explains that a person only becomes homeless intentionally if each of several conditions applies. Section 191(2) provides further explanation. Section 191 provides:

> *'(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 deliberate.'*

Section 191(3) is another deeming provision. It provides for the circumstances in which a person 'shall be treated as becoming homeless intentionally'; essentially, if he makes an agreement under which he is required to leave accommodation which it would be reasonable for him to occupy, and does so for the purpose of getting help under Part VII of the 1996 Act, 'and there is no other good reason why he is homeless'.

13. Section 202(1) gives an applicant a right to ask for a review of the decisions of LHAs which are listed in paragraphs (a)-(h), and in the circumstances listed in subsections (1A) and (1B). He must ask within the period described in section 202(3). If he does, the LHA must review its decision (section 202(4)). An applicant who is dissatisfied with the LHA's decision on a review, or who has not been notified of the decision on the review within the time limit in section 203, may appeal to the county court 'on any point of law arising from the decision, or as the case may be, the original decision' (section 204(1)). On such an appeal, the court may 'make such order confirming, quashing or varying the decision as it thinks fit.'

14. Sections 205-209 make provision for the discharge by LHAs of their functions under Part VII 'to secure that accommodation is available for the occupation' of a person. By section 206(1), an LHA may only discharge its housing functions under Part VII by securing that 'suitable accommodation provided by them is available' or 'by securing that he obtains suitable accommodation from some other person', or 'by giving him such advice and assistance as will secure that suitable accommodation is available from some other person'. LHAs must, so far as is reasonably practicable, secure that accommodation is available in their district for the occupation of an applicant (section 208(1)). If not, they may secure such accommodation outside their district, if they give notice to the LHA in whose district the accommodation is (section 208(2)).

15. Section 182(1) obliges LHAs, when exercising their functions under Part VII, to 'have regard' to such guidance as may from time to time be given by the Secretary of State. The current guidance is the Homelessness Code of Guidance for Local Authorities ('the Code'). Paragraph 9.13 of the Code is headed 'Consequence of a deliberate act or omission'. It gives guidance about the causal link which is required by that phrase. It gives as an example a case in which a person 'voluntarily gave up settled accommodation that it would have been reasonable for them to continue to occupy, moved into alternative accommodation of a temporary or unsettled nature and

subsequently became homeless when required to leave the alternative accommodation. Housing authorities will, therefore, need to look back to the last period of settled accommodation and the reasons why the applicant left that accommodation, to determine whether the current incidence of homelessness is the reasonably likely result of a deliberate act or omission.'

The authorities

16. The submissions centred on three decisions of the House of Lords: *R v Hillingdon London Borough Council ex p Puhlhofer* [1986] AC 484 ('*Puhlhofer*'), which concerned the interpretation of sections 1 and 4 of the Housing (Homeless Persons) Act 1977 ('the 1977 Act'), *R v Brent London Borough Council ex p Awua* [1996] AC 55 ('*Awua*'), which concerned Part III of the 1985 Act, and *Birmingham City Council v Ali* [2009] UKHL 36; [2009] 1 WLR 1506 ('*Ali*'), which was about Part VII of the 1996 Act.

Puhlhofer

17. The applicants were married with two young children. They were living in one room in a guest house. There were no laundry or cooking facilities. The only meal which was provided was breakfast. They applied to the LHA for accommodation under the 1977 Act. The LHA refused the application on the grounds that the room was accommodation which was available for their occupation within the meaning of section 1(1) of the 1977 Act. The LHA later reconsidered that decision and confirmed its original decision.

18. The Judge, Hodgson J, held that the accommodation had to be appropriate to the needs of the family and that no reasonable LHA could have decided that the accommodation was appropriate. This court allowed the LHA's appeal and the applicants appealed to the House of Lords. On appeal, the House of Lords held that Parliament had not qualified the word 'accommodation'. What was properly to be regarded as 'accommodation' was a question of fact for the LHA. The LHA had been entitled to decide that the applicants were not 'homeless' for the purposes of the 1977 Act.

19. Lord Brightman gave the leading speech. This was the first case to reach the House of Lords on the meaning of 'the word accommodation, a word which is central to the operation of [the 1977 Act] and has a place in almost every section' (p 511 A-C). The 1977 Act was the first legislation to impose a duty on LHAs to accommodate homeless people. Section 1 defined a homeless person.

20. The word 'accommodation' was not defined, although other terms were (p 512B-C). The applicants submitted that a person did not have 'accommodation' if he occupied premises which were too small for him or for him and his family, or which lacked basic facilities. In this court, Ackner LJ had interpreted 'accommodation' by reference to the definition of 'intentionally homeless' in section 17. Lord Brightman rejected that approach. Section 17 had 'nothing to do with the inherent quality of the accommodation'. It did not help with the question whether an applicant was homeless.

21. The 1977 Act did not impose any duty on LHAs to house the homeless. Its purpose was to help people who are homeless, not to provide them with homes (p 517B-C). Given the pressures exerted on the resources of LHAs by the homeless and by those on their housing waiting lists, it was not surprising that Parliament had not qualified the word

'accommodation'. The words 'appropriate' and 'reasonable' were not to be implied, nor were considerations relating to fitness for human habitation or overcrowding. 'What is properly to be regarded as accommodation is a question of fact to be decided' by the LHA. 'There are no rules. Clearly some places in which a person might choose or be constrained to live could not properly be regarded as accommodation at all; it would be a misuse of language to describe Diogenes as having occupied accommodation within the meaning of [the 1977 Act]'. The LHA has to ask whether an applicant for assistance (under what is now Part VII) 'has what can properly be described as accommodation within the ordinary meaning of that word in the English language' (p 517C-G).

Awua

22. The applicant in *Awua* applied to her LHA for help ('LHA1'). She was a mother with two children. LHA1 decided that she was not intentionally homeless, and that she was in priority need. She was accommodated at first in an hotel, and then in a two-bedroom flat in a 'short-life house' let to LHA1 by a private landlord ('flat 1'). LHA1 intended that she should stay in flat 1 until it could offer her more permanent accommodation. Soon afterwards, it offered her a second flat ('flat 2'), explaining that it considered that flat 2 was suitable accommodation, that its policy was to make only one such offer, and that if she refused that offer, its duty towards her would be discharged. She refused the offer and was in due course evicted from flat 1.

23. She then applied to LHA2 for help as a homeless person. LHA2 decided that she was in priority need but that she was 'intentionally homeless' within the meaning of section 60(1) of the 1985 Act, because her eviction was a consequence of her decision to reject LHA1's offer of flat 2. Section 60(1) of the 1985 Act was identical to section 191(1) of the 1996 Act (see paragraph 12, above). She applied for judicial review of LHA2's decision. Her application was granted by a Deputy Judge, who held that the accommodation to which section 60(1) referred had to be 'settled accommodation'. This court allowed the appeal of LHA2.

24. By the time of the appeal to the House of Lords, the applicant had accepted that the offer of flat 2 had discharged LHA1's duty to her. The House of Lords dismissed the applicant's further appeal. Lord Hoffmann gave the leading speech. He noted that until it was amended, the 1985 Act did not define 'accommodation'. He summarised Lord Brightman's reasoning in *Puhlhofer*. No qualifying adjective such as 'appropriate' should be implied. Accommodation did not have to 'have any quality except that of being fairly described as accommodation. As an example of shelter which would have failed this test, he [sc Lord Brightman] instanced Diogenes's tub. The modern equivalent would be the night shelter in *Reg. v Waveney District Council ex p Bowers* [1983] QB 238, in which the applicant could have a bed for the night if one was available, but had to walk the streets of Lowestoft by day' (pp 66-67).

25. Lord Hoffmann added that 'The [1985] Act deals with precariousness of tenure by the concept of being "threatened with homelessness"…This does not fit very easily with an implication that a person whose tenure is *less* precarious can be regarded as not merely threatened with homelessness, but actually homeless' (original emphasis) (p 67C-D). He noted that, as a result of *Puhlhofer*, the 1985 Act was amended so as to introduce section 58(2A) (now section 175(3) of the 1996 Act) (see paragraph 8, above), and section 58(2B) (now section 177(2) of the 1996 Act) (see paragraph 9, above).

26. It followed that an LHA was entitled to regard a person as 'having accommodation (and therefore as not being homeless) if he has accommodation which, having regard to the matters mentioned in subsection (2B), it can reasonably consider that it would be reasonable for him to continue to occupy. This produces a symmetry between the key concept of homelessness…and intentional homelessness… If the accommodation is so bad that leaving for that reason would not make one intentionally homeless, then one is in law already homeless'. Nothing in the Act prevented an LHA from taking the view that a person 'can reasonably be expected to continue to occupy accommodation which is temporary'. If he was likely to have to leave the accommodation within 28 days (that figure is now 56), his tenure was so precarious that he was 'threatened with homelessness'. Lord Hoffmann found it 'hard to imagine circumstances in which a person who is not threatened with homelessness cannot reasonably be expected to continue to occupy his accommodation simply because it is temporary' (p 68A-B).

27. At p 68 D-E he expressly rejected the applicant's submission that 'accommodation' (in sections 58 and 60) must be construed as 'a settled home'. There was 'absolutely no warrant' in the 1985 Act or in *Puhlhofer* for 'such a concept'.

28. He explained, in the following paragraph, that such an idea came from 'an altogether different context'. That context was cases like *Dyson v Kerrier District Council* [1980] 1 WLR 1205. In that case, the applicant gave up her flat in Huntingdon and went to live in a cottage in Cornwall, which was let for three months, and only during the winter. She knew that the tenancy was not protected and that she would have to leave the cottage when the tenancy ended. When she was evicted, she applied to the respondent LHA for help as a homeless person. The LHA decided that she was intentionally homeless because she had given up her flat knowing that, when the winter let ended, she would have nowhere to live. She argued that the predecessor of section 191(1) was only concerned with the accommodation which an applicant had occupied immediately before she became homeless. That argument had force on a literal reading of the provision, but this court held that such a construction would enable people to jump the housing queue by making themselves intentionally homeless 'at one remove', as they would only have to move into temporary accommodation and wait to be evicted. This court therefore held that the question was not limited to whether it was reasonable for her to continue to occupy the cottage, but whether it would have been reasonable for her to continue to occupy the flat in Huntingdon. If it would have been reasonable for her to stay in Huntingdon, there was a causal link between deliberately leaving that flat, and her later homelessness in Cornwall.

29. Lord Hoffman said that the nature of the necessary causal link was considered by the House of Lords in *Din (Taj) v Wandsworth London Borough Council* [1983] AC 657. A disqualification on the grounds of having made oneself intentionally homeless was not displaced by obtaining temporary accommodation. In this court, Ackner LJ had said that to remove that disqualification, an applicant should have got 'what can loosely be described as "settled residence" as opposed to what is known…to be only temporary accommodation'.

30. Lord Hoffmann then explained that the contrast between 'settled' and 'temporary' accommodation was being used to identify what would break the causal link between departure from accommodation which it would have been reasonable to continue to

occupy and homelessness separated from that departure by a period or periods of accommodation elsewhere. This distinction was well-established and was approved by the House of Lords in *Din*. He did not cast any doubt on it, although he would leave open the question whether this was the only way in which the causal link could be broken. What was, however, 'unwarranted' was the 'importation of' that distinction into other questions which might arise under Part III (ie the predecessor of Part VII of the 1996 Act) (p 69 D-E).

31. There was 'an occasional tendency' to understand the decision in *Dyson* as a decision that Ms Dyson was homeless as soon as she left the flat in Huntingdon. Lord Hoffmann could not accept that Ms Dyson was homeless while she was in Cornwall. All that *Dyson* decided was that she was intentionally homeless when she was evicted from the cottage in Cornwall, because her homelessness was caused by her decision to leave the flat in Huntingdon. The majority in *Din* also decided that appeal on the basis of causation. 'What persists until the causal link is broken is the intentionality, not the homelessness' (p 69 F-H).

32. His conclusion was that 'accommodation' in section 58(1) and section 60(1) 'means a place which can fairly be described as accommodation' (echoing *Puhlhofer*), and acknowledging the amendment to the 1985 Act, 'which it would be reasonable, having regard to the general housing conditions in the [LHA's] district, for the person in question to occupy. There is no additional requirement that it should be settled or permanent' (p 69-70). He had the same view about the 'accommodation' which was the subject of the duty imposed by section 65(2), notwithstanding that the courts and the Department for the Environment had taken a different view. Those views were wrong (p 70 B-D). He explained why at pp 70 D-72F. The duty was not a duty to secure 'permanent accommodation'; that was to confuse duties to the homeless with an LHA's general housing duties. The duty was simply to 'secure that accommodation becomes available for [the applicant's] occupation'. The accommodation must be 'suitable' but that did not mean 'permanent'. The control mechanisms were the definition of 'threatened with homelessness' and the *Wednesbury* test. The court should not lay down any requirements about security of tenure (p 72 B-F).

33. On the facts, LHA2 was entitled to decide that the applicant ceased to occupy flat 1 because she had deliberately decided to refuse the offer of flat 2. Flat 1 was accommodation which was available for her occupation and which it would have been reasonable for her to continue to occupy until flat 2 was ready for her. Lord Hoffmann rejected an argument based on the hypothesis that the applicant had accepted the offer of flat 2, because that is not what she did. The question was why she became homeless, not why she was homeless at the date of the inquiry. It was not necessary to show that it would have been reasonable for her to continue to occupy flat 1 for any particular period. It was enough that it would have been reasonable for her to stay until she was able to move into flat 2 (p 73).

Ali

34. In *Ali* the House of Lords considered six appeals together, and a seventh appeal (in the case of Ms Moran) which raised a distinct issue. Ms Moran left her council accommodation with her two young children because of domestic violence. She moved into a women's refuge. The licence agreement said that the refuge provided 'temporary

accommodation, advice and support' for people in Ms Moran's circumstances. There was no fixed length of stay, which could be from between three and six months, while the woman concerned decided what to do. Ms Moran was evicted from the refuge after 12 days because of her behaviour.

35. She asked the LHA for help as a homeless person. The LHA decided that she was intentionally homeless because of her conduct in the refuge. She asked for a review and then appealed to county court. The recorder allowed her appeal, quashed the review and remitted the case to the LHA. The LHA appealed. This court allowed the appeal. Ms Moran appealed to the House of Lords.

36. All the members of the Appellate Committee agreed with the opinion of Baroness Hale and Lord Neuberger.

37. Baroness Hale said that the first issue was whether the refuge was 'accommodation' for the purposes of section 175 of the 1996 Act. The second was whether, if it was, it was accommodation which it would be reasonable for Ms Moran to continue to occupy (paragraph 33). It was convenient to deal with that second question in both sets of appeals, because it was a potential solution in both cases. Baroness Hale asked 'Does section 175(3) mean that a person is only homeless if she has accommodation which it is not reasonable for her to occupy for another night? Or does it mean that she can be homeless if she has accommodation which it is not reasonable for her to continue to occupy for as long as she would occupy it if the local authority did not intervene?' (paragraph 34).

38. This court had assumed, in both cases, that the former was the correct question. The words 'continue to' in sections 175(3) and 191(1), however, suggested an element of futurity (paragraph 41). There would be cases where an applicant occupied accommodation which it would not be reasonable for her to occupy in the long term, but which it would not be unreasonable for her to continue to occupy for a short time (paragraph 42). The advantage of that interpretation in the case of Ms Moran was that a woman who had lost her home through domestic violence was homeless, 'even though she had a roof over her head'. The intervener was 'worried about the "bed-blocking effect" if women in refuges are no longer regarded as homeless'. Refuges were not 'places to live'.

39. In *R v Ealing London Borough Council ex p Sidhu* 80 LGR 534 Hodgson J 'instinctively felt, in our view rightly', Parliament did not intend that a woman who 'had found temporary shelter in a women's refuge should no longer be considered homeless'. The alternative was for refuges to give women 28 days' notice so that they would be 'threatened with homelessness' (paragraph 44). Baroness Hale noted that when *Sidhu* was decided, the predecessor of section 175(3) had not been enacted: all that Hodgson J could do was to hold that the refuge was not 'accommodation'. Section 175(3) was now available. It was 'proper' for a local authority to decide that it would not be reasonable for an applicant to occupy accommodation which was available to her, even if it was reasonable for her to occupy it 'for a little while longer, if it was not reasonable for the person to continue to occupy accommodation for as long as he or she will have to do so unless the local authority take action' (paragraph 46).

40. Baroness Hale said that if it was not reasonable for a woman to occupy a place in a refuge 'indefinitely', it was not necessary to decide whether or not the refuge was 'accommodation' (paragraph 52). She made some observations on the issue, nevertheless. In paragraph 54, she referred to section 188. A person might have a roof over his or her head, '- indeed a roof which is described as "accommodation" for one purpose - but still be regarded as without accommodation for the purpose of section 175(1) for this would defeat the whole scheme of the Act: see *R (Alam) v London Borough of Tower Hamlets* [2009] EWHC 44 (Admin) …' In paragraph 55 she recorded that the LHA now accepted that a person provided with interim accommodation under section 181 was still homeless for the purpose of section 175, but submitted that the word 'accommodation' in each section must have the same meaning.

41. She was inclined to accept that the reasoning in *Sidhu* could not survive *ex p Puhlhofer* and *ex p Awua*. The appellate committee preferred not to consider further whether a prison cell or a hospital bed could be 'accommodation' for the purposes of the 1996 Act 'until the need arises' (paragraph 56).

The Decision

42. Citizens' Advice Shepway responded to the Original Decision on A's behalf with representations dated 19 August 2021 ('the representations'). The representations argued that the Room was not A's last 'settled accommodation', relying on paragraphs 9.6 and 9.15 of the Code. The representations pointed out that the Original Decision was wrong in suggesting that A had a tenancy of the Room. She only had a licence, and she had had 'minimal security of tenure'. Those factors weighed significantly against the Room being settled accommodation. The purpose of the provision of the Room was described. A was only 17 when she moved in, and too young to have a tenancy. The Room was only provided temporarily, and could not be regarded as settled accommodation. That meant that A could not be intentionally homeless from that accommodation.

43. The Decision responded to the representations. It said that it was made under section 202 of the 1996 Act. It was addressed to A's solicitors. It referred to the facts that the Council had provided A with temporary accommodation while it considered A's application, and that it had written a 'Minded to Find' letter to A on 20 August 2021. The Council had decided to uphold the conclusion of the original deciding officer that A was intentionally homeless.

44. The Council noted that A had decided 'voluntarily to vacate settled accommodation, and reside in unsettled accommodation'. Homelessness for any household was 'regrettable'. The Council were 'not of the view that your client's condition/s and or circumstances are so exceptional as to create a special circumstance in this instance'.

45. A's solicitors had asked for the review on three grounds.

i. They considered that her last settled accommodation had been in the Room (Mr Hutchings submitted, plausibly, and I accept his submission, that a 'not' was missing from this part of the Decision).
ii. She had a mental health condition which had not been taken into account.
iii. The Council should have contacted A's GP.

46. The Council summarised the factual position very briefly. A had been living in the Room, under a licence. It was common ground that A was in priority need, because she was pregnant. The Council drew A's attention to the decision in *Awua* on the issue of 'last settled accommodation'. The Decision said

> *'In this case it was established that in line with [Puhlhofer] that the concept of settled* accommodation was one for the authority alone to decide and that the concept of settled* accommodation is defined as:*
>
> ***Means 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 authority district for the person to continue to occupy, there is no additional requirement that it should be settled or permanent"***
>
> ***Shelter***
>
> ***"The concept of settled accommodation has been developed by the court to deal with the situation where someone loses or permanent or settled accommodation and is evicted through their own fault (intentionally) but then moves into temporary unsettled accommodation before applying as homeless.***
>
> ***The authority can look back to the last settled accommodation so as to make a finding of intentionality. To be intentionally homeless from a particular property it used to be necessary for that accommodation to be settled. This can work in the applicant's favour e.g. s/he voluntarily leaves unstable (Unsettled accommodation) having previously unintentionally lost accommodation."***
>
> ***Awua***
>
> ***"One way of understanding this decision is that the concept of settled accommodation was destroyed unless it helps the authority. Therefore a person can be intentionally homeless from unstable temporary accommodation."***
>
> ***"However if a person was unintentionally homeless from this type of accommodation, but had previously held secure accommodation which s/he had left voluntarily, then the authority is still entitled to look back to it, as the real cause of the applicant's homelessness."****.'*

47. The Council noted A's reliance on the fact that she only had a licence of the Room. They noted that they 'give preferential move on – into long term secure social housing for those successfully undertaking a stay at the same, as would have been the case here in [A's] instance had the lady not voluntarily vacated'.

48. Under the heading 'Deliberate Actions/Good Faith' the Council said that this point had been 'looked [at] in detail' in the Original Decision. The Council then quoted from the part of the Original Decision headed 'Physical Health/Mental Health/Temporary Aberration of Mind'. The Council had looked at 'the information available' and decided that 'there is no indication from Porchlight or evidence provided that shows that you suffered from mental health issues that resulted in you making the decision to leave the supported accommodation provided to you, or that you were receiving support or

treatment from the Community Mental Health Team for a mental health condition' (original emphasis). The Council were confident that had A needed such support, Porchlight would have provided it. What mattered was A's mental condition when she lost her settled accommodation.

49. The next heading is 'Contact with GP and or other health professional'. The Council were satisfied that 'significant account' had been taken of A's condition when she decided to leave the Property. The Council did not consider that they were obliged to contact an applicant's GP in every case. The Council were satisfied that A's health had been considered appropriately. None of the relevant factors, in the Council's view, 'either in isolation or collectively' had had a 'significant impact on' A's 'decision to no longer wish to reside' in the Property.

50. The Council had looked at a number of factors, including A's housing history, and her mental health condition, and had formed the view that A 'was/is capable of understanding the consequences of her actions'. The Council did not think that A had acted 'either in good faith, or in absence/ignorance of any relevant facts'.

51. The Decision then considered section 191(1) and (2) of the 1996 Act. The Council were satisfied that A had become homeless intentionally 'due to having sought voluntarily to vacate supported housing… which would otherwise have led to a later offer of secure housing'. The Council were also satisfied that A was 'very aware of the future implications of giving up supported housing with no substantive long term housing plans in place'. In summary, 'in spite of a degree of mental health issues' A 'did not suffer from a temporary aberration of mind, and pursued a course of conduct in terms of the deliberate relinquishment of a supported housing tenure'. The Council were entitled to find that it was reasonable for A 'to continue to occupy rather than giving it up'.

52. The Council then listed, in 17 bullet points, the information which had been taken into account in reaching the Decision. The list was said not to be exhaustive. The Decision considered section 149 of the Equality Act 2010. The conclusion was that the Original Decision that A was intentionally homeless was correct. A was notified of her right of appeal to the County Court.

The Judge's judgment

The Judge's summary of the facts

53. A was 24 years old when the reserved judgment was handed down. She had a significant history of difficulties with her mental health. She was diagnosed with personality disorders in 2011, and with an 'emotionally unstable personality disorder' in 2011. She had attempted suicide and had had visual and auditory hallucinations. She left home when she was 12. She went to live with her grandmother. Social services were involved. In March 2015, she moved to young person's accommodation provided by Porchlight. In August 2015, she moved into the Room (a studio flat), which was also provided by Porchlight.

54. She occupied the Room under a written licence dated 3 August 2015. Page 1 of the licence described the aims of the project run by Porchlight. They were to provide 'high quality, temporary supported accommodation for single homeless', to assess their needs

so that they could get appropriate support services, and to plan to help them to move into longer-term accommodation.

55. Clause 2 of the licence added that Porchlight provides temporary accommodation while residents look for more permanent accommodation. Porchlight helps people to find, but cannot guarantee access to, permanent housing. The maximum length of stay would depend on the licensee's needs. Staff supported residents, and each was given a key worker. Clause 8 of the licence was headed 'Ending the licence'. Porchlight would normally give not less than seven days' notice, but could give shorter notice in the case of 'seriously disruptive or violent behaviour'. Clause 1 of the licence provided that it was an excluded licence under section 1 of the Protection from Eviction Act 1977.

56. A left the Room on 10 August 2016 'of her own accord'. She then moved in with members of her family 'for some time'. In 2020 she rented a flat from a friend. She left that flat on 20 May 2021. She said that the tenant had become aggressive and had told her to leave. She slept in a car. On 24 May 2021 she applied to the Council for accommodation as a homeless person.

The relevant ground of appeal

57. There were five grounds of appeal. I will only refer to the Judge's analysis of ground 2, which is the only ground which is relevant to this appeal. Ground 2 was that the Council erred in law in concluding that the Room was 'accommodation' for the purposes of section 191(1) of the 1996 Act, and that the Council erred in law in finding that it was 'settled accommodation'.

58. The Judge considered, first, whether the Room was 'accommodation' at all. He summarised the authorities to which A had referred in support of her argument that the Room was not accommodation. In particular, interim accommodation provided under section 181(1) of the 1996 Act was not 'accommodation' for the purpose of deciding whether a person is unintentionally homeless for the purpose of section 175(1). Having considered those authorities, he decided that the Room was 'accommodation' for the purposes of section 191(1).

59. He then considered, and rejected, A's further argument that even if the Room was 'accommodation', A could not be intentionally homeless unless it was settled accommodation. The Judge held that there was no binding authority to that effect. A had made a further submission, after the hearing, relying on paragraph 9.13 of the Code. The Judge held that the Code could not contradict provisions of primary legislation, and rejected that submission.

The grounds of appeal

60. Arnold LJ gave A permission to appeal on two issues: whether the Room was 'accommodation' for the purposes of section 191(1) of the 1996 Act and whether the Room had to be 'settled accommodation' or not.

The submissions

61. The parties agree that 'Accommodation' is not defined in the 1996 Act.

62. Mr Colville submitted that Part 7 is a statutory scheme which is a 'safety net designed to resolve or prevent homelessness'. Local housing authorities owe what is known as 'the main housing duty' to applicants who, they are satisfied, are unintentionally homeless, eligible for help, and in priority need (section 193(2)). As he explained, 'accommodation' is a significant concept in the statutory scheme. It is relevant to whether a person is 'homeless', whether she is 'intentionally homeless' and to the way in which a local housing authority can discharge its duty towards a homeless person.

63. Mr Colville accepted in argument that the question whether a place which an applicant occupied was accommodation for the purposes of Part VII was a question of fact and degree for the LHA, but that some places could not be 'accommodation' as a matter of law. Examples were the prison cell in *Stewart v Lambeth London Borough Council* [2002] EWCA Civ 753; [2002] HLR 40 and the night shelter in *R v Waveney District Council ex p Bowers* (see paragraph 24, above). He submitted that temporary accommodation such as the Room is not 'accommodation' for the purposes of section 191(1). It is like a refuge. It would defeat the statutory scheme if it was 'accommodation'. It would be anomalous if hostel accommodation counted as 'accommodation' for the purposes of section 191(1) but not for the purposes of section 188.

64. The Judge was wrong to hold that there is a difference between non-secure temporary accommodation provided as a result of an application by a homeless person and accommodation which is not so provided. Whether the place is 'accommodation' should not depend on whether an application has been made. There is no difference in substance between accommodation in a hostel providing specialist support for homeless young people and a refuge providing support for a woman fleeing domestic violence. Neither is secure; each is temporary and lasts until permanent accommodation is found. To hold otherwise would be contrary to public policy, as it would lead to the blocking of temporary hostels.

65. Mr Colville's second submission was that even if the Room was 'accommodation', the Council could not decide that A was homeless unless it also decided that the Room was settled accommodation. The Decision did not properly address that issue, or the question of whether the Room was A's last settled accommodation. Occupation of accommodation as a step towards permanent accommodation is not occupation of settled accommodation. The entitlement to a 'preferential move on' was therefore irrelevant to this question. Whether accommodation is settled accommodation is a question of fact and degree.

66. He referred to *Bullale v Westminster City Council* [2020] EWCA Civ 1587 on the chain of causation. If an applicant leaves accommodation and becomes intentionally homeless, she can cease to be intentionally homeless if, after that, she occupies settled accommodation, which she then loses (not intentionally). He derived from that decision the proposition that in order to find that an applicant is intentionally homeless, an LHA must consider the applicant's housing history until it reaches accommodation which can be regarded as settled, and decide whether the applicant became intentionally homeless as a result of losing that accommodation. As she did before the Judge, A relied on paragraph 9.13 of the Code.

67. The Council noted that A did not shrink from the consequences of her argument, which were that, if temporary supported accommodation is not 'accommodation', that construction must apply throughout Part VII. In his oral submissions, Mr Hutchings accepted that the large earthenware jar in which Diogenes lived, like the night shelter, was not 'accommodation'. He nevertheless submitted that on the face of things, the Room was accommodation. The issue for this court was not whether the Room was 'accommodation', however: that was a question for the Council to decide. The issue, rather, was whether, on a proper construction of section 191(1), the Room was not capable of being accommodation. He supported those submissions by referring to the authorities.

68. A attempted to escape the plain meaning of the word 'accommodation' by suggesting either that 'temporary supported move on accommodation' cannot be accommodation or by the implication of a requirement that 'accommodation' must be settled. If accommodation was temporary, that was potentially relevant, not to the question whether it was 'accommodation' at all, but to whether or not it would be reasonable to continue to occupy it. He explained, by reference to *Awua*, how the legislation had been amended in the wake of *Puhlhofer* so as to recognise that point. He also showed, by reference to *Awua*, why courts had asked whether accommodation was 'settled'. It did not follow from the fact that accommodation was not 'settled' that a person was 'homeless' while occupying it. It should be reasonable for the applicant to continue to occupy the accommodation, and there was no further requirement that it should also be 'settled' or not temporary (*R v Wandsworth London Borough Council ex p Mansoor* [1996] QB 953 (CA)). Part VII was legislation to assist the homeless, not to provide them with homes. Part VI of the 1996 Act deals with the provision of housing. If and to the extent that security of tenure could be relevant in Part VII, it could only be relevant to the 'suitability' of any accommodation provided by an LHA.

69. *Ali* shows that accommodation provided under section 188 is 'accommodation' and that a women's refuge is 'accommodation'. The innovation in *Ali* was the emphasis on the medium term in the House of Lords' interpretation of the phrase 'reasonable to continue to occupy'. That was why Ms Moran was 'homeless' while she was living in the refuge.

70. Mr Hutchings conceded that the Decision was 'not a model of clarity'. There were typographical errors which made some of it difficult to understand. For example, there was a missing 'not' and there were two incorrect insertions of the word 'settled'. Nevertheless, when read sensibly, it was a decision which the Council were entitled to make on the facts.

71. He pointed out that the word 'accommodation' is relevant to various duties to secure accommodation: section 188(1) (the interim duty), section 189B(2) (the 'initial or relief' duty), section 190(2) (the limited duty owed to intentionally homeless applicants), section 193(2) (the 'full' or 'main' housing duty), section 195(2) (the 'prevention duty'), and to section 206(1), which provides for the circumstances in which the housing functions of an LHA under Part 7 are discharged. All the 'accommodation' provided by an LHA under Part VII was temporary; Part VI deals with longer-term accommodation.

72. If A's submissions were right, there would be two unfortunate consequences, as a matter of policy. First, an applicant with a priority need could walk out of temporary

accommodation such as the Property, present herself as homeless, and, in effect, jump the queue. Second, LHAs would not be able to use temporary supported accommodation to discharge their duties under Part VII.

Discussion

73. Authorities which bind this court (that is, Lord Brightman's reasoning in *Puhlhofer*, and Lord Hoffmann's endorsement in *Awua* of Lord Brightman's reasoning) decide that whether the place which an applicant happens, or happened, to occupy is, or was, 'accommodation' for the purpose of section 191(1) is a question of fact for the LHA, subject to *Wednesbury*. Authority which also binds this court (*Ali*) decides that whether it is reasonable for an applicant to continue to occupy temporary accommodation is also a question of fact for the LHA, subject to *Wednesbury*. Contrary to Mr Colville's submissions, *Ali* does not decide that a women's refugee (or a similar habitation) is not 'accommodation'. Finally, authority which binds this court (*Awua*) decides that in order to qualify as accommodation for the purposes of Part VII, there is no requirement that accommodation be 'settled'. The concept of 'settled' accommodation is a gloss on the statutory words, and has been invented by the courts as a tool to help them to analyse whether there is a causal connection between a loss of past accommodation and the applicant's current condition of homelessness. 'What persists until the causal link is broken is the intentionality, not the homelessness' as Lord Hoffmann put it in *Awua* (see paragraph 31, above).

74. Against that background, it is necessary to consider how the Council approached the relevant questions in the Decision. Mr Hutchings was right to concede that the Decision was not perfect. I have already noted the missing 'not'. He also submitted, and I also accept, that in the first paragraph which I have quoted (see paragraph 46, above) the word 'settled' occurs twice (see the asterisks in the quotation) when it is redundant. Nevertheless, the Decision is not a statute and was not written by a lawyer.

75. Despite the superficial imperfections in the drafting of the Decision, I consider that when the text of the Decision is amended as Mr Hutchings suggested it should be, it is clear that its author correctly understood the legal position, as explained in *Puhlhofer*, *Awua* and *Ali*.

76. In my judgment, the author of the Decision correctly understood, and applied, three propositions.

i. The question whether the Room was 'accommodation' was for the Council to decide, and the fact that the Room was occupied pursuant to a licence was not decisive.

ii. The concept of 'settled accommodation', relied on in the representations, was only relevant as an analytical tool, in effect, if it helped the LHA on the issue of causation.

iii. Whether it was reasonable for A to continue to occupy the Room, rather than leaving it, was a question for the Council to decide.

77. I consider that the Council were entitled to decide that the Room was 'accommodation'. The Council were also entitled to decide, in response to the representations, that the Room had been 'settled accommodation' and that A had made a deliberate decision to leave it. If she had stayed, she would have got an offer of secure accommodation. The Council were, further, entitled to find, as they did, that it would have been reasonable for A 'to continue to occupy [the Room] rather than giving it up'.

78. I should make clear that I also accept Mr Hutchings's submission that, in this case, it was only necessary for the Council to answer two questions. They were whether the Room was 'accommodation', and whether it would have been reasonable for A to continue to occupy it. The Council addressed the question whether or not the Room was 'settled' accommodation because that question was raised in the Representations, but, on the facts of this case, it was unnecessary for the Council to examine that question.

79. For those reasons, the Council were therefore also entitled to decide that A was intentionally homeless.

80. I would dismiss this appeal.

Lord Justice Arnold

81. I agree.

Sir Andrew McFarlane

82. I also agree.