

**Bucknall v Dacorum Borough Council [2017] EWHC 2094 (QB): When is temporary accommodation occupied as a dwelling for the purposes of Section 3 of the Protection from Eviction Act?**

**By Natalie Thomas, Associate at Trowers & Hamlins LLP**

Mrs B applied to DBC under Part 7 of the Housing Act 1996 and was placed in temporary accommodation on a non-secure licence under Section 188 pending the outcome of the application.

*R(N) v Lewisham London Borough Council* [2015] AC 1259 is clear that temporary accommodation provided under Section 188 (prior to the Section 184 decision) is not occupied as a dwelling.

DBC subsequently determined that the full housing duty was owed under Section 193(2). No new licence agreement was issued, but DBC wrote to Mrs B stating that she would be offered suitable private sector accommodation but, in the meantime, she should continue to pay the charges and abide by the conditions of her agreement to occupy the "temporary accommodation you will be provided with". About 6 weeks later Mrs B was offered a permanent property but she refused it as unsuitable. On review DBC upheld the property as suitable and discharged its duty.

DBC served a notice to quit which did not comply with the requirements of Section 5 of the Protection from Eviction Act 1977 and the Notices to Quit etc. (Prescribed Information) Regulations 1988 (SI 1988/2201). DBC then issued possession proceedings in respect of the temporary accommodation. At first instance the Judge referred to *R(N) v Lewisham LBC* and stated that the accommodation remained interim accommodation provided under Section 188 and was not provided as a dwelling. As such the notice to quit did not need to comply with the referenced Act and Regulations and a possession order was made. Mrs B appealed.

On appeal to the High Court, it was held that the accommodation was being provided under Section 193(2). The Section 188 duty ended when the Section 184 decision was notified. Following notification that the full housing duty was owed, the accommodation is provided pursuant to that duty even if not secure or permanent.

Further, it was held that the property was occupied as a dwelling because of the terms of the Section 184 letter and also because of the appellant's continued occupation of it.

It is not the change in duty which necessarily changes the dwelling/non dwelling status of occupation, which depends on the purpose of the occupation. If permitted to stay in accommodation for an indefinite period, that is likely to lead to the conclusion that the continued occupation is as a dwelling. So the question is not simply whether occupation is under Section 193(2), but rather whether the occupation is merely transient, and indefinite occupation goes beyond this.

As a result, Section 5 of the Protection from Eviction Act applied to Mrs B's licence and so, in omitting the prescribed information, the notice to quit was ineffective to terminate it. The appeal was allowed.