Neutral Citation Number: [2021] EWCA Civ 396

Case No: B5/2019/1363/CCRTF

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT OXFORD
HER HONOUR JUDGE MELISSA CLARKE
E00MK841/E00MK854

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 March 2021

Before :

LADY JUSTICE MACUR
LORD JUSTICE ARNOLD
and
LORD JUSTICE STUART-SMITH

- -

Between :

AUDREY NGNOGUEM	**Appellant**
- and -	
MILTON KEYNES COUNCIL	**Respondent**

- -

Ms Lara Simak (instructed by **Charles Hill Solicitors**) for the **Appellant**
Mr Iain Colville (instructed by **Milton Keynes Council Legal Department**) for the **Respondent**

- -

Hearing date: 11 March 2021

- -

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Approved Judgment

Lord Justice Stuart-Smith :

1. This appeal raises two related points of law. First, where an applicant who is dissatisfied with a decision made pursuant to s. 184 of the Housing Act 1996 ["a s. 184 Decision"] requests a review of that decision pursuant to s. 202 of the Act, what is the legal status of the requested decision ["a Review Decision"] if the authority issues and notifies the applicant of the Review Decision outside the time specified by applicable regulations? Second, where a Review Decision has been issued and notified to the applicant late, is it open to the applicant to commence an appeal to the County Court against the original s. 184 Decision relying upon the terms of s. 204(1)(b) of the Housing Act 1996 ["the Act"]?

2. In the present case, HHJ Melissa Clarke was confronted by two appeals by the Appellant to the County Court – one against the Respondent's original s. 184 Decision in her case and the other against a late-issued Review Decision. She held that the Review Decision, despite being issued late, was a decision that "overtook [the s. 184 Decision] and became the decision in relation to which the Appellant has a right of appeal." Having reached that conclusion, she dismissed the Appellant's appeal against the s. 184 Decision without further consideration of the merits. She went on to consider the Appellant's appeal against the Review Decision on the merits and dismissed it.

3. There is no appeal against the Judge's dismissal of the appeal against the Review Decision. The Appellant appeals against the Judge's decision to dismiss the appeal against the s. 184 Decision without consideration of the merits.

4. In my judgment, HHJ Melissa Clarke was right and, if my Lady and my Lord agree, the Appellant's appeal to this Court should be dismissed for the reasons I set out below.

The factual background

5. From about September 2017 the Appellant and her young daughter were living in a refuge in Merton, having fled their family home because of domestic violence. In January 2018 she made an application for assistance to the Respondent. On 26 January 2018 her Refuge Support Worker wrote to the Respondent on her behalf to support her application. The letter explained that she had decided to approach the Respondent so that she would be far from her ex-partner and had chosen Milton Keynes because she felt she would be safe there.

6. On 10 April 2018 the Respondent notified the Appellant of the s. 184 Decision that is in issue in the present appeal. The Appellant's application was successful: the Respondent accepted that it owed her a duty to make sure that she had suitable accommodation. Even before the s. 184 Decision was made, the Appellant had formed the view that she would prefer to return to live permanently in London provided it was at a suitable distance from her ex-partner. However, her application to the Respondent was not withdrawn before the date of the s. 184 Decision.

7. On 10 September 2018 the Appellant requested a review of the s. 184 Decision. Her request was months out of time but was accepted by the Respondent. Under the Regulations to which I shall refer below, the Respondent's Review Decision should

have been issued and notified by 5 November 2018. In the event, the Review Decision was issued on 9 November 2018, four days late. The Review Decision upheld the s. 184 Decision.

8. On 20 November 2018 the Appellant, who then had the benefit of representation by solicitors, issued proceedings in the Oxford County Court to challenge the s. 184 Decision. Nine days later, on 29 November 2018, she issued separate proceedings challenging the Review Decision. It was said that "this appeal is brought without prejudice to the Appellant's contention that the review was completed out of time and therefore of no effect." On 24 May 2019 both appeals came before HHJ Melissa Clarke.

Stanley v Welwyn Hatfield Borough Council

9. This appeal was originally listed to be heard at the same time as *Stanley v Welwyn Hatfield Borough Council* [2020] EWCA Civ 1458, which raised similar or identical issues. The leading judgment in *Stanley* was given by McCombe LJ, with whom Peter Jackson LJ and Roberts J agreed. The first issue considered by the Court was whether, on the facts of that case, the applicant and the reviewer had agreed to extend time for the issuing of the Review Decision. The Court held that they had, which was sufficient to dispose of the appeal. However, as the point had been argued, the Court went on to consider the effect of bringing two appeals. In the course of his judgment, McCombe LJ considered information about a number of County Court decisions including (at [45]-[51]) the present case and HHJ Melissa Clarke's decision. McCombe LJ said, at [51] that HHJ Melissa Clarke "was correct to say in [the present case] that, as at the date of the review decision, that decision replaced the original decision of the authority and there would be no legitimate interest in doing other than addressing such legal challenge as there might be to what was decided on the review."

10. The reasoned judgment of the Court in *Stanley* is obviously to be taken into account but is not binding upon us because (a) the discussion of the second issue was *obiter* in the light of the Court's dispositive finding on the first, and (b) the present Appellant and Respondent were not before the Court and therefore are not bound by what was said there. For these reasons, I have considered the issue afresh and independently before coming to the conclusion that I agree with McCombe LJ's approach to the issue and his conclusions on the facts of the present case.

The legal framework

11. The duties of local housing authorities towards applicants seeking assistance in securing accommodation are set out in Part 7 of the Housing Act 1996 ["the Act"]. S. 202(1)(a) gives an applicant the right to request a review of any decision of a local housing authority about their eligibility for assistance. Such a request must be made before the end of the period of 21 days beginning with the day on which the applicant is notified of the authority's s.184 Decision or such longer period as the authority may in writing allow: s. 202(3). On a request being duly made to them, the authority concerned "shall review their decision": s. 202(4).

12. S. 203 of the Act deals with the procedure on a review, including as follows:

> "(3) The authority … concerned shall notify the applicant of the decision on the review.
>
> (4) If the decision is—
>
> (a) to confirm the original decision on any issue against the interests of the applicant, or
>
> …
>
> they shall also notify him of the reasons for the decision.
>
> (5) In any case they shall inform the applicant of his right to appeal to the county court on a point of law, and of the period within which such an appeal must be made (see section 204).
>
> (6) Notice of the decision shall not be treated as given unless and until subsection (5), and where applicable subsection (4), is complied with.
>
> (7) Provision may be made by regulations as to the period within which the review must be carried out and notice given of the decision.
>
> (8) 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 if it is made available at the authority's office for a reasonable period for collection by him or on his behalf."

13. As contemplated by s. 203(7), Regulation 9(1)(b)(i) of the Homelessness (Review Procedure etc) Regulations 2018 provides that in a case such as the present, "notice of the decision on a review under section 203(3) must be given to [the applicant] …[within][1] eight weeks beginning with the day on which the request for the review is made … or within such longer period as [the applicant] and the reviewer may agree in writing." In the present case no question of agreeing a longer period arises and it is common ground that the regulation required the Review Decision to be given to the Appellant by 5 November 2018.

14. S. 204 is the section at the heart of the present appeal. It provides:

> "(1) If an applicant who has requested a review under section 202—
>
> (a) is dissatisfied with the decision on the review, or

[1] The word "within" is not present in the regulation: but the sense is clear.

> (b) is not notified of the decision on the review within the time prescribed under section 203,
>
> he may appeal to the county court on any point of law arising from the decision or, as the case may be, the original decision.
>
> (2) An appeal must be brought within 21 days of his being notified of the decision or, as the case may be, of the date on which he should have been notified of a decision on review.
>
> …
>
> (3) On appeal the court may make such order confirming, quashing or varying the decision as it thinks fit."

15. Four points may immediately be noted about these statutory provisions. First, once an applicant requests a review, the obligation upon the authority to review their decision is mandatory. Second, the regulation establishes the basic period of eight weeks within which the review must be carried out and notice given of the Review Decision. That period can be extended by agreement in writing.

16. Third, s. 204(1) and (2) deal with two possible outcomes compendiously. The effect of the subsections is:

    i) If an applicant who has requested a review under s. 202 is dissatisfied with the Review Decision, they may appeal to the County Court on any point of law arising from the Review Decision within 21 days of being notified of it: s. 204(1)(a) and s. 204(2); and

    ii) If an applicant who has requested a review under section 202 is not notified of the decision on the review within the time prescribed under s. 203, they may appeal to the County Court on a point of law arising from the original s. 184 Decision within 21 days of the date on which they should have been notified of the requested Review Decision: s. 204(1)(b) and s. 204(2);.

17. Fourth, the legislation is silent on the effect (or otherwise) of a Review Decision that is not duly notified to the applicant within the required period but is notified late.

The judgment of HHJ Melissa Clarke

18. It was submitted to the Judge below that a Review Decision that was notified late was of no effect unless it was "validated." The Judge (at [26]) accepted the Respondent's submission that there is nothing in the statutory scheme to suggest that, in the absence of "validation", such a decision is no more than a "purported" decision and is of no effect. Distinguishing s. 203(5), which provides that notice of a Review Decision "shall not be treated as given unless and until" statutory prerequisites are satisfied, she observed that "if Parliament had, similarly, wished to treat an out-of-time review decision as 'not being given unless and until' an Appellant had validated it, it could have done so. It has not." She then (at [27]) reminded herself that the requirement for a local authority to carry out a review once a review request is "duly made" is mandatory pursuant to s. 202(4), as is the requirement to notify the appellant of the Review Decision pursuant to s. 203(5), and said that "There is nothing in the statute

that provides that these mandatory requirements cease because the statutory time period in which the review should be carried out is exceeded."

19. The Judge's reasons continued:

> "28. Of course, I accept that the effect of section 204(1)(b) is that if a section 202 review has not been completed within time, the applicant may appeal the original section 184 decision to the county court. Once that has been filed, it is an appeal proceeding in the county court like any other, and the court will determine it unless the appellant withdraws it or settles it by reaching a compromise with the local authority. This is so even though it may be that an appeal may become academic, because a review decision is made out of time after the appeal of the s184 decision has been made. Whether or not the appeal becomes academic will depend on whether there is any additional benefit to the appellant in pursuing the appeal (per *Deugi*).
>
> 29 If an appellant chooses to withdraw or compromise a section 184 appeal because a later out of time review decision is made, then she will also have the right to appeal that out of time review decision, pursuant to section 204, within the statutory time limits. However I do not consider that 'validates' the decision. In my judgment that out of time review decision is a decision whether or not the s184 appeal continues or is withdrawn.
>
> 30. However, all of this envisages that the Section 184 Appeal has been filed before the out of time review decision has been made, … .
>
> 31. Chadwick LJ considered these circumstances in *Bellamy v Hounslow*. The facts are that the local authority issued a s184 decision on 4 August 2004 and a s202 review was completed in time on 14 September 2004. The appellant appealed the review decision. Whilst the appeal was proceeding, but before it was heard, the respondent withdrew the review decision and carried out a further review, which was completed out of time on 15 November 2004. The appellant appealed both the s184 decision and the out of time review decision. The judge at first instance treated the appeal as one only from the out of time review decision. Chadwick LJ stated at para 55:
>
> > "For my part, I doubt whether s. 204 of the 1996 Act confers a right of appeal from the original decision in circumstances where there has been a review decision under s.202 of that Act. The reference in s. 204(1) to an appeal from the original decision - in the context of the phrase *"an appeal... arising from the decision [on the review] or, as the case may be, the original decision"* - is, as it seems to me, included in order

> to make it clear that there can be an appeal from the original decision in the case (for which para.(b) of that subsection provides) where the decision on the appeal has not been notified within the period prescribed under s.203 of the Act. Be that as it may, when the appeal came before H.H. Judge Marcus Edwards, on September 6, 2005, he treated it (correctly, as I think) as an appeal from the review decision of November 15, 2004".
>
> 32. … I have already set out that I do not see any statutory basis for the concept of an Appellant validating an out of time review decision before it becomes a decision, and there is nothing in the judgment of Chadwick LJ that suggests any such concept was before him.
>
> 33. It seems to me, as Mr Colville submits, that Chadwick LJ is endorsing the first instance judge's decision that there can only be one decision, namely the review decision, even though it was issued out of time.
>
> 34. For those reasons I agree with Mr Colville that on the facts of this case, the out of time Review Decision, properly notified to and received by the Appellant, overtook the Initial Decision and became the decision in relation to which the Appellant has a right of appeal. Accordingly, I will not go on to consider whether the s184 Appeal was rendered academic by the Review Decision, since it should never have been brought in the first place, having been superseded by the Review Decision albeit that it was notified out of time. I dismiss the s184 Appeal, and will go on to consider the s202 Appeal."

The decision in *Stanley*

20. In *Stanley* the appellant submitted that a late Review Decision was no decision at all. McCombe LJ rejected that submission:

> "36. … The Act requires that, once a request for review has been made, the authority shall review its decision: s. 202(4) and once made it must be notified to the applicant: s. 203(3). Section 203(4) envisages that if the earlier decision is confirmed against the applicant's interest, the reasons for it must be given. Nothing is said in the Act to suggest that the obligation to review lapses upon expiry of the time, under the regulations, within which it is required to be provided. If it is late, the applicant has the remedy of appealing the original decision, instead of a cumbersome alternative of applying to the High Court on judicial review for an order requiring the decision to be made and notified.
>
> 37. It would be surprising if Parliament had intended that, in a case such as the present, if a review decision is made, the

> parties and the court should ignore it, and then go through an argument as to the adequacy of the original decision and potentially start the whole procedure all over again. This seems a strange result in a case in which the review decision is in the applicant's hands even before he/she begins an appeal against the original decision. In all the time since the passing of the Act, it does not seem to have been said, in any fully reported decision, that a late review decision is no decision at all - which is also surprising, if that were so."

21. After reviewing contrasting decisions that had been made by different County Court Judges, including the present case McCombe LJ continued:

> "49. As I have said, the Act envisages that a review once requested must be carried out and the decision must be notified to the applicant. There is nothing to suggest that a review carried out pursuant to this obligation is of no effect. Nor is there anything in *Bellamy's* case (supra) … to suggest that the review decision under appeal was a nullity, … . Therefore, I do not see the bringing of the appeal against the s.202 decision in this case as "validating" an otherwise invalid decision.
>
> 50.. In the passage quoted above from the judgment of Chadwick LJ in *Bellamy* , the learned Lord Justice expressed the view that the County Court judge had been correct to treat the appeal before him as being against the later review decision of 15 November 2004; it was a route to dealing with the case on its merits and on an up-to-date basis. This and the wording of s.204, …, indicate that once the authority fails to notify a review decision in time, but produces a late review decision, the applicant has a choice of an appeal against the original decision or the review decision but not both. If he/she does appeal against both, as Judge Clarke said in *Ngnoguem*, the first appeal will remain an appeal before the County Court, but the review decision will not be a nullity; unless there is some distinct factor giving rise to a legitimate interest in pursuing a quashing of the first decision (*Deugi*), the court (as in *Bellamy*) will treat the composite case as an appeal against the review.
>
> 51. I also think that Judge Clarke was correct to say in *Ngnoguem* that, as at the date of the review decision, that decision replaced the original decision of the authority and there would be no legitimate interest in doing other than addressing such legal challenge as there might be to what was decided on the review.
>
> 52. I do not see that seeking the quashing of the original decision simply in the speculative hope of a more favourable decision from a different officer would be legitimate in the relevant sense. Nor would the mere hope of fresh evidence be

> of use, provided the reviewing officer had had all the material evidence. A desire to preserve the interim housing duty under s.188 would seem to be simply an attempt to play the system which is not what the public housing system is for. …"

The submissions on the present appeal

22. On this appeal the Appellant is represented by Ms Lara Simak, who did not appear in the Court below and did not draft the Grounds of Appeal for which permission has been given. Her skeleton argument went well beyond the limited scope of the appeal for which permission had been given, as she recognised. In these circumstances I confine myself to the defined scope of this appeal and Ms Simak's submissions that are relevant to that defined scope.

23. Ms Simak submits that s. 204(1)(b) of the Act gives an applicant who has requested a review decision a right to appeal to the County Court against the s. 184 Decision if the Review Decision is not forthcoming within the time allowed; and that there is nothing in the legislation that removes the right of appeal if a Review Decision is issued and notified late. She submits that, since the right of appeal under s. 204(1)(b) is not removed by the legislature where a late Review Decision is issued and notified, an appellant's established right to appeal is not to be curtailed and an appellant may therefore pursue the appeal against the s. 184 Decision to judgment. She submits that to hold otherwise would cause uncertainty in litigation and would be contrary to the Overriding Objective, whether or not the "validation" argument is correct. She does not support the "validation" argument and accepts that a late Review Decision is not merely a "purported" decision but is an effective one. But she submits that, giving s. 204 of the Act its plain meaning leads to the conclusion that, whilst a delay in issuing and notifying the Review Decision does not render it invalid, the Appellant would have a choice whether to appeal under s. 204(1)(a) or 204(1)(b).

24. As a separate submission Ms Simak submits that, even if in a normal case (of which she says that *Stanley* is one) the continuation of an appeal against the s. 184 Decision would be rendered academic by the provision of a late Review Decision, this is not a normal case because a successful appeal against the s. 184 Decision could be of enduring benefit to her in the sense identified in *Deugi v Tower Hamlets LBC* [2006] EWCA Civ 159. She identifies four factors which she says support her submission. They are:

    i) If successful the Appellant would have achieved a further s. 184 Decision and a possible further review, and would be given a further opportunity to draw attention of the decision maker/reviewer to the prolonged correspondence pre-dating the review indicating that it was never the Appellant's choice to reside in Milton Keynes;

    ii) Pending those reviews the Appellant would continue to enjoy secure accommodation provided by the Respondent under section 188(1) of the Act;

    iii) The s. 184 Decision was less robust and open to challenge than the review decision;

iv) With reference to the facts of the Appellant's particular case she had good prospects of demonstrating compellingly on review of the s. 184 Decision that she had no local connection to the area - therefore obtaining the relief that she has been seeking from the outset of these proceedings.

25. On this material Ms Simak submits that, in circumstances where the Appellant wishes to challenge the finding that she has a local connection with Milton Keynes as opposed to London Boroughs, there is an enduring benefit to her in being able to challenge the original s. 184 Decision rather than the Review Decision.

26. Mr Colville, who has appeared before us and appeared for the Respondent in the Court below, opposes the appeal for the reasons given by the Judge. He submits that neither s. 204(1)(b) nor the time limit imposed by the 1999 Regulations debars an authority from notifying a review out of time. There is nothing to remove the mandatory requirement that, if requested by an applicant to review its original s. 184 Decision, the authority must do so. The right of appeal where the Review Decision is not provided within time is a convenient statutory alternative to Judicial Review proceedings that would seek to compel the authority to provide its Review Decision, albeit out of time. Just as the High Court in Judicial Review proceedings could not debar an authority from providing its Review Decision out of time so, submits Mr Colville, there is nothing in the legislative framework to debar the authority from doing so. He distinguishes *Deugi* (supra) as a decision on its facts and submits that the factors relied upon by the Appellant in this case have no substance.

27. Mr Colville's submission is that a late Review Decision is still a decision: it does not need to be "validated" to be effective. As such it supersedes the original s. 184 Decision and renders an attack on it academic other than in the exceptional case where enduring benefit can be shown. He distinguishes between two different situations that could arise where a Review Decision has been requested but is not provided within the specified time:

i) If the applicant issues an appeal in the County Court against the s. 184 Decision before a Review Decision has been received, that is a proper exercise of the right of appeal provided by s. 204(1)(b). However, if a (late) Review Decision is subsequently provided, it becomes the operative decision and the appeal against the s. 184 Decision becomes academic and should be compromised, stayed or dismissed; but

ii) If the applicant receives the (late) Review Decision before proceedings have been issued in the County Court then, as a matter of statutory interpretation, the right to appeal against the s. 184 Decision is lost and the applicant is confined to their remedy under s. 204(1)(a) i.e. to challenge the Review Decision.

Discussion

28. It is common ground that a Review Decision that is notified in time supersedes the original s. 184 Decision. I would also accept the Appellant's submission that, when requested and required to review its s. 184 Decision, an authority is likely to devote significant resources to that exercise and may well produce a Review Decision that is more substantial than the s. 184 Decision it supersedes, in the sense that the

application may be more fully investigated, more evidence gathered, and more detailed reasoning applied to the Review Decision than was the case with the earlier s. 184 Decision. The fact that it is likely to be more substantial is itself a justification for treating it as superseding the less substantial s. 184 decision.

29. HHJ Clarke rejected the submission that was made to her that a late Review Decision was only a "purported" decision unless it was "validated" by being accepted by the applicant. The parties to this appeal agree that a Review Decision that is served and notified late is an effective decision, as HHJ Clarke held. In my judgment, HHJ Clarke's decision and the agreement of the parties to this appeal on this point are correct. I see nothing in the legislative structure to support a conclusion that a Review Decision that is issued late (by whatever margin) is of no effect. To the contrary, the obligation upon an authority to provide a Review Decision when duly requested to do so is an obligation that subsists, not least because (a) there is no reason to restrict or terminate the applicant's statutory entitlement to receive the Review Decision they have requested; and (b) as identified above, a Review Decision may well prove to be a better decision (in the sense of being better constructed and more robust) than the s. 184 Decision it reviews. Furthermore, I am not persuaded that there is any legal principle or process by which, if a late Review Decision would otherwise be of no effect, it could be "validated" on the applicant's say so. The effect of such a process would be that, however slight the delay, the decision whether to treat it as having substance would be entirely in the hands of the applicant. This, as McCombe LJ pointed out, smacks of gaming the system, which is no part of the legislative purpose. To my mind, it is also inappropriate when it is borne in mind that the authority has been obliged by statute to commit resources to a Review Decision because the applicant asked them to do so. It would be perverse, in my judgment, to hold that a Review Decision, which the authority is under a mandatory obligation to carry out at the request of the applicant, is of no effect simply because it is not completed in the required time by whatever margin. Equally perverse would be an interpretation which gave to the applicant who has requested the Review Decision the right to determine at their will whether to treat the Review Decision as having effect or not.

30. Once one accepts, as I do, that a late Review Decision is not merely a "purported" decision but a real one, its purpose and effect is (as it would have been if issued and notified in time) that it supersedes the original s. 184 Decision and becomes the subsisting decision of the authority that has issued it. In other words, there can only be one effective decision of the authority at any time. This approach is consistent with the passage from *Bellamy v Hounslow LBC* [2006] EWCA Civ 535 cited by HHJ Clarke at [31] of her judgment.

31. Ms Simak's central point is that s. 204(1)(b) expressly provides for a right of appeal to the County Court on any point of law arising out of the s. 184 Decision where the applicant is not notified of the requested Review Decision within the prescribed time. I agree that there is no express provision that curtails that right on the late provision of the Review Decision; but I am persuaded that the structure of s. 204 supports the Respondent's submission as a matter of statutory construction. As I have outlined, s. 204 treats two different situations compendiously. The words "as the case may be" indicate that there is a binary choice to be made, as to whether to challenge a Review Decision if the applicant is dissatisfied with it or to challenge the s. 184 Decision if the applicant is not notified of the Review Decision within the prescribed time. Since

even a late Review Notice is, from the date of its notification, the effective decision on the applicant's case, the words of s. 204(1)(a) and "as the case may be" indicate that once a Review Decision has been issued, that is the proper target for any challenge and not the now-superseded s. 184 decision.

32. Where an applicant has already issued a challenge to the s. 184 Decision relying upon s. 204(1)(b) before a Review Decision is issued, the effect of the late Review Decision is to render those proceedings academic save in exceptional circumstances. Both parties should recognise that the appeal has become academic because the authority has not complied with its obligation to produce the Review Decision in time but has done so later. The proceedings should normally be compromised, stayed or dismissed on terms as appropriate. The position would be similar to that which obtains where a public body withdraws a decision in response to Judicial Review proceedings. Questions of costs sometimes loom large, but a principled approach will readily identify who is responsible for the (properly) issued proceedings having become academic.

33. Where, as here, the applicant receives the Review Decision before they have issued proceedings under s. 204(1)(a), the position is different. Quite apart from the statutory construction to which I have referred above, there can be no justification for issuing a challenge under that sub-section as the proceedings would be academic from the moment that they are issued. By whichever route the conclusion is reached, HHJ Clarke was correct to say that the Appellant's appeal against the s. 184 Decision "should never have been brought in the first place, having been superseded by the Review Decision albeit that it was notified out of time."

34. I do not accept that this gives rise to litigation uncertainty or is contrary to the Overriding Objective. What would lead to litigation uncertainty would be to hold that there may be two effective decisions of the authority at any one time, since there would be scope for unending argument about which of two decisions should be the proper target of a challenge, as the present case shows. If there is only one effective decision, the position is straightforward. In the absence of a Review Decision it is the s. 184 Decision that is the effective decision which needs to be challenged. Once there is a Review Decision, that becomes the effective decision of the authority and the appropriate target to be challenged. If the applicant does not like the Review Decision, they then have a right to appeal against that decision on a point of law within 21 days.

35. None of this leads to unacceptable litigation uncertainty or contravenes the Overriding Objective. It will be clear in the overwhelming majority of cases whether a County Court challenge to the s. 184 Decision has become academic and, if so, what course should be followed. It is, in my judgment, both reasonably certain and just that the applicant who has required that a Review Decision should be produced should then direct their attention to that decision once it is notified rather than persisting with a challenge to the s. 184 Decision it was intended to supersede.

36. I have referred above to McCombe LJ's suggestion of "gaming" the system. His observation applies to both parties. It would be quite wrong for an authority to seek to gain some advantage by manipulating the time when it notifies a Review Decision. Homelessness affects the most vulnerable in society and engages the limited resources of authorities. Anything that smacks of legal gaming is to be severely deprecated.

37. The approach I have suggested leaves open the possibility that there may be an exceptional case where there is an enduring benefit to the applicant in maintaining a challenge to the s. 184 decision notwithstanding the existence of a Review Decision. I turn to that next. Subject to that possibility, however, I consider that HHJ Clarke was right to dismiss the Appellant's proceedings that challenged the s. 184 Decision in this case for the reasons I have outlined above, which are essentially the reasons she gave.

38. Ms Simak's attempt to distinguish the present case in such a way as to take it outside the general principles I have outlined were without substance or merit. None of the features on which she relied give rise to a principled reason to treat this case differently from the norm. Furthermore, in the course of her reasoned dismissal of the applicant's challenge to the Review Decision, HHJ Clarke specifically considered the Respondent's s. 184 finding of a local connection on the basis of special circumstances and rejected the criticisms that were made of it. Accordingly, Ms Simak's submissions fail both on principle and on the facts.

39. It follows from what I have said that I am in respectful agreement with the obiter observations of McCombe LJ in *Stanley*, save that I do not accept that (in the absence of special circumstances) where a Review Decision has been notified there is any justification for pursuing (or continuing to pursue) an appeal to the County Court against the original s. 184 Decision.

Conclusions

40. For the reasons set out above, I conclude that:

    i) Where an applicant is dissatisfied with a s. 184 Decision, their primary remedy is to request a Review Decision;

    ii) If such a request is duly made, the authority is under a mandatory obligation to review its s. 184 Decision and to notify the applicant of its decision in the light of that Review;

    iii) Where the authority provides a Review Decision, it becomes the authority's sole effective and operative decision whether the Review Decision is provided within time (as specified in the regulations or as extended by agreement in writing) or is provided late;

    iv) Where the applicant has requested a review and is not notified of the Review Decision within time then, provided a (late) Review Decision has not been notified before the appeal is brought, the applicant has 21 days from the date on which it should have been notified to bring an appeal to the County Court on any point of law arising from the original s. 184 Decision. If the authority provides a Review Decision after such an appeal to the County Court has been commenced, it will render the appeal academic save in exceptional circumstances;

    v) Where the applicant has requested a review and is not notified of the Review Decision within time *but* a (late) Review Decision has been provided before

the appeal is brought, the applicant's remedy is to appeal to the County Court on any point of law arising from the Review Decision (if so advised);

vi) An appeal to the County Court against the s. 184 Decision should not be commenced after notification of a Review Decision, whether that notification was in time or late.

41. For these reasons, which are essentially the same as the reasons given by the Judge below, I would dismiss this appeal.

Lord Justice Arnold

42. I agree.

Lady Justice Macur

43. I also agree.