OUTER HOUSE, COURT OF SESSION

[2021] CSOH 20

P287/20

OPINION OF LORD BRAILSFORD

In the petition of

ABDELWAHAB-KABA DAFAALLA

Petitioner

for

Judicial Review of a refusal by City of Edinburgh Council to perform statutory duties under part ii of the Housing (Scotland) Act 1987

Petitioner: Stalker; Balfour + Manson LLP
Respondent: Anderson; City of Edinburgh Council

19 February 2021

[1] The petitioner is of no fixed abode and was designed care of Shelter Scottish Housing Law Service. The respondents are a local authority. There was no issue in relation to jurisdiction or the petitioner's standing.

[2] The petitioner seeks declarator that the respondent has failed to perform statutory duties under sections 28 to 31 of the Housing (Scotland) Act 1987 ("the 1987 Act") and an order ordaining the respondents to perform their duties under the said sections of the 1987 Act in respect of an application by the petitioner for accommodation and assistance.

[3] The parties were at one in stating that the issue in the petition was whether the respondent's refusal to accept an application for accommodation from the petitioner made under section 28 of the Act of 1987 was unlawful.

Factual background

[4] The facts giving rise to the present petition and which form the background thereto are substantially agreed. These may be summarised as follows. The petitioner is a 64 year old refugee from Sudan granted indefinite leave to remain in the United Kingdom in 2014. His family joined him in the United Kingdom in November 2015. That family consists of his wife and six children, four of whom are under the age of 16 years. The petitioner suffers from Type 2 diabetes, functional dyspepsia and osteoarthritis in the left knee. He receives medical treatment from his general practitioner and the Department of Orthopaedics at Edinburgh Royal Infirmary. In addition to these conditions the petitioner avers that he suffers from depression and anxiety for which conditions he states that he is prescribed medication. These latter conditions are not the subject of admission by the respondents.

[5] In May 2015 the petitioner made an application to the respondent for accommodation and assistance under part ii of the 1987 Act. That application was accepted by the respondents who carried out investigations under section 28 of the 1987 Act. In November 2015 the respondents provided temporary accommodation to the petitioner under section 29 at 7/6 Wester Hailes Park, Edinburgh. The petitioner was then accommodated at the said address with his family, these being persons who might reasonably be expected to reside with him under section 41 of the 1987 Act.

[6] During the course of 2016 the respondents made a decision in relation to the petitioner's application that he was homeless and not intentionally homeless. In these

circumstances the respondents became subject to a duty under section 31(2) of the 1987 Act to secure permanent accommodation for the petitioner and his family. The nature and extent of that duty were not the subject of agreement. In 2016 the respondent made two offers of accommodation to the petitioner both of which were refused. In October 2016 the respondent decided that it had discharged its duties under the 1987 Act. The petitioner sought a review of that decision under the provisions of section 35(A) of the 1987 Act. On 29 December 2016 the respondents confirmed its decision. The petitioner did not challenge that decision by way of judicial review.

[7] Subsequently the respondent raised eviction proceedings in the sheriff court in order to recover possession of 7/6 Wester Hailes Park. They obtained an order for recovery of possession on 15 March 2019. Thereafter, following representations made by agents then acting on behalf of the petitioner, the respondents agreed to make another offer of permanent accommodation to the petitioner. It did so in August 2019. The petitioner refused that offer. On 16 January 2020 the respondents enforced the order it had obtained in March 2019 and evicted the petitioner and his family from the premises at 7/6 Wester Hailes Park, Edinburgh.

[8] On 24 March 2020 agents instructed on behalf of the petitioner made an application for assistance under section 28 of the Act of 1987. The application was made by email. On 26 March 2020 the respondents refused to accept the application.

Relevant legislation

[9] The following provisions of the 1987 Act are relevant to the determination of the present petition:

"24(1) A person is homeless if he has no accommodation …

(2) A person is to be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family …—

(a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or

(b) has a right or permission, or an implied right or permission to occupy … or

(c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession.

(2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

(3) …….

(e) it is not permanent accommodation. In circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him.

26(1) 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.

28(1) If a person ('an applicant') applies to a local authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.

31(1) This section applies where a local authority are satisfied that an applicant is homeless.

(2) Where they are not satisfied that he became homeless intentionally, they shall … secure that permanent accommodation becomes available for his occupation."

Submissions

(i) Petitioner

[10] The submission was that section 28 of the 1987 Act applied in the circumstances of the present petitioner. This provision imposed an obligation on the respondents to "make such enquiries as are necessary to satisfy themselves as to whether he is homeless or

threatened with homelessness." If that provision applied in the present case then subsequent duties were incumbent upon the respondents as desiderated in sections 29, 30 and 31 of the 1987 Act.

[11] The submission pointed out that there is no provision in the 1987 Act dealing with repeat applications in respect of homelessness, the situation in the present case. In the absence of direct statutory provision, counsel founded upon the approach taken to the issue of determination of fresh applications in two English decisions, *Rikha Begum* v *Tower Hamlets LBC*[1] a decision of the Court of Appeal of England and Wales and *R* v *Harrow LBC EX P Fahia*[2]a decision of the House of Lords. These authorities were said to establish a principle that, where an authority has already made a decision on an application relative to homelessness, it is not obliged to accept a new application from the same person if it is based on "exactly the same facts" as the earlier decision. Having regard to the essential similarity between the applicable statutory provisions in England and Wales and Scotland, a matter that was not in dispute, it was said that this principle could and should be followed in this jurisdiction,

[12] In *Fahia* (*supra*) reliance was placed on passages in the speech of Lord Browne-Wilkinson, with whom the other members of the judicial committee agreed, at pages 1401 G-1402 F in the following terms:

> "The problem is this. When a local authority, having discharged their statutory duties in relation to one application for accommodation, then receive a second application from the same applicant, are they bound in all circumstances to go through the whole statutory enquiry procedure and provide interim accommodation or is there a 'threshold test' which the second application must satisfy if it is to be treated as an application under the act?

---

[1] [2005] 1 WLR

[2] [1998] 1 WLR 1396

> It is Harrow's case that a person making a second application must demonstrate a change of circumstances which might lead to the second application being successful and it is for the local authority to decide whether that test has been satisfied. So, it is said, in the present case Mrs Fahia had not shown any new circumstances which could lead to the conclusion that she was not intentionally homeless and that accordingly how could refuse to go through the whole process of making statutory enquiries again.
>
> I have sympathy with Harrow's case on this point but I am unable to extract from the statutory language any sufficient justification for the suggested short cut. Under section 62 the statutory duty to make enquiries arises if (a) the person applies for accommodation and (b) 'the authority have reason to believe that he may be homeless or threatened with homelessness'. It is established that requirement (a) is not satisfied if an application purports to be made by someone who lacks the capacity to do so… Moreover when an applicant has been given temporary accommodation under section 63 and is then found to be intentionally homeless, he cannot make a further application based on exactly the same facts as his earlier application… But those are very special cases when it is possible to say that there is no application before the local authority and therefore a mandatory duty imposed by section 62 has not arisen."

[13] In *Begum* (*supra*) Neuberger LJ (as he then was) provided some amplification of the foresaid dicta. At paragraph 39 he stated:

> "The effect of the reasoning of the House of Lords in Fahia is that, … on receipt of what purports to be an application, an authority are bound to make enquiries, if they have reason to believe that the applicant is or may be homeless, unless the purported application can be shown to be no application. The only relevant basis upon which a purported subsequent application may be treated as no application, according to Fahia… appears to be where it is based on 'exactly the same facts as [the] earlier application'".

At paragraph 46 he said:

> "…in order to check whether a subsequent purported application is based on 'exactly the same facts' as an earlier application, the authority must compare the circumstances as they were at the time when the earlier application was disposed of (ie when it was decided or when the decision was reviewed) with those revealed in the documentation by which the subsequent application is made…"

At paragraph 50 he said:

> "I consider there is no room to imply a further requirement which has to be satisfied, such as establishing a material change of circumstances since the refusal of an offer of accommodation… Any such implication faces insuperable difficulties in light of the decision, but also the reasoning, in Fahia. A person seeking to imply words into

> a statute faces a difficult task: it is a court which can only be justified in clear and unusual circumstances. Where the implication involves imposing a further requirement, over and above express requirements imposed by the legislature, the task is, in my view, particularly difficult."

[14] The submission was that the decision in *Fahia* (*supra*) and *Begum* (*supra*) "set a low bar for the duty to accept a fresh application". In that regard my attention was drawn to two further English authorities, albeit only by way of illustration[3].

[15] The petitioner's submission was that an application was made on behalf of the petitioner on 24 March 2020. The application stated that the petitioner's medical conditions put him at increased risk of severe illness should he contract coronavirus. The petitioner and his family had been forced to stay where it could find accommodation from night to night. They were said to be in urgent need of accommodation in particular to protect the petitioner from contracting coronavirus.

[16] Against that background the submission proceeded that the respondents were bound to ask itself the following questions, *viz*: (1) Is the application based on exactly the same facts as existed when the previous application was determined in November 2016? (2) If there are new facts, are these facts which are, to the knowledge of the respondents, and without further investigation, trivial or fanciful? It was further submitted that the respondent's response dated 26 March indicated that neither of those questions had been addressed. The email which constituted the respondent's reply to the application was produced[4] and is in the following terms:

> "We do not consider the contents of your email relevant to Mr Dafaalla's homelessness status and accordingly are not prepared to accept a fresh application on that basis."

---

[3] *R (May)* v *Birmingham City Council* [2012] EWC 1399 (admin); *R (Abdul Rahman)* v *Hillingdon LBC* [2017] HLR 1

[4] Number 6/4 of process

The petitioner's contention was that the basis for the refusal disclosed in the email was that the application did not disclose any fact which would alter the petitioner's status as a homeless person. He was homeless before and he was still homeless. This, it was submitted, was not the correct test in deciding whether to accept a fresh application. In any event, it was further submitted that if the respondents had addressed the two questions identified it would have been bound to find that the COVID-19 pandemic and the petitioner's consequent increased risk of severe illness due to his diabetes were "new facts" which did not exist at the time when his previous application was determined. It would have been bound to find that these news facts were neither "trival" nor "fanciful".

[17] On the basis of the foregoing, counsel submission was that the respondent's refusal on 26 March to accept an application for accommodation by the petitioner was unlawful. Orders as set forth in paragraphs 4 (i) and (iii) of the petition were said to be appropriate.

(ii) Respondent

[18] The respondent's principal submission was that in terms of the 1987 Act it had performed all duties owed to the petitioners under the 1987 Act as a homeless person and could not therefore be compelled to do so again in the circumstances of the present petition. The petition was said to raise the question of whether and in what circumstances a local authority could be compelled to repeat performance of its statutory duties owed under part ii of the 1987 Act to homeless persons.

[19] Counsel then identified the relevant provisions of the 1987 Act, a matter on which I could not determine any difference from the submission on behalf of the petitioner.

[20] The submission developed with an outline of the approach said to be taken by local authorities such as the respondent to the practical aspects of the discharge of their duties

under part ii of the 1987 Act. Central to this part of the submission was the process of making enquiries in relation to a local authorities discharge of duties under section 28 of the 1987 Act a process said to be "commonly known" as a "homelessness assessment". In the context of the present case it was said that a homelessness assessment was undertaken in 2015. The court's attention was then drawn to section 31(2) of the 1987 Act which provision was said to give rise to what was "sometimes known" as "the permanent housing duty". In the context of the 2015 housing assessment relative to the petitioner the respondents had decided that the permanent housing duty under section 31(2) of the 1987 Act was owed to the petitioner. It was noted that pending completion and performance of the permanent housing duty a local authority such as the respondents were under duties under section 29(1) of the 1987 Act to secure that accommodation was made available to the petitioner. It was in the context of this duty that the respondent's provided accommodation for the petitioner at 7/6 Western Hailes Park, Edinburgh. This was further developed by submitting that the effect of section 24(3)(e) of the 1987 Act was that notwithstanding that the petitioner was provided with the said accommodation by the respondents under the interim accommodation provisions of section 29 of the 1987 Act he remained homeless for the purposes of that act throughout the relevant period. It was said that the petitioner had never ceased to be homeless since he first presented as homeless to the respondents and the reasons for his homelessness today were identical to those which arose at that time. Nothing was put before the respondent by the petitioner which contradicts this by providing a different reason for homelessness. In relation to the duties anent the permanent housing duty, and the interim accommodation duty, which were said to be "commonly known" as "discharging duty" the requirements were fulfilled when accommodation was made available.

[21] Applying those factors to the present case the submission was that the respondents making of two offers of accommodation to the petitioner in 2016, which offers were refused, entitled it to determine that it had discharged its duties to the petitioner. Section 35A of the 1987 Act provided applicants such as the petitioner with an entitlement to seek an internal review of this decision. The petitioner sought a review of that nature. The respondents declined to uphold that review. The petitioner has never challenged that decision. The court's attention was brought to the fact that the petitioner had admitted that any challenge to the respondent's said decision in relation to the discharge of the permanent housing duty was now time barred. The court was invited to regard the respondent's decision as valid absent timeous steps having been taken to challenge it.

[22] Counsel for the respondent then turned to address the central issue of repeat applications. It was recognised that this involved a construction of the scope of the duty incumbent upon the respondents under section 28(1) of the 1987 Act. The submission was

> "that a local authority in Scotland must, as a minimum, be entitled to decline to carry out a homelessness application where the request for a second homelessness assessment amounts to an exploitation of the homelessness system."

An exploitation of the homelessness system was said to be constituted where a request for a second homelessness assessment was made not for the purposes of obtaining a new decision made under the relevant procedure, but for some other purpose, such as accessing interim accommodation under section 29 of the 1987 Act or reinstating a right to demand performance of the same permanent housing duty which had been previously discharged. This submission was developed by the proposition that a request for a new decision could be one seeking either (i) a decision based on new relevant facts which arrive at a different outcome to a previous homelessness assessment or (ii) a decision based on new relevant facts which arrives at the same outcome as a previous homelessness assessment. It was said

that a new decision could not be one which requests the respondent to reconsider matters to be considered under a homelessness assessment based on the same relevant facts as a previous application. That latter categorisation was the situation, on the respondent's submission, that the petitioner seeks in the present case. It was said that that did not amount to a new decision in respect of his case. In relation to the submission counsel accepted that there appeared to be no Scottish authority on the issue of repeat applications under the homelessness legislation. It was observed that in Wales there was a statutory requirement for a material change to that which was considered previously before a repeat application could be made.[5] It was accepted that with regard to the equivalent English provisions the similarities to the Scots legislation in crucial elements were such that the court would be entitled to have regard to statements of principle in any relevant English authorities. It was accepted that the cases, already drawn to the court's attention by counsel for the petitioner, *Fahia* (*supra*) and *Begum* (*supra*) could therefore be regarded as relevant to the court's consideration of the present petition.

[23] Counsel identified the following propositions from the cases of *Fahia* (*supra*) and *Begum* (*supra*) which, as a matter of concession might be applicable in the consideration of the present case. These were:

(a) a request for a homelessness assessment under the statute may be rejected if it can be treated as identical with an earlier application;

(b) where new facts are presented "non-statutory" inquiries into these are not permitted to determine whether there has been a relevant change in circumstances;

[5] Housing (Wales) Act 2014, section 62(2)

(c) on receiving a subsequent purported application, an authority should compare the circumstances revealed by that application, with the earlier application, in order to determine whether the subsequent application is "no application". This involves a comparison of the circumstances disclosed by, and thereby relevant to, the application made;

(d) once there is a "genuine and effective application" the provisions are engaged;

(e) a material change in circumstances is not required;

(f) a subsequent application entitles the applicant to a homelessness assessment unless it is based on exactly the same facts. It is the facts which form the basis of the application that requires to be identical, and not the whole facts in which the application is made;

(g) it is for the applicant to identify the facts which are said to be different, and if no new facts are revealed the authority should reject it as incompetent;

(h) if the subsequent application report revealed facts which without further investigation can be seen to be not new, fanciful, or trivial the same conclusion applies;

(i) due to the passage of time, the facts will never be precisely the same, but this in itself should not prevent an application from being rejected because it is made on the same facts.

[24] In the context of the present case the respondent's position was that the application under consideration was made in three emails bearing dates of 24 and 25 March 2020.[6] The emails referred to the family makeup of the petitioner's family and the medical conditions the petitioner suffered from. It was contended that coronavirus amounted to an increased

[6] Numbers 6/1, 6/2 and 6/3 of process

risk to the petitioner and that there was therefore an urgent need for accommodation. It was further stated that the petitioner's family were vulnerable. Medical letters supporting these propositions were supplied with the emails.[7] The response to this application has already been quoted in para [16] hereof. The submission was that it was "patent" from the terms of this response that the respondent had undertaken the comparison considered by Neuberger LJ to be necessary in *Begum* (*supra*). The terms of the emails submitted as a fresh application by the petitioner did not amount to new facts. The respondent was entitled to conclude that the alleged new facts were not relevant to the petitioner's homeless status. The alleged new facts were "trivial" to the substance of the homelessness assessment previously undertaken by the respondents and the decision made therein. The respondent was entitled to decline to accept the fresh application on this basis.

Analysis and conclusion

[25] There was no dispute between parties that the issue before the court was whether the respondent's refusal to accept an application for consideration under section 28 of the 1987 Act from the petitioner in March 2020 was unlawful. There was, further, a degree of common ground between parties in relation to the petitioner's position in relation to accommodation when the application which is at the core of the issue before the court was made to the respondent. The petitioner's position as presented in the petition and in submission was that he was homeless. The respondent's position, albeit reached on different reasoning to that advanced on behalf of the petitioner, was that the petitioner was homeless and had in fact been in that position since 2016. It follows from these two broadly non disputatious factors that, in my view, the issue for the court has resolved to a

[7] Production 6/5 and 6/6 of process

determination of the ambit of the duty imposed upon the respondents by section 28 of the 1987 Act and, following therefrom, whether in the factual circumstances of this petition that duty has been discharged.

[26] In determining these questions the first issue must be consideration of the language of the statutory provision at issue, that is section 28 of the 1987 Act. The section has already been quoted in para [9] hereof. It provides that a local authority who "… have reason to believe …" that the applicant "… may be homeless …" "shall make such inquiries as are necessary to satisfy themselves as to whether …" the applicant "… is homeless …" In the context of the present case, for the reasons set forth in the immediately preceding paragraph, it is plain that the respondents were in a position to be satisfied that the petitioner was homeless. It follows that they were under an obligation to make "such inquires" as were "necessary" to satisfy themselves of that situation. It is the nature of the inquiries which the respondents were obliged to undertake that is, in my view, the crux of the issue raised in the petition.

[27] Considering that question I would initially observe that counsel for the respondents outlined in some detail, as I have already narrated, what was said to be the approach taken by local authorities to making inquiries in pursuit of their duties under section 28 and, for that matter, other provisions under part ii of the 1987 Act. I should indicate that I have no reason to doubt the veracity or accuracy of counsel's description of these essentially administrative procedures. In that regard I note that no objection or rebuttal of what counsel for the respondent said was made by counsel for the petitioner. I should also indicate that I make no criticism of the procedures which counsel described. Whilst my knowledge on this matter was limited to what counsel said in submission I have no reason to doubt that the steps which were said to have been adopted by many local authorities

were administratively sensible and assisted them in the discharge of the obligations incumbent upon them under part ii of the 1987 Act. The administrative procedures described to me are however, again in my view, of no direct relevance to the determination of the issue before the court. The respondents are bound to discharge duties imposed upon them by statute. Having regard to the language of, in the context of this case, section 28 of the 1987 Act there is no restriction or guidance as to how they discharge these duties. The court is accordingly constrained to proceed on the language of the statute and can regard the information it was given in relation to administrative procedures as constituting no more than background information.

[28] It follows from the foregoing that I have to consider whether in considering the petitioner's application of March 2020 the respondents complied with their duty to make such inquiries as were "necessary to satisfy themselves" of the petitioner's status. In answering that question I require to consider both the terms of the application and the respondent's response thereto. The applications were said to be made in three emails sent by agents on behalf of the petitioner to the respondents, the first dated 24 March with two subsequent emails dated 25 March 2020. On consideration of the emails I would regard the latter to as no more than reminders and the application proper to have been made by the email dated 24 March 2020.[8]

[29] The document is relatively brief and the effective paragraph is in the following terms:

> "I refer to the above and confirm I have been instructed by Mr Abdelwahab Dafaalla to make a fresh application for homeless assistance on his behalf. Due to the current lockdown situation and Government guidance, I ask that you treat this email as a fresh application by Mr Dafaalla with the request that he is provided with urgent temporary accommodation as of this evening. Mr Abdelwahab ordinary resides

[8] Number 6/1 of process

> with his wife and six children. He suffers from a number of medical conditions including diabetes which puts him at increased risk of severe illness should he contract coronavirus. At present, the family are forced to stay where he can from night to night which makes the family particular vulnerable. They are in urgent need of accommodation to keep the family safe and in particular, to protect Mr Dafaalla from contracting the virus."

[30] The response to this, dated 26 March 2020, was brief and has been quoted in full in para [16] hereof.

[31] As was accepted by counsel for both parties the petitioner's application was not his first to the respondents under the 1987 Act. It was what was termed a repeat application. Both counsel also accepted that there is no statutory guidance in the 1987 Act as to how local authorities such as the respondent should treat such an application. It seems to me that in the absence of statutory guidance the respondents have no alternative but to fulfil their duties set forth in section 28 of the 1987 Act. In doing that, and again it was a matter of agreement between both parties, there has been no guidance from a Scottish court on this issue. It was to be noted, a matter drawn to my attention by counsel for the respondents, that the position has been the subject of statutory guidance in Wales. There is no statutory guidance in England and, further, as already noted it was conceded by counsel for the respondents that the equivalent statutory provisions in England were in such similar terms to the provisions I am considering that I would be entitled to have regard to any judicial guidance emanating from the English courts on the matter. There are in fact two cases, of high authority, which both counsel agreed I would be entitled to have regard to. I do so. I accept of course that because the English courts were dealing with a different, albeit linguistically similar, provision these authorities are not binding upon me. Emanating as they do from in the case of *Fahia* the House of Lords and in *Begum* the Court of Appeal, they are of highly persuasive authority in this court.

[32] The relevant passages in *Fahia* (*supra*) and *Begum* (*supra*) have already been quoted. It seems clear to me that the gravamen of these decisions is that a local authority can only discharge its duties imposed under section 28 of the 1987 Act without further inquiry if it can be satisfied that the fresh, or repeat, application is in exactly the same terms as the original application. I see no justification in any of the language used in the passages that were drawn to my attention in either of those cases which elide the respondent's obligation to conduct inquiries unless the fresh application is exactly the same as the earlier application. In *Fahia* (*supra*) Lord Browne-Wilkinson expressed sympathy with a local authorities position when faced with a repeat application that appeared unlikely to lead to any decision other than that reached in the first application but notwithstanding he felt himself "… unable to extract from the statutory language any sufficient justification for the suggested short cut."[9] I consider that dictum equally applicable in the circumstances of the present case. The allegedly new circumstances set forth in the email of 24 March 2020[10] are brief and might, on inquiry, amount to no more than a repeat of a claim or position that has already been investigated and determined. The problem is, in my view, that the respondents do not, having regard to the terms of their reply,[11] appear to have carried out any inquiries. It is plain from the terms of the response that the refusal to accept the application is based upon a consideration of the contents of the email without any investigation as to any aspect of those contents. I pause to observe that the follow-up emails[12] did contain additional information in the form of various medical reports. I do not consider that the bare consideration of the email of 24 March without any further inquiry or

---

[9] [1998] 1 WLR 1396 at pages 1401 G - 1402 F
[10] Number 6/1 of process
[11] Number 6/4 of process
[12] Numbers 6/2 and 6/3 of process

investigation in relation to what was disclosed therein would entitle the respondents to take the position they did in their response. I note further that they offer no explanation in the response as to any reasoning behind the decision they reached. The terms of the response amount in my view to no more than an assertion that there was nothing further to consider.

[33] Having regard to the foregoing I am satisfied that the respondents have failed to perform their statutory duties under sections 28 to 31 of the 1987 Act. I will pronounce declarator in terms of the prayer of the petition and, further, an order ordaining the respondents to perform its duties under sections 28 to 31 of the 1987 Act in respect of the application by the petitioner for accommodation and assistance.