would conclude that there was a 'real possibility' that the decision-maker was biased (*Porter v Magill* [2002] AC 357).

1.39.3. A general perception or suspicion of bias does not, absent evidence, suffice.

1.39.4. The fair minded and informed observer, whilst not complacent, is not 'unduly sensitive or suspicious' (*Lawal v Northern Spirit Ltd* [2003] UKHL 35).

Examples of where bias does not arise

1.39.5. Decisions held not to be unlawful on grounds of inherent apparent bias include:

- A request for interim accommodation pending review decided upon by the officer who made the original adverse decision that is to be reviewed (*R (Abdi) v Lambeth LBC* [2007] EWHC 1565 (Admin)).
- A second s.202 review decision taken by the same officer who undertook the first review, following a successful Ombudsman complaint (*Feld v Barnet LBC* [2005] EWCA Civ 1307).[73]
- S.202 reviews undertaken by a company under contract (*De-Winter-Heald v Brent LBC* [2009] EWCA 930).

1.40. Breach of statutory procedure

1.40.1. A failure to comply with the requirements of the Review Procedure Regulations[74] may render a s.202 review decision unlawful.[75]

[73] The reviewer's conduct was not the subject of the Ombudsman's report, nor was her conduct criticised. The Court of Appeal held that in the absence of exceptional circumstances there was nothing wrong with the same officer undertaking an initial and second review. Bias did not arise either because of the Ombudsman's report or the fact the officer had conducted the first review. Parliament has deemed reviewers to be competent and conscientious. They are trained, able to engage with issues on a reasonable and intelligent basis, and able to change their minds on issues which fall to be determined.

[74] The Homelessness (Review Procedure etc.) Regulations 2018, SI No 223.

1.40.2. See the chapter 'Section 202 reviews' for the statutory review requirements generally.

Notifying procedure etc

1.40.3. Reg. 5 requires the council, upon receiving a review request, to:

- Notify the applicant that they, or their representative, may make representations in writing to the council, and
- Notify the applicant (if they have not already done so) of the procedure to be followed in connection with the review.

1.40.4. A failure to notify the applicant of their right to make representations and the procedure may render the process procedurally unfair, particularly if prejudice was caused, e.g. if the applicant would have otherwise responded with representations (e.g. *Safi v Sandwell MBC* [2018] EWCA Civ 2876).

Reg.7(2) procedure

1.40.5. Regulation 7(2) states:

> *"If the reviewer considers that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but is minded nonetheless to make a decision which is against the interests of A [the applicant] on one or more issues the reviewing must notify A –*
>
> *(a) that the reviewer is so minded and the reasons why and*
>
> *(b) that A, or someone acting on A's behalf, may make representations to the reviewer orally or in writing, or both orally and in writing."*

1.40.6. A 'deficiency' means 'something lacking' which is sufficiently important to the fairness of the procedure to justify the extra procedural safeguard. This evalulative judgment is for the reviewing officer, subject to challenge on *Wednesbury* grounds (*Hall v Wandsworth LBC* [2004] EWCA Civ 1740).[76]

1.40.7. However, in practice a deficiency has been held to have a wide definition (see the section entitled 'Deficiency or irregularity' in the chapter 'Section 202 reviews').

1.40.8. The Reg.7(2) requirements are mandatory. In *Lambeth LBC v Johnston* [2008] EWCA Civ 690, Rimer LJ stated:

> *"... regulation 8(2) [now 7(2)] is not a discretionary option that the review officer can apply or disapply according to whether or not he or she considers that the service of a "minded to find" notice would be of material benefit to the applicant. Regulation 8(2) imposes a dual, mandatory obligation upon the review officer. First, to "consider" whether there was a deficiency or irregularity in the original decision or in the manner in which it was made. Secondly, if there was – and if the review officer is nonetheless minded to make a decision adverse to the applicant on one or more issues – to serve a "minded to find" notice on the applicant explaining his reasons for his provisional views. In my judgment, there is no discretion on the review officer to give himself a dispensation from complying with either of those obligations. As regards the first of it, I have referred to the fact that it is not a purely subjective exercise but that failure to arrive at the right "consideration" can be challenged on usual public law grounds. As regards the second part, the language of reg.8(2) is unambiguously mandatory – "the reviewer shall notify..."".* (para 51).

[76] See further the chapter 'Section 202 reviews'.

1.40.9. Accordingly, non-compliance with Reg.7(2) affords the applicant grounds for appeal, notwithstanding the merits of the substantive issue under review.

1.40.10. To avoid this technical challenge, reviewing officers may decide to invoke the Reg.7(2) procedure in all but the most straightforward cases.[77]

Timescale for response

1.40.11. In *Harman* the county court held that seven days was an unreasonably short period of time for enabling the applicant to respond to a Reg.8(2) (now Reg.7(2)) 'minded to find' letter (*Harman v Greenwich LBC* (2010) January *Legal Action* 36, CC).

1.40.12. In *Connors* the applicant refused a final offer of accommodation made to end the s.193 main housing duty. The council accepted there was a deficiency or irregularity because the discharge of duty notification did not contain reasons. On a s.204 county court appeal HHJ Cook observed tha,t had reasons been provided in the decision letter, the applicant would have had 21 days in which to respond, via her review request. It was held that giving fewer than seven days, including postal delivery, to respond to a Reg.8(2) (now Reg.7(2)) 'minded to find' letter was unfair (*Connors v Birmingham CC* (2010) May Legal Action 25, CC).

1.41. Importance of record keeping

1.41.1. The absence of file records may undermine a council's reliance on an undocumented event. For example, a court might make

[77] Straightfoward case in the sense that it cannot feasibly be asserted there was something lacking in the original decision.

adverse inferences from absence of a file record concerning a factual matter.[78]

1.41.2. Clearly, decision-makers routinely rely on file records to establish factual matters. A failure to adequately record events in relation to housing applications is likely to constitute maladministration (see 'Ombudsman' section below).

1.41.3. In *Complaint against Eastleight BC* the Ombudsman rejected the council's account that the applicant had been offered and declined interim accommodation. There was an absence of supporting evidence. Compensation of £3,000 was recommended (06/B/07896, 18 September 2007).

1.42. Court's interpretation of decision

1.42.1. The court should adopt a benevolent approach when interpreting a decision and should not:

- Subject the decision to a 'pedantic exegesis' (critique).
- Search for inconsistencies, or adopt a nit-picking approach.
- Take too technical a view of the language used.
- Analyse or interpret the decision as if it were a statute, contract or court judgment (*Holmes-Moorhouse v Richmond Upon Thames LBC* [2009] UKHL 7).

1.42.2. Although the court should be vigilant to ensure the applicant is not deprived of benefits to which they are entitled under Part 7, it is equally important that the court does not overturn a decision because of an error which does not, on a fair analysis, undermine the basis on which it was made (*Holmes-Moorhouse*).

[78] In addition the Ombudsman often draws adverse inferences in published reports where a fact or action relied on by a council has not been documented. See for example *Complaint against Tower Hamlets LBC*, 19 000 068, 11 November 2019.

1.42.3. By contrast incomprehensible or misguided reasoning will vitiate a decision (*Holmes-Moorhouse*).

1.42.4. The decision-maker is not writing an examination paper in housing law. The council is not required on appeal to demonstrate the decision-maker correctly understood the law; it is for the applicant to show they have not (*Freeman-Roach v Rother DC* [2018] EWCA Civ 359).

1.43. Ombudsman

1.43.1. The Ombudsman[79] has the power to investigate complaints from members of the public about council services and may recommend redress for individuals.[80]

Threshold criteria

1.43.2. The Ombudsman considers whether there has been maladministration causing injustice.[81]

1.43.3. 'Maladministration' is not statutorily defined. It means 'poor administration' or 'fault'.

1.43.4. The 'Crossman catalogue'[82] listed:

> *"...bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness, and so on."*[83]

1.43.5. In *Eastleigh BC* Lord Donaldson stated:

> *"...administration and maladministration ... is concerned with the manner in which decisions...are reached and the manner in which they are or are not implemented. Administration and maladministration have nothing to do with the nature, quality*

[79] The Local Government and Social Care Ombudsman, established in its original form by the Local Government Act 1974
[80] Local Government Act 1974, ss.24A, 25 and 26A.
[81] Local Government Act 1974, s.26.
[82] As stated by Richard Crossman MP, Leader of the Commons,, during the second reading of the Parliamentary Commissioner Bill, which ultimately established the Parliamentary Ombudsman.
[83] HC Deb Vol 734, col 51 (18 October 1966).

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