Neutral Citation Number: [2022] EWHC 3185 (Admin)

Case No: CO/773/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 December 2022

Before :

ROGER TER HAAR K.C. SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

THE KING

On the application of

E. L.

Claimant

- and -

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

Defendant

- -
- -

LIZ DAVIES KC AND TIM BALDWIN (instructed by **Hodge Jones and Allen LLP**) for the **Claimant**
IAN PEACOCK (instructed by **Bi-Borough Legal Services**) for the **Defendant**

Hearing dates: 6 December 2022

- -

Roger ter Haar K.C. :

1. At the hearing in this matter on 6 December 2022 I made an anonymity order preventing publication of the Claimant's name and identification of the premises to which reference is made below. That order continues.

Background Facts

2. The Claimant ("EL") is 46 years old, having been born on 12 March 1976. He has a history and current presentation of mental health disorders and physical health disorders.

3. EL was a homeless person and through an application for homeless assistance was granted by the Defendant a secure tenancy in about January 2015 at premises in Grenfell Walk. There were reports of complaints and concerns as to his conduct at this tenancy. These included allegations of screaming and shouting, and of disturbing and intimidating neighbours.

4. Following the Grenfell fire on 14 June 2017, EL was evacuated from his accommodation and was accommodated by the Defendant in hotels and temporary accommodation pending an allocation under the Grenfell Rehousing Policy, which was adopted by the Defendant in April 2019. Most of these temporary placements were terminated as a result of allegations of anti-social behaviour on the part of EL.

5. On 8 April 2019 EL was offered and signed an introductory tenancy of a one bedroom flat. Because of the anonymity order to which I have referred above, I refer to this simply as "the property". The property is in the basement of a block owned by the Defendant. The placement was made by the Defendant

under its Grenfell Rehousing Policy to which I have already referred and to which I refer in more detail below. The tenancy formally started as a secure tenancy under the Housing Act 1985 on 15 April 2019.

6. As a result of allegations of anti-social behaviour, on 9 December 2019 the Defendant sought and obtained an injunction against EL. The injunction was for a period of 2 years, thus ending on 8 December 2021. On 8 December 2021 an application by the Defendant for an extension of the period of the injunction was refused, but by then the Defendant had commenced an application for committal for breaches of the injunction. On 17 August 2022, by consent, the hearing of the committal application was stayed pending the determination of this judicial review application.

7. It is EL's case that he has been the victim of retaliatory behaviour by his neighbours. This is best illustrated by the following account by Ms. Sonia Isaza, a Dedicated Service Worker employed by the Defendant[1]:

> "[EL]'s living situation is currently volatile. There is a risk that [EL] may be assaulted by his neighbours who are frustrated with their perception that the RBKC Council is taking no action to ameliorate his antisocial behaviour.
>
> "On 13/08/2020 I completed a joint home visit with Psychologist, Dr Sarah Heke, from the Grenfell Health and Wellbeing Service. The purpose of the visit was to get an up to date mental health assessment and treatment plan.
>
> "Following the assessment, as I was leaving several neighbours gathered outside [EL]'s flat in an attempt to speak to me about their frustration with the Council for allowing [EL] to live on their street.
>
> "One of the neighbours was particularly vocal and loud in his expression of frustration. He blocked me from leaving and spoke

[1] Hearing bundle page 229

> with a raised volume. He was carrying a walking stick which he shook angrily.
>
> "[EL] came out of his flat because of the shouting and interpreted his neighbours' actions as aggressive towards me.
>
> "The neighbour began shouting at [EL] calling him "beggar" and a "useless excuse" and a "dirty" drug user.
>
> "The argument became more heated as both parties raised their voices. The neighbour threatened to assault [EL] twice. I called the police because of the volatility of the situation and because [EL] was not heeding my advice to return to his flat.
>
> "While I was calling the police, the neighbour raised his walking stick in a threatening manner, opened the gate to [EL]'s property and ran down the steps to his front door threatening to hit him. [EL] ran into his home and did not attempt to retaliate physically.
>
> "I followed [EL] into the flat. The police arrived, and I invited them into the flat to make a police report."

8. As well as having the benefit of legal assistance from, advice from, and representation by, solicitors at Hodge Jones & Allen, EL has been assisted by Ms Clara Citro of the Kensington and Chelsea Citizens Advice. Ms Citro was acting under the supervision of a solicitor and she commenced a process of securing alternative accommodation for the EL.

9. Following the incident on 13 August 2020 referred to at paragraph 7 above, Ms. Isaza took the view that EL needed "*to be moved as a matter of urgency*"[2]. She took steps to convene a complex case panel. She also involved Ms Citro[3]. The referral for a complex case review[4] refers to EL having been asking to move for a year and Ms. Isaza's view that he needed to be moved as a matter of urgency.

[2] 203
[3] 205-206
[4] 207-213

10. The first complex case discussion took place on 25 August 2020[5]. The Defendant's housing officers noted that there were allegations that the injunction had been breached. It was noted that assisted housing was not suitable and supported accommodation not viable. Mr. Lay (the Defendant's Head of Grenfell Housing Services) suggested a management transfer. It was decided that he would speak to Mr. Choda (a Team Leader in the Defendant's Grenfell Housing Team) to find out what documentation was required for a management transfer and would assess the position from a housing perspective once Dr Heke (a Consultant Clinical Psychologist in the Defendant's Grenfell Health and Well-being team) had written a report.

11. A second complex case discussion took place on 22 September 2020[6]. It was agreed that Mr Lay would reassess from the housing perspective once Dr Heke's report had been received, that Ms Citro would send Dr Heke specific questions around housing and then send a revised report.

12. On 2 October 2020, Mr Choda had a phone conversation with Ms Citro[7]. He is recorded as saying that there was no dispute that EL needed to move but there were contradictory messages from different directors about whether EL would be moved. It was agreed between them that Ms Citro would gather medical evidence and send that to Mr Choda asking for EL to be moved, and those representations would then be passed on within the Defendant's housing department.

[5] 229-234
[6] 235-239
[7] 240-241

13. A third complex case discussion took place on 20 October 2020[8]. Dr Heke's report had been received by housing that day. Ms Citro informed the meeting that she had agreed with Mr Choda that she would be submitting representations for EL to be moved on medical grounds. An email from Ms Citro on 21 October 2022[9] confirmed that this was the plan.

14. On the 27 October 2020 Ms Citro wrote a letter making the request to move and representations in support[10]. The following are significant passages in that lengthy letter:

> "The purpose of this letter
>
> "I am writing to request that [EL] be rehoused either pursuant to the Grenfell Rehousing Policy (Revision April 2019) on the basis that the permanent accommodation as offered was never suitable for [EL] and as such that the Council continues to fall under a duty to provide him with suitable long-term housing; or in the alternative, on medical grounds pursuant to 4.6 of the Housing Allocations Scheme February 2017, on the basis that his current property is having a directly detrimental impact on his current health conditions and that a move to suitable accommodation is the only way to allow his health conditions to significantly improve over time.
>
> ….
>
> "Our representations
>
> "As evidenced by the attached medical documents, following [EL]'s move into [the Property], there has been a significant deterioration in both his physical and mental health – this deterioration is attributable to the significant levels of stress and anxiety he experiences in the property, which feelings have escalated more recently to extreme feelings of being unsafe in the property, and ultimately led to a total inability for him to settle into this property as his new permanent home.
>
> ….

[8] 242-246
[9] 247-248
[10] 249-254

"The culmination of all this is that the property which [EL] had initially hoped would finally give him a settled base from which he would attempt to recover and rebuild his life, has turned into another volatile and unsettled situation for him – the cumulative impact of the property and its environment has resulted in a further and significant deterioration in his health conditions.

"It is due to this, that we request that [EL] be moved into suitable accommodation as soon as possible.

….

"Impact of his current property on his health

"The current property has had, and continues to have, a directly detrimental impact on [EL]'s mental health conditions – as well as causing his existing health conditions to worsen, it has also caused him to suffer from physical health conditions as well as impacts on in his social, which have all in turn led to him experiencing new symptoms and challenges.

"We submit that the attached medical letters provide clear evidence that the current property that [EL] is living in is having a significantly detrimental impact on his mental health, such that his conditions and associated symptoms have, and continue to, deteriorate significantly. This is in part due to the treatment that he has received from his neighbours which has left him feeling unsafe, unwelcome and ultimately prevented him from ever being able to settle into this property.

"In addition, this evidence makes clear that the current environment that [EL] is in, which leaves him feeling fearful and which in turn causes a state of heightened fear exacerbating his symptoms of trauma, is making it much harder for him to effectively engage in any sort of mental health treatment so as to allow his mental health conditions to be stabilised and hopefully improved – such that not only is the impact of the property worsening his health, but it is also in turn preventing him from taking the necessary steps to counteract his deterioration or eventually achieve any sort of improvement.

"It is also notable that for the first time since moving into the current property, [EL] now has a very strong support network around him – comprised of his Dedicated service worker, the Grenfell health and well-being service, a Mental health nurse, Hodge Jones and Allen Solicitors and ourselves – he is also currently being supported to locate a new GP surgery. It is argued that a property in which he can feel safe and ultimately settled, will allow him to engage with Mental health treatment but also to ensure that he continues to engage with all of these support services, the combined effect of which should allow him

> a fresh start from which he can attempt to move forward with his life in terms of both his health and consequently, his behaviours.
>
> Type of accommodation to be considered.
>
> ….
>
> "It is clear from the attached medical evidence that the first step is to allow [EL] to move into general needs housing in which he can feel safe, which in turn should assist him in engaging with the relevant treatment and services to allow his health conditions to be better managed – it is not until he is allowed to be in this position, where for the first time since the Grenfell tower disaster he is in a stable home in which he feels safe, that a genuine assessment into whether he needs supported accommodation could then be carried out.
>
> "Conclusion
>
> "We believe that the above demonstrates [EL]'s immediate need to be moved into suitable and settled accommodation; if this request is denied it will not only keep [EL] trapped in a property in which he feels unsafe and unsettled, but will also potentially threaten his ability to engage with mental health treatment and his support network which would surely lead to a further deterioration in his mental health and symptoms, and consequently his behaviours. It is argued that leaving him in his current property would not only damage his health but that this, in turn, could also threaten his safety ….."

15. The letter enclosed:

(1) a report from Dr Heke which stated that a move to suitable accommodation was "*central to his capacity to engage in treatment*";

(2) a letter from Sandra Osagiede (a Mental Health Nurse in the Grenfell Health and Wellbeing team) which stated that *"a move to suitable accommodation where [EL] feels safe, accepted and settled would improve his emotional health and wellbeing*"; and

(3) a letter from Ms Isaza which set out the history, described the incident on 13 August 2020 and concluded "*in my professional view, the impact of the history of conflict with the neighbours, in addition to the two threatening incidents which were reported to police, has had a negative effect on [EL]'s mental health and his motivation to maintain his tenancy. Any intervention, at this point, with the aim of helping him maintain his tenancy, is scuppered by the fact that he feels he cannot settle in his property and that he is unsafe*."

16. A fourth complex case discussion took place on 10 November 2020[11]. It was noted that Ms Citro's application for the move on medical grounds had been submitted and that Ms Parish (the Grenfell Housing Services housing manager) would chase Mr Lay for a date when the housing panel would be starting. Ms Parish confirmed in an email to Ms Citro on 16 November 2020[12] that the options for the panel would be "*to enforce the current injunction or agree a transfer or other remedy*". She was to be writing a report.

17. A fifth complex case discussion took place on 24 November 2020. Ms Isaza confirmed that the housing panel had started and hoped that the case would be presented the following week. Ms Karla Knott (a Grenfell Dedicated Service Team Manager) said that she would be presenting cases and, in light of the anxiety from neighbours, would be stating that "*there is no other option but to move*".

[11] 271-275
[12] 276

18. A sixth complex case discussion took place on 22 December 2020[13]. Ms Knott reported that she had been following up when the complex housing panel would meet and there had still been no move. She was also waiting to get an answer from the panel (once formed) on the position as to enforcement of the injunction.

19. An "*informal meeting*" was held on 10 February 2021. Minutes are not available and/or have not been disclosed. It appears that the meeting was between Ms Knott and Ms Thais Mayne Hanvey (who had replaced Ms Isaza). Ms Mayne Hanvey sent an email on 11 February 2021 to a number of people within the Defendant's organisation, but also copied the email to Ms Citro. The email said (emphasis is in the original)[14]:

> "Karla and I attended an internal housing meeting yesterday where the decision was made to move [EL] to a new property. **Please do not share this with [EL]** (the process is likely to take quite a while and we want to have made more progress before he is made aware and we think that knowing could heighten anxiety rather than reduce it) or his lawyer (who will need to liaise with housing/management for any information).
>
> "The decision was also made to refer him to adult social services as he is simply not managing well right now and needs an increased package of support. Again, please do not mention this to him or his lawyer at this point in time.
>
> "**Could you please respond to this email with two separate lists of bullet points looking at the following-**
>
> > "1) [EL]'s general needs and what adult services could do to offer additional support to that which he is getting (including any knowledge of support which you know he has engaged with in the past/what motivates ..him to engage/what deters him). Basically, what would a good support package look like for him?

[13] 287-289
[14] 290

> "2) [EL]'s specific housing needs and what sort of property is going to be most suitable for him. Please consider his social and environmental needs, his own vulnerabilities along with the risks he can pose to others. We want to think from now about how a suitable property can best manage/minimise these. Please include absolutely anything that you feel could be relevant based on either what he has told you or your assessment of him/his situation. Don't worry about any repetition as Karla and I will tidy it up.
>
> " I'd be really grateful if you could get this information back to me by Tuesday 16/02/2021. Sorry, I know it's not long but that will give Karla and I time to collate it before my leave at the end of the week and her leave the week following – we are keen to keep the ball rolling."

20. On 25 February 2021 Ms Citro sent an email sensibly and properly removing herself from the email network[15]:

> "Please be advised that I currently have to remove myself from this professionals network.
>
> "I am aware via Thais that currently the Council are not disclosing to [EL] the decision reached regarding his rehousing, and that the network will decide on a timeframe to inform him in due course, so as to manage his anxieties.
>
> "It is our view that it is vital that [EL] and any representative he instructs is included in the process of his rehousing from the very beginning.
>
> "I am happy to be involved and to assist [EL], however until he is made aware of the Council's current decision and involved in the process and invited to share his views, he is prevented from being able to update his instructions to me or receive any advice, and I am therefore prevented from having any further involvement in this matter.
>
> "I will add that whilst I understand that the Council are concerned about his anxieties should he be notified of the decision, it is clear that [EL] is and has been experiencing acute anxiety around being kept in a property in which he feels unsafe, and I believe that updating him on the council's decision would alleviate those anxieties.

[15] 307

> "I look forward to being able to rejoin the network once [EL] has been formally notified of the Council's decision and is able to instruct me further."

21. On 3 March 2021 there was contact between the Defendant and Ms Citro by telephone and by email. I am unsure which came first.

22. The telephone call was the subject of a detailed note made by Ms Citro (in the note "Cl" is a reference to EL[16]. The emphasis below has been added by me):

> "**Thais confirmed that RKBC have agreed to rehouse [EL] and will be making him a direct offer – however at the same time, they have confirmed that they also need to apply to enforce the injunction due to the breaches, but at the same time will be moving him.** Thais confirmed that at the meeting it was acknowledged that this is an unusual process and that usually housing management wouldn't rehouse in cases where there is an injunction but that they want to take this action to ensure that everything is in place to ensure his good behaviour when he does move. To set him clear guidelines and boundaries.
>
> "**Thais confirmed that she is due to speak to the client to explain all of this to him – she will also explain that his engagement with them is key to shaping the offer they make to him, as he will need to accept it.** As part of this, Thais will try to get his permission to make a referral to Adult social case as they believe that his needs exceed what the DS can provide. I explained that a previous referral had been made to ASC which I thought was not accepted but Thais was unsure of this and certain that they would take his case.
>
> "Thais confirmed that she is unsure if he will consent to the referral to ASC but that he has recently been asking for a mobility scooter, which requires assessment by an ASC OT anyway so Cl may be more willing to engage with their service initially as a means to getting the scooter.
>
> "Cl is not engaging with Sarah H[17] at all but is back in sporadic contact with Sandra[18] and Thais – they are hoping that his engagement will increase whilst they try to get him rehoused. Explained my concern that it may be difficult for him to engage whilst another arm of RBKC are taking legal action against him and that it will be vital that [EL] is aware of the distinction

[16] 315-316
[17] I take this to be a reference to Dr Heke
[18] Sandra Osagiede, a Mental Health Nurse on the Grenfell Health and Wellbeing team

between the departments as otherwise it will be impossible for him to trust/engage with them.

"Thais confirmed that Cl has been asking for cleaners again but that HM[19] have said they will not provide this – Thais will explore this with ASC also.

"**Thais confirmed that her task now is to help stipulate what Cl will require in his next property so that housing can identify one – Thais explained her thoughts are that Cl needs a basement flat so that he has no neighbours below him for example – Thais is keen to hear from Cl what he thinks he will need and also to hear about what locations he may want/want to avoid.**

"Confirmed that it may be difficult for Cl to understand the importance of the injunction proceedings and engaging with his solicitor if he is also being told that he will be rehoused and that she must be careful not to make promises that RKBC cannot/will not keep – Thais confirmed that she will explain that he must get the bank statements to his solicitor for legal representation in relation to the injunction proceedings but also engage with them to shape the offer. Thais will explain that whilst he is being rehoused he must be on his best behaviour hence the injunction being explored at the same time.

….

"**Reiterated that Cl has still nothing in writing to confirm that he is being rehoused** – Thais agreed that she will notify Cl asap about the situation and then let me know once she has told him, so that I can support him with this….."

23. The email was sent by Mr Andrew Lay, head of the Defendant's Grenfell Housing Services department, to Ms Citro and said[20]:

"Hi Clara

"We are proceeding with enforcement of the injunction on the basis of numerous and persistent breaches of tenancy and the original injunction.

"We agreed that whilst taking this action the Dedicated Service would seek to identify alternative accommodation and [EL]

[19] Housing Management
[20] 317

> would be offered 1 suitable direct offer. We (GHS) won't be involved in the process because of conflict of interest.
>
> "If a suitable property isn't identified and accepted within 3 months and the breaches continue we will convene a Tenancy Sustainment Panel with Directors and make our case for actioning the order of possession (if granted by the Court) with a view to purchasing[21] a warrant. It will be up to the panel to decide what happens after that but obviously we will go with whatever decision is made."

24. It is not entirely clear what happened after 3 March 2021, but the best evidence I have comes from notes Ms Citro made of two telephone calls between herself and Ms Jackie Keiza who had by then replaced Ms Mayne Hanvey.

25. The first call was on 12 July 2021[22]:

> "Jackie called and confirmed she could only speak for a minute as she was running late for another home visit – she had just had a home visit with Cl and it was meant to be a quick one, but suddenly the neighbours had become very aggressive and attempted to force their way into Cl's flat and Jackie had to call the police. Jackie confirmed it has now settled and she has left, and that she would update me fully later."

26. The second call was on 16 July 2021[23]:

> "Jackie confirmed that when she visited Cl there was an incident with the neighbours as they were attempting to force their way into Cl's property. Jackie called police and the situation was defused. Cl is engaging well with her – she has visited him 3 times this week and has arranged for cleaners to go round.
>
> "Housing updates? In their last meeting, Andrew Lay was continuing to state that they are going for an eviction, but then Mandeep jumped in to say that if he was evicted, it was agreed that the homeless team would pick him up. I asked what had changed, as the last confirmation was that housing were waiting for SS to carry out an assessment of Cl's needs so housing could look for a property for him. Jackie confirmed that Cl has engaged with SS but they have said the housing OT's[24] need to

[21] Sic: this presumably should read "procuring"
[22] 341
[23] 340-341
[24] OT's is a reference to Occupational Therapists

> be the ones who decide what Cl's housing needs are – confirmed that I share the same view hence our request for a medical move which would have been handed to the housing OT's for assessment. Jackie confirmed that this seems like wasting time as they have been saying they need SS for a long time, and now that SS have picked it up, they are saying actually the housing OTs should have done that work all along. Agreed that I would raise my requests for clarity and a decision via Rob Shaw – as the housing OT's should be involved [if] they process my request properly. Agreed that I would cc Jackie into the email to Rob, so that she can push this with him.
>
> "Jackie confirmed that she also manages to get Cl's GP to do a home visit on Monday – they confirmed that Cl has a hernia, is morbidly obese and that the obesity is causing chronic severe back pain and pain in his left leg. The Dr recommended a pain patch – Jackie is trying to get a service in place to come and apply this pain patch weekly. Jackie confirmed that it is no surprise that Cl has been struggling as he has been left in chronic levels of pain for an excessively long time. The DR confirmed that due to the length of time his pain was unmanaged, it was not surprising that he was using substances and the DR believes that this was an attempt to self-medicate and cope with his pain levels.
>
> "Jackie is also concerned with Cl's access issues – due to the metal staircase to enter/exit his property – he is concerned that this is too difficult and painful, and that he is likely to fall.
>
> "Jackie agreed she will support my email to housing to push for a decision and will continue to work closely with cl."

27. Later that day (16 July 2021) Ms Citro wrote an email to the Defendant[25]:

> "Please see below email chain. I have been repeatedly requesting that a decision letter be issued to myself and [EL] by RBKC to confirm their position on his rehousing and to respond to our request that he be moved on medical grounds as submitted 27 October 2020.
>
> "We are yet to receive any such written responses or confirmation. A detailed explanation of the information we are lacking is set out in my email to Simon of 26 April 2021. No further updates have been received since his response to me of 28 April 2021.
>
> "I appreciate that this is a complex case and that there are numerous departments involved, however RBKC's continued

[25] 326

> failure to provide me with information about [EL]'s housing or their position on this matter is preventing him from being able to access the housing advice that he requires. Further, I was forced to withdraw from the complex case review meetings, which I was initially invited to, on account of the lack of information being disclosed by RBKC to [EL] about his housing with prevented me from obtaining instructions from him.
>
> "I have included Jackie in this email, as since she has begun working with [EL] huge amounts of progress have been made in terms of his engagement and assisting him to access the support he requires – I believe this supports the strong arguments that he be rehoused, to allow him to continue with this progress. [He] has also witnessed this week the abusive and threatening behaviour his neighbours are continuing to subject him to. [He] has also raised concerns over his ability to access his flat via the metal staircase and [his] concerns that due to his severe pain and limited mobility, this is incredibly painful and potentially dangerous for him.
>
> "I would be grateful if you could look into this matter, and ensure that [EL] and ourselves are provided with the information we require."

28. In the event, no offer of alternative accommodation has been made. It is the Defendant's intention to proceed with its application for committal.

29. On 1 March 2022 the Claimant issued his claim for judicial review. This set out 4 grounds: on 1 July 2022 Mr. Vikram Sachdeva KC granted permission in respect of Grounds 1 and 2.

Ground 1

30. Ground 1 is as follows:

> In breach of statutory duty the Defendant has acted unlawfully and irrationally in requiring the Claimant to continue to occupy unsuitable accommodation and has unlawfully and unreasonably delayed in providing him with suitable alternative accommodation. It is submitted there is no good reason for the Defendant's failure to provide the Claimant with suitable accommodation. Rather the Defendant has pursued applications

to commit the Claimant to prison for breach of an injunction. It is submitted this is a breach of a continuing duty.

31. The breaches of duty alleged are breach of the Defendant's housing allocation scheme, breach of the Defendant's housing duty under Part 6 of the Housing Act 1996 and/or breach of the Defendant's homelessness obligations under Part 7 of the Housing Act 1996.

32. The allocation of housing accommodation is governed by Part 6 of the Housing Act.

33. Section 159 of the Act provides:

> "(1) A local housing authority shall comply with the provisions of this Part in allocating housing accommodation.
>
> "(2) For the purposes of this Part a local housing authority allocate housing accommodation when they-
>
> (a) select a person to be a secure or introductory tenant of housing accommodation held by them,
>
> (b) nominate a person to be a secure or introductory tenant of housing accommodation held by another person, or
>
> (c) nominate a person to be an assured tenant of housing accommodation held by a private registered provider of social housing or a registered social landlord...
>
> "(4A) Subject to subsection (4B), the provisions of this Part do not apply to an allocation of housing accommodation by a local housing authority in England to a person who is already-
>
> (a) a secure or introductory tenant, or
>
> (b) an assured tenant of housing accommodation held by a private registered provider of social housing or a registered social landlord.
>
> "(4B) The provisions of this Part apply to an allocation of housing accommodation by a local housing authority in England to a person who falls within subsection (4A)(a) or (b) if-

(a) the allocation involves a transfer of housing accommodation for that person,

(b) the application for the transfer is made by that person, and

(c) the authority is satisfied that the person is to be given reasonable preference under section 166A(3)."

Section 160ZA provides for accommodation to be allocated only to eligible and qualifying persons. Eligibility depends on an applicant's immigration status. The local housing authority has a discretion to decide what classes of persons are, or are not, qualifying persons.

34. Section 166A of the 1996 Act provides:

"(1) Every local housing authority in England shall have a scheme (their 'allocation scheme') for determining priorities, and as to the procedure to be followed, in allocating housing accommodation.

“For this purpose 'procedure' includes all aspects of the allocation process, including the persons or descriptions of persons by whom decisions are to be taken...

(3) As regards priorities, the scheme shall... be framed so as to secure that reasonable preference is given to-

(a) people who are homeless (within the meaning of Part 7);

(b) people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);

(c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;

(d) people who need to move on medical or welfare grounds (including grounds relating to disability); and

(e) people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).

> "The scheme may also be framed so as to give additional preference to particular descriptions of people within one or more of paragraphs (a) to (e) (being descriptions of people with urgent housing needs)...
>
> "(14) A local housing authority in England shall not allocate housing accommodation except in accordance with their allocation scheme."

35. The Defendant's obligations to those who are or may become homeless are contained in Part 7 of the 1996 Act.

36. By virtue of section 184(1), where a person applies to a local housing authority for assistance under Part 7 of the Act, if the local housing authority have reason to believe that the applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves whether the applicant is eligible for assistance and, if so, whether any duty, and if so what duty, is owed to the applicant under the provisions of Part 7.

37. Section 175 provides:

> "(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he-
>
> (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
>
> (b) has an express or implied licence to occupy, or
>
> (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession...
>
> "(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy..."

38. In certain cases section 188 creates an interim duty to secure accommodation for an applicant pending decisions as to the duties owed to the applicant under

Part 7 of the Act. By section 188(1) that duty arises if the local housing authority have reason to believe that the applicant may be homeless, eligible for assistance and have a priority need.

39. By section 189A, if the local housing authority are satisfied that an applicant is homeless or threatened with homelessness and eligible for assistance, the authority must make an assessment of the applicant's case and seek to agree a personalised housing plan with them.

40. By section 189B, if the local housing authority are satisfied that an applicant is homeless and eligible for assistance, the authority comes under a duty to take reasonable steps to secure that accommodation becomes available for the applicant's occupation for at least 6 months (or such longer period not exceeding 12 months as may be prescribed).

41. The main housing duty under section 193 requires the authority to secure accommodation for the applicant's occupation. It arises following the end of the relief duty under section 189B and is owed to those who are homeless and eligible for assistance, have a priority need and did not become homeless intentionally.

The Defendant's allocation scheme

42. The Defendant has an allocation scheme as required by section 166A ("the allocation scheme")[26].

[26] 439-494

43. By section 1.5 of the allocation scheme an applicant's inclusion on the register will follow a formal assessment of the applicant's household's housing circumstances, including whether they are eligible for an allocation of accommodation and qualify for an offer of accommodation[27].

44. By section 1.7(c) of the allocation scheme applicants will be disqualified for registration if they have had legal action taken against them for violence, racial harassment, threatening behaviour or any other antisocial behaviour. Legal action includes serving of injunctions[28]. Applicants will be expected to demonstrate a change of behaviour before they can reapply with, ordinarily, no repeat occurrence of the behaviour for 5 years[29].

45. By section 1.11 of the allocation scheme the Defendant can allocate properties outside the priorities under section 4 of the allocation scheme, for example under local lettings plans[30].

46. By section 4.3 of the allocation scheme 2,000 exceptional priority points can be awarded as a matter of the Defendant's discretion in order to resolve exceptional housing need[31].

47. By section 4.4 of the allocation scheme 2,000 emergency health and independence points can be awarded[32]. By section 4.6 of the allocation scheme

[27] 445
[28] 446
[29] 447
[30] 449
[31] 458-459
[32] 459

900 supporting health and independence points can be awarded in less serious cases[33].

48. Accommodation can be allocated via direct offers (section 7.2[34]) or through a choice based lettings scheme (section 7.3[35]) where applicants bid for accommodation. My understanding is that the choice based lettings scheme is the norm.

The Grenfell Rehousing Policy

49. The Grenfell Rehousing Policy was adopted as a local lettings plan following the Grenfell Tower fire[36].

50. It applied to those who immediately before the fire were living at Grenfell Tower or Grenfell Walk (paragraph 2[37]).

51. Those to whom the policy applied were awarded 3,000 points (paragraph 6[38]).

52. Once a household accepted a property, their application under the policy would be closed (paragraph 7.3[39]).

53. The Director of Housing retained a discretion to amend or waive the policy in exceptional circumstances (paragraph 1[40]).

The Settled Homes Policy

[33] 460-464
[34] 482-484
[35] 484-485
[36] 495-504
[37] 496
[38] 501
[39] 503
[40] 496

54. The settled homes policy[41] was introduced because some families who had been rehoused following the Grenfell Tower fire were finding it difficult to settle into their new homes and had asked to move to an alternative permanent home[42].

55. The policy covers all whole households who formerly lived in Grenfell Tower or Grenfell Walk rehoused to a permanent social housing tenancy through the Grenfell Rehousing Policy (paragraph 1.1[43]).

56. Households may move only once under the settled homes policy and, once the household has moved to a new permanent home under the policy, their application will be closed (paragraph 1.4[44]).

57. Households covered by the policy can apply to transfer to a new permanent home and be awarded 1,500 points (paragraph 3.1[45]).

58. Direct offers can be made where a household has an overriding need for a specific type of property (paragraph 6.5[46]).

The relief claimed

59. In paragraph 80 of the Claimant's skeleton argument for this hearing, the following relief is sought:

> "C seeks an order in the following terms:
>
> "a. A declaration that D has acted unlawfully, and in breach of its statutory duty, by failing to treat C as having applied for an

[41] 529-546
[42] 530-531
[43] 532
[44] 532
[45] 533
[46] 542

> allocation of accommodation and by failing to make him a direct offer;
>
> "b. A declaration that D has acted unlawfully and in breach of C's legitimate expectation by failing to take any steps to identify whether a suitable property was available for C and therefore failing to offer him that property;
>
> "c. A mandatory order requiring D to:
>
> i) Make C a direct offer under its allocation scheme;
>
> ii) Take all reasonable steps for three months from the date of this order to identify a suitable property for C and offer it to him."

60. In my understanding, where the relief sought is in respect of "failing to make [EL] a direct offer" and "a mandatory order requiring D to make [EL] a direct offer under its allocation scheme", that is primarily relief claimed under Ground 1.

Breach of Part 6 of the Act or of the allocation scheme?

61. The Defendant submits in its skeleton argument as follows:

> "52. D's approach to C's situation has been influenced by two (potentially conflicting) objectives. First, D's commitment to those affected by the Grenfell Tower fire that it would ensure that they were suitably housed. That objective would support the provision of alternative accommodation to C.
>
> "53. Secondly, the need to ensure that D's tenants do not cause nuisance and the desirability of taking action to protect residents from nuisance. That objective supported the application for an injunction against C and the subsequent committal application following allegations of breach of the injunction. It might also weigh against offering C alternative accommodation (or general needs accommodation) given the possibility that that might simply result in C's anti-social behaviour being moved to another location.

"54. Different officers of D took different views as to the best way forward and that led to the decision-making process being difficult and protracted.

"55. That decision making process resulted in a decision that an application for committal would be made but that at the same time efforts would be made to identify suitable alternative accommodation for C to be offered via a direct offer. If those efforts had not proved successful within 3 months, a decision would be taken as to whether to pursue a claim for possession of the property (*p 317*).

"56. C does not suggest in his skeleton argument that that decision was irrational or otherwise unlawful.

"57. C also suggests that the decision was consistent with D's powers under Parts 6 and 7 of the Act and under the allocation scheme. D agrees although its analysis differs from C's:

(1) C's application under the Grenfell Rehousing Policy would have been closed following the grant of the tenancy of the property to him. However, the Director of Housing retained a discretion to waive the policy in exceptional circumstances. That discretion could have been exercised to reopen C's application so that he could move to alternative accommodation.

(2) The injunction granted against C meant that he was disqualified from joining the housing register under the allocation scheme but D retained a discretion to award 2,000 exceptional priority points.

(3) C suggests that D could have relied on its power to move an existing secure tenant under section 159(4A). However, that power could not be exercised if C had applied for a transfer and D was satisfied that he was to be given reasonable preference under section 166A(3). On the face of it C had applied for a transfer (*p 249-255*) and any basis for offering him alternative accommodation would have been because he fell within one of the reasonable preference classes under section 166A(3).

(4) C suggests that D could have secured accommodation for his occupation under Part 7 of the Act. But, by virtue of section 166A(14), D's powers under Part 7 could not have been used to secure Part 6 accommodation for his occupation outside the allocation scheme.

"58. The fact that D would have had power to make an offer of alternative accommodation to C does not mean that it was obliged to do so.

> "59. C argues that D is in breach of its allocation policy, has failed to exercise its power under section 159(4A) and is in breach of its homelessness functions under Part 7 of the Act.
>
> "60. However, it is doubtful that the power under section 159(4A) arose. C was disqualified from joining D's housing register as a result of the injunction. Although, as discussed above, D would have had discretion under the Grenfell Rehousing Policy and under the exceptional priority provision of the allocation scheme, it cannot realistically be suggested that it was irrational not to exercise that discretion."

62. On my reading of the events, the Defendant accurately records the factual matters set out at paragraphs 52 to 55 of its skeleton argument.

63. In my judgment, and subject to what I say below in respect of Ground 2 and in respect of the settled homes policy, the Defendant acted at all times in accordance with its allocation scheme read in conjunction with the Grenfell Rehousing Policy.

64. The problems faced by the Defendant in finding alternative accommodation for EL were acute. The alternative accommodation would have to be on a ground or basement level; allow for his physical condition; allow for his own mental health issues; and allow for the problems which might arise between EL and future neighbours, all this in an environment where publicly funded accommodation is in very short supply.

65. This led to considerable delays, not assisted by differing views as to whether the correct way forward was to press ahead with the application for an injunction and the subsequent committal application.

66. In those circumstances I accept the submissions made at paragraphs 58 to 61 of the Defendant's skeleton argument, which I have set out above.

Breach of the Defendant's duty under Part 7 of the Act?

67. In the alternative to the claim under Part 6 of the Act and under the Defendant's allocation scheme, it is contended that the Defendant should have considered an application under Part 7 of the Act.

68. This submission appears to me to fail for a number of reasons.

69. Firstly, it seems to me that being treated as homeless was the opposite of what EL has been seeking. What he was and is seeking is accommodation in which he would feel more secure than he feels in the property. Being treated as homeless would involve him either (perhaps) staying in the property or (more probably on the facts of this case) being rehoused in the somewhat unpredictable manner that the homelessness regime provides in practice.

70. Secondly, it is far from certain that an application under Part 7 would have procured the result he wanted since (as Ms. Davies conceded) it is at least possible that he would be regarded as intentionally homeless, or that it was not unreasonable to expect him to stay in the property. The highest that Ms Davies could put it was that he had a case for consideration under Part 7 of the Act. That would not suffice to justify in my making the mandatory order sought and, probably, would also make it difficult for me to grant the mandatory relief sought.

71. Thirdly, and most powerfully, the case which Ms Citro was putting forward very eloquently, particularly in the letter of 27 October 2020 referred to in paragraph 14 above, was a case for consideration under Part 6 of the Act and under the allocation scheme. In those circumstances it was not irrational for the

Defendant to treat EL's housing situation under Part 6 rather than Part 7 of the Act.

72. For the above reasons I dismiss the application made under Ground 1.

Ground 2

73. Ground 2 is as follows:

> "The Defendant has acted in breach of statutory duty and unlawfully, irrationally and in breach of a substantive legitimate expectation created as a result of the decision of the 3 March 2021 to adopt a procedure of making a direct offer of alternative accommodation to Claimant as an alternative to enforcement of allegations of breaches of an injunction arising out of the occupation of the unsuitable accommodation provided to the Claimant [i.e. "the property"] as a result of the Grenfell Fire and under that bespoke scheme for allocation."

74. Ground 2 refers to the 3 March 2021 Decision. In the course of oral submissions the decision relied upon was the email which I have quoted at paragraph 23 above, but in my judgment that should be read together with the note of the telephone call on the same day which I have set out at paragraph 22 above.

75. I was referred by counsel to a number of authorities as to the circumstances in which a governmental body will be held to, and required to honour, a legitimate expectation arising out of a representation made by such a body. It was agreed that the following summary of the relevant principles contained in paragraph [35] of the judgment of Stuart-Smith J. (as he then was) in *R (on the application of Alansi) v Newham LBC* [2013] EWHC 3722 (Admin); [2014] H.L.R. 25 is accurate:

"Without derogating in any way from the statements of applicable principle set out above, I attempt to summarise the main points as follows:

i) Where a person asserts a legitimate expectation to enforce what amounts to a substantive right based upon a promise or assurance by a public authority, the authority's statement must be clear, unambiguous and devoid of relevant qualification;

ii) Where a public authority has made statements to an individual that are said to give rise to a legitimate expectation, the Court should ascertain the meaning which the authority's statements would reasonably convey to that person in the light of all the background knowledge which he or she had in the situation in which he or she was at the time that the statements were made;

iii) Where a person is relying upon a promise or representation by a public authority as giving rise to a substantive right, the Court will not be limited to a *Wednesbury* irrationality test but will be required to consider whether the public authority has struck the correct balance between the public interest and the interests of the person relying on the promise or representation;

iv) The test to be applied is whether frustrating the Claimant's expectation is so unfair that to take a new and different course will amount to an abuse of power. Once the expectation has been established, the court must weigh the requirements of fairness against any overriding interest relied upon for the change of policy. Both procedural and substantive unfairness may be taken into account when applying this test;

v) Reliance and detriment are not essential pre-requisites to a finding of unlawful abuse of power but their presence (or absence) may be taken into account in deciding where the balance of fairness lies and whether the authority has acted unlawfully;

vi) The Court should give due weight to the proper role of public authorities as agents of change and as being responsible for the adoption and implementation of policies that are in the public interest even though they

> may conflict with the interest of private individuals, including those to whom assurances have been given;
>
> vii) Being afforded priority under a housing allocation scheme is no guarantee of being awarded permanent accommodation either at all or within any particular timescale."

76. Applying those principles, I consider first what assurance or promise was made by the Defendant to EL.

77. As argued on behalf of EL, what was offered was contained primarily in the second paragraph of the email, namely: *"Whilst* [pursuing the application for an injunction] *the Dedicated Service would seek to identify alternative accommodation and* [EL] *would be offered 1 suitable direct offer."*

78. Ms Davies argues that the promise of (a) a search and (b) a direct offer of accommodation are both of value to EL. In particular, EL was anxious not to receive an offer of supported accommodation, and would be far from guaranteed alternative accommodation if he were to bid for alternative accommodation against others on the Defendant's housing list.

79. In my judgment, if the 3 March 2021 email is taken, as I believe it should be, together with the telephone call, it is clear firstly that the proposal was dependant upon identifying a suitable alternative property.

80. Secondly, both the email and the telephone call made it clear that the proposal was not to be communicated to EL, but how realistic that was in circumstances where it was necessary to identify suitable alternative premises is somewhat doubtful.

81. In the circumstances it seems to me that what was offered was an attempt to search for alternative accommodation and to make a direct offer if, but only if, suitable alternative accommodation could be identified: of course, even if such accommodation could be identified there would then be a further issue as to whether it would be acceptable to EL.

82. Applying the first of Stuart-Smith J.'s principles, it is well arguable that what was offered was clear and unambiguous, but it seems to me that it was not "devoid of relevant qualifications" since the most important qualification was that it depended upon the identification of suitable alternative accommodation. The process which was followed as recorded in the telephone call on 16 July 2021 (see paragraph 26 above) showed how difficult it was to identify a suitable alternative.

83. Secondly, there is the question raised in the second of Stuart-Smith J's principles as to what was reasonably conveyed by the Defendant's statements. Both the e mail and the telephone call on 3 March 2021 involved Ms Citro to the exclusion of EL. It seems to me significant that the documentation after 3 March 2021 did not suggest that Ms Citro regarded any form of promise as having been made.

84. Thirdly, although it is not necessary for a party to have acted to his or her detriment in reliance upon what was said by the public body, the demands of justice are stronger where somebody's hopes have been raised by what the public body said and the statement of the public body has been relied upon by the affected party. In this case, because the 3 March 2021 "decision" was not communicated to EL, there was no such raising of hopes or reliance.

85. The matters set out above seem to me to accord with the following submissions in paragraphs 68 to 75 of the Defendant's skeleton argument, which I accept:

> "68. It is unarguable that, as is argued in ground 2, that email amounted to an assurance that a direct offer of accommodation would be made *as an alternative to* pursuing the allegations of breach of the injunction. The start of the email makes clear that, regardless of efforts made to identify alternative accommodation, D would be proceeding with enforcement of the injunction.
>
> "69. It is also impossible to see how the email could amount to a commitment to make a direct offer of accommodation which is clear, unambiguous and devoid of relevant qualification. The email says that D *would seek* to identify alternative accommodation, not that it would identify it. It also says what would happen if a suitable property had not been identified and accepted within 3 months and thus envisaged that no suitable property might be identified.
>
> "70. Perhaps in recognition of that potential difficulty, in his skeleton argument C advances for the first time a more subtle argument. He argues instead that D should be required to seek to identify an alternative property for C and that, if one is identified within three months, it should be offered to C but, if a property is not identified after three months, matters might change.
>
> "71. But that alternative argument faces the difficulty that the 3.3.21 email does not specify any particular level of intensity of search for alternative accommodation which would be carried out. As such, it is difficult to see how the email could be treated as an assurance that any particular sort of search would be carried out which was clear, unambiguous and devoid of qualification.
>
> "72. It is clear that some steps were taken with a view to identifying accommodation. D took the view that, given the difficulties which had arisen when C was in occupation of general needs accommodation both before the Grenfell Tower fire and at the property, further such accommodation would not be suitable (*p 368-369*). C did not want to consider supported accommodation (*p 368*). Social services was asked to carry out an assessment of C's needs with a view to informing what sort of accommodation might be suitable but social services suggested an assessment by occupational therapy instead (*p 340-341*). As a result the steps taken were not successful in identifying suitable alternative accommodation.
>
> "73. It may well be that further steps might have been taken, particularly if D had not taken the view that further general needs

> accommodation would be unsuitable. But there was no clear, unambiguous and unqualified promise to take such steps in the 3.3.21 email.
>
> "74. The relief sought by C in this regard (in paragraph 80(c)(ii) of his skeleton argument) is a mandatory order requiring D to take *all reasonable steps* for three months to identify a suitable property for C. But the 3.3.21 email cannot be read as a clear and unambiguous promise to take all reasonable steps to identify a suitable property. Any such order would also raise the question of what constitutes a suitable property and who is to decide that.
>
> "75. Accordingly, D submits that the 3.3.21 email did not give rise to any legitimate expectation."

86. Even if the 3 March 2021 email did give rise to a legitimate expectation, the Defendant argues in paragraph 76 of its skeleton argument that frustrating that expectation would not be so unfair as to amount to an abuse of power:

> "Even if it did, frustrating that expectation would not be so unfair as to amount to an abuse of power:
>
> "(1) Although the email was sent to C's representative, it was sent on the basis that the decision was not to be communicated to C.
>
> "(2) C's representative clearly did not treat the email as containing a binding commitment as she continued to press for a formal decision letter (*p 339-340*).
>
> "(3) C himself appears not to have become aware of the email until after the 3 month period referred to in the email had come to an end.
>
> "(4) C asserts that he relied on the assurance in the email by not making applications for accommodation or housing assistance under Parts 6 and 7 of the Act. But there is no evidence to that effect.
>
> "(5) Further, it has been plain, at least since D's solicitors' email sent on 16.9.21 (*p 360*), that D did not consider that it had made any commitment to offer alternative accommodation. It was not reasonable to refrain from making applications under Part 6 or 7 of the Act in reliance on the email after that date."

87. Points (1) to (4) are in accord with points I have made above, and I accept them. I would not regard point (5) as being of much weight, but given the view I have

taken on points (1) to (4) I accept that it is not unfair for the Defendant to be permitted to take the stance which it has and does.

88. Had I not reached that conclusion, I would still have dismissed this application for the reasons I give below.

The Grenfell Settled Home Policy

89. I have referred above to the Defendant's Grenfell Settled Home Policy. This was adopted after the Claim Form in this matter was issued (the Claim Form was issued on 1 March 2022, and the Policy was adopted on 16 March 2022).

90. Given those dates, it seems to me not to be relevant to a claim that the Defendant was in breach of duty as at the date of issue of the Claim Form. However, it seems to be a powerful factor in the fair disposal of this case.

91. There was some delay in this Policy being brought to the attention of the EL's advisers, and for that the Defendant has apologised. In my judgment that was unfortunate but not relevant to the decision I have to make.

92. The Introduction to the Policy reads as follows:

> "The harrowing impact of the Grenfell Tower tragedy of 14 June 2017 upon survivors and the bereaved will never fully heal. The community, the Royal Borough of Kensington and Chelsea ('RBKC' or 'the Council') and its partners are committed to supporting survivors of the tragedy, and the families bereaved by it, to recover as far as possible while learning and adopting vital lessons from this humanitarian disaster.
>
> "In July 2017, the Council introduced the Grenfell Rehousing Policy, revising it further in November 2017 and in April 2019. The Grenfell Rehousing Policy provided the path upon which former residents of Grenfell Tower and Grenfell Walk would be rehoused to a new permanent home, and it reflected Council and

> Government pledges that residents would have a choice about where they live,
>
> "The residents and their families were in a unique situation, living in a highly pressurised and traumatic environment, which sometimes made it difficult to make important decisions about their housing future.
>
> "While many households are happy in their new homes, some households have subsequently found that they now cannot settle, and cannot try to rebuild their lives, in their current homes. For these families their homes now feel like a barrier to recovery.
>
> "The Grenfell Settled Home Policy provides survivor households with the opportunity to move one further time to an alternative permanent home. It explains the high priority ('Settled Home Priority') for rehousing that will be given to households who feel they need to move once more …."

93. Section 1 of the Policy explains at 1.4 that:

> "Households may only move once under the Grenfell Settled Home Policy. Once a household has moved to a permanent home under the Policy, their Grenfell Settled Home application will be closed."

94. Section 1.1 lists those residents who will not be covered by the Policy: so long as EL remains a resident at the property, he will not fall within any of the excluded categories.

95. Section 3.1 provides:

> "Households qualifying fore rehousing under the Grenfell Settled Home Policy will be awarded the following priority:
>
> - 1500 points Grenfell Settled Home Priority
> - This high level of priority reflects the impact, on a mental health and emotional level, of the challenges and barriers to recovery felt by the residents in their original permanent homes (the home a household moved to under the Grenfell Rehousing Policy).
> - No additional points will be awarded: for example, for reasons of health or overcrowding."

96. Under the normal allocation scheme, an applicant who has previously been the subject of legal action, including being the subject of service of an application for an injunction, will be disqualified for registration on the register of applicants for the Defendant's rental property.

97. That disqualification, which is a significant problem for EL under the Defendant's allocation scheme, does not apply to EL under the Grenfell Settled Home Policy. As it was put in the course of Mr Peacock's oral submissions, under that Policy the slate is wiped clean. This appears to me to be an important explanation of the Defendant's position.

98. The allocation of 1500 points places a person applying under the Policy in a very good position in the order of priority of applicants.

99. The result is that unless EL is evicted from the property before an application under the Policy has been made or considered, EL has a very good chance of being allocated alternative accommodation if suitable accommodation can be identified.

100. Accordingly, it seems to me that his position now is as good as it would have been had the search for accommodation which it is said should have been carried out in implementation of the 3 March 2021 Decision had been carried out.

101. Accordingly, had I not decided that this application should have been dismissed on other grounds, I would have dismissed it in any event upon the basis that EL has an adequate alternative remedy and/or it would not be unfair for the Defendant to be permitted to take the stance which it has and does.

102. For the above reasons this application for judicial review must fail.