"Revisiting" homelessness decisions

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In *R (Sambotin) v Brent LBC* [2017] EWHC 1190 (Admin), [2017] HLR Sir Wyn Williams held that a local authority had not been entitled to revisit or withdraw their decision that the claimant was eligible for homelessness assistance under Pt 7, Housing Act 1996. The authority had, in substance, made a final decision as to the duty owed to the claimant, notwithstanding the fact that they had made a local connection referral. The evidence did not establish that a "fundamental mistake of fact" had been made which would have entitled them to revisit that decision and, furthermore, the authority had failed to provide reasons to justify doing so.

Background
The claimant, a 31-year-old Romanian national, moved to the UK for work in October 2013. In September 2015, while on holiday in Romania, he was involved in a serious car accident which left him wheelchair-bound and unable to work. In August 2016, he applied as homeless to Waltham Forest LBC who decided that he was not eligible for assistance under s.185, Housing Act 1996. In December 2016, he made a fresh application to the defendant authority.

On January 30, 2017, the defendant accepted that the claimant was homeless, eligible for assistance, in priority need and not intentionally homeless but found that he did not have a local connection with its area but did have a local connection with Waltham Forest. The defendant referred the claimant's application to Waltham Forest LBC, pursuant to s.198, 1996 Act.

On February 8, 2017, the defendant advised the claimant that Waltham Forest LBC had refused to accept the referral on the basis that he was not eligible for assistance. The defendant also advised him that the referral had been withdrawn. On February 10, 2017, the claimant was issued with a fresh s.184 decision letter notifying him that he was not eligible for homelessness assistance.

The Claim
The claimant sought judicial review on three grounds:

(1) The revocation of the decision of January 30, 2017, was *ultra vires*. The defendant had completed its enquiries and made a final decision which was favourable to him. The defendant was not entitled to revisit that decision. In particular, the defendant's reliance on *Porteous v West Dorset DC* [2004] HLR 30, CA, was mistaken because the defendant was unable to identify a fact about which it had been mistaken.
(2) The defendant had failed to provide reasons for the revocation.
(3) The defendant was in breach of s.200(1) in failing to secure accommodation pending the outcome of the referral.

The claim was listed as an expedited "rolled-up" permission and substantive hearing.

The defendant opposed permission, relying on *R v Brent LBC ex p Sadiq* (2001) 33 HLR 47, QB, on the basis that the claimant had an alternative remedy by way of statutory review and county court appeal under ss.202-204. In relation to ground 1, the defendant argued that it had not made a final decision because there had been a local connection referral and therefore, applying *Crawley BC v B* (2000) 32 HLR 636, CA, it was entitled to revisit the decision. In the alternative, the defendant had made a fundamental mistake of fact and, applying *Porteous*, it had been entitled to withdraw the decision.

The Decision
The judge held that the court retains a residual discretion to entertain a claim for judicial review even where alternative remedies are available. The interests of justice in the case and the need for efficient disposal of legal disputes pointed strongly to the conclusion that permission should be granted.

Crawley BC v B provides broad support for the proposition that a local authority is entitled to revisit a decision which has been communicated to an applicant for housing assistance in circumstances where either (a) it has not completed its enquiries under s.184 of the Act, or (b) it has made no final decision as to the nature of the duty it owes to an applicant. However, in this case it was clear that the defendant had completed its enquiries and that the defendant had made a decision as to its duty under the Act. As the High Court held in *R v Southwark LBC ex p Dagou* (1996) 28 HLR 72, QB, a local connection referral was simply "an executional performance of a full housing duty" and the defendant had, in substance, made a final decision as to the duty owed.

The evidence did not establish a fundamental mistake of fact on the part of the defendant which had led it to its decision of January 30, 2017.

Fairness demanded that the defendant was under a duty to provide reasons to justify its view that it was entitled to make the decision communicated in the letter of February 10, 2017, and it had failed to do so.

The defendant had owed the duty under s.200(1) of the Act from January 30, 2017, and continued to owe that duty until resolution of the referral issue.

Watch this space!
Having been refused permission to appeal by the judge the defendant authority sought permission to appeal from the Court of Appeal. That application is currently awaiting a decision.