Easter Term
[2015] UKSC 34
On appeal from: [2014] EWCA Civ 792

JUDGMENT

Haile (Appellant) *v* London Borough of Waltham Forest (Respondent)

before

Lord Neuberger, President
Lady Hale, Deputy President
Lord Clarke
Lord Reed
Lord Carnwath

JUDGMENT GIVEN ON

20 May 2015

Heard on 29 January 2015

Appellant	*Respondent*
Kerry Bretherton Laura Tweedy (Instructed by Hackney Community Law Centre)	Andrew Arden QC Robert Brown (Instructed by London Borough of Waltham Forest Legal and Democratic Services)

LORD REED: (with whom Lord Neuberger, Lady Hale and Lord Clarke agree)

1. The question in this case is whether the appellant falls within the scope of section 193 of the Housing Act 1996 as amended, which applies, by virtue of subsection (1), where the local housing authority are satisfied that "an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally". In such a case, section 193(2) requires the authority to secure that accommodation is available for occupation by the applicant. In the present case, there is no doubt that the appellant is homeless, eligible for assistance and has a priority need. The question is whether the authority were entitled to be satisfied that she became homeless intentionally.

2. The appellant surrendered her tenancy of a bedsitting room in a hostel in Leyton on 25 October 2011, as she was unhappy about smells in the hostel. She moved into temporary accommodation in King's Cross. That arrangement came to an end during November 2011, when she was asked to leave because the house was over-crowded. On 24 November 2011 she applied to the respondent authority for accommodation as a homeless person under the 1996 Act. She was provided with interim accommodation in Ilford, where she remained until 23 December 2011. She was then moved to interim accommodation in Leytonstone, where she still remains until after the decisions which are challenged. On 15 February 2012 she had a baby daughter. If she had still been living in the hostel in Leyton, she would then have had to leave it, as only single persons were permitted to reside there. On 1 August 2012 the authority decided that they were satisfied that she was homeless, eligible for assistance and had a priority need, but were also satisfied that she became homeless intentionally. On 31 January 2013, a decision to the same effect was made by a review officer on a review under section 202 of the 1996 Act. The basis of the decision was that the applicant had surrendered her tenancy of the room in the hostel in October 2011 and in consequence had ceased to occupy accommodation which was available for her occupation, and which it would have been reasonable for her to continue to occupy until she gave birth. Her contention that it would not have been reasonable for her to continue to occupy the accommodation because of an unpleasant smell was rejected. Her contention that she would have had to leave the hostel in any event when she gave birth was regarded as irrelevant. There was no finding as to the date on which the appellant became homeless.

3. The issue raised in the appeal is, in substance, whether the review officer was entitled to be satisfied that the appellant became homeless intentionally, on the basis that she deliberately gave up the accommodation in the hostel, given that she would have been homeless in any event by the time her application was considered. In that

regard, it is contended that the birth of the baby broke the chain of causation between the appellant's leaving the hostel and her state of homelessness when the application was considered. In relation to that issue, the court is invited to depart, if necessary, from the decision of the House of Lords in *Din v Wandsworth London Borough Council* [1983] 1 AC 657 under the Housing (Homeless Persons) Act 1977.

The homelessness legislation and its construction

4. It may be helpful to begin by summarising how the legislation in relation to homelessness, and its construction by the courts, have evolved, so that the decision in *Din* can be placed in its historical context. The following summary, so far as concerned with the legislation, is largely borrowed from the speech of Baroness Hale of Richmond in *Birmingham City Council v Ali* [2009] UKHL 36; [2009] 1 WLR 1506 and the judgment of Lord Hodge in *R (N) v Lewisham London Borough Council* [2014] UKSC 62; [2014] 3 WLR 1548.

5. Following the Second World War, Part III of the National Assistance Act 1948 placed local authorities under a duty to provide temporary accommodation to persons who were in urgent need of it. The 1977 Act replaced the provisions of the 1948 Act with a regime which also provided longer term accommodation for the homeless. Important aspects of that regime survive in the 1996 Act. In particular, the 1977 Act introduced the concept of priority need (section 2), the obligation of the authority to provide temporary accommodation while they make inquiries as to whether the applicant is homeless and in priority need and whether he or she became homeless intentionally (section 3), and the duties, depending on the results of that investigation, to provide advice and appropriate assistance, to provide temporary accommodation for a period to give a reasonable opportunity to secure other accommodation, or to secure that accommodation becomes available for occupation (section 4).

6. The 1977 Act was consolidated into wider housing legislation in Part III of the Housing Act 1985. As I shall explain, that in turn was amended by the Housing and Planning Act 1986, so as to harmonise the definitions of homelessness and intentional homelessness. The 1985 Act, as amended, was repealed by the 1996 Act, which in Part VII provides the current statutory regime for dealing with homelessness. In particular, when an applicant applies for accommodation or assistance in obtaining accommodation (section 183), the local housing authority carry out inquiries to satisfy themselves whether he or she is eligible for assistance and, if so, what if any duty is owed (section 184). There is an interim duty to accommodate under section 188.

7. If, following the section 184 inquiry, the local housing authority are satisfied that the applicant is homeless, eligible for assistance but homeless intentionally, section 190 applies: see section 190(1). The authority's duty, if the applicant has a priority need, is to secure that accommodation is available for a period to give a reasonable opportunity of securing accommodation for occupation, and to provide advice and assistance in attempts to secure accommodation: section 190(2). If not satisfied that the applicant has a priority need, the authority's duty is confined to the provision of advice and assistance: section 190(3). If the authority are satisfied that the applicant is homeless and eligible for assistance, not satisfied that he or she is intentionally homeless, but also not satisfied that he or she has a priority need, the duty is again to provide advice and assistance: section 192. If, on the other hand, the authority are satisfied that the applicant is homeless, eligible for assistance and has a priority need and are not satisfied that he or she became homeless intentionally, section 193 applies: see section 193(1). The authority are then under a duty to secure that accommodation is available for occupation by the applicant: section 193(2.). The question in the present case is whether the appellant falls within the scope of section 190(1) or section 193(1).

8. The 1977 Act, Part III of the 1985 Act, and Part VII of the 1996 Act, have all given rise to numerous difficulties of interpretation. In particular, the meaning attributed to some of the fundamental concepts employed, such as "homeless" and "accommodation", has evolved over time as the result of judicial decisions and legislative amendment.

9. To summarise matters which I shall later discuss in greater detail, the case of *Din*, in 1981, concerned the definition of "becoming homeless intentionally", in section 17(1) of the 1977 Act. That definition required the authority to consider whether an applicant for assistance under the Act had ceased to occupy accommodation which was available for his occupation, and which it would have been reasonable for him to continue to occupy, in consequence of his own deliberate act or failure to act. The House of Lords decided by a majority that the questions whether the accommodation was available, and whether it would have been reasonable to continue to occupy it, were to be considered as at the time when the applicant ceased to occupy it. It followed that, if the definition was satisfied as at that time, it was irrelevant to that question to consider whether, if the applicant had not ceased to occupy the accommodation, it would have ceased to be available for his occupation by the time of the authority's inquiry. I can say at once that, in relation to those matters, the decision appears to me to have been correct and to remain good law. That does not however resolve the issue in the present case, as I shall explain.

10. Importantly for present purposes, all the members of the House also considered that there must be a continuing causal connection between the deliberate conduct referred to in section 17(1) and the applicant's homelessness at the time of the inquiry. It will be necessary to return to the relevant passages in the speeches.

11. In relation to the nature of the causal link, Lord Lowry described the connection in terms of continuing homelessness. On his approach, homelessness was a condition which necessarily continued unless and until non-temporary or "settled" accommodation was obtained. That approach was however disapproved by the House of Lords in the case of *R v Brent London Borough Council, Ex p Awua* [1996] AC 55, decided under the 1985 Act. Applying the definition of "homeless", a person could cease to be homeless even if he or she was not in settled accommodation. It was confirmed that the necessary connection between the deliberate conduct required by the definition of "becoming homeless intentionally" and the applicant's homelessness at the time of the inquiry was causal. The current homelessness had to have been caused by the applicant's earlier intentional conduct. A causal connection would not exist where there had been an intervening period in settled accommodation, but the House of Lords reserved their opinion as to whether that was the only method by which the causal connection could be broken. As I shall explain, in later cases in the High Court and the Court of Appeal a variety of other circumstances have been held to have broken the causal connection. One of the questions arising in the present appeal is whether that is indeed possible.

12. Four other aspects of the evolution of the legislation require to be borne in mind when considering authorities decided under the earlier legislation, such as *Din*. First, under the 1977 Act, a person was homeless if he had no accommodation which he and his family were entitled to occupy, by virtue of some interest, court order, express or implied licence or statutory right to occupy: section 1(1). There was no reference in the definition of homelessness to whether or not it was reasonable for him to continue to occupy the accommodation to which he was entitled. Thus in *R v Hillingdon London Borough Council, Ex p Puhlhofer* [1986] AC 484, the House of Lords decided that a family were not homeless within the meaning of the 1977 Act, however intolerable their living conditions were. There was no requirement that their accommodation be appropriate or reasonable, as long as it could properly be described as accommodation and was available for them to occupy.

13. Parliament reacted to the *Puhlhofer* decision by inserting new provisions into the Housing Act 1985, Part III of which had replaced the 1977 Act. Most importantly for present purposes, it was provided that "a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy": section 58(2A) of the 1985 Act, as inserted by section 14(2) of the 1986 Act. Equivalent provision is now made by section 175(3) of the 1996 Act. As was observed in *Awua* at p 67, this produced symmetry between the concepts of "homelessness" and "becoming homeless intentionally".

14. Secondly, in deciding whether it would have been reasonable for the applicant to continue to occupy accommodation, for the purpose of applying the definition of "becoming homeless intentionally", the 1977 Act did not require the authority to take any particular matters into account, other than to have regard to

guidance given by the Secretary of State (section 12). They were also permitted to have regard to the general circumstances prevailing in relation to housing in the district (section 17(4)). In *Din*, it was accepted that the authority were entitled to conclude that it would have been reasonable for the appellants to have continued to occupy the accommodation in question until the landlord obtained an order for possession, notwithstanding that the appellants could not afford the accommodation and had mounting arrears of rent and rates. That concession was effectively endorsed by the majority of the House of Lords. Under the 1996 Act, however, section 177(3) enables subordinate legislation to be made, specifying matters to be taken into account in determining whether it would have been reasonable for a person to continue to occupy accommodation. Such legislation now specifies that account is to be taken of whether or not the accommodation is affordable for that person: Homelessness (Suitability of Accommodation) Order 1996 (SI 1996/3204). Guidance issued by the Secretary of State also now makes it clear that the question whether an order for possession has been obtained should not be regarded as critical, where (put shortly) the landlord has given notice and there would be no defence to an application for a possession order: Department for Communities and Local Government, *Homelessness Code of Guidance for Local Authorities* (2006), para 8.32.

15. Thirdly, in *Birmingham City Council v Ali* the House of Lords considered the meaning of the requirement introduced after *Puhlhofer*, and now set out in section 175(3) of the 1996 Act (the definition of homelessness), that a person is not to be treated as having accommodation unless it is "accommodation which it would be reasonable for him to continue to occupy": a form of words which also appears (subject to a change of tense) in the definition of "becoming homeless intentionally" in section 191(1). The question arose in the *Birmingham* case whether what had to be considered was the reasonableness of continuing to occupy the accommodation for another night, or for the foreseeable future, or indefinitely. The House of Lords held that both sections 175(3) and 191(1) looked to the future as well as to the present (para 36). A person was homeless if he had accommodation which it was not reasonable for him to continue to occupy for as long as he would have to occupy it if the local authority did not intervene (para 37). There would be cases where an applicant occupied accommodation which it would not be reasonable for him to continue to occupy on a long-term basis, as he would have to do if the authority did not accept him as homeless, but which it would not be unreasonable to expect him to continue to occupy for a short period while the authority investigated his application and rights, and even thereafter while they looked for accommodation to satisfy their duty under section 193 (para 42).

16. Fourthly, the 1996 Act introduced, in section 202, the right to request a review of the authority's decision. This is a full review of the merits of the application, rather than a consideration of whether the original decision was flawed: *Mohammed v Hammersmith and Fulham London Borough Council* [2001] UKHL

57; [2002] 1 AC 547, para 26. The review is conducted on the basis of the circumstances existing at the date of the review: *Mohammed*, para 25; *Banks v Kingston upon Thames Royal London Borough Council* [2008] EWCA Civ 1443; [2009] PTSR 1354, para 71.

17. With that overview of the legislation in mind, it is now necessary to consider in greater detail the provisions of the 1996 Act which are central to the appeal.

The 1996 Act

18. Section 193(1) provides:

> "This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally."

In terms of that provision, the authority have to be satisfied of three matters: that the applicant is homeless, that he is eligible for assistance, and that he has a priority need. They must also be "not satisfied" of one further matter: that the applicant became homeless intentionally.

19. Homelessness is defined by section 175, which provides:

> "(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he -
>
> (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
>
> (b) has an express or implied licence 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 another person to recover possession.
>
> (2) A person is also homeless if he has accommodation but -

(a) he cannot secure entry to it, or

(b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.

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

(4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days."

As I have explained, "continue to occupy", in section 175(3), means "continue to occupy for as long as he would have to occupy it if the local authority did not intervene": *Birmingham City Council v Ali.*

20. "Becoming homeless intentionally" is defined by section 191(1):

"(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.

(2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(3) A person shall be treated as becoming homeless intentionally if -

(a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and

(b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part,

and there is no other good reason why he is homeless."

21. Given the symmetry between section 175 and section 191, it can be inferred that the words "continue to occupy" are intended to be interpreted so as to enable the provisions to operate harmoniously together. They cannot however be interpreted in an identical manner in both contexts. As Lady Hale explained in the *Birmingham* case at paras 37-40, there can be circumstances in which a person is homeless, within the meaning of section 175, because it would not be reasonable for him to continue to occupy his current accommodation, but in which it may nevertheless be reasonable for him to stay where he is while the authority consider his application and look for more suitable accommodation. The question under section 191(1) is therefore whether it would have been reasonable for the person to continue to occupy the accommodation for as long as he would occupy it while the authority considered his application and, if appropriate, looked for more suitable accommodation.

22. As I have explained, the effect of the requirement in section 193(1), and its statutory predecessors, that the authority must not be satisfied that the applicant became homeless intentionally has caused difficulties of interpretation, linked to difficulties in construing the meaning of "homelessness". The purpose of the requirement is however not difficult to discern. As was explained by Lord Lowry in *Din* (at p 679), and as counsel for the appellant emphasised in the present case, it is designed to prevent "queue jumping" by persons who, by intentionally rendering themselves homeless, would (in the absence of such a provision) obtain a priority in the provision of housing to which they would not otherwise be entitled.

23. Consistently with that rationale, it cannot be intended that an applicant is to be disqualified for accommodation if he has ever, at any time in his life, become intentionally homeless. For example, an elderly man who becomes homeless when his care home is closed cannot be intended to be denied assistance merely because, 60 years earlier, he was evicted from his student digs for holding rowdy parties. As counsel for the appellant submitted, the homelessness with which the words "became homeless intentionally" are concerned must be the homelessness which the authority have found to exist: "is homeless" and "became homeless" must refer to the same current state of being homeless. It is therefore in relation to the current state of being homeless that the question has to be answered, did the applicant become homeless intentionally?

24. On the other hand, section 193(1) cannot be concerned only with the reason for the loss of accommodation which the applicant occupied immediately before he became homeless. If that were its effect, the legal consequences of becoming homeless intentionally could readily be avoided by obtaining temporary accommodation, so that the applicant ceased for a time to be homeless, and then

waiting to be evicted from it, so bringing about a state of homelessness consequent on the involuntary loss of that accommodation. The aim of the provisions relating to intentional homelessness would then be circumvented.

25. Section 193(1) must therefore be understood as being concerned with the question whether the applicant's current homelessness has been caused by intentional conduct on his part, in consequence of which he ceased to occupy accommodation which was available for his occupation and which it would have been reasonable for him to continue to occupy: either the accommodation which he was occupying immediately before he became homeless, or previous accommodation. Whether the applicant "became homeless intentionally" thus depends in the first place on the application of the definition of "becoming homeless intentionally" in section 191(1): in short, on whether he deliberately did or failed to do anything in consequence of which he ceased to occupy accommodation meeting the requirements of that provision. If that question is answered in the affirmative, the further question then arises under section 193(1) whether the applicant's current homelessness was caused by that intentional conduct.

Dyson v Kerrier District Council

26. These two distinct causal questions were identified by Brightman LJ, delivering the judgment of the Court of Appeal, in *Dyson v Kerrier District Council* [1980] 1 WLR 1205, a decision which has been repeatedly endorsed by the House of Lords. Referring to the predecessor provision of section 191(1) of the 1996 Act, namely section 17(1) of the 1977 Act, he said at pp 1214-1215:

> "This subsection is dealing with cause and effect. The subsection states the effect first. The specified effect is the state of being homeless. The subsection specifies that effect and then describes a particular cause which, if it exists, requires the effect to be treated as intentional. The subsection therefore means
>
> > 'a person becomes homeless intentionally if he deliberately *has* done or failed to do anything in consequence of which he *has* ceased to occupy accommodation which *was* available for his occupation and which it would have been reasonable for him to continue to occupy.'" (original emphasis)

27. So understood, two separate questions arise concerning causation. One arises, under what is now section 191(1) of the 1996 Act, in respect of what Brightman LJ described as the cause: the person's ceasing to occupy accommodation which he

could reasonably have continued to occupy must be the consequence of his deliberate act or omission. The second arises, under what is now section 193(1), in respect of what Brightman LJ described as the effect: the homelessness which the authority have found to exist must be the consequence of that intentional conduct. In other words, section 193(1) is to be construed as meaning:

> "This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that [he is homeless because] he became homeless intentionally."

28. The second causal question has to be understood as being implicit if absurd consequences are to be avoided. The elderly man in my example, who is homeless after his care home closes, is undoubtedly someone who, in his student days, did something in consequence of which he ceased to occupy accommodation which was available for his occupation and which it would have been reasonable for him to continue to occupy. The causal question arising under section 191(1) must therefore be answered in the affirmative. But, if that were the only causal question which arose, the legislation would have absurd results. Absurdity is avoided by asking the second question, which arises under section 193(1): the authority are satisfied that he is homeless following the closure of the home, but cannot be satisfied that he became homeless intentionally, since his homelessness was not caused by his holding rowdy parties in his student digs. He would have been homeless following the closure of the home in any event.

29. On the other hand, in my example of the person who intentionally gave up his accommodation and moved into temporary accommodation and waited to be evicted, both questions would be answered in the affirmative. He deliberately did something in consequence of which he ceased to occupy accommodation which was available for his occupation and which it would have been reasonable for him to continue to occupy. The causal test under section 191(1) is therefore satisfied, even though he did not at that stage become homeless. When he did become homeless, following his eviction from the temporary accommodation, he could properly be said under section 193(1) to have become homeless intentionally, since the effective cause of his homelessness was his previous intentional conduct, but for which he would not be homeless. That conduct was a "but for" cause of his homelessness, and no unconnected event had intervened to break the causal connection.

30. These points are illustrated by the decision in *Dyson v Kerrier District Council.* The case was one where the applicant had surrendered the tenancy of her flat in Huntingdon in October 1978 after taking a temporary let of a cottage in Cornwall. Following the expiry of the let in March 1979, she was evicted from the cottage in May of that year. The contention that she was unintentionally homeless,

having been evicted from the cottage, was acknowledged to be a formidable argument on the literal wording of the statute. As was pointed out in *Awua*, however, such a construction would enable people to jump housing queues by making themselves intentionally homeless at one remove. That result was avoided by giving the legislation a purposive construction and asking whether the applicant's current state of homelessness had been caused by conduct falling within the scope of what is now section 191(1). Brightman LJ stated (p 1215):

> "The district council were entitled to reach the conclusion that the plaintiff became homeless on May 25, 1979 [the date of her eviction], intentionally because she deliberately had done something (surrendered the Huntingdon tenancy) in consequence of which she ceased to occupy accommodation (the Huntingdon flat) which was available for her occupation and which it would have been reasonable for her to continue to occupy; and that, therefore, if she had not done that deliberate act she would not have become homeless on May 25."

It is to be noted that the court applied a "but for" test of causation: "if she had not done that deliberate act she would not have become homeless".

Din v Wandsworth London Borough Council

31. A different type of situation was considered by the House of Lords in the case of *Din v Wandsworth London Borough Council*. The appellants in that case fell into arrears of rent and rates as a consequence of the failure of their business, and left their flat in Wandsworth in August 1979 after a distress warrant for non-payment of rates was served on them. They obtained temporary accommodation in Upminster, where they lived for four months before being required to leave. When they left the Wandsworth flat, they were not at that time threatened with eviction. They would however have been evicted by December 1979, when they left the Upminster accommodation and applied for accommodation under the 1977 Act.

32. In considering the speeches in the House of Lords, it is relevant to note that, in a number of respects, the case was not approached in the way in which it would now be approached under the 1996 Act. First, the appellants did not dispute that the authority were entitled to find that it would have been reasonable for them to continue to occupy the Wandsworth flat, notwithstanding that they could not afford it. That concession presumably reflected the prevailing understanding at that time of the law then in force, although there are later decisions to the contrary effect, including *R v Hillingdon London Borough Council, Ex p Tinn* (1988) 20 HLR 205 and *R v Camden London Borough Council, Ex p Aranda* (1998) 30 HLR 76. As I have explained, subordinate legislation made under section 177(3) of the 1996 Act

now provides (read short) that in determining whether it would have been reasonable for a person to continue to occupy accommodation, account is to be taken of whether or not the accommodation is affordable for that person. The likelihood of eviction within a few months would now be a further factor to be taken into account in considering whether it was reasonable for the appellants to continue to occupy the flat, following the *Birmingham* case; but that matter might well have been viewed differently prior to the amendments to the legislation which were made following *Puhlhofer.*

33. Secondly, the case was argued on the basis that there was an unbroken period of homelessness beginning when the appellants left the Wandsworth flat, since the accommodation in Upminster was intended from the outset to be temporary. That was not a correct understanding of the law, as became particularly apparent after *Awua*. As Lord Bridge of Harwich pointed out in *Din* at p 684, the appellants had at least an express or implied licence to occupy the Upminster accommodation, and therefore were not homeless as defined in section 1 of the 1977 Act. In Lord Bridge's words, the appeal was therefore decided "on a basis accepted as common ground which involved an erroneous conclusion of law from undisputed facts" (p 684).

34. The argument presented on behalf of the appellants, as reported, did not adopt the two-stage approach to causation which the Court of Appeal had applied in *Dyson.* Instead, it focused on the definition of "becoming homeless intentionally" in section 17(1) of the 1977 Act. Following the approach adopted by Donaldson LJ in his dissenting judgment in the Court of Appeal (unreported), 23 June 1981; Court of Appeal (Civil Division) Transcript No 372 of 1981, it was argued that the necessity for a causal connection between leaving the Wandsworth flat and the appellants' state of being homeless was implicit in the requirement under section 17(1) that it must have been reasonable "to continue to occupy" the flat. "Continue to occupy", it was argued, meant "continue to occupy and still to occupy". That construction of the words "continue to occupy" cannot, however, be reconciled with the terms of the provision.

35. The majority of the House of Lords approached the case on the basis of the arguments advanced. Lord Wilberforce construed the relevant provisions of the 1977 Act as being concerned with the cause of the homelessness which was conceded to have arisen at the time when the appellants left their accommodation in Wandsworth and continued thereafter:

> "If one takes the words of the statute, the council has to be satisfied that the applicants became homeless intentionally (section 17). Under section 4(2)(b) their duty is limited to advice and assistance if 'they *are* satisfied ... that [they] *became* homeless ... intentionally.' The time factors here are clearly indicated: at the time of decision (the present),

> the local authority must look at the time (the past) when the applicants became homeless, and consider whether their action *then* was intentional in the statutory sense. If this was the right approach there could only be one answer: when the Dins left 56, Trinity Road [the Wandsworth accommodation] their action was intentional within section 17, and the council was entitled to find that it would have been reasonable for them to continue to occupy 56, Trinity Road." (pp 666-667: original emphasis)

36. Lord Wilberforce gave a number of reasons at pp 667-668 for rejecting the appellants' construction of section 17(1). The first reason reflected the wording of the provision:

> "To achieve the result desired by the appellants it is either necessary to distort the meaning of 'in consequence of which he ceases to occupy' (section 17(1)) or to read in a number of words. These are difficult to devise. Donaldson LJ suggests adding at the end of section 17(1) 'and still to occupy': the appellants, as an alternative 'to the date of his application'. Both are radical - and awkward - reconstructions of the section."

The second reason was that such an interpretation of the words "continue to occupy" was not called for by any purposive approach. The third reason was the following:

> "The appellants' interpretation adds greatly to the difficulties of the local authority's task in administering this Act. It requires the authority, as well as investigating the original and actual cause of homelessness, to inquire into hypotheses - what would have happened if the appellants had not moved, hypotheses involving uncertain attitudes of landlords, rating authorities, the applicants themselves, and even intervening physical events."

37. The latter observations were a response to the mistaken argument that section 17(1) required the authority to determine not merely whether the applicant's ceasing to occupy the accommodation was the consequence of his intentional action, but in addition whether he would otherwise have continued to occupy that accommodation until the time of the authority's decision. They were not concerned with causal issues properly arising under the legislation. Lord Wilberforce accepted at p 667 that the authority had to investigate the actual cause of homelessness, and endorsed the decision in *Dyson* as an illustration of a causal connection. Establishing such a connection involves asking in the first place, in Brightman LJ's words, whether, if the applicant had not done that deliberate act, she would not have become homeless.

That might be described as inquiring into a hypothesis, but is inherent in the nature of an inquiry into causation. It cannot therefore have been Lord Wilberforce's intention to bar such an inquiry. It would also be necessary to consider whether the chain of causation connecting the intentional action to the applicant's homelessness had been broken by an intervening event, in circumstances where that was a live issue. That approach is consistent not only with an ordinary understanding of causation but also with the rationale of the concept of intentional homelessness, namely to prevent a person from obtaining a priority in the provision of accommodation to which he would not otherwise be entitled. In that regard, Lord Wilberforce accepted that the connection would be broken if the applicant obtained settled accommodation during the intervening period.

38. Lord Fraser of Tullybelton gave a concurring speech, in which he made clear his acceptance of the need for a continuing causal connection between the deliberate conduct resulting in the applicant's ceasing to occupy accommodation which it would have been reasonable for him to continue to occupy, on the one hand, and his homelessness at the time of the inquiry, on the other hand. Addressing the argument that, even if the Dins had not left the Wandsworth flat when they did, they would in any event have been evicted by the date of the authority's inquiry, he stated:

> "Be it so. The fact remains that the appellant's homelessness in December 1979 was a consequence of his deliberate act of moving out on August 28. *I accept that for section 17(1) to be applicable there must be a continuing causal connection between the deliberate act in consequence of which homelessness resulted and the homelessness existing at the date of the inquiry.* Such a causal connection exists in this case, and that being so it is immaterial to inquire whether he might in other circumstances have been homeless then for other reasons." (emphasis supplied)

39. Given his conclusion on the facts, Lord Fraser must have considered that a causal connection between deliberate conduct falling within section 17(1) of the 1977 Act and the current state of homelessness was not affected by circumstances which might have occurred but did not in fact occur. On the other hand, Lord Fraser evidently accepted that a causal connection could be interrupted by an event which actually occurred.

40. It is important to bear in mind Lord Fraser's acceptance of the need for a continuing causal connection when considering an earlier passage in his speech:

> "It is ... irrelevant for an applicant who is homeless at the date of his application, and who became homeless intentionally, to show that he

> would have been homeless by that date in any event. The material question is why he became homeless, not why he is homeless at the date of the inquiry. If he actually became homeless deliberately, the fact that he might, or would, have been homeless for other reasons at the date of the inquiry is irrelevant."(p 671)

This passage envisages a state of homelessness continuing between the time when the applicant became homeless intentionally and the date of the inquiry. In order for the passage to be read consistently with the passage cited previously, it must also envisage a situation where nothing has occurred to break the continuing causal connection between the initial cause of homelessness and the homelessness existing at the date of the inquiry. Granted those premises, what is said is uncontroversial.

41. Lord Lowry, in a further concurring speech, also accepted at p 676 the need for a causal nexus between the intentional action and the homelessness subsisting at the time of the inquiry. He gave the example of the cessation of a period of homelessness following a deliberate act falling within section 17(1) and the later inception of another period of homelessness, following a period in non-temporary (or "settled") accommodation. As he made clear at p 678, he considered section 17(1) to be "concerned with occupation other than temporary occupation": in his view, "a person continues to be homeless while he enjoys temporary occupation". That aspect of his reasoning is however inconsistent with the later decision of the House of Lords in *Awua*.

42. Lord Russell of Killowen, in a dissenting speech, explained at p 673 the significance of the decision in *Dyson:* a case which, as he observed, was the opposite of the Dins' case:

> "If in the past he has become homeless intentionally and but for that he would not now be homeless (as in the *Dyson* case [1980] 1 WLR 1205) well and good: that is why he is homeless now. But if on the facts as established in the present case he would be homeless now in any event, the past circumstances in which the homelessness originated appear to me to be no longer of any relevance: the past actions of the applicant are spent." (pp 673-674)

43. Lord Bridge, in his dissenting speech, identified the two different causal questions which arise in the application of the legislation. Referring to the question of whether the applicant became homeless intentionally, he stated:

> "Thus, on the true construction of sections 3 and 4 and in the application of section 17(1), the third question the housing authority must ask and answer may be expanded into the following form: 'Is the applicant's present homelessness the result of a deliberate act or omission on his part in consequence of which he ceased to occupy accommodation which was available for his occupation and which it would have been reasonable for him to continue to occupy?'" (p 681)

As Lord Bridge explained, this construction does not require any words to be read into the legislation:

> "Section 17 is simply concerned to define what is meant by becoming homeless intentionally. But in construing the phrases 'whether he became homeless intentionally' and 'that he became homeless intentionally' in the context in which they are found in sections 3 and 4, it would be absurd to hold that the housing authority are at liberty to rely on any past act or omission on the part of the applicant which satisfies the section 17 formula but which is not causally related to the applicant's present state of homelessness." (p 681)

Later authorities on causation

44. There are a number of later authorities which indicate how the law relating to causation in this context has developed since *Din:* how, in particular, courts have applied the principle that there must be a continuing causal connection between the deliberate act in consequence of which the applicant ceased to occupy accommodation which it would have been reasonable for him to continue to occupy, and the homelessness existing at the date of the inquiry. The more recent authorities also illustrate a range of circumstances in which it has been accepted that the causal nexus might be broken.

45. One group of cases, of only indirect relevance in the present context, concerns the causal connection, under section 191(1) of the 1996 Act and its predecessors, between the applicant's deliberate act or omission and the cessation of occupancy of accommodation. An example is the case of *R v Hammersmith and Fulham London Borough Council, Ex p P* (1989) 22 HLR 21, where the applicants had fled Belfast after being ordered to leave by the IRA, on pain of death, as a result of their anti-social behaviour. The court held that the authority were entitled to conclude that the applicants were intentionally homeless, since the threat by the IRA was a consequence of the applicants' conduct, not a novus actus interveniens breaking the chain of causation between their conduct and their homelessness.

46. Other cases, of more direct relevance in the present context, have concerned the causal connection between the current state of being homeless and the deliberate act or failure to act in consequence of which there was a prior cessation of occupancy of settled accommodation.

47. First, the case of *R v Basingstoke and Deane Borough Council, Ex p Bassett* (1983) 10 HLR 125 concerned an applicant who had given up the tenancy of a house in Basingstoke when she and her husband decided to emigrate to Canada. They moved to Canada, but their application to stay permanently was refused, and they had to return to England, where they lived in temporary accommodation in Bramley. The marriage then broke down as a result of the husband's behaviour, and the applicant left the Bramley accommodation and applied for accommodation as a homeless person. Taylor J, relying on Lord Fraser's acceptance in *Din* of the need for a continuing causal connection, held that the applicant had not become homeless intentionally. Her homelessness was not due to her having given up the secure accommodation in Basingstoke and moved into unsettled accommodation: it was due to the break-up of her marriage.

48. Some clarification of the nature of the necessary causal connection was provided by the House of Lords in *R v Brent London Borough Council, Ex p Awua*, in a speech delivered by Lord Hoffmann with which the other members of the House agreed. The principal point decided was that temporary accommodation was nonetheless accommodation within the meaning of the legislation, so that a person who was entitled to occupy temporary accommodation was not homeless. In the *Dyson* case, therefore, Miss Dyson became homeless, as Brightman LJ recognised, when her temporary accommodation in the cottage in Cornwall ended, not when she surrendered the tenancy of her flat in Huntingdon. The case had been correctly decided on the basis that her deliberately leaving the flat was the cause of her subsequent homelessness in Cornwall. In the case of *Din*, Lord Lowry had been in error in considering that homelessness persisted until it was interrupted by obtaining a settled residence. The other members of the House had analysed the case in terms of causation. What persisted until the causal connection was broken was the intentionality, not the homelessness. Lord Hoffmann accepted that the causal connection would be broken by the occupation of a settled residence, as opposed to what was known from the outset to be only temporary accommodation, but expressly reserved his opinion as to whether that was the only method by which the causal connection could be broken.

49. Another situation in which the causal connection might be broken had been accepted in *Bassett.* Another was accepted in the case of *R v Harrow London Borough Council, Ex p Fahia.* The case concerned an applicant who was found to have deliberately procured her own eviction from accommodation in Harrow of which she was the tenant. She was then provided by the authority with temporary accommodation in a guest house, where she remained for over a year. Her housing

benefit was then reduced by half, on the basis that her rent was too high. The landlord then told her that she would be evicted.

50. At first instance, Mr Roger Toulson QC, sitting as a Deputy Judge, held that the authority had erred in failing to consider whether the causal connection between the applicant's deliberately procuring her eviction from her accommodation in Harrow, and her homelessness on being evicted from the guest house, had been broken by the reduction in her benefit: (1996) 29 HLR 94. In his view, a good example of the causal connection being interrupted, other than by a period in settled accommodation, would be if the applicant's accommodation in the guest house had been burned down; or if, in *Dyson's* case, the let of the cottage had been brought prematurely to an end by the cottage being destroyed by fire. As the judge observed, *Dyson's* case had been decided as it was because, when the let came to an end, the fact that Miss Dyson was thereafter homeless was caused by her initial conduct. If, on the other hand, somebody went into a property for a three month period but lost it after 14 days because the premises were burnt down, then in the judge's view, applying the ordinary common sense test of causation, one would say that the cause of the homelessness was the fire. The judge considered *Ex p Bassett* to be another illustration of the same principle.

51. That decision was upheld by the Court of Appeal: (1997) 29 HLR 974. Roch LJ, with whose judgment Aldous and Leggatt LJJ agreed, stated at pp 980-981 his agreement with the judge that the causal connection could be broken by events other than the acquisition of a "settled residence", and that *Bassett's* case was an example of such a situation. On a further appeal to the House of Lords, the point was conceded: [1998] 1 WLR 1396, 1401.

52. Another example is the case of *R v Camden London Borough Council, Ex p Aranda* (1997) 30 HLR 76. The applicant and her husband surrendered their tenancy of a house in Camden and moved to Colombia, where they obtained accommodation. On arrival in Colombia, the applicant was deserted by her husband. With no prospect of employment in Colombia, and no entitlement to social security benefits, she returned to Camden and applied for housing. It was held by the Court of Appeal that the causal connection between her deliberately giving up the accommodation in Camden, and her homelessness after leaving the accommodation in Colombia, had been broken by her husband's desertion.

53. A further example is the case of *R v Hackney London Borough Council, Ex p Ajayi* (1997) 30 HLR 473. The applicant in that case left settled accommodation in Nigeria to come to the United Kingdom, where she lived in overcrowded short-term accommodation. She was given notice to leave after she became pregnant. She challenged the authority's decision that she had become homeless intentionally as a result of having left the accommodation in Nigeria, and argued that the true cause

of her homelessness was her pregnancy. Having reviewed the authorities, Dyson J stated at p 478 that the fundamental question was whether there was a continuous chain of causation between the loss of the last settled accommodation and the present state of homelessness. He added at p 479:

> "In some cases, the cause closest in point of time will be regarded as the effective cause. A good example of this might well be the case discussed in *Ex p Fahia* (1996) 29 HLR 94, 102, of the premises occupied on a short letting which are burnt down, thereby rendering the occupant homeless."

In the particular circumstances of the case, the authority had been entitled, in the judge's view, to decide that the effective cause of the applicant's homelessness was her action in leaving Nigeria.

54. A final example is the case of *Stewart v Lambeth London Borough Council* [2002] EWCA Civ 753; [2002] HLR 747. The applicant ceased to occupy his council flat when he was convicted of a drugs offence and sentenced to imprisonment. While in prison, he was evicted from the flat for non-payment of rent. He had arranged with his sister that the rent should continue to be paid while he was in prison, but she failed to implement the arrangement. It was held that the causal chain connecting his deliberate conduct in committing the offence to his homelessness on release from prison had not been broken. It was accepted that the position might have been different if the arrangement had been implemented for a time but had then broken down.

55. The cases of *Bassett*, *Fahia* and *Aranda* are capable of being explained, as Lord Carnwath suggests, on the basis that the immediate cause of the applicant's homelessness in each case was an event unconnected to the temporary nature of that accommodation. That aspect of the cases is not however sufficient in itself to provide a satisfactory explanation of the decisions. If, for example, an applicant deliberately gives up a secure tenancy, and takes on a short lease of temporary accommodation following which she is likely to be homeless, as in the case of *Dyson*, why should it necessarily be decisive whether her occupation of that accommodation comes to an end on the expiry of the lease, on the one hand, or one day earlier, as the result of marital breakdown, on the other hand? The importance of the marital breakdown, so far as the purposes of the legislation are concerned, is not that it resulted in a slightly earlier cessation of occupation of temporary accommodation than would otherwise have been the case. It is important because it is an involuntary cause of homelessness which may be regarded in certain circumstances as interrupting the causal connection between the applicant's current homelessness and her earlier conduct, for example in surrendering a secure tenancy.

56. One situation where that is so is where, applying the words of Brightman LJ in the case of *Dyson* which were cited in para 30 above, it cannot reasonably be said of the applicant that "if she had not done that deliberate act she would not have become homeless". Giving the legislation a purposive application, she has not therefore jumped the queue as a result of her earlier decision to surrender the tenancy. That might be the position, for example, in a case where a marriage broke down at some point after the couple had left secure accommodation, if it appeared that the marriage would probably have broken down, and the applicant would have been rendered homeless, in any event. The ordinary requirement that the cause of an event should be a sine qua non of that event would not then be satisfied.

57. Another situation where deliberate conduct in giving up earlier accommodation may not be regarded as the cause of current homelessness is where homelessness would probably not have occurred in the absence of some other, more proximate, cause, which arose independently of the earlier conduct: where, as it is sometimes put, there is a novus actus interveniens. That is again consistent with the purpose of the provisions concerning intentional homelessness, which is to prevent queue-jumping, not to deter people from moving out of secure accommodation. As counsel for the appellant submitted, that purpose does not require the adverse treatment of those who move out of secure accommodation and are subsequently rendered homeless by an event which is unconnected to their own earlier conduct, and in the absence of which homelessness would probably not have occurred.

58. That was the position in *Fahia*, where the applicant had given up secure accommodation, but her subsequent eviction from temporary accommodation was the result of a reduction in housing benefit. It was true, in relation to her giving up the secure accommodation, that "if she had not done that deliberate act she would not have become homeless". Nevertheless, she could have remained indefinitely in the temporary accommodation if her housing benefit had not been cut: an event which was unconnected to her earlier conduct. Her giving up the secure accommodation was therefore properly regarded as a background circumstance, rather than as the cause of her homelessness. The cases of *Bassett* and *Aranda* can also be explained on that basis. In the case of *Stewart*, on the other hand, the proximate cause of the applicant's homelessness – the non-payment of rent when he was in prison - was connected to the conduct which brought about his imprisonment. In *Ajayi*, the precariousness of the applicant's accommodation after she left Nigeria appears to have been sufficient to maintain a connection between that conduct and her later homelessness.

Conclusions

59. As I have explained, the case of *Din* concerned a relatively narrow issue, namely the interpretation of the definition of "becoming homeless intentionally", in

section 17(1) of the 1977 Act. The House of Lords' decision that the elements of that definition were to be considered as at the time when the applicant ceased to occupy accommodation meeting the requirements of the definition appears to me to have been correct. The decision as to the *tempus inspiciendum* remains good law in relation to the corresponding definition in section 191(1) of the 1996 Act. It also remains true that, if the definition is satisfied as at that point in time, it is immaterial under section 191(1) to consider subsequent hypothetical events. It is however necessary to note that, following the amendment of the legislation after *Puhlhofer,* and the interpretation of the amended legislation in *Birmingham City Council v Ali,* the length of time for which the accommodation would be available may be relevant to the question whether it would have been reasonable, at the time when the applicant ceased to occupy it, for him to have continued to occupy it. It is also necessary to note that, following *Awua,* the applicant need not become homeless upon ceasing to occupy the accommodation with which the definition in section 191(1) is concerned.

60. The conclusion in *Din* that there must be a continuing causal connection between the deliberate act satisfying the definition now contained in section 191(1) and the homelessness existing at the date of the inquiry, also remains good law. The question is whether that homelessness has been caused by conduct meeting the requirements of section 191(1), so that the applicant is to be regarded as having become homeless intentionally for the purposes of sections 190(1) and 193(1). As counsel for the appellant submitted in the present case, the legislation is concerned with the applicant's homelessness at the time of the authority's inquiry, and therefore with the intentionality of that state of homelessness. As counsel submitted, any consideration of intentional homelessness arises after it has been decided that a person is homeless, and looks backwards to determine the operative cause of that homelessness.

61. That approach is consistent with the object of the provisions concerning intentional homelessness, namely to prevent "queue jumping" by persons who, by intentionally rendering themselves homeless, would (in the absence of such a provision) obtain a priority in the provision of housing to which they would not otherwise be entitled. It would not be consistent with that purpose to deny applicants a priority which had not been affected by their intentional conduct.

62. *Din* was an early case in the history of the law on this subject. The decision on the facts reflected the concessions made and the state of the law at that time. As I have explained, a case on similar facts would not now be approached in the same way. Nevertheless, *Din* provided a foundation for the further development of the law. Later case law has provided examples of a variety of events which might be capable of interrupting the causal connection between the deliberate act in consequence of which homelessness resulted, and the homelessness existing at the date of the inquiry: marital breakdown (*Bassett; Aranda),* a cut in housing benefit

(*Fahia),* and the breakdown of an arrangement for the payment of rent (*Stewart).* These examples all concern actual, not hypothetical, events.

63. These decisions are consistent with what was said about causation in *Din,* leaving out of account the aspect of Lord Lowry's reasoning which was disapproved in *Awua.* As counsel for the appellant submitted, the decision whether an applicant is intentionally homeless depends on the cause of the homelessness existing at the date of the decision. That has to be determined having regard to all relevant circumstances and bearing in mind the purposes of the legislation. As I have indicated, a later event constituting an involuntary cause of homelessness can be regarded as superseding the applicant's earlier deliberate conduct, where in view of the later event it cannot reasonably be said that, but for the applicant's deliberate conduct, he or she would not have become homeless. Where, however, the deliberate conduct remains a "but for" cause of the homelessness, and the question is whether the chain of causation should nevertheless be regarded as having been interrupted by some other event, the question will be whether the proximate cause of the homelessness is an event which is unconnected to the applicant's own earlier conduct, and in the absence of which homelessness would probably not have occurred.

The present case

64. In the review decision letter, the writer began by identifying the appellant's last settled accommodation, which he found was the room in the hostel. He considered whether the accommodation remained available for her occupation when she gave it up, and found that it did. He found that it would have been reasonable for her to continue to occupy it, notwithstanding her complaint about smells. In response to representations by the appellant's solicitors that the appellant could not have remained in the hostel after having her baby, the writer added that, although the appellant was pregnant and the accommodation was for single people, all that meant was that it would have been reasonable for her to occupy it until she gave birth. He stated his conclusion by answering four questions: (1) "Did the applicant deliberately do something or fail to do something?" (2) "Did the applicant cease to occupy the accommodation at [the hostel] in consequence of his (*sic*) deliberate act?" (3) "Was the accommodation at [the hostel] available for the applicant to occupy?" (4) "Was it reasonable for the applicant to continue to occupy the accommodation?" These questions addressed the definition of "becoming homeless intentionally" in section 191(1) of the 1996 Act.

65. The review officer's finding that it would have been reasonable for the appellant to continue to occupy the accommodation until she gave birth was presumably made on the footing that she could have sought assistance from the authority in the meantime, and remained in the hostel while suitable arrangements

were made to accommodate her and her baby. It is not apparent whether consideration was given to the question whether the authority could have considered an application and found suitable accommodation within the four months or so before the baby was due. That has not however been made a ground of challenge: on the contrary, it was conceded that the review officer was right to accept that the accommodation was reasonable for the appellant to continue to occupy until she gave birth.

66. The decision was nevertheless deficient in the respect identified by those acting on behalf of the appellant, in that no consideration was given to the question whether the cause of her current state of homelessness was her surrender of her tenancy of the room in the hostel. If that question had been asked, it appears to me that only one answer to it was reasonably possible on the undisputed facts.

67. As I have explained, the causal connection between an applicant's current homelessness and her earlier conduct will be interrupted by a subsequent event where in the light of that event, applying the words of Brightman LJ in the case of *Dyson*, it cannot reasonably be said of the applicant that "if she had not done that deliberate act she would not have become homeless". That is the position in the present case. The consequence of the appellant's giving birth to her baby is that it cannot be said, in relation to her earlier conduct in leaving the hostel, that "if she had not done that deliberate act she would not have become homeless". Nor can it be said that the policy underlying the provisions as to intentional homelessness, namely to prevent queue-jumping, was applicable to her case. The birth of the baby meant that the appellant would be homeless, at the time when her case was considered, whether or not she had left the hostel when and for the reasons that she did. She had not therefore jumped the queue as a result of her earlier decision to surrender the tenancy.

68. For these reasons I would allow the appeal.

LORD NEUBERGER:

69. At the conclusion of the oral argument, I was of the opinion that this appeal should be dismissed, because it seemed to me that we could only allow the appeal if we effectively departed from (in effect overruled) the decision of the House of Lords in *Din (Taj) v Wandsworth London Borough Council* [1983] 1 AC 657. I am now persuaded by Lord Reed's analysis that this appeal can and should be allowed for the reasons which he gives, which do not involve departing from *Din*, albeit that I would accept that we are distinguishing it on a fairly fine basis.

70. The Borough's case, which was accepted in both courts below, is based on the following propositions. (i) the appellant became homeless by vacating the flat in October 2011; (ii) she thereby "became homeless intentionally", as found by the reviewing officer in the review letter of 31 January 2013; (iii) she should continue to be treated as having become intentionally homeless in October 2011; and (iv) she should only cease being so treated once she has been provided with permanent accommodation.

71. As the courts below observed, this line of argument appears to be consistent with the majority view expressed by Lord Wilberforce, Lord Fraser and Lord Lowry in *Din (Taj) v Wandsworth London Borough Council* [1983] 1 AC 657. *Din* was a case concerned with the predecessor of Part VII of the 1996 Act, the Housing (Homeless Persons) Act 1977. However, section 17(1) of the 1977 Act was effectively identical to section 191(1) of the 1996 Act; and sections 4(3) and 4(5) of the 1977 Act were respectively very similar to sections 190(1) and 193(1) of the 1996 Act, and contained the same centrally important words "satisfied that he became homeless intentionally".

72. In those circumstances, I would agree with Lord Carnwath that, if this appeal could not be allowed without departing from *Din*, it should be dismissed. It has not been suggested that the decision of the majority in *Din* was arrived at *per incuriam*, and, although it might appear to some people to have been a somewhat harsh outcome, which may (and I mean "may") not have been reached by this court today, that does not provide sufficiently strong grounds for departing from the decision.

73. First, we should be very slow before departing from an earlier decision of this court or the House of Lords. In *Fitzleet Estates Ltd v Cherry (Inspector of Taxes)* [1977] 1 WLR 1345, the House of Lords had to consider a contention that it should depart from one of its earlier decisions, which had been reached some eleven years earlier by a majority of three to two. Lord Wilberforce (with whom Lord Salmon and Lord Keith agreed) said this at p 1349C-F

> "My Lords, in my firm opinion, the Practice Statement of 1966 was never intended to allow and should not be considered to allow such a course. Nothing could be more undesirable, in fact, than to permit litigants, after a decision has been given by this House with all appearance of finality, to return to this House in the hope that a differently constituted committee might be persuaded to take the view which its predecessors rejected. True that the earlier decision was by majority: I say nothing as to its correctness or as to the validity of the reasoning by which it was supported. That there were two eminently possible views is shown by the support for each by at any rate two members of the House. But doubtful issues have to be resolved and

> the law knows no better way of resolving them than by the considered majority opinion of the ultimate tribunal. It requires much more than doubts as to the correctness of such opinion to justify departing from it."

74. Viscount Dilhorne took the same view at p 1350E-H, saying that, even if he had thought the 1965 decision "was wrong, … I would not have departed from it", stressing "the importance of the use of precedent as providing a degree of certainty … and the orderly development of legal rules" and the risk of differently constituted committees boxing and coxing (not his expression). Lord Edmund-Davies also agreed, pointing out at p 1352A that the appellant simply "submitted that [the 1965 decision] was wrong when delivered and that nothing has since happened to make right today what was wrong in 1965", and made it clear that this was not nearly enough to justify departing from the 1965 decision.

75. Secondly, as Lord Hodge said in a very recent judgment in this court, with which Lord Clarke, Lord Wilson and Lord Toulson agreed, *R (on the applications of ZH and CN) v London Borough of Newham and London Borough of Lewisham* [2014] UKSC 62, [2014] 3 WLR 1548, para 53:

> "[W]here Parliament re-enacts a statutory provision which has been the subject of authoritative judicial interpretation, the court will readily infer that Parliament intended the re-enacted provision to bear the meaning that case law had already established: *Barras v Aberdeen Sea Trawling and Fishing Co Ltd* [1933] AC 402, Viscount Buckmaster at pp 411-412."

Lord Carnwath seems to have taken the same view at paras 83-88 and 95-97, and Lady Hale referred to *Barras* without disapproval at para 167, although I was somewhat less enthusiastic about it – see at paras 143-148. As Mr Arden pointed out, the principle is also supported by Lord Lloyd speaking for the judicial committee in *Lowsley v Forbes* [1999] 1 AC 329, 340F-G.

76. Turning to the facts of this case, it must, of course, be accepted that the initial cause of the appellant's homelessness was her deliberate act of vacating the flat at Lea Bridge House. If the issue had been whether the appellant's homelessness at the date she vacated Lea Bridge House had been voluntary and deliberate, then that would be the end of the matter: no subsequent event, such as the birth of her daughter, could change the fact that it was. However, as the issue is whether the appellant's homelessness as at the date of the review, 31 January 2013, was caused by her own deliberate act, the issue is, or at least is capable of being, more subtle.

77. Once the appellant gave birth to her daughter, there could be said to have been a severing of what Lord Fraser of Tullybelton (who was in the majority in *Din*) characterised as a "continuing causal connection between [her] deliberate act in consequence of which homelessness resulted and the homelessness existing at the date of the inquiry" – see *Din* at p 672. That is because, by the date of the relevant inquiry in this case, namely 31 January 2013, the applicant would have had to vacate the flat at Lea Bridge House, and therefore would have been homeless anyway, because she had given birth to a daughter eleven months earlier, and her tenancy of that flat limited the number of occupants to one person. In other words, even if the appellant had not voluntarily vacated the Lea Bridge House flat when she did, she would have been made homeless by 31 January 2013. A new event had intervened, so that it can no longer be said that, but for the appellant vacating voluntarily, she would have been in occupation of the Lea Bridge House flat in January 2013: she would not.

78. This approach is consistent with the policy behind Part VII of the 1996 Act, as explained by Lord Lowry in *Din* at p 679. That is because it would mean that an applicant who had initially become deliberately homeless would be treated as deliberately homeless, and therefore as not entitled to "jump the homelessness queue", until such time as she could show that, in the light of a subsequent specific event or series of events, she would on the balance of probabilities have become involuntarily homeless anyway. At that point she would no longer be treated as being deliberately homeless. If she were to be treated thereafter as being deliberately homeless, that would involve penalising her.

79. Accordingly, I consider that the interpretation favoured by Lord Reed complies with the wording of the relevant provisions of, and with the purpose of, Part VII of the 1996 Act. With rather more hesitation, I also agree that his analysis and conclusion do not involve departing from the reasoning of the majority in *Din*. In this case, there is an undeniable later event which would have caused the applicant to become homeless anyway, namely the birth of her daughter, whereas in *Din* there was no such later causative event, merely a possibility that one might well have occurred.

80. That is a rather narrow ground for distinguishing the earlier decision in *Din*, but I consider that it is justifiable in the circumstances. I have already mentioned that this conclusion is consistent with the policy of Part VII of the 1996 Act. In addition, as is stated in para 62 above, the decision in *Din* was reached at a relatively early stage of the homelessness law, and in the light of subsequent developments (including the more recent cases cited by Lord Reed and the fact that much of Lord Lowry's reasoning in *Din* was disapproved in *R v Brent London Borough Council, Ex p Awua* [1996] AC 55), it does not seem inappropriate to constrict the application of the decision. Thus, it is clear that a subsequent event such as permanent rehousing occurring after the deliberate homelessness can break the chain of causation, and it

would seem inconsistent if an event such as what happened in this case did not have the same effect. That point is reinforced by the cases discussed in paras 47-54 above, which provide good examples of other circumstances which can break or restart the chain of causation in this field. Quite apart from all this, allowing this appeal on the ground explained by Lord Reed would, as already explained, be consistent with the correct test expressed in *Din* by Lord Fraser, who was one of the majority.

81. Accordingly, while I understand, and have considerable sympathy with, Lord Carnwath's view to the contrary, I am in agreement with Lord Reed.

LORD CARNWATH: (dissenting)

82. For more than 30 years the majority decision in *Din v Wandsworth LBC* [1983] 1 AC 657 has been accepted as authority at the highest level for the proposition that under the homeless persons legislation (in the words of the headnote):

> "… in deciding whether the (applicants) became homeless intentionally, the housing authority had to look to the time of their action in leaving the accommodation they occupied and a subsequent hypothetical cause of homelessness did not supersede the actual cause represented by their action"

83. That result was thought by the majority to follow from the wording of the relevant provisions, under which the scope of the authority's duty turned on an inquiry whether the applicant "is" homeless" but whether he "became" homeless intentionally (section 4). As Lord Wilberforce said:

> "The time factors here are clearly indicated: at the time of decision (the present), the local authority must look at the time (the past) when the applicants became homeless, and consider whether their action then was intentional in the statutory sense …." (p 666H; see also p 671E per Lord Fraser, to like effect)

84. The emphasis on actual rather than hypothetical causes of homeless was most clearly stated by Lord Fraser –

> "… it is ... irrelevant for an applicant who is homeless at the date of his application, and who became homeless intentionally, to show that he would have been homeless by that date in any event. The material

> question is why he became homeless, not why he is homeless at the date of the inquiry. If he actually became homeless deliberately, the fact that he might, or would, have been homeless for other reasons at the date of the inquiry is irrelevant." (p 671G)

The same approach was reflected in Lord Wilberforce's concern that the alternative would pose problems for authorities, who would be required –

> "… as well as investigating the original and actual cause of homelessness, to inquire into hypotheses - what would have happened if the appellants had not moved …" (p 667F)

It was reflected also in the way in which Lord Lowry, having accepted that the "act of becoming intentionally homeless" must be causally linked to the homelessness at the time of the application to the authority, characterised the appellants' argument, which he rejected –

> "Their argument necessarily disregards this aspect of causation and concentrates on something else: what would have been the position if the deliberate act which caused the relevant homelessness had not occurred. They then say that the real cause of their homelessness is not the act which caused it but something which did not cause it, namely the fact that they would have been homeless unintentionally by December if they had not already become homeless intentionally in August." (p 676D-E)

The contrary approach of the minority was put succinctly by Lord Russell:

> "… if on the facts as established in the present case he would be homeless now in any event, the past circumstances in which the homelessness originated appear to me to be no longer of any relevance: the past actions of the applicant are spent." (p 674A).

85. The majority's approach may have seemed harsh at the time. As applied to the facts of the case (involving mounting arrears of rent), it has been overtaken by statutory provisions. In *Din* the appellant had conceded that he could not challenge the authority's decision that it would have been "reasonable for him to continue to occupy" the accommodation in question, notwithstanding his keenness to avoid mounting debts, although Lord Fraser noted that the position might have been different in a part of the country under less housing pressure (p 671A-B). This problem has been addressed, not by substituting hypothetical for actual causes in the

principal provision, but by defining the matters to be taken into account in deciding whether continued occupation is reasonable. As Lord Reed points out (para 15), subordinate legislation under section 177(3), introduced in 1996 provides that in determining that issue account is to be taken of the applicant's financial resources and the cost of the accommodation. In the words of the Code of Guidance: "one factor that must be considered in all cases is affordability" (para 8.29).

86. The one area of possible disagreement between the members of the majority in *Din* was on a matter not essential to their decision, that is the interpretation of the decision in *Dyson v Kerrier District Council* [1980] 1 WLR 1205. This concerned the correct approach to homelessness resulting from an intentional move from settled accommodation (in Huntingdon) followed by a limited period in temporary accommodation in a winter let in Cornwall. The Court of Appeal had held that there was a sufficient causal link between the original decision and the subsequent homelessness to satisfy the statutory test. In *Din* Lord Wilberforce thought the case was rightly decided:

> "There (as here) the applicant intentionally surrendered available accommodation in order to go to precarious accommodation (a "winter letting") from which she was ejected and so became homeless. It was held (in my opinion, rightly) that she had become homeless in consequence of her intentional surrender. This does not in any way support an argument that a subsequent hypothetical cause should be considered to supersede an earlier actual cause. It merely decides that a disqualification for priority by reason of an intentional surrender is not displaced by obtaining temporary accommodation. As pointed out by Ackner LJ in the Court of Appeal, it can be displaced by obtaining 'settled' accommodation."

Lord Fraser agreed because on the facts of that case "the original cause of her homelessness was still in operation" at and after the time when she had to leave the winter let. Lord Lowry alone expressed doubts about the correctness of the reasoning in *Dyson.* He said:

> "It could well be that the plaintiff, having become homeless intentionally when she left the Huntingdon flat, was continuously homeless during the temporary winter letting and therefore rightly lost her priority. That is a result which I would understand and accept. But that was not the basis of decision in *Dyson* …."

87. That limited area of difference was resolved in 1995 by the House of Lords in *R v Brent London Borough Council, Ex p Awua* [1996] AC 215. Lord Hoffmann

acknowledged that in finding the necessary "causal link" the Court of Appeal in *Dyson* had stretched the "literal wording", to avoid a construction which would enable people to jump housing queues "by making themselves homeless at one remove". In answer to the question "what constitutes the causal link?", he cited with approval Lord Wilberforce's explanation that the "disqualification" on the grounds of intentional homelessness "was not displaced by obtaining temporary accommodation":

> "The distinction between a settled residence and temporary accommodation is thus being used to identify what will break the causal link between departure from accommodation which it would have been reasonable to continue to occupy and homelessness separated from that departure by a period or periods of accommodation elsewhere. This jurisprudence is well-established (it was approved by this House in Din's case) and nothing I have said is intended to cast any doubt upon it, although I would wish to reserve the question of whether the occupation of a settled residence is the sole and exclusive method by which the causal link can be broken."

He rejected Lord Lowry's suggestion that Mrs Dyson had become homeless when she left the settled accommodation and remained so during the temporary let:

> "… of course Dyson's case implies no such thing. It decides only that her homelessness after eviction from the cottage in Cornwall is intentional because it was caused by her decision to leave the flat in Huntingdon. Some support for a contrary view can be found in the speech of Lord Lowry in Din's case but this opinion was not shared by the other members of the House, who analysed the case solely in terms of causation. What persists until the causal link is broken is the intentionality, not the homelessness."

Nothing in *Awua* casts any doubt on the principle, established by the majority in *Din*, that the definition of intentional homelessness is not concerned with hypothetical causes.

88. The law on these issues has thus been settled for some 20 years or more. Although these cases were decided under the previous legislation, in terms of the wording of the relevant provisions of the 1996 Act, nothing has changed. Section 190(1) includes precisely the same contrast of tenses as was found in section 4 of the 1977 Act, and was regarded as determinative in *Din*. It applies where the authority are satisfied that the applicant "is" homeless, but "became" homeless

intentionally. To my mind this is a clear indication that Parliament intended the same approach to apply as under its predecessor.

89. Lord Reed has undertaken his own re-analysis of *Din* in a way which had not suggested by the parties before us, nor (to my knowledge) by anyone else in the three decades since it was decided. While he makes some interesting points, I find it hard with respect to accept that such a re-analysis is desirable or necessary. Lord Reed observes that these provisions have given rise to "numerous difficulties of interpretation" (para 8). That may have been so in the past, but it seems all the more reason for leaving well alone an aspect of the law which was regarded as settled in the highest court at a relatively early stage. As already noted, the limited difference between Lord Lowry and the other members of the majority on that issue was settled 20 years ago in *Awua.* The reasoning of the review officer in the present case seems to me a perfectly orthodox reflection of the majority approach in *Din* as endorsed in *Awua.*

90. Miss Bretherton for the appellant has adopted a rather different approach. She has not sought to re-interpret the majority decision in *Din*, but she submits that developments in both the statutory framework and in the case-law mean that the decision need no longer be treated as binding, or if necessary, justify overruling it. As I understand her submissions, the principal developments on which she relies are:

i) The 1996 Act involved a major restructuring of the law, not simply a consolidation, so that previous case-law, though persuasive was no longer formally binding.

ii) More particularly, the review procedure, introduced by section 202 of the 1996 Act, provides for a full merits review of the application on the basis of the facts at the date of the review. The reviewing officer, in the words of Lord Slynn (*Mohammed v Hammersmith and Fulham London Borough Council* [2002] 1 AC 547 para 26) -

> "… is not simply considering whether the initial decision was right on the material before it at the date it was made. He may have regard to information relevant to the period before the first decision but only obtained thereafter and to matters occurring after the initial decision."

iii) More recent cases have shown, as anticipated by Lord Hoffmann, that the causal link following an act of intentional homelessness may be broken

> by an occurrence other than the acquisition of settled accommodation, provided that it is unconnected with the temporary nature of the intervening accommodation, for example the breakdown of a marriage (*R v Basingstoke and Deane Borough Council, Ex p Bassett* (1983) 10 HLR 125), or a reduction in housing benefit (*Ex p Fahia* (1996) 29 HLR 94). The same thinking should apply to the birth of the child in the present case, which would have led to the loss of the accommodation in any event.

91. I will take these points in turn. For the reasons already given when commenting on Lord Reed's judgment, I do not consider that the 1996 Act was intended to alter in any way the concept of intentional homelessness, or gives any reason for departing from or questioning *Din* – particularly having regard to its then recent reaffirmation in *Awua.* It is true that the new review procedure allows consideration of new evidence, on those issues where the inquiry is directed to the present (such as "local connection" as in *Mohamed*). However, that has no relevance in my view to the issue of intentionality, which remains specifically related to the past.

92. On Miss Bretherton's last point, I do not see that her client can gain any help from cases such as *Bassett* and *Fahia*. As she says, the effect of these, if correct, appears to be to create an exception to the *Dyson* approach where the intervening accommodation comes to an end due to a change of circumstances for reasons not directly linked to its temporary nature, such as a breakdown of marriage which leads to exclusion from the temporary home. Another example, suggested by Toulson J in *Fahia* is where the temporary accommodation is destroyed by fire. The key to these cases is that the new event is the direct cause of the eventual homelessness, and is treated as its operative cause, thus breaking the chain of causation from the (intentional) loss of the previous settled accommodation.

93. Neither the logic of the exception, nor its precise limits are entirely clear. In *R v Hackney London Borough Council, Ex p Ajayi* (1997) 30 HLR 473, Dyson J upheld the authority's refusal to treat the operative cause of homelessness as the applicant's pregnancy, which was the immediate cause of her eventual homelessness. He gave no clear explanation for the difference, other than that the issue was one for the authority to answer "in a practical common sense way having regard to all relevant circumstances" (p 479). Those cases, whatever their precise rationale, do not support a departure from the *Din* principle that the focus is on actual not hypothetical causes. Nor do they help the present claimant. The birth of her child might have been, but was not, the actual cause of her loss of either the original or the temporary accommodation.

94. In conclusion, while I have much sympathy with the appellant's arguments, I do not think we can properly accede to them. I would therefore have dismissed the appeal.