Neutral Citation Number: [2025] EWCA Civ 92

Case No: CA-2024-000842

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Dexter Dias KC (sitting as a Deputy High Court Judge)
[2024] EWHC 654 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/02/2025

Before:

LORD JUSTICE PETER JACKSON
LORD JUSTICE NEWEY
and
LORD JUSTICE WARBY

- -

Between:

THE KING (on the application of SABHYA BANO)	**Claimant/ Respondent**
- and -	
LONDON BOROUGH OF WALTHAM FOREST	**Defendant/ Appellant**

- -
- -

Michael Mullin and Joseph Mahon (instructed by **Director of Legal Services, Waltham Forest London Borough Council**) for the **Appellant**
Liz Davies KC and Adrian Marshall Williams (instructed by **Edwards Duthie Shamash**) for the **Respondent**

Hearing date: 22 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 7 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. These proceedings stem from a "private rented sector offer" which the appellant, Waltham Forest London Borough Council ("the Council"), made to the respondent, Mrs Sabhya Bano, on 11 June 2020. Mrs Bano refused the offer, but, citing the decision of this Court in *Norton v Haringey* [2022] EWCA Civ 1340, [2022] PTSR 1802 ("*Norton*"), she maintains that the offer letter was defective and has claimed judicial review in respect of the Council's refusal in a letter dated 30 May 2023 to accept that it continued to owe her the "main housing duty". Mr Dexter Dias KC ("the Judge"), sitting as a Deputy High Court Judge, acceded to the application, but the Council now appeals against his decision.

The legal framework

2. Where a local housing authority arrives at the conclusion that an applicant is homeless, did not become homeless intentionally, is eligible for assistance and has a priority need, it is obliged by section 193(2) of the Housing Act 1996 ("the 1996 Act") to "secure that accommodation is available for occupation by the applicant" unless it refers the application to another authority in accordance with section 198. This is the "main housing duty".

3. Section 193(3) of the 1996 Act provides for a local housing authority to remain subject to the main housing duty until it ceases by virtue of any of the following provisions of the section. In that connection, subsections (5), (6), (7) and (7AA) are in point. They provide:

> "(5) The local housing authority shall cease to be subject to the duty under this section if—
>
> (a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,
>
> (b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and
>
> (c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.
>
> (6) The local housing authority shall cease to be subject to the duty under this section if the applicant—
>
> (a) ceases to be eligible for assistance,
>
> (b) becomes homeless intentionally from the accommodation made available for his occupation,

> (c) accepts an offer of accommodation under Part VI (allocation of housing), or
>
> (cc) accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord,
>
> (d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.
>
> (7) The local housing authority shall also cease to be subject to the duty under this section if the applicant, having been informed of the possible consequence of refusal or acceptance and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part 6.
>
> …
>
> (7AA) ... the authority shall also cease to be subject to the duty under this section if the applicant, having been informed in writing of the matters mentioned in subsection (7AB)—
>
> (a) accepts a private rented sector offer, or
>
> (b) refuses such an offer."

4. The "matters mentioned in subsection (7AB)" are these:

> "(a) the possible consequence of refusal or acceptance of the offer, and
>
> (b) that the applicant has the right to request a review of the suitability of the accommodation, and
>
> (c) in a case which is not a restricted case, the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer."

5. With regard to "the effect under section 195A", that provision states so far as material as follows:

> "(1) If within two years beginning with the date on which an applicant accepts an offer under section 193(7AA) (private rented sector offer), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority—
>
> (a) is satisfied that the applicant is homeless and eligible for assistance, and

> (b) is not satisfied that the applicant became homeless intentionally,
>
> the duty under section 193(2) applies regardless of whether the applicant has a priority need.
>
> (2) For the purpose of subsection (1), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) has been given is to be treated as homeless from the date on which that notice expires ….”

6. In *Norton*, the Court of Appeal held that a local housing authority continued to be subject to the main housing duty because the letter in which it had sought to make a “private rented sector offer” to the person to whom it owed the duty had not mentioned the effect of section 195A(2) of the 1996 Act. Elisabeth Laing LJ, with whom Asplin and Males LJJ agreed, said in paragraph 43:

> “The question is what is the ‘effect under section 195A of a further application’ within two years of the current application. The introductory words of section 195A(2) are ‘For the purpose of subsection (1)’. Section 195A(2) is a special rule, for the purpose of section 195A(1), about the time at which a person becomes homeless. In my judgment, ‘the effect under section 195A’ includes the effect of section 195A(2). It was common ground that A was not notified of the effect of section 195A(2). On the ordinary meaning of those words, he was not, therefore, told of the effect, ‘under section 195A of a further application’.”

7. Section 202 of the 1996 Act confers on an applicant a right to request a review of various decisions of a local housing authority. Such decisions include, by section 202(1)(b), (f) and (g) respectively, “any decision of a local housing authority as to what duty (if any) is owed to him under sections 189B to 193C and 195 (duties to persons found to be homeless or threatened with homelessness)”, “any decision of a local housing authority as to the suitability of accommodation offered to him in discharge of their duty under any of the provisions mentioned in paragraph (b) or (e)” and “any decision of a local housing authority as to the suitability of accommodation offered to him by way of a private rented sector offer (within the meaning of section 193)”. Section 202(3) provides that a request for a review “must be made before the end of the period of 21 days beginning with the day on which [an applicant] is notified of the authority’s decision or such longer period as the authority may in writing allow”.

8. By section 204 of the 1996 Act, a person dissatisfied with a review decision may appeal to the County Court on “any point of law arising from the decision or, as the case may be, the original decision”. “Although the county court’s jurisdiction is appellate, it is in substance the same as that of the High Court in judicial review” (*Runa Begum v Tower Hamlets LBC* [2003] UKHL 5, [2003] 2 AC 430, at paragraph 7, per Lord Bingham). The grounds of challenge can include “procedural error, the extent of legal powers (*vires*), irrationality and inadequacy of reasons”: see *James v*

Hertsmere BC [2020] EWCA Civ 489, [2020] 1 WLR 3606, at paragraph 31, per Peter Jackson LJ, and also *Abdikadir v Ealing LBC* [2022] EWCA Civ 979, [2022] PTSR 1455, at paragraph 8, per Lewison LJ.

9. The procedures for review and appeal for which sections 202 and 204 of the 1996 Act provide were an innovation. In this connection, *De Smith's Judicial Review*, 9th ed., states in paragraph 17-036:

> "By the mid-1990s, a third of all judicial review applications to the High Court concerned homelessness decisions; often the dispute was essentially one of fact and primary judgment (was the person intentionally homeless? was the accommodation offered suitable?) rather than of law. … In Access to Justice, Lord Woolf recommended that the supervisory jurisdiction over the lawfulness of homelessness decision-making should be transferred to the county courts and this was swiftly implemented by Pt 7 of the Housing Act 1996. … The existence of a review procedure in the county courts has not taken away the Administrative Court's jurisdiction to exercise its judicial review jurisdiction in the context of decisions relating to homelessness, but that jurisdiction will now be used only in exceptional circumstances."

The facts

10. Mrs Bano is the mother of two children. They are now adult, but they were not when the Council made the offer at issue on this appeal.

11. In a letter to Mrs Bano dated 23 February 2017, the Council explained that it was satisfied that she was eligible for assistance, homeless, in priority need and not intentionally homeless. The Council accordingly accepted that it owed Mrs Bano the main housing duty under section 193 of the 1996 Act. It added, however, that its duty to provide Mrs Bano with accommodation would cease if, among other things, she refused "an offer in the private sector".

12. In May 2017, the Council arranged for Mrs Bano and her children to be provided with temporary accommodation in a maisonette in Newham ("the Newham Property").

13. On Thursday 11 June 2020, the Council sent Mrs Bano a letter offering her accommodation in a flat in Derby. The letter was headed "Re: Offer Accommodation to end Main Duty under Section 193(2) of the Housing Act 1996". The Council explained in the letter that it had "decided to bring the duty under s.193(2) to an end by arranging an offer of an assured shorthold tenancy in the private sector with a fixed term of twenty-four months". Mrs Bano was asked to meet an agent at the flat on Monday 15 June and was told that the Council would "assume that you have refused the accommodation offered if you fail to attend".

14. The letter included these passages:

> "Please note that this offer of suitable private sector accommodation will discharge our duty to you whether you accept or refuse the property. You will only receive this one

of[f] offer of suitable accommodation. Under Section 193(2) of the Housing Act 1996 it will bring our housing duty to you to an end.

I must inform you in writing of the following

a) that if you accept or reject this suitable private rented sector offer of accommodation it will discharge our duty to you under section 193 (2) of the Housing Act 1996, Part 7.

b) you have a right to request a review of the suitability of accommodation offered, I must also inform you even if you accept the offer, you can continue to request a review of our decision and that the accommodation offered you suitable under section 202 (1) (f). If you do not wish to accept the offer and seek a review you are strongly advised to reconsider and sign the tenancy and move into the accommodation to protect your homeless application ….

c) I must also inform you of what will happen if you become homeless within two years of acceptance of this offer and make a further application to this or any other English local authority. This is information concerning the reapplication duty. If you become homeless again within two years of accepting the private rented sector offer and make a reapplication for assistance within this two-year period of accepting a private rented sector offer, if you are at that time eligible for assistance and have become homeless unintentionally a new duty to accommodate you will occur under section 193(2) regardless of whether you still have a priority need or not ….

…

Please note this is a Final Offer of suitable accommodation to discharge the Council's duty to you. The consequences of you accepting or refusing the accommodation is that the Council will no longer be subject to any further duty to you under the homelessness legislation including any duty to provide temporary accommodation.

…

Right to Review - Housing Act 1996 S.202

If you wish to request a review you must put this in writing within 21 days of the notification of this decision or offer. Please give us all your reasons and any information that you think should be taken into account ….”

15. It is to be observed that, while the 11 June letter sought to inform Mrs Bano of the implications of section 195A(1) of the 1996 Act, it did not inform her of the implications of section 195A(2).

16. On Sunday 14 June 2020, Mrs Bano's daughter, who was then aged 15, sent the Council this message through WhatsApp:

> "Just to update you.
>
> I feel as a 15 year I have been under immense stress and pressure from the recent events. As a family we cannot move to Derby as this has been our decision from day one …. We would like to be relocated locally if we are to be moved.
>
> Can I request any further correspondence to be made via email not via whatsapp. Please cancel the removal van for Monday …."

17. The Council replied by email that same evening. It said in its email:

> "As I stated in the offer letter the councils duty to your household has been discharged, whether you accept the offer or not. Your temporary accommodation has been cancelled from tonight which means that you are required to look for your own accommodation from tomorrow if you are not accepting the offer made.
>
> I am aware that you are all very upset and nervous about the offer being out of London, however I have made the councils position very clear and also have advised you the reason for why you have been made the offer."

18. Mrs Bano did not go to Derby on 15 June 2020 but remained in occupation of the Newham Property. It is common ground that she refused the Council's offer at this stage.

19. On 19 August 2020, the Council sent Mrs Bano a letter headed "Re: Cancellation of your current temporary accommodation" in which it said:

> "We recently advised you that your temporary accommodation … was cancelled, but you would not be asked to leave due to the ongoing Covid-19 pandemic. The Government has now lifted the restrictions on individuals/households moving. I am therefore writing to advise you that your accommodation at [the Newham Property] … has now been cancelled. Your last night … is **31 August 2020**.
>
> The Council has given you adequate notice to make your own arrangements for accommodation …."

20. On 28 September 2020, solicitors then acting for Mrs Bano sent the Council a letter with the heading:

> "Request for review under s202 Housing Act 1996 …
>
> Request for temporary accommodation pending review outcome"

The solicitors said that Mrs Bano was under the impression that she had through her daughter's WhatsApp message of 14 June requested a review of the suitability of the accommodation which the Council had offered. The letter continued:

> "On 19th August 2020, our client received a letter … from the Temporary Accommodation team that they have to leave the accommodation by 31st August 2020. Our client was shocked as she was under the impression that her review is pending …. Our client started to seek legal advice and was looking for a legal aid firm which took time.
>
> Our client informed us that she made a review request via WhatsApp message … ; we are now instructed to make further submissions on behalf of our client to support her review on why moving to Derby would not be suitable for the family …."

21. The Council responded in a letter dated 7 October 2020 headed "REQUEST FOR REVIEW UNDER SECTION 202 OF THE HOUSING ACT 1996 – PART VII (AS AMENDED)". After noting that its letter of 11 June 2020 had advised Mrs Bano that its duty to her under section 193(2) of the 1996 Act would be discharged whether she accepted or refused its offer, it said:

> "As the offer letter dated 11 June 2020 was emailed to Mrs Bano the same day, the statutory timeframe for requesting the review lapsed on 2 July 2020. Using the date of 28 September 2020 as the date the review was requested[,] [t]his date suggests that the request was made 109 days after the statutory deadline had lapsed."

The letter went on to reject the suggestion that a review has been requested any earlier than 28 September 2020 before stating:

> "in regards to accommodation pending the outcome of the review the council will not grant your request. Mrs Bano was notified that the accommodation would come to an end following the Council's policy on Lockdown and she was to find alternative accommodation. Furthermore, we have stated that the request was made out of time and this council considers itself as relieved of its homeless duty towards Mrs Bano pursuant to section 193 (5) of the Housing Act 1996."

22. It is to be noted that Mrs Bano no longer suggests that a review had been duly requested.

23. In November 2022, the provider of the Newham Property issued proceedings against Mrs Bano for possession of it. At a hearing on 4 May 2023, Mrs Bano was assisted by her present solicitors, Edwards Duthie Shamash, as the duty solicitors.

24. On 15 May 2023, Edwards Duthie Shamash wrote to the Council on Mrs Bano's behalf asking it to agree that, having regard to *Norton*, its letter of 11 June 2020 had not discharged its duty to her under section 193(2) of the 1996 Act, that that duty continued and that it would accommodate her. On 30 May 2023, however, the Council replied asserting that its duty was "legally and lawfully executed". At that stage, the Council said that *Norton* "was not in force" when it sent its letter of 11 June 2020 and that it did "not accept that the Council should go back 2 years to accept that the offer made on 11 June 2020 to discharge duty towards Mrs Bano is not correct".

25. On 5 September 2023, Mrs Bano issued a claim for judicial review. The decision to be judicially reviewed was identified as the Council's decision on 30 May 2023 to refuse to accept that its duty under section 193(2) of the 1996 Act continued.

26. A witness statement dated 16 November 2023 of Mr Chidi Egbom of the Council was filed in the proceedings. Mr Egbom explained that, while he believed that Mrs Bano was continuing to occupy the Newham Property, she was not being accommodated there by the Council, which did "not have a material interest in the property". Mr Egbom further said:

> "Ms Bano's homeless application was closed (section 193(2) duty ended by the offer of PRS which she refused) and she remained in the Property without permission from the Council."

27. The claim came before the Judge on 16 January 2024. In a judgment dated 25 March 2024 ("the Judgment"), the Judge ruled in Mrs Bano's favour and granted a declaration that the Council continued to owe her a duty under section 193 of the 1996 Act to secure that accommodation was available for occupation by her.

28. Before the Judge, the Council did not dispute that, having regard to *Norton*, its letter of 11 June 2020 did not comply with section 193(7AA) of the 1996 Act. As, however, the Judge explained in paragraph 7 of the Judgment, the Council submitted that Mrs Bano's claim should nonetheless be dismissed for three reasons:

> "(1) The claim has been brought out of time and there is no good reason to extend time;
>
> (2) the court should exercise its discretion to refuse to grant any relief because of the undue delay since granting the relief sought would offend the principle of finality and be detrimental to good administration;
>
> (3) the claimant had alternative remedies by way of statutory review and appeal, but chose not to exercise those rights."

29. For present purposes, I can concentrate on the last of these. As to that, the Judge said this in paragraph 86 of the Judgment:

> "The defendant argued that there were alternative remedies available to the claimant. She should have within the appropriate time requested a review under s.202 of the Act. I have at the forefront of my thinking the judgment of Sales LJ in

> *Glencore* and the fact that judicial review is a remedy of last resort. There is unquestionably in this case a relevant statutory regime in *Glencore* terms. However, its applicability is based on the assumption that the decision to be reviewed was contained in the 11 June 2020 offer letter or the subsequent letter of 7 October 2020. Such an ending decision could be subject to statutory review and then right of appeal on a point of law to the county court in the usual way. In the absence of challenging the decision in the way prescribed by Parliament, the claimant would need to demonstrate 'pressing' (*Glencore* at [55]) or 'exceptional' circumstances to bring this claim in judicial review (*R v Merton London Borough Council ex p. Sembi* (2000) 32 HLR 439; *R v Brent London Borough Council ex p. O'Connor* (1998) 31 HLR 923, QBD). Given this court's decision on the prime question about the continuation of the main duty and the failure to make an effective decision that it was ended, these arguments about alternative remedy fall away. The fact is that the main duty has not been 'brought to an end', as Elisabeth Laing LJ termed it in *Norton* at [27], in accordance with the statutory ending conditions. A fresh application under Part VII is not an alternative remedy to the recognition that the main duty continues. The question of whether Ms Bano still qualifies as a priority need would require reconsideration. This is unnecessary if the main duty has not ended. This is not, therefore, an alternative remedy to a declaration to that effect …."

30. Earlier in the Judgment, the Judge had said, among other things, the following:

i) *Warsame v Hounslow LBC* [2000] 1 WLR 696 ("*Warsame*") spelled out that "there is a s.202(1) right to request a statutory review of 'decisions' by an LHA [i.e. local housing authority] where the LHA decides whether it owes or does not owe a duty under Part VII" (paragraph 20);

ii) *Warsame* "provides powerful support for the proposition that the LHA must make a decision whether the main duty under s.193(2) has ceased, rather than it being something 'automatic', and that decision is based on events or 'factual situations' such as acceptance or refusal of offers that 'have occurred'" (paragraph 26);

iii) *Ravichandran v Lewisham LBC* [2010] EWCA Civ 755, [2011] PTSR 117 ("*Ravichandran*") draws "a distinction … between a prospective discharge [of] duty by the making of an offer as against the decision by the LHA that there has been "satisfaction of the conditions of discharge" (paragraph 30). "Both 'decisions' are reviewable", but "this is not to say that a prospective discharge, which expresses a future intention should events occur in future is sufficient to bring the duty to an end" (paragraph 30);

iv) A local housing authority is not obliged to notify an applicant that it considers that it has ceased to owe the main housing duty pursuant to section 193(7AA) of the 1996 Act (paragraph 51). However, a "'prospective intention' that the duty will end on the occurrence of certain future events" is not the same as "a

decision that the duty ceases to be owed": "[t]here needs to be an assessment whether in fact the conditions set out in the statute for discharge of duty have been satisfied" (paragraph 55). An authority "must make a decision, that is reach a conclusion, whether the main duty it owes to an individual has ended by one of the prescribed statutory routes that Parliament has set out" (paragraph 74); and

v) In the present case, the Council "has made no relevant decision that its duty has ended" (paragraph 74). The offer letter of 11 June 2020 "did nothing objectively that succeeded in ending the main duty the defendant owed Ms Bano" (paragraph 60). The email which the Council sent in the evening of 14 June 2020 was "simply a reiteration of the original offer to Ms Bano's daughter, who was then 15 years old", "predated the 'refusal' of the offer on 15 June 2020" and "stated that the duty was at an end 'whether you accept the offer or not'" (paragraph 62). The email "cannot be … a balanced and rational decision based on what the response to the offer is since it was unknown at that point" and, "rather than … an effective decision", it was "another notice of intention" (paragraph 62). Further, the Council's letter of 7 October 2020 "did not purport to be a decision letter about ending the main duty under s.193(2)" (paragraph 69).

31. Summing up some of his conclusions, the Judge said in paragraph 75:

> "The net effect of this analysis is that neither the 11 June nor 7 October 2020 letters are decisions by the defendant ending the main duty. I judge that what the defendant has sought to do is promote the original offer letter into an ending decision. It was not. It has then attempted to convert a letter by a review officer refusing a requested suitability review into an ending decision. Once more, it was not …. What is lacking in this case is precisely what existed in *Norton* and *Warsame*: a decision to end the main duty following PRSO [i.e. private rented sector offer] and refusal/acceptance, as occurred in both cases before the Court of Appeal."

The significance of alternative remedies

32. In *R v Home Secretary, Ex p Swati* [1986] 1 WLR 477, Sir John Donaldson MR said at 485:

> "it is well established that in giving or refusing leave to apply for judicial review, account must be taken of alternative remedies available to the applicant. This aspect was considered by this court very recently in *Reg. v. Chief Constable of the Merseyside Police, Ex parte Calveley* [1986] 2 W.L.R. 144 and it was held that the jurisdiction would not be exercised where there was an alternative remedy by way of appeal, save in exceptional circumstances. By definition, exceptional circumstances defy definition, but where Parliament provides an appeal procedure, judicial review will have no place, unless the applicant can distinguish his case from the type of case for which the appeal procedure was provided."

33. More recently, in *R (Glencore Energy UK Ltd) v Revenue and Customs Commissioners* [2017] EWCA Civ 1716, [2017] 4 WLR 213 ("*Glencore*"), the Court of Appeal considered that the existence of a review procedure (from which an appeal was possible) provided a ground on which an application for judicial review should be dismissed. Having noted in paragraph 53 that "[t]he principle that judicial review will be refused where a suitable alternative remedy is available is not in doubt", Sales LJ said:

> "55. In my view, the principle is based on the fact that judicial review in the High Court is ordinarily a remedy of last resort, to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective. However, since it is a matter of discretion for the court, where it is clear that a public authority is acting in defiance of the rule of law the High Court will be prepared to exercise its jurisdiction then and there without waiting for some other remedial process to take its course. Also, in considering what should be taken to qualify as a suitable alternative remedy, the court should have regard to the provision which Parliament has made to cater for the usual sort of case in terms of the procedures and remedies which have been established to deal with it. If Parliament has made it clear by its legislation that a particular sort of procedure or remedy is in its view appropriate to deal with a standard case, the court should be slow to conclude in its discretion that the public interest is so pressing that it ought to intervene to exercise its judicial review function along with or instead of that statutory procedure. But of course it is possible that instances of unlawfulness will arise which are not of that standard description, in which case the availability of such a statutory procedure will be less significant as a factor.
>
> 56. Treating judicial review in ordinary circumstances as a remedy of last resort fulfils a number of objectives. It ensures the courts give priority to statutory procedures as laid down by Parliament, respecting Parliament's judgment about what procedures are appropriate for particular contexts. It avoids expensive duplication of the effort which may be required if two sets of procedures are followed in relation to the same underlying subject matter. It minimises the potential for judicial review to be used to disrupt the smooth operation of statutory procedures which may be adequate to meet the justice of the case. It promotes proportionate allocation of judicial resources for dispute resolution and saves the High Court from undue pressure of work so that it remains available to provide speedy relief in other judicial review cases in fulfilment of its role as protector of the rule of law, where its intervention really is required."

34. Still more recently, Lords Sales and Stephens (with whom Lord Reed, Lord Leggatt and Lady Simler agreed) said in *The Father v Worcestershire CC* [2025] UKSC 1, at paragraph 82:

> "it is well established that judicial review will only be granted if there is no suitable alternative remedy: *Sharma v Brown-Antoine*, para 14; *In re McAleenon* [2024] UKSC 31; [2024] 3 WLR 803, paras 50–64. Where there is a statutory right of appeal in respect of an order, that is regarded as a suitable alternative remedy (save in exceptional circumstances) and will operate as a defence to a claim in judicial review to challenge the order in issue: *Noeleen McAleenon*, para 51; *R (Watch Tower Bible & Tract Society of Britain) v Charity Commission* [2016] EWCA Civ 154; [2016] 1 WLR 2625, para 19 and *R (Glencore Energy UK Ltd) v Revenue and Customs Comrs* [2017] EWCA Civ 1716; [2017] 4 WLR 213, paras 55–58."

35. The principle that judicial review should be refused where an alternative remedy exists has been applied in the context of Part 7 of the 1996 Act (which includes section 193): see *R v Brent LBC, Ex p O'Connor* (1999) 31 HLR 923, *R v Merton LBC, Ex p Sembi* (2000) 32 HLR 439 and *Nipa Begum v Tower Hamlets LBC* [2000] 1 WLR 306 ("*Nipa Begum*"). In the last of these cases, Auld LJ observed at 314 that "it has become normally inappropriate to grant judicial review in [homelessness cases] because there is now another, and generally more appropriate, avenue of challenge" and that, "save in the most exceptional circumstances, the residual jurisdiction of the High Court should not be regarded as a backstop for the appellate jurisdiction of the county court under section 204 where the applicant for housing assistance has failed to appeal a review decision within the 21 days' time limit".

The appeal

36. The argument before us focused on whether it had been open to Mrs Bano to request a review in 2020 in relation to the deficiency in the offer letter of 11 June 2020 which *Norton* shows to have existed.

37. Mr Michael Mullin, who appeared for the Council with Mr Joseph Mahon, argued that Mrs Bano had two opportunities to request such a review. In the first place, Mrs Bano could have requested a review in respect of the offer letter. The letter reflected a decision by the Council that its duty to Mrs Bano under section 193 of the 1996 Act would come to an end when Mrs Bano either accepted or refused the offer. There was therefore, Mr Mullin submitted, a decision by the Council as to "what duty (if any) is owed to" Mrs Bano within the meaning of section 202(1)(b) which could have been the subject of a request for a review. Secondly, so it was said, the Council can be seen to have concluded once Mrs Bano had refused the offer that its duty to her had ceased. In this connection, it was contended by Mr Mahon, presenting this part of the Council's case, that a "decision" by the Council need be no more than confirmatory and that it sufficed that the thrust of what the Council intended was apparent. Once again, accordingly, it was possible for Mrs Bano to request a review pursuant to section 202(1)(b). Mrs Bano thus had a remedy other than judicial review available to her in 2020 and she should not now be allowed to claim judicial review.

38. In contrast, Ms Liz Davies KC, who appeared for Mrs Bano with Mr Adrian Marshall Williams, denied that Mrs Bano had been able to request a review in 2020. She supported the Judge's conclusion that the Council never made a decision ending its duty to Mrs Bano. The Judge was, Ms Davies said, correct that a duty owed under section 193 of the 1996 Act does not come to an end automatically when an offer is

accepted or refused but only if and when the local housing authority makes a decision to that effect. In the circumstances, it was not possible for Mrs Bano to challenge the validity of the 11 June 2020 offer when it was made, and, as the Judge held, the Council never made a decision to end its duty after its offer had been refused. There being no such decision, Mrs Bano could not request a review under section 202(1)(b), Ms Davies argued.

Warsame* and *Ravichandran

39. *Warsame* and *Ravichandran* were central to the Judge's reasoning. They were also the subject of much debate before us.

40. In *Warsame*, applicants to whom the main housing duty was owed were offered accommodation under Part 6 of the 1996 Act. After they had refused it, the local housing authority interviewed them, concluded that the accommodation was suitable and sent them a letter in which it said:

> "The council… urges you to reconsider your proposed refusal and to arrange to accept the offer by 9 February 1998 otherwise the offer will be withdrawn and no further offer will be made as a duty under homelessness legislation. You will have to leave the temporary accommodation by or before [that] date. I must also make it clear that the council is unwilling for you to remain in the temporary accommodation at the above address which was provided for your household whilst arrangements were being made for your permanent rehousing. If you are still refusing this offer, you should start making your own arrangements as to where you will stay after the termination date. I regret any disappointment which this decision may cause you but must emphasise that the council is of the opinion that the offer is suitable for you and your household and, by making it to you, the duty accepted towards you following your homelessness application has been fully discharged. The council believes that it has fulfilled the statutory housing duties accepted towards you under this Act. No further offer will be made."

41. As Chadwick LJ noted at 703, the local authority "was intending to treat the refusal of accommodation offered under Part VI as a ground for bringing the duty imposed by section 193(2) to an end under the provisions of section 193(7) [of the 1996 Act]". The applicants requested a review, but the local housing authority confirmed its decision and, when the applicants sought to appeal to the County Court under section 204, it was held that there was no jurisdiction to hear the appeal. The Circuit Judge considered that "there is no right of appeal unless … there was in fact a right to request a review under section 202" and, section 202(1)(b) being "confined to a decision as to what duties, if any, were owed to persons 'found to be homeless or threatened with homelessness', it "had no application to a decision under section 193(7) whether accommodation offered under Part VI of the Act was suitable accommodation": see 704.

42. Allowing an appeal, Chadwick LJ, with whom Rattee J agreed, commented that the Circuit Judge's approach "fails to give due weight to the width of section 202(1)(b)":

see 704. Chadwick LJ identified the first question as "whether a decision by the local housing authority that it no longer owes a duty—because some event has occurred which has caused an existing duty to cease—is a decision as to what duty, if any, is owed", and he answered that in the affirmative. He said at 705:

> "the language [of section 202(1)(b)] is apt … to apply to a decision that a duty, once owed, is owed no longer. A decision that a duty once owed is no longer owed is, to my mind, plainly a decision as to what duty, if any, is owed at the time when the decision is taken. I can see nothing in the language which restricts decisions within paragraph (b) to decisions whether a duty arises and excludes decisions whether a duty which has arisen has ceased."

43. Chadwick LJ went on to address the question "whether a decision as to whether certain events have occurred or certain conditions are satisfied is also within the phrase 'any decision of a local housing authority as to what… duty is owed'", and he answered that, too, in the affirmative: see 705. He therefore concluded at 706:

> "I am satisfied that, in the context of this legislation as a whole, it was the intention of Parliament that decisions as to matters which, if they existed, would cause a duty to cease, are decisions which can be the subject of a request for review; and so are decisions which can be the subject of an appeal on a point of law under section 204. For those reasons I take the view that the judge was wrong to decline jurisdiction in this case and that the appropriate course is to remit the matter to the county court for further decision."

44. However, Chadwick LJ added at 706 that the Court had been informed that the applicants had now left their temporary accommodation and that it "may be that the circumstances in which they left fall within section 193(6)—in particular, within paragraph (b), 'becom[ing] homeless intentionally from the accommodation made available for [their] occupation,' or paragraph (d), 'voluntarily ceas[ing] to occupy… the accommodation made available for [their] occupation'". Chadwick LJ went on:

> "If that be the case, so that the duty on the local authority has ceased by reason of section 193(6), I would not expect the applicants to trouble the county court judge with what will have become an academic question in relation to the termination of the duty under section 193(7)."

45. As the Judge noted, *Warsame* shows that a decision by a local housing authority that it no longer owes a duty is a decision as to "what duty (if any) is owed" and, hence, can be the subject of a request for a review under section 202(1)(b) of the 1996 Act. As I have mentioned, the Judge also said that *Warsame* "provides powerful support for the proposition that the [local housing authority] must make a decision whether the main duty under s.193(2) has ceased, rather than it being something 'automatic', and that decision is based on events or 'factual situations' such as acceptance or refusal of offers that 'have occurred'". Section 193(7) has, however, been amended substantially since *Warsame* was decided. At that date, the subsection read:

> "The local housing authority shall also cease to be subject to the duty under this section if—
>
> (a) the applicant, having been informed of the possible consequence of refusal, refuses an offer of accommodation under Part VI, and
>
> (b) the authority are satisfied that the accommodation was suitable for him and that it was reasonable for him to accept it and notify him accordingly within 21 days of the refusal."

The wording of subsection (7)(b) suggested that, for the duty under section 193 to have ceased, the authority must have concluded that "the accommodation was suitable" and "it was reasonable for [the applicant] to accept it" at a time subsequent to its offer having been refused: after all, the notification for which subsection (7)(b) also provided was clearly to take place only post refusal. In contrast, section 193 now requires an authority to be satisfied as to suitability and reasonableness *before* either making an offer under Part 6 or approving a private rented sector offer (see subsection (7F)), and section 193(7) simply states that the local housing authority "shall … cease to be subject to the duty under this section if the applicant, having been informed of the possible consequence of refusal or acceptance and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part 6". I do not think, therefore, that *Warsame* gives any guidance as to whether, as the law now stands, the main housing duty will not come to an end under section 193(7) (or section 193(7AA), which is comparable) unless the authority makes a decision to that effect on the strength of events that have by then occurred. In fact, Chadwick LJ's reference at 706 to the possibility that "the duty on the local authority has ceased" as a result of an event listed in section 193(6) lends a degree of support to the idea that an authority's duty under section 193 can cease without the authority so deciding.

46. In *Ravichandran*, applicants refused an offer of accommodation under Part 6 of the 1996 Act and, following a review of suitability under section 202(1)(f), the local housing authority confirmed that it regarded the property in question as suitable and subsequently, in January 2009, informed the applicants that it no longer considered itself to have a duty to secure accommodation for them. The Court of Appeal held that the applicants were entitled to request a further review, under section 202(1)(b), of "a decision in January 2009 about whether or not its duty had ceased under section 193(7)": see paragraph 31.

47. As Stanley Burnton LJ, giving the judgment of the Court, noted in paragraph 28, Mr Andrew Arden QC, who was appearing for the local housing authority, submitted that, in consequence of the amendments to the 1996 Act, "the only 'decision' of an authority as to the discharge of its duty under section 193(7) in relation to which a review is possible under section 202, is the decision prior to the making of the offer that the offer will satisfy the requirements of section 193(7F) and the refusal of it will result in a discharge under section 193(7)". Stanley Burnton LJ went on in paragraph 29:

> "Mr Arden, relying on the amendments to section 193(7), and particularly the omission of the notification provision,

> submitted that section 193(7) now provides for automatic cessation of the authority's duty if the circumstances specified there have occurred. The discharge is, he said, no longer dependent on any decision to be taken by the authority following the refusal of an offer. He dismissed as misconceived and irrelevant the indications of Lewisham's officers, in particular by Mr Gomez in his letter of 10 October 2008 and by Mr Dixon in his letter of 8 January 2009, that Lewisham only decided to regard its duty under section 193(2) as discharged some time after the applicants' refusal of the offer. By way of riposte, Mr Latham [i.e. counsel for the applicants] … advanced several reasons as to why, notwithstanding the omission of the notification requirement in the amended section 193(7), it is implicit in the amended statutory provisions that, following refusal of an offer, the authority must notify the applicant that the authority regards itself as discharged from its duty under the subsection."

48. Stanley Burnton LJ observed in paragraph 30 that "both Mr Arden's submission, as well as Mr Latham's perceived need to address it by arguing for an implied notification provision, are misconceived in view of the analysis and decision of the Court of Appeal in [*Warsame*]". After referring to *Warsame*, Stanley Burnton LJ said in paragraph 31:

> "Although that was a decision under the unamended provisions of section 193(7), the decision remains applicable to the amended provisions. Although worded differently, the original provisions of section 193(7) provided for automatic cessation, albeit at a later date (i e after notification). In the present case it is clear from the correspondence, including in particular the letters from Mr Gomez and Mr Dixon to which we have referred in para 29 above, that Lewisham came to a decision in January 2009 about whether or not its duty had ceased under section 193(7). The effect of *Warsame's* case is that its decision taken then, even if only confirmatory of a prior automatic discharge, was reviewable under section 202(1)(b)."

49. In the next paragraph, Stanley Burnton LJ said:

> "If, following the making of the offer by Lewisham or at any event once there had been a refusal of the offer, there had been a review at the same time of both the suitability and 'reasonable to accept' requirements as well as the decision prospectively to discharge by the making of the offer (or, if after refusal, that the conditions for discharge had been satisfied), they could have been dealt with at the same time, and by virtue of section 202(2) would not then be open for further review."

However, the "only review was of suitability under section 202(1)(f) (as amended) and not, as indicated in *Warsame's* case, under section 202(1)(b) both as to the discharge of Lewisham's duty and the 'reasonable to accept' issue".

50. Summarising the Court's analysis of the relevant principles, Stanley Burnton LJ said in paragraph 35:

> "(5) The applicant is entitled to a review of the suitability requirement in section 193(7F) by virtue of section 202(1)(f) of the 1996 Act and of the reasonableness requirement in section 193(7F) by virtue of section 202(1)(b). It is both possible and desirable for both requirements to be reviewed at the same time. The right to a review of both requirements, and the intention to review both at the same time, should be made clear to the applicant.
>
> (6) The applicant is also entitled to a review of the decision of the authority as to the discharge of its duty under section 193(7) by virtue of section 202(1)(b). If the review takes place before refusal of the final offer of accommodation, it will strictly be a review of the intention that the offer will, on refusal, result in cessation of the authority's duty. If the review takes place after the refusal of accommodation, it will be a review of the authority's confirmation that its duty has ceased by virtue of satisfaction of the statutory preconditions for such cessation. The applicant should be informed of the right to such review.
>
> (7) It is desirable that such a review of the decision of the authority as to the discharge of its duty under section 193(7) takes place at the same time as the review of the suitability requirement and the reasonableness requirement in section 193(7F). If it is intended that it will take place at the same time, the applicant should be so informed.
>
> (8) If the review of the suitability requirement and the reasonableness requirement and the decision of the authority as to the discharge of its duty under section 193(7) take place at the same time, by virtue of section 202(2) there will be no further right to review of the decisions on any of those matters. If, however, the decision of the authority as to the discharge of its duty does not take place at the same time as either the review of the suitability requirement or the reasonableness requirement, matters relevant to those requirements which were not taken into account on the earlier review must be taken into account by the authority on the decision review if the matters existed prior to the refusal of the offer, even though they were not raised by the applicant at the earlier review."

51. As mentioned in paragraph 30(iii) above, the Judge considered that in *Ravichandran* "a distinction is drawn between a prospective discharge [of] duty by the making of an offer as against the decision by the [local housing authority] that there has been 'satisfaction of the conditions of discharge'" and that "[b]oth 'decisions' are reviewable": see paragraph 30 of the Judgment. As mentioned in paragraph 30(iii) and (iv) above, the Judge added that that was "not to say that a prospective discharge, which expresses a future intention should events occur in future is sufficient to bring the duty to an end" and said that he was "not persuaded that a 'prospective intention'

that the duty will end on the occurrence of certain future events is the same as a decision that the duty ceases to be owed" and that "[t]here needs to be an assessment whether in fact the conditions set out in the statute for discharge of duty have been satisfied".

52. In my view, that last proposition derives no support from *Ravichandran*. The Court of Appeal did not hold in *Ravichandran* that the duty of a local housing authority under section 193 of the 1996 Act would not come to an end under section 193(7) unless it decided that the conditions for that had been satisfied but, rather, that a decision to that effect was reviewable under section 202(1)(b) "even if only confirmatory of a prior automatic discharge". The Court thus recognised that there could have been "prior automatic discharge" and, further, commented that in its unamended form section 193(7) had "provided for automatic cessation, albeit at a later date (i e after notification)". The Court also referred (in paragraph 35(6)) to the possibility of "a review of the decision of the authority as to the discharge of its duty under section 193(7) by virtue of section 202(1)(b)" "tak[ing] place before refusal of the final offer of accommodation".

53. What may matter more in the context of the present appeal is that, as the Judge recognised, in *Ravichandran* the Court of Appeal proceeded on the basis that a "decision prospectively to discharge by the making of the offer" can be the subject of a request for a review under section 202(1)(b) of the 1996 Act. That is particularly apparent from paragraphs 32 and 35(3), (5) and (6) of the Court's judgment.

Discussion

54. Section 193(7AA) of the 1996 Act states that a local housing authority "shall cease to be subject" to the duty under the section where an applicant accepts or refuses a private rented sector offer having been informed in writing of the matters mentioned in subsection (7AB). While subsection (5) provides for the section 193 duty to cease only if, among other things, "the authority notify the applicant that they regard themselves as ceasing to be subject to the duty", nothing comparable is to be found in either subsection (7) or subsection (7AA). On the face of it, an authority's duty under section 193 ceases as soon as a "final offer of accommodation under Part 6" is refused (pursuant to subsection (7)) or a private rented sector offer in respect of which the requisite information has been supplied is accepted or refused (pursuant to subsection (7AA)). Subsections (7) and (7AA) do not in terms require either a further decision from the authority or notification to the applicant.

55. It is doubtless the case that, as Ms Davies said, local housing authorities commonly tell applicants who have refused offers that they consider their duties to have come to an end. No doubt, authorities also sometimes (though I would guess less often) inform applicants who have accepted private rented sector offers that the authorities' duties have ceased. However, the legislation does not specify that an applicant must be told that the authority's duty has terminated, and I do not think that the decided cases establish that an authority is under an obligation to inform an applicant that it considers its duty to have ceased or even to make a decision to that effect. To the contrary, *Ravichandran* seems to me to lend support to the proposition that, as section 193(7) of the 1996 Act is now framed, there is "automatic discharge" where an offer of accommodation under Part 6 is refused and, if that is right, there must similarly be "automatic discharge" under section 193(7AA) where a private rented sector offer is

refused or accepted provided that the applicant has been informed of the matters mentioned in section 193(7AB).

56. Arguing otherwise, Ms Davies pointed out that there could be dispute as to whether an offer has been refused. To illustrate the point, she cited *Nikolaeva v Redbridge LBC* [2020] EWCA Civ 1586, [2021] 1 WLR 1534, where an applicant refused to sign a tenancy agreement but nonetheless maintained that she was not refusing the property. Given the scope for such issues, Ms Davies submitted, it must be incumbent on a local housing authority to decide to end its duty under section 193 of the 1996 Act. An authority, she said, needs to make an evaluative decision.

57. However, I should have thought that it would be relatively rare for there to be a real issue as to whether an offer had been refused or accepted. Further, it strikes me that Ms Davies' submissions, if well-founded, could produce undesirable consequences. Suppose, for example, that an applicant accepted a private rented sector offer and that the authority then simply assumed that its duty under section 193 of the 1996 Act had come to an end without making a decision to that effect or thinking that it might need to. On the basis of Ms Davies' contentions, the authority would presumably continue to owe the section 193 duty indefinitely notwithstanding the fact that section 193(7AA) provides for an authority's duty to cease if an applicant accepts a private rented sector offer.

58. In all the circumstances, it appears to me that the Judge was mistaken in considering that refusal of a private rented sector offer would bring a local housing authority's duty under section 193 of the 1996 Act to an end only if and when the authority so decided. The better view, I think, is the duty ceases automatically on refusal.

59. Even supposing, however, that that is wrong, Mrs Bano will, as it seems to me, have been entitled to request a review under section 202(1)(b) of the 1996 Act when she received the offer letter of 11 June 2020. The letter recorded a decision by the Council that the offer would bring its duty to Mrs Bano to an end, stating, for instance, "The consequences of you accepting or refusing the accommodation is that the Council will no longer be subject to any further duty to you under the homelessness legislation". The Judge himself considered a decision involving a "prospective discharge duty by the making of an offer" to be "reviewable", and he was right about that. Regardless of whether a local housing authority's duty ceases automatically under section 193(7) or section 193(7AA) where an offer is refused, the decision to make such an offer is appropriately characterised as a "decision … as to what duty (if any) is owed … under sections 189B to 193C and 195" within the meaning of section 202(1)(b). As the Judge recognised, confirmation of that is to be found in *Ravichandran*. It can be seen from paragraph 32 of the judgment in that case that the Court regarded a "decision prospectively to discharge by the making of an offer" as reviewable. Similarly, it is evident from paragraph 35(6) that the Court considered that "a review of the decision of the authority as to the discharge of its duty under section 193(7) by virtue of section 202(1)(b)" could potentially take place "before refusal of the final offer of accommodation", in which case it would "strictly be a review of the intention that the offer will, on refusal, result in cessation of the authority's duty".

60. Ms Davies submitted that, while the offer letter of 11 June 2020 specifically informed Mrs Bano that she had a right to request a review of the suitability of the accommodation, it did not tell her that she could request a review on any other basis. However, (a) section 193(7AA) and (7AB)(b) of the 1996 Act impose a requirement

to inform an applicant of the right to request a review of suitability but not on any other basis, (b) the offer letter included a reference to a right of review under section 202 which did not mention suitability (see the last part of the quotation in paragraph 14 above) and (c) in any event, nothing in section 193, section 202 or elsewhere in the 1996 Act makes the right to request a review under section 202(1)(b) conditional on the applicant having been informed of the right.

61. We now know, following *Norton*, that the offer letter of 11 June 2020 was defective in that it did not inform Mrs Bano of the effect of section 195A(2) of the 1996 Act. That will not, however, have precluded a request for a review. As Ms Davies rightly accepted, section 202 extends to flawed decisions. In fact, the review process allows an applicant to complain of a defect.

62. In my view, therefore, Mrs Bano was entitled to request a review in respect of the offer of 11 June 2020 not only under section 202(1)(g) of the 1996 Act (as regards suitability) but also under section 202(1)(b). A review on the latter basis would have allowed her to make the *Norton* point.

63. Turning to what happened after Mrs Bano had refused the offer:

    i) Mr Egbom has said that Mrs Bano's homeless application was "closed", adding "section 193(2) duty ended by the offer of PRS which she refused";

    ii) On 19 August 2020, the Council said in a letter to Mrs Bano that her accommodation had been "cancelled" and that she had been given "adequate notice to make [her] own arrangements for accommodation";

    iii) Responding on 7 October 2020 to the request for a review of suitability which the solicitors then acting for Mrs Bano had made in a letter dated 28 September, the Council commented that Mrs Bano had been told in the letter of 11 June that its duty to her would come to an end whether she accepted or refused the offer, that she had been notified that she was to find alternative accommodation and that it "considers itself as relieved of its homeless duty towards Mrs Bano pursuant to section 193 (5) of the Housing Act 1996".

64. The Judge took the reference to section 193(5) of the 1996 Act to relate to the request which Mrs Bano's solicitors had made for *temporary* accommodation. "Within the compass of a single sentence", the Judge said in paragraph 70 of the Judgment, the Council "accurately notes that … [it] deemed the request for suitability 'out of time' and considered itself 'relieved' of its s.193(5) duty to provide temporary accommodation".

65. As I see it, however, it is plain from Mr Egbom's evidence and the correspondence that the Council had formed the view that its duty to Mrs Bano had ceased. That was why her homeless application was "closed", why her accommodation had been "cancelled" and why she was being expected "to make [her] own arrangements for accommodation". I also think that it is apparent from its letter of 7 October 2020, read as a whole, that the Council considered that it no longer owed Mrs Bano a duty under section 193 of the 1996 Act. Regardless of how the reference to section 193(5) of the 1996 Act arose, there is no hint anywhere in the letter that the Council saw itself as under any obligation to Mrs Bano.

66. It follows, as it appears to me, that Mrs Bano could have requested a review of a decision by the Council that its duty had ceased following Mrs Bano's refusal of the 11 June 2020 offer. While the Council did not tell Mrs Bano in so many words that it believed its duty under section 193 of the 1996 Act to have come to an end, that was clearly the view it took, and *Ravichandran* shows that a decision that such a duty has ceased is reviewable "even if only confirmatory of a prior automatic discharge".

67. The upshot is that Mrs Bano could have requested a review both in relation to the offer letter of 11 June 2020 and in respect of the Council's later conclusion that its duty to Mrs Bano under section 193 of the 1996 Act had ceased. In either case, moreover, Mrs Bano could have taken the *Norton* point on which she now relies. I agree with Mr Mullin, therefore, that Mrs Bano had a remedy other than judicial review available to her.

68. The Judge observed as regards an "ending decision" that "[i]n the absence of challenging the decision in the way prescribed by Parliament, the claimant would need to demonstrate 'pressing' … or 'exceptional' circumstances to bring this claim in judicial review": see paragraph 29 above. It was his view that arguments about alternative remedy "fall away" given his "decision on the prime question about the continuation of the main duty and the failure to make an effective decision that it was ended". As I have indicated, however, it seems to me that the Council did make a "decision", even if only a confirmatory one, that its duty to Mrs Bano under section 193 of the 1996 Act had ended and that it was open to Mrs Bano to request a review under section 202(1)(b) of both that decision and the decision to make the 11 June 2020 offer. That being so, the Judge arrived at his conclusions on an erroneous basis and we must consider for ourselves whether Mrs Bano should be able to claim judicial review.

69. It is plain that the Court has a discretion where a person claiming judicial review has failed to take advantage of an alternative remedy. However, Sales LJ explained in *Glencore*, at paragraph 55, that "[i]f Parliament has made it clear by its legislation that a particular sort of procedure or remedy is in its view appropriate to deal with a standard case, the court should be slow to conclude in its discretion that the public interest is so pressing that it ought to intervene to exercise its judicial review function along with or instead of that statutory procedure". In the present case, it was clearly Parliament's intention in enacting section 202 of the 1996 Act that challenges to decisions such as are identified in section 202(1) should be pursued by way of review and, if necessary, appeal to the County Court, not through judicial review. It is also noteworthy that Parliament thought it appropriate to require a request for a review of a decision to be made within 21 days after its notification unless the local housing authority allowed a longer period.

70. In my view, it is not appropriate to allow Mrs Bano to claim judicial review. I do not think that there are "pressing" or "exceptional" circumstances which would warrant permitting Mrs Bano to pursue her claim for judicial review notwithstanding the fact that she had available to her, but failed to invoke, the procedure (viz. review and appeal) which was meant to apply in relation to decisions as to whether a duty under section 193 of the 1996 Act was owed. In *Nipa Begum*, Auld LJ said that, "save in the most exceptional circumstances, the residual jurisdiction of the High Court should not be regarded as a backstop for the appellate jurisdiction of the county court under section 204 where the applicant for housing assistance has failed to appeal a review

decision within the 21 days' time limit". I do not consider such exceptional circumstances to exist in the present case and I would therefore allow the appeal.

71. I would add, finally, that the reality in this case is that Mrs Bano is seeking to impugn the 11 June 2020 offer letter and the cancellation of her temporary accommodation later in 2020 on the strength of her refusal of the offer. The Council's letter of 30 May 2023 did no more than state its position in respect of the contentions which Edwards Duthie Shamash had advanced in their letter of 15 May 2023. It was not the true focus of Mrs Bano's case and it is artificial and inappropriate to treat it as the subject of a judicial review claim.

Conclusion

72. I would allow the appeal and dismiss the claim for judicial review.

Lord Justice Warby:

73. I agree.

Lord Justice Peter Jackson:

74. I also agree.