IN THE COUNTY COURT AT BRISTOL

Appeal No: A00GLL914
Claim No: 5BS00003C

B E T W E E N:

BRIDGET CONNORS

Appellant

and

FOREST OF DEAN DISTRICT COUNCIL

Respondent

JUDGMENT

SUBJECT MATTER

1 This is an appeal, under Section 204 Housing Act 1996 ("HA 1996") against the decision of the Respondent ("the Review Decision"), a local housing authority, on a review under Section 202 HA 1996, notified on 10th December 2014, that the Appellant did not have *"a local connection"* with the Forest of Dean, and that she should therefore be referred back to Stroud District Council, where, the Respondent had decided, she did have a local connection- a decision which Stroud District Council has accepted.

BACKGROUND

2 The Appellant is 28 years of age and is an Irish Traveller. She has five children who live with her

- Michael (15.04.06)
- Mary (09.11.07)
- James (31.12.08)
- Margaret (11.12.09) and
- Bridget (28.03.13)

3 Her son Michael and her daughter Bridget both suffer from ciliary dyskinesia, a lung condition that can affect the ear, nose and throat. Michael suffers from a hearing problem, which is a consequence of the condition.

4 The Appellant moved on to a disused traveller site at Cinderford, Gloucestershire, on 1st June 2014. She placed her eldest three children in the local Forest View primary school. Her sister lives in the Forest of Dean about five minutes away from the site.

5 The freehold is owned by the Respondent.

6 On 19 June 2014, the Respondent wrote to the Appellant, advising her that her occupation of the site was unlawful and requiring her to vacate it.

7 On 3rd July 2014, solicitors, acting on behalf of the Appellant, made a homeless application to the Respondent for the purposes of invoking the duty which applies to a housing authority, by virtue of Section 193(2) of HA 1996, where an applicant is unintentionally homeless, is eligible for assistance, and has a priority need for accommodation, *"to secure that accommodation is available by occupation by the applicant"*.

8 On 17 July 2014, Caroline Clissold, one of the Respondent's officers, carried out a Homeless Interview with the Appellant, which was also attended by the Appellant's sister, Billie-Jo Cole.

9 On 20 August 2014, Ms Clissold wrote advising the Appellant that she qualified under s. 193(2) HA 1996, in that she was in priority need, and not intentionally homeless, but that she did not have a local connection to the District, as provided in ss.198 and 199 HA 1996, although she did have such a connection with Stroud District Council.

10 The grounds for Ms Clissold's decision, explained in the letter, were that the Appellant did not have a local connection with the Forest of Dean as:

(a) She was not *"normally resident"* in the district.

(b) She was not employed in the district.

(c) Although her sister was resident in the district she had been resident for only twelve months which was less than the five years recommended in the Local Authority Agreement, and although the officer accepted that the Appellant's sister provided help and support the officer considered that the Appellant's needs in those areas were capable of being met outside the family as many organisations in the statutory and voluntary sectors were capable of providing the assistance needed.

(d) There were no special circumstances, and the assertions about the availability of other organisations, were repeated.

(e) The Appellant has a local connection with Stroud from her 18 months on the private travellers' site there.

(f) Mr Clissold had taken full account of the Appellant's circumstances and all the information available in deciding to exercise the discretion to refer the Appellant to Stroud.

11 That decision, however, was not notified to the Appellant until 24th September 2014, and, on 15th October 2014, the Appellant's solicitors requested a review of the decision.

12 On 27th October 2014 the Respondent acknowledged the application for a review and set out the procedure to be adopted - as it was required to do under Regulation 6 of the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999, ("the Regulations").

13 On 14th November 2014, the Appellant's solicitors made further representations, stating that:-

(a) The Appellant's sister Billie-Jo Cole had been living in the area since 23/03/13, nearly 18 months, rather than a year, and had a local connection with the area, and that therefore the Appellant had a connection due to family association.

(b) Ms Cole helps the Appellant with managing her children, one of whom has a significant disability, in particular by looking after the other children by freeing up the Appellant to care for Michael.

(c) The test on local connection has to be applied with regard to the particular circumstances of the case, and that the protected characteristics of the Appellant should be taken into account, in particular *"that the Appellant has been vulnerably housed in a number of different locations across the UK given that she comes from a Traveller background"*.

(d) The circumstances in which she came to the area, and Michael's condition amount to *"exceptional circumstances"*.

14 As stated above, the Respondent's decision upon the Review was notified to the Appellant on 8 December 2014. A copy of that decision, ("the Review Decision") is attached at Annex 1.

THE LAW

15 The relevant provisions of HA 1996 are as follows:-

s.184 Inquiry into cases of homelessness or threatened homelessness

(1) If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves –

(a) whether he is eligible for assistance, and

(b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part.

(2) They may also make inquiries whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.

(3) On completing their inquiries the authority shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision.

(4) If the authority have notified or intend to notify another local housing authority under section 198 (referral of cases), they shall at the same time notify the applicant of that decision and inform him of the reasons for it.

(5) A notice under subsection (3) or (4) shall also inform the applicant of his right to request a review of the decision and of the time within which such a request must be made (see section 202).

(6) Notice required to be given to a person under this section shall be given in writing, and, if not received by him, shall be treated as having been given to him if it is made available at the authority's office for a reasonable period for collection by him or on his behalf ...

Section 198 Referral of case to another local housing authority

(1) If the local housing authority would be subject to the duty under section 193. ... but consider that the conditions are met for the referral of the case to another local housing authority, they may notify that other authority of their opinion.

(2) The conditions for referral of the case to another authority are met if:

(a) neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom his application was made.

(b) the applicant or a person who might reasonably be expected to reside with him has a local connection with the district of that other authority and

(c) neither the applicant or a person who might reasonably be expected to reside with him will run the risk of domestic violence in that other district.

(2A) But the conditions for a referral mentioned in subsection (2) are not met if:-

(a) the applicant or any person who might reasonably be expected to reside with him has suffered violence (other than domestic violence) in the district of the other authority.

(b) It is probable that the return to that district of the victim will lead to further violence of a similar kind against him.

(3) For the purpose of section (2) and (2A) 'violence' means –

(a) violence from another person; or

(b) threats of violence from another person which are likely to be carried out; and violence is domestic violence if it is from a person who is associated with the victim.

(5) The question whether the conditions for referral of a case are satisfied shall be decided by agreement between the notifying authority and the notified authority, in accordance with such arrangements that the Secretary of State may direct by order.

Section 199 Local connection

(1) A person has a local connection with the district of a local housing authority if he has a connection with it –

(a) because he is, or in the past was, normally resident there, and that residence was of his own choice;

(b) because he is employed there;

(c) because of family associations, or

(d) because of special circumstances.

(2) .....

Section 200 Duties to applicant whose case is considered for referral or referred

(1) Where a local housing authority notify an applicant that they intend to notify or have notified another housing authority of their opinion that the conditions are met for the referral of his case to that other authority – but they shall secure that accommodation is available for occupation

by the applicant until he is notified of the decision whether the conditions for referral of his case are met.

(a) they cease to be subject to any duty under section 188, and

(b) they are not subject to any duty under section 193.

(2) When it has been decided whether the conditions for referral are met, the notifying authority shall notify the applicant of the decision and inform him of the reasons for it.

The notice shall also inform the applicant of his right to request a review of the decision and of the time within such a request must be made.

(3) If it is decided that the conditions for referral are not met, the notifying authority are subject to the main duty under section 193.

(4) If it is decided that the conditions for referral are met, the notified authority are subject to the main duty under section 193.

(5) The duty under subsection (1), (3) or (4) ceases as provided in that subsection even if the applicant requests a review of the authority's decision (see section 202). The authority may secure that accommodation is available for the applicant's occupation pending the decision on a review.

16 For the purposes of the orderly and consistent administration of the procedures set out above, which might require different housing authorities to apply them to the same applicant, associations of local authorities entered into an agreement ("the Local Authority Agreement") setting out guidelines ("the guidelines"). These include agreed criteria which might be applied in deciding whether or not a *"local connection"* has been established. This guidance includes the following:-

"(1) It is suggested that a working definition of "normal residence" should be residence for at least 6 months in the area during the previous 12 months, or for not less than 3 years during the previous 5 year period.

The period taken into account should be up to the date of the authority's decision. ..."

(2) Family associations normally arise where an applicant or a person who might reasonably be expected to reside with the applicant has parents, adult children or brothers or sisters who have been resident in the district for a period of at least 5 years at the date of the decision, and the applicant indicates a wish to be bear them. ..."

17 This suggested working definition was endorsed by the House of Lords in **R v Eastleigh BC ex p Betts** [1983] 2 AC 613 – see per Lord Brightman @ 627 F-H:

"Has the normal residence of the applicant in the area been of such duration as to establish for him a local connection with the area? To answer that question speedily it is sensible for local authorities to have agreed guide-lines. I see nothing in the least unreasonable with a norm of six months' residence during the previous twelve months, or three years' residence during the previous five years. Seeing that the section is concerned with a subsisting and not with a past local connection, it is also reasonable to work on the basis that, after five years have gone by, no local connection based on residence is likely to have any relevance.

So I start my conclusions on this appeal by expressing the view that paragraph 2.5 of the Agreement on procedures is eminently sensible and proper to have been included in the agreement. Although 'an opinion' formed by a housing authority under section 5(1) must be concluded by reference to the facts of each individual case, there is no objection to the authority operating a policy or establishing guidelines, for reasons which the authority may legitimately entertain, and then applying such policy or guidelines generally to all the applications which come before them, provided that the authority do not close their mind to the particular facts of the individual case."

18 Chadwick LJ pointed out in **Ozbek v Ipswich BC** [2006] HLR 41 @ para 349 that the need for a common basis of decision-making by different housing authorities in cases of local connection means that there is an imperative for all authorities to apply the

guidelines *"generally to all applications that come before them"*, but this does not permit such authorities to close their minds to the facts of individual cases.

19 Section 202 of HA 1996 provides that an applicant has the right to request a review of various local housing authority's decisions, including a decision under Section 198(1) (referral of cases). Section 202(4) provides that on such a request being made, the authority concerned shall review the decision. Section 203 provides for regulations to be made as to the procedure to be followed in connection with a review under section 202. This power has been implemented by the Regulations (i.e. the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999). These provide that in carrying out a review the reviewer must consider any representations made by, or on behalf of, the applicant, and make a decision on the basis of the facts known at the date of the review.

20 It is common ground that the review is required to be a complete re-hearing – in **Mohammed v Hammersmith and Fulham LBC** [2002] 1 AC 597 Lord Slynn stated:-

> *"The decision of the reviewing officer is at large both as to the facts (i.e. as to whether the three conditions in section 198(2) of the Act are satisfied) and as to the exercise of the discretion to refer. He is not simply considering whether the initial decision was right on the material before it at the date it was made. He may have regard to information relevant to the period before the first decision but only obtained thereafter and to matters occurring after the initial decision."*

21 On behalf of the Appellant Mr Stark of counsel submitted that there are a number of stages in the process of referring to another local authority an applicant to whom the full housing duty under Section 193(2) Housing Act 1996 is owed:-

(1) The authority to whom the application is made must make the appropriate inquiries under Section 184 as to what duty if any is owed to the applicant i.e. whether they are homeless, eligible for assistance, in priority need or intentionally homeless.

(2) Then the authority must determine whether the applicant or a person who might reasonably be expected to reside with him has a local connection with that authority. If so then the full housing duty arises in that authority. It is irrelevant that the applicant also has a local connection with another authority.

(3) If not, then the authority must ascertain whether the conditions for referral are met – if they are not met they may not refer – these are as follows:

(a) whether the applicant or a person who might reasonably be expected to reside with him has a local connection with another authority and if so which authority – if there is no authority with which he has a local connection then the authority to whom the application was made owes the full housing duty.

(b) whether the applicant or a person who might reasonably be expected to reside with him will run the risk of domestic violence in that other district - if so they may not refer.

(c) whether the applicant or any other person who might reasonably be expected to reside with him has suffered violence other than domestic violence in the district of the other authority and whether it is probable that the return to that district of the victim will lead to further violence of a similar kind against him. Violence including not only actual violence but threats of violence from another person which are likely to be carried out – if so they may not refer.

(4) Whether they should exercise their discretion under Section 198(1) not to refer although the applicant does not have a local connection with their authority and the conditions for referral are met. This question must be considered.

22 As I understand it, there is no challenge to that analysis, and I accept it. It follows, since a review under S.202 HA 1996 is a re-hearing, that the review panel is also required to go through the stages referred to in the last paragraph.

23 By regulation 8(2) it is provided that:-

"If the reviewer considers that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of the applicant on one or more issues, the reviewer shall notify the applicant –

(a) that the reviewer is so minded and the reasons why; and

(b) that the applicant, or someone acting on his behalf, may make representations to the reviewer orally or in writing or both orally and in writing."

24 Carnwath LJ explained the meaning of *"deficiency"* in **Hall v Wandsworth LBC** [2004] EWCA Civ. 1740 @ [29]:-

"29. ... The word 'deficiency' does not have any particular legal connotation. It simply means 'something lacking'. There is nothing in the words of the rule to limit it to failings which would give grounds for legal challenge. If that were the intention, one would have expected it to have been stated expressly. Furthermore, since the judgment is that of the reviewing officer, who is unlikely to be a lawyer, it would be surprising if the criterion were one depending solely on legal judgment. On the other hand, the 'something lacking' must be of sufficient importance to the fairness of the procedure to justify an extra procedural safeguard. Whether that is so involves an exercise of 'evaluative judgment' ... on which the officer's conclusion will only be challengeable on ***Wednesbury*** *grounds.*

30. To summarise, the reviewing officer should treat reg.8(2) as applicable, not merely when he finds some significant legal or procedural error in the decision, but whenever (looking at the matter broadly and untechnically) he considers that an important aspect of the case was either not addressed, or not addressed adequately, by the original decision-maker. In such a case, if he intends to confirm the decision, he must give notice of the grounds on which he intends to do so, and provide an opportunity for written and (if requested) oral representation." (Emphasis added)

25 In **Bury MBC v Gibbons** [2010] EWCA Civ. 327 [2010] H.L.R.33, Jackson L.J. (with whom Sedley and Jacob L.JJ agreed) said at [45]:-

> *"Where the reviewer rejects the factual basis of the original decision and proposes to substitute a different factual basis leading to the same conclusion, it seems to me that the review has identified a 'deficiency' within the meaning of reg. 8(2)."*

26 It is common ground that the jurisdiction of the court in the present appeal is akin to that of a judicial review – this appeal is not a complete re-hearing: it is an appeal on points of law only – see Section 204.

THE GROUND OF APPEAL

Grounds 1 and 2

27 Mr Stark, on behalf of the Appellant, submitted that upon the review the Respondent should have considered, but did not consider, whether the Appellant had established a local connection with the Respondent's area at the time of the review decision, that had it asked the right question it would have been demonstrated that the Appellant had lived in the area of the Forest of Dean since 1st June 2014, and that she had therefore established that she had been normally resident in the area for six of the past twelve months and had therefore, under the Local Authority Agreement, established the necessary period to be found to have a local connection.

28 It was accepted that the evidence before the review panel indicated that the Appellant had been residing on the Cinderford site since 1 June 2014: hence, by the date of the decision on the review, she would as a matter of fact have been resident in the area for six of the previous twelve months.

29 Because the review was a re-hearing it was incumbent upon the review panel to consider, at the outset of its review, whether the Appellant had a local connection within the terms of section 199 (1)(a) of HA 1996, and in so doing it was bound to apply the guidance referred to in paragraph 16(1) above, or spell out the reasons why, on the particular facts of the Appellant's case, it was reaching a conclusion which was at odds with that guidance.

30 As can be seen, on the third page of the Review Decision, it is stated:-

> *"At the time when your client's homelessness application was made, she had only lived in the Forest of Dean area for six weeks and therefore failed the test for local connection set out in the Code of Guidance – six out of the last twelve months or three out of the last five years."*

31 The Panel then proceeds to address the alternative grounds by which a local connection may be established, namely *"family association"*, but rejects this on the basis that Billie-Jo Cole had only lived in the district for eleven months, and then states:-

> *"Although further time has now elapsed this is irrelevant to the decision made on 20th August 2014."*

32 Nowhere in the Review Decision is there any reference to the fact that by the date of the Review (which was the relevant date) the Appellant did fulfil the criteria in the guidelines referred to in paragraph 16(1) above, and nor is there any suggestion that the Panel considered there were reasons to depart from those guidelines.

33 The inescapable conclusion is that the Panel did not consider afresh whether the Appellant was at the time of the review *"normally resident"* in the Respondent's district, because if it had done, it could only have concluded that the criteria in the guidelines referred to in paragraph 16(1) above were fulfilled, and, if it was not intending to follow the guidelines, it would have needed to have good reasons on the facts for not doing so, and to set out those reasons in the Review Decision.

34 If, in the alternative, the Panel did consider afresh the issue of whether the Appellant had a local connection within the terms of section 199 (1)(a) it either failed to apply the date of the Review to the facts, or, on the facts, it reached a conclusion which, absent further explanation for its failure to follow the relevant guidelines, no reasonable local housing authority, could reach if it directed itself properly.

35 The sentence from the Review decision quoted in paragraph 31 above provides additional support for one or other of the first two of the possibilities referred to in paragraphs 33 and 34 above, but whichever of the three possible inferences referred to

in the last two paragraphs is correct, the Panel erred in point of law, and on this ground alone the Review Decision cannot stand.

36 On behalf of the Appellant, Mr Stark submits that if the Panel had properly directed itself at the 8th December 2014 there was only one answer to the question as to whether the Appellant was normally resident in the district of the Forest of Dean – namely yes. He therefore submits that the court can and should amend the Review Decision in favour of the Appellant. This issue is addressed below.

Ground 3

37 Mr Stark's submission is that the Panel erred in law in its consideration of the question as to whether the Appellant had a local connection by reason of *"family associations"* in that:-

(1) it treated the guidance that the family member needed to have lived in the area for at least five years as a rule;

(2) it reached a decision based on no evidence or was irrational, namely, that the fact that the Appellant did not wish confidential medical information to be sent to her sister's address was evidence that she was not being provided with necessary support by her sister in caring for her own children one of whom has significant disabilities.

38 The issue of whether or not the Appellant could establish a local connection through family associations (on the facts, through her sister Billie-Jo) is addressed in the following paragraph of the Review Decision:-

> *"The Local Government Association Guidelines for Local Authorities on Procedures for Referral provide that family associations usually arise where the applicant has family who have been resident in the district for a period of at least five years at the date of the decision. At the date of the decision in this case (being 20 August 2014), your client's sister had lived in Cinderford for only eleven months. Although further time has now elapsed this is irrelevant to the decision made on 20 August 2014."*

39 The Appellant's solicitors had informed the Respondent that Billie-Jo Cole had actually been resident in the Forest of Dean district since 23 March 2013 i.e. almost 18 months as at the date of Ms Clissold's decision on 20 August 2014 – see paragraph 13 above. Given the guideline referred to in paragraph 16(2) above and in the Review, it would have been understandable if the Panel had taken into account the longer period of Billie-Jo Cole's evidence in the district but concluded that the evidence, taken as a whole, still justified a conclusion that the Appellant did not have a connection with the district. However, the Panel described the longer period of residence as *"irrelevant to the decision made on 20 August 2014"*, thus making two errors of law.

40 The first error was to treat the longer period of residence as being *"irrelevant"*, when it is plain that the period of residence, whatever its length, is relevant to the consideration of whether or not an applicant has a connection with the district. If the Panel thought that the longer period of residence was irrelevant as it still failed to satisfy the guideline referred to in paragraph 16(2), that was an erroneous view.

41 The Panel's second error was to repeat the mistake giving rise to Grounds 1 and 2 of this appeal, namely to fail to apply the guidelines as at the date of the Review. Hence it failed to consider the fact that the length of Billie-Jo Cole's evidence as at the date of this Review was getting on for 21 months.

42 It follows that in my judgment this ground of appeal is also made out.

43 It is perhaps worth noting that the Panel, in an earlier paragraph in the Review Decision, stated:-

> *"The Code of Guidance states that the overriding consideration should always be whether the applicant has a real local connection with an area. The specified grounds are subsidiary to that overriding consideration."*

It is not clear to me on what basis that assertion was made. Neither S.198 or S.199 of HA 1996 refer to *"a real local connection"* with an area, and the grounds specified in S.199 are not expressed to be subordinated to any such concept.

44 As appears from paragraph 37(2) above, Mr Stark also takes issue with a further paragraph in the Review Decision:-

"Your client also indicates that she relies on family support from her sister who is resident in Cinderford. This is contrary to information provided by your client to the Council when she specifically advised that she did not want her post being sent to her sister's address as she didn't want her sister to know her business or about medical appoints etc."

45 Mr Stark submits:-

"At review stage, the Respondent has sought to cast doubt on the need to be close to a person with family associations on the mere basis that the Appellant expressed a view that she did not wish her post to be sent to her sister's address as she did not want her sister to know her business. This is a complete non sequitur and irrational. Members of a family may be very close and reliant upon each other but still wish to protect their own privacy and choose what they wish to share. The suggestion that simply because the Appellant wished to receive her own post undermined the assertion that she was in need of the support of her sister especially in helping with looking after five children under the age of ten, two of whom are disabled is nonsensical."

46 It is not clear to me that the extract from the Review Decision set out in paragraph 44 above is part of the reasoning relating to the Panel's consideration of whether the Appellant has a local connection as a result if *"family associations"*. Rather, it appears to me to relate to the Panel's consideration of whether or not the Appellant has a local connection through *"other special circumstances"* within the terms of Section 199(1)(d).

47 In any event, I accept Mr Stark's criticism of the reasoning of the paragraph in question. It is understandable that the reluctance of the Appellant to have her post sent to her sister might cause the Panel to question the closeness of the relationship between her and her sister, and hence to question whether the Appellant did or does receive support from her sister, but the Panel should have sought clarification of this issue, rather than jump to conclusions: the fact is that the Appellant's reluctance for her post to be sent to her sister's address is not *"contrary"* to her indication that her sister provides her with support, and the Panel misdirected itself in concluding that it did.

48 Since the Panel does appear to have taken this belief into account when concluding that there was no local connection by reason of any *"special circumstances"* it appears to me that this is another ground of appeal which is made out.

Grounds 4

49 Mr Stark submits that:-

(1) There were a number of deficiencies or irregularities in Ms Clissold's decision of 20 August 2014 within the terms of Regulation 8(2); accordingly,

(2) Since the Panel was apparently minded to make a decision which is against the interests of the Appellant, the Panel should have notified the Appellant that it was minded to do so, (in a so-called *"minded-to letter"*) and the reasons why it was so minded, to enable further representations to be made by or on behalf of the Appellant, and that in failing to do so the Panel acted in breach of that Regulation.

50 The deficiencies or irregularities alleged, identified in **Ground 4**, are that Ms Clissold in her decision dated 20 August 2014:-

(1) reached a conclusion on *"family association"* with the area on the basis of a rigid requirement of five years residence and that similar support could be provided elsewhere without making any enquiries as to whether that support was actually available; and

(2) failed when considering whether it should exercise its discretion not to refer the Appellant to Stroud District Council to have regard to all the relevant circumstances, in particular, the interests of the Appellant's children if it were to do so.

51 Mr Stark bases this submission on a statement on the second page of Ms Clissold's Decision dated 20 August 2014:-

> *"While I accept that your sister does provide help and support I consider that your needs in these areas are capable of being met outside of your family, and that many organisations in both the statutory and voluntary sectors throughout*

the country are capable of providing the help and support you and your family need."

52 He submits that this disclosed three deficiencies or irregularities and that no reasonable review panel properly directing itself in accordance with Regulation 8(2) could have come to any other conclusion but that Regulation 8(2) was engaged for three reasons:-

(1) The Review Panel itself doubted that the Appellant's sister provided help and support to the Appellant – see paragraphs 44-47 above.

(2) Whilst Ms Clissold accepted that the Appellant was in receipt of help and support from her sister, Ms Clissold asserted that the Appellant could receive that support from many statutory or voluntary organisations throughout the country: this may properly be something that may be assumed in relation to general welfare assistance, but in this case the Respondent was aware that the Appellant has five children under ten, two of whom suffer from a serious lung condition and one of whom (Michael) also suffers hearing loss in those circumstances, it was incumbent upon Ms Clissold both (a) to make enquiries as to the full extent of support given and (b) how it may be provided out of the district: the unreasoned reference to statutory and voluntary organisations did not address the question.

(3) Ms Clissold made a simple averment that she has considered whether she should exercise her discretion whether to refer the Appellant back to Stroud even though they do not have a local connection: although the homeless file shows that she was aware of Michael's condition and that the Appellant was in receipt of carer's allowance, that Michael's condition required medication and inhalers daily and weekly physiotherapy and frequent hospital admissions – the file also shows no evidence of any enquiries made as to exactly what support is provided, why this is necessary to enable care to be given to Michael or what the consequences would be for the family if they lost the support of the Appellant's sister: all these matters are highly material to the exercise of the residual discretion, but Ms Clissold, however, took no steps to inform herself of the relevant circumstances and paid mere lip service to the test.

53 Accordingly, Mr Stark submits Regulation 8(2) was engaged and the Respondent erred in law in failing to provide an opportunity to make representations in accordance with that provision.

54 The questions of whether or not the Appellant's sister was (and is) providing her with help and support, if so, why it was (and is) unnecessary, and whether it could be provided by others if the Appellant were moved to another district were (and are) important aspects of the case.

55 There is nothing in the material which was before Ms Clissold to indicate what help and support was provided to the Appellant by her sister. Whilst it is clear that the health issues affecting and arising from the Appellant's children were longstanding and, as is stated in the fourth page of the Review Decision, had been managed, prior to her move to Cinderford, or when she had been living in other districts, and whilst it may reasonably be assumed, in the absence of evidence to the contrary, that any schooling would be provided if she was moved from the Forest of Dean, it is not at all obvious that all other necessary support, and in particular support currently provided by her sister, would be provided, if she was moved to another district, by other statutory or voluntary organisations. It should have been obvious to the Review Panel that Ms Clissold had not addressed this problem, and the Panel should have considered whether Regulation 8(2) was engaged.

56 As can be seen from paragraphs 44 to 48 above, the panel by misdirecting itself, cast doubt on Ms Clissold's finding that the Appellant's sister did, and does, provide her with help and support.

57 In my judgment, any reasonable review panel directing itself properly would have recognized that Regulation 8(2) was engaged because:-

(1) There was doubt as to an important finding in Ms Clissold's original decision, and because of that there was a deficiency on that decision;

(2) Ms Clissold had made no enquiry in relation to the help and support provided by her sister, and hence there was a deficiency and irregularity in relation to

her finding that that help and support would be provided by statutory or voluntary organisations if the Appellant and her children were unable to continue living in the Respondent's district.

58 For the reasons given above therefore, I consider this Ground to be valid.

Ground 5

59 The Appellant's contention is that the Respondent erred in law in failing to take account of or have any regard to the Appellant's protected characteristic namely being a member of an ethnic group Irish Travellers capable of being discriminated against on the grounds of her membership of that group and in particular (a) in considering how long a traveller's relatives should be required to be normally resident in an area before establishing a connection by family association as by the very nature of their way of life residence for five years is much less likely to be established than if they were not a traveller and (b) in failing to have regard to the same matters when deciding to exercise its discretion to refer and in doing so failed to comply with its public sector equality duty under S.149 Equality Act 2010.

60 This ground is closely linked with Ground 3 above. Mr Stark's submission is that Irish Travellers have a protected characteristic on the basis of their ethnic and national origins: the travelling way of life means by its very nature that Irish Travellers are less likely to remain in particular areas for long periods: accordingly, this should be taken into account in considering whether an Irish Traveller is normally resident in that area or has a local connection by reason of family associations: Irish Travellers might well have areas to which they resort much more often than others and that and the likelihood that due to their way of life they may stay in one area for shorter periods should be taken into account in deciding whether they have a local connection: this is underlined by S.149 Equality Act 2010, which requires in relation to every decision taken by a public authority proper consideration of their protected characteristic and whether it should be taken into account in the decision made: the Respondent only considered this question in relation to what accommodation could be provided: this was plainly inadequate.

61 It is plain from a number of passages in the Review Decision that the Review Panel was mindful of the fact that the Appellant is an Irish Traveller and has protected characteristics – see the first paragraph commencing on the first page and the four following paragraphs on the second page, the reference on the third page to *"travellers pitches"*, and the reference to the Gipsy/Traveller Liaison Officer in the fourth paragraph.

62 The Review Panel took these matters into account when referring to attempts to find an alternative traveller's pitch, as well as in relation to the suitability of conventional housing. However, it is plain that an account was taken of them in relation to the question of whether or not the Appellant has a local connection with the Respondents' district by reason of the length of her residence or her sister's residence there: this is because the Review Panel effectively treated any periods of residence short of those set out in the guidelines referred to in paragraph 16 above, as being irrelevant. The Review Panel should have considered section 199 (1)(a), (c), and (d) afresh, and in that context were obliged to take account of the Appellant's and her sister's *"protected characteristics"*. Again, therefore, I consider this ground of appeal to be made out.

Ground 6

63 The contention advanced in this Ground is that the Respondent further erred in law in that it acted unfairly and in breach of natural justice in making adverse findings against the Appellant that were not raised in the S.184 letter and upon which it gave her no opportunity to comment in particular in suggesting that by reference to the Appellant's disinclination for her sister to have knowledge of her business or medical appointments her sister was not providing her with necessary support in the care of her children.

64 I have already indicated that in my judgment the doubts felt by the Review Panel arising from the Appellant's desire that her sister should not receive her post should have been put to the Appellant to enable her to comment on them – see paragraphs 44-47 above. The failure to do so was a clear breach of the rules of natural justice, and related to an important matter. This ground of appeal is also made out.

Ground 7

65 This Ground is expressed in general terms:-

The Respondent failed to have regard to relevant and material considerations and/or to make relevant enquiries in deciding to exercise its discretion to refer the Appellant to Stroud.

66 It is explained in Mr Stark's Skeleton Argument in the following terms:-

> *"37. The failures of the original decision-maker in this regard are set out above. Those failures are not remedied by the review decision. Likewise, albeit the review refer to the respondent not having a policy on the exercise of that discretion the review decision is entirely silent on what factors have been taken into account and the homelessness file shows that no further enquiries were made."*

67 In so far as this Ground refers back to the earlier Grounds, it can be ignored. The assertion by Mr Stark that the Review Decision is silent as to the factors taken into account in exercising the overall discretion as to whether or not to refer the Appellant to Stroud District Council is not substantiated. On the third page of the Review Decision the Panel explained that the decision was taken *"solely on the merits of the case"*, and in the ensuing paragraphs referred to a variety of general considerations and then the facts of the case as the Panel perceived them. I reject this ground of appeal.

CONCLUSION

68 For the reasons given above the Review Decision must be quashed. Mr Stark submits that the court should go further and amend the Review in favour of the Appellant – see paragraph 36 above. However, the guidelines referred to in paragraph 16 above are only guidelines. That fact reflects the fact that in the end each case must be dealt with on its own facts. The guidelines indicate what should happen unless in the individual case there is a good reason to depart from them. Whether or not there is such a good reason is something which has not been explained in this case, but it is a matter to be considered by the Respondent and not by the court. Accordingly I do not accept Mr Stark's submission on this point.

David Blunt QC

[Recorder]

Draft judgment issued 22 June 2015

Judgment handed down .....