Case No: H40CL264

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 08/04/2022

Before :

HHJ RICHARD ROBERTS

Between :

KALTUN BULLALE	**Appellant**
- and -	
CITY OF WESTMINSTER COUNCIL	**Respondent**

Mr Nick Bano of Counsel (instructed by **Gillian Radford & Co.**) for the **Appellant**
Mr Ian Peacock of Counsel (instructed by **London Borough of Westminster)** for the **Respondent**

Hearing date: 28 March 2022, with the hand down of judgment on 8 April 2022

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

HHJ RICHARD ROBERTS

His Honour Judge Richard Roberts:

Introduction

1. This is the hearing of the section 204 Housing Act 1996 (the Act) appeal of the Appellant against the Respondent's homelessness review decision dated 1 October 2021[1] that the Appellant has "become homeless intentionally", which was made on the basis that she has not obtained "settled" accommodation since she was last owed the main statutory homelessness duty.

2. Mr Bano of Counsel appears on behalf of the Appellant. I am grateful for his perfected skeleton argument, dated 14 March 2022[2]. Mr Peacock of Counsel appears on behalf of the Respondent. I am grateful for his perfected skeleton argument, also dated 14 March 2022.

3. On 13 November 2018, the Appellant first applied as homeless to the Respondent. This is the third set of proceedings that the Appellant has brought against the Respondent's decisions that her accommodation was not "settled". The first appeal was initially dismissed but succeeded in the Court of Appeal in November 2020. The Court of Appeal case is reported in *Bullale v City of Westminster Council* H.L.R. 21[3], hereinafter referred to as *Bullale*. The second appeal settled in the Appellant's favour very shortly before the listing of its final hearing in May 2021.

4. There is a bundle of documents before the Court. References to page numbers in the footnotes below is to this bundle.

5. There is a bundle of authorities before the Court, to which reference is made in the footnotes below.

Factual background

6. The Appellant was born on 21 October 1969 and is now aged 52. She is the single parent to three daughters: Ayda Morland (dob 13 March 1994, now aged 28), Saara Saarnio (dob 25 November 1999, now aged 22), Noora Saarnio (dob 11 April 2003, now aged 18). All three of her daughters are now over 18, but when the Appellant first approached the Respondent on 13 November 2018, Noora was still a child aged 15.

7. From 16 April 2005 to 15 November 2015, the Appellant and her three daughters lived at a privately rented flat in Fulham, Flat 247, Sullivan Court, Broomhouse Lane, London SW6 3DW[4]. The Appellant and her daughters were evicted when the landlord sold their home in 2015. The Appellant approached the London Borough of Hammersmith & Fulham for homelessness assistance.

8. Between 16 November 2015 and 1 February 2016[5] the London Borough of Hammersmith & Fulham provided temporary accommodation of one room for the Appellant and her daughters in a hostel at Seagrove Lodge, Seagrove Road, London

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[1] 12-20
[2] 26-42
[3] Authorities bundle 156-169
[4] 181
[5] 181

SW6 1RP[6] (Seagrove Lodge). The London Borough of Hammersmith & Fulham accepted that they owed the family the "main housing duty" under Part VII of the Act and made an offer of accommodation in Barking.

9. The Appellant considered that the offer was unsuitable and refused it in January 2016. The London Borough of Hammersmith & Fulham considered the accommodation in Barking to be suitable and therefore said that its "main housing duty" had ceased[7]. That decision was upheld on review in May 2016, and was not challenged by the Appellant.

10. In about April 2016 the Appellant and her three daughters were evicted from Seagrove Lodge because they had turned down the Barking offer[8]. The Respondent says that it was at that point that the Appellant "became homeless intentionally".

11. The Respondent says in its s. 184 notice dated 18 June 2019[9],

> "I am satisfied that your last settled, reasonable and available accommodation was at 33, Seagrove Lodge, Seagrove Road, London, SW6 1RP."

12. On 19 September 2016 the Appellant entered into an assured shorthold tenancy for twelve months of a studio flat, Flat 7, 180 Bravington Road, London W9 3AP[10] (Flat 7) with the landlord, Omis Properties Limited[11]. The director of Omis Properties Limited was a Mr Amin Haji. The studio flat was in a large house in the Respondent's district containing 10 self-contained studios. At that point two of the Appellant's daughters were school-age children, and the oldest was over 18.

13. Shortly after moving into Flat 7, the Appellant asked the landlord to be moved to a larger room at Bravington Road, and the landlord agreed. The Appellant entered into a fixed term assured shorthold tenancy of Flat 9, 180 Bravington Road, London W9 3AP (Flat 9), from 13 October 2016 to 18 September 2017[12] (11 months and 5 days). The Appellant says that she made the request to move to Flat 9 because both she and the landlord were aware of the overcrowding and Flat 9 was larger than Flat 7. The landlord is reported by the Respondent as saying that the Appellant gave no reason for requesting the move[13]. I note that the Respondent accepts that some of the studio flats were larger than others. In an email from Peter Gale, Senior Property Procurement Officer at Hammersmith & Fulham Council to the Respondent dated 22 February 2021, he says[14],

> "We were aware that the flat was a studio as the landlord has frequently offered the Bravington Road units to our AST scheme and some of them are of a larger size."

14. I was informed by Mr Peacock and Mr Bano that it was not until the case was before the Court of Appeal that the parties' legal representatives became aware that the

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[6] 13
[7] 13
[8] 60-61
[9] 103
[10] 63-67
[11] 63-67
[12] 68-72
[13] 135
[14] 157

Appellant had entered into the assured shorthold tenancy of Flat 9. The parties' legal representatives had thought until then that the Appellant was in Flat 7 until she was evicted in November 2018.

15. The Appellant's case, which the Respondent accepted in its first s.202 review decision, is that the landlord and the London Borough of Hammersmith and Fulham both knew about the overcrowding from the start of the assured shorthold tenancy of Flat 7[15]. The Appellant says that the landlord requested her passport and those of her two youngest children, and took copies of them. In the bundle there is also an express counter receipt from Housing Benefit and Council Tax Support from the Respondent, dated 29 September 2016[16], which states that they have received as evidence three passports for Miss Kaltun Bullale, Miss Noora Kristina Saarnlo and Miss Saara Saarnlo.

16. By a letter dated 20 January 2021[17] from the Appellant's solicitors, they set out the facts relating to the assured shorthold tenancies of Flat 7 and Flat 9. They say,

> "Our client therefore liaised with the London Borough of Hammersmith & Fulham in relation to the deposit and they agreed to pay the deposit directly to the landlord on behalf of our client.
>
> On the day that our client moved into the property at Flat 7, 180 Bravington Road, London W9 3AP she attended at the offices of the London Borough of Hammersmith & Fulham and Mr Andrew Hague assisted our client in relation to her housing matters. Mr Hague contacted the landlord directly by telephone in order to confirm that the London Borough of Hammersmith & Fulham would pay the deposit directly to the landlord in order to enable our client and her two youngest children to move into the property.
>
> ...
>
> In particular, our client provided her former landlord with her passport together with proof of her income, namely her bank statements and Child Tax Credit entitlement letters. Our client also provided her former landlord with the passports for her two youngest children's passports as requested by her former landlord. The former landlord took copies of our client's original documents and advised our client to make an application for Housing Benefit.
>
> The London Borough of Hammersmith & Fulham had already informed our client's former landlord that our client would be moving into the property with her two youngest children and our client confirmed the same to her former landlord when she attended at his office. It is therefore simply not correct that our

[15] Decision of 23 August 2019, page 116, paragraph 13
[16] 292
[17] 137-140

client's former landlord did not know that our client would be moving into the property with her two youngest children.

Our client and her two youngest children moved into the property at Flat 7, 180 Bravington Road, London W9 3AP on the same day and she was granted an Assured Shorthold Tenancy Agreement by her former landlord at Flat 7, Bravington Road, London W9 3AP on the 19th September 2016.

... Our client contacted her former landlord by telephone in order to confirm that her eldest daughter has moved into the property also.

Our client's former landlord was fully aware from the outset of the tenancy agreement that it was intended that this property would be occupied by our client and her three daughters. Indeed, he agreed with the family that they could move to another, slightly bigger studio flat at 180 Bravington Road after Ayda had moved in.

... Our client informed the Housing Benefit Department that she was living at the property with her two youngest children and she is therefore unable to explain the reasons why the Housing Benefit Department have stated that only our client and her youngest daughter were named on the Housing Benefit claim.

...

It is evident that our client's former landlord would not want to disclose any information which would expose him to criminal liability for overcrowding.

...

Our client's position has been consistent throughout and we note that the City of Westminster did not dispute our client's position that her former landlord was aware of the overcrowding at both properties throughout the County Court and Court of Appeal Court proceedings.

... This was the only accommodation that our client was able to afford, and she moved in with a genuine intention of accommodating her family. There is no question here of 'queue jumping'."

17. The Respondent accepted in the appeal first presented to the County Court and then to the Court of Appeal that the landlord and Hammersmith and Fulham knew the flat would be overcrowded. Lewis LJ said in *Bullale* at paragraph 37[18],

[18] Authorities bundle, 168

> "On the facts as accepted by the review officer, the landlord, the previous local authority (Hammersmith and Fulham), and the tenant all knew at the outset that the flat would be occupied by four people when the appellant moved in: see paragraph 13 of the decision letter."

18. Mr Haji wrote a letter dated 13 February 2017 to the Appellant saying[19],

> "It has come to my attention that 4 persons are occupying the above property – you and your 3 daughters. … It was rented to you on the strict understanding that only one daughter, namely Noora Saarnio, would be living with you."

He said the Appellant must either remove the two older daughters from Flat 9 or vacate the Flat.

19. On 13 June 2017, Mr Haji sent the Appellant a Form 6A notice seeking possession[20] on the no-fault basis in s. 21 of the Housing Act 1988 and not on the basis of overcrowding. The landlord took no action on the Form 6A notice.

20. On 18 September 2017 the Appellant's fixed term assured shorthold tenancy of Flat 9 expired, and the Appellant held over as a periodic tenant without demur from the landlord.

21. On 22 September 2017, the Appellant completed a housing application form[21], in which she says,

> "The landlord has realised my overcrowded situation. Really bad for us."

22. On 18 February 2018 that the landlord served another Form 6A notice.

23. On 30 May 2018, the landlord issued a claim for possession[22].

24. On 25 September 2018 the Respondent's benefits service sent the Appellant a letter saying[23],

> "Your awards for Housing Benefit and Council Tax Support have been reviewed."

The letter includes a calculation of Housing Benefit Award from 24 September 2018 to 1 October 2018 which states[24],

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[19] 74
[20] 75-77. The notice was defective because it required the Appellant to leave Flat 9 after 13 August 2017 (76), which was before the expiry of the contractual term on 18 September 2017.
[21] 78-89 at 88
[22] 90-96
[23] 297
[24] 299

> "The 3-bedroom LHA rate of £365.09 per week, which is based on 3 person(s) in your household, is used."

25. The Respondent's Benefits Service sent the Appellant another statement in respect of her Housing Benefit and Council Tax Support, dated 12 November 2018[25], which included a statement in identical terms to the letter of 25 September 2018, namely that the rate was based on three persons in her household.

26. In November 2018, the Appellant and her family were evicted, two years after they had first moved into Flat 9 and more than 18 months since the landlord had sent his first letter, dated 13 February 2017.

27. On 13 November 2018 the Appellant applied to the Respondent for homelessness assistance. By a s.184 decision, dated 18 June 2019[26], the Respondent decided that the Appellant had "become homeless intentionally" from the Seagrove Road hostel[27]. It decided that Flat 9 was overcrowded and as a consequence could not be treated as being intervening "settled" accommodation.

28. The s.184 decision was upheld in the first s.202 review letter by the Respondent's reviewing officer, Ms Aisha Ahmed, dated 23 August 2019[28].

29. In the s.202 review letter, the reviewing officer said at paragraph 13[29],

> "I acknowledge that both Hammersmith and Fulham Council and the landlord were aware of the family size when they moved into the property."

30. The Appellant issued a statutory appeal against that first review decision, which was heard and dismissed by HHJ Freeland QC on 12 December 2019.

31. The Court of Appeal granted permission to bring a second appeal. Bean, King and Lewis LJJ reversed the County Court's decision and by an order dated 25 November 2020 quashed the first review decision for three reasons, namely[30]:

    i) The reviewing officer had not considered all the relevant facts to determine whether, as a matter of fact and degree, and bearing in mind the purpose of the legislation, the accommodation at Flat 9 was a settled or temporary arrangement.

    ii) It was not enough simply to identify a potentially relevant factor. It is necessary to identify how that factor is relevant to the question of whether the accommodation is settled or temporary. In the present case, there was no analysis either of the relevance of the overcrowding on the facts of this case or its relationship with the other factors.

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[25] 302-307
[26] 102-105
[27] 102-105
[28] 114-120
[29] 116
[30] See *Bullale* at pages 168-169, paragraphs 35-38

iii) The reviewing officer did not relate the overcrowding to the other factors to assess whether those other factors meant that, taken overall, the accommodation could properly be seen as settled or temporary.

32. After the Court of Appeal decision, the reviewing officer decided to revisit the factual basis on which she had made her s. 202 decision. She made new enquiries of Hammersmith & Fulham, the Respondent's housing benefits department, and Mr Haji.

33. By a letter dated 30 November 2020 from the Appellant's solicitors to the Respondent[31], they say,

> "6. The landlord was fully aware from the outset of the tenancy agreement that it was intended that the property would be occupied by our client and her three daughters. Indeed, he agreed with the family that they could move to another, slightly bigger studio flat at 180 Bravington Road after Ayda had moved in.
>
> 7. The landlord was clearly content for the arrangement to continue beyond the initial term of the tenancy agreement.
>
> 8. The London Borough of Hammersmith and Fulham paid the deposit in the sum of £1,500 on behalf of our client in relation to the property at 180 Bravington Road, London W9 3AP. Hammersmith and Fulham council also knew about the overcrowding.
>
> 9. Our client genuinely intended to stay at 180 Bravington Road for significant or open-ended period time: she was not merely "marking time" before re-applying as homeless. ...
>
> 12. In view of the above, we respectfully submit that it is clearly evident that our client's last settled accommodation was therefore in fact Flat 9, 180 Bravington Road, London W9 3AP, where she and her family lived from the 13th October 2016 until she was evicted from the property in November 2018 i.e. a period of two years and one month, having spent a further month living at Flat 7, Bravington Road, London W9 3AP prior to this.
>
> 13... Even a six-month tenancy would be a 'significant pointer' towards the accommodation being settled, and our client occupied under an assured shorthold tenancy for more than two years."

34. In January 2021 the reviewing officer spoke to Mr Haji by telephone. There is no record of the conversation in the Respondent's case management system or housing file. The reviewing officer has produced her own note of the conversation, which says[32]:

> "I asked why he evicted Ms Bullale from Bravington Road. He stated that Ms Bullale was evicted as she had allowed her older

[31] 121-126
[32] 135

> children to move into the studio flat. He stated that she initially moved into the property with her youngest child, however he later found our [sic.] that she had moved her oldest daughters into the property. He stated that the accommodation was a studio property, which was only suitable for up to 2 people. He stated that he did not consent to Ms Bullale [sic.] other daughters residing in the property.
>
> Mr Haji stated that Ms Bullale was a good tenant and rent was always paid in a timely manner. He stated that, she initially moved into Flat 7, however at her request he moved her into Flat 9. He stated that there was no reason for this, and she requested a different flat."

35. By an email dated 13 April 2021[33], the reviewing officer conceded that,

> "I did not ask Mr Haji when he specially became aware of Ms Bullale children in the property. However I assumed that he became aware prior to him serving notice in February 2017."

36. By an email on 19 January 2021[34] from the reviewing officer to the Appellant's solicitors, she says,

> "The HB [Housing Benefit] Department have confirmed that only Ms Bullale and her youngest daughter, Ms NK Sarnio, were named on the HB claim. They have confirmed that there were no other children on the HB claim."

37. By an email dated 22 February 2021 from Peter Gale, Senior Property Procurement Officer of Hammersmith and Fulham Council, to the reviewing officer he says[35],

> "According to the AST tenancy register from 2016, it was noted that she had one dependent child only."

38. On 8 February 2021 the reviewing officer formally notified the Appellant that, on the second review, she was "minded to find" that Flat 9 had not been "settled" accommodation, having abandoned her previous finding that Mr Haji knew about the overcrowding from the outset[36].

39. By an email dated 12 February 2021, the Appellant's solicitors replied, making submissions as to the effect of the Court of Appeal's decision, and repeating that Mr Haji had known about the overcrowding from the start[37]. They said[38],

> "We note that you have confirmed that you are minded to prefer the information which has been provided by our client's former

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[33] 161
[34] 136
[35] 157
[36] 141-148
[37] 149-155
[38] 150

> landlord rather than the information which has been provided by our client.
>
> If you are genuinely proposing to believe our client's former landlord over our client, then we respectfully submit that you will need to make enquiries of Hammersmith and Fulham as we believe that their housing file should demonstrate that our client was clear from the very start about who would be occupying the property."

40. On 1 March 2021 the reviewing officer reached her second review decision[39]. That was also appealed, and very shortly before the hearing in May 2021, the Respondent conceded and withdrew the second review decision in a consent order made on 10 May 2021[40].

41. By an email dated 9 April 2021, the Appellant's solicitors asked the Respondent to[41],

> "Clarify the following information:
>
> Did the Reviewing Officer ask the former landlord when he became aware of the children moving in?
>
> Did the Reviewing Officer put my client's case to the former landlord?
>
> Did the Reviewing Officer have any other contact with the landlord before or after that interview?"

42. The Respondent replied by an email dated 13 April 2021[42],

> "1. I did not record the notes under the case management system, as I tend not to record interviews onto the system and I prefer to record interview notes onto a word document and save the file. This is not an unusual practice.
>
> 2. I explained to Mr Haji that I was investigating Ms Bullale application, and then asked why she had been evicted from Bravington Road.
>
> 3.I did not ask Mr Haji when he specially became aware of Ms Bullale children in the property. However I assumed that he became aware prior to him serving notice in February 2017."

43. By a letter dated 28 May 2021 the Appellant's solicitors made new representations in respect of the third review[43]. They said,

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[39] This is not in the bundle but Mr Bano sent me a copy of it by email at the outset of the appeal hearing.
[40] 287
[41] 160
[42] 161
[43] 287-290

> "In particular, our client informed the Housing Benefit Department that she was living at the property with her two youngest children when she initially moved into the property. Our client believes that she submitted a further Housing Benefit claim when she and her children moved to live at Flat 9, Bravington Road, London W9 3AP and that she would therefore have confirmed at that point that her eldest daughter was living with her also."

44. By an email from the reviewing officer to Mr Haji, sent in June 2021, she asked the following questions[44]:

> "1. Do you have a copy of the tenancy agreement, which lists the occupants of the property.
>
> 2. When did you first become aware that Ms Bullale other children were residing in the property.
>
> 3. I understand that you served a s.21 Notice in February 2017, however you did not seek possession until November 2018. Can you please explain the reason for the delay.
>
> 4. Ms Bullale states that she was moved to a bigger room due to the household composition. She states that this is evidence that you understood that she was residing in the property with all of her children. Can you advise on why Ms Bullale was moved from Room 7 to Room 9.
>
> I have attached a copy of Ms Bullale's signed authorisation permitting me to make this enquiry."

45. By an email dated 14 June 2021[45] Mr Haji replied saying,

> "I am extremely busy at the moment so please bear with me and I will endeavour to respond as soon as possible. Hopefully it will be by the end of this week".

46. The reviewing officer sent Mr Haji chasing emails for the answers to these questions in June, July, and August 2021[46], Mr Haji never answered her questions and in particular did not answer the question when he knew that Flat 9 was overcrowded.

47. On 1 September 2021 the reviewing officer sent a 'minded to find' notice in respect of the third review[47]. The Appellant's solicitors sent the Respondent detailed representations by a letter dated 3 September 2021 in response[48], which (among other things) raises the points which are now grounds 2 and 3 in this appeal.

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[44] 310
[45] 309
[46] 308
[47] 315-321
[48] 322-323

48. On 1 October 2021 the reviewing officer reached her third review decision[49], which is under appeal in the present case.

The Homelessness Framework

49. Local authorities' duties towards homeless people are governed by Part VII of the Housing Act 1996.

50. Under section 193(2) of the Housing Act 1996[50] there is a duty on local housing authorities to "secure that accommodation is available" for applicants who are homeless, within the meaning of s. 175, eligible for assistance (section 185), in 'priority need' (section 189) and who have not 'become homeless intentionally' (section 191[51]). This is often referred to as the 'main housing duty'.

51. If, however, the authority is satisfied that the applicant has 'become homeless intentionally', a much lesser duty under s. 190 is owed instead.

'Settled accommodation'

52. Section 191 of the Housing Act 1996[52] defines 'becoming homeless intentionally':

> "191 Becoming homeless intentionally.
>
> (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.
>
> (2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.
>
> (3) A person shall be treated as becoming homeless intentionally if—
>
> (a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and
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> (b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part,
>
> and there is no other good reason why he is homeless".

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[49] 12-20
[50] Authorities bundle, p. 8
[51] Authorities bundle, p. 5
[52] Authorities bundle, p. 5

53. In *Haile v Waltham Forest LBC* [2015] AC 1471, SC[53], Lord Reed said at paragraph 67,

> "The causal connection between an applicant's current homelessness and her earlier conduct will be interrupted by a subsequent event where in the light of that event, applying the words of Brightman LJ in the case of Dyson, it cannot reasonably be said of the applicant that 'if she had not done that deliberate act she would not have become homeless'."

54. Lord Reed said at paragraph 48[54],

> "What persisted until the causal connection was broken was the intentionality, not the homelessness. Lord Hoffmann accepted that the causal connection would be broken by the occupation of a settled residence, as opposed to what was known from the outset to be only temporary accommodation."

55. In *Bullale* Lewis LJ said[55],

> "21. Secondly, one of the ways in which the causal connection can be broken is if the applicant has obtained settled, in the sense of non-temporary accommodation, following the earlier homelessness. What amounts to such settled or non-temporary accommodation is a question of fact and degree having regard to all the circumstances of the individual case bearing in mind the purpose of the legislation.
>
> 22. That was recognised by Ackner L.J., as he then was, in the Court of Appeal in *Din v Wandsworth London Borough Council,* unreported, where he said:
>
> "To remove his self-imposed disqualification he must therefore have achieved what can loosely be described as a "settled residence" as opposed to what from the outset is known (as in *Dyson's* case [1980] 1 W.L.R. 1205) to be only temporary accommodation. What amounts to 'a settled residence' is a matter of fact and degree depending upon the circumstances in each case."
>
> 23. That approach was cited with approval by Lord Hoffmann, with whom the other Law Lords agreed, in *R v Brent London Borough Council ex p. Awua* [1995] 1 A.C. 55 at 69b-d and by the Court of Appeal in *Knight v Vale Royal Borough Council* [2004] H.L.R. 9 at para. 20."

56. In *Doka v Southwark LBC* [2017] HLR 47, Patten LJ said at paragraph 18:

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[53] Authorities bundle, 147
[54] Authorities bundle, 142
[55] Authorities bundle, 164

> "What the applicant needs to establish is a period of occupation under either a licence or a tenancy which has at its outset or during its term a real prospect of continuation for a significant or indefinite period of time".

Guidance on s. 204 appeals

57. Homelessness decision making is a matter for local housing authorities, but the court has an important judicial review-type jurisdiction under s.204 of the Act. The correct approach is set out in Lord Neuberger's well-known guidance in *Holmes-Moorhouse v Richmond-upon-Thames RLBC* [2009] 1 WLR 413[56] at paragraphs 47 to 50[57]:

> "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.
>
> [...]
>
> 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.
>
> Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a 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".

58. In *Freeman-Roach v Rother DC* [2017] PTSR 61, CA Rose J said,

> "31. When an applicant appeals a review decision to the county court, the relevant council is not required to establish that the review officer applied the correct test; rather it is for the applicant to show that the decision letter contains an error of law."

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[56] Authorities bundle, 107-123
[57] Authorities bundle, 122

Grounds of appeal

59. There are four grounds of appeal, set out in the notice of appeal, dated 7 October 2021[58].

Ground 1

60. The notice of appeal states[59],

> "**Ground 1.** The respondent erred in law as to the correct approach to 'settled' accommodation in that she failed to consider whether the Appellant's occupation had, at its outset or during its term, a real prospect of continuation for a significant or indefinite period of time (cf *Doka v Southwark LBC* [2017] HLR 7). The reviewing officer (wrongly) focused on the fact that period of occupation was not indefinite, and failed to consider whether the period spent in occupation was a 'significant' one in light of *Knight v Vale Royal BC* [2004] HLR 9."

Discussion

61. Mr Bano submits that the reviewing officer continues to ask the wrong legal question in respect of "settled" accommodation. He argues that on a fair reading of the review decision, the reviewing officer's essential reason for the decision is that the Appellant could not have stayed at the accommodation for an indefinite period[60]. However, as the Court of Appeal made clear in *Doka* and reaffirmed in *Bullale*, the reviewing officer was required to consider whether the period of occupation did (or had the potential to) last for a "significant or indefinite period of time" (my emphasis). Mr Bano submits that significant and indefinite are disjunctive, and both need to be considered. He argues that the reviewing officer did not consider whether the period of occupation was significant.

62. Mr Bano argues that it is clear from *Knight v Vale Royal Borough Council* [2004] H.L.R. 9[61], that even six months' occupation under an assured shorthold tenancy is likely to be settled rather than temporary. Sir Martin Nourse LJ, giving the judgment of the Court of Appeal, said[62],

> "20. So the question is one of fact and degree to be decided by the local authority, whose decision will only be reviewed by the court on *Wednesbury* principles. It must be emphasised that the concept of settled residence has no statutory origin. It has been developed by the courts as an aid to determining whether there has been a break in a chain of causation from past intentional homelessness.
>
> 24. In our judgment the occupation by a tenant of accommodation let on a six months' assured shorthold tenancy is

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[58] 21-22
[59] 21
[60] 15-16
[61] Authorities bundle, 72-82
[62] Authorities bundle, 80-82

> capable of constituting settled accommodation for the purposes of breaking a chain of causation from past intentional homelessness. We do not think it is right, just because six months is the minimum period required, to assume that occupation for such a period is likely to be temporary rather than settled. Indeed, we agree with counsel for Miss Knight that tenure equivalent to the prevailing tenure in the private rented sector is likely to be settled rather than temporary. From their letter of 4th November 2002 that appears to have been the view of the Council in the present case.
>
> 25. What we cannot accept is that the occupation by a tenant of accommodation let on a six months' assured shorthold tenancy is, as a matter of law, always sufficient to constitute settled accommodation. The question remains one of fact and degree to be determined by the local authority in the circumstances of the particular case. While we accept that the existence of an assured shorthold tenancy will normally be a significant pointer to the accommodation being settled, we reject the primary submission of counsel for Miss Knight."

63. Mr Bano submits that the reviewing officer makes no attempt whatsoever to consider whether the two years that the family spent at the accommodation is "significant". She makes repeated reference to "indefinite" but does not even mention the word "significant", let alone offer any analysis of whether the period of occupation was or could have been "significant".

64. Mr Bano submits that when the reviewing officer refers to the Appellant's specific representations on this point, she makes the irrational argument that the period of occupation cannot be significant because it was not indefinite. He quotes the following passage from the reviewing officer's decision[63]:

> "You state that she held an AST and intended to occupy the accommodation for a significant period. [...] As Ms Bullale [sic] eviction was inevitable, I am not satisfied that the accommodation at Flat 7, 180 Bravington Road, London W9 can be deemed as settled accommodation."

65. Mr Bano concludes that the reviewing officer has not applied the correct legal test. She has not considered whether, at the outset or during the term, there was the prospect of occupation for a significant period of time and as a consequence, there is a material error of law.

66. Mr Peacock submits that the reviewing officer found that:

i) The accommodation at Flat 9 was occupied by the Appellant and her three daughters, and was thus severely overcrowded;

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[63] 16, at paragraphs 3 and 4

ii) The deposit for the accommodation at Flat 9 was provided by the London Borough of Hammersmith and Fulham on the understanding that the Appellant would be moving there with only her youngest daughter;

iii) The Appellant's landlord also understood that the Appellant would be occupying the accommodation only with her youngest daughter;

iv) When the landlord discovered that all three daughters were there, he wrote on 13 February 2017[64] asking that the older two daughters vacate Flat 9 or that the Appellant leave Flat 9;

v) When that did not happen, the landlord in due course sought possession;

vi) The Appellant herself recognised the unsuitability of the accommodation at Flat 9 as shown by her approaches to the Respondent in 2016 and 2017;

vii) It was inevitable that the landlord would seek possession once he became aware that all three daughters were occupying Flat 9.

67. Mr Peacock submits that in the above circumstances the reviewing officer could properly find that Flat 9 was not settled accommodation.

68. Finally, he submitted that even if the reviewing officer's references to "on an indefinite basis" were not simply a slip of the pen, any error in that regard clearly did not affect the outcome of the review.

Finding as to Ground 1

69. There was no dispute between the parties as to the law. In *Doka v Southwark LBC* [2017] HLR 47, Patten LJ, with whom Lord Briggs agreed, said at paragraph 18 that,

> "What the applicant needs to establish is a period of occupation under either a licence or a tenancy which has at its outset or during its term a real prospect of continuation for a significant or indefinite period of time."

70. It is common ground that the words "significant or indefinite" are disjunctive.

71. I find that the reviewing officer only considered in her decision whether there was a real prospect of the Appellant's assured shorthold tenancy at Flat 9 continuing for an indefinite period. The reviewing officer never stated that she considered whether the period of occupation was significant or analysed whether the period of occupation at the outset or during the term of the assured term of the tenancy had a real prospect of continuation for a significant period of time.

72. I find that the reviewing officer's failure to consider whether the period of occupation was significant did affect the outcome of the review. It is clear law from *Knight* (supra) that even six months' occupation under an assured shorthold tenancy is "likely to be settled rather than temporary". In the present case, the Appellant occupied under the assured shorthold tenancy for two years and one month. I accept Mr Bano's submission

[64] 74

that the reviewing officer never considered whether the two years that the Appellant and her family occupied Flat 9 was significant. The reviewing officer made repeated references to "indefinite" but no reference to, let alone analysis of, whether the period of occupation did, or had the potential to, last for a significant period of time.

Conclusion as to Ground 1

73. I conclude that the reviewing officer has not considered whether at the outset or during the contractual term of the assured shorthold tenancy, the occupation by the Appellant of Flat 9 was for a significant period of time. This amounts to a material error of law which vitiates the review decision. As a consequence, the review decision must be quashed or varied.

Ground 2

74. In the grounds of appeal, it is said[65],

> "**Ground 2.** The Court of Appeal's decision in *Knight v Vale Royal Borough Council* (supra) is no longer good law. In light of subsequent amendments to the Housing Act 1996, which allow local authorities to relieve homelessness or discharge their duties towards homeless people by way of an assured shorthold tenancy, an assured shorthold tenancy should generally be treated as having ended a period of homelessness. Therefore, applying *Haile v Waltham Forest LBC* [2015] AC 1471, an assured shorthold tenancy should generally be treated as something that 'breaks the chain of causation' between one period of homelessness and another."

Discussion – procedural point

75. In the Appellant's submissions, during the first and second reviews, it was not argued that a 12-month assured shorthold tenancy should as a matter of law be considered as settled accommodation. This point was not dealt with in the reviewing officer's s.202 decision letter of 23 August 2019. When the review decision of 23 August 2019[66] was heard in the Court of Appeal in *Bullale,* this point was not argued.

76. In contrast, in the present appeal this point was argued by the Appellant's solicitors prior to the review decision under appeal, in their letter dated 28 May 2021[67]. The reviewing officer referred to the issue in her decision letter dated 1 October 2021[68].

77. Mr Peacock referred the Court to the well-known case of *Henderson v Henderson* [1843] 3 Hare 100 at 114-115. He submitted that this point could have been argued in the Court of Appeal in *Bullale* and it is not open to the Appellant to relitigate it. He says that it could have been argued in the Court of Appeal even though it was not raised in the Appellant's solicitor's submissions or dealt with in the review decision dated 23

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[65] 21
[66] 114-120
[67] 287-290 at 288
[68] 12

August 2019, because it was a pure point of law and as such should have been considered by the reviewing officer.

78. In reply Mr Bano argued that, in order to rely on a point of law in an appeal, it first needed to be raised before the reviewing officer unless it was obvious, which he says this point is not. He referred the Court to the judgment of Maurice Kay LJ in *Aw-Awden v Birmingham City Council* [2005] EWCA Civ 1834[69]:

> "12. … (2) Mr Nicol also submits that even if the appellant's solicitors omitted to refer to section 191 (2) in the application for an internal review, that did not relieve the Council or the Review Panel of the duty to consider it.
>
> He relies on *O'Connor v Kensington and Chelsea RLBC* [2004] HLR 601. The first answer to this is that in the circumstances of this case, to which I have referred, section 191(2) was and is a non-starter. As regards *O'Connor*, I simply observe that whilst there are or may be cases in which the first decision maker or the review panel may be required to consider section 191(2) because the material before them renders the need for such consideration obvious – notwithstanding the absence of express reference to the subsection in the representations submitted by or on behalf of the applicant – for my part, I would not impose such a duty outside the circumstances of obviousness or circumstances in which it is plain that the housing authority has been put on warning as to something that might arise and merit consideration under that statutory provision."

Would *Knight* be decided differently today?

79. Mr Bano referred the Court to Nourse LJ's judgment in *Knight* at paragraph 16, where it is said,

> "Counsels' primary submission is that, in present conditions, the occupation by a tenant of accommodation let on an assured shorthold tenancy is, as a matter of law, always sufficient to constitute settled accommodation for the purposes of breaking a chain of causation from past intentional homelessness."

I set out the relevant paragraphs of Nourse LJ's judgment in *Knight* at paragraph 62 above.

80. Mr Bano submits that when the case of *Knight* was decided, very different statutory provisions concerning homelessness were in force. At the time of the Court of Appeal's decision in *Knight*, the 1996 Act (under amendments that had recently been introduced by the Homelessness Act 2002) explicitly provided that councils could not offer an assured shorthold tenancy to bring the "main housing duty" to an end (see section 7(2) of the 2002 Act), and homeless people were not required to accept any assured shorthold tenancy that had been offered by a private landlord (see section 7(4) of the

[69] 87

2002 Act). In other words, anyone owed the "main housing duty" could opt to wait for an offer of a secure or fully assured (i.e. long-term) tenancy before the statute would cease to treat them as homeless.

81. Mr Bano argues that it was not until 2008, six years after the Court of Appeal's decision in *Knight*, that Parliament first allowed councils to discharge the "main housing duty" by offering assured shorthold tenancies, and even then it was only available "in a restricted case" (i.e. where the household included a person who was ineligible for housing due to their migration status) (see paragraph 5 of schedule 1 to the Housing and Regeneration Act 2008).

82. Then, under s.148 of the Localism Act 2011, Parliament empowered local authorities to meet their statutory homelessness duties by way of 12-month assured shorthold tenancies in all cases. Section 148 of the Localism Act 2011 inserted sub-section 193(7AC) to the Housing Act, by virtue of which councils may now offer 12-month private tenancies to anyone who is owed the "main housing duty".

83. Mr Bano also referred to s.13 of the Homelessness Reduction Act 2017, which inserted section 189B, the "relief duty", into the 1996 Act. Under that new duty, councils may now "relieve" homelessness by arranging a six-month assured shorthold tenancy.

84. Mr Bano submitted that the correct approach under the current statutory framework is as follows. Applying *Haile*, the relevant question when considering "settled" accommodation is whether, looking backwards, the applicant has at some point ceased to be homeless since they were last found to have "become homeless intentionally". He submits that if a suitable[70] six- or 12-month assured shorthold tenancy is now sufficient to relieve or end a period of homelessness, it follows that it must be sufficient to break the chain of causation between one period of homelessness and another.

85. Mr Peacock submits that the Court of Appeal has consistently held that whether accommodation is settled is a matter of fact and degree, having regard to all the circumstances of the individual case, bearing in mind the purpose of the legislation (see paragraph 55 above). He argues that the Appellant's argument is contrary to that consistent line of authority - it renders one factor (that the accommodation was occupied pursuant to an assured shorthold tenancy with a term of at least 6 months) determinative regardless of the other circumstances of the case.

86. Mr Peacock argued that the causal connection may remain unbroken even though an applicant has had a period of not being homeless. He referred the Court to the case of *Dyson v Kerrier DC* [1980] 1 WLR 1205, in which the applicant had surrendered the tenancy of a flat in Huntingdon and taken a temporary letting of a cottage in Cornwall. A decision that, following her eviction from the cottage in Cornwall, she had become homeless intentionally as a result of giving up her tenancy in Huntingdon was upheld. That was the case even though she had had a period of not being homeless while residing at the cottage in Cornwall. As discussed by Lord Reed in *Haile* at paragraph 48, what persisted was the intentionality, not the homelessness. As a result, even though

[70] Mr Bano submits that Bravington Road must be treated as being suitable, overcrowded though it was, on the reviewing officer's own analysis because in the Respondent's s.184 decision dated 18 June 2019, it is said that the one-room accommodation at Seagrove Lodge was "settled" and "reasonable" for the family (103). In her review decision dated 1 October 2021, the reviewing officer says (12) that Seagrove Lodge was the Appellant's "last settled address" and that it was "reasonable for her to continue to occupy" (19).

a six-month assured shorthold tenancy may be sufficient to relieve an applicant's homelessness, it does not follow that the accommodation provided must be settled.

87. Mr Peacock further submits that accommodation must be suitable in order to bring the main housing duty to an end or to relieve an applicant's homelessness. Although six or twelve months may be the minimum (and likely initial) period of an offered tenancy, it must be likely that there will be an expectation that the tenancy will be renewed (or allowed to continue) after the initial period. If accommodation is offered in circumstances where (as found in *Knight*) there is no prospect of it continuing beyond an initial six-month period, it must be doubtful that the accommodation could properly be considered suitable.

88. Mr Peacock also submits that in any event, the Court of Appeal in *Bullale* clearly treated *Knight* as continuing to be good law. Lewis LJ said[71],

> "25. … Other factors, however, such as the expectations of the parties as the outset, may indicate that it was temporary, not settled, accommodation, such as where the parties expressly agreed at the outset that the tenancy would not be renewed as the landlord would wish to sell the property at that time. See *Knight v Vale Royal Borough Council* [2003] H.L.R. 9 at paragraphs 12 and 24-26. A local authority was also entitled to reach the conclusion that a six-month shorthold tenancy was not settled accommodation, in circumstances where the accommodation was overcrowded, was not affordable and the context in which the applicant entered the tenancy was to enable her to re-apply for accommodation from the local authority. On that combination of factors, the local authority was entitled to conclude that the accommodation was not settled: see *Mohammed v Westminster City Council* [2005] H.L.R. 47, per Wilson J, as he then was at paragraph 20, Rix LJ at paragraphs 22 to 23, and Tuckey LJ at paragraph 29 who agreed with the reasons given in both judgments."

89. In reply, Mr Bano submitted that if an assured shorthold tenancy of 12 months duration was suitable, it would necessarily be settled as a matter of law. However, if it was not suitable, whether it was settled would be a question of fact and degree, having regard to all the circumstances of the individual case and bearing in mind the purposes of the legislation. Mr Peacock observed that in *Knight* it was not argued that an assured shorthold tenancy is, as a matter of law, always sufficient to constitute settled accommodation if it is suitable.

Were amendments to housing legislation in force at time of grant of assured shorthold tenancy of Flat 9?

90. Mr Peacock submits that even if the Appellant were right that *Knight* should not be treated as good law following the amendments to Part 7 of the Act made by the Homelessness Reduction Act 2017, that would not help her. Whether Flat 9 was settled accommodation falls to be considered by reference to the situation at the start of her

[71] Authorities bundle, 164-165

occupation of Flat 9 on 13 October 2016, which was before the amendments in s.13 of the Homelessness Reduction Act 2017 came into force on 3 April 2018.

Findings as to Ground 2

Procedural point

91. It is common ground that the Appellant did not argue before the reviewing officer made her decision on 23 August 2019 that *Knight* was no longer good law and that a 12-month assured shorthold tenancy would always amount to settled accommodation.

92. I accept Mr Bano's submission that this point was not obvious and therefore was not before the reviewing officer. I further accept Mr Bano's submission that in these circumstances it was not open to the Appellant to argue this point in the Court of Appeal. As a consequence, I find that it is open to the Appellant to argue this point on the present appeal.

Would Knight be decided differently today?

93. I accept that since the case of *Knight* (supra) was decided in 2004, there have been fundamental amendments introduced by s.148 of the Localism Act 2011, by virtue of which Councils may now offer assured shorthold tenancies to anyone who is owed the "main housing duty". Further, s.13 of the Homelessness Reduction Act 2017 inserted section 189B – the "relief duty" – into the 1996 Act. Under that new duty, councils may now "relieve" homelessness by arranging a six-month assured shorthold tenancy.

94. The question is whether the fact that a six- or twelve-month assured shorthold tenancy is now sufficient to end a period of homelessness is now always sufficient to constitute settled accommodation. I accept Mr Peacock's submission that there is a line of Court of Appeal authority that what amounts to settled or non-temporary accommodation is a question of fact and degree having regard to all the circumstances of the individual case, bearing in mind the purpose of the legislation. Mr Bano has not cited any case law or academic authority in support of his proposition.

95. I find the Appellant has not demonstrated that the case of *Knight* no longer remains good law. The reasons given in *Knight* by the Court of Appeal for deciding that an assured shorthold tenancy would not automatically amount to settled accommodation still remain extant, despite the changes in the Housing legislation. Those reasons were summarised by Lewis LJ at paragraph 25 of *Bullale* (see paragraph 88 above).

Were amendments to housing legislation in force at time of grant of assured shorthold tenancy of Flat 9?

96. In light of my finding that the case of *Knight* remains good law, it is unnecessary to consider whether the amendments to the housing legislation were in force at the time of the grant of the assured shorthold tenancy of Flat 9. However, as this point was argued before me, I set out my finding below.

97. The Appellant was granted a 12-month assured shorthold tenancy of Flat 7 from 19 September 2016 to 18 September 2017[72]. The Appellant says she asked the landlord to

[72] 63

change her room for a larger room and was granted an assured shorthold tenancy of Flat 9 from 13 October 2016 to 18 September 2017[73].

98. Mr Peacock's argument is that Flat 9 was not let for 12 months but 11 months and five days, and the provision that local authorities could grant 6-month assured shorthold tenancies under s.13 of the Homelessness Reduction Act 2017 came into force after the assured shorthold tenancy for Flat 9 was granted.

99. I reject Mr Peacock's argument. In my judgment, the reality of the situation is that the Appellant was granted a 12-month assured shorthold tenancy of Flat 7 from 19 September 2016 to 18 September 2017. She moved from Flat 7 to Flat 9, both at 180 Bravington Road, both at the same rent and on identical terms, after one month because Flat 9 was larger. A new assured shorthold tenancy agreement was made, with the same end date of 18 September 2017. As a consequence, in my judgment, the two tenancy agreements have to be read together. The assured shorthold tenancy agreement of Flat 9 is in effect a variation of the assured shorthold tenancy agreement of Flat 7. The deposit, which had been paid by the London Borough of Hammersmith and Fulham, was not lost, as it would have been if the tenancy of Flat 7 had been broken, but was read across to Flat 9. Therefore, I conclude that the reality is that the Appellant must be treated as having been granted a 12-month assured shorthold tenancy. I bear in mind in this connection the dicta of Simon Brown J, approved by Lewis LJ in *Bullale* that,

> "It is much to be hoped that housing authorities will in general interpret benevolently the character of accommodation secured by applicants after a finding of intentionality, namely as to whether or not it is settled."

Conclusion as to Ground 2

100. I find that *Knight* remains good law and I dismiss Ground 2 of the notice of appeal.

Ground 3

101. In the grounds of appeal, it is said[74],

> "**Ground 3**: The reviewing officer erred by failing to resolve her doubt or uncertainty in the Appellant's favour. The reviewing officer made a number of enquiries of Mr Haji, which went unanswered. In the circumstances, the reviewing officer could not have been 'satisfied' as to Mr Haji's account. The reviewing officer was thus required to accept the Appellant's account (*R v Gravesham BC ex p Winchester* (1986) 18 HLR 207, per Simon Brown J (as he then was) at p. 125, applying *R v Thurrock BC ex parte Williams* (1981-82) 1 HLR 128, per Phillips J (as he then was) at p.134) but failed to do so."

[73] 68
[74] 22

Discussion

102. Mr Bano submits that section 184 of the Housing Act 1996 puts the burden of making enquiries on the Respondent. The Respondent is required to carry out such enquiries as are necessary to "satisfy" itself of the relevant matters.

103. Mr Bano concedes that the Respondent was not necessarily required to accept the Appellant's case at face value, and refers to *R v Kensington & Chelsea RLBC ex p Cunha* (1989) 21 HLR 16. However, he submits that the correct legal position is that if, following enquiries, there is any doubt or uncertainty about an issue, the matter should be resolved in the applicant's favour. He referred the Court to the judgment of Phillips J, as he then was, in *R v Thurrock BC ex parte Williams* (1981-82) 1 HLR 128[75], where he said,

> "It must, it seems to me, be the case that if there is doubt or uncertainty after making the necessary inquiries, that uncertainty is to be resolved in favour of the applicant; which is not unreasonable, because it is an Act to provide for the homeless."

104. In her skeleton argument in the previous appeal, the Appellant had pointed out that the Respondent had failed to make adequate enquiries of the landlord[76]. Mr Bano argues that since the Court of Appeal decision in the present case, the reviewing officer has emailed the landlord five times to ask him when he found out about the overcrowding. The landlord said he was busy but would reply by the end of the week but then failed to respond to three emails in June, July, and August 2021[77].

105. Mr Bano submits that there is doubt or uncertainty about what the landlord knew about overcrowding and when. He says that in light of the fact that the landlord has not answered the question as to when he first knew of the overcrowding, the reviewing officer cannot be "satisfied" as to whether the landlord knew or did not know about the overcrowding and therefore she should have given the Appellant the benefit of the doubt and accepted her evidence.

106. Mr Peacock submits that the reviewing officer was entitled to resolve the conflict of evidence between the Appellant and her landlord. In those circumstances no question of giving the Appellant the benefit of any doubt arose. He submits that there was ample material on which the reviewing officer could resolve the conflict of evidence adversely to the Appellant. The reviewing officer had spoken to the landlord, who had said that he was initially unaware that all three daughters were in occupation[78]. Although the landlord had not responded to further inquiries[79], his account was supported by his letter dated 13 February 2017, which he had written while the Appellant was in occupation[80]. Mr Peacock argues that this was not a case where it was simply the Appellant's word against the landlord's. The landlord's statement that he was unaware that all three daughters would be occupying the accommodation was supported by information

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[75] Authorities bundle, 30-40 at 36
[76] 279-280
[77] 308-310
[78] 135
[79] 308-310
[80] 74

obtained from the London Borough of Hammersmith and Fulham[81] and by the Appellant's own statement to the Respondent on 22 September 2017 that the landlord had "realised" her overcrowded situation[82]. He says that it also appeared that the Appellant had, at least initially, not disclosed that all three daughters were in occupation to the Respondent's housing benefit department.

Findings as to Ground 3

107. The Appellant has always said that the landlord was aware from the outset that Flat 7 and Flat 9 were overcrowded. In support of this:

i) The Appellant says that she provided her former landlord with passports for herself and her two youngest children, and the landlord took copies of these and advised the Appellant to make an application for Housing Benefit. There would be no point in the landlord seeing and copying two of the children's passports other than for a record of who was in occupation of Flat 9. In the bundle is an express counter receipt of Housing Benefit and Council Tax Support from the Respondent, dated 29 September 2016[83], showing that the Respondent received as evidence three passports for Miss Kaltun Bullale, Miss Noora Kristina Saarnlo and Miss Saara Saarnlo.

ii) The Appellant says that she agreed with the landlord to change her flat from Flat 7 to Flat 9 because she and the landlord were aware of the overcrowding and that she needed a larger room. The landlord says there was no reason for the Appellant's change of flat from Flat 7 to Flat 9.

108. Prior to the s.202 review decision, dated 23 August 2019, the Respondent was aware of a letter from Mr Haji to the Appellant, dated 13 February 2017[84] (see paragraph 18 above).

109. In the s.202 review letter, dated 23 August 2019, the reviewing officer said[85],

> "13. I acknowledge that both Hammersmith and Fulham Council and the landlord were aware of the family size when they moved into the property."

110. When this case was heard in the Court of Appeal in November 2020, the Respondent was still maintaining that the landlord was aware of the overcrowding from the outset.

111. In the s.202 review decision dated 1 October 2021 the reviewing officer changes her position and says that the landlord was not aware at the outset that the accommodation would be overcrowded. Mr Peacock relies on three matters to justify the reviewing officer's change of position.

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[81] 157-158
[82] 88
[83] 292
[84] 74
[85] 116

112. Firstly, Mr Peacock says the Appellant's statement to the Respondent on 22 September 2017 that the landlord had "realised" her overcrowded situation [86], shows that the landlord was previously unaware of the overcrowding. However, this is not so; the landlord had already sent a letter saying Flat 9 was overcrowded dated 13 February 2017[87], over seven months earlier. I find that the reviewing officer could not derive any support for a contention that the landlord was unaware that Flat 9 was overcrowded at the time the tenancy was granted from the Appellant's statement.

113. Secondly, Mr Peacock relies on the notes of a conversation the reviewing officer had with Mr Haji in January 2021[88]:

> "I asked why he evicted Ms Bullale from Bravington Road. He stated that Ms Bullale was evicted as she had allowed her older children to move into the studio flat. He stated that she initially moved into the property with her youngest child, however he later found our [sic.] that she had moved her oldest daughters into the property."

114. However, this evidence is undermined by the following. By an email dated 9 April 2021, the Appellant's solicitors asked the Respondent to[89],

> "Clarify the following information:
>
> Did the Reviewing Officer ask the former landlord when he became aware of the children moving in?
>
> Did the Reviewing Officer put my client's case to the former landlord?"

The Respondent replied by an email dated 13 April 2021[90],

> "3. I did not ask Mr Haji when he specially became aware of Ms Bullale children in the property. However, I assumed that he became aware prior to him serving notice in February 2017."

115. In June 2021, the Respondent asked Mr Haji[91], "When did you first become aware that Ms Bullale's other children were residing in the property?" Mr Haji replied saying that he was,

> "Extremely busy at the moment so please bear with me and I will endeavour to respond as soon as possible. Hopefully it will be by the end of this week."[92]

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[86] 88
[87] 74
[88] 135
[89] 160
[90] 161
[91] 310
[92] 309

Despite the reviewing officer chasing Mr Haji in June, July, and August[93], he never answered her question as to when he knew that Flat 9 was overcrowded.

116. I find that the reviewing officer's note of the telephone conversation and subsequent enquiries take the matter no further than Mr Haji's letter of 13 February 2017 and in particular, do not answer the question as to the date upon which Mr Haji was aware of the overcrowding. Mr Peacock sought to argue that a telephone conversation carried greater weight than a letter. He did not say why. I reject this submission. Even if (which I do not accept) a note of a telephone conversation has greater weight than a letter, they both say the same thing.

117. I conclude that the note of the reviewing officer's telephone conversation does not take matters any further than Mr Haji's letter of 13 February 2017[94], which she had already taken into account in her decision letter of 23 August 2019, when she concluded that the landlord was aware from the outset that Flat 9 would be overcrowded.

118. Thirdly, the reviewing officer relies upon an email of 22 February 2021[95] from Peter Gale, Senior Property Procurement Officer of Hammersmith and Fulham Council, in which he says[96],

> "According to the AST tenancy register from 2016, it was noted that she had one dependent child only."

119. I accept Mr Bano's submission that the AST register is wrong because the Appellant had two dependent children in 2016, and an adult daughter and that this was known to the Respondent because the London Borough of Hammersmith and Fulham had found accommodation in Barking for the Appellant and her three daughters. Further, the Respondent's customer service notes from an interview with the Appellant on 30 September 2016 say[97],

> "Said that her and her children 22, 16, 13 have been living in a bedsit, said that she is living at Flat 7, Bravington Road, W9 3AP.
>
> ...
>
> Clt said that prior to securing this property she was living at unit 33, Seagrove Lodge, Seagrove Road, London, SW6 1RP between 16/11/2016-01/02/2016."

120. I find that the reviewing officer could not derive any support for a contention that the landlord was unaware that Flat 9 was overcrowded at the time the tenancy was granted from Peter Gale's email of 22 February 2021 or the housing benefit information.

121. In conclusion, I find that the three pieces of evidence relied upon by Mr Peacock for the reviewing officer's fundamental change of position cannot rationally support that

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[93] 308
[94] 74
[95] 157
[96] 157
[97] 181

change of position. I accept Mr Bano's submission that on any view, there was doubt about what the landlord knew about overcrowding and when and that this uncertainty should have been resolved in the Appellant's favour.

Conclusion as to Ground 3

122. I find that the Appellant has proved Ground 3 of the notice of appeal and accordingly, the review decision must be quashed or varied.

Ground 4

123. In the Grounds of Appeal[98] it is said,

> "**Ground 4.** The Respondent erred in law as to whether the Appellant had attained 'settled' accommodation for the purposes of section 191 (cf *Bullale v City of Westminster Council* [2020] EWCA Civ of 1587) in that:
>
> a. the reviewing officer failed to consider all relevant facts, bearing in mind the purpose of the legislation;
>
> b. the reviewing officer failed to explain how the relevant factors were relevant to the question of whether the Appellant's accommodation was 'settled'; and
>
> c. The reviewing officer failed to relate her conclusion that an eviction was ultimately 'inevitable' to the question of whether the Appellant did, in fact, occupy the accommodation for a significant period of time."

Discussion

124. Mr Bano submits that the reviewing officer's decision was unlawful for three reasons:

i) She failed to consider all relevant factors;

ii) She failed to explain how the factors that she had identified were relevant to the question of whether the accommodation had been 'settled'; and

iii) She failed to relate the overcrowding to the other factors to assess whether those other factors mean that, taken overall, the accommodation could properly be seen as temporary or not settled.

Failure to consider all relevant factors

125. Regarding the failure to consider all relevant factors, Mr Bano referred me to Lewis LJ's judgment in *Bullale* at paragraph 36[99]:

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[98] 22
[99] Authorities bundle, 168

> "The review officer has not considered all the relevant facts to determine whether, as a matter of fact and degree, and bearing in mind the purpose of the legislation, the accommodation at Bravington Road was in fact a settled arrangement not a temporary one. The review officer does not refer to the nature or length of the tenancy of 9 Bravington Road or the circumstances in which the tenancy was granted. There is no reference to the fact that it was a commercial relationship or that a tenancy agreement of just under a year was entered into after it was made clear to the appellant that she would not be eligible for assistance from the authority (and not as a means of enabling her to apply for assistance from the local authority)".

126. Mr Bano submits that the reviewing officer's decision does not consider all relevant factors. In particular, he says Lewis LJ's analysis of the relevant factors in *Bullale* at paragraph 36 applies equally to her 1 October 2021 review decision.

127. Mr Peacock submits that the reviewing officer did not need to spell out every factor. He says that the fact that a particular matter was not referred to in the review decision does not mean that it was not taken into account. Only if the matter concerned was so startling that one would not expect it to pass without individual comment might there be grounds for criticism. He referred the Court to *R v Brent London Borough Council, ex parte Barilse* [1998] 31 HLR 50 at 58[100], where Millett LJ said at p.58,

> "I recognise that it may not be sufficient for the decision-maker merely to state that he has considered all the material put before him. If there is something which is startling that one would not expect it to pass without individual comment, the Court may be justified in drawing the inference that it has not received any or sufficient consideration. But in this case it is very much a matter of degree."

Failure to identify how factors are relevant to question of whether accommodation was settled or temporary

128. As to the failure to identify how the factors were relevant to whether the accommodation was settled or temporary, Mr Bano refers the Court to *Bullale* at paragraph 37[101], where Lewis LJ said,

> "Secondly, it is not enough simply to identify a potentially relevant factor. It is necessary to identify how that factor is relevant to the question of whether the accommodation is settled or temporary. In the present case, there is no real analysis either of the relevance of the overcrowding on the facts of this case or its relationship with the other factors. On the facts as accepted by the review officer, the landlord, the previous local authority (Hammersmith and Fulham), and the tenant all knew at the outset that the flat would be occupied by four people when the appellant

[100] Authorities bundle, 52-60 at 60
[101] Authorities bundle, 168

> moved in: see paragraph 13 of the decision letter. Hammersmith and Fulham provided a deposit. The rent was paid for out of housing benefit and discretionary payments made by the local authority. I do not accept that in those circumstances, the arrangement was doomed to fail or that the landlord would inevitably have sought to recover possession. It may well be that the accommodation, unsuitable though it was, was the best that the appellant could find for herself and her family, given their limited financial resources and the shortage of accommodation in London. The overcrowding in the flat would not necessarily mean that the accommodation would be temporary".

129. Mr Bano submits that while the review decision is now made on a different factual and legal basis (it is no longer accepted that the landlord knew at the outset, and reliance on overcrowding has been replaced with reliance on an assertion that the accommodation was not available indefinitely), Lewis LJ's overall point at paragraph 37 is still applicable. In the review decision the reviewing officer sets out various factual points about who knew about the overcrowding and when, and eventually arrives at the conclusion that the whole family had not been permitted to live at Flat 9 and that their eviction was inevitable, but she does not explain how this relates to whether they did (or would have been able to) stay for a significant period of time.

130. Mr Bano further argues that it remains the case, as Lewis LJ said, that this was the best accommodation that the applicant could find, and (even on the Respondent's case) she remained in occupation for 18 months after the very latest point at which the landlord could have found out about the overcrowding. Mr Bano argues that applying Lewis LJ's statement of the law in *Ballule* at paragraph 37, as well as *Knight*, no lawful finding that Flat 9 was "temporary" accommodation could be made.

Failure to relate overcrowding to other factors to assess whether accommodation temporary or settled

131. Mr Bano refers the Court to *Bullale* at paragraph 38[102], where Lewis LJ said,

> "Thirdly, the review officer does not relate the overcrowding to the other factors to assess whether those other factors mean that, taken overall, the accommodation could properly be seen as temporary or not settled. In paragraph 14, the review officer acknowledges that the appellant spent two years in the property but did not consider that that made the accommodation any more settled. No explanation for that view is given. The review officer says that she cannot have regard to the length of occupation alone but must look at all the facts of her case. That is correct – but she does not, however, refer to any other facts (other than the overcrowding previously referred to). The review officer states that she is aware that it is possible to occupy insecure, unreasonable or temporary accommodation for an extended period of time. That may be correct but does not provide an analysis, or explanation, of why the accommodation in this case

[102] Authorities bundle, 168-169

> was temporary rather than settled. Nor does the review officer consider all the relevant facts, including the tenancy, the length of occupation, the commercial nature of the relationship, and the basis upon which the property was let (i.e. that it was known that all four family members would be living there or, at the very least, that was known from February 2017)".

132. Mr Bano says that the reviewing officer makes exactly the same mistakes as in her two earlier review decisions:

i) Paragraph 14 of the 2019 decision[103] is essentially exactly the same as page 4 of the current decision[104];

ii) As in the first review decision of 23 August 2019, the reviewing officer fails to provide any analysis or explanation of why the accommodation was temporary rather than settled (aside from her belief that the landlord did not know about the overcrowding until February 2017, which, Mr Bano says, can be seen from paragraph.33 of Lewis LJ's judgment, not to be inconsistent with Flat 9 being settled accommodation); and

iii) The reviewing officer fails to consider all relevant facts.

133. Mr Peacock submits that the reviewing officer sufficiently explained her decision. She recognised that the fact that the Appellant occupied Flat 9 under an assured shorthold tenancy and for a period of around 2 years were factors in the Appellant's favour[105]. However, the reviewing officer concluded that Flat 9 could not be considered settled as it was inevitable that the landlord would seek possession once he discovered that four people were in occupation.

134. Mr Peacock submits that the reviewing officer did not need to relate her conclusion as to the inevitability of the landlord seeking possession to the suggestion that the Appellant had occupied Flat 9 for a significant period of time. He argues that assuming in the Appellant's favour that she did occupy Flat 9 for a significant period of time (as to which the review officer made no finding and the Respondent makes no concession on this appeal), the crucial issue was the prospect of continuation at the outset (or, if something changed, during the term).

135. Mr Peacock submits that the fact that it takes a period of time before what was inevitable from the start happens does not render accommodation settled. He referred the Court to *R v Croydon London Borough Council, ex parte Easom* (1993) 25 HLR 262[106]. In this case, until 1986, the applicants lived in Lambeth, where they were secure tenants. They moved to Australia with visitor visas. They overstayed and were deported to the United Kingdom. When they returned to England, they applied to the respondent for accommodation. The respondent notified the applicants that they were considered intentionally homeless for leaving secure accommodation in England. In respect of the intervening period, the respondent stated that "it is considered that the accommodation that you had in Australia was insecure because at any time you could have been asked

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[103] 116
[104] 15
[105] 19
[106] Authorities bundle, 41-51

to leave by the authorities as you were there illegally." In his judgment, Andrew Collins QC said at pages 270-271[107],

> "The length of time during which an applicant has been in accommodation is normally a very relevant factor. It is adverted to by Simon Brown J. at the end of ex p. Ruffle and in the usual case, when one is considering the circumstances of any accommodation, the fact that someone has been there for a substantial period of time will lead to the almost inevitable inference that the accommodation was settled. Of course, there is no magic time before which it is not settled and after which it is settled; it is a question of fact and degree depending on the circumstances but, as I say, normally the longer the time, the greater the chance of an applicant establishing the necessary degree of settlement. But I think the situation is a little different in a case like this where the applicants were liable to be removed at any time and it is that that that makes the accommodation precarious. ... I do not doubt that an authority would, and could, properly take the account of all the circumstances which include length of time in coming to a decision in a case such as this, a case incidentally which I do not doubt is exceedingly unusual. I think length of time is a factor which, perhaps slightly illogically but no doubt practically, an authority can take into account and I hope, in many cases, would."

Was there a consideration of the relevant factors?

136. In *Bullale* Lewis LJ found that the reviewing officer had not considered all the relevant factors and his Lordship helpfully listed them for the reviewing officer at paragraph 36.

137. In her second review decision letter of March 2021[108], the reviewing officer noted that,

> "The Court of Appeal found that the original review decision did not identify relevant factors for determining that Bravington Road was not settled accommodation."

138. Curiously, in the review decision letter of 1 October 2021, the reviewing officer makes no acknowledgment that the original review decision did not identify the relevant factors. The only reference she makes to the original decision is that[109],

> "The judgment [in *Bullale*] made it clear that the original review decision did not sufficiently explain why the accommodation at Bravington Road was not settled."

This is of course an entirely different point to not considering all the relevant factors.

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[107] Authorities bundle, 49-50
[108] This decision letter is not in the bundle
[109] 17

139. Firstly, I accept Mr Bano's submission that the reviewing officer did not consider all the relevant factors as identified by Lewis LJ in *Bullale* at paragraph 36[110]. The reviewing officer did not even mention, let alone consider the following relevant factors, despite them being listed for her by the Court of Appeal:

i) The Appellant's occupation by way of an assured shorthold tenancy was likely to be settled rather than temporary.

ii) The assured shorthold tenancy was entered into after it was made clear to the Appellant that she would not be eligible for assistance from the local authority, and not as a means of enabling her to apply for assistance from the local authority.

iii) The assured shorthold tenancy was a commercial relationship;

iv) The rent was affordable and paid from Housing Benefit and discretionary assistance.

v) As the Appellant's solicitors said in their letter of 20 January 2021[111], Flat 9 was the only accommodation that the Appellant was able to afford. This point was made by Lewis LJ in *Bullale* at paragraph 37,

> "It may well be that the accommodation, unsuitable though it was, was the best that the Appellant could find for herself and her family, given their limited financial resources and the shortage of accommodation in London. The overcrowding in the flat would not necessarily mean that the accommodation would be temporary."

This factor is further supported by the fact that prior to moving to Flat 7, the Appellant and her three daughters lived in one room at 33 Seagrove Lodge.

vi) The landlord knew from the outset that there would be overcrowding. I repeat my findings under Ground 3 above herein. The Respondent accepted this in the first review decision and in the Court of Appeal, and I have found should not have departed from this decision in her third review decision, but given the Appellant the benefit of the doubt.

vii) However, even if the landlord did not know at the outset, the reviewing officer says in her review decision[112],

> "I am satisfied that her occupation did not have a prospect of continuation on an indefinite basis. This is demonstrated by the fact that the landlord began possession proceedings once he became aware that Ms Bullale (sic) daughters were residing with her in the property."

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[110] Authorities bundle, 168
[111] 137-140 at 140
[112] 15

However, the evidence shows to the contrary that the landlord did not begin possession proceedings once he became aware that Ms Bullale's older daughters were also residing with her in Flat 9 and acquiesced in Flat 9 being used by the Appellant and her three daughters:

a) After his letter of 13 February 2017[113] asking the Appellant to leave because of the overcrowding, the landlord took no action.

b) In June 2017 the landlord sent the Appellant a Form 6A notice seeking possession on the no-fault basis in s. 21 of the Housing Act 1988 and not on the basis of overcrowding. The landlord took no action on the notice.

c) On 18 September 2017 the fixed-term tenancy expired, and the landlord allowed the Appellant to hold over as a periodic tenant without demur.

d) On 18 February 2018 that the landlord served another Form 6A seeking possession on the basis fault under s. 21 of the Housing Act 1988.

e) The Appellant and her family were evicted, over two years after they had first moved into Flat 9 and more than 18 months since the landlord had sent his first letter, dated 13 February 2017.

140. Secondly, I find that the reviewing officer does not relate the relevant factors in paragraph 139 above to the issue of whether Flat 9 was settled or temporary accommodation as identified by Lewis LJ in *Bullale* at paragraph 37[114].

141. Regarding factor i), the reviewing officer only stated that the assured shorthold tenancy was "a significant factor to accommodation being settled". It was, of course, much more than that. As stated in *Knight*, an assured shorthold tenancy was likely to be settled rather than temporary.

142. Regarding factors ii) to v), these all point to the assured shorthold tenancy of Flat 9 being settled and not temporary.

143. Whether the landlord was aware of the overcrowding from the outset of the assured shorthold tenancy or from some time before February 2017, the evidence shows that the landlord knew and acquiesced in the Appellant and her three daughters occupying Flat 9. The Appellant remained in occupation for at least 18 months after the very latest point at which the landlord could have found out about the overcrowding. As was said by Lewis LJ in *Bullale* at paragraph 33[115],

> "In any event, the landlord clearly knew about, and acquiesced, in the flat being used for the appellant and the three daughters from February 2017 and did not take steps to issue for a further year. In either of those scenarios, the fact that the accommodation was overcrowded was not inconsistent with it being settled, or non-temporary, accommodation."

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[113] 74
[114] Authorities bundle, 168
[115] Authorities bundle, 167

144. Regarding the length of the occupation by way of an assured shorthold tenancy of over two years, the reviewing officer only says, at page 4 of her review decision[116],

> "I cannot consider the length of time Ms Bullale spent in the property in isolation and must consider all the facts of her case together. I am also aware that it is possible to occupy insecure, unreasonable or temporary accommodation for an extended period."

The reviewing officer entirely misses the point that as stated by Andrew Collins QC in *R v Croydon Borough Council* (supra),

> "A substantial period of time will lead to the almost inevitable inference that the accommodation was settled."

145. Thirdly, I find that the reviewing officer did not relate the overcrowding to the other factors listed at paragraph 139 above to assess whether those other factors mean that, taken overall, the accommodation could properly be seen as temporary or not settled. If the reviewing officer had related the overcrowding to the other factors, I am in no doubt that she could only have concluded that the accommodation at Flat 9 was settled.

Conclusion as to Ground 4

146. I conclude that Ground 4 of the Notice of Appeal is made out and the review decision of 1 October 2021 must be quashed or varied.

Summary of Grounds of appeal

147. I find that the Appellant has proved Grounds 1, 2 and 3 of the Grounds of Appeal. I find that the Appellant has not proved ground 2 of the Grounds of Appeal.

Quashing or varying decision

148. S.204(3) of the Act provides[117],

> "On appeal the court may make such order confirming, quashing or varying the decision as it thinks fit."

Discussion

149. It is common ground that the review decision of 1 October 2021 should only be varied to a decision that Flat 9 was settled accommodation if there is no real prospect that a fresh review could reach a different result. In *Deugi v Tower Hamlets London Borough Council* [2006] HLR 28[118] May LJ said at paragraphs 36-37,

> "The question for the judge was whether there was any real prospect that Tower Hamlets, acting rationally and with the

[116] 15
[117] 24
[118] Authorities bundle

> benefit of further enquiry, might have been satisfied that Mrs Deugi was intentionally homeless.
>
> ... My formulation, which may perhaps be seen as an amalgam of Chadwick LJ and Schiemann LJ is intended to reflect the fact that this appeal process is in the nature of judicial review."

150. Mr Bano submits that a varying order should be made because:

i) Applying *Bullale* and *Knight*, there is no real prospect that a fresh review could reach a different result.

ii) The Appellant first applied as homeless in November 2018, and the Respondent has maintained an unlawful approach to "settled" accommodation for more than three years now. Enough is enough.

iii) Instead of approaching the new reviews with an open mind, the reviewing officer made a cynical attempt to escape the Court of Appeal's reasoning by seeking to change the factual basis of the case.

iv) Instead of respecting and learning from the Court of Appeal's judgment the reviewing officer has repeated the same errors.

151. Alternatively, Mr Bano invites the Court to quash the review decision of 1 October 2021.

152. Mr Peacock submits that a fresh review could properly decide that Flat 9 was not settled accommodation despite the length of time the Appellant had occupied it, with the result that the Respondent could properly decide that the Appellant became homeless intentionally. In those circumstances the court should not step in and usurp the decision-making role given to the Respondent. He says the reviewing officer has not acted cynically by seeking to change the factual basis of the case. Rather, he says, further inquiries have suggested that what the Appellant initially told the Respondent was not correct.

Finding as to quashing or varying review decision

153. In my judgment, if all relevant factors were considered and the threefold approach clearly stated by Lewis LJ in *Bullale* was applied, a fresh review could not reach a decision other than that the Appellant's assured shorthold tenancy of Flat 9 was for a significant period of time and was settled accommodation.

Conclusion as to remedy

154. I vary the reviewing officer's decision dated 1 October 2021 to state that the Appellant's occupation of Flat 9 was settled accommodation.