**Minott v Cambridge City Council**

**The consequences of the lapse of time for the purpose of a fresh homeless application**

On 18 February 2022 the Court of Appeal gave its judgment on this appeal from the High Court decision relating to whether or not Cambridge City Council (CCC) were obliged to accept a fresh Part VII application from Mr Minott. CCC had provided temporarily accommodated and referred him to another local housing authority (LHA) who had accepted the referral. Mr Minott refused to leave the temporary accommodation. The appeal turned on whether the lapse of time, of six months, occasioned by Mr Minott resisting attempts to evict him from temporary accommodation gave rise to a ‘new fact’ on which he could establish normal residence (and therefore a local connection) on which he could base a fresh homeless application.

The meaning of ‘local connection’ is defined in s.199 of the Housing Act 1996. Mr Minott relied on s.199(1)(a) to argue that after six months he was ‘normally resident’ in Cambridge. In *Mohamed v Hammersmith and Fulham LBC* [2001] UKHL 57, it was held that interim accommodation provided by an LHA could, as matter of law, constitute an applicant’s normal residence for the purposes of s.199(1)(a) (paragraphs 17 and 21). At paragraph 18 of that decision, Lord Slyn said;

“the prima facie meaning of normal residence is a place where at the relevant time the person in fact resides…..and it is not appropriate to consider whether in a general or abstract sense such a place would be considered an ordinary or normal residence”.

CCC argued that Mr Minott had refused to leave his temporary accommodation which was subject to a Notice to Quit and possession proceedings. Further, that the second application was based on exactly the same facts as his first application. In *Rikha Begum v Tower Hamlets LBC* [2005] EWCA Civ 340 at [39] to mean that the “only relevant basis upon which a purported subsequent application may be treated as no application, according to *Fahia* at 1402D appears to be where it is based on “exactly the same facts as [the] earlier application”.”

In *Reg. v Harrow LBC Ex p Fahia* [1998] 1 WLR 1396 the court considered that if no new facts are revealed or the facts are, to the authority's knowledge and without further investigation, “not new, fanciful, or trivial” then the purported application is “no application”. Whether new facts are fanciful or trivial must inevitably turn on the “particular circumstances of the particular case” (*Fahia* at para 60).

The Court of Appeal held that CCC should have considered the six months residence as a new fact. The reason for this is that the six months crossed a threshold provided firstly in CCC’s own decision for referral which explicitly made reference to him not being in the district for six months, and set out in the Code of Guidance and Local Authorities Agreement for referral which provides a six month benchmark against which to measure normal residence. The mere ‘lapse of time’ is not necessarily a new fact, but the consequences of it are – see paragraph 83.

LJ Lewison provided that the way that a LHA approaches a new application should be by way of a two-stage test (at paragraph 76);

Stage 1: it is an application at all? The answer will only be no if it is based on precisely the same facts as an earlier application (disregarding fanciful allegations and trivial facts);

Stage 2: if it is an application, is it well-founded? That will require the housing authority to carry out the inquiries required by section 184. If an application passes stage 1, there is no available short cut.

In Minott, the court determined that CCC had jumped to Stage 2 to decide that the application was not founded, as a justification for its assertion that it was not an application on the same facts for the purpose of Stage 1.

The implications for LHAs of this judgment are, on the face of it, that the process for referral between LHAs could be rendered entirely unworkable if an applicant decides to simply not leave to go to the district who has accepted the referral. An LHA will have to assess under Stage 1 whether it is an application, and then proceed to Stage 2.

At the heart of this new conundrum is the question posed by the two stage test; what is the nature of the decision at Stage 1 as to whether there are fanciful allegations and trivial facts? At Stage 1, how can an LHA determine whether a fact is fanciful or trivial without being accused of stepping into Stage 2, and ‘putting the cart before the horse’? The very fact that a decision maker could say that a fact is fanciful or trivial is, in itself, a decision.

By way of offering a solution to these difficulties, there will be many cases where the facts are easy recognised as fanciful or trivial. Where there is pause for thought, it may well be that the decision maker has to accept a Part VII application and make a s.184 decision.

LJ Lewison postulated that this s.184 decision could be a decision made on the same day or shortly thereafter. This could theoretically be true in cases where the LHA has already made a s.184 decision and can lean on the previous inquiries. However, in circumstances where the LHA has not in fact carried out any inquiries for the first application, but rather referred the application to a different district, the obligation to carry out inquiries is engaged. The additional Prevention and Relief Duties are also engaged by this implication, further rendering the ‘quick decision’ rationale redundant. The implications for the practical workings of local authority referrals is in significant difficulty with this decision where an applicant refuses to leave the district.