Neutral Citation Number: [2020] EWCA Civ 1586

Case No: B5/2019/3159

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CENTRAL LONDON COUNTY COURT
His Honour Judge Luba QC
E40CL323

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/11/2020

Before :

LORD JUSTICE BEAN
LADY JUSTICE ASPLIN
and
LORD JUSTICE LEWIS

- -

Between :

Nikolaeva	**Appellant**
- and -	
London Borough of Redbridge	**Respondent**

- -
- -

Mr Ben Chataway (instructed by **Edwards Duthie Shamash Solicitors**) for the **Appellant**
Mr Michael Mullin and **Miss Elizabeth England** (instructed by **The London Borough of Redbridge**) for the **Respondent**

Hearing date: 11th November 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 11.00 a.m. on Friday 27th November 2020.

Lady Justice Asplin:

1. This is an appeal from the order of HHJ Luba QC dated 9 December 2019, dismissing the Appellant's appeal against the Respondent's decision that its main housing duty owed to the Appellant, Mrs Nikolaeva, under Part VII of the Housing Act 1996 had ceased under section 193(7).

2. The appeal raises the important issues of the nature of the "final offer of accommodation", the refusal of which triggers a cessation of the "main housing duty" placed upon a local housing authority by the Housing Act 1996, and when that offer is made.

Background

3. In the light of the nature of the challenges to the judge's order and the decision of the reviewing officer, it is necessary to set out the background in this matter in some detail.

4. It is not in dispute that on 2 June 2004, the Respondent, the London Borough of Redbridge ("Redbridge") accepted that it owed Mrs Nikolaeva the main housing duty under section 193(2) Housing Act 1996 (the "1996 Act") on the basis that she was vulnerable (due in particular to her mental illness). She was placed in temporary accommodation on 27 September 2004 and has lived at the same address ever since.

5. By a letter dated 1 July 2013 Redbridge nominated Mrs Nikolaeva to East Homes Housing Association in respect of a ground floor studio flat. In the letter Redbridge made clear that if Mrs Nikolaeva's circumstances had not changed and she rejected the offer of accommodation, Redbridge's duty to her under section 193 of the 1996 Act would cease. Mrs Nikolaeva did not accept the offer. Nevertheless, having received information about her mental health, Redbridge accepted that it continued to owe her the "main housing duty" despite the fact that she had refused the offer.

6. Thereafter, by a letter dated 19 May 2017, Redbridge informed Mrs Nikolaeva that she had been nominated to Sanctuary Housing Association ("Sanctuary") which had asked for a nomination for a one bedroom, ground floor flat at Flat 10A Redbridge Lane West, London (the "Property") and that she would be invited to view the Property. The letter went on (where relevant) as follows:

> ". . . This nomination to an Assured Tenancy is made under **Part VI, Housing Act 1996**. If the nomination is successful and you are offered **10A Redbridge Lane west, London E11 2JU**, this offer will constitute a final offer of accommodation for the purpose of **Section 193** of the **Housing Act 1996, Part VII**. Having taken account of your individual circumstances, the council is satisfied that the accommodation to which you have been nominated, is suitable for you and your household to occupy. It is the correct size and type of accommodation for your assessed needs and is in one of your areas of choice.
>
> . . .
>
> Should your circumstances have changed and you feel that this property is not now suitable for your needs, please contact me immediately.

> However, if your circumstances have not changed and you refuse the offer, the Council's duty to ensure that you have accommodation to occupy under **Section 193 of the Housing Act 1996 Part VII** will cease. If you are occupying temporary accommodation provided by the Council, including leased accommodation, your occupation will be terminated. . . ."

7. Mrs Nikolaeva viewed the Property on 8 June 2017, accompanied by a Sanctuary housing officer. It was alleged that the Property was dirty and in poor condition and Mrs Nikolaeva was told that it would be cleaned and repaired.

8. On 29 June 2017, Mrs Nikolaeva attended a meeting with a Sanctuary housing officer, during which she was presented with a letter from Sanctuary's letting officer, Ms Narouie, offering her an "Assured Shorthold ("Starter") (Six Year Fixed Term)" tenancy of the Property to commence that day. The offer was made subject to her accepting and signing Sanctuary's "Tenancy Agreement" and it was stated in the letter that she "should consider this matter very carefully before making a decision to accept the tenancy". She was, nevertheless, asked to sign the tenancy agreement during the meeting on 29 June.

9. In an email from Ms Narouei to Redbridge sent the following day, 30 June 2017, Ms Narouei reported that the "tenancy sign up" did not go ahead. She set out the explanation from the housing officer who had been present and asked Redbridge to ". . . advise another nomination for this property". The explanation was that Mrs Nikolaeva had:

> " . . . refused to complete the sign up. . .on the grounds that she cannot keep or store 20 pots of plants from her previous accommodation on rear ground floor communal pathway of a semi detached house converted into 4 flats. . . .
>
> She did also request to plant the plants in the communal garden which I also refused on the grounds that maintenance of her plants will be subjected to be maintained by estate service which will then not be fair to charge other residents in maintaining her plants.
>
> Nom was previously advised 2 weeks ago during viewing with myself that this request will not be allowed as this will be a health and safety risk and a trip hazard to other residents.
>
> She became agitated and advised that she will still put the plants out on communal grounds whether I like it or not. At this point I reiterated the term of the Assured Shorthold Starter/fixed 6 years tenancy to her as per the tenancy agreement; 3.1D(vi) . . .
>
> She did not accept this and has advised to return to the Redbridge council to discuss further."

10. On 3 July 2017, Mrs Nikolaeva wrote to the Operational Director of Housing at Redbridge raising concerns about the terms on which the Property had been offered to her. In particular, she complained about Sanctuary's failure to provide information about utility meters; rules restricting alterations to the Property, planting in the garden and pet ownership; Sanctuary's request for bank details and proposed direct debit arrangements; the lack of security of tenure, given the Property had been offered as an assured shorthold tenancy; and the prospect of being evicted after 12 months for violation of the rules. Nonetheless, amongst other things, she stated:

> ". . .
>
> I'm not talking about the state of housing or about REFUSAL I'm talking about the rules that will worsen my living conditions and the mental state will be at risk.
>
> . . .
>
> When discussing the rules, our conversation turned into a dispute about rules that I did not understand, which led to a nervous breakdown.
>
> . . .
>
> I do not refuse the property provided but after explaining some points in the rules I understand that I can not agree with them.
>
> . . .
>
> This offer is provided to me subject to the acceptance and signing of the lease agreement.
>
> And that I should consider this matter carefully before making a decision to accept the tenancy. And I decided that I can not agree and sign though I do not refuse the apartment."

11. On receipt of the letter, on the same day, 3 July 2017, Redbridge's housing allocation officer made a file note which reads: "Letter received from applicant about refusing to sign tenancy agreement because she does not agree with it. Rang applicant to let her know that we are not accepting her reason but got no reply." In her handwritten note she goes on to refer to a conversation with a Ms Narouie at Sanctuary and states that Ms Narouie "said they [Sanctuary] need a nomination by tomorrow or they will be taking back property due to them losing rent on the flat". The note goes on to record a further unsuccessful attempt to speak to Mrs Nikolaeva by telephone later that afternoon.

12. On 4 July 2017, the housing allocation officer spoke to Mrs Nikolaeva on the telephone. A short handwritten note of that conversation reads: "Spoke to app regarding her letter and refusal to sign the tenancy agreement. App seeing YS [Mr Sharma] on Friday 7/7/17 @ 9.00am in HAC".

13. On 7 July 2017, Mrs Nikolaeva met with Mr Sharma, an allocation manager from the Redbridge housing team. A handwritten note of the conversation on that occasion records, amongst other things, that Mrs Nikolaeva's concerns were "not about [the]

[P]roperty" but "about rules" and that she had been "told if she does not comply with rules she may not have her tenancy extended". It also records that Mr Sharma had "concerns about Ms Nikolaeva and her mental health state and she will need to be referred to mental health". Mr Sharma further notes:

> "I advised Ms Nikolaeva that having listened to her reasons for not accepting the property I am satisfied that the property was suitable and that not being happy with the rules does not make the property unsuitable.
>
> The property has now been offered to another applicant. I will make my decision and she can request a review of the decision within 21 days."

Redbridge then wrote formally to Mrs Nikolaeva on the same date, stating that as she had refused a final offer of accommodation that was suitable and reasonable for her to occupy, it considered that its duty under section 193 of the 1996 Act had been discharged (the "Decision").

14. The Decision includes a short summary in the following terms:

> ". . . On 29 June you viewed 10A Redbridge Lane West and informed the Housing Association that you were refusing the property as it was not suitable. You also sent a letter dated 3 July 2017 giving your reasons for refusal and an interview was arranged with myself for 7 July 2017.
>
> At the interview, you stated your reasons for refusal:
>
> 1. In your opinion the property was not suitable as you thought it was for disabled person and that you wanted another viewing before accepting. On 29 June when you went to sign up for the tenancy you were not allowed to view property.
>
> 2. Did not agree with the rules of the tenancy agreement. Were not allowed to put flowers in the garden and not allowed to change fittings in the property including taps and tiles. Also, not allowed to put bike in the Garage.
>
> 3. You then said it was not about the property but the rules which were imposed on you by the Housing Association.
>
> 4. You were concerned about the rent level of £106.26 and affordability."

15. It also states that Redbridge had concluded that the offer of accommodation was "reasonable, suitable and available . . . at the time of offer". The writer, Mr Sharma, stated that he had also "taken into account the duty under the Equality Act 2010" and that Redbridge was "aware of your mental health concerns and have duly regarding this [sic] as part of our decision". He then recorded that "[d]ue to the refusal of the offer of accommodation that was suitable and reasonable for you to occupy, [the] duty has now been discharged under s193 of the Housing Act 1996 (as amended by the 2002 Homelessness Act) and the 2011 Localism Act".

16. Thereafter, on 18 July 2017, Citizens Advice Redbridge wrote to Redbridge, on Mrs Nikolaeva's behalf, requesting a review of the Decision and her solicitors sent a more detailed request on 28 July 2017.

17. On 20 October 2017, Matthew Waldron, the reviewing officer on behalf of Redbridge, issued a "minded to" letter indicating that he would uphold the Decision. Having received further submissions and having interviewed Mrs Nikolaeva, he issued a further "minded to" letter dated 2 August 2018, again recording his intention to uphold the Decision. Redbridge issued the final Review Decision on 6 December 2018, maintaining the Decision. Mrs Nikolaeva appealed the Review Decision on 20 December 2018, and HHJ Luba dismissed that appeal on 9 December 2019.

The Review Decision

18. The Review Decision is detailed, lengthy and, at times, confusing. Given Mr Chataway's detailed submissions, on Mrs Nikolaeva's behalf, in relation to the reviewing officer's conclusions about when Mrs Nikolaeva refused the final offer of accommodation, it will be necessary to consider it in more detail below. At this stage, it is sufficient to provide an overview.

19. In summary, the reviewing officer found that: Mrs Nikolaeva had refused the Property; it was reasonable for her to have accepted it; the Property was suitable; Mrs Nikolaeva's mental health concerns did not mean that she qualified as disabled under the terms of the Equality Act 2010 and even if she did, Redbridge had given sufficient consideration to the issue and made reasonable adjustments; and Mrs Nikolaeva had been aware of the consequences of refusing the offer; it was reasonable and suitable for Mrs Nikolaeva to have accepted the offer; by refusing to sign the agreement, she had refused the offer and Redbridge's decision to discharge the duty owed to her was correct.

Judgment below

20. The judge, whose expertise in housing law is well known, held that none of the amended grounds of appeal had established an error of law in the Review Decision and accordingly, dismissed the appeal. He did so despite describing parts of the Review Decision as "leaving one scratching one's head", "a muddle" and "confusing", noting that the reviewing officer had used incorrect dates on a number of occasions and in relation to a file note of a conversation on 4 July 2017 had placed an emphasis on the content of that discussion "which the file note simply cannot bear". See [71], [74] and [75] of the judgment.

21. In relation to the first ground that the Review Decision was based upon a finding of fact which was untenable and contrary to the evidence, namely that Mrs Nikolaeva had refused the offer of accommodation, the judge held that the reviewing officer had based his decision on the undisputed evidence that Mrs Nikolaeva had refused to sign the tenancy agreement. He noted that "[h]is [the reviewing officer's] logic was that there had been a refusal to sign the tenancy agreement and that was equivalent to a refusal to accept the offer" and that there was no challenge to that reasoning. See judgment at [64] - [65].

22. The judge went on to address a further point raised by Mr Chataway in his skeleton and oral submissions. He submitted that it was vital for the reviewing officer to have

identified precisely when the final offer was refused and whether it was on 29 June or 4 July 2017 and that the failure to do so was an error of law.

23. In this regard, the judge stated at [67] that: " . . . the reviewing officer's decision is hopelessly unclear as to how, or rather at what time, the refusal of the accommodation crystallised". Having quoted passages from [32] and [33] of the Review Decision the judge noted that "one is simply left scratching one's head as to the conclusion". Read as a whole, the judge decided that the reviewing officer had found that there had been a refusal of the offer and that the refusal was constituted by the failure to sign the agreement. He noted, however, that "[P]recisely at what point that refusal to sign the tenancy agreement crystallised into final refusal does not emerge from that rather opaque set of paragraphs". See judgment at [71].

24. He concluded, nevertheless, that the confusion did not matter and addressed the issue as follows:

> "75. All this muddle is, to say the least, confusing. However, does any of it matter? Mr Mullin says not. He submits that what the reviewing officer found was a refusal that began on 29 June 2017 at the earliest and was maintained up to and including 4 July 2017. It is not, Mr Mullin contends, suggested that in the discussion on 4 July the appellant changed her position from what it had been on 29 June and agreed to sign the tenancy agreement.
>
> 76. It is plain, submits Mr Mullin, that the officer had found that a refusal had occurred on the basis of tolerably clear material which he was entitled to find.
>
> 77. To my mind, Mr Mullin has comprehensively answered the proposition advance in ground one of the grounds of appeal. As I have earlier said, on its face, it is simply not capable of being made out."

25. The first part of the second ground of appeal was that the reviewing officer failed to consider whether at the time of the alleged refusal, on 4 July 2017, the offer was still open to accept. The judge held that on the face of it, the point was hopeless because "the offer remained open for acceptance up until the letter of 7 July 2017 by which [time] the council indicated that it was relying on the facts which had occurred to trigger a cessation of the duty". See judgment at [81]. However, having considered the Redbridge file notes of 3 and 7 July 2017 concerning the availability of the Property, the judge stated that he was not concerned with any offer made by Sanctuary, but only the offer made by Redbridge itself. As there was no suggestion that Redbridge had withdrawn its offer prior to the 4 July 2017, the Reviewing Officer did not need to consider it. See judgment at [86] - [88]. In particular, he stated as follows:

> "87. To my mind it would have been a relevant consideration for the reviewing officer to ask him or herself whether the offer had at any time been withdrawn or discontinued before the refusal on 4 July. However, there is no whisper of a suggestion that the council had done anything at all to withdraw the offer that it had made."

Accordingly, he held that this part of the ground of appeal led nowhere at all.

26. The second part of the second ground of appeal was that insofar as the reviewing officer did consider the issue, he failed to carry out any adequate enquiries as to whether or not the offer was still open and failed to acquaint himself with the relevant facts. In this regard, the judge concluded that there was nothing to suggest that the reviewing officer had not made adequate and proper enquiries, the enquiries he wished to make being a matter for him. See [91] of the judgment. He went on:

> " 91. . . . I understood Mr Chataway to be suggesting that the facts would require some form of retrospective enquiry of Sanctuary Housing Association as to whether and precisely when they did offer the accommodation to somebody else.
>
> 92. . . . this simply showed that Mr Chataway was focused on entirely the wrong target, namely the availability of the accommodation. The statutory target is the offer and the question of whether the offer was refused."

27. The third ground of appeal was that the reviewing officer failed to have regard to paragraph 14(22) of the "*Homelessness Code of Guidance for Local Authorities"*, DCLG July 2006 (the "Guidance") and/or consider whether Mrs Nikolaeva had been allowed sufficient time to consider Redbridge's offer such that it would have been reasonable for her to have accepted under section 193(7F) of the 1996 Act.

28. Having noted that the reviewing officer had referred to the Guidance and had decided that Mrs Nikolaeva "was given ample opportunity to accept the offer made" (see judgment at [97]) the judge allowed Mr Chataway to develop his argument further and to address the proposition that no reasonable local authority could have decided that the period provided between offer and acceptance in this case was sufficient to enable this particularly vulnerable applicant properly to have considered her position.

29. The judge distilled Mr Chataway's submissions and concluded at [102] – [104] as follows:

> "102. . . I think he was making the proposition that if the refusal started on 29 June or took place on 29 June, in either eventuality there had not been sufficient time since the offer of the tenancy by the letter of 29 June.
>
> 103. However, the letter of 29 June is not the offer. It is not entirely clear when the offer was made in this case but in my judgment it must have preceded the first viewing of the accommodation on 8 June. On any view, the applicant had a number of weeks to consider the accommodation before she was asked to sign the tenancy for it on 29 June.
>
> 104. She had had several weeks to seek such advice and assistance that she wished and it seems to me that she was, to put it into the words of the reviewing officer, a recipient of 'ample opportunity to accept the offer made'.

30. The judge decided, accordingly, that none of the amended grounds of appeal established that there was an error of law in the Review Decision and the appeal was dismissed.

Grounds of appeal and Respondent's Notice

31. Mrs Nikolaeva appeals the judge's order on two grounds. First, it is said that he ought to have set aside the Review Decision because it was based on a finding that Mrs Nikolaeva had refused an offer of accommodation made by Redbridge on 4 July 2017, which was irrational and contrary to the evidence; and to the extent that the judge concluded that the Review Decision should, nevertheless, stand because Mrs Nikolaeva had been given reasonable opportunity to consider the offer by 29 June 2017 and/or the reviewing officer had made a clear finding to that effect, the judge's conclusions were contrary to the evidence.

32. Secondly, it is said that the judge erred in concluding that there was no requirement on the reviewing officer to consider whether the accommodation had still been available for Mrs Nikolaeva on 4 July 2017. The judge distinguished between the offer of accommodation made by Redbridge and the offer of a tenancy made by the proposed landlord, Sanctuary, and in doing so, it is said that he misdirected himself as to the requirements of section 193(7) of the 1996 Act. On a proper reading of that section, it is alleged that the acceptance or refusal of an offer of accommodation can only lead to the cessation of the housing duty if the accommodation is still available so that acceptance of the offer would result in an assured or secure tenancy.

33. By a Respondent's Notice, Redbridge seeks to uphold the judge's decision on the basis that the reviewing officer found that the offer of accommodation was refused on 29 June 2017; and to the extent that he did not do so, the judge should also have dismissed the second ground of appeal on the basis that the reviewing officer found that the offer had been refused on 29 June 2017 and the Property was available on that date and, in any event, that it remained available on 4 July 2017.

Legal Framework

34. Before turning to the issues themselves, it is important to have the relevant legal framework both in relation to the main housing duty and appeals from a review decision in mind.

(i) Relevant provisions of the 1996 Act

35. Section 159 of the 1996 Act is concerned with the allocation of long term social housing by a local housing authority. It is concerned with the allocation of housing accommodation by the selection of a person to be a secure tenant in the authority's own accommodation or the nomination of a person to be a tenant of another housing authority or of a private registered provider of social housing such as a housing association like Sanctuary. Where relevant, it provides as follows:

> ". . .
>
> (2) For the purposes of this Part a local housing authority allocate housing accommodation when they—
>
> . . .

> (c) nominate a person to be an assured tenant of housing accommodation held by a private registered provider of social housing or a registered social landlord.
>
> ...
>
> (4) The references in subsection (2)(b) and (c) to nominating a person include nominating a person in pursuance of any arrangements (whether legally enforceable or not) to require that housing accommodation, or a specified amount of housing accommodation, is made available to a person or one of a number of persons nominated by the authority."

36. Part 7 of the 1996 Act contains the duties owed by a local housing authority to the homeless. Section 193, which is relevant here, has been amended substantially by the Localism Act 2011 and the Homelessness Reduction Act 2017. As a result of transitional provisions, the amendments do not apply to Mrs Nikolaeva, however. The relevant parts of section 193 in their 2009 form which continues to apply in Mrs Nikolaeva's case, are as follows:

> "(1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.
>
> (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.
>
> (3) The authority is subject to the duty under this section until it ceases by virtue of any of the following provisions of this section.
>
> ...
>
> (6) The local housing authority shall cease to be subject to the duty under this section if the applicant –
>
> . . .
>
> (c) accepts an offer of accommodation under Part VI (allocation of housing) or
>
> (cc) accepts an offer of an assured tenancy (other than an assured shorthold tenancy from a private landlord
>
> . . .
>
> (7) The local housing authority shall also cease to be subject to the duty under this section if the applicant, having been informed of the possible consequence of refusal and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part 6.

> (7A) An offer of accommodation under Part 6 is a final offer for the purposes of subsection (7) if it is made in writing and states that it is a final offer for the purposes of subsection (7).
>
> ...
>
> (7F) The local housing authority shall not— (a) make a final offer of accommodation under Part 6 for the purposes of subsection (7);
>
> ...
>
> unless they are satisfied that the accommodation is suitable for the applicant and that it is reasonable for him to accept the offer."

37. Further, section 182(1) of the 1996 Act provides that: "[I]n the exercise of their functions relating to homelessness and the prevention of homelessness, a local housing authority or social services authority in England shall have regard to such guidance as may from time to time be given by the Secretary of State."

38. Paragraph 14.22 of the Guidance is as follows:

> "14.22. Housing authorities must allow applicants a reasonable period for considering offers of accommodation made under Part 6 that will bring the homelessness duty to an end whether accepted or refused. There is no set reasonable period; some applicants may require longer than others depending on their circumstances, whether they wish to seek advice in making their decision and whether they are already familiar with the property in question. Longer periods may be required where the applicant is in hospital or temporarily absent from the district. In deciding what is a reasonable period, housing authorities must take into account the applicant's circumstances in each case."

39. A local housing authority may only discharge its housing functions under Part 7 in the ways set out in section 206(1) of the 1996 Act. They are as follows:

> ". . .
>
> (a) by securing that suitable accommodation provided by them is available,
>
> (b) by securing that he obtains suitable accommodation form some other person, or
>
> (c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person."

40. The right to a review of a local housing authority's decision as to what duty is owed under section 193 is contained in section 202(1)(b) and section 204(1) of the 1996 Act, which provides that a person who is dissatisfied with a review decision may appeal to the County Court on a point of law. It is not in dispute that the County Court's

jurisdiction includes "not only matters of legal interpretation but also the full range of issues which would otherwise be the subject of an application in the High Court for judicial review: *Runa Begum v Tower Hamlets LBC* [2000] 1 WLR 3036".

(ii) Approach to review decisions

41. Before turning to the issues in this case, it is also important to be clear about the approach that the court should take in relation to a review decision. The issue was addressed by Lord Neuberger in his opinion in *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] 1 WLR 413, in which he agreed with Lord Hoffmann and Baroness Hale. The facts of that case are far removed from this one and are not directly relevant here. The review decision in that case was held to contain an error as to the effect of a shared residence order, but it was not an error which invalidated the decision. Lord Neuberger commented as follows:

> "46. The rights granted by Part VII of the 1996 Act to those claiming to be homeless or threatened with homelessness are based on humanitarian considerations, and this underlines the fact that any challenge to a review decision should be carefully considered by the County Court to whom such challenges are directed. Given that the challenge in the County Court is treated as a first appeal, the responsibility on the Judge considering the challenge is heavy, and, if he or she is satisfied that there is an error in the reasoning which undermines the basis upon which the decision was arrived at, then the decision should obviously be set aside.
>
> 47. However, a Judge should not adopt an unfair or unrealistic approach when considering or interpreting such review decisions. Although they may often be checked by people with legal experience or qualifications before they are sent out, review decisions are prepared by housing officers, who occupy a post of considerable responsibility and who have substantial experience in the housing field, but they are not lawyers. It is not therefore appropriate to subject their decisions to the same sort of analysis as may be applied to a contract drafted by solicitors, to an Act of Parliament, or to a court's judgment.
>
> 48. Further, at least in my experience, and as this case exemplifies, review decisions generally set out the facts, the contentions, the analyses and the conclusions in some detail. To my mind, given the importance, particularly to the applicant, of the issues considered in review decisions, such fullness is to be strongly encouraged. However, as any lawyer knows, the more fully an opinion is expressed, the greater the opportunity for alleging mistakes of fact, errors of law, or inconsistencies. If the courts are too critical in their analyses of such decisions, it will tend to discourage reviewing officers from expressing themselves so fully.
>
> 49. In my view, it is therefore very important that, while Circuit Judges should be vigilant in ensuring that no applicant is wrongly deprived of benefits under Part VII of the 1996 Act because of any error on the part of the reviewing officer, it is equally important that an error which does not, on a fair analysis, undermine the basis of the decision, is not accepted as a reason for overturning the decision.

> 50. Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions.
>
> 51. Further, as the present case shows, a decision can often survive despite the existence of an error in the reasoning advanced to support it. For example, sometimes the error is irrelevant to the outcome; sometimes it is too trivial (objectively, or in the eyes of the decision-maker) to affect the outcome; sometimes it is obvious from the rest of the reasoning, read as a whole, that the decision would have been the same notwithstanding the error; sometimes, there is more than one reason for the conclusion, and the error only undermines one of the reasons; sometimes, the decision is the only one which could rationally have been reached. In all such cases, the error should not (save, perhaps, in wholly exceptional circumstances) justify the decision being quashed.
>
> 52. In the present case, while one paragraph of the review decision contains an error, it seems to me that it is not an error which in any way undermines the reasoning upon which the conclusion is based. It is also fair to add that, if one excises the short passage which contains the error, the review decision in this case, when read as a whole, contains a full and very fair summary of the relevant facts, an accurate assessment of the issues, a clear explanation of the reviewing officer's reasoning, and a conclusion which seems to me to be unassailable."

42. In this case, as the judge pointed out and as will be seen below, the Review Decision is at times inaccurate, confusing, hopelessly unclear and the logic is difficult to follow. It is also lengthy. Although the court will adopt the benevolent approach outlined by Lord Neuberger, given the huge importance of a review to the homeless person in question or those threatened with homelessness, it is essential that review decisions are concise where possible, contain an accurate record of the relevant facts and are structured in a way which enables the reader easily to follow the conclusions which have been reached and the reasons for those conclusions. There is no set rubric. However, the structure adopted should leave the person to whom the housing duty is allegedly owed and the local housing authority which allegedly owes it, in no doubt about the reasoning which has led the reviewing officer to his conclusions.

The final offer of accommodation

43. Before turning to the grounds of appeal, it is important to be clear about the offer which is in question. Section 193(7) of the 1996 Act is concerned with the refusal of "a final offer of accommodation under Part 6." If one reads section 193(7) in the context of section 193 as a whole and section 193(7F), in particular, it is clear that the offeror in relation to a final offer is the local housing authority itself. Section 193(7F) provides that the local housing authority shall not "(a) make a final offer of accommodation under Part 6 for the purposes of subsection (7) . . . unless they are satisfied that the accommodation is suitable for the applicant and that it is reasonable for him to accept

the offer". There can be no doubt, therefore, that the offer with which section 193(7) is concerned is made by the local housing authority. This is consistent with the fact that it is the local housing authority which owes a duty to the homeless: see section 193(1) – (3). The offer in question, in this case, therefore, is the final offer of accommodation made by Redbridge.

44. How does section 193(7) operate where, as in this case, the actual accommodation is to be provided by a third party rather than the local housing authority itself? In this regard, Mr Chataway pointed, by way of example, to section 193(6)(c) and (cc) which contain two ways in which the local housing authority can cease to be under the main housing duty contained in section 193(2). They are where the applicant accepts an offer of accommodation under Part 6 or where he accepts an offer of an assured tenancy from a private landlord. He submits, therefore, that it is clear that the final offer must be linked to a concrete offer of a tenancy which can be accepted.

45. In this regard, Mr Chataway also referred us, albeit by way of an aside, to *R (Faizi) v London Borough of Brent* [2015] EWHC 2449 (Admin) per Haddon-Cave J (as he then was) at [16] – [19] and to *Griffiths v St Helens Metropolitan Borough Council* [2006] 1 WLR 2233 per May LJ at [34] and [35], with whom Rix LJ and Coleridge J agreed. He submitted that the reference in the *Faizi* case at [19] to a "guillotine" coming down on the duty to provide accommodation following the applicant's refusal of an offer of reasonable accommodation, and the reference in the *Griffiths* case at [35] to the cessation of the duty under section 193 as a result of either the refusal or acceptance of the offer, are consistent with the need for the final offer to be an offer of a tenancy.

46. There is no need to explain the context in which those matters were considered in either of those cases as there is no need to place any reliance upon them. The plain wording of section 193(7) makes the matter quite clear. The local housing authority ceases to be subject to the duty under section 193 if the applicant refuses "a final offer of accommodation". In order to be an "offer of *accommodation*" (emphasis added) it seems to me that it must be made by reference to an actual property which the applicant can occupy. Otherwise, the offer is not "of accommodation". It is merely abstract.

47. This approach to the plain and unequivocal wording in section 193(7) is also consistent with the structure of section 193 as a whole. For example: the local housing authority's duty is ended by the acceptance of an offer of accommodation or an assured tenancy under section 193(6)(c) and (cc); and section 193(7F) requires the local housing authority to be satisfied that the accommodation is suitable for the applicant and that it is reasonable for the person in question to accept the offer. These provisions do not make sense unless the offer relates to actual accommodation.

48. In his written argument, Mr Mullin, who appeared on behalf of Redbridge with Miss England (but was not called upon) sought to equate the final offer of accommodation for the purposes of section 193(7) with the allocation of housing accommodation by nominating a person to be an assured tenant of a private registered provider of social housing or a registered social landlord under section 159(2) of the 1996 Act.

49. It will be apparent from what I have already said that I consider it to be unarguable that, where the accommodation is to be provided by a third party, a mere allocation by way of nomination is "a final offer of accommodation". A nomination might never give rise to the provision of accommodation to a homeless person under Part 6 of the 1996 Act

at all. Such an approach is inconsistent with the plain wording of the phrase itself and section 193 as a whole. Furthermore, it would make a mockery of the main housing duty, if it were satisfied potentially without the offer of suitable accommodation. It cannot have been the intention of Parliament that a local housing authority's duty to the homeless can be terminated in such a way.

50. In this case, it seems to me that the position is quite clear. It was recognised by Redbridge itself in its letter of 19 May 2017. It stated that Mrs Nikolaeva had been nominated to an assured tenancy of the Property and that the nomination had been made under Part 6 of the Housing Act 1996. It went on, quite properly, to distinguish the nomination from the final offer of accommodation. Redbridge stated that: "[*I*]*f the nomination is successful* and you are offered [the Property] this offer will constitute a final offer of accommodation for the purpose of Section 193 of the Housing Act 1996, Part VII." (emphasis added)

51. In the circumstances of this case, therefore, as Redbridge envisaged in its letter of 19 May 2017, the offer it made in the letter of 19 May 2017 was conditional upon the nomination being successful and Mrs Nikolaeva being offered a tenancy of the Property by Sanctuary. That condition was satisfied on 29 June 2017. It follows that I agree with the judge that the offer for the purposes of section 193 is that of the local housing authority and not the housing association which may grant an applicant a tenancy. I also agree with Mr Chataway that a final offer of accommodation must be connected to the actual provision of accommodation.

When was the offer refused?

52. When was the final offer of accommodation refused? This question is of direct relevance to Mr Chataway's first ground of appeal. He says that the Review Decision should have been set aside because it was based on a finding that Mrs Nikolaeva had refused a final offer of accommodation made by Redbridge on 4 July 2017, which was irrational and contrary to the evidence.

53. In this regard, Mr Chataway focussed upon [33] of the Review Decision. It is in the following form:

> "An officer from the London Borough of Redbridge spoke to your client about this on the 4th of July, advising that we were taking her refusal to sign the agreement as a refusal. It does not appear that this was a conversation about the technicalities of a tenancy and whether or not to sign the agreement but rather a fairly straight forward conversation that entailed your client refusing the offer of accommodation. I am satisfied, therefore, that at this point your client had the opportunity to change her mind and say she would be accepting the offer and would sign the agreement as, at this point, the accommodation was still potentially available. The information recorded by the officer that spoke to your client does not indicate to me that she was seeking advice or clarification before agreeing to sign the tenancy agreement. There is no indication that your client requested more time to consider her position nor advised that she was now willing to sign the agreement. In fact, I note that the officer noted that your client's refusal was specifically because of the communal garden, which would indicate to me that your client was actively refusing

> the offer of accommodation. I am mindful that it seems reasonable for the Allocations team to have taken this as a refusal of the offer. The fact that the accommodation was no longer available to your client at the point Mr Sharma interviewed your client to decide whether or not to discharge the duty owed is not, to my mind, relevant to whether or not he could or could not elect to make use of the London Borough of Redbridge's ability to consider the duty owed to your client to be complete as the fact that your client was considered to have refused the offer on the 4th of July is the relevant fact . . . "

54. Mr Chataway submitted that it was clear from that paragraph that the reviewing officer had found that there had been a refusal of the final offer of accommodation on 4 July 2017 and that he had come to that conclusion as a result of having misread the evidence. He pointed out that there is nothing about the communal garden in the handwritten file notes of 4 July 2017 at all, nor, he submitted, was there anything in the note to support the conclusion that the offer was refused on 4 July.

55. In support of his submission, Mr Chataway also relied upon a number of further passages in the Review Decision. They were as follows:

> "38. . . I am mindful that the officer that spoke to your client on the 4th of July was clear that your client was refusing the offer of accommodation and that there was no ambiguity about her wanting to accept the offer or wishing to have aspects of a tenancy explained. . .
>
> . . .
>
> 43. . . . She clearly spoke to an officer at the Housing Advice Centre on the 4th of July, but still did not agree to sign the agreement despite the fact that the officer spoke to the Housing Association. Had your client advised at this point that she wished the [sic] sign the tenancy, by the Housing Association were not willing to allow her to, I am mindful that I might have viewed this matter differently; indeed, I am mindful that this perhaps then could not have constituted a "final offer' . . ."

56. It is unfortunate that the Review Decision is as muddled as it is. It seems to me, however, that these further passages hinder Mr Chataway rather than help him. If they are read as a whole and [33] of the Review Decision, upon which Mr Chataway primarily relies, is read in context, it is clear that the reviewing officer was not misreading the file note of 4 July 2017 at all, nor did he consider that it contained a reference to the communal garden at the Property.

57. [33] of the Review Decision and the passages at [38] and [43] to which I have referred above, arise under the heading "Did your client refuse the offer of accommodation?" In this section of the Review Decision which runs to [56], the reviewing officer addresses Mrs Nikolaeva's failure to sign the tenancy agreement on 29 June 2017 (see for example, [31] and [36]), her letter of 3 July 2017 (see [34]), the note of the telephone discussion on 4 July 2017 (see for example, [33], [35], [38] and [43]) and her meeting with Mr Sharma on 7 July 2017 (see [35]), amongst other things. The reviewing officer did so in the context of Mrs Nikolaeva's assertion that she had not refused to sign the

agreement on 29 June 2017 but had wished to seek advice from Redbridge before doing so. See [32] of the Review Decision.

58. It was in that context that the reviewing officer noted at [33] that the conversation on 4 July 2017 did not appear to be about the technicalities of the tenancy. Read as a whole, it seems to me that he was stating that there had been a refusal which had been maintained and, therefore, in a sense was also made once more on 4 July 2017. Reading the file notes of 3 and 4 July 2017 together, Mrs Nikolaeva had been informed that Redbridge did not accept her reasons for refusal and there was no suggestion that it was withdrawn. As the reviewing officer pointed out at [33] there was no evidence that Mrs Nikolaeva was seeking advice or clarification before signing the tenancy agreement, nor was there any indication that she requested more time or stated that she was now willing to sign the agreement. It seems to me that the reviewing officer was entitled to come to those conclusions and did so upon the basis of the evidence before him. There is nothing irrational about that.

59. Such a reading is consistent with the reference to the content of the 3 July 2017 letter at [34], the reference at [35] to the fact that it was clear to the officer [Mr Sharma] at the Housing Advice Centre that the offer "was being refused as opposed to [your client] wishing to seek advice on a technical point" and the passages at [38] and [43] of the Review Decision set out above.

60. Furthermore, if [33] is read as a whole, it is clear that the reviewing officer was not suggesting that the reference to the communal garden was made in the file note of 4 July 2017. He was noting that there was an active refusal rather than any desire to obtain further advice or clarification which was illustrated by the issue in relation to the communal garden. It seems to me that Mr Chataway has sought to construe this reference completely out of context.

61. In my view, therefore, the reviewing officer was entitled to find as he did and the Review Decision does not contain an error and is not irrational as Mr Chataway suggests. As a result, the judge was right not to set it aside. As Mr Mullin had described, and the judge endorsed at [75] – [77] of his judgment, on the basis of tolerably clear material, the reviewing officer found that the refusal began on 29 June 2017 at the earliest when Mrs Nikolaeva refused to sign the tenancy agreement and was maintained up to and including 4 July 2017.

62. Even if I am wrong about that, in my judgment, the Review Decision was the only one which could rationally have been reached. I come to this conclusion in the light of the following: Mrs Nikolaeva's refusal to sign the tenancy agreement; the content of her letter of 3 July 2017 making her refusal clear and including the statement "I cannot agree and sign"; the receipt of that letter by Redbridge; and the file note also of 3 July coupled with that of 4 July 2017. The former stated that the housing officer had tried unsuccessfully to speak to Mrs Nikolaeva to let her know that Redbridge did not accept her reasons for refusing the tenancy and the latter made clear that the housing officer spoke to Mrs Nikolaeva regarding her 3 July letter and her refusal to sign the tenancy agreement. It follows that I reject Mr Chataway's submission that there is a factual dispute about what occurred on 4 July 2017.

Reasonable opportunity to consider the final offer

63. In addition, Mr Chataway's submission based on the Guidance does not assist him. In his written submissions, Mr Chataway argued that the reviewing officer's conclusion that Mrs Nikolaeva had had "ample opportunity to accept the offer" (see Review Decision at [134]) was based upon a purported refusal on 4 July and that it could not be said that he would have come to the same conclusion but for his mistaken findings about the refusal on that date. As the reviewing officer's conclusions about 4 July 2017 were not irrational, this submission goes nowhere. As Mr Chataway accepted in oral submissions, Mrs Nikolaeva had sufficient opportunity to seek further clarification and accept the offer between 29 June 2017 when she refused to sign the tenancy agreement and 4 July 2017 when her refusal was maintained.

64. Furthermore, as the judge held at [104] of his judgment, Mrs Nikolaeva had several weeks to seek advice and assistance. She could have done so at any stage from receiving the letter from Redbridge on 19 May 2017 and certainly could have done so after viewing the Property and being informed of the terms of the tenancy on 8 June 2017.

Was the Property still available on 4 July 2017?

65. Lastly, it is said that the judge erred in concluding that there was no requirement on the reviewing officer to consider whether the Property was still available for Mrs Nikolaeva on 4 July 2017.

66. Mr Chataway submitted that, at best, the reviewing officer was vague about whether the Property was available on 4 July and that he needed to be clear. For example, the reviewing officer noted at [33] of the Review Decision that the Property was "still potentially available" on 4 July and at [43] suggested that he might have taken a different view if Mrs Nikolaeva had been willing to sign the tenancy agreement on 4 July 2017 but Sanctuary had not allowed her to do so.

67. This issue can be dealt with very shortly. As Mr Chataway points out in his written submissions, when considering this aspect of the matter at [81] – [92] of his judgment, it seems that the judge focussed solely upon Redbridge's offer (using the term in the widest sense) rather than coupling it with the availability of the Property. As I have already mentioned, my analysis is slightly different. Redbridge's final offer of accommodation was conditional upon accommodation actually being offered. It follows therefore, that the availability of the Property was an important part of the reviewing officer's reasoning.

68. It seems to me, however, that the decision is the only one which rationally could have been reached. There was no evidence that the Property had been taken back on 4 July 2017 or at any relevant time. It is clear from the file note of the conversation on 3 July 2017 that the Property remained available then, had not been taken back by Sanctuary at that stage and that Sanctuary needed a nomination by the following day (4 July 2017) or they would be taking the Property back. The file note does not record that the Property would be taken back on 4 July 2017, just that a nomination was needed that day or the Property "would be taken back" at an undefined time in the future. Further, there is no evidence whatsoever to suggest that it was taken back on 4 July. In any event, Mr Chataway accepted that it could be safely assumed that had Mrs Nikolaeva changed her mind on 4 July and had the Property actually been taken back at that stage, Redbridge would have been able to re-nominate her for the Property.

69. In such circumstances, it seems to me, therefore, that in this regard, the Review Decision is the only one which could rationally have been reached and accordingly, it should not be set aside.

70. For all of the reasons set out above, I would dismiss the appeal.

Lord Justice Lewis:

71. I agree.

Lord Justice Bean:

72. I also agree.