HOUSE OF LORDS SESSION 2007–08

[2008] UKHL 58

on appeal from: [2007]EWCA Civ 544

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

R (on the application of Heffernan) (FC) (Appellant) *v* The Rent Service (Respondents)

Appellate Committee

Lord Hope of Craighead
Lord Scott of Foscote
Lord Rodger of Earlsferry
Lord Walker of Gestingthorpe
Lord Neuberger of Abbotsbury

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LORD HOPE OF CRAIGHEAD

My Lords,

1. I have had the advantage of reading in draft the opinion of my noble and learned friend Lord Neuberger of Abbotsbury. I agree with it, and for the reasons he gives I would allow the appeal and make the order that he proposes.

2. The exercise which is contemplated by para 4 of Schedule 1 to the Rent Officers (Housing Benefit Functions) Order 1997 (1997 SI/1984), as amended by the Rent Officers (Housing Benefit Functions) (Amendment) Order 2001 (2001 SI/3561), leaves much to the judgment of the rent officer. But, as its rather complex formula indicates, the area within which that judgment is to be exercised is not unlimited. It follows that, if his decision is challenged, the rent officer must be in a position to show that he has conducted the exercise in the way that is required by the paragraph.

3. The principle of valuation which the rent officer is asked to apply requires him to make an assessment based on a comparison with the rents payable for dwellings that are, on a carefully framed hypothesis, comparable with that which the beneficiary occupies. In order to arrive at a local reference rent by applying the formula which para 4(1) of Schedule 1 sets out he must be in possession of a sufficient basket of rents to form a judgment as to the highest and lowest rents that it envisages. The criteria that a dwelling must satisfy for its rent to be put in the basket are set out in para 4(2). Three assumptions must be made,

two of which no doubt are familiar to every rent officer: its state of repair and the number of its bedrooms and rooms suitable for living in. It is the third assumption, as to the locality, that gives rise to difficulty. The rules that must be applied to determine the area of the locality are set out in para 4(6).

4. The essential difference between the approach of the Court of Appeal and that which I would favour lies in the extent to which the rent officer is restrained in his determination of the area which constitutes the locality. The basic purpose of the scheme remains the same as that which Sir Thomas Bingham MR described in *R (Gibson) v The Housing Benefit Review Board for East Devon* (1993) 25 HLR 487. The balance that he described is to be found in the determination of the highest and lowest rents for the purposes of the formula used to arrive at the cap that is imposed by the local reference rent (LRR). The cap must not be set at such a low level as to make it impossible for the occupier of the dwelling to find any other accommodation to which he could be expected to move at the level of rent payable. The amendments contained in the 2001 Order were made in response to the decision of the Court of Appeal in *R (Saadat) v The Rent Service* [2002] HLR 613; [2001] EWCA Civ 1559. It is plain that they exclude any consideration of the demographic restraint to which Sedley LJ referred in *Saadat*, para 13. But they continue to place a geographical restraint on the extent of the area within which the dwellings are to be found whose rents are to be placed in the basket before the rent officer makes his judgment as to the LRR according to the formula.

5. As Pill LJ said in para 35 of his judgment in the Court of Appeal, the requirement in para 4(6)(a) that the area must comprise two or more neighbourhoods imposes a minimum requirement but it does not suggest a maximum: [2007] EWCA Civ 544, para 35. He thought that para 4(6)(b) did not favour a narrow geographic restriction. I would, with respect, differ from him on this point. His approach reflects the advice that an area may be made up of a city and its immediate area which is to be found in the circulars. It invites a broad geographical approach which is, no doubt, the most convenient one to adopt. But in my opinion it is the wrong approach. It starts the exercise at the wrong end. Para 4(6)(a) does indeed impose a minimum requirement of two neighbourhoods. The fact that it starts with such a low number is in itself quite significant. It indicates that a combination of two will do. It suggests that the addition of any more neighbourhoods must be justified. The addition of a neighbourhood will be justified if the rent officer considers that the variety of types of residential properties and tenancies is insufficient to enable him to determine the highest and lowest rents

for the purposes of the formula: para 4(6)(c). Arriving at an appropriate figure for those rents is, after all, the aim of the entire exercise.

6. In my opinion para 4(6)(b) imposes a geographical control on the extent of the area within which the variety referred to in para 4(6)(c) is to be found. The result of its application may be wide or narrow in terms of geography according to the circumstances. This will depend on the judgment of the rent officer. He must however apply the criterion mentioned in para 4(6)(b) to every neighbourhood which he wishes to add to the one where the dwelling is situated. The only rents which can be added to his basket are those for dwellings which are to be found within a neighbourhood which satisfies this criterion. Those for premises in a neighbourhood which fails to satisfy it must be discarded. The protection that the system provides against unfairness to the beneficiary is ensured by the application of para 4(6)(b) to every neighbourhood that the rent officer needs to include, in addition to the beneficiary's own neighbourhood, for the purposes of the formula.

LORD SCOTT OF FOSCOTE

My Lords,

7. Having had the advantage of reading in draft the opinions of my noble and learned friends Lord Hope of Craighead and Lord Neuberger of Abbotsbury I would allow this appeal for the reasons they give with which I am in full agreement.

LORD RODGER OF EARLSFERRY

My Lords,

8. Those who live in rented accommodation but have little or no income are entitled to a means-tested housing benefit. Whatever the amount of the rent which they pay, however, they are not entitled to receive more by way of benefit than the "local reference rent" (LRR). The LRR is the mean between the highest and lowest rent which a landlord might reasonably have been expected to obtain for an assured

tenancy of a similar dwelling, in a reasonable state of repair, "in the same locality": para 4(1) and (2) of Part I of Schedule 1 to the Rent Officers (Housing Benefit Functions) Order 1997 ("the 1997 Order"). The issue in the present appeal turns on the interpretation of the definition of "locality" in para 4(6) in that Schedule. The definition was inserted by article 2(5) of the Rent Officers (Housing Benefit Functions) (Amendment) Order 2001.

9. Although a new system of local housing allowances based on "broad rental market areas" is replacing housing benefit, the definition of those areas is largely similar to the definition of "locality". The point in dispute is therefore one of continuing importance.

10. At the conclusion of the hearing I was inclined to favour a construction of para 4(6) along the lines of Lord Neuberger's. On further consideration, however, I have come to the view that it introduces too many elements which are not to be found in the text. In explaining my view, I gratefully adopt Lord Neuberger's outline of the legislation and of the facts of the present case. In discussing rents, I assume that all the other requirements of the scheme are met.

11. As Lord Neuberger points out, before the decision of the Court of Appeal in *R (Saadat) v Rent Service* [2002] HLR 613; [2001] EWCA 1559 the Rent Service had developed a working definition of the term "locality", which appeared in paras 4 and 5 of Schedule 1 but was not defined. In particular, the Rent Service regarded a "locality" as being a "broad geographical area". The Court of Appeal interpreted the term differently, however. The purpose of the amendments made by the 2001 Order was to restore the previous working definition. Against that background, it would scarcely be surprising if the language of the amended legislation were apt to describe a broad area – especially since similar wording is used in the definition of "broad rental market area" inserted into article 2(1) of the Rent Officers (Housing Benefit Functions) Order 1997 by para 4 of Part I of Schedule 3A to the Rent Officers (Housing Benefit Functions) (Local Housing Allowance) Amendment Order 2003.

12. Para 4(6) of Part I of Schedule 1 to the 1997 Order provides:

> "For the purposes of this paragraph and paragraph 5 'locality' means an area—

(a) comprising two or more neighbourhoods, including the neighbourhood where the dwelling is situated, each neighbourhood adjoining at least one other in the area;
(b) within which a tenant of the dwelling could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping which are in or accessible from the neighbourhood of the dwelling, taking account of the distance of travel, by public and private transport, to and from facilities and services of the same type and similar standard; and
(c) containing residential premises of a variety of types, and including such premises held on a variety of tenancies."

13. While a literal interpretation of a legislative provision may have to give way to broader considerations, the best place to start is with the text. Indeed, rather unusually, at the hearing of this appeal counsel on both sides devoted a good deal of time to analysing the language of para 4(6). Looking at the provision as a whole, I see no room for doubting that all three sub-paragraphs (a) – (c) are elements in the definition of an "area" which constitutes a "locality" for the purposes of determining LRRs. A "locality" is an area which meets the cumulative criteria in the three sub-paragraphs. Equally, for purposes of sub-paras (a) and (b), the term "neighbourhood" is defined in para 3(5). The nature of that definition is such that it will apply to areas of different sizes, depending on the particular situation.

14. In my view, no gloss on either of these definitions is permissible unless para 4(6) would otherwise be unworkable. More especially, they are not to be modified to conform to some extra-statutory idea of what amounts to a "locality" or "neighbourhood".

15. In the course of discussion at the hearing, the suggestion was made that, somehow or other, para 4(6)(b) should be read, not as part of the definition of the area which constitutes the "locality", but as referring to each of the two or more "neighbourhoods" which make up that area. That line of thinking surfaces in para 58 of the speech of Lord Neuberger where he says that para 4(6)(b) must refer to each neighbourhood in sub-para (a) since, if it referred to the locality, it

would be meaningless, as the dwelling itself must be in the locality and therefore ex hypothesi the locality would always satisfy para 4(6)(b).

16. Although I doubt whether much turns on the supposed distinction, I would respectfully reject that approach, which is inconsistent with the grammatical structure of the provision. Sub-para (b) qualifies "an area". A locality is simply an area "within which", i e, "within the whole of which", a tenant of the dwelling could reasonably be expected to live, having regard to the various accessible facilities. It follows, of course, that the hypothetical tenant must be able to live in the whole of any of the neighbourhoods included in the area and so the highest and lowest rents in any neighbourhood are potentially relevant for LRR purposes. So a "locality" is an area (a) comprising two or more contiguous neighbourhoods, including the neighbourhood where the actual tenant lives in a dwelling, (b) within the whole of which a tenant of that dwelling could reasonably be expected to live, having regard to the various accessible facilities, and (c) containing residential premises of various types and including such premises held on a variety of tenancies.

17. Sub-paras (a) and (c) prescribe certain *minimum* features which an area must have if it is to qualify as a "locality". It must (a) contain two or more contiguous neighbourhoods, including the one where the actual tenant lives, and it must (c) contain various types of residential premises and include such premises held on a variety of tenancies. On the other hand, neither sub-paragraph prescribes any kind of upper limit for an area which is to count as a "locality". Nor does sub-para (b). Again, it concentrates on features which the area must have in order to qualify. In that sense, sub-para (b), too, is concerned with the minimum standard which an area must meet if it is to qualify: it must be an area within the whole of which a hypothetical tenant of the actual dwelling could reasonably be expected to live, having regard to the various accessible facilities.

18. In theory, a problem could arise if the only area which would meet the standard set by sub-para (b) did not contain a variety of types of residential premises or include such premises held on a variety of tenancies, as required by sub-para (c). But the point does not seem to have given rise to difficulties in practice and there is, accordingly, no need to consider it.

19. Provided that an area meets the criteria in the three sub-paragraphs, the rent officer is entitled to use the highest and lowest rents in that area in fixing the relevant LRRs for the purposes of housing benefit. That makes sense. Since a hypothetical tenant of the actual dwelling could reasonably be expected to live anywhere in that entire area, having regard to the accessible facilities, the rents in the whole of the area are relevant when considering the amount of housing benefit which it would be reasonable for the actual tenant to receive.

20. I respectfully agree with Lord Neuberger that, in considering whether the hypothetical tenant of the actual dwelling could reasonably be expected to live in an area, the only factor to which the rent officer is to have regard is the physical accessibility of comparable facilities of the kinds specified in sub-para (b). The legislator's decision to confine the scope of the test in this way must be respected. It follows, in my view, that a locality may include both urban and rural neighbourhoods. I see absolutely nothing in the language of para 4(6) which would introduce the idea that, *as a matter of law*, a tenant living in an urban neighbourhood could not reasonably be expected to live in a contiguous non-urban neighbourhood. According to the unqualified text of sub-para (b), if comparable facilities are accessible, the hypothetical tenant can reasonably be expected to live anywhere in the area, whether in an urban or more rural "neighbourhood". The hypothesis is true to life: in the real world, people move from towns and cities to the surrounding area and back again, for various reasons – not least, the cost of housing. The legislation envisages that the hypothetical tenant, too, would be prepared to do so.

21. As I have indicated, in assessing the position under para 4(6)(b), the rent officer is concerned only with the physical accessibility of the various facilities. He has to consider the facilities in the neighbourhood of the actual dwelling and those that are accessible from that neighbourhood. In doing so, the rent officer obviously does not consider whether, in fact, the actual tenant has been taken on as a patient by the local medical practice, or whether, in fact, he has children or has been able to get them into the local school. The market rent for the dwelling is not affected by these aspects of the tenant's personal situation. An area will not qualify as a "locality" for LRR purposes unless the hypothetical tenant of the actual dwelling could be expected to live anywhere in the area, taking account of the distance of travel, by public and private transport, to and from facilities of the same type and of a similar standard. Only the distance of travel, by public and private transport, to and from the equivalent facilities is to be taken into account. Again, the rent officer is not concerned with whether or not a

particular medical practice would, in reality, be full or a particular school would, in reality, be oversubscribed. All that matters is that the facilities which would be physically accessible, taking account of the distance of travel, are of the same type as, and of a similar standard to, those which are physically accessible from the actual tenant's dwelling.

22. It is for the rent officer to judge whether, given the local transport system, any particular facility is accessible from any given neighbourhood. Much may depend on the facility in question: people are prepared to travel much further to buy a computer than to buy a pint of milk. It is, moreover, a fact of modern life that many shopping developments, for instance, draw their clientele from every part of a town or city, as well as from the surrounding area. At one time, department stores tended to be situated in the centre of cities and people travelled in to them from residential areas all over the city and surrounding area. Nowadays, many stores are situated in shopping malls with large parking areas far from the city centre. But people still travel considerable distances by public and private transport from all over the city and surrounding area to shop there. Parents take children on long journeys across town to and from the school of their choice. Both children and adults embark on equally long journeys to a stadium to attend a pop concert or football match. Similarly, the only specialist cardiology unit may be in a hospital on the south side of a city and the only specialist renal unit in a hospital on the north side. Patients and their relatives have to travel to and from the appropriate hospital. Bus services may be run with their needs in mind.

23. What the legislation requires is that the facilities be comparable, not that the access to them should be comparable. A tenant in one neighbourhood may be within walking distance of a swimming pool, while a tenant in another neighbourhood would need to make a twenty-minute journey by bus to get to it. But that tenant might be within walking distance of the local hospital, to which the tenant in the first dwelling would have to travel by bus from his neighbourhood. The pool and hospital would be accessible in or from both neighbourhoods, even though the journeys to them would be different.

24. In these circumstances, I see nothing objectionable, in principle, in a rent officer concluding that various facilities are accessible to everyone living in a town or city and the surrounding area, which can therefore be regarded as a "locality" in terms of para 4(6)(b). Indeed, a contrary conclusion would often be divorced from reality.

25. I agree with Lord Neuberger that Pill LJ, 2007 EWCA 544, at para 36, was wrong to say that it would be sufficient if the facilities met "the requirements of the law and the appropriate public authorities," as opposed to being of a similar standard. That would be to ignore the unmistakable terms of sub-para (b). I also agree that rent officers can easily acquire sufficient information to make the kind of comparison that is needed. But, of course, a comparison is only required if the facilities which are accessible in, or from, the actual tenant's neighbourhood are not also accessible in, or from, another neighbourhood which is being considered for inclusion in the "locality". If the rent officer concludes that the transport links are such that the same facilities are accessible in, or from, another area, then there will be no need to compare the standards of other accessible facilities.

26. Applying the approach which I have indicated to the information available to him, the rent officer must decide whether an area meets the criteria in sub-paras (a) – (c). If it does, then he can use it as a "locality" for determining LRRs. There is no size limit beyond which an area cannot count as a "locality" for these purposes. So long as the whole area is one in which the hypothetical tenant could reasonably be expected to live, having regard to the accessible facilities, the rent officer fulfils the objective of the legislation by having regard to the rents in that area. Nothing in the language of para 4(6) or in its rationale justifies imposing some arbitrary limit on the size of the area which a rent officer can use as a locality. In particular, I see no justification for saying that, once the rent officer has identified an area – comprising a minimum number of neighbourhoods - which meets the criteria in sub-paras (a) – (c), he must call a halt and draw a line. If there are other contiguous neighbourhoods in which, or from which, facilities of the same type and of a similar standard would be accessible, the hypothetical tenant could reasonably be expected to live in those neighbourhoods too. So the rent officer would be entitled to include them in the "locality". Para 4(6) does not oblige the rent officer to include all the possible neighbourhoods which would constitute an area meeting the criteria; equally, there is nothing to prevent him from including any neighbourhoods which do. The decision is left to his judgment.

27. Suppose, for example, a rent officer decided that a tenant living in the neighbourhood of Blackheath could reasonably be expected to live in the adjoining neighbourhood of Greenwich to the north - and there were enough dwellings and tenancies in the two neighbourhoods to meet the requirements of sub-para (c). Nothing in the language of para 4(6) requires the rent officer, *as a matter of law*, to ignore his

professional judgment – if it be his judgment – that, having regard to the accessible facilities, the hypothetical tenant could also be expected to live in a wider area, including, say, the neighbourhood of Lewisham to the south-west. On the contrary, in my view, he would be entitled to include Blackheath, Greenwich and Lewisham in the one locality, even though the smaller area of Blackheath and Greenwich would, on this hypothesis, also meet the requirements of para 4(6). The rents in the additional area would be just as relevant as the rents in the smaller area and their inclusion might well affect the level of the LRR by altering the value of either H or L in the relevant formula. In principle, therefore, it would be wrong for this House to devise a rule to exclude them from consideration. Moreover, the approach which I prefer places no additional demands on rent officers since, on any view, there must be a "locality" for every dwelling in the country and so the sub-para (b) exercise has to be carried out in respect of every neighbourhood.

28. It follows that I can detect no error in principle in the approach adopted by the rent officers in this case. Admittedly, their analysis may seem to be broad-brush rather than refined. But that is justified if their basic premise that the transport system in Sheffield makes all the facilities accessible to people living in the area is justified. Making that assessment is very much a matter for the rent officers, and I can find nothing in the case which would actually justify a court in interfering with it.

29. For these reasons I would dismiss the appeal.

LORD WALKER OF GESTINGTHORPE

My Lords,

30. I have had great difficulty in the resolution of this appeal. Bearing in mind that the new definition of "locality" in para 4(6) of the amended Order was intended to rectify the difficulties identified in *R (Saadat) v The Rent Service* [2002] HLR 613, I find it surprising that Parliament has given so little guidance as to how to answer the question posed by Sedley LJ in *Saadat* (para 15): "Where *does* it stop?" The absence of clear guidance suggests to me that Parliament must have intended rent officers to have a wide margin for judgment.

31. Like my noble and learned friend Lord Rodger of Earlsferry, I was at the end of the hearing inclined to think that the appeal should be allowed. But further reflection, and in particular study of Lord Rodger's opinion (which I have had had the advantage of reading in draft), have led me to the conclusion that the appeal should be dismissed, for the reasons set out in Lord Rodger's opinion. I cannot usefully add to them.

LORD NEUBERGER OF ABBOTSBURY

My Lords,

32. Section 130 (1) of the Social Security Contributions and Benefits Act 1992 entitles a person to receive housing benefit, if "he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home", and either he has no income, or his income is below a specified level. Section 122 of the Housing Act 1996 empowers the Secretary of State by order to require rent officers (who are employed by the Rent Service, an executive agency of the Department for Work and Pensions) to carry out functions in relation to housing benefit.

33. This appeal concerns the meaning and effect of an Order made pursuant to section 122, namely the Rent Officers (Housing Benefit Functions) Order 1997 (1997 SI/1984), as amended by the Rent Officers (Housing Benefit Functions) (Amendment) Order 2001 (2001 SI/3561). This Order ("the 1997 order") requires rent officers, on request, to determine, and, where appropriate, to re-determine, the maximum amount of housing benefit that a particular tenant should receive.

The 1997 order

34. Part I of Schedule 1 to the 1997 Order ("the schedule") requires a rent officer to carry out four assessments. First, by para 1, the rent officer has to determine "whether, in his opinion, the rent payable under the tenancy of the dwelling … is significantly higher than the rent which the landlord might reasonably have been expected to obtain under the tenancy…". In carrying out that exercise, the rent officer must, by virtue of para 1(3), "have regard to the level of rent under similar tenancies of similar dwellings in the vicinity". If the rent is found to be "significantly

higher", then para 1(2) requires the rent officer to "determine the rent which the landlord might reasonably have been expected to obtain".

35. The second task assigned to the rent officer is under para 2(1), which requires him to "determine whether the dwelling, at the relevant time, exceeds the size criteria for the occupiers". If it does exceed the size criteria, then he has to assess the rent which a landlord would obtain for a notional dwelling in the vicinity which accords with the size criteria. In such a case, the third and fourth tasks are then carried out by reference to this notional rent.

36. Thirdly, para 3(1) requires the rent officer to "determine whether, in his opinion, the rent payable for the tenancy of the dwelling… is exceptionally high". Para 3(4) states that, when carrying out this exercise, the rent officer must:

> "have regard to the levels of rent under assured tenancies of dwellings which –
>
> a) are in the same neighbourhood as the dwelling and or in as similar a locality as is reasonably practicable and;
>
> b) have the same number of bedrooms and rooms suitable for living in as the dwelling…"

By virtue of para 3(3), if the rent officer decides that the rent is exceptionally high, then he has to "determine the highest rent, which is not an exceptionally high rent and which a landlord might reasonably have been expected to obtain … for an assured tenancy of a dwelling which … is in the same neighbourhood as the dwelling", and which has the same number of bedrooms and living rooms as the dwelling.

37. The fourth task for the rent officer is under para 4(1) which requires him to determine a "local reference rent" ("LRR"). This is defined as being half the aggregate of H and L, which are, respectively, "the highest rent" and "the lowest rent":

> "in the rent officer's opinion –
>
> a) which a landlord might reasonably have been expected to obtain, at the relevant time, for an assured tenancy

of a dwelling which meets the criteria in sub-paragraph (2); and

b) which is [neither an exceptionally high nor an exceptionally low rent]."

The criteria in para 4(2) are:

"a) that the dwelling under the assured tenancy –

(i) is in the same locality as the dwelling;

(ii) is in a reasonable state of repair; and

(iii) has the same number of bedrooms and rooms suitable for living in as the dwelling…".

38. A person's entitlement to housing benefit is then based on the rent payable for the dwelling, or, if lower, the lowest of the rents determined under the four paragraphs of the schedule.

39. It will be noted that paras 1 to 4 of the Schedule refer variously to the "vicinity", the "neighbourhood", and the "locality". Until the amendments effected by the 2001 Order, the word used throughout the first four paragraphs of the Schedule was "locality", which was not defined. The amendments were effected following the decision in *R (Saadat) v Rent Service* [2002] HLR 613;[2001] EWCA 1559, in which the Court of Appeal had disapproved the working definition of "locality" in para 4 as adopted by rent officers.

40. These amendments not only introduced the words "vicinity" and "neighbourhood" in addition to "locality"; they also provided definitions of all three expressions. Para 1(4) defines "vicinity" as meaning "the area immediately surrounding the dwelling", with a fallback provision if there is no other dwelling in the vicinity. By para 3(5) "neighbourhood" is defined as meaning:

"a) where the dwelling is in a town or city, that part of that town or city where the dwelling is located which is a distinct area of residential accommodation; or

b) where the dwelling is not in a town or city, the area surrounding the dwelling which is a distinct area of residential accommodation and where there are dwellings satisfying the description in sub-paragraph 4(b)."

41. Of central relevance to the present appeal, is the definition of "locality", which is to be found in para 4(6) and it is in these terms:

> "[L]ocality means an area –
>
> a) comprising two or more neighbourhoods, including the neighbourhood where the dwelling is situated, each neighbourhood adjoining at least one other in the area;
>
> b) within which a tenant of the dwelling could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping which are in or accessible from the neighbourhood of the dwelling, taking account of the distance of travel, by public and private transport, to and from facilities and services of the same type and similar standard; and
>
> c) containing residential premises of a variety of types, and including such premises held on a variety of tenancies."

42. The Schedule reflects a balancing exercise which has to be carried out where a person claims housing benefit. On the one hand, it would be a waste of public funds to pay for accommodation which is inappropriately expensive or extensive for that person. On the other hand, it would be unduly harsh to require a radical deterioration in such a person's residential circumstances. Sir Thomas Bingham MR said, in relation to predecessor regulations, in *R v Housing Benefit Review Board for East Devon District Council, ex p Gibson & Gibson* (1993) 25 HLR 487, 493:

> "[T]his whole scheme is directed to mitigate the demand on public funds where recipients of Housing Benefit are paying rent above the market level or living in accommodation which is larger than reasonably necessary to meet their needs, or living in accommodation which is unreasonably expensive. The key to the operation of the reduction mechanism is the finding that recipients of housing benefit are paying a rent which is, for one reason or another, unreasonably high.
>
> It is…plain that the procedure is designed to protect the public purse. But it is fair, I think, to infer that the

> procedure is not designed to produce homelessness, which would be the result if a beneficiary's rent were restricted, so that he could not afford to stay where he was but was unable to find any other accommodation to which he could be expected to move at the level of rent payable."

43. Accordingly, the Schedule involves a graduated approach on the part of the rent officer. First, under para 1, he considers the rent payable for the actual dwelling, and decides whether it is "significantly higher" on the basis of rents payable within a relatively small area, namely the "vicinity". Secondly, he asks whether the dwelling is too large for the tenant, in which case he fixes a market rent for an appropriately sized dwelling in the vicinity. Thirdly, under para 3, he enquires whether the rent payable is "exceptionally high" by reference to similarly sized dwellings "in the same neighbourhood", a rather larger area than the vicinity. Finally, under para 4, he has to assess the LRR, and it is this paragraph which, although "a blunt instrument" (per Sedley LJ in *Saadat* [2001] EWCA 1559, para 10), most vividly encapsulates the balancing exercise. Bearing in mind rents paid in the "locality" for various types of property of the same size as the dwelling, the tenant should not be funded for living extravagantly (hence "L"), but he should not be expected to move to substantially less attractive accommodation (hence "H"). It is clear that the "locality" is larger than the "neighbourhood", not least because it must consist of at least two neighbourhoods.

The factual and procedural history

44. Mr Daniel Heffernan, who is 51 years old, blind and registered with various physical and medical complaints, does not work and is dependent on welfare benefits. In March 2004, he was granted an assured (private sector) tenancy of a two-bedroom, one living-room apartment, together with a parking space, in Cavendish Street, central Sheffield, at a rent of £745 per month. In April 2004, he applied to Sheffield City Council for housing benefit in respect of the whole of the rent, and the Council referred the question of his maximum allowable housing benefit to the Rent Service. After four determinations, which are irrelevant for present purposes, there were two subsequent re-determinations.

45. First, on 20 December 2004, the Rent Service through Mr Shaw re-determined (a) that the rent of £745 per month was not significantly

higher than the reasonable rent for the apartment given its vicinity, (b) that the apartment complied with the relevant size criteria, (c) that the rent was not exceptionally high for the apartment in the context of the neighbourhood, but (d) that the LRR was £433.34 per month.

46. A second re-determination was made on 25 May 2005, by which time the contractual rent had been reduced to £695 per month, because the parking space had been consensually removed from the tenancy. This re-determination was made by Mr Spedding, who came to the conclusions (a) that the rent of £695 per month was not significantly higher than the reasonable rent for the vicinity, (b) that the apartment complied with the relevant size criteria, (c) that the rent was not exceptionally high for the neighbourhood, but (d) that the LRR was £455 per month.

47. The two re-determinations were each carried out on the basis that the "neighbourhood" of the apartment was "Sheffield Central", and the "locality" for assessing the LRR was "the whole of the city of Sheffield and some of its surroundings" (which I shall call "the Sheffield area"). This area is made up of a total of 13 neighbourhoods, including, of course, Sheffield Central. In each of the two re-determinations, the rent officer stated that he was proceeding on the basis that the meaning of "locality" was:

> "a broad geographical area made up of a number of neighbourhoods with a mix of property types and tenure where a tenant could, as an alternative to the property in question, reasonably be expected to live and benefit from similar amenities".

This formula was taken from a circular ("the circular"), GA/18a/2001, distributed by the Rent Service to rent officers nationally in June 2001, after the amendments had been effected by the 2001 order. The circular repeated the guidance given to rent officers as to the meaning of "locality" in the 1997 order prior to its amendment by the 2001 order, on the basis that the effect of the amendments was to restore the law to what it had been understood to be before the decision in *Saadat* [2002] HLR 613.

48. The sole relevant ground upon which Mr Heffernan sought judicial review of the two re-determinations was that it was impermissible to have taken the whole of the Sheffield area as the

"locality" for the purpose of para 4(6). Mr Shaw put in no evidence to support his choice of that area as the relevant locality. However, in its evidence, the Rent Service relied on a brief three-page official description of the City of Sheffield. The Judge, His Honour Judge Gilbart QC, sitting as a Deputy High Court Judge, rejected this description as being of no significant help for present purposes, and, to my mind realistically, nobody has suggested otherwise.

49. Much more significantly, Mr Spedding made a detailed witness statement, in which he sought to justify his choice of the Sheffield area as the "locality". Having "considered the nature and characteristics of the area", he said that he had concluded that "Sheffield and its rural hinterland [i.e. the Sheffield area] formed the suitable locality for the purposes of the LRR re-determination". He went on to state that the definition in para 4(6), "precludes the locality from being as small as merely the centre of Sheffield, as Sheffield Central formed the neighbourhood, and there is a requirement for the locality to comprise at least two neighbourhoods". He then said this (with sentence numbering added):

> "(i) Likewise, I did not consider it correct in my professional judgment merely to include neighbourhoods immediately adjoining Sheffield Central in order to include an area which would afford the variety of property types and tenures that para 4(6) (c)…required.
>
> (ii) I also considered in my professional judgment that the whole of the city of Sheffield and some of its surroundings formed a cohesive area in which a prospective tenant living in Sheffield Central could in fact exercise reasonable choice when looking for a home and within which he might reasonably be expected to live having regard to the factors identified [in para 4(6) (c)].
>
> (iii) Access to services of the same type and similar standard throughout Sheffield is broadly the same, and travel times by both private and public transport allow cross-city travel for access to these services and facilities.
>
> (iv) Although there are a number of locally named areas throughout the city, I concluded that there were only 13 distinct areas of residential accommodation within the

> locality, having regard to the definition of neighbourhood in para 3(5)(a)….
>
> (v) I considered that the rural hinterland [was] an area within which the claimant could reasonably be expected to live having regard to the factors contained in para 4(6)(b)… relating to the facilities and services and distance of travel by public and private transport to those facilities and services including those within Sheffield itself."

50. It appears that, when performing their functions under the 1997 order, rent officers in Sheffield routinely tend to proceed on the basis that there are thirteen "neighbourhoods" in the Sheffield area and that they all form part of a single "locality". The Sheffield area extends to some 350sq km and its total population is in the region of 550,000. The thirteen neighbourhoods vary in size from about seven sq km to around 180 sq km, and in population from some 18,000 to over 65,000. Two of the neighbourhoods, namely Stocksbridge in the north-west and Bradfield to the west, are "predominantly rural and incorporate large swathes of the Peak District National Park to the west with open moor land, forests and reservoirs" and include "areas of agricultural land and a number of isolated villages", as well as containing "more urban centres". A third neighbourhood, Sharrow, to the south-west, extends to rural villages in the Peak District National Park, as well as to "the actual inner-city working-class residential area" within the city boundaries.

51. On the basis of this evidence, the Judge quashed the two re-determinations; he considered that the two rent officers had each wrongly followed the guidance in the circular that "locality" involved a "broad geographical area", and had not properly examined each of the twelve neighbourhoods (in addition to Sheffield Central) to confirm that it complied with para 4(6) – [2006] EWHC 2478 (Admin), paras 75 and 78-80. The Court of Appeal allowed the Rent Service's appeal: in a judgment given by Pill LJ, with which Rix and Longmore LJJ, agreed, they concluded that the view that the Sheffield area was the appropriate "locality" for the apartment was one which each of the rent officers was entitled to reach on the evidence – [2007] EWCA Civ 544, paras 35-38.

The correct interpretation of para 4(6)

52. A number of questions concerning the interpretation of para 4(6), and in particular sub-para (b), require to be resolved. The interpretation

of the Schedule presents difficulties, which is not surprising as the draftsman was faced with the task of laying down a formula which not only had to give effect to two competing and very different concerns, but which also could be applied to every dwelling in Great Britain. In the first sub-paragraphs of paras 1 to 4, he managed to identify four tolerably simple concepts, and to express them in clear terms. However, the identification of the exercises required by those paragraphs, above all para 4, was plainly more difficult, not least when it came to defining the "vicinity", "neighbourhood" and "locality" in the amendments made by the 2001 order. Much had to be left to the assessment and opinion of the particular rent officer carrying out the exercise, but consistency and predictability were obviously desirable.

53. The definition of "locality" in para 4(6) must have presented real problems, and, as Pill LJ said, sub-para (b) in particular is "unclear and difficult to construe" – [2007] EWCA 544 at para 34. It is therefore particularly important to approach its interpretation bearing in mind not only its overall purpose, but also its immediate context. As to its purpose, it is an integral ingredient of the final of the four stages of a regime whose purpose was summarised by Sir Thomas Bingham MR in *Gibson* (1993) 25 HLR 487, 493. More particularly sub-para (b) is an attempt to complete the exercise of balancing the need not to over-subsidise a tenant against the desire not to over-penalise him, the exercise encapsulated in the formula in para 4(1). As to the context, para 4(2) makes it clear that the rent officer has to consider levels of rent over a wide range of types of dwelling and letting. There are only three limiting factors, namely size, locality and, not of much relevance for present purposes, state of repair.

54. The first question concerns the inter-relationship of the three sub-paragraphs of para 4(6). The rent officer knows from sub-para (a) that he has to look at rents of premises in the neighbourhood of the dwelling plus at least one other contiguous neighbourhood, but he does not know from that sub-paragraph how many other neighbourhoods. However, passing from sub-para (a) to sub-para (c), what the rent officer does know is that his search has to come up with enough properties to satisfy the requirements of sub-para (c). Thus, detached, semi-detached and terraced houses, flats in purpose-built or converted buildings, dwellings with or without gardens, and dwellings subject to regulated, secure and assured tenancies are all to be considered.

55. Once the rent officer has assembled enough neighbourhoods to satisfy, in his judgment, the requirements of sub-para (c), the language

of para 4(6) appears to be open to three possible interpretations. The first is that the rent officer is at that point required to stop looking for, or including, any further neighbourhoods: he has identified the locality. The second possibility is that he is free, but not obliged, to increase the size of the locality by adding further neighbourhoods, provided, of course, that they satisfy sub-paras (a) and (b). The third possibility is that he is positively obliged to go on adding neighbourhoods, so long as he is satisfied that they satisfy sub-paras (a) and (b), until he is satisfied that there are no further such neighbourhoods to be found.

56. All three interpretations could be justified in the light of the rather loose language of para 4(6), but I have reached the conclusion that the first is to be preferred. It is the interpretation which best fits the purpose of the Schedule, leads to the least unpredictability, and is the most easy to operate.

57. The fact that sub-para (a) appears to give no guidance as to the maximum number of neighbourhoods to be included in the "locality" was a point which concerned Sedley LJ in *Saadat* [2002] HLR 613, paras 14-15 and the Judge in this case – [2006] EWHC 2478, para 36. However, as my noble and learned friend, Lord Hope of Craighead, observed in argument, on the first interpretation sub-paras (a) and (c) give rise to a control mechanism as to the maximum number of neighbourhoods to be included in the locality. Once the rent officer has identified a sufficient number of neighbourhoods to provide enough properties to satisfy sub-para (c) no further neighbourhoods are needed, or indeed appropriate, for inclusion in the locality. On this basis, the function of sub-para (b) is to ensure that any neighbourhood which might otherwise be added, in order to satisfy sub-paras (a) or (c), cannot be added if it falls foul of sub-para (b).

58. At first sight, it may seem somewhat curious to approach para 4(6) by treating sub-paras (a) and (c) as the governing provisions, with sub-para (b) as a limiting provision. However, in my judgment, such an approach is justified once one looks more closely at the drafting. There is no doubt that, as a matter of language and layout, sub-paras (a), (b) and (c) each appear to refer to the "area" and hence to the "locality", as mentioned in the opening part of para 4(6). That is, indeed, the true meaning and effect of sub-paras (a) and (c). However, it seems to me that, by contrast, sub-para (b) refers to each "neighbourhood" in sub-para (a). As both counsel accepted in argument, if sub-para (b) referred to the "area", it would appear to be meaningless, as the dwelling itself must be in the area, and therefore *ex hypothesi* the locality would always

satisfy sub-para (b), unless that sub-paragraph has to be satisfied in relation to every part of the locality, which would seem a little impractical. Hence, it does not seem inappropriate to treat sub-paras (a) and (c) as governing the number and purpose of the neighbourhoods to be included in the locality, and to treat sub-para (b) as excluding any neighbourhood which might otherwise be included, if it does not comply with that sub-paragraph's requirements.

59. This approach has the advantage of limiting the extent to which the identification of the locality is left to the judgment of the individual rent officer in a particular case. While the choice of the particular adjoining neighbourhood to be added will be a matter for him, there will be a limit to the number of neighbourhoods he can add: once he has enough properties to satisfy sub-para (c) he should stop. The notion that the identification involves less subjectivity than the rent officers in these two re-determinations seem to have assumed is consistent with the need for consistency and certainty. It is also supported by the absence of any reference to the rent officer's opinion in para 4(6), which, as my noble and learned friend Lord Rodger of Earlsferry has pointed out, is in contrast to paras 1(1), 3(1) and 4(1). I agree with what Lord Hope says in connection with this point in paras 4 to 6.

60. The second interpretation, which is favoured by Lord Rodger, does not require the rent officer to stop adding neighbourhoods once he has aggregated a sufficient number to satisfy the requirements of sub-para (c). At that point, it is a matter for him whether, and if so how far, to search for and add more neighbourhoods. On this basis, the only mandatory limitation on the number of neighbourhoods occurs when (or if) there are no further neighbourhoods which satisfy sub-paras (a) and (b). There is no guidance in para 4(6) or elsewhere in the schedule as to how a rent officer should decide whether, and if so on what basis, to add more neighbourhoods, once he has enough to satisfy sub-para (c). Once he had aggregated sufficient neighbourhoods to satisfy sub-para (c), a rent officer would not know whether he should add further neighbourhoods, and, if he was to add, when he should stop. Different rent officers would be entitled to take very different views.

61. It therefore appears to me that the second interpretation would be a recipe for uncertainty and inconsistency. It is true that the Rent Service appears to have issued guidance, such as that which applies to Sheffield, for application throughout much of Great Britain, and, as a result, such problems could normally be expected to be avoided. However, the fact that it is possible to promulgate non-binding rules of practice to avoid

the inherent uncertainty and subjectivity of a particular interpretation of statutory words is not a reason for rejecting that interpretation in favour of one which has no such inherent problems. Quite apart from anything else, a rent officer is not bound to follow the guidance issued by the Rent Service; indeed, whatever the correct interpretation of para 4(6), he would always have to exercise his own judgment in each particular case.

62. I am also concerned that, unlike the first interpretation, the second interpretation proceeds on the assumption that it is required that a neighbourhood can only be included in the locality if every part of it satisfies sub-para (b). (That is because, as indicated above, if it refers to the locality, then, unless sub-para (b) has to be satisfied in relation to every part of the locality, it would be meaningless, as the locality will always include the subject dwelling, which, by definition, must satisfy the sub-paragraph). Particularly given the size of some of the neighbourhoods as revealed by this case, this requirement could lead to a potentially contentious and difficult exercise. There could often be room for argument whether a neighbourhood of 100 sq km or more satisfies sub-para (b), on the basis that not every part of the neighbourhood has sufficient access to facilities and services of the appropriate quality; the possible difficulties involved in resolving such an argument speak for themselves.

63. The third interpretation involves sub-para (b) having the effect of requiring all neighbourhoods which satisfy sub-paras (a) and (b) to be included in the locality, provided that they satisfy the requirements of those two sub-paragraphs. I consider that this approach suffers from a number of problems.

64. First, it would lead to inevitable difficulties with sub-para (c) Once the rent officer has assembled the locality by aggregating all the neighbourhoods which satisfy sub-para (b), there would, at least normally, be nothing for sub-para (c) to bite on. If, on the other hand sub-para (c) was not satisfied once he had assembled the locality, then there is an obvious problem, as there would be no way of satisfying the sub-paragraph without adding a neighbourhood which did not satisfy sub-para (b).

65. Secondly, this third approach would present rent officers with a potentially very demanding exercise of looking at a large number of neighbourhoods which satisfy sub-para (a) to see if they satisfy sub-para (b). What is required of a rent officer by the schedule is difficult enough

without adding such a potentially onerous additional responsibility. Thirdly, this interpretation would raise similar problems of uncertainty and issues relating to satisfying sub-para (b) as I have mentioned in relation to the second interpretation.

66. The second question is whether the words "having regard to" in sub-para (b) are exclusive or not. This raises the issue of whether, when deciding whether a neighbourhood is one in which "a tenant of the dwelling could reasonably be expected to live", the rent officer has to restrict his enquiry to the "facilities and services" (hereafter "amenities") specified in sub-para (b). The words "having regard to", as a matter of language, may or may not be exclusive: whether they are or not inevitably depends on their context.

67. In this case, I consider that they are exclusive. The purpose of the amenities to which regard is to be had is, as I see it, to provide a useful way of deciding whether the neighbourhood should qualify in terms of rental value for the para 4(1) formula. Further, the matters left to the rent officer's judgment are complex and difficult enough without being increased by his having to decide what amenities, in addition to those specified in sub-para (b), might be relevant in a particular case to the issue of the suitability of a neighbourhood. In addition, sub-para (b) raises a qualitative, and to some extent subjective, question which relates to the suitability of a neighbourhood for a hypothetical tenant. So it would be difficult to decide what other amenities could or would be relevant and what weight to give them. Similarly, some tenants would not be concerned about some of the amenities specified in sub-para (b) (in this case, I suspect, education), but all those amenities must be taken into account, which also suggests that the specified amenities are intended to be exhaustive.

68. Thirdly, there is the broader issue as to how para 4(6) works. It would be wrong for a court to be too prescriptive in this connection, as the legislature has left it to the rent officer. However, in order to explain its effect, it may help to set out how, at least as at present advised, I would expect that it might normally be operated.

69. In order to satisfy sub-para (a), the rent officer has to find at least one adjoining neighbourhood to add to the neighbourhood of the dwelling. Once such an additional neighbourhood is identified, the rent officer must ask himself whether it satisfies sub-para (b). This involves identifying the specified amenities which are in, or accessible from, that

neighbourhood, and then comparing them with the specified amenities in, or accessible from, the neighbourhood of the dwelling. This in turn involves amassing information, but, in addition, an element of judgment is obviously involved in assessing what is reasonably accessible.

70. The rent officer must then assess the type of specified amenities available to a neighbourhood - e.g. sixth form colleges, secondary schools and primary schools; modern covered shopping malls, supermarkets or local small shops; hospitals with an accident and emergency facility and cottage hospitals. He must also consider their standard, which I consider involves more than simply satisfying himself that the services "meet the requirements of the law and the appropriate public authorities" as Pill LJ said – [2007] EWCA 544 at para 36. In my view, as a matter of ordinary language, this must involve the rent officer carrying out an assessment of the quality of the specified amenities. As the Judge said, the rent officer has to make a "qualitative judgment", although it need not go very deep; in the case of a school, for instance, his analysis would be "less substantial, probably much less so, than a prospective parent would carry out" – [2006] EWHC 2478, para 28.

71. The rent officer must then ask himself whether a hypothetical tenant of a dwelling in a neighbourhood with access to the amenities of the type and standard it enjoys could reasonably be expected to move to the additional neighbourhood under consideration, bearing in mind the type and standard of the amenities to which it enjoys access. The additional neighbourhood does not have to enjoy the same level of amenities on an overall basis (i.e. taking the two sets of specified amenities together), let alone on an individual basis (i.e. taking each category of specified amenity separately). The question is simply whether, taking the type and standard of the various available specified amenities as a whole, a tenant living in the neighbourhood of the dwelling could reasonably be expected to move to the additional neighbourhood. In this connection, I agree with what Lord Rodger says in paras 20 to 23, and 25.

72. I do not consider that this exercise should impose an unrealistically demanding task on rent officers, and it is right to record that Mr David Pannick QC, who appeared for the Rent Service, did not suggest otherwise. There is a great deal of relevant information currently publicly available, for instance performance tables for schools and hospitals and records of recreational facilities. It is not as if the rent officer is required to calibrate precisely the quality of each amenity. Further, the exercise under the schedule is one which would have to be

carried out relatively frequently by rent officers. Accordingly, as the Judge pointed out, rent officers would be well advised to keep a database of relevant information, which is continually updated. Indeed, it is clear from a circular, GA/09/2002, that, since June 2002, the Rent Service has, very sensibly, required rent officers to maintain a six-monthly "review of localities and socio-economic profiles on a regional basis" for this very purpose.

73. Having decided that an additional neighbourhood satisfies sub-paras (a) and (b), the rent officer must then consider whether, in his professional judgment, there are sufficient lettings, in terms of number and variety, across that neighbourhood plus the neighbourhood of the dwelling to satisfy the requirements of paras 4(2) and 4(6)(c). If so, he examines the rental figures to arrive at H and L. If not, he must search for another additional neighbourhood which satisfies sub-paras (a) and (b), and the exercise I have been discussing starts again.

74. The final issue concerns the meaning of the word "locality". It is obviously dangerous to reformulate, or to put a gloss on, a legislative definition, however vague and unsatisfactory it is. However, when interpreting "locality" in para 4, it is legitimate to bear in mind its ordinary English meaning, especially given that there is nothing in para 4(6) which conflicts with that meaning. It seems to me that, while the expression could easily extend to an area which included, for instance, a postal district (or a number of postal districts), it could not apply (in addition or instead) to a long road outside, but running off, the district (or districts). On the other hand, albeit with some hesitation, I think it could cover a doughnut-shaped area. The word "locality" would not normally convey, as a matter of ordinary English, an area as large as a city, but it is such an imprecise word that I do not think it could be said that the attribution of such a meaning is excluded as a matter of ordinary language. Subject to that, it is hard to be prescriptive about what para 4(6) means, beyond analysing the effect of sub-paras (a), (b) and (c).

75. Having said that, it is right to mention a contention fairly strongly advanced in Mr Heffernan's written case, albeit hardly mentioned in the oral submissions of Mr Richard Drabble QC. That contention is that the Court of Appeal failed to appreciate that a purpose of sub-para (b) is "to distinguish between more and less prosperous areas". The application of the sub-paragraph in the case of a dwelling in a prosperous neighbourhood with access to high quality amenities may well result in another, less prosperous, neighbourhood with access to lower quality

services being excluded from the locality because of the application of sub-para (b). However, that would be entirely because the rent officer concluded that a tenant of a dwelling could not be expected to live in the other neighbourhood because of its poorer quality of specified amenities, not because it was less prosperous.

76. There was no discussion before your Lordships as to the meaning of "neighbourhood". However, particularly in the case of cities or urban areas, it seems to me that care should be taken not to interpret it as comprising too large an area. Every property in an additional neighbourhood will potentially be taken into account under para 4, once the rent officer is satisfied that some part of that neighbourhood has access to appropriate specified amenities. Accordingly, at least as at present advised, it seems to me that it cannot have been envisaged that, at least in a city or town, a neighbourhood would normally be very large or sprawling.

The re-determinations in this case

77. Having analysed the meaning and operation of the Schedule, it appears to me to follow that the two re-determinations under challenge in this case cannot stand. In the first place, neither of the rent officers approached the assessment of the locality as he should have done. He should have started by deciding which of the neighbourhoods adjoining Sheffield Central should be considered first, and then considering whether that neighbourhood satisfied sub-para (b). If it did not, then he would have had to look for another adjoining neighbourhood and consider the same issue with regard to it. Once he found an adjoining neighbourhood which satisfied sub-para (b), he should have asked himself whether the locality consisting of that neighbourhood and Sheffield Central had sufficient variety of evidence to satisfy sub-para (c). If the answer had been positive, he would have completed his search for the locality. If it had been negative, he would have had to find a second additional neighbourhood, adjoining Sheffield Central and/or the first additional neighbourhood, which satisfied sub-para (b), and asked himself whether the three neighbourhoods satisfied sub-para (c). If so, he would have had his locality; if not, a fourth neighbourhood would have had to be identified. And so on.

78. Instead of taking this course, the two rent officers simply took the Sheffield area as the locality, effectively for the reasons given by Mr Spedding (or so I assume in the case of Mr Shaw). The rather

ambiguous sentence (i) in the quoted passage suggests to me that Mr Spedding did not regard satisfying sub-para (c) as the end, or limit, of his quest for the locality. Rather, he took the whole of the Sheffield area as the locality because, as he said in sentence (v), it represented the area in which a person who lived in any of the neighbourhoods within it could reasonably be expected to live. As I have explained, that was the wrong approach in principle.

79. If there is to be any prospect of justifying taking an area as large and populous as the Sheffield area (especially if it is to include the outlying rural locations) as the locality, rather more would be required of a rent officer than the rather bald statements contained in sentences (ii) and (iii). As the Judge said ([2006] EWHC 2478, para 77), it does not appear that there has been any real analysis of the matters required by para 4(6)(b). The reference to "similar facilities and services over a broad area" is simply too superficial and general. There seems to have been no consideration of the different types and standards of the specified amenities in or accessible from each of the twelve selected additional neighbourhoods, and no real attention devoted to comparing them with those in, or accessible from, Sheffield Central. As my noble and learned friend Lord Walker of Gestingthorpe said, a general reference to the transport system in a large city cannot justify, without more, the conclusion that all neighbourhoods enjoy comparable access to similar types and standards of amenity.

80. As already mentioned, sub-para (b) does not require a minute and detailed analysis and comparison. However, it does give rise to a need for something more than a generalised assertion, such as is to be found in sentences (ii) and (iii) in the passage I have quoted from Mr Spedding's evidence. In those sentences, he does not really address the issues raised by the sub-paragraph, and in any event, his consideration of the issues is far too cursory, especially given that he is seeking to justify taking as large and populous an area as the city of Sheffield, together with some outlying rural areas, as the locality.

81. In taking the Sheffield area as the locality, Mr Shaw and Mr Spedding appear to have adopted an approach which was generally taken by the Rent Service when assessing LRR for dwellings within that area, which in turn was based on the guidance in the circular. The circular could be misleading when it refers to a locality being "a broad geographical area". The word "broad" may encourage rent officers to take a larger area than is appropriate (as, indeed, has probably happened

here), and the word "geographical" appears to me to add nothing, and hence to risk misleading.

82. Having said that, I see nothing wrong in the Rent Service giving guidance not merely on the principles to be adopted when assessing LRR, but also on the appropriate areas to adopt in a city, or within any other location, when deciding on vicinities, neighbourhoods, and localities. Indeed, provided that the guidance is accurate and not prescriptive, it is desirable, as it should make determinations of LRR both easier and more predictable. However, such guidance cannot avoid the need for rent officers determining LRR in any particular case to consider the issues raised by sub-paras (a) to (c) by reference to the facts of that case. In particular, in many cases, what may be the right locality for one dwelling may not be the right locality for a dwelling in an adjoining neighbourhood.

83. The Judge observed that he could not go so far as to say that it would not be permissible, if it could be justified on the facts found and judgments made by the rent officer, to treat the Sheffield area as the locality of the apartment in this case. While the selection of the locality is a matter for the rent officer, I very much doubt if the proper approach to the build-up of a locality would ever lead to one as extensive (at least in a para 3(5)(a) case) or as populous as the Sheffield area.

Conclusion

84. For these reasons, I would allow Mr Heffernan's appeal, and restore the order of the Judge quashing the two re-determinations of 20 December 2004 and 25 May 2005.