
GARDEN COURT
CHAMBERS

Homelessness Update:
Where are we now?

Georgie Rea, Stephen Cottle & Matthew Ahluwalia,

Garden Court Chambers

27th March 2024

Assessments, PHPs and inquiries

- Section 189A HA 1996:

(1) If the local housing authority are satisfied that an applicant is—
(a) homeless or threatened with homelessness, and
(b) eligible for assistance, the authority must make an assessment of the applicant's case.

(2) The authority's assessment of the applicant's case must include an assessment of—
(a) the circumstances that caused the applicant to become homeless or threatened with homelessness,
(b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside ("other relevant persons"), and
(c) what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation.

(3) The authority must notify the applicant, in writing, of the assessment that the authority make.

- Chapter 11 of Code

UO v London Borough of Redbridge [2023] EWHC 1355 (Admin)

- Claimant and three children were homeless following grant of refugee status and end of asylum support accommodation
- Two children attended school in Tottenham area and one attended nursery
- Applied as homeless to Redbridge but did not hear anything until the day before her eviction. Told that she would be accommodated, but not told where. Not asked about her housing needs.
- Provided with a single room in a hotel that was 1.5 hours from the school by public transport; then another hotel that was 2.5 hours away
- Redbridge moved family to 7 different hotels in 4 months, none of which had cooking or laundry facilities
- Social worker and headteacher of school provided evidence setting out their concerns, which was ignored
- After a PAP letter from solicitors Redbridge offered accommodation in Peterborough which would have required children to change schools – claimant refused the offer and Redbridge discharged s193 duty

UO v London Borough of Redbridge [2023] EWHC 1355 (Admin)

- Judicial review claim issued in January 2023; interim relief granted in March 2023
- Four grounds:

  i. Initial HNA and PHP were unlawful – insufficient enquiries, failure to identify needs, inadequately evidenced, PHP therefore improperly informed, failure to take steps to agree or consult with UO on the PHP

  ii. Failure to review housing needs and suitability of hotel accommodation and Peterborough accommodation

  iii. Unlawful suitability decisions, both in of themselves and due to flawed HNA and PHP

  iv. Unlawful discharge of s193 duty as accommodation offered not suitable

UO v London Borough of Redbridge [2023] EWHC 1355 (Admin)

- Claim succeeded on all grounds
- D's interactions with C were 'wholly inadequate'. No material questions asked, no enquiries made of the school in Tottenham or regarding the children's educational needs
- Suggestion that position had been that because the family had moved around a lot in asylum support accommodation, that somehow justified moving them between different hotels in this context (para. 110) – firmly rejected by the court
- Unlawful not to reconsider HNA and PHP in light of evidence from headteacher and social worker

UO v London Borough of Redbridge [2023] EWHC 1355 (Admin)

Para. 120: Whilst I accept that officials working in the housing department of the defendant and other local authorities are often required to operate under significant pressure, it is impossible to avoid the overall conclusion that the defendant has fallen far short of what Parliament has ordained. It is not for this Court to usurp Parliament's functions by relaxing the intensity of judicial review in this area, by reference to these and other pressures (such as the paucity of accommodation), to such an extent as in effect to re-write the legal duties of housing authorities.

Para. 134: The hotel accommodation could not rationally be regarded as suitable. This is particularly so, given the impact upon the children of having to travel, in many cases, excessive distances to attend school; having nowhere that the claimant could prepare meals for them and therefore having to subsist on fast food outlets. That all of this was having a detrimental impact upon the performance of the children, particularly LO, was evidenced by the headteacher of the school in Tottenham.

Para. 138: Since the defendant has failed to show that it undertook any (let alone legally sufficient) inquiries, the defendant simply cannot rely on the general premise (which I accept) is that there is an acute housing shortage in London. The defendant has failed to show what accommodation was available closer to the school in Tottenham and why it could not have been offered to the claimant.

SK, R (On the Application Of) v Royal Borough of Windsor and Maidenhead [2024] EWHC 158 (Admin)

- Claimant was a single parent who lived with four of her eight children (GZ, HZ, JZ and KZ). Two of the children had significant disabilities.

- HZ was hospitalised in March 2023. Following treatment, while she recovered sufficiently to be medically fit for discharge, her home was not considered suitable for her to return to because it was not fully wheelchair accessible. Two months later, the Defendant obtained interim care orders in respect of JZ and KZ who were then placed in foster care. An interim care order was made in respect of HZ. The council subsequently applied for final care orders in respect of the three children leaving GZ as the only child continuing to live with the claimant.

- Contested family proceedings were therefore ongoing.

- In June 2022, Claimant applied as homeless due to the unsuitability of her accommodation. The Defendant accepted that the main housing duty was owed under s193 HA 1996.

SK, R (On the Application Of) v Royal Borough of Windsor and Maidenhead [2024] EWHC 158 (Admin)

- The defendant prepared an initial assessment of the claimant's case, as required under section 189A HA 1996, producing a housing needs assessment and personalised housing plan.

- However, these were subsequently updated on several occasions to account for three of the claimant's four children leaving the family home as a result of the care proceedings.

- The most recent version of the documents (produced in November 2023) proceeded on the basis that the assessment only needed to consider the needs of the claimant and GZ and did not account for the circumstances around how the family had become homeless.

SK, R (On the Application Of) v Royal Borough of Windsor and Maidenhead [2024] EWHC 158 (Admin)

- The Claimant sought judicial review on several grounds, including that the Defendant had failed to meet its obligations to -

  - produce an up-to-date HNA and PHP for her and all of her children, as required by section 189A HA 1996; and
  - comply with its duty under section 193 HA 1996 to secure accommodation for the claimant and her children which is 'suitable' as required by section 206 HA 1996.

- Court found that the current HNA and PHP were unlawful because they did not consider the needs of all four children. It was plainly a possibility that all four would return to live with the Claimant.

  [43] 'I do not accept the defendant's submission that the duty to assess persons with whom the applicant might reasonably be expected to reside only arises in the initial assessment, and not on review. Such a narrow interpretation could produce absurd results in those cases, such as this one, where there was a possible change in composition of the household in the near future.'

- Claim allowed on both grounds. Mandatory order made for new HNA, PHP, and suitability of accommodation offered.

Eligibility

- Updates to The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 / 1294
  - Classes N and O - Ukraine
  - Class P - Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery of the Immigration Rules
  - Class Q - Sudan
  - Class R – Israel, West Bank, Gaza Strip, East Jerusalem, Golan Heights, Lebanon

SSWP v AT (AIRE Centre and IMA intervening) [2023] EWCA Civ 1307

- AT was an EEA national, single parent, victim of domestic abuse, not able to work.
- Granted pre-settled status in December 2020.
- In January 2021, had to move into a refuge, applied for Universal Credit and was refused.
- AT argued that without Universal Credit she would be unable to meet her basic needs.
- Article 1 of Charter: Human dignity is inviolable. It must be respected and protected.
- First-tier Tribunal allowed AT's appeal; Upper Tribunal dismissed SSWP's appeal - [2022] UKUT 330 (AAC).

SSWP v AT (AIRE Centre and IMA intervening) [2023] EWCA Civ 1307

- Court of Appeal dismissed SSWP's appeal.
- After the end of the transition period for the UK's withdrawal from the EU, the Charter of Fundamental Rights of the European Union continued to apply to the right of residence set out in art.13 of the Withdrawal Agreement, which incorporated into the Agreement the right of free movement and residence set out in TFEU art.21.
- The test for whether there had been a breach of the right to human dignity provided for in art.1 of the Charter was the approach set out in *CG v Department for Communities in Northern Ireland* (C-709/20), in which the ECJ described a requirement for national authorities to conduct an individualised approach to assessing need.
- There was a positive duty on a host state which refused one form of relief to determine whether the applicant was in need of other forms of protection to secure their dignity and make their residence right viable.
- Supreme Court refused SSWP permission to appeal.

SSWP v AT (AIRE Centre and IMA intervening) [2023] EWCA Civ 1307

- As CPAG have advised, arguably all with pre-settled status without a qualifying 'right to reside' can potentially rely on this judgment if core facts are similar

- Upper Tribunal provided helpful guidance

- A claimant would need to establish:
  - Pre-settled status
  - Unable to work
  - No sufficient and regular support from third party
  - No other adequate support from local authority
  - An actual and current risk that they might not have sufficient resources to meet basic needs

- Likely to be relevant to homelessness eligibility decisions

- Excellent notes and resources on CPAG website: https://cpag.org.uk/sites/default/files/2024-02/09-02-24-CPAG-note-for-advisers-AT_0.pdf and https://cpag.org.uk/welfare-rights/test-cases/test-case-updates/destitute-eu-nationals-pss-can-rely-eu-charter-fundamental-rights-obtain

Kyle v Coventry City Council [2023] EWCA Civ 1360

- A had a history of drug addiction. Applied to Coventry as homeless and was provided s188 accommodation in a hostel. A was taking methadone at the time.
- Said to have broken the hostel rules and moved to different accommodation. Complaints were made about his behaviour at the second hostel and moved to a third hostel.
- The third hostel was specifically for recovering drug addicts.
- Coventry notified A that he was owed s193 duty.
- However, the third hostel informed Coventry that A had broken the rules there too.
- Coventry discharged duty and said A had made himself intentionally homeless.

Kyle v Coventry City Council [2023] EWCA Civ 1360

- Appeal dismissed in County Court and by Court of Appeal.
- Recognition that refuges are not comparable in this scenario to 'halfway houses' – refuges are temporary safe havens, and not places to live - rejecting A's arguments that they were analogous.
- Hostel accommodation had therefore been reasonable for A to continue to occupy.
- Coventry entitled to come to view that A had made himself intentionally homeless.

R (Bano) v Waltham Forest [2024] EWHC 654 (Admin)

- Claimant was a single parent who had made a homelessness application in January 2017. In February 2017 the Defendant notified her that they owed her the main housing duty under s193 HA 1996 and was provided with temporary accommodation.
- On 11 June 2020, the Defendant made an offer of accommodation (the PRSO). The Claimant refused the offer but did not request a suitability review.
- No further letter was sent by the Defendant stating that a decision had been made that the duty had ended. A letter was sent on 19 August 2020 entitled, “Cancellation of your temporary accommodation”. It advised that the claimant was now being asked to leave the current accommodation as Covid restrictions had been lifted.
- Claimant’s solicitors asked for a review in October 2020, which the Defendant declined to carry out. The Claimant remained in temporary accommodation. The Defendant issued possession proceedings where the Claimant was assisted by the duty solicitor.

R (Bano) v Waltham Forest [2024] EWHC 654 (Admin)

- Claimant's new solicitors wrote to the Defendant in May 2023 arguing that the main housing duty under s193 was still owed, as the formal notification requirements for ending the duty had not been met. The Defendant responded treating that as a request for a review out of time. The request was refused. The Defendant's letter did not dispute that the Defendant had failed to comply with the notification requirement.

- The prime issue between the parties was whether the Defendant continues to owe the Claimant a duty to secure her accommodation under s.193 of the Housing Act 1996.

- Claimant brought judicial review proceedings, on the sole ground that the Defendant erred in law in failing to recognise that it continues to owe a duty to the claimant under s.193(2) HA 1996 to secure that accommodation is available for her occupation.

R (Bano) v Waltham Forest [2024] EWHC 654 (Admin)

[45] *Therefore, the scheme of the Act is that once the LHA accepts the main duty, that duty only ceases to be owed or comes to an "end" in certain prescribed ways. Those ending routes or pathways are set out in statute. There was forensic debate during the hearing about the "technicality" of this issue. In fact, this is about something different: the proper and fair protection of the rights of people, who often are vulnerable, and who are being supported with their living accommodation. Parliament has therefore set down carefully articulated pathways to ending the main duty. They cannot be ignored. Nor should they be trivialised. They exist as a matter of safeguarding, fairness and good administration.*

R (Bano) v Waltham Forest [2024] EWHC 654 (Admin)

- The Court found that there was no decision made by Waltham Forest that the main housing duty had ended.

- The June 2020 letter could not be construed as a decision to end the main housing duty; it was an offer of accommodation would could have been refused or accepted. The local authority would have had to make a decision as to whether there was refusal or acceptance. Sending a letter offering accommodation could therefore not be interpreted as formally ending the duty owed.

- October 2020 letter also could not be read as determining that the duty had been ended.

R (Bano) v Waltham Forest [2024] EWHC 654 (Admin)

- Court rejected argument that the duty is automatically ended if an offer is rejected.

[73] It seems to me that there are number of problems with the notion of an automatically ending duty without any LHA decision or action following offer. It is for the LHA to assess whether there has been offer or acceptance. It must make a decision about that. That decision is then challengeable. If there were automatic ending, when would time run for the purposes of a challenge?... An LHA needs to decide whether there has been refusal or acceptance; it would be puzzling if it did not need to decide whether the main duty, such a fundamental legal concept, it owed to an individual had ended as opposed to merely expressing an intention for it to end if future events occur. It would be curious indeed if the LHA would not need to consider whether those future events in fact had occurred. If the LHA does need to consider this, then it is likely to be considering, should the event be a statutorily relevant ending event, whether the main duty is still owed or has ceased. If the LHA need never decide whether the s.193(2) duty had in fact ended upon a future eventuality, when should time for challenge start to run? This appears to be a recipe for chaos.

Declaration made that Waltham Forest still owed Ms Bano the s193 duty.

Thank you

020 7993 7600 | info@gclaw.co.uk | @gardencourtlaw

Homelessness Update: Where are we now? – Supplementary Notes

Stephen Cottle, Garden Court Chambers, 27 March 2024

This evening, I am going to be talking about recent homelessness case law developments, and there have been quite a few since the end of 2022!

But before I do, I thought you would want to know about where we are now, and one headline answer to that question is that we about to criminalise what is called 'nuisance rough sleeping'.

Whilst the Westminster UK government indulges in politics that fuels problems for the homeless, the Welsh Government, by contrast, are in the process of taking a completely different tack.

They are setting an example we can all learn from, by contemplating responsible sustainable long-term solutions with proposals for a cultural shift to prevention, extending a 'no one left out approach' and adopting a rapid rehousing policy to ending homelessness. They have proposed a repeal of (1) the priority need test and (2) removing the intentionality test from the Welsh legislation. The WG Consultation on Ending Homelessness closed in January.

CRIMINALISING THE HOMELESS

The key provisions you need to look at are proposed sections/clauses 51 to 61, inclusive in the Criminal Justice Bill. The way the intended provisions would play out in practice is that:

(a) There are three new measures coming into force to familiarise yourself with – a rough sleeping direction, a rough sleeping notice and a rough sleeping order.

(b) The notice and the notice can be appealed but the direction can't so it would be a JR.

(c) A prevention order can last longer but must be made by the magistrate's court. Failing to comply with all three is an offence carrying the possibility of a month in jail – there is also the power to impose a fine not exceeding £2500

but what chance would there be of that being paid; so, it is the threat of imprisonment that matters.

(d) All three measures require the relevant person/initiator to be satisfied that a nuisance condition has been met, see particularly the definition in clauses 61(3) and 61(4) that a group is sleeping rough in a place, and one or more does something that is a nuisance. The problem there is guilt by association. Another problem is the uncertainty over the extent of land comprising "the place" if there is gap of 100 metres along the pavement between people, is it still the same place?

Something that is a nuisance includes something that prevents determination of whether there is a health risk – think: "let me have a look at you"; "No F off! Would there then be grounds for criminalising the rest of the group in that "place", if they didn't all leave?

(d) Pre- action protocol letter pro forma could be considered, most obviously of the decision to issue a direction, but possibly also in relation to the gateway for using the other two measures. Such a JR would not be because an area of pavement is the home, but because the interference and loss of dignity caused by this could trigger an obligation on public authorities to avoid needless and oppressive evictions that would not satisfy the requirements of Article 8(2).

(e) Matters made statutorily relevant considerations include not only the most obvious HRA & Equality Act issues, but also section 1(5) of the Homelessness Act 2002, which requires a local housing authority in England to take their homelessness strategy into account in the exercise of their functions. How many have up to date strategies geared to meeting the accommodation needs of the homeless in their area? How many will amend the strategy to refer to the new powers, or to steer away from use of the new powers, or give guidance for the criteria and procedure, including the prior need for welfare inquiries?

Challenges to the use of these new powers may be along the lines of the many judicial reviews brought against use of police powers following enactment in 1994 of section 77 of the Criminal Justice & Public Order Act. The Act empowered a local authority to direct persons residing unlawfully in

vehicles/caravans to leave the land. Failure to comply with the direction led to Magistrates Court proceedings and an order that it was a criminal offence not to obey.

At the same time as the passing of sections 77-80 in the 1994 Act, the Government issued useful circular guidance tempering use of the powers, and there was a spate of litigation over failure to follow the guidance and what it applied to.

In one of those early cases, it was said:

> "*I do not think that plot 8, which Mr Ward had occupied as a trespasser for about a fortnight, could be said to be "his home", but his private and family life are affected by the council's decision. It is therefore necessary to consider whether the council's decision satisfies the requirements of Article 8.2"*.
>
> *R (Ward) v Hillingdon LBC* [2001] EWHC Admin 91 @ 29.

So, let's wait for the Guidance on use of the nuisance rough sleeping measures.

RAPID REHOUSING

RECENT HOMELESSNESS CASE LAW

The following cases resulted in the review decision being quashed, and the matter remitted for a fresh decision.

Successful cases included: -

1. *R (Bukartyk) v Welwyn Hatfield BC* [2020] HLR 19, This was four years ago, but the first homelessness case in the HLRs occurred 42 years ago. The purpose of including it is to illustrate the basic proposition that what is relevant is whether the facts were known and taken into account. The authority decided that the claimant had failed to produce evidence that she was suffering from mental health problems, and the decision was quashed because the authority had failed to evaluate the concerns about mental health that were on file.

2. *YR v Lambeth LBC* [2023] H.L.R. 16 – A November 2022 decision – An unlawful 189A assessment was quashed because, when interviewed, no questions were asked about the children, and before an out-of-area placement was made, there was no reference made to the impact it would have on the children, who were in year 11.

3. *R (Davidson) v Cambridge CC* [2023] EWHC 1022 KB (03/23) - Permission and interim relief were granted on a 188(3) JR, where applicant suffering chaotic circumstances in a shared property including alcohol abuse and suicidal ideation, which Mr D said placed him in real danger. Rumbling issue of the appropriate test for interim mandatory relief. See also *R (MA by litigation friend Houlihan) v Liverpool CC* [2023] EWHC 359 (Admin) where it was held:

   > "*I consider it at least arguable that De Falco and Crawley were wrongly decided in light of the judgment of the House of Lords in Factortame and the judgment of the Privy Council in National Commercial Bank Jamaica v Olint" and so no need to show strong prima facie case. In Davidson the test the Judge said "the court needs to look at what is the least harm in either granting the interim relief and being wrong about that, or not granting interim relief and being wrong about that.*"

   The field of public law needs a structured HRA compliant review of the principles.

4. *R (Iman) v Croydon LBC* [2023] UKSC 45; [2023] 3 W.L.R. 1178; | [2024] H.L.R. 6 (05/23) – In sum, Ms Iman was owed a duty and was entitled to call on Croydon to comply with that duty. Therefore, it was not an answer for Croydon to say that it is expensive and not cost-effective to comply with its duty. It is legally obliged to comply. The Court of Appeal's decision that the council had not discharged the onus on it to explain why no order should be made, was upheld. The court overcame its usual reluctance and restraint in reviewing a democratically elected body's budgeting decision. The Court was fully conscious of the fact that:

"*In planning its affairs and setting its budgets, an authority has to balance all the demands placed upon it by Parliament and match these with the sources of income available to it. A court cannot carry out that function itself, since it lacks the democratic authority, detailed knowledge of the range of demands and range of funding options available and the administrative expertise required for this*."

Five matters were identified as critical to the facts of the Croydon case:

(1) There may be a contingency fund, so an order requiring provision of suitable housing may cause minimal disruption to carry out other functions.

(2) The longer an authority is aware of the problem has sat on its hands, the more important it is for the Court to intervene.

(3) The extent of impact on Ms Iman because it is the vindication of his right which is being denied and a suspended order may be appropriate (4) whether there is any sign the housing authority is moving to rectify the situation and;-

(5) The court should avoid being unfair to others (so Ms Iman could not be promoted up the queue). The court considered whether a local authority's lack of financial, or other resources, should be take into consideration when deciding to make an order enforcing a full housing duty under the Housing Act 1996 Pt VII s.193(2).

5. *UO v Redbridge LBC* (06/23) [2023] H.L.R. 39 - Failure to carry out a lawful review of housing needs – MW

6. *R (Saint Sepulchre) v Kensington and Chelsea RLBC* [2023] EWHC 2913 (Admin) KG (11/23)-188 (3) - Decisions quashed due to unfairness in the balancing exercise, due to lack of inquiries and reasoned consideration of new information (see para 64).

   The applicant's case was that he was assaulted three times by a neighbour in the summer of 2022, pushed out of his wheelchair and that on Halloween 2022, at about 3 am, he heard noises outside. He

opened the door and then was attacked. He named the alleged attacker.

After this incident, Mr. Saint Sepulchre again returned to London. It appears that he slept in Kensington High Street car park. He approached the Defendant for housing on 6 December 2022, who decided five months later that he was not homeless and that the interim accommodation that he was in should not be continued pending review.

At para 61 the Judge concluded:

> *"The complexities of Mr. Saint Sepulchre's mental and physical conditions are not reflected as having been considered, beyond their description, in the approach to the inquiries. Where there is analysis, there appears to be some questioning of the Claimant's dependence on a wheelchair; a questioning that is not supported by medical evidence or further inquiry. The Defendant argues that the Claimant was given an opportunity to explain inconsistencies. However, telephoning him and having a note pushed under his door may well have been difficult for Mr. Saint Sepulchre to cope with due to his mental health struggles."*

7. *St Hilaire v Lambeth LBC* – LAG Housing Recent Devs - 15.01.2024 CLCC - Serious procedural defect in a review because the LHA had not disclosed relevant information on file prior to inviting sol's written reps- Refer to the 2005 *Aw Aden v BCC* case at 22, where Henry Brooke LJ said a review should not be made without properly complying with a request for material before the decision maker.

8. *R (SK) v Redbridge LBC* (01/24) [2024] EWHC 158 (Admin) – Ritchie J held that Redbridge had failed to comply with its duty under the Housing Act 1996 s.193 to provide suitable accommodation to a single mother with four children, two of whom were profoundly disabled, and had failed to produce a lawful assessment of the family's needs under s.189A. Covered by Matt.

9. *Fertre v South Oxfordshire DC* (01/24) [2024] EWHC 112 KB-Claim began against South Oxfordshire instead of Vale of White Horse District Council did engage the jurisdiction of the court and was not a nullity. Permission to amend name of respondent granted under CPR 52 and 3.10 not Cpr 19, after the time for appealing had expired.

   Lengthy reference was made to *S of SC & LG v San Vicente* [2013] EWCA Civ 817, which decided six weeks for bringing a statutory review was not a limitation period for the purposes of CPR 17, so amendments otherwise out of time could be made. If the contrary were true, that would inhibit the court's ability to uphold the law. The requirement that an appellant file Form N161 was fulfilled if there had been substantial compliance with that requirement. Here, there had been substantial compliance: the appellant's notice had made clear the date of, had attached the decision from which the appeal was brought, had identified the decision-maker by name; and it had described the decision against which the appeal was brought.

10. *R (Bano) v Waltham Forest* [2024] EWHC 654 (Admin) - Important decision on s.193, which concluded with a declaration not a quashing order - MW

The following cases resulted in the review decision being upheld.

Unsuccessful cases included: -

1. *Rowe v Haringey LBC* [2023] H.L.R. 5 (10/22) - By the time the case was heard, the housing authority had withdrawn its decision that an HMO was reasonable to continue to occupy, because it had failed to consider if the HMO in which Ms Rowe shared a room with her two children was appropriately licensed. Another occupier had been complaining about her children being in the kitchen. Her case was that by reference to the house as a whole, her accommodation was not reasonable to continue to occupy due to the number of people in the HMO and the shortage of shared facilities experienced by her children.

A sub-issue concerned application of the HA 2004 to HMOs and part 10 of the HA 1985 to premises that are separate dwellings. The issue for the court of appeal was whether HHJ Roberts erred in concluding that the Appellant's bedroom, rather than the whole house in multiple occupation in which her bedroom is situated, was the relevant "dwelling" for the purposes of the "room standard" and "space standard" of overcrowding.

Her case that the premises let to her/her dwelling was not just her bedroom, but included the shared facilities was rejected, so overcrowding was not to be judged by reference to the shared facilities in the HMO, but just by reference to the room she shared with her children. The point worthy of note is that it was observed at para 25 & 37 that:

> "*Not all of the features that are prescribed in relation to suitability have obvious relevance to the question of reasonable continued occupation… An authority that is considering the question whether it is reasonable for a person to continue to occupy their present accommodation is not required to replicate the procedure and enquiries that are required by statute when considering the separate and later question of suitability of accommodation. However, depending on the facts of the case, factors that may be relevant to the prior assessment of reasonableness may also be relevant to the later question of suitability and vice versa*".

2. *Yarbary v Westminster CC* [2023] HLR 34 (01/23) - Not homeless at home decision, discharging the 188(i) duty by advising the applicant to remain was irrational due to the fire safety risk of wheelchair user not being able to escape in the event of fire. But duty was discharged (see para 184 of the judgment) by the subsequent unaccepted offer that was made. <u>There is a 26-page synopsis of provisions and case law</u>.

   At para 123, the Judge held that the authority was not entitled to frustrate the principle behind the duty to provide immediate

assistance to the homeless, or delay or fetter the urgent right of a vulnerable homeless person to suitable interim accommodation. Questionable conclusion at para 169 of no breach of PSED due to A's failure to provide medical evidence. The court was critical of the failure, whilst progressing the urgent relief application, to inform the court of an unaccepted offer made four days after issue.

The irrationality finding was arrived at in this way: *"No one appears to have doubted the accepted level of disability would have prevented him descending 7 flights of stairs fast, if a fire arose and the lift was not to be used. This Court was provided with no evidence to show that the Defendants had considered whether the Claimant was suitably housed at home at his 7th floor flat taking into account the fire risk. I find that the Defendants, on the balance of probabilities, failed to take into account this crucial factor. Defence counsel at the hearing did not make submissions in response to the Claimant's fire risk point. It is not mentioned in the Defendants' response letters. Nor do the Grounds of Response deal with this issue. So, in my judgment, the Defendants' case that they were fulfilling their S.188(1) duty after 26 September 2022 by deciding the Claimant was suitably housed at home was irrational. They failed to take into account a really important matter: fire safety."* Per Ritchie J [2023] HLR 34 @ [135].

3. *Baptie v Kingston Upon Thames RLBC* (06/23) [2023] PTSR 1432 concerned the minimum reasonably required to acquire life's necessities and affordability. On 6 June, the Supreme Court refused permission to appeal the Court of Appeal's decision to overturn HHJ Hellman's decision that it was irrational for a local authority not to have used the amount of benefits the applicant actually received to decide if accommodation was unaffordable for her.

The housing officer was therefore entitled to reject the appellant's actual monthly expenditure net of rent and conclude that she should

have more available to her than she did. The legal relevance of the limit on income from the benefit cap or ceiling was not challenged, (see para 55) but the amount of available income to Ms Baptie should not have been treated as a benchmark for how much she could reasonably spend on living expenses.

4. *Moge v Ealing LBC* [2023] EWCA Civ 464 [2023] H.L.R. 35 - This decision handed down in April 2023 contains a six-page review of case law under section 208. On 30 November 2023, Lord Lloyd Jones, Lord Hamblen, and Lady Simler refused permission to appeal. The Court of Appeal decided that a final offer of accommodation of an out-of-district property was lawful. The evidence was that at the time of the letting, Ealing did not have any two-beds in its borough.

   At para 37, the Court recorded that the offer letter contained a generic statement to the effect that, in reaching its decision that the Flat was suitable for her, the Council had "fully considered" the 2012 Order, and *"all existing legislation, statutory guidance and caselaw relating to making suitable offers of accommodation and specifically Chapter 17 of the Homelessness Code of Guidance."*

   The 202 representations did not challenge the evidence that, at the relevant time, it was the only two-bedroom accommodation available. However, before the Court of Appeal, the issue was whether any search for a property closer than the one offered had been carried out. The second live issue was whether the council had acted unlawfully in not also looking to see if an allocation of council housing could be made. It turned out Ms Moge was not registered and so was unable to bid under Part VI.

   The Court concluded on the second issue that, by reason of the council's allocation policy's silence on the matter, *"even if an otherwise suitable Part VI property had been available in Ealing at the relevant time, I see no basis for a conclusion that it would have been reasonably practicable for the Council to have made bespoke*

arrangements to procure that it should have been made available to be offered to Ms. Moge under Part VII".

On the matter of compliance with section 208, Lord Justice Snowden held at para 96 that because it was for Ealing to satisfy the Judge that it had complied with its duty under section 208, HHJ Raeside KC was wrong to conclude that there was "no point of law" to indicate Ealing had not looked anywhere between Ealing and the offered property, when there was no evidence before him that it had.

But Ealing was allowed, after lengthy consideration of *Ladd v Marshall* considerations, and by a narrow margin, to plug the gap by being permitted to rely on a late statement, leading to the appeal being dismissed. This was on the basis, according to its policy; relevant officers were always on the lookout for temporary properties in and close to Ealing. The Court cross-referenced *Zaman v Waltham Forest LBC* [2023] EWCA Civ 322, where a property had been offered in Stoke and common sense indicated, and a dearth of evidence on the subject, that it should have been possible to locate a property closer than Stoke.

5. *Hodge v Folkestone and Hythe DC* [2023] H.L.R. 46 (07/23) - Ms Hodge was found to have made herself intentionally homeless because the hostel room the applicant had previously occupied, and deliberately chose to leave, was "accommodation" within the meaning of s.191(1), and that it would have been reasonable for her to continue to occupy it. Those were questions of fact for the local authority to decide, moreover the council's decision that the accommodation was settled was also lawful.

   The housing authority's argument before the Court of Appeal was that if A's submissions were right, an applicant with a priority need could walk out of temporary accommodation such as the Property, present herself as homeless, and, in effect, jump the queue. Secondly, LHAs would not be able to use temporary supported accommodation to

discharge their duties under Part VII. The Court of Appeal having carried out a five-page review of the meaning of "accommodation" as discussed in *Pulhofer, Awua* and *Ali,* agreed. The argument that, since the room was not settled accommodation, Ms Hodge could not be intentionally homeless from it was wrong, noting that had Ms Hodge stayed, she would have got "an offer of secure accommodation".

6. *R (Ahamed) v Haringey LBC* [2023] H.L.R. 43 (08/23) - Apart from the procedural issues, the judgment provides an account of the relationship between section 189B and section 193. At para 49, the Court concluded:
   "The upshot is that, where a local housing authority duly brings its relief duty to an end pursuant to section 189B(5) and (7)(a) of the 1996 Act on the basis that suitable accommodation is available, that may not necessarily prevent the applicant from being owed the main housing duty as "homeless". However, it must very often at least be the case that a person for whom such suitable accommodation is available is not "homeless".

   Where that is so, the condition specified in section 193(1)(a)(i) will not be met and so the main housing duty cannot arise". The case is also significant because of the procedural wrangle that led to the use of judicial review being questioned. This was despite an available statutory route under section 204 to get the legal merits of a decision, that a room in a hostel that would be available for six months meant the applicant was not homeless, determined by the Court.

   The applicant was sent a letter telling her she could request a review under section 202. A pre-action letter was sent, which the Council said it would treat as an out-of-time request for a review, but a month later, a judicial review was issued challenging the suitability of the hostel room. This was followed by a negative review decision regarding the long-term suitability of the hostel room. So, Ms Ahamed was not homeless, on the heels of which there was a refusal of permission to apply for judicial review because of the alternative

remedy available under section 204. Once permission to appeal in the Judicial Review had been obtained, the Court of Appeal accepted transfer of the County Court 204 appeal which had been begun whilst the Court of Appeal was considering permission to appeal, so the Court was seized of both matters.

7. *Kyle v Coventry CC* [2024] HLR 7 - Evicted for breaking into other people's rooms in a hostel, and so intentionally homeless. Unsuccessfully appealed on the basis that it was not reasonable to continue to occupy – MW.

8. *R (AB&CD) v Westminster CC* [2024] EWHC 266 (Admin), (02/24) - The case is of note, because over twenty paragraphs deal with a challenge to the Defendant's policy in respect of accommodating households with animals. The Claimants unsuccessfully contended that it was discriminatory, pursuant to EA 2010 sections 19 and 29.
   Complicated facts show a rolling review - at para 19 the Judge recorded: "*the Defendant stated that it required medical evidence of the Claimants' need to be housed with their dog if accommodation was to be sought which accepted animals. This was provided on 7 August 2023 in the form of a report from a psychiatrist. On 17 August 2023 the Defendant stated that, having reviewed the medical evidence, it agreed to seek to accommodate the Claimants with their dog. On 18 August 2023 the Defendant wrote to the Claimant indicating that their homelessness application had been considered, and that the Defendant accepted that the full housing duty under HA 1996 s 193 was owed to them.*"

   A week later, the applicants issued a judicial review arguing WCC was in breach of the 193 duty, because the Defendant had not made suitable accommodation available to them. The Claimants also sought and obtained interim relief on 25 August 2023, requiring the Defendant to secure accommodation for the First Claimant and Claimants' dog as a matter of urgency.

As a result of the police telling Westminster of safety concerns, on 17 October 2023, the Claimants were moved together to a Travelodge in Town Y, a town outside London, which accommodated dogs and was wheelchair accessible, whereupon Westminster reached a fresh decision that the 193 duty was discharged "while a long-term solution was sought". No decision was issued to that effect, which meant the Claimants were not told of their right to request a review. See yesterday's case of *Bano MW*. Since the Claimants' pleadings did not challenge the Defendant's assessment of the suitability of the Town Y Travelodge, and because the Claimants provided no evidence about the conditions in the Town Y Travelodge (whether they assert it is unsuitable and if so, why), the Court felt unable to deal with the matter (see paras 40 and 46).

The Judge concluded the Claimants are vulnerable individuals and have significant housing needs, and I pay tribute to the hard work of the Claimants' counsel, solicitors and charity workers who have helped them thus far. So, the knub of it was that even though JR was not the appropriate remedy, breach of duty and unsuitability was conceded for earlier period.

9. *Webb-Harnden v Waltham Forest LBC* [2023] H.L.R. 45 – C of A (08/23) – Out of area placement /suitability/ affordability challenge, in which it was found that the PSED had been discharged. The LHA policy stated:
"*Offers of accommodation in Waltham Forest or nearby boroughs are subject to affordable accommodation being available and the applicant being able to afford accommodation in those areas. If the benefit restrictions (cap) makes properties in Waltham Forest and London unaffordable then they will not be regarded as suitable.*"

It was argued that the policy indicated a standard practice of offering accommodation outside London to applicants whose benefits were capped, and that the authority had failed to have regard to the sex-equality implications of the benefit cap, which puts women at a

disadvantage. Lewis LJ decided that the housing authority was not using the benefit cap as a proxy for determining that the offered accommodation in Walsall was suitable and considered that the PSED was a duty to have regard to in the exercise of functions, and not to achieve a substantive result of the duty being discharged in a different way.

10. Where are we now? This case demonstrates that either that the PSED needs reform, or the Courts simply have not understood the basic discipline required of decision makers to have in place a system for monitoring the exercise of their functions to have data available to them of likely adverse impacts and then to see if that adverse impact can be mitigated if not altogether avoided. So, with respect to the Court of Appeal (as we know from the Lawrence Inquiry) its purpose, if implemented properly, is that it may lead to different outcomes, even if it is only a duty to have regard to, rather than to achieve a particular outcome.

    Where we are now is that the equality law is not working and needs reform, or it is being misapplied. The Government's December 2023 *"Public Sector Equality Duty: guidance for public authorities"* should be added to your shelves/files.

11. Where are now is that we now have an enhanced Housing Ombudsman available. It is beyond the scope of this evening's session to discuss how the HO will bed in with the Local Government and Social Care Ombudsman, who in January 2024, directed Wandsworth to pay £13,800 to a homeless applicant left in unsuitable accommodation.