



Neutral Citation Number: [2021] EWHC 211 (Admin)

Case No: CO/4404/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8th February 2021

Before:

HIS HONOUR JUDGE LICKLEY QC sitting as a Deputy Judge of the High Court

Between:

THE QUEEN
-on the Application of-

LEMARI MINOTT

Claimant

- and -

CAMBRIDGE CITY COUNCIL

Defendant

Mr Vanhegan (instructed by **GT Stewart Solicitors**) for the **Claimant**
Mr Grundy QC (instructed by **Cambridge City Council**) for the **Defendant**

Hearing date: 21st January 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be Monday 8th February 2021 at 10:30am.

His Honour Judge Lickley QC sitting as a Deputy Judge of the High Court:

1. In this matter the Claimant Lemari Minott seeks to challenge the Defendant council's (CCC) decision dated the 21/10/19 to refuse to accept a fresh homelessness application from him following an alleged change in his circumstances. The short point in this matter can be stated as follows namely, whether the Claimant acquired a local connection for the purposes of establishing that he was '*normally resident*' having occupied temporary accommodation provided by the defendant in discharge of an interim duty under the Housing Act 1996 for more than six months when that continued occupation was after any housing duty owed to him had expired, a referral to another Housing authority (HA) had been made and accepted, and after the right of occupation had been terminated and he occupied the accommodation without permission.
2. For the purposes of this decision I grant permission for the parties to rely upon the additional witness statements from the Claimant and Mr Penn and Ms Begum-Rusi on behalf of the defendant.
3. The facts of this matter can be stated briefly. The Claimant was born on the 28/12/94 and was, in the early part of 2019, unemployed. He said in his first witness statement that he lived with his father at 15 Cumberland Rd West Bromwich until April 2018 when the relationship broke down and he became homeless. He says that he helped his mother to escape from domestic violence from her ex-partner and with his assistance his mother moved with his siblings eventually settling in Cambridge. The Claimant described his mother's personal circumstances and that he was working as a courier driver requiring him to drive to a depot in Birmingham and spend some time sleeping in his van or sofa surfing with friends in Cambridge or his mother who by then had found accommodation there.
4. The Claimant applied as a homeless person to CCC the relevant Housing Authority on the 26/3/19 and was provided with temporary accommodation under S.188 Housing Act 1996 (HA 96) that day because there was reason to believe he was eligible, homeless and had a priority need. The following day he was provided with accommodation at 27 Gilbert Close Cambridge (the relevant accommodation). The Claimant described the accommodation provided as 'non-secure' in his witness statement.
5. Having made inquiries the defendant council decided that the Claimant did not have a 'local connection' for the purposes of SS198 / 199 HA 96 in Cambridge but did with Sandwell MBC (Sandwell). On the 8/1/19 the Claimant's case was referred to Sandwell and on the 9/8/19 Sandwell accepted the referral namely that they agreed with the defendants that the Claimant had a local connection with Sandwell.
6. By letter dated the 8/8/19 the Claimant was informed of the S.184 HA 96 decision made in his case that he was homeless but that he did not have any local connection with Cambridge and accordingly the duty to take reasonable steps to help him and resolve this homelessness had been referred to the authority where he did have a local connection. In a detailed letter Semina Begum-Rusi set out the reasons for that decision. The letter ended by saying that if the referral was accepted by the local authority to whom the case had been referred then that authority would be under a

duty to provide the claimant with suitable temporary accommodation from the day the duty was accepted by them. The letter also informed the Claimant that he had a right to request a review of that decision.

7. On 19/8/19 CCC sent a letter to the Claimant pursuant to S.198(A1) HA 96 notifying him that the conditions for referral of his case were met and that Sandwell had accepted the referral. The letter informed the Claimant that because Sandwell had accepted the referral his homeless application began with that authority on the date of the referral to them which was the 8/8/19. The letter also informed the Claimant that the duty to provide temporary accommodation also ended when CCC notified Sandwell that they were intending to refer him. Accordingly, the Claimant was told, because the referral had been accepted, his temporary accommodation would be terminated and that Sandwell would thereafter have a duty to provide him with temporary accommodation while they worked with him to try and relieve his homelessness. That letter informed the Claimant that he had a right of review of that decision pursuant to S.202 of the HA 96.
8. On 22/8/19 the Claimant requested a review of the decision to refer his case to Sandwell pursuant to S.202(1). On 23/8/19 the Claimant asked Mr Penn a Senior Housing Advisor for CCC how he could get a local connection. Mr Penn told him of the four grounds within S199 HA 96. He was also told that he could request that the council provide him with accommodation pending the review. The Claimant did so on the 27/8/19. On 28/8/19 the council decided not to provide him with accommodation pending review and they informed him of that decision by letter of the same date.
9. As a consequence of the decision not to provide accommodation pending the review CCC terminated the Claimant's licence to occupy 27 Gilbert Close by notice dated the 22/8/19. That notice was served on him on the 23/8/19 informing him that the weekly licence would expire on Sunday 1/9/19 and requiring him to deliver up possession of the premises to the council no later than 10.00hrs on Monday 2/9/19. He was given instructions as to what to do with the keys. The notice informed him that if he did not leave the premises and return the keys by the date specified the locks would be changed and any possessions will be kept in storage for 28 days before disposal. The accompanying letter reiterated that the licence to occupy had been terminated and reminded the Claimant that following their investigation into his circumstances a decision was made that he had no local connection to Cambridge City and that his application had been transferred to Sandwell the local authority that he did have a local connection to. The letter stated that Sandwell had accepted the referral. On the reverse of the notice of termination of the licence is the signed note confirming service in person on the 23/8/19. I add that during the hearing of this matter an issue arose as to the service of the notice and the requisite days of notice however I am satisfied the notice was served on the 23/8/19 and accept that where Mr Penn in his more recent witness statement stated the notice was served on the 28/8/19 that was, as I was informed, an error. The witness statement of Ms Begum-Rusi dated 9/10/19 clarified the position stating that the notice was served personally on the claimant by a member of the housing team Miss Melody Turner on the 23/8/19. Therefore after the 2/9/19 the Claimant occupied the accommodation without permission and thereby unlawfully.

10. Mr Penn confirmed that Sandwell stated that they would provide temporary accommodation for the Claimant. Sandwell were told by email that the Claimant had been served with a notice ending his licence so that they would know when to provide their accommodation.
11. On 2/9/19 the keys were not returned to CCC. Following that Michelle Hayes an officer at Sandwell sent an email on the Claimant's behalf to CCC stating that they had changed their mind about accepting the referral because his intentions were to remain in Cambridge and his mother had fled from an abusive relationship. Mr Penn replied to Sandwell on the 3/9/19 stating the reasons why the conditions for referral had been met under S.198 HA 96 and that the Claimant did not have a local connection to Cambridge.
12. On the 4/9/19 the claimant said he would not be leaving the temporary accommodation in a telephone conversation with a member of the housing team in Cambridge. An attempt was made to change the locks on the property because it had been provisionally allocated to another family however the claimant was present in the property. Because S.6 Criminal Law Act 1977 states that an offence is committed if an eviction is carried out when someone is on the premises at the time who is opposed to the property entry the property could not be taken back. Therefore, although CCC had a right to possession of the property as the Claimant was there the locks could not be changed. Several attempts were made to do that but the Claimant was at the property on each occasion.
13. On the 6/9/19 Michelle Hayes at Sandwell advised that the referral had been accepted. The Claimant was informed of that decision and that he should contact Sandwell who would organise temporary accommodation in that area. He was given a number to call and told what to do. He advised Ms Begum-Rusi that he would not leave because he had been advised that a warrant would be needed to evict him. He told her that *'in a few weeks he would acquire a local connection'*. Accordingly, the Claimant made decisions not take up the matter with Sandwell and remained in the property without permission in order to gain what he believed was an advantage in pursuing his housing application with CCC.
14. On the 25/9/19 CCC made the decision on the review. The Claimant was notified by letter that the original decision was confirmed and reminded him that he had a right of appeal to the County Court however that right was not taken up by him. On 17/10/19 the Claimant made a second homeless application by letter from his solicitors. He had by now been occupying the property without permission since the 2/9/19 namely for approximately six weeks. The letter of the 17/10/19 began with a series of complaints concerning the referral to Sandwell but stated finally that the Claimant had instructed his solicitors not to pursue an appeal in the County Court. The letter then stated *'This is because a material change in his circumstances has occurred. This change is that he has resided in (the) Cambridge area for more than six months. Whilst our clients position is that he has been in Cambridge much sooner than the councils claim that he has resided (in) Cambridge since 26 March 2019, it is clear that on the council's version, our client has more than six months residence in Cambridge. There can therefore be no doubt that our client now has a local connection in Cambridge. We therefore ask the council to open a new homeless application for our client. In addition our client remains homeless as he has been served a notice to quit for his*

accommodation at 27 Gilbert Close Cambridge CB4 3HR. He has a dependent child in his household and is eligible for assistance. He therefore meets the criteria for the acceptance of the full housing duty’.

15. Mr Penn a Senior Housing Advisor replied on the 21/10/19 rejecting the new application. He gave his reasons having set out that the homeless application was now with Sandwell stating ‘*An applicant cannot make a further application based on exactly the same facts as her / his earlier submission application unless there is a change of circumstances / facts which are neither trivial or fanciful. Your submission does not provide new information. The reason for this is because Mr Minott does not have a local connection to Cambridge. In your submission you state that Mr Minott has resided in temporary accommodation since 26th March 2019. Mr Minott has resided in this accommodation for large periods of time without permission from the City Council, under a homeless application (firstly when he refused to leave following the section 198 referral to Sandwell, secondly when he wasn't provided with accommodation pending review and lastly following the s 202 decision of which he still has not left). Temporary accommodation can be residence of choice for the purpose of a local connection however the House of Lords held that residence in interim accommodation pending enquiries can be residence of choice (he cited Mohamed). Local connection is determined on the date of the decision (both at the s198 referral and the second time at the date of the s202 decision). At both dates he does not have a local connection and does not gain 6 months within the borough in temporary accommodation pending inquiries. Mr Penn then stated that the Claimant did not have a local connection based on the four grounds in S.199 HA 96.*
16. In his witness statement dated 18/8/20 Mr Penn stated that the accommodation was not accommodation of choice once the temporary accommodation duty had ended and further the accommodation had not been provided (per Code 10.5) after the expiry of the notice to leave the premises and had not been provided pending the review.
17. County Court possession proceedings were commenced on the 23/10/19. The following day the Claimants solicitor sent a letter before action stating that a change of circumstance had occurred and that the Claimant had resided for more than six months in the Cambridge area. The letter stated that residence is not the only factor giving the Claimant a local connection and stated that the council had a discretion to confer a local connection especially in relation to the family association. The letter referred to the Homelessness Code of Guidance and stated that the guidance supported the claim that the issue was one of actual residence and not where the residence had been permitted. Accordingly, it was argued that it was undeniable the Claimant had resided in Cambridge for a period of in excess of six months therefore he had a local connection with Cambridge. The letter went on to erroneously state that the Claimant was entitled to occupy the property as he had a tenancy of the property which continued until it had been lawfully determined by a court order. It was alleged therefore it was not correct to say that permission had been withheld.
18. Mr Penn replied on the 29/10/19. He reiterated the CCC position that the Claimant did not have a local connection and therefore consequently there was no change of circumstances. As advised previously, there are no special circumstances in this case other than that Mr Minott wishes to live in Cambridge. Mr Penn pointed out the errors in the letter particularly concerning the assertion of a tenancy and that persons

accommodated under the interim duty are not considered to be occupying premises as a dwelling and are therefore exempt from the Protection From Eviction Act 1977 (PFEA 77). He stated that Mr Minott continuing to occupy the premises was not to be confused with an acceptance by the defendants that he had permission to occupy the premises. Mr Penn stated that it had been made clear at each point that he did not have permission to reside in the accommodation which was why the notice to quit was issued at the point of the referral to Sandwell.

The legal framework

19. S.184 HA 96 provides that if a local housing authority have reason to believe that a person who has applied to them is homeless they must make inquiries to decide whether he is eligible for assistance and, if so, what if any duty is owed. S.188 HA96 imposes a duty to provide interim accommodation in any case of apparent need.
20. The local connection provisions within the HA 96 provide a framework for determining where an applicant's claim is best suited to be determined. It prevents popular areas from becoming overwhelmed. There is no suggestion, other than in relation to the new application, in this case that CCC or Sandwell have acted incorrectly or inappropriately and have not applied the provisions of Pt VII of the Housing Act 1996 correctly. CCC were entitled as part of their interim responsibilities under S.184 HA 96 to consider the Claimant's eligibility for assistance and were obliged to inquire what duty was owed to him. CCC may have decided to or refused to provide accommodation but CCC had the option of inquiring whether the Claimant had a local connection with another local authority. In this case, having determined that he did not have a local connection with Cambridge, the case was correctly referred to Sandwell pursuant to S.198(A1). As a consequence, there was an immediate impact on the Claimant's application when CCC informed him that the referral had been made. Pursuant to S.199A(1)(a) the interim and relief duties ceased at that point.
21. However, where the notifying authority has reason to believe that the applicant has a priority need which would be the case where an applicant has a dependent child residing with them, as in this case, the notifying authority has a separate and new duty under S.199A(2) to continue to secure that accommodation until the applicant is notified of the decision whether the conditions for referral are met. If the conditions for referral are met S.199 A(5)(a) applies and the applicant is treated as having made a homeless application to the notified Housing Authority and by S.199A(5)(b) from that date the notifying authority owes no duties to the applicant under Pt VII HA 96. That includes the interim housing duty under section 188(1) and the relief duty under section 189B(2). Accordingly, on the 6/9/19 when CCC notified the Claimant that Sandwell had agreed that the conditions for referring his application were met Cambridge ceased to owe him any housing duty under the HA 1996.
22. S.199 provides the definition for a '*local connection*'. 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. In this case only (a) is relevant.

23. Mr Grundy QC on behalf of CCC submits that although there are the four grounds upon which a local collection may be established they are not in any sense sufficient and must not divert focus from the governing phrase of *local connection* itself. In *Re Betts* [1983] 2 AC 613 Lord Brightman at 627 and 628 said ‘*the fundamental question is existence of a ‘local connection’. In construing section 5 (The Housing (Homeless Persons) Act 1977) 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 the jump over the heads of all other persons or 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 period employment; or by family associations which have endured in the area; or by special circumstances which spell out a local connection in real terms.*’

And ‘*as regards the meaning of normally resident in the context of section 18(1)(a) this will take its colour from the fact that residence of any sort will be irrelevant unless and until it has been such as to establish a local connection with the area which such residence subsists or has subsisted*’.

24. Pursuant to S.182 HA 96 the Homeless Code of Guidance 2018 was published. Section 10 deals with the issue of Local Connection.

- (i) Paragraph 10.5 provides ‘*For the purposes of (a) above 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*’.
- (ii) Paragraph 10.6 ‘*In the case of person who street homeless or insecurely accommodated (sofa surfing) the housing authority will need to carry out a different type of enquiry 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 enquiries 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*’.
- (iii) Paragraph 10.7 ‘*The Local Authority’s Agreement suggests that a working definition of normal residence sufficient to establish a local connection should be residence for at least six months in an area during the previous 12 months or for three years during the previous five-year period*’.
- (iv) The reference in paragraph 10.7 to the local authority’s agreement is a reference to the agreement for the purposes of S.198(5) HA 96.
- (v) Paragraph 10.13 of the guidance adopting the decision effectively in *Betts* states ‘*the test regarding local connection as set out in S.199 should be applied, ... The fact that the applicant may satisfy one of these grounds will not necessarily mean that they have been able to establish a local connection*’.
- (vi) Paragraph 10.14 provides ‘*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'.

25. There is no doubt that temporary accommodation can count as normal residence for these purposes as paragraph 10.5 of the Code provides. See also *Mohamed v Hammersmith and Fulham LBC* [2003] 1 AC 547. In this case the defendant contended that temporary accommodation could not as a matter of principle be a place of normal residence for the purposes of S.199(1) HA 96. Lord Slynn, at 21, said '*there is no overriding reason or principle why interim accommodation should not count as normal residence for that purpose*' and having considered *Betts* said at 22 '*In my opinion the occupation of temporary accommodation can be taken into account in deciding whether such a local connection exists*'.
26. More generally as to what is 'normal residence' His Lordship at 18 stated that '*So long as that place where he eats and sleeps is voluntarily accepted by him, the reason why he is there rather than somewhere else does not prevent that place from being his normal residence. He may not like it, he may prefer some other place, but that place is for the relevant time the place where he normally resides. If a person having no other accommodation takes his few belongings and moves into a barn for a period to work on a farm that is where during that period he is normally resident however much he might prefer some more permanent or better accommodation. In a sense it is 'shelter' but it is also where he resides. Where he is given interim accommodation by a local housing authority even more clearly that is the place where for the time being he is normally resident*'.
27. Accordingly, the occupation of temporary accommodation can amount to a place of normal residence and can be taken into account in determining if there is a local connection for the purposes of the legislation. Any such determination however will turn on the facts of each individual case. I agree with Mr Grundy QC that the decision in *Mohamed* is not authority for the proposition that the mere fact of physical occupation of such interim accommodation for a period of six months is sufficient without more to establish a local connection. The court in *Mohamed* was not required to consider the lawfulness of the occupation.
28. In the circumstances of this case although the Claimant occupied the temporary accommodation lawfully from 26/3/19 to 2/9/19 he thereafter was occupying the premises unlawfully. He stated, according to one witness, that it was his intention to remain there in order to gain what he regarded as a benefit by staying in the property for six months. He thwarted the efforts of CCC to change the locks by occupying the property until 26/9/19 which would equate to six months occupation and beyond. In addition, it is also clear that by that stage given the referral to Sandwell CCC owed him no housing duty at all. In addition, he made no effort to engage with Sandwell in a positive way.
29. In submissions counsel addressed me as to the nature of *residence* in this context. As an argument, it does not seem to be central to the issue I must decide. In *R(N) V Lewisham LBC and R (H) v Newham LBC* [2015] AC 1259 the Supreme Court considered the nature of S.188 HA 96 temporary accommodation in the context of the Protection from Eviction Act 1977 (PFEA 77). Of relevance, particularly the decision

involved an analysis of the meaning of ‘*licence to occupy premises as a dwelling*’ and if S.188 HA 96 temporary accommodation met that definition.

30. Lord Hodge agreed with Lord Millett who in *Uratemp Ventures Ltd v Collins* [2002] 1 AC 301 said that *dwelling* suggests a greater degree of settled occupation and refers to a place where one lives and makes one home whereas ‘*reside*’ and ‘*residence*’, connote the place where the occupier habitually sleeps and usually eats. Importantly the court held that temporary accommodation provided under S.188 HA 96 did not amount to the granting of a licence to occupy premises as a dwelling – see 33.
31. In addition, Lord Hodge noted that a person assisted in this way ‘*remains homeless while he or she occupies temporary accommodation provided (under the HA 96) so long as the occupation is properly referable to the authority’s performance or exercise of those statutory duties or powers.*’. His Lordship added ‘*another way of looking at the matter is that having a roof over your head in such short-term accommodation does not give you a fixed abode*’. At 45 His Lordship stated, ‘*that an overnight or day to day licence of accommodation pending a decision under S.184...does not show any intention to allow the homeless applicant to make his or her home in that accommodation*’. Accordingly, such temporary accommodation is exempt from the provisions of the PFEA 1977.
32. The analysis set out in the decision puts the status of such temporary accommodation into context. The accommodation is by its very nature different to that let as a dwelling.
33. The Housing Act 1996 is silent as to how often a person may make a homeless application. In principle, there is nothing to stop an unsuccessful applicant immediately making a further application following the determination of an initial application by a housing authority or in this case after a referral to another authority. In *Begum v Tower Hamlets LBC* [2005] 1 WLR 2103 this question was considered. Neuberger LJ (as he then was) rejected the requirement that the applicant must show a ‘*material change of circumstances*’ in a new application and emphasised how that test had been rejected in *Fahia* [1998] 1WLR 1396. Following the reasoning in *Fahia* the court held that a new application could only be rejected if it was in fact no application at all namely if it was based on ‘*exactly the same facts as the earlier application*’ or was ‘*identical*’. The time for comparison was at the time the earlier application was disposed of i.e. when it was decided or when reviewed. In *Begum* two new facts were relevant namely that one of the applicant’s brothers had moved in with her as had another brother who was addicted to heroin. Accordingly, the two applications were not identical or on exactly the same facts and accordingly the second application was a valid application under S.183 HA 96 and should have been accepted and treated as such.
34. His Lordship gave guidance as to when a new application could and could not be rejected without consideration. The guidance given was at 58 ‘*of a general nature because each application must be dealt with on its own particular merits*’. At 59-61 His Lordship stated;

‘*First it seems to me that it is for the applicant to identify in the subsequent application the facts which are said to render the application different from the*

earlier application. If the authority are to assess the question of whether the circumstances of the two applications are ‘exactly the same’ by reference to the facts revealed by the document by which the subsequent one is made, then that, I think, must be the logical, indeed the inevitable consequence. Accordingly, if no new facts are revealed in that document (or any document accompanying it or referred to in it) the authority may, indeed should normally reject it as incompetent’.

‘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 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 facts of the particular case’.

His Lordship then stated that in a case where the new application appeared to reveal new facts that were neither trivial or fanciful the application must be treated as valid even if the new facts turned out to be inaccurate or insufficient after investigation. An investigation as to the accuracy of the facts before deciding whether or not to treat the application as valid was not permissible.

35. In addition, the court stated that the date for comparison between the new application in the previous application was the date of determination of the old application. Thus, the authority must determine if the new application was based on exactly the same facts as the earlier application. Finally, at 62 Neuberger LJ stated that his observations should not be seen as an invitation to invent new ‘facts’ to justify a second application with a view to benefitting from its provisions.
36. In *R (May) v Birmingham CC [2012] EWCA 1399 (Admin)* Singh J (as he then was) considered the test to apply on a Judicial Review of such a case where a new application was rejected on the basis that it revealed no new fact or facts. The test is to assess the decision of the authority on the grounds of irrationality. In short was the decision one that no reasonable authority properly directing itself could have come to and thereby it was irrational or was it within the range of reasonable decisions or judgements open to an authority to reach.

Submissions

37. Mr Vanhegan for the Claimant has made a number of submissions in writing and in oral argument. In summary only he submits that Mr Penn in his decision of the 21/10/19 made a fundamental error of law in rejecting the new claim. He says there was a new fact namely the occupation of the temporary accommodation for more than six months which established normal residence for the required period to establish a local connection. He says the Claimant had acquired six months residence.
38. Mr Vanhegan then made a number of submissions suggesting that unlawful occupation was no bar to his main argument. He submitted;
- (i) That the reference to *local connection* and *normally resident* in S.199 HA is silent as to whether the occupation should be lawful or unlawful.
 - (ii) That paragraph 10.6 of the guidance and the reference to persons who might be street homeless or sofa surfing means that unlawful occupation of premises is

countenanced by those references and that the code does not say unlawful occupation does not count. As became clear in argument persons who sofa surf are not ordinarily occupying premises unlawfully and would have the permission of the property owner or tenant to do so. In addition, those who are street homeless are not necessarily acting unlawfully. My interpretation of paragraph 10.6 is that it highlights, in certain circumstances, the need to take care when considering homeless applications from persons who might be of a more itinerant lifestyle but who nevertheless do have a local connection with the area.

- (iii) He continued this theme by referring to Paragraph 10.5 of the Code where temporary accommodation can constitute normal residence of choice and the decision in *Mohamed* where normal residence was defined namely where a person would eat and sleep and they were voluntarily accepted. He submits that is not based on the legal nature of occupation and that is a very wide and general test.
- (iv) He argued that unlawful occupation of itself may not be a bar to a finding that a person has a local connection. He cited examples including squatters who may occupy a building for many years.
- (v) Finally, in this regard Mr Vanhegan sought to argue that a tenant occupying pursuant to a statutory tenancy for the purposes of the Rent Act 1977 after the protected tenancy had come to an end was in the same position as a person who remained in occupation of temporary accommodation provided by a housing authority after a notice to quit had been served. In other words, he contended that the Rent Act tenant was in the same position as the Claimant in this case. He referred me to the decision of Lord Neuberger in *R(N) v Lewisham etc* at 109. Upon my reading of that section of the judgement what was said does not, in fact, support his submission. The two positions are very different. The protected Rent Act tenant is entitled as a matter of law to remain in the property as the legislation permits him to do so. He is not occupying the property unlawfully. There is therefore a clear distinction between such cases and the case under consideration here.

39. Mr Grundy QC on behalf of the CCC submits that *residence* should not be confused with *normal residence* for the purposes of establishing a local connection as required by the Housing Act 1996. He submits that it is perfectly clear in this case that the Claimant had a local connection with Sandwell and not with Cambridge. That state of affairs was accepted by Sandwell and they therefore took on the responsibilities under the HA 96 owed to the Claimant. He submits that the decision to reject the new homelessness application was rational having taken into account all of the relevant facts and accordingly cannot be criticised.

40. He submits that the decision to reject the renewed application cannot be impugned on public law grounds and therefore the claim should be dismissed. He submits that the only new fact asserted in the letter of 17/10/19 was that the Claimant had been resident in Cambridge for the last six months and accordingly that gave rise to him having a local connection within the council's district. He submits that the relevant dates for comparison of 25/9/19 and 17/19/19 namely the date of the S.202 review decision and the date of the second application. He says that between those dates the defendant did not owe the Claimant a housing duty and had not since 19/8/19. He says on 28/8/19 the council declined to provide him with accommodation pending review,

a decision he did not challenge, and on 23/8/19 the defendant had served a notice terminating his licence to occupy the property requiring him to leave on 2/9/19. He therefore submits that it was not irrational to hold that in the circumstances the second homeless application was based on the same facts that were in existence at the time that the first application was determined.

41. He submits that unlike in *Mohamed* where the temporary accommodation was occupied lawfully throughout that is not the case here. He says the local connection cannot be established mechanistically i.e. just because a person occupied premises for six months whatever the circumstances. Accordingly, he submits that the defendants were entitled to disregard his occupation of the property as supporting his case that there have been a material change of circumstances giving rise to him being normally resident in Cambridge for six months and thereby having a local connection giving rise to an obligation on the part of the council to adopt accept his second homeless application.
42. Finally, he cited a number of policy reasons why as a matter of principle the Claimant should not be allowed to rely upon the unlawful occupation of premises particularly when any duty owed to the Claimant under the HA 96 had ceased namely that such a finding would circumvent the local connection regime that works between local housing authorities and in this case where Sandwell had accepted the referral and agreed that the Claimant had a local connection with their area. Further, he adds that the referral scheme is designed to be draconian meaning that where a referral has been accepted duties under the HA 96 cease. He submitted that if someone in a similar position to the Claimant simply refused to leave their temporary accommodation that will encourage others to refuse to co-operate with the referral of the case as appears to have happened in this here. Finally, he said it will encourage applicants to make renewed applications in areas where they have no connection but where they would like to live.
43. Delay. Before giving my decision, I should say something about the time these proceedings have taken. Regrettably this case has taken far too long to be resolved. The global pandemic has affected the workings of the courts and caused delay. This case is an example. The claim was lodged on the 5/11/19. The matter was considered on the papers on the 23/12/19. Leave was refused and an oral renewal hearing was not conducted until 6/2/20. The matter was listed for hearing on the 24/4/20 to take place on the 21/1/21 as it did before me nearly one year later. I have been informed that the County Court possession proceedings have been stayed pending this decision and that the claimant still lives in the property some seventeen months after he was required to leave.

Decision

44. In my judgement;

- (i) At the time of the new application on 17/10/19 the only alleged new fact was that the claimant by then had resided in the temporary accommodation for more than 6 months and thereby for that reason had a local connection to Cambridge.
- (ii) From the 23/8/19 when the Claimant was served with notice requiring him to vacate on the 2/9/19 and from 28/8/19 when he was refused

accommodation pending review CCC withdrew permission to occupy the temporary accommodation provided by them. From the 2/9/19 the Claimant had been in occupation unlawfully and had made a decision to remain to gain 6 months occupation. CCC owed him no housing duty from the time Sandwell accepted the referral.

- (iii) Other than the passing of time nothing had changed. The Claimant did not have a local connection with Cambridge indeed his local connection for the purposes of the HA 96 was with Sandwell who had accepted the referral.
- (iv) In my judgement, in the circumstances of this case 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 HA 96.
- (v) The new application was also in my judgement, wholly fanciful i.e. unrealistic given the circumstances. The actions of the Claimant to frustrate CCC in not leaving the accommodation as he was required to, in preventing CCC from changing the locks and thereby preventing others from using the much needed temporary accommodation and failing to engage with Sandwell is tantamount to a manipulation of the homeless statutory regime.
- (vi) If such conduct were permissible any person in similar circumstances without a local connection who was dissatisfied with a referral decision, as an example, would be able to frustrate the referral system by refusing to leave until such time as he had resided for 6 months in one area.

45. Accordingly, the decision of Mr Penn on the 21/10/19 rejecting the new homelessness application was not unlawful. It was not irrational in a public law sense namely that no reasonable authority could have made that decision and there was no error of law.

46. I therefore dismiss the claim.

47. I will ask counsel to draft the appropriate order for costs.