R. v. London Borough of Tower Hamlets, ex p. Nadia Saber

Queen's Bench Division

McCullough J.

June 10, 1992

Introduction

By section 60(1) of the Housing Act 1985 (*Encyclopedia*, para. 1–0126), 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."

In deciding whether it is reasonable for a person to continue to occupy accommodation, a local authority may have regard to "the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he applied for accommodation": *ibid.*, section 60(4).

Once an authority are satisfied that an applicant is homeless and in priority need of accommodation, they must make inquiries to satisfy themselves whether he is intentionally homeless: *ibid.*, section 62(2) (*Encyclopedia*, para. 1–0142). Inquiries should be carried out sympathetically and not in a way that leads the applicant into a false position. The authority must apply commonsense and general knowledge in asking their questions. See generally *R.* v. *Gravesham Borough Council, ex p. Winchester* (1986) 18 H.L.R. 207, Q.B.D. In particular, basic issues must be put to an applicant: see *R.* v. *Wyre Borough Council, ex p. Joyce* (1983) 11 H.L.R. 73, Q.B.D., *R.* v. *Wandsworth Borough Council, ex p. Rose* (1983) 11 H.L.R. 105, Q.B.D., *R.* v. *Dacorum Borough Council, ex p. Brown* (1989) 21 H.L.R. 405 and *R.* v. *London Borough of Tower Hamlets, ex p. Rouf* (1989) 21 H.L.R. 294, Q.B.D.

In *R.* v. *Royal Borough of Kensington and Chelsea, ex p. Bayani* (1990) 22 H.L.R. 406, C.A., Neil L.J. said that: "The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made..." and in *R.* v. *Nottingham County Council, ex p. Costello* (1989) 21 H.L.R. 301, Q.B.D., Scheimann J. stated: "A council which makes numerous inquiries can, in my judgement, only be attacked for failing to make one more if it failed to make an inquiry which no reasonable Council could have failed to regard as necessary." See also *R.* v. *Leeds City Council, ex p. Adamiec & Adamiec* (1989) 24 H.L.R. 138, Q.B.D.

Facts

The applicant was aged 20, and was French and spoke no English. In June 1989, she

and her husband, who was from Algeria, took a tenancy of a small bed-sitting room for which they paid £140 per fortnight. The applicant's husband earned about £90.00 per week after deductions. The applicant worked as an usherette and also earned about £90.00 per week.

In October 1989, the applicant was four months pregnant. On October 6, she and her husband paid two weeks' rent in advance. On October 9, 1989, the couple left their accommodation without being asked to leave. At about the same time, the applicant gave up her job. Initially, they moved in with friends but after two days were asked to move out. The applicant sought accommodation from the respondents. The original reason for leaving the accommodation was stated to be that the rent was too expensive. In July 1990, the applicant was asked if there was any other reason why she had left the bedsitting room. She said the room was too small and as she could not work the rent was too expensive. On inquiry, the applicant's landlord said that the room did not have enough space to bring up a child.

In August 1990, the applicant's husband was interviewed alone. He said that no claim had been made for housing benefit and that their only plan was to go to friends. He repeated that the room would be too small for the baby as well and that as the applicant was no longer working they could not afford the rent. He also stated that he did not think the applicant had been advised by her doctor to give up work. The applicant was not seen again by the respondents.

On November 16, 1990, the respondents notified the applicant that she was intentionally homeless since it would have been reasonable for her and her husband to have continued to occupy the bedsitting room. The notification letter stated that the respondents had taken into account the fact that there were no medical reasons for leaving her work and that no application had been made for housing benefit because she had "already decided to leave your accommodation as you and your husband were of the opinion that it would not be big enough when the baby was born."

Two unsuccessful requests were made to the respondents to review their decision and further information relating to the application was offered, in particular as to her health prior to giving up her job in a letter dated November 27 from an advice centre. The applicant sought judicial review of the decision.

Held (allowing the application)

(1) Where it is alleged that a housing authority did not make the necessary inquiries, the court cannot intervene unless it is satisfied that a reasonable housing authority, having made the inquiries and only the inquiries which the respondent authority in fact made, could not have been satisfied that the applicant had become homeless intentionally;

(2) Awareness of entitlement to housing benefit was a material fact; no reasonable authority having made the inquiries, and only the inquiries, which the respondent authority had made could have been satisfied that the applicant knew of her entitlement to housing benefit;

(3) As the applicant was not given the opportunity to deal with the issue as to whether there were medical reasons for her giving up work, no reasonable authority having made the inquiries, and only the inquiries, which the respondent authority

had made could have been satisfied that there were no medical reasons for her leaving work when she did;

(4) On the material before the respondent authority and without further inquiry, it was not reasonable to conclude that, even if the applicant and her husband had realised their entitlement to housing benefit, they would have left when they did;

(5) A request to reconsider material in the light of additional material or argument is not the equivalent of a re-application and does not cast on the authority the duties imposed when an application under Part III of the Housing Act 1985 is made; it is otherwise if there has meanwhile been a material change of circumstances; the authority have a discretion whether to accede to the request; a decision not to reconsider is reviewable on ordinary *Wednesbury* principles and not more stringent criteria;

(6) The vital assertions made in the letter of November 27, 1990, had not been covered in interview with the applicant; she was not herself asked about her health or why she gave up her job or her knowledge of entitlement to housing benefit; the decision not to reconsider was reached unlawfully; immaterial factors were taken into account; material factors were not.

M. Westgate for the applicant, instructed by Messrs. Alan Edwards & Co., London, W.11.

A. Underwood for the respondent, instructed by James Marlowe, Acting Head of Legal Services, Tower Hamlets, E.2.

McCULLOUGH J.: Mrs. Saber seeks by way of judicial review orders quashing three decisions made by the London Borough of Tower Hamlets.

Each relates to the application she made on October 11, 1989, for housing under Part III of the Housing Act 1985.

At the time of her application she was 20 and living with her husband who was 25. Their son was born on March 6, 1990.

By letter dated November 16, 1990, Tower Hamlets informed her that it had been decided that she was homeless and had a priority need but that she had intentionally rendered herself and her family homeless.

This finding of intentional homelessness is the first of the decisions under challenge.

In letters dated December 20, 1990, and January 8, 1991, Tower Hamlets informed her that this decision would not be reconsidered.

These are the other two decisions she seeks to have quashed.

A person is to be treated as homeless if:

> (1) There is no accommodation in England, Wales or Scotland which:
> (a) he, and those who normally reside with him as members of his family is entitled or licensed or permitted to occupy; and
> (b) it is accommodation which it would be reasonable for him to continue to occupy or
> (2) he has accommodation, but it is probable that his occupation of it will lead to violence or to threats of violence which are likely to be carried out — see section 58 of the Act.

Certain people have a priority need for accommodation. These include anyone with whom dependent children reside or might reasonably be expected to reside — see section 59.

A person becomes homeless intentionally if he deliberately does or fails to do something in consequence of which he ceases to occupy accommodation which is available for occupation by him and his family and which it would be reasonable for him to continue to occupy — see section 60(1).

The question is not whether it was reasonable for him to leave the accommodation in question; it is whether it would have been reasonable for him to stay there.

An act or omission in good faith on the part of the person who was unaware of any relevant fact shall not be treated as deliberate — see section 60(3).

Regard may be had, in determining whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the housing authority to whom he applied for accommodation — see section 60(4).

If a person applies to a housing authority for accommodation and the authority had reason to believe that he may be homeless they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless. If they are so satisfied they shall make any further inquiries necessary to satisfy themselves as to whether he has a priority need and whether he became homeless intentionally — see section 62.

In making its inquiries a housing authority must give an applicant an opportunity to deal with such matters as are ultimately decided against him. In relation to their duties under Part III, section 71(1) requires housing authorities to have regard, in the exercise of their functions, to such guidance as may from time to time be given by the Secretary of State. At the time these decisions were taken the relevant edition of the Code of Guidance was dated 1983.

Pending a decision as a result of these inquiries the housing authority must secure that accommodation is made available for an applicant whom they have reason to believe may be homeless and have a priority need.

When these various decisions have been reached the housing authority must notify the applicant in writing and if any such decision is adverse they must at the same time notify him of the reasons.

Where the housing authority is satisfied that an applicant has a priority need but also that he became homeless intentionally they must secure that accommodation is made available for his occupation for such periods as they consider or give him a reasonable opportunity of securing accommodation. They must also help him to obtain such accommodation by giving him what they consider is appropriate advice and assistance.

Where any application for judicial review of a decision under Part III is made regard must be had to the well-known remarks of Lord Brightman in *R.* v. *Hillingdon London Borough Council ex p. Puhlhofer* [1986] A.C. 484 at 518.

> "... it is not, in my opinion, appropriate that the remedy of judicial review, which is discretionary remedy, should be made use of to monitor the actions of local authorities under the Act save in the exceptional case. .... Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely."

Where it is alleged that, prior to reaching a decision that an applicant is homeless intentionally, a housing authority did not make the necessary inquiries the court

cannot intervene unless it is satisfied that a reasonable housing authority, having made the inquiries and only the inquiries which the respondent housing authority in fact made, could not have been satisfied that the applicant had become homeless intentionally.

The principle challenges to the decision letter of November 16, 1990, are to the sufficiency of the inquiries and to the conclusions reached about why the applicant left for employment in October 1989, why she and her husband left the address at which they were then living (58, Chepstow Road, W.2) and her awareness, or lack of it, of entitlement to housing benefit.

On October 11, 1989, Mrs. Saber, a French national who then spoke no English and whose principal languages were French and Arabic, arrived at the homeless persons unit of the London borough with an interpreter. Shortly before that date she and her husband had been evicted from 49, St. Stephen's Gardens, W.2 where they had been staying for some two days with friends in overcrowded conditions.

She had come here from France in January 1989 and had begun to live with Mr. Saber in May 1989. They married in July 1989. On June 2, 1989, they had taken up residence at 58, Chepstow Road in a small bed-sitting room in which were a refrigerator, a microwave oven, a sink and a small electric heater. The bathroom and lavatory were shared. For this they paid £140 per fortnight. This included what were called the "bills," presumably electricity and water. There was no gas. The last payment of rent had been paid on October 6, 1989, and was for two weeks in advance. They had not been asked to leave.

Mr. Saber came from Algeria in 1988. He was employed by the Kentucky Fried Chicken company in Westbourne Grove, W.2; payslips indicated that his earnings varied but that in the financial year to mid-October 1989 they had averaged about £90 per week after deductions.

Mrs. Saber had been employed as an usherette at a West End cinema; she had earned enough to raise their joint income to about £180 per week, but had given up her job at about the same time as had they left 58, Chepstow Road. She was then about four months pregnant.

Prior to her application to Tower Hamlets for housing she had made a similar application in Westminster; this must have been on October 10 or 11, 1989. She also applied to the DSS in Paddington for income support. This application was made on October 17, 1989; it was refused on basis that Mr. Saber's wages were too high.

At some stage Mr. and Mrs. Saber had a solicitor acting for them; his involvement, so far as Tower Hamlets were concerned was limited to making calls to the homeless persons unit on June 4 and 28, 1990, to enquire about the progress of the application.

As to why Mrs. Saber had left her job and why they had both left 58, Chepstow Road the papers before the court give the following information:

On a document dated October 11, 1989, the reason for leaving 58 was entered as "rent too expensive."

On July 24, 1990, Mrs. Saber visited the homeless persons unit. She was asked "if there were any other reasons" why they had left 58. Why the word "other" was used is not clear. She said "that the room was too small and as she could not work the rent was too expensive."

On about August 2, 1990, a letter requesting information from the landlord at 58 was returned to the homeless persons unit. He gave the dates of occupation as June 2 to October 20, 1989. The latter date was wrong but must have reflected the fact that the rent had been paid to that date, as the rent receipts, which Mr. Saber furnished to Tower Hamlets, show. The landlord said that the arrangement for the

occupation of the room was permanent but was no longer available. As to why this was so he said, "They left when Mrs. Saber was about to have a baby; she thought she needed more space to bring up the child."

On August 24, 1990, Mr. Saber attended the homeless persons unit without his wife. He was asked for and gave information about the size of the room at 58.

The note continued: "Regarding housing benefit, Mr. Saber said that no claim was made for housing benefit."

After questions about their joint income it continued: "Regarding plans for further accommodation after leaving Mr. Saber said that there were none, only to go to friends at 49, St. Stephen's Gardens. Mr. Saber explained further that his wife wanted to leave 58 because, as they both knew, the room would be too small for the baby as well. Also Mrs. Saber decided to give up work in October and Mr. Saber could not have paid all the expenses from his earnings alone. I asked if Mrs. Saber was advised by her doctor to give up work so early in her pregnancy. Mr. Saber said he did not think she was advised to but simply decided to herself. I asked if they had thought about what effect this would have on their finance. He replied no but just felt that as Mrs. Saber was pregnant she would have to give up work."

This was the information on which it was decided that Mr. and Mrs. Saber were intentionally homeless.

The decision letter of November 16, 1990, read as follows:.

> ".... during the course of the interview you stated that you and your husband resided at 58, Chepstow Road, W.2 from June 1989 until October 1989 and I am satisfied that this accommodation would have continued to be available for occupation by yourself and your husband, had you not left it.
> I have also taken into account the following matters:
> 1. that the accommodation you occupied at 58, Chepstow Road, W.2 was a privately rented double bed-sit. This was your last secure accommodation;
> 2. that you gave up work in October 1989 when you were 4 months pregnant and that there were no medical reasons for leaving work at that time;
> 3. .... once you gave up work in October 1989 you felt that you could not afford to pay your rent but you did not apply for Housing Benefit — you had already decided to leave your accommodation as you and your husband were of the opinion that it would not be big enough when baby was born;
> 4. that after leaving your accommodation you moved in temporarily with friends who were also living in a double bed-sit and you were ejected from there due to problems caused by the overcrowding which ensued;
> 5. that you had no reasonable expectation of obtaining alternative permanent accommodation after leaving 58, Chepstow Road, W.2;
> 6. that you do not have any material support from friends or family in this Borough;
> 7. that there is a chronic shortage of housing available to the Council and to private individuals of limited means in Tower Hamlets.
> Weighing those matters, I arrive at the conclusion that it would have been reasonable for you and your husband to continue to occupy the accommodation at 58, Chepstow Road, W.2 which you vacated in October 1989. In consequence of these factors I have concluded that by leaving the accommodation at 58, Chepstow Road, W.2 without taking any reasonable steps to secure your own alternative permanent accommodation you have rendered yourself and your family intentionally homeless."

The housing persons officer who dealt with Mrs. Saber's application was Ms Tracy Johnstone who has sworn an affidavit which is before the court. In it she says:

> "I have seen Mrs. Saber's affidavit. I cannot comment on a good deal of it

because everything which I know is in the interview notes. What I would like to point out is a number of factors which emerged from my investigation and which were taken into account when the decision was made that she was intentionally homeless:
(a) when she left her settled accommodation it was not overcrowded, though she expected it to be when her baby was born;
(b) she left it when she was 4 months pregnant;
(c) her reasons for leaving were the expected overcrowding and her desire to give up work, whereupon the rent could not be paid;
(d) notwithstanding that second reason being advanced, her husband was working, and the rent was only £70 including bills. She was entitled to claim state benefits. Further, the rent had been paid up to October 20, 1989, but she left on October 9 or 10, 1989;
(e) the choice to give up work was hers and was not based on medical advice;
(f) an application for housing assistance of some form was made to Westminster. I had no reason to believe that the Sabers knew nothing of housing benefit. In my experience that benefit is universally known of by the applicants I interview, and I certainly do not regard it is a necessary subject of inquiry unless something puts me on notice that the particular applicant may be ignorant of it."

Mr. Westgate, for Mrs. Saber, submits that Tower Hamlets failed to make necessary inquiries about
(a) whether or not Mrs. Saber was aware of her entitlement to housing benefit;
(b) why they left 58 when they did;
(c) why Mrs. Saber gave up her job;
(d) the size of the room at 58.

I take first the question of Mrs. Saber's awareness or lack of it of her entitlement to housing benefit. Mrs. Saber deposes to the fact that she was not aware that she was entitled to housing benefit; nor, so far as she is aware, was her husband.

Mrs. Saber was asked nothing about housing benefit. Her husband was, but only whether it had been claimed. Mr. and Mrs. Saber separated in about November 1990; they may even have parted by the time the decision letter was sent on November 16, 1990, but the fact that this was to happen was unknown to Tower Hamlets when they had their conversation with Mr. Saber on August 24, 1990, and I see no criticism of Tower Hamlets in asking her husband rather than her.

The fact that the question was asked and the reference to its answer in the decision letter show its materiality. Section 60(3) shows that Mrs. Saber's awareness of her entitlement housing benefit was also material. So do paragraphs 2.16 and 2.17 of the Code of Guidance then current.

Paragraph 2.16 reads:

> "... If people can no longer afford to remain in their accommodation (*e.g.* because of a drop in income) and no further financial help is available, it should not be regarded as unreasonable for them to leave."

I pause to note that the question is not, of course, whether it was unreasonable to leave; it is a question of whether it would have been reasonable to stay. Paragraph 2.17 reads:

> "Examples of people who might be regarded as unaware of the relevant facts are those who get into rent arrears, being unaware that they are entitled to rent allowances or rebates under the Social Security and Housing Benefit Act 1982 or other welfare benefits ...."

The materiality of Mrs. Saber's awareness or lack of it is acknowledged by Ms Tracy Johnstone. She could have asked Mr. Saber why no claim for housing benefit was made, but it is accepted that she did not. In her affidavit she says that she did not ask because in her experience the existence of housing benefit is known to all the applicants she interviews. By August 1990 she had been employed as a homeless persons officer for two years and had been dealing with an average of 6-8 new applicants each week in that time.

For all her experience I have difficulty in accepting that there will not be a number of applicants for housing who do not have this knowledge. The existence of paragraph 2.17 in the Code tends to support this impression.

Mr. Westgate does not assert that housing authorities are under a duty to enquire of each applicant whether he is aware of his entitlement to housing benefit; he confines himself to submitting that there were circumstances here that should have put Tower Hamlets, and would have put any reasonable housing authority, on inquiry as to whether or not Mrs. Saber did have this knowledge. She was a French national with a limited knowledge of English — indeed none at all at the material time, October 1989. She was only 20 and had been in the country for less than a year. There was no evidence that she had ever received any state benefit, let alone housing benefit. She was married to a foreigner who had been admitted to the country temporarily as a student and had been here for less than two years. Her application for income support had been made about a week after they had left 58 and, for all that Tower Hamlets knew, may well have resulted from knowledge acquired in the previous few days.

Mr. Underwood, for Tower Hamlets, points to the fact that there is no evidence that, when Mr. Saber was asked if they had applied for housing benefit, he expressed ignorance of what it was. Even so I think that, when he said they had not applied for it, he should have been asked why not. Indeed I would have thought the question one that would and should automatically be asked of everyone who said that he had not applied.

I accept Mr. Westgate's submission and for the reasons he advances I am satisfied that no reasonable housing authority, having made the inquiries (and only the inquiries) which the respondent housing authority in fact made, could have been satisfied that Mrs. Saber knew of her entitlement to housing benefit.

Mr. Westgate submits that it must follow that no reasonable housing authority could, on this information, have been satisfied that Mrs. Saber was homeless intentionally. Mr. Underwood, for Tower Hamlets, submits that it does not follow. But I will first consider Mr. Westgate's submission that Tower Hamlets failed to make necessary inquiry about why Mr. and Mrs. Saber left 58 when they did and why Mrs. Saber gave up her job. I take them together since the two questions are linked.

On July 24, 1990, Mrs. Saber said that she could not work. She was not asked why. The only questions directed to this topic were asked of her husband on August 24, 1990. He had said that his wife "decided to give up work in October." He was then asked if this had been on the advice of her doctor. He said he "did not think she was advised but simply decided to herself." And in response to a further question he said she felt that as she was pregnant she would have to give up work.

Mr. Westgate submits that Mr. Saber's answer about medical advice left the question in doubt and that Tower Hamlets ought to have taken the matter further. They should have asked Mrs. Saber herself and, if she had said it was on medical advice or for medical considerations, they should have asked her general practitioner. This is a point that can only be judged from the written record of the

conversation; there is no means of knowing the tone of voice or the emphasis that Mr. Saber used. Even so I agree with Mr. Westgate. The question was about Mrs. Saber's health and her job. There may well be reasons why a husband does not know all that has passed between his wife and her general practitioner during pregnancy. The wording of paragraph 2 of the decision letter of November 16, 1990, show that a conclusion adverse to Mrs. Saber was reached: "you gave up work in October 1989, when you were four months pregnant and .... there were no medical reasons for leaving work at that time." Such a conclusion should not, in my judgment, have been reached without Mrs. Saber being given an opportunity to deal with the point; she was not.

I am, for these reasons, satisfied that no reasonable housing authority, having made the inquiries (and only the inquiries) which the respondent housing authority in fact made, could have been satisfied that there were no medical reasons for her leaving work when she did.

Again Mr. Westgate submits that it must follow that no reasonable housing authority could, on this information, have been satisfied that Mrs. Saber was homeless intentionally. Mr. Underwood, for Tower Hamlets, submits that it does not. Again this is an issue to which I will return.

On the information given to Tower Hamlets there were essentially two reasons for leaving 58. One was that, as Mrs. Saber had given up her job, they could not afford to stay. The other was that the room was too small. The landlord's reference to the size of the room had been in connection with the expected birth of the baby. Mr. Underwood, realistically, attaches little weight to this since, as he accepts, Mrs. Saber may have been reluctant to tell her landlord how strained financially they were. Mr. Saber's remarks about the size of the room were also related to the birth. Tower Hamlets would understandably have been unimpressed by this: the birth did not take place until almost five months after they had left. The only occasion when Mrs. Saber spoke of the size of the room was on July 24, 1990, when, in answer to the question why they left, she said, without reference to the baby, that it was too small; in the same answer she said that as she could not work the rent was too expensive. This was the reason that had initially been given.

In the decision letter of November 16, 1990, it was said:

> "... once you gave up work in October 1989 you felt that you could not afford to pay your rent but you did not apply for Housing Benefit — you had already decided to leave your accommodation as you and your husband were of the opinion that it would not be big enough when the baby was born."

The word "already" raises a question. There was no evidence to justify the conclusion that Mrs. Saber had decided to leave 58 *before* she gave up her job. So that cannot be what it meant; alternatively if that is what it meant it was a conclusion unsupported by evidence and one which no reasonable authority could have reached. The other possible interpretation is that Tower Hamlets found that, even if Mrs. Saber had known of her entitlement to housing benefit, she would have left in any event.

If this is what the paragraph means it is attacked by Mr. Westgate as a conclusion reached without necessary inquiry. Two reasons having been advanced, it was not open to Tower Hamlets to regard one as operative without further inquiry. What should have been asked, submits Mr. Westgate, was whether, if they had known that they would be entitled to housing benefit after Mrs. Saber left her job, they would nevertheless have left 58 in October 1989. In this connection he points to the pertinent distinction between an intention to leave at some, as yet undecided, time

prior to the birth and an intention to leave at once. If the former was the intention the date of departure may have been determined by Mrs. Saber's leaving her job. If the latter the date of the departure was unaffected by the question of housing benefit and indeed whether or not Mrs. Saber left her job.

Mr. Underwood submits that Mr. Westgate's approach to paragraph 3, and indeed to the reasoning in the decision letter as a whole is over analytical; its sophistication, he says, reveals its unreality; the seven paragraphs were reciting the history of the application; not everything mentioned was strictly relevant to the decision; take, for example, the recitation of the fact that the room at 58 was privately rented.

I do not accept that Mr. Westgate's submission can be dismissed so summarily. On the contrary I accept it. The conclusion that Mrs. Saber wanted more spacious accommodation was justifiable, but it did not follow from the material then before Tower Hamlets that this is why they left in October 1989 rather than nearer the expected date of birth. They left when she gave up her job, and on her husband's earnings alone they could not afford to stay. I do not think that on the material then before Tower Hamlets and without further inquiry it was reasonable to conclude that, even had they realized that housing benefit could be obtained, they would have left when they did. In saying this I have not overlooked the fact that the rent had been paid up to October 20, 1989, yet they left ten days earlier. The point is made in Ms Tracy Johnstone's affidavit but it was not taken in the decision letter. Neither Mrs. Saber nor her husband was ever asked to deal with it.

The fact that I reject the conclusion that they would have left 58 when they did in any event as one which no reasonable housing authority could have reached on the material before it means that it cannot follow, as Mr. Underwood submits, that any error in failing to ask whether Mrs. Saber knew of her entitlement to housing benefit was immaterial and that Tower Hamlets could nevertheless properly have held her to have been intentionally homeless. Similarly, my rejection of the conclusion means that it cannot follow, as Mr. Underwood also submits, that any error in failing to take further the question of why Mrs. Saber gave up her job was immaterial and that Tower Hamlets could nevertheless have held her to have been intentionally homeless.

Mr. Westgate also submitted that in failing to visit the room at 58, Tower Hamlets failed to make a further necessary inquiry without which they could not properly have found that it would have been reasonable for Mr. and Mrs. Saber to stay there. I disagree; they had a full description from Mr. Saber and would have known that there were many other people in Tower Hamlets who were accommodated even less satisfactorily.

In summary, however, I find the following reasons to quash the decision of November 16, 1990:

On the material before Tower Hamlets and without further necessary inquiry the following conclusions could not properly have been drawn by a reasonable housing authority:

(1) that there were no medical reasons for Mrs. Saber leaving work in October 1989;
(2) that her failure to apply for housing benefit was to be held against her;
(3) that she had already decided to leave 58 before she gave up her job [assuming that this is implied by the word "already"];
(4) that she would have left 58 in October 1989 even if she had known of her entitlement to housing benefit [assuming this is implied by the word "already"];
(5) that she was intentionally homeless.

In circumstances the later decisions not to reconsider Mrs. Saber's application cease to have any importance and I shall say only a little about the submissions

relating to them.

It is not the uncommon, after a decision has been reached that an applicant for housing under Part III of the Act became intentionally homeless, for a request to be made to reconsider the decision in the light of additional material or argument. Such a request is not the equivalent of a reapplication and does not cast on the housing authority the duties imposed when an application under Part III is made. It is otherwise if there has meanwhile been a material change of circumstances. See *R.* v. *Ealing London Borough Council ex p. McBain* [1985] 1 W.L.R. 1351 C.A. The housing authority has, however, a discretion to accede to the request. A decision not to reconsider the original decision is clearly reviewable on ordinary *Wednesbury* principles. I do not accept that some more stringent criteria (referred to in argument as super *Wednesbury*) can apply. Naturally the court will have well in mind both the considerations referred to by Lord Brightman in *ex p. Puhlhofer* and the fact that the housing authority will have known that, if its original decision was reached unlawfully, judicial review will lie. It may well therefore be that a challenge to a decision not to reconsider will infrequently succeed. Each case will of course fall to be considered on its own facts.

In the present case on November 27, 1990, the Moroccan Information and Advice Centre wrote on Mrs. Saber's behalf to make such a request. The strongest point which, in my view, it made was to assert that after becoming pregnant and before leaving her job in October 1989 Mrs. Saber had suffered ill-health and had been twice in hospital. Some support for what was said was enclosed in the form of two short letters — one from one of the hospitals and the other from her general practitioner or one of his or her partners. It was also said that she had not been aware that she might have claimed housing benefit. Other assertions were made which I do not think it necessary to particularise.

On December 20, 1990, Tower Hamlets replied saying that very careful and thoughtful consideration had been given to the contents of the letter of November 27, 1990. It also asserted that the interview notes (copies of which were enclosed) showed that each of the points raised had been adequately covered in interview with Mrs. Saber. It concluded that the writer saw no reason to review the earlier decision.

My reading of the interview notes leads me to conclude that the vital assertions made in the letter of November 27, 1990, were not covered in interview with Mrs. Saber. She was not herself asked about her health or why she gave up her job or her knowledge of entitlement to housing benefit. I would, if necessary, therefore have held that the decision of December 20, 1990, not to reconsider was reached unlawfully; immaterial factors were taken into account; material factors were not.

The further letter written on Mrs. Saber's behalf by solicitors on January 4, 1991, added little, if anything, further and I say nothing about the response dated January 8, 1991.

In the result the decision that Mrs. Saber became homeless intentionally is quashed and must be reconsidered in the light of all the information now in the possession of Tower Hamlets.