Neutral Citation Number: [2023] EWHC 185 (Admin)

Case No. CO/3453/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31st January 2023

Before:

MR JUSTICE RITCHIE

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BETWEEN

THE KING on the application of
ODAY YABARI

Claimant

- and -

THE LORD MAYOR
AND CITIZENS OF THE CITY OF WESTMINSTER

Defendants

- -
- -

Annabel Heath (instructed by Lawstop Solicitors) for the **Claimant**
Ian Peacock (instructed by Bi-Borough Legal Services) for the **Defendants**

Hearing date: 19 January 2023

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JUDGMENT APPROVED

Mr Justice Ritchie:

The Parties

1. The Claimant is a resident in Westminster and asserts that he is living in accommodation which is inadequate for his needs as a disabled person.

2. The Defendants are the local Housing Authority.

Bundles

3. For the hearing I was provided with two bundles, one of pleadings and documents and one of authorities.

Summary

4. The Claimant seeks judicial review of the Defendants' handling of his application for priority homelessness rehousing. He asserts that the Defendants breached their obligations under section 188 (1) of the *Housing Act* 1996 by failing to offer suitable interim accommodation and by asserting that he should remain in his current accommodation pending their determination of his application for a long term change of accommodation. The Claimant also asserts that the Defendants breached their Public Sector Equality Duty. The Claimant seeks a declaration in support of those assertions and a mandatory injunction forcing the Defendants to provide suitable interim accommodation which he asserts would be a two-bedroom property.

5. The Defendants assert that they did not breach the *Housing Act* in any way. They offered suitable temporary interim accommodation (with one bedroom) which was rejected by the Claimant and thereafter they were justified in deciding that the Claimant should stay in his current accommodation on an interim basis until they complete their investigations into whether he qualifies for long term larger alternative suitable accommodation because of the extent of his asserted disabilities.

The Issues

6. The issue at the heart of this claim is whether the Claimant's medical conditions justify him needing a two bedroom wheelchair adapted property or a one bedroom wheelchair accessible property. The context is the the Defendants' duty to provide the Claimant as a disabled person who is vulnerable with suitable interim accommodation under S.188(1) of the *Housing Act 1996* and the definition of "*reason to believe".*

7. The parties agreed and proposed that the following are the relevant issues for the Court to determine:

> "1. a. When did the duty under s188(1) arise?
>
> b. Did the Authority carry out non-statutory enquiries?
>
> c. Was the Authority under a duty to notify the applicant that the duty under s188(1) had arisen and was being performed by advising the Claimant to remain in his current accommodation?

d. Is it lawful in principle for an authority to discharge the s188(1) duty by advising an applicant to remain in his current accommodation?
e. If so, was it lawful for the Authority to discharge the s188(1) duty by advising the Claimant to remain in his current property?
f. If so, was the decision that the current property was suitable in the short term irrational?
g. If not, is the decision now irrational because the short term has elapsed?
h. Is the Authority in breach of the PSED?
i. What, if any, are the appropriate remedies?

2. The Authority has accepted that the duty under s188(1) is immediate and non-deferable and therefore it is no longer in issue. However the Claimant still seeks a declaration to that effect."

Procedural Rigour and duty of candour

8. By CPR r.54.1 a claim for judicial review means a claim to review the lawfulness inter alia of a decision, action or failure to act in relation to the exercise of a public function. When the Defendants were dealing with the Claimant's previous application for rehousing and the current homelessness application the Defendants were exercising such a public function.

9. It is axiomatic that Judicial Review is not concerned with reviewing the merits of a decision but the lawfulness of it. This is not an appeal. Generally this Court will not interfere with the exercise of a discretion or power by a public body unless that body has acted unlawfully and/or breached a public law principle. The claim is determined by considering whether one of the grounds asserted is made out. For instance if there has been an error of law, procedural impropriety, irrationality or abuse of power, the grounds may be made out.

10. In addition even if a ground is made out on the evidence remedies may or may not be granted because these are discretionary – see *R (Edwards) v Environment Agency (No 2)* [2008] UKHL 22. Remedies may not be granted if the claim has become academic, or exceptionally if the remedy is no longer necessary or the applicant has suffered no loss and prejudice.

11. This claim was commenced by the issuing of a claim form on 22 September 2022 and an application for urgent relief that day. The CPR require that a claim form must be accompanied by a statement of facts. By PD54A para.4:

> "4.1 **(**1) A Claimant seeking permission to apply for judicial review, urgent consideration or interim relief (whether by a claim included in the Claim Form itself or by a separate application notice) must ensure that the Claim Form or application notice sets out all material facts, that is all those facts which are

relevant to the claim or application being made. A Claimant must make proper and necessary inquiries before seeking permission to apply for judicial review or interim relief to ensure so far as reasonably possible that all relevant facts are known."

12. At issue a claim, must be accompanied by evidence and the documents required in PD54A, see CPR r.54.6(2). PD54A states in relation to evidence from the Claimant:

> 4.4 (1) In addition, the Claim Form must be accompanied by—
> (a) any written evidence in support of the claim (in this regard, see also rules 8.5(1) and 8.5(7)).
> (b) any written evidence in support of any other application contained in the Claim Form;
> (c) …
> (d) …
> (e) where the claim is directed to the decision of any other public authority, a copy of any record of the decision under challenge;
> (f) copies of any documents on which the Claimant proposes to rely;
> (g) copies of any relevant statutory material; and
> (h) a list of essential documents for advance reading by the court (with page references to the passages relied on).
> (2) Where it is not possible to file all the above documents, the Claimant must indicate which documents have not been filed and the reasons why they are not currently available."

CPR r.8.5(1) states:

> "The claimant must file any written evidence on on which he intends to rely when he files the claim form."

"PD54A goes on to state:

> **"Rule 54.16—Evidence**
> 10.1 In accordance with the duty of candour, the Defendants should, in their Detailed Grounds or evidence, identify any relevant facts, and the reasoning, underlying the measure in respect of which permission to apply for judicial review has been granted.
> 10.2 Disclosure is not required unless the court orders otherwise.
> 10.3 It will rarely be necessary in judicial review proceedings for the court to hear oral evidence. Any application under rule 8.6(2) for permission to adduce oral evidence or to cross-examine any witness must be made promptly, in accordance with the requirements of Part 23, and be supported by an explanation of why the evidence is necessary for the fair determination of the claim."

13. Disclosure is not automatic in judicial review claims but a duty of candour is imposed on both parties (see the *Administrative Court Guide*, at para. 6.4). There is also a duty on the Claimant's shoulders to co-operate to allow an appropriate assessment if legitimately required by a Defendant in judicial review proceedings – see *Croydon v Y* [2016] EWCA Civ 398, at paragraphs 10 and 11 and the case of *Starr* [1977] 1 WLR 63.

Documents and evidence

14. The witness evidence put before the court consisted of three witness statements from the Claimant. There was no witness statement from the Defendants. The Court was also provided with an agreed bundle of documents and correspondence which included various forms filled in by the Claimant at the Defendants' request, a report from the Local Government and Social Care Ombudsman dated May 2021 and the Defendants' computer log relating to part of the Claimant's homeless housing application. The Claimant also provided photographs of the labels on his prescriptions for medications. Internal reports from occupational therapists provided to Westminster Social Services in May 2020, May 2021 and September 2020 and a care/support plan dated May 2020 were also in the agreed bundle.

The background facts

15. The Claimant is a 32 year old British citizen. He lives in a private rented flat in Park West, London, W22 QT on the 7th floor. It is a studio flat with a separate bathroom.

The history from the Ombudsman's report

16. From the Ombudsman's draft decision dated 10th May 2021 it appears that the Claimant made a complaint about the Defendants to the Ombudsman. The Ombudsman set out the chronology of facts in the document.

17. In July 2016 the Claimant's family including his father, mother and 3 siblings made a homelessness application to the Defendants. The Defendants offered them interim temporary accommodation which they accepted whilst the Defendants considered the more permanent accommodation application. In October 2016 the Defendants decided the family did not have a local connection to Westminster and refused the application. The family sought a review and this was rejected in February 2017. The family appealed to the County Court and in July 2017 the Defendants accepted a full housing duty and entered the family onto their housing register and reinstated the interim temporary accommodation arrangements. The Defendants sent letters to confirm this settlement to the old interim accommodation address. This address subsequently turned out to be the wrong address for the Claimant's family, who had departed, so they did not receive the letters. The Claimant's family asserted that they had visited the Defendants' offices soon thereafter but were told that their application had been rejected (see paragraph 34 of the Ombudsman's chronology). The Defendants had no further notes or records relating to contact with the family or the family's housing application for 1 year and 10 months. The Claimant asserted to the Ombudsman that

he and his family became homeless for 8 to 10 weeks. They then found a room for 6 to 8 weeks. The family then secured private rental accommodation however due to the Claimant's disabilities that private rental accommodation was not suitable for him so he lived with a friend for 11 or more months and then found his own private rental flat at Park West. The Claimant's evidence to the Ombudsman was that he found the 7th floor flat at Park West in August 2018 and moved in despite being a wheelchair user at that time.

18. In October 2019 the Claimant contacted the Defendants and explained that he no longer lived with the rest of his family and inquired about splitting the permanent rehousing application so that the family's application would be separate from his. Further phone calls took place thereafter. On the 8th of November 2019 the family submitted a stage one complaint asserting that they had heard nothing from the Defendants after July 2017 and had only found out on the 7th of November 2019 that the family were on the housing register and able to bid for properties. They also complained that their priority on the register was inadequate because the Defendants had not properly considered the disabilities of various family members. On the 21st of November 2019 the Claimant spoke to the Defendants on the telephone and explained his family's private rental accommodation was not suitable for them because of his mother's health.

19. On the 22nd of November 2019 the Defendants asked the Claimant to fill in a medical assessment form for himself, his father and his mother but the Claimant asserted he was unable to read or write English. That assertion does not appear to have been truthful. The Defendants therefore considered what (interpreter) support they could offer to him.

20. The Defendants completed their housing needs assessment in December 2019 and placed the family in category 1, making them a priority for interim accommodation. On the 10th of December 2019 the Defendants visited the family and the Claimant to complete medical assessment forms and the Claimant interpreted the conversation for the family into English. The Defendants noted that at this time the Claimant was living separately from the family.

21. On the 30th of December 2019 the Defendants referred the Claimant and his mother to their medical assessor for medical assessment. The Defendants also contacted the Claimant's carer to seek further information about his needs. In January 2020 the Defendants contacted the local authority where the family lived to seek further information about the Claimant's mother's needs.

22. On the 8th of January 2020 the Defendants' adult social care department confirmed they had made a referral to wheelchair services for the Claimant and had installed some equipment in his flat at Park West but they did not provide a care package for him.

23. Through February and March 2020 the Defendants gathered information about the Claimant's needs including requesting information from his GP. However the GP informed the Defendants that the GP had received an e-mail in January cancelling the request for medical information and the GP refused to inform the Defendants who had sent the cancelling e-mail. At about this time the Defendants' notes indicated that the Claimant had declined to answer information about his mother's landlord. This refusal to permit access to the Claimant's GP was to be repeated later as I shall set out below (I infer that the Claimant effected the refusal).

24. On the 5th of March 2020 the Defendants referred the Claimant to their occupational health service.

25. In March 2020 the Defendants responded to the complaint accepting that they had failed to inform the family and the Claimant after the July 2017 settlement that they accepted a duty to rehouse and apologised for that error. The Defendants also accepted the Claimant's request to be rehoused separately from the rest of his family. The Defendants offered the family compensation. The Defendants noted the family was housed in another borough, in a four bedroom house. The Defendants asserted that despite their error even if they had kept the family on the relevant register the family would not have been rehoused in a four bedroom property in the intervening 2 years.

26. The Claimant submitted a stage two complaint on the 13th of March 2020 seeking housing for himself and his family separately and more substantial compensation.

27. On the 8th of June 2020 the Defendants received their own assessment of the Claimant's medical state from their medical officer which confirmed he was a wheelchair user. I have not been provided with a copy of that important document in the hearing bundle.

28. On the 19th of June 2020 the Defendants acknowledged the Claimant's request for permanent housing but maintained their position that their previous error had not delayed the rehousing of the Claimant's family. The Defendants increased their offer of compensation to £3,100 pounds. The Defendants acknowledged the Claimant's request for separate rehousing and accepted it. The Defendants were still in the process of assessing the Claimant's need for a live in carer but this had been delayed by COVID. On 25th June 2020 the Defendants telephoned the Claimant to explain that social services needed to assess his needs before they could decide whether he needed an extra bedroom for a carer (presumably the issue was his overnight care need).

29. The family referred their complaint to the Ombudsman on the 7th of July. On the 29th of September 2020 the Defendants wrote to the Claimant's father explaining that the

original application was made for a five bedroom property as a single household including the Claimant, but because the Claimant was now separately accommodated the accommodation needs of the family were reduced. The Defendants agreed to rehouse the Claimant separately. The Defendants accepted the family needed wheelchair accessible accommodation but not wheelchair adapted accommodation. Such properties were rare.

Medical assessment result

30. Importantly for the current case the Defendants advised the Claimant that on the basis of their medical assessment of him they considered that the Claimant's need was for studio accommodation and that he could manage stairs. The Defendants noted the Claimant was using crutches during the assessment and was undergoing physiotherapy. The Defendants considered that this therapy should allow the Claimant to progress to walking with a stick and then walking unaided. The Defendants relied on their medical assessment to assert that the Claimant did not need a separate sleeping space for a carer.

31. The Defendants noted the Claimant had relied on a telephone occupational therapy assessment dated 20th of May 2020 completed on the phone due to COVID and that the Claimant had asserted he had suffered a road traffic accident causing his injuries leading to the need for a wheelchair. The Defendants had arranged an urgent face to face assessment following up on this. The Defendants explained that before they could give the Claimant "mobility 1" categorisation they needed confirmation from the NHS that the Claimant required a wheelchair permanently and at all times. The Defendants stated that there was nothing in the Claimant's medical records to indicate that he had been in a road traffic accident or had suffered the injuries that he had described to the assessor and so the Defendants were currently seeking further information from the Claimant's GP. The Defendants also noted that although the Claimant had asserted that the Defendants' social services department had confirmed he needed a live-in carer, in fact the Defendants denied this.

The Claimant's medical records

32. I comment here that the issue on the extent of the Claimant's disability between the Claimant and the Defendants was clearly identified by this date and it would appear that by this time the Defendants had obtained the Claimant's medical records or at least some of them and these did not support all of what the Claimant was asserting.

The Ombudsman's decision

33. The Ombudsman's analysis of the facts highlighted the Defendants' failure to communicate to the correct address that they had accepted a duty to rehouse the family and the Claimant in July 2017. The Ombudsman had to consider whether the Defendants had adequately remedied the injustice caused by that. The Ombudsman found at paragraph 89 that the Claimant was not compelled by the Defendants' error to separate from his family and live with a friend, he had chosen to do so. He was not

homeless during that period. The Ombudsman found at paragraph 91 that once the Claimant had separated from his family the Defendants' duty to house him had come to an end. The Ombudsman found that any problems arising from the unsuitability of his own rented property were not the Defendants' fault. The Ombudsman increased the compensation to the Claimant's family and the Claimant for the relevant period to £7,200.

Facts from the revised Grounds of Response

34. The following asserted facts are taken from the Defendants' Revised Grounds. The evidence to support these assertions was not in the trial bundle. The bundle page references in the Revised Grounds related to documents in an interlocutory bundle (for instance para 6 of the Revised Grounds cited pages 293-296 as containing the offer to the Claimant's father of accommodation at 93 Morris House but these documents were not in the trial bundle). However the facts were not disputed.

35. On the 3rd of March 2022 the Claimant's father was offered permanent accommodation at 93 Morris House, Salisbury St, London NW8 by the Defendants. This was a six bedroom ground floor flat. The Claimant's father refused the offer and as a result the decision was made in March 2022 that the Defendants' duty to the father and the family had been discharged. This decision was upheld on a review on the 1st of July 2022.

36. I imply that as at 1st July 2022 the Claimant's housing application was still on the Defendants' waiting list for a studio property.

The OT reports

37. Various reports from occupational therapists (OT), most of which had been seen by the Ombudsman, were in the trial bundle. On the 20th of May 2020 a telephone assessment was completed by Intisar Osman. The Claimant's GP was listed as the Torriden Medical Centre, Catford; which is odd being far away from Westminster. The Claimant's carer, called Hadi, reported he was providing 35 hours of care and that the Claimant's sister and another friend were providing the remaining hours to complete 24 hours of support per day voluntarily. The carer asserted the Claimant needed 24 hours care, so day and night. Mr Hadi asserted that he was receiving a carers allowance through the Claimant's PIP payments for 35 hours care per week. The carer asked for manual handling equipment which had previously been recommended by an occupational therapist but could not be issued due to lack of space in the property and narrow door widths. Under "relevant medical information" the Claimant asserted he had suffered a road traffic accident leading to frozen left shoulder, spinal disc degeneration and nerve damage. He asserted he attended pain management and neurology clinics. He also asserted that he suffered tachycardia, asthma, migraines and tremors, constipation, dyslexia and anxiety. The Claimant asserted he was a permanent wheelchair user but was unable to use the wheelchair properly in his flat due to restricted space and door width. The carer reported the

Claimant had minimal weight bearing capacity and was requesting a tripod walking stick due to reduced balance. The OT advised the carer to liaise with the GP however the GP was in Catford. The OT advised the carer to liaise with the neurologist at clinic. The Claimant was able to self-propel his wheelchair indoors. The OT noted that the Claimant needed maximum assistance with steps and front door access. The OT noted a previous recommendation for a profiling bed but that there was insufficient space in the flat for that. The Claimant had been provided with a raised toilet seat and frame to assist with toileting. The OT noted assistance was needed with mobility, personal care, shopping, meal preparation, feeding, housework, laundry, correspondence, community access and prompting medication. The OT noted the Claimant had a bath lift and needed assistance with transfers. The OT considered the current property unsuitable and described it as temporary accommodation. The OT reported no adaptation was possible. The OT recommended a move to suitable step free accommodation where his complex needs could be met with suitable equipment.

38. On the 20th May 2020 the same OT filled in a "telephone assessment form". The OT noted that the Claimant spoke English and needed no interpreter. There had been a referral from adult social services asking the OT to complete a functional mobility assessment because social services had been informed that one carer was unable to manage. That carer, Hadi, was acting as advocate for the Claimant. He received carers allowance to provide 35 hours care per week. Informally more care was being provided by a family friend and the Claimant's sister. The carer was requesting an increase in supported care. As to the question of whether the carer was managing, the OT wrote the carer advised that he *was* managing. The OT accepted that the Claimant was unable to negotiate stairs and was wheelchair dependant. The OT advised that the current property was not suitable for the Claimant's complex needs. The OT recommended completing a form for consideration of an increase in paid for care.

39. On the same date, 20th May 2020 a Care-support plan was provided by the OT. In that the OT advised that the current informal package of care was not meeting the Claimant's needs and that the Claimant needed a care package review. Although the box for consent to access to medical records is ticked by the OT there was no signature from the Claimant and no details of the GP or any consultant were listed on the form.

40. These OT reports were available before the Defendants' medical assessor in mid 2020 and the doctor's assessment did not support the level of disability the Claimant reported to the OT.

41. Four months later, in September 2020, the same OT provided a further report having visited the Claimant. The Claimant, his sister and his cousin were present. The Claimant asserted he was sleeping on the floor because he was unable to tolerate lying on a soft mattress. The OT observed transfers from the floor and observed that the Claimant had a frozen left shoulder and minimal weight bearing through his legs. The

OT recommended removal of the double bed and installation of a profiling bed, installation of a mobile hoist and reassessment in a formal way to assess his care needs. The OT also suggested a follow up visit.

42. In May 2021, Jermaine Frazer, a different OT reported. She was asked to focus on care and equipment because the Defendants' social work department did not think that the Claimant needed 24 hour care. The OT met the Claimant and his sister, Rezar. The Claimant asserted his health had deteriorated with increased migraines and more severe back pain so he slept on the floor. He reported he was still seeing a neurological team, a cardiology team, a pain management team and going to an asthma clinic. There was a mini sling in the flat. The Claimant asserted he only slept on the floor. The Claimant asserted 2 informal carers lifted him without use of the hoist. The OT suggested a hospital bed but this was refused because the Claimant asserted the landlord would not give permission for any of the furniture to be removed. He did not use the commode because he had no one to empty it. Therefore he waited for two carers to assist moving him into the bathroom. He refused incontinence pads. The Claimant's sister asserted that the Claimant was provided with 24 hour care and that she wanted to get back to her life now that COVID restrictions were lifting. The OT informed the Claimant that a 24 hour care package *would not be recommended*. The OT focused instead on the need for assistance with transfers and the need for more space. The OT noted the Claimant's concern about the *fire risk* if the fire alarm went off and advised that the property was not suitable for the Claimant. The OT supported rehousing on an urgent basis because more space was needed for the carers to use a hoist. In the recommendation section the OT noted the Claimant was in crisis and required *rehousing urgently* and recommended a full care review. The OT did not recommend 24 hour care but did recommend the need for a formal care package because of the risk of the voluntary informal care package breaking down. The OT considered the Claimant needed assistance with transfers, washing, household tasks, shopping and toileting.

Current facts including the pleadings and chronology of the action

43. The recitation of communications that I set out below was hampered by the fact that the trial bundle had emails which were not in chronological order.

44. On the 10th of August 2022 the Claimant's solicitors wrote to the Defendants' housing options service asserting that the Park West flat was unsuitable due to the Claimant's disabilities and expressly requested relief under S.188 (1) of the Housing Act 1996 and more permanent suitable accommodation. The Claimant's medical conditions were summarised and the unsuitability of his flat was summarised. The homelessness code of guidance for local authorities was referred to and the specific provisions of S.188(1) were set out. There was no mention made of concern of the fire risk. The Claimant made it clear the interim accommodation he was seeking should be larger and provide him with privacy from his carers. This application made no reference to the previous dealings between the Claimant and the Defendants, or the

Defendants' previous decisions on the lower level of Claimant's need for care and accommodation based on the Defendants' own medical assessment and the Claimant's own GP notes.

45. On the next day (11th) the Defendants responded providing contact details. On the same day the Claimant's solicitors emailed the Defendants at four different e-mail addresses asking for confirmation that the Claimant's homelessness application had been accepted.

46. The Defendants quickly arranged an interview with the Claimant. This took place on 12th August 2022. No note of the contents of the interview was produced by either party. However it is evidenced by an e-mail from Charlie Alaway dated 12th August sent to the Claimant stating as follows:

> "Dear Oday, as discussed we will require the relevant documents to be signed in order to proceed with your application. I have attached these documents which are: GDPR consent form; Passage consent form; Medical Assessment form; Affordability form. Please ensure all of the above forms are completed in full and signed before being returned to me in a reply to this e-mail. Should it not be possible to return the forms to me via e-mail you are able to attend the Passage to hand forms in person.... failure to return the documents within five working days will result in the case being closed due to lack of contact."

47. The Claimant did not do as requested and did not return those forms in 5 days. Instead on the same day the Claimant's solicitors emailed the Defendants with a formal letter before action under the judicial review pre-action protocol. They asserted the Defendants had failed to meet their duties under the Housing Act. They required a response by the 19th of August. They asserted that they had not received a sufficient response to the pre-action protocol letter. They repeated the contents of the letter of the 10th of August. They failed to mention the interview that had taken place or was taking place that very day or the request made by the Defendants for completion of the relevant forms. This begs the question whether the lawyers had been told by the Claimant about the interview. There was no mention made of fire risk. The Claimant made it clear the interim accommodation he was seeking should be larger and provide him with privacy from his carers. The letter made no reference to the previous dealings between the Claimant and the Defendants, or the Defendants' previous decisions on the extent of Claimant's need for care and accommodation based on the 2020 medical assessment and his own GP notes.

48. On the 15th of August the Defendants, through Natalie Stevens, asked the Claimant's lawyers to ask the Claimant to comply with the earlier request to complete the various forms. It was stated these were necessary for the application for assistance to be progressed. On that date the Claimant's lawyers were also informed of the interview and the emailed request for information made on 12th August 2022.

49. The Claimant failed to comply with the first or that second request.

50. On the 19th of August the Defendants provided a formal response to the threat of an application for judicial review. The response set out the interview on the 12th of August and the request for the medical assessment form and other forms to be completed and returned. The response specifically stated these documents were necessary to inform the Defendants' enquiries and that it was not possible to reach *any* conclusions without the information requested. The response complained that despite a chaser from the Defendants on the 15th of August the documents had still not been provided and the Defendants asserted they were unable to progress matters without those documents. The Defendants stated that they remained ready to continue their investigations and consider what, if any, duties might be owed to the Claimant once the requested information and consents were provided in order to facilitate proper enquiries.

51. On the 25th of August 2022 the Defendants wrote again to the Claimant's solicitors reminding them of the requests for documentation and stating that the usual time scale for provision of these documents had passed and requesting that the lawyers advise the Claimant of the need to provide these in order for the application to proceed. On the next day, the 26th of August, the Claimant did provide the requested documentation. However on reading the documentation provided it is quite clear that it was not properly completed and omitted all relevant evidence relating to his medical conditions.

The Medical Assessment form

52. The form specifically requested the Claimant to complete it in full if the Claimant asserted a medical or health condition. The Defendants stated that they would carefully consider the information and if necessary refer the form to their medical advisor. The Defendants advised the Claimant to give as much detail as possible because failure to do so could result in delay of the assessment. The form asked for medical letters or reports, prescriptions, hospital discharge summaries, disability benefit awards or employment and support allowance awards and a patient summary from the Claimant's GP. The form stated that if the Claimant did not have supporting information and it was necessary to contact health professionals the Claimant was required to complete "in full" the details of those professionals.

53. The Claimant provided the 12 prescriptions which he asserted he was taking but in answer to the question "who is treating you?" he failed to give any response. In answer to the request for his NHS hospital number he left that section blank. He asserted he *could walk, but less than 50 metres*. This was an important answer because it is directly related to the use of stairs and being able to walk though his bathroom door to use his toilet. In answer to specific requests for the names addresses and contact details of his carers he wrote *"unable to put their full details as they*

provide unpaid care due to the absence of the Westminster care package. I can provide their names and numbers later to support my case and explain their roles and care they provide." This was an obviously unhelpful approach. In answer to the question whether he needed day care he provided no details. In answer to the question whether he needed night care he stated he was unable to move or manage the medications or his essential needs. In answer to the question whether he needed a care package from mental health services he responded "no". Under Section 5 he was specifically provided with spaces to fill in the details of: his GP, his hospital consultants and any psychiatrist, psychologist or therapist and care manager. He left all of those sections blank. The Claimant did complete the Section 7 declaration and authorisation but that was not going to help the Defendants because he had not provided the details of any medical professional for the Defendants to contact.

Consent to share form

54. The Claimant filled in the form permitting the Defendants to obtain information from professionals. However under question three in relation to health service professionals he refused to give consent.

Income form

55. The Claimant completed the income form giving his e-mail address as that which the Defendants had used throughout the correspondence. The total income received from the state in Universal Credit, DLS/PIP, Housing Benefit and Family Support Benefit was £2,567 per month.

56. The Claimant also signed a consent form under the Data Protection Act for the Defendants to obtain information from other government bodies including medical and healthcare professionals. Once again that was of little use to the Defendants in the absence of any names and addresses for his GP or treating consultants.

Factual chronology continued

57. On the 30th of August a new case worker, A Anene, called the Claimant to introduce him or herself. The Defendants' computer records start on that date. There are no earlier ones in the bundle. They disclose that on the 12th of September the case worker called the Claimant again and his carer, Mr Saadi answered. The Claimant gave consent for this carer to liaise with the Defendants in relation to his disabilities. The Claimant informed the Defendants that he had applied for a care package to social services and was seeking a two-bedroom ground floor property because he required overnight care and space for the carers. This was a crucial piece of information and identified the long running issues between the Claimant and the Defendants.

58. On the 13th of September the Defendants housing department emailed adult social care inquiring as to their assessment of his disabilities in relation to his accommodation needs.

59. On the 21st of September the Claimant made his judicial review claim which was issued the next day. In that he claimed to be challenging a decision made on the 15th of September by which the Defendants failed to accept his application under the Housing Act and had failed to make enquiries and failed to provide suitable accommodation under S.188. No copy of any decision made on that day was provided to me. He sought a mandatory order compelling the Defendants to accept his application, carry out inquiries and provide suitable interim accommodation under S.188. In the Statement of Facts relied on the Claimant wholly omitted to mention the interview on the 12th of August by the Defendants with him and the request made that day for the Claimant to provide his full medical information and details of his GP and treating doctors and carers. He also wholly failed to mention the blanks in the forms he returned and his refusal to provide details of his doctors and NHS number and consultants.

60. On the 22nd of September the Claimant also applied for urgent relief. Directions were given by Hill J on the same day for dealing with that urgent application.

61. In my judgment this claim form and urgent application were divorced from the factual reality and did not set out in the statements of facts the relevant facts which were needed for the court to consider the claim fairly. There was no mention of the long running issue between the parties over the extent of the Claimant's disabilities. There was no medical evidence provided in support of the Claimant's asserted medical conditions. Before such application were made the Claimant should have obtained a GP letter at the least setting out the diagnoses and prognoses for his various conditions.

62. On the 26th of September the Defendants' case worker (Anene) called the Claimant and spoke to Mr Saadi his carer. The case worker explained the 56 day process for a referral for help finding private rental accommodation. The Claimant stated (through his carer) that he was unhappy with this and that he had started judicial review proceedings. The Claimant raised that he was unsure why his application was being processed as a new one because of the long history of housing applications he had made. The case worker explained that the Defendants were moving forwards with the homelessness application as expected. In a later addition to the note made by the case worker which was written on 28 September he/she added that the case worker had offered temporary accommodation: *"I offered TA"* but the Claimant responded that he had lived in his current flat for four years and that it would not be helpful for him to move multiple times and he only wanted a permanent move.

63. I note that the Claimant did not put that rather important new evidence before the court. He progressed the urgent application for relief without informing the court of this.

64. In the Defendants' response letter through Mr/Ms Anene, sent to the Claimant's lawyers on 29th September, the Defendants accepted that the Claimant was homeless, eligible for assistance and had a local connection. They accepted their duty to investigate, assess the case and progress. They attached a personalised housing plan. They also asserted that on the 26th of September they had sought to reach agreement with the Claimant in relation to interim accommodation. They recorded that no agreement was reached. They asserted that on that day they stated they would work with the Claimant to find suitable private rented accommodation: a one bedroom property and that they had offered temporary accommodation to the Claimant but the Claimant's carer, Mr Saadi, had stated both the Claimant and the carer were unhappy because they believed the Claimant was entitled to "a council property". In addition, through Mr Saadi, the Claimant stated he would not accept temporary accommodation because he had been residing at his flat for four years and he only wanted to move once as a result of his medical conditions and that move should be to a council property.

65. On the 29th of September the Defendants' Grounds of Resistance were filed. The Defendants relied on the letter of 29th September. The Defendants asserted that the Defendants had performed their duty under S.188 by advising the Claimant to remain in his flat pending the completion of their inquiries as to what duty was owed to him in relation to accommodation. The Defendants raised the fact that the Claimant had been in his flat for four years and that no reason had been advanced as to why he had become disadvantaged recently. The Defendants asserted that the Claimant's flat was suitable interim accommodation pending the outcome of his homelessness application.

66. On the 3rd of October Lang J refused interim relief. On the 6th of October the Claimant applied to set aside the order of Lang J and to amend the grounds of claim.

67. On the 13th of October the Defendants offered the Claimant interim accommodation out of the borough (in Northolt) but the Claimant rejected that offer on the grounds that it was too far away from his family and support system.

68. At the inter parties hearing before Deputy High Court Judge Clare Padley on the 14th of October interim relief was refused but the Claimant was granted permission to amend his grounds. The revised grounds were served and the grounds of defence were revised and served.

69. On the 28th of October Jonathan Glasson KC, sitting as a Deputy High Court judge, granted permission for judicial review.

70. By an order dated 30th December Bourne J permitted the Claimant to adduce in evidence a third witness statement but ordered that part of that witness statement relating to the conversation on the 26th of September 2022 be deleted.

The Claimant's witness statements

71. The Claimant's first witness statement asserted various serious medical conditions. Those were: asthma; tachycardia; high blood pressure; dyslexia; migraines; a slipped disc in his back and depression. He provided no medical evidence in support and provided no medical notes or letters. In effect he relied on his mere assertions.

72. The Claimant's second witness statement contained the assertion that the Claimant could not read emails himself and could not access his carer's emails. He asserted the need for a change of accommodation arose inter alia because he had started a relationship in February 2022 and he could not get privacy from his carers with his new partner. He asserted that the Defendants were not funding his carers. He raised his concerns about fire safety and his inability to use the stairs to escape, the narrow doorways in his flat and his need for night care and a carer bedroom.

73. In the 3rd witness statement the Claimant asserted his slipped disc had been caused by some falls at age 21 and his spine/disc had "*adjusted in their own way"*. At para. 38 he explained: "*Due to my mobility issues I am unable to walk very*." (This quote is not a typing error). He asserted that he needed to be carried into the bathroom. He claimed that by the age of 26/27 he had become a permanent wheelchair user. He was born in 1990 so that would have been 2016/2017 and before he chose and started to occupy his flat in Park West.

74. In none of the witness statements did the Claimant provide any medical evidence of his conditions.

75. This Court has judicial knowledge that slipped discs affect large numbers of British Citizens. They are can be categorised as bulging or prolapsed discs (sequestrated or not) and may lead to conservative or surgical treatment. However they are not an automatic step to permanent wheelchair use and disability or paraplegia. The Claimant has made no effort to provide the Defendants or this Court with a medical diagnosis for his asserted permanent wheelchair-bound life.

The grounds for the claim for judicial review

76. In the original grounds the Claimant asserted that the Defendants failed to accept the Claimant's homelessness application; failed to make inquiries as required under S.184 and failed to provide suitable accommodation. The statement of facts mentioned the interview on 12.8.2022 and the request for medical information made on that day by the Defendants verbally and by email to the Claimant and informed the court that these had been sent on 26.8.2022 but omitted to tell the Court that the Claimant had refused to fill in the requested medical evidence sections.

77. In the amended grounds for judicial review the Claimant no longer asserted that the Defendants failed to accept or progress the Claimant's housing application but instead

assert, in ground one, that the Defendants failed to offer interim accommodation and failed to notify the Claimant that they had purported to perform their duty under S.188(1) by leaving him to stay in his flat pending the outcome of the long-term housing application. I shall make findings of fact below but note here that this ground wholly ignores the offer of temporary accommodation made on 26th September to the Claimant which the Claimant rejected.

78. In ground two (which overlaps with ground 1) the Claimant asserted that the Defendants breached S.188(1) by failing to offer the Claimant suitable interim accommodation and in the alternative that the decision to leave him in his flat was irrational, or alternatively that the delay had made the current flat unsuitable. In ground three the Claimant asserted the Defendants had breached their public service equality duties by failing properly to consider the Claimant's medical needs and disabilities and giving inadequate reasoning in relation to those.

Findings of fact

79. In so far as I need to make findings of fact I find on the balance of probabilities that:

79.1 The Claimant had a long running application for a permanent change of housing based on his medical conditions. In that application he had asserted that he needed 24 hour care and a two bedroom flat. The Defendants had medically assessed the Claimant in mid 2020 and had refused 24 hour care. The Defendants had accepted that the Claimant used a wheelchair and needed day care but had found on medical evidence that he could walk and would improve with physiotherapy. The Defendants considered that the Claimant needed a one bedroom property. Thus the parties had an issue over the extent of the Claimant's disabilities and his prognosis and his accommodation needs.

79.2 The Claimant had a partial history of avoiding allowing the Defendants access to his GP records. He had never provided GP reports or consultants' reports on his asserted medical conditions on the evidence before me. However the Defendants had obtained at least some of his medical records and these did not support the Claimant's assertions. The Defendants had obtained enough in their past records to know that the Claimant was a wheelchair user due to a medical condition of some sort. What was in dispute was whether the Claimant could walk short distances (for instance between his studio room and his bathroom and use stairs). The Defendants considered he could walk and would improve with physiotherapy. On the issue of whether he was completely wheelchair-bound and unable to weight bare and needed 24 hour care including night care, the Defendants did not accept the Claimant's assertions.

79.3 The Claimant had in the past alleged he could not speak English and later had been the translator into English for his family.

79.4 For a period of time the Claimant had been receiving State funding for 35 hours per week of care provided by carers.

79.5 The Claimant chose and moved into his flat in Park West in 2018 and this was paid by Housing Benefit. He was a wheelchair user at that time. He had lived there for 4 years.

79.6 On 10 August 2022 the Claimant made his urgent homelessness housing application on legal advice and with representation based on his previously asserted disabilities and provided no medical evidence of any diagnosis or prognosis in support of the application.

79.7 After a meeting or interview on 12th August 2022 and being asked to provide medical evidence in that meeting he was also emailed for that information and sent forms to complete the same day. He delayed responding long past the 5 day time limit requested and when he did respond he failed to provide any GP letters; notes or records; hospital discharge summaries; consultants notes or letters all of which he had a right to access under the *Data Protection Act 2018*. The Claimant also specifically failed to give the names and contact details of his GP, pain management consultant, neurologist, physiotherapist, consultant orthopaedic surgeon (spinal) or his NHS number despite being asked to do so by the Defendants via the forms in the emails on 12.8.2022 and letters dated 15.8.22 and others.

79.8 The Claimant chose, despite legal advice and the clear past issues with the Defendants relating to his medical conditions, to provide no medical evidence to the Defendants of his medical conditions. The only documents evidencing his asserted symptoms which were disclosed in the judicial review claim were four reports from OTs, who are not doctors or medically qualified to diagnose medical conditions.

79.9 The Claimant ignored multiple requests for medical information and access to his GP and treating medical consultants until January 2023 when his GP's name and address (in Shepherd's Bush) was provided. I am not aware whether any consultants' details have ever been provided to the Defendants.

79.10 The Defendants informed the Claimant that they had made a decision in relation to "accepting" the Claimant's application for interim relief under S.188(1) on 26.9.2022.

79.11 On 26.9.2022 the Defendants offered to the Claimant interim temporary accommodation in the form of studio or one bed accommodation and the Claimant refused such stating that he would prefer to stay where he was and await long term council accommodation (he clearly wanted a two bed council tenancy to accommodate his night carer).

79.12 Thereafter the Defendants considered that the Claimant had chosen to be and was homeless at home for the short term and that they had discharged their duty under S.188(1).

79.13 In the judicial review claim and the urgent relief application the Claimant chose not to provide the Court with any medical evidence or medical notes from any doctors relating to his medical conditions.

The Law

Overview

80. To determine whether the Defendants challenged actions or omissions were unlawful I must address the law on "homeless at home" applications.

81. Applications for priority homelessness accommodation assistance are governed by Part 7 of the *Housing Act 1996*.

The homelessness application may trigger inquiries

82. By S.184(1) where a person applies to a local housing authority for assistance under Part 7, if the local housing authority has "*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 then the local housing authority shall decide whether any duty, and if so what duty, is owed to the applicant under the provisions of Part 7.

83. "Applicant" is defined in S.183(2). "Eligibility" is related to an applicant's immigration status.

Accepting the application

84. The threshold to accept the application and make inquires is low. The local housing authority is bound to consider and decide the application based on the information initially provided to the authority by the applicant and any past history, see the judgment of Hickinbottom J in *R(Edwards) v Birmingham City Council* [2016] EWHC 173 (Admin); (2016) HLR 11, at paras. 41 and 45. The reference to past history is particularly relevant in this claim.

85. In the Claimant's case the Defendants had a considerable body of past information which raised clear issues over the extent of the Claimant's medical conditions and his needs relating to his accommodation. The parties did not agree on whether the Claimant needed a two bedroom flat or a one bedroom flat or night carers or could walk short distances. His application was made in that historical context.

Definition of "homeless at home"

86. By S.175(1) a person is "homeless", in so far as is relevant to this case, if (1) he has no accommodation available for his occupation which he is entitled to occupy and (2) by S.175(3) a person shall not be treated as having accommodation unless he is in accommodation which "*would be reasonable for him to continue to occupy*". This creates what counsel called those who are "homeless at home".

Priority Need

87. Section 189(1) sets out the various categories of need. Section 189(1)(c) provides that a person is in priority need if he is vulnerable. Vulnerable means significantly more vulnerable than an ordinary person if made homeless, see *Hotak v Southwark LBC* [2015] UKSC 30; (2016) AC 811. In this case the Defendants have accepted that they

had reason to believe the Claimant may have been and may be in priority need so this was not in issue between the parties. The date of that acceptance was not stated. It was however clearly communicated on 26.9.2022.

The Assessment

88. By S.189A if a local housing authority is satisfied that an applicant is homeless or threatened with homelessness then they must make an assessment of the applicant's case.

Code of Guidance

89. By S.182, in the exercise of their functions relating to homelessness and the prevention of homelessness, a local housing authority in England shall have regard to such guidance as may be given from time to time by the Secretary of State. That guidance is contained within the "*Homelessness Code of Guidance for Local Authorities*".

Notification of the decision

90. By S.184(3), on completing their inquiries, a local housing authority shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform the applicant of the reasons for their decision. Indeed littered throughout the *Housing Act* 1996 are other notification provisions but there is no notification requirement in relation to S.188(1).

The Main Duty to accommodate

91. The highest duty owed to applicants is the main housing duty under S.193(2) and applies to those who are eligible for homeless assistance, in priority need and not intentionally homeless. It provides that "*Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant."* This duty is immediate as the case law below explains.

The "Relief Duty" to help to secure temporary accommodation

92. S.189B applies where a local housing authority is satisfied the applicant is homeless and eligible for assistance. In these circumstances they must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for occupation for at least 6 months or such longer period not exceeding 12 months as may be prescribed [the "Relief Duty"].

Duty to provide interim accommodation for priority need applicants

93. By S.188(1), if the local housing authority has "*reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available"* for the applicant's occupation. This is over and above the Relief Duty.

94. This S.188(1) duty may arise at the same time as the acceptance of the Part 7 application or later. Chapter 15 of the Code provides inter alia that:

> *"15.5: The threshold for triggering the section 188(1) duty is low as the housing authority only has to have a reason to believe (rather than being satisfied) that the applicant may be homeless, eligible for assistance and have a priority need."*

95. Once the housing authority is satisfied that there is "*reason to believe that an applicant may be homeless, eligible for assistance and have a priority need,"* the S.188(1) duty has been described as immediate, non-deferrable and must be offered upon the duty arising, see the judgment of Hickinbottom J in *R (Edwards) v Birmingham City* [2016] EWHC 173 (Admin) at paras. 40-41 and the reasoning of Lewis LJ in *R (Elkundi and others) v Birmingham City Council; R (Imam) v London Borough of Croydon* [2022] EWCA Civ 601; [2022] QB 604 which was a decision in relation to the s193(2) main duty.

96. Before both of those cases, in *R (Kelly) v Birmingham CC* [2009] EWHC 3240 (Admin) (unreported) at para. 7, Hickinbottom J had summarised the low threshold test for providing interim accommodation under s188(1) as follows:

> "7(i) An application under Part 7 of the 1996 Act can be in any form, and need not be in writing…"
> "7(ii) Once an application has been made, the duty on an authority to make enquiries is immediate, in the sense that there is no power to defer making that enquiry..."
> "7(iii) In the meantime, if an authority has reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they are under a duty to provide that applicant with temporary accommodation…".
> "7(iv) … In considering whether their duty under Section 188 is engaged, the authority's starting point is consequently the information provided by the applicant himself. If that gives rise to reason to believe that the applicant may be homeless, eligible for assistance and have a priority need, then the duty to provide interim accommodation arises. In addition to the phrase "reason to believe", I emphasise the word "may", which again underscores the low hurdle an applicant has to surmount to engage the Section 188 obligation…"
> "7(iv)… An authority cannot defeat the prompt engagement of Section 188 by introducing filters or delays, e.g. by making non-statutory enquiries …"

97. I shall consider below whether this ruling prevents a housing authority from clarifying the application where they already have in their possession a considerable file which contains relevant decisions which contradict the foundation of the assertions in the application that the applicant makes to engage the S.188(1) duty.

Discharge of Duty under s188(1)

98. Section 205(1) refers to S.206 for a definition as to how the S.188(1) housing functions "may" be discharged "only" in three ways:

> "206 (1) A local housing authority may discharge their housing functions under this Part only in the following ways—
> (a) by securing that suitable accommodation provided by them is available,
> (b) by securing that he obtains suitable accommodation from some other person, or
> (c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person."

99. Paragraph 16.9 of the Code gave guidance on the words "secured" in section 206(1)(c) and stated:

> "…where an authority has a duty to secure accommodation, they will need to ensure that the advice and assistance provided results in suitable accommodation actually being secured. Merely assisting the applicant in any efforts that they might make to find accommodation would not be sufficient if suitable accommodation did not actually become available."

Applicants who refuse offers of suitable alternative interim accommodation

100. Paragraph 15.22 of the Guidance deals with applicants who refuse accommodation and states:

> "15.22 Where an applicant rejects an offer of interim accommodation (or accepts and moves into the interim accommodation and then later rejects it), this will bring the housing authority's interim accommodation duty to an end - unless it is reactivated by any change of circumstances."

Communication of decision on S.188(1) application/duty

101. There is no statutory requirement to notify the S.188(1) decision. However in my judgment it is a principle of procedural fairness that a person liable to be directly affected by an administrative act, such as the making of an offer of accommodation, should be given notice of what is proposed. In *Pathan v Secretary of State for the Home Department* [2020] UKSC 41 [2020] 1 WLR 4506, an immigration case which concerned a failure to notify the revocation of an employer sponsor licence, Lord Kerr and Lady Black held at para. 131 that:

> "We are of the view that the duty to give notice of a decision to someone who will be adversely affected by it cannot be denied solely by the consideration that it is pointless for that person to make representations with a view to reversing or avoiding the effect of the decision. The duty to give notice is an accepted element of the duty to act fairly".

102. The Claimant asserted in submissions that *Pathan* is of wider application because it underlines the principle that there is a duty to give notice to an applicant of a decision which he has the right to challenge or review – otherwise there is procedural unfairness. An applicant's right to appeal and review a decision is in my judgment also undermined if notification is not given.

103. No ground of review persists in relation to the former complaint (in the original grounds) of a failure to inform the Claimant when the Defendants had decided that the S.188(1) duty was engaged therefore I make no ruling on this issue. Nothing turns on this issue either. The Defendants accepted the S.188(1) duty and notified the Claimant of that on 26.9.2022.

PSED

104. The public sector equality duty is set out in s149 of the *Equality Act* 2010.

> "**149 Public sector equality duty**
> (1) A public authority must, in the exercise of its functions, have due regard to the need to—
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

105. In addition by S6(1) *Equality Act* 2010. P has a disability if—
> (a) P has a physical or mental impairment, and
> (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

106. The general principles underlying the public sector equality duty are summarised by Briggs LJ in *Hackney LBC v Haque* [2017] EWCA Civ 4; [2017] HLR 14. That case concerned the suitability of accommodation. The PSED was intended to bring equality issues into the mainstream. The duty is to have 'due regard' to the equality goals which are: (i) the need to eliminate discrimination, (ii) to advance equality of opportunity between persons who share a protected characteristic and those who do not, and (iii) to foster good relations. Having 'due regard' to these aims is not a tick-box exercise, but is one of substance. It can be performed even when a public officer does not know of its existence. The obligation is to have 'due regard' to the broad aims, it is not a duty to achieve a particular result. Its purpose is to encourage public authorities to keep in mind the PSED goals.

107. In *Lomax v Gosport Borough Council* [2018] EWCA Civ 1849; [2019] PTSR 167 Lewison LJ at para. 43 and Coulson LJ, at para. 57, held that when considering whether it would be reasonable for a disabled person to continue to occupy accommodation, the local housing authority should demonstrate a sharp focus on: the extent of the disabilities; the likely effect of the disabilities when taken together with any other features so long as they continue to occupy the property; the applicant's particular needs in relation to accommodation which arise from their disabilities and the extent to which their current accommodation meets those needs. There should also be a comparison between the applicant's accommodation needs and the accommodation needs of people without their particular disabilities. Finally there should be a recognition that when considering whether it was reasonable for him to continue to occupy a property the applicant might need to be treated more favourably than others without their disabilities.

Case law

108. In *Birmingham v Ali* [2009] UKHL 36, on appeal from *R (Aweys) v Birmingham*, the relevant four Claimants applied to the housing authority (HA) for accommodation based on asserted homelessness under Part 7 of the *Housing Act* 1996. Each either had a large family or was suffering disrepair. The HA asserted that they could leave them homeless at home until the final decision under S.193 and made an allocation decision about how fast they would get permanent housing. The judicial review claim was successful and the judge granted declarations and mandatory orders. The HA's appeal to the Court of Appeal was dismissed. In the House of Lords the HA's appeal was granted. In summary the "suitability" under S.193(2) of the temporary accommodation – homeless at home - had a temporal element (short term). It could be suitable despite it not being reasonable for the Claimants to continue to occupy longer term. Incidentally the judge's decision on the allocation policy as unlawful was upheld but that is not relevant to the case before me.

109. Baroness Hale gave the lead judgment. The following passages are relevant:

> On S.188(1):
> "17 … If the authority have reason to believe that an applicant "may be homeless, eligible for assistance and have a priority need", they must secure that accommodation is available for his occupation pending a decision as to what duty is owed: section 188(1). Priority need is then defined, and includes families with dependent children: section 189(1)(b)."
>
> On suitability:
> "18 Whether the authority are securing interim accommodation under section 188(1) pending a decision, or securing accommodation after the decision has been made under section 190(2) or 193(2), they may provide the accommodation themselves or secure that it is provided by someone else. However, the accommodation secured has to be "suitable": the 1996 Act, section 206(1). In

deciding what is "suitable" the council must "have regard" to Parts IX and X of the Housing Act 1985 and Parts 1 to 4 of the Housing Act 2004 (which relate to slum clearance and overcrowding) and also to matters specified by the Secretary of State: the 1996 Act, section 210(1) (as amended by section 265(1) of and paragraphs 40 and 43(a) of Schedule 15 to the 2004 Act) and (2). Clearly, however, what is regarded as suitable for discharging the interim duty may be rather different from what is regarded as suitable for discharging the more open-ended duty in section 193(2); but what is suitable for discharging the "full" duty in section 193(2) does not have to be long-life accommodation with security of tenure such as would arise if the family were allocated the tenancy of a council house under the council's allocation policy determined in accordance with Part VI of the 1996 Act. It is expressly provided that a person who is secured accommodation under Part VII of the 1996 Act does not become a secure tenant unless the council say so: the 1985 Act, Schedule 1, paragraph 4."

Defining the issue:
"21 The main issue in the Birmingham case, therefore, is whether it was open to the council to accept that it was not reasonable for a family to continue to occupy their present home but to accommodate them there until something appropriate for them could be found..."

Considering the issue:
"38 In the Birmingham case, this interpretation has the advantage that the council can accept that a family is homeless even though they can actually get by where they are for a little while longer. The council can begin the hunt for more suitable accommodation for them. Otherwise the council would have to reject the application until the family could not stay there any longer. The likely result would be that the family would have to go into very short-term (even bed and breakfast) accommodation, which is highly unsatisfactory.
39 It also has the advantage that the family do not have to make repeated applications. If their application is rejected on the ground that it is reasonable for them to stay one more night, they cannot apply again until there is a different factual basis for the application. How are they to judge whether the council will consider that the tipping point has been reached, when this is such an uncertain event?"

Determining the issue:
"41 This then feeds into the duty under section 193. As Lord Hoffmann said in *R v Brent London Borough Council, Ex p Awua* [1996] AC55, 68:

> "there is nothing in the Act to say that a local authority cannot take the view that a person can reasonably be expected to continue to occupy accommodation which is temporary . . . the extent to which the accommodation is physically suitable, so that it would be reasonable for

> a person to continue to occupy it, must be related to the time for which he has been there and is expected to stay."

Those observations were directed to the question of when it ceases to be reasonable for a person to continue to occupy accommodation in the context of the meaning of "accommodation", but they apply equally to the point at issue here.

42 Given that an authority can satisfy their "full" housing duty under section 193(2) by providing temporary accommodation (which must of course be followed by the provision of further accommodation, so long as the section 193(2) duty survives), these observations clearly do not only apply to section 188. They emphasise that accommodation which may be unreasonable for a person to occupy for a long period may be reasonable for him to occupy for a short period. Accordingly, there will be cases where an applicant occupies accommodation which (a) it would not be reasonable for him to continue to occupy on a relatively long-term basis, which he would have to do if the authority did not accept him as homeless, but (b) it would not be unreasonable to expect him to continue to occupy for a short period while the authority investigate his application and rights, and even thereafter while they look for accommodation to satisfy their continuing section 193 duty."

And:

"46 However, another tool is now available and in our view it is proper for a local authority to decide that it would not be reasonable for a person to continue to occupy the accommodation which is available to him or her, even if it is reasonable for that person to occupy it for a little while longer, if it would not be reasonable for the person to continue to occupy the accommodation for as long as he or she will have to do so unless the authority take action.

47 This does not mean that Birmingham were entitled to leave these families where they were indefinitely. Obviously, there would come a point where they could not continue to occupy for another night and the council would have to act immediately. But there is more to it than that. It does not follow that, because that point has not yet been reached, the accommodation is "suitable" for the family within the meaning of section 206(1). There are degrees of suitability. What is suitable for occupation in the short term may not be suitable for occupation in the medium term, and what is suitable for occupation in the medium term may not be suitable for occupation in the longer term. The council seem to have thought that they could discharge their duty under section 193(2) by putting these families on the waiting list for permanent council accommodation under their Part VI allocation scheme. But the duty to secure that suitable accommodation is available for a homeless family under section 193(2) is quite separate from the allocation of council housing under Part VI. There are many different ways of discharging it, and if a council house is provided, this does not create a secure tenancy unless the council decides that it should. As we have already pointed out, the suitability of a place can be linked to the time that a person is expected to live

there. Suitability for the purpose of section 193(2) does not imply permanence or security of tenure. Accommodation under section 193(2) is another kind of staging post, along the way to permanent accommodation in either the public or the private sector.

48 Hence Birmingham were entitled to decide that these families were homeless even though they could stay where they were for a little while. But they were not entitled to leave them there indefinitely. There was bound to come a time when their accommodation could no longer be described as "suitable" in the discharge of the duty under section 193(2)."

On the practical effects of the ruling:

"49 … While the council were entitled in principle to leave the families in their current accommodation for a period notwithstanding that it was accepted that that accommodation "would [not] be reasonable for [them and their families] to continue to occupy" (section 175(3)), it must be a question, which turns on the particular facts, whether, in any particular case, the period was simply too long. However, the basis upon which the applicants in the Birmingham cases argued their claims (and succeeded before Collins J and the Court of Appeal) meant that it was unnecessary to consider the detailed facts of their respective cases. Accordingly, once that line of argument is rejected, there is no longer any basis for a decision in their favour.

50 It is right to face up to the practical implications of this conclusion. First, there is the approach to be adopted by a court, when considering the question of whether a local housing authority have left an applicant who occupies "accommodation which would [not] be reasonable for him to continue to occupy" in that accommodation for too long a period. The question is of course primarily one for the authority, and a court should normally be slow to accept that the authority have left an applicant in his unsatisfactory accommodation too long. In a place such as Birmingham, there are many families in unsatisfactory accommodation, severe constraints on budgets and personnel, and a very limited number of satisfactory properties for large families and those with disabilities. It would be wrong to ignore those pressures when deciding whether, in a particular case, an authority had left an applicant in her present accommodation for an unacceptably long period.

51 None the less, there will be cases where the court ought to step in and require an authority to offer alternative accommodation, or at least to declare that they are in breach of their duty so long as they fail to do so. While one must take into account the practical realities of the situation in which authorities find themselves, one cannot overlook the fact that Parliament has imposed on them clear duties to the homeless, including those occupying unsuitable accommodation. In some cases, the situation of a particular applicant in her present accommodation may be so bad, or her occupation may have continued for so long, that the court will conclude that enough is enough."

110. 7 years later in *R (Edwards) v Birmingham* [2016] EWHC 173 (Admin) Hickinbottom J was determining a judicial review claim. The claimant, Edwards, who applied under Part 7, had a one bed flat on the 3rd floor of a block with no lift. She made a homeless application when she was a few months pregnant. She was not disabled. She was interviewed and said she did not want interim accommodation but then applied for judicial review asserting that she did. When given hostel accommodation she stayed a few nights then complained and went to live with her mother. When provided with an unsuitable 4th floor flat in a block with no lift she stayed with her mother. Suitable alternative accommodation was eventually provided. Hickinbottom J dismissed the judicial review claim save as to the unsuitable 4th floor flat. He ruled as follows:

On the duty to provide interim accommodation:

> "23 Sections 184 and 188 therefore set out the interim duties on a housing authority where it has reason to believe that an applicant may be homeless, namely a duty to make inquiries to ascertain if the applicant is in fact homeless and (if so) in priority need; and, if the authority has reason to believe the applicant may be homeless and in priority need, to provide him and his family with accommodation in the meantime, whilst those inquiries are being pursued. The duties are "interim" in the sense that they are imposed **from the time the authority has a reason to believe the relevant matters, until they determine the homeless application."** (my emboldening).

In relation to the Guidance code:

> "34 With regard to the duty to provide interim accommodation, the Code says (emphasis in the original):
>
> > "6.5 If a housing authority has reason to believe that an applicant may be eligible for assistance, homeless and have a priority need, the authority will have **an immediate duty under s.188 to ensure that suitable accommodation is available for the applicant** (and his or her household) pending the completion of the authority's inquiries and their decision as to what duty, if any, is owed to the applicant under Part VII of the Act. Chapter 7 provides guidance on the interim duty to accommodate. Authorities are reminded that 'having reason to believe' is a lower test than 'being satisfied'.
> >
> > …
> >
> > 6.6 Applications can be made by any adult to any department of the local authority expressed in any particular form; they need not be expressed as explicitly seeking assistance under Part VII …
>
> …
>
> 7.3 The threshold for the duty [to provide interim accommodation] is low as the local authority only has to have a reason to believe that the applicant may be homeless, eligible for assistance and have a priority need. (See paragraph 6.5 for guidance on the 'reason to believe' test.)"

In relation to the threshold:

> "39 Turning to the second threshold condition, paras 6.5 and 7.3 of the Code specifically emphasise that the local authority only has to have a *reason to believe* that the applicant *may be* homeless to trigger the duty to inquire (under s.184), and *reason to believe* that the applicant *may be* homeless and in priority need to trigger the duty to provide interim accommodation pending those inquiries (under s.188). That threshold is low and, indeed, clearly low by design, in view of the vulnerable individuals it is intended to protect (see *R. (M) v Hammersmith and Fulham LBC* [2008] UKHL 14 at [36] per Baroness Hale). It is a hurdle patently lower than the authority "being satisfied" as to the fact of those matters (which is the s.193 threshold in respect of the applicant in fact being homeless, in priority need and not intentionally homelessness, which triggers a final, full duty to accommodate)."

In relation to delaying interim accommodation Hickinbottom J ruled thus:

> 40 That low threshold has to be considered in the context of another proposition that derives from both the Code (especially paras 6.5 and 6.16: quoted at paras 33–34 above) and the authorities, that, once an effective application has been made and the authority has reason to believe that the applicant is or may be homeless or threatened with homelessness, s.183 is engaged and the provisions that follow (including the duties to inquire and, if the authority has reason to believe the applicant is or may be in priority need, to provide interim accommodation) become immediately effective (see, e.g. *Rikha Begum* at [49] per Neuberger LJ). An authority is not entitled to defer or delay these duties, to allow time (e.g.) to persuade the individual to mediate (*Robinson v Hammersmith and Fulham LBC* [2006] EWCA Civ 1122 at [42] per Jonathan Parker LJ, and at [45] per Jacob LJ), **or to engage in inquiries outside the statutory scheme into whether the applicant is indeed homeless** etc (*R. v Harrow LBC Ex p. Fahia* [1998] 1 W.L.R. 1396 at 1401G –1402F per Lord Browne-Wilkinson; and *Rikha Begum* at [61] where Neuberger LJ referred to "the manifest disapproval in *Fahia* of non-statutory inquiries"). Once the authority has reason to believe that the applicant is or may be homeless or threatened with homelessness, a duty to make the statutory inquiries required by s.184 immediately arises and **they cannot engage in non-statutory inquiries designed to (or which in fact) emasculate, dilute or "short-cut" the statutory requirements**. This important principle led the Court of Appeal in *Rikha Begum* to conclude that, where an applicant makes a second homeless application, the housing authority is bound to accept and consider that subsequent application if it had been properly made, i.e. if it is made other than on exactly the same facts, even if the authority considers there has been no material change in the applicant's circumstances. That is now directly reflected in para.6.27 of the Code."
> (The bold sections are highlighted by me).

On immediacy Hickinbottom J ruled as follows:

> "41 The low threshold, and the requirement for immediacy, also led Collins J to say, in *Aweys* (HC) at [8]:
>
> > "**In the vast majority of cases, the making of the application will mean that it is difficult if not impossible for the council not to believe that the applicant may be homeless or threatened with homelessness.**

> Furthermore, no particular form of application is prescribed ... If it is apparent from what is said by an applicant (for there is no requirement that an application be in writing) or from anything in writing that he may be homeless or threatened with homelessness, the duty is triggered. Thus if a person complains to a council that the conditions in his existing accommodation are so bad that he wants a transfer or needs to find somewhere else, it is likely that the duty will arise because of section 175(3) even if there is no application based specifically on homelessness. Furthermore, there is no power to defer the inquiry which has to be carried out …".
>
> Collins J was here considering the s.184 duty to make inquiries he went on to consider the further duty to provide interim accommodation, to which I shall shortly return." (Again the bold section was highlighted by me).

In relation to the decision on "reason to believe" and whether clarification can be sought Hickinbottom J ruled thus:

> "42 I agree that the duty to make statutory inquiries under s.184 is lightly triggered; and that is so whether the applicant says that he is (or is threatened to be) "roofless" or "homeless at home" to which the same statutory formula equally applies. However, in my respectful view, that does not mean that every housing complaint to an authority will necessarily require the authority to make s.184 inquiries. The authority is required to focus on whether it has reason to believe that the individual may be homeless or threatened with homelessness, because he is either roofless or homeless at home. If a person claims to be roofless, then the authority is entitled to ask him questions to clarify his housing status as such. **Equally, the authority is entitled to question a person who claims that he is homeless at home, to clarify whether, in fact, there is reason to believe that the accommodation occupied by that person is such that it may not be reasonable for him to continue to occupy it. It is simply not the case that every complaint about the condition of a property of which the Council, and no doubt other housing authorities, receive very many gives rise to such a reason to believe, despite the lowness of the threshold.** Where the complaint is about the condition of the property, the authority will often be able to proceed on the basis that the condition (even as described to them by the complainant) is repairable, and it will not be unreasonable to expect the complainant and his family to continue to live in the property until the remedial works have been carried out."
> (The bold sections are highlighted by me).

On the Housing Authority's choice of method of inquiry Hickinbottom J ruled as follows:

> "43 Furthermore, even where a duty to inquire arises, the manner in which the authority complies with that duty (including the form of the inquiries and time spent over them) is essentially a matter for the authority themself, subject to guidance and the usual public law constraints including the bounds of reasonableness. What is reasonable will of course depend upon all of the circumstances, including the urgency and vulnerability of the applicant inherent in homelessness applications. *R. v Camden London Borough Council Ex p. Gillan*

> [1988] 21 H.L.R. 114 (*Gillan*)—a case relied upon by Mr Nabi, which I consider further below (see [61])—is an example of how cautious the courts are in finding that a scheme designed to carry out their Pt VII duties and adopted by a housing authority is outside the generous ambit granted to an authority in such matters."

On deferring the decision on reason to believe Hickinbottom J ruled thus:

> "44 What the authority cannot do is defer consideration and a decision on the issue of whether it has reason to believe that the person may be homeless or threatened with homelessness, whilst it conducts further, non-statutory inquiries designed to (or with the consequence of) defeating the intent of the statutory provisions by avoiding their immediate duty to make statutory inquiries."

On what can be considered to enable the HA to decide Hickinbottom J ruled thus:

> "45 Whether an authority has, in a particular case, unlawfully avoided their duty to inquire will depend upon the facts and circumstances of that case. However:
> (i) whether it has unlawfully avoided their statutory duty to inquire will be assessed against the background that this duty is designed to protect particularly vulnerable people;
> (ii) the "reason to believe" threshold is necessarily low, and, in most cases, the authority will be bound to consider and decide whether the threshold has been met on the basis of **what the applicant says together with the past history of the applicant as known to the authority**; and
> (iii) it is difficult to envisage circumstances in which a decision as to whether, on the basis of what the authority then knows, there is reason to believe the applicant may be homeless could properly be avoided on the day the application is made (see [108] below)."

On the S.188 interim accommodation duty Hickinbottom ruled thus:

> "46 However, a housing authority's interim duties do not end with the obligation to make inquiries: if the authority has reason to believe that the applicant may be homeless and may have a priority need, then, by virtue of s.188, it has a duty to secure interim accommodation pending a decision as to what full duty to house him (if any) that authority has under the later provisions, e.g. s.193. Once the obligation to secure interim accommodation has arisen under s.188, it remains on the authority until the authority has completed their inquiry under s.184 and notified the applicant of the resultant duty to house him, if any. The engagement of s.188 is, as the Code says (Introduction, para.15), "an important part of the safety net for people who have a priority need for accommodation and are unintentionally homeless"."

On suitability Hickinbottom J ruled as follows:

> "47 As I have explained (see [28]–[29] above), by virtue of ss.206, 188 interim accommodation must be "suitable". Following the post *Puhlhofer* amendment in 1986, there was uncertainty over the relationship between (i) the definition of a "homeless" person which included a person who had a roof over his head but who was in accommodation that it was not "reasonable for him to continue to occupy",

> and (ii) the duty on an authority to secure such a person "suitable" accommodation. This question arose: if an authority has reason to believe that a person is or may be "homeless", so it is or may be unreasonable for him to continue to occupy his current accommodation, does it automatically follow that, subject to him satisfying the other relevant conditions, the authority must immediately and without delay secure "suitable" housing for him elsewhere? The question is of considerable practical importance, not only in the context of a finding by an authority that an applicant is in fact homeless and in priority need (and so entitled to accommodation under the authority's full s.193(2) duty), but also where, on an application but before their determination, the authority has reason to believe that the applicant may be homeless and in priority need and thus entitled to accommodation under s.188. In both cases, the entitlement is to "suitable" accommodation."

Hickinbottom J then considered the decision in *Ali* and whether it applied equally to the S.188 duty and ruled that it did:

> "53 Although *Aweys* HL was a case concerning the full duty to accommodate under s.193, the analysis and conclusion equally apply to the interim duty to accommodate under s.188, although, as Baroness Hale herself acknowledged (see *Aweys* HL at [18]), what is regarded as suitable for discharging the interim duty may of course be different from what is regarded as suitable for discharging the more open-ended full duty."

111. I glean from these judgments that the S.188(1) duty is not engaged merely on request or assertion. In particular where a housing authority has a pre-existing file which counteracts the assertions made by the applicant, clarification may be necessary to avoid a refusal to engage the S.188(1) duty because the housing authority does not consider that the applicant's assertions amount to "*reason to believe* …" but instead amount to a repeat of a previously rejected assertion in the existing file.

112. I also consider that in the light of the express references to S.188 in the judgment in *Ali,* Baroness Hale was making clear that a homeless at home decision which relates to the suitability of interim temporary accommodation before the S.193 decision would apply equally to interim accommodation under S.188(1). I consider that a "homeless at home" decision is properly a decision on suitability which a housing authority can make if the facts and circumstances justify it to fulfil the S.188(1) duty.

113. On the facts of *Edwards* the housing authority had a policy always of offering interim accommodation to homeless applicants including those who were homeless at home. That was more generous than the law required. But each case is determined on its merits. So in relation to the assessment of suitability of the applicant's current home as his interim accommodation Hickinbottom J said this at para. 104:

> "104 … The statute provides that, if an authority has reason to believe that the applicant may be homeless and in priority need, then it must secure that "suitable" accommodation is available for his occupation. As I have explained

> (see [29] and [86(ii)] above), that involves an evaluative exercise by the authority, which might conclude that the accommodation occupied by a homeless at home applicant is "suitable" for him to occupy temporarily, for the whole (or for at least a part) of the period in which the homeless application is being considered. …"

114. One issue in this claim is whether it was lawful under s206(1)(c) for the Defendants to decide that the Claimant was to remain in his then current accommodation having earlier offered TA which was refused by the Claimant. In R (*Elkundi) v Birmingham* [2022] EWCA Civ 601 Lewis LJ gave the lead judgment. The Claimant "E" had arthritis and difficulty with stairs. He had 5 children. He made a homelessness application. The housing authority decided under S.188(1) to offer temporary accommodation two months later in unsuitable accommodation (3 bedrooms with stairs). Later, having decided that E qualified for S.193 alternative permanent housing because they were homeless and had priority need, the Defendants asked E to stay where he was until they found somewhere suitable. The housing authority sought to assert that the duty could be deferred for a reasonable period whilst they found such accommodation and put the applicants on a waiting list. Steyn J had held that the S.193 duty was immediate and could not be deferred.

115. On appeal Lewis LJ ruled as follows at para. 8 on the circumstances to be taken into account when considering whether it is reasonable for a person to continue to occupy their current accommodation after the S.193 decision:

> "8 Regard may be had to the general circumstances prevailing in relation to housing in the authority's area in determining whether it is reasonable for a person to continue to occupy accommodation: see section 177(2) of the 1996 Act. Section 177(1) provides that it is not reasonable to continue to occupy accommodation if it is probable that that would lead to a risk of domestic violence. The Secretary of State may prescribe other circumstances in which it is, or is not, reasonable to continue to occupy accommodation: see section 177(3) of the 1996 Act."

In relation to how a housing authority may discharge their duties Lewis LJ ruled;

> "79 Nor do I consider that section 206(1)(c) of the 1996 Act indicates a different conclusion. That section is concerned with the discharge of all of the local housing authority's functions under Part VII, not merely the duty under section 193(2). Section 206(1) provides that a local housing authority "may discharge" their functions in the following three ways, i.e. (a) by securing that suitable accommodation is provided by them, or (b) by securing that the individual obtains suitable accommodation from some other person, or (c) by giving him advice and assistance as will secure that suitable accommodation is available from some other person. I do not consider that the general, permissive words used in section 206(1)(c) are intended to indicate that the duty under section 193(2) is qualified in some way. Rather section 206 provides that an authority's functions can only be discharged in one of the three ways set out (and not by any other method). It does not prescribe that all three methods must be available for use in

> respect of each duty, or each set of circumstances. If only two of the methods would discharge the section 193(2) duty in a particular case, and the third would not, the local housing authority will have to use one of the first two methods. Thus, if the actions would not lead to the discharge of the duty, because the duty is one to secure that the accommodation "is available for occupation" and the actions taken under section 206(1)(c) would only secure that accommodation "will become available" in future, that would not be an appropriate method of discharging the section 193(2) duty."

116. It is clear from this ruling that Lewis LJ considered that when considering whether the Defendants in this case have discharged their S.188(1) responsibilities, once engaged, the only statutory methods of discharging those are set out in S.206. However with deference to Lewis LJ's ruling it seems to me that fraud or misrepresentation could and should also permit the Defendants to revoke their acceptance of a S.188(1) duty under a plain interpretation of the word "may" and the common law. I will deal below with whether the applicant's refusal or failure to answer reasonable questions and provide necessary information on his asserted medical conditions could also permit the Defendants to decide that they did not accept the duty in the first place or were no longer subject to the S.188(1) duty having already accepted it.

117. Lewis LJ went on to rule at para. 83 that the S.193(2) duty arose immediately when the housing authority decided that the applicant qualified and had a priority need and was homeless. It could not be deferred. Having considered the House of Lords' decision in *Ali*, Lewis LJ at paras. 101-102 considered that the temporal interpretation of "reasonable to continue to occupy" affected the issue in *Elkundi*. Once the housing authority has decided it is unreasonable for the applicant to continue to occupy where he is currently, the duty to rehouse arose immediately. Finally in relation to waiver of the right to be rehoused and the choice to stay put, which one claimant had made in *Elkundi*, Lewis LJ held at para. 115 that this did not alleviate the housing authority of the duty to rehouse unless the purported waiver was after the applicant was fully and properly informed of his rights. He also cited the decision of Hickinbottom in *Edwards* on the right to be homeless at home if the applicant so chooses as he waits for the final decision:

> "116 Section 188 of the 1996 Act imposes an interim duty where the local authority have reason to believe that a person may be homeless, eligible for assistance and have a priority need. The authority must then investigate whether or not any duty is owed and, in the interim, must secure that accommodation is available for the applicant's occupation. An individual may prefer to stay in his current occupation, or stay with family and friends rather than have accommodation secured for him under the interim duty in section 188 and await the outcome of the housing authority's inquiries. That may be a preferable course of action for the applicant for a number of reasons. Interim accommodation may be bed and breakfast accommodation whereas his current accommodation, although inadequate, may be preferable to that. Or an

individual may have an assured tenancy of a property and be reluctant to give that up and move into bed and breakfast accommodation before he knows whether or not the local housing authority will be satisfied that duties are owed to him. In that context, the courts have recognised that a local housing authority will not be in breach of their section 188 duty if a person prefers to stay in his current accommodation rather than move to interim accommodation secured by the local housing authority. As Hickinbottom J put it in *R (Edwards) v Birmingham City Council* [2016] HLR 11, para 105:

> "However, so long as the applicant is aware that he is entitled to interim accommodation until a decision is made on the homeless application - and so can make an informed initial decision, and knows that he can return to the Council at any time to request interim accommodation - there is nothing objectionable in this."

118. So I understand that Lewis LJ accepted that the S.188(1) duty could be satisfied despite a "homeless at home" choice being potentially outside the three S.206 limbs if limb (c) was interpreted too narrowly.

Applying the law to the facts

119. In relation to S.188(1) the statute requires the Defendants at the gateway stage to consider whether to accept the application. In doing so the Defendants had a judgment call to make when considering the criteria under S.188(1). Those are:

Do we have *reason to believe*:

119.1 that the Claimant is eligible; and

119.2 that the Claimant has a priority need; in this case the asserted disabilities; and

119.3 that the Claimant may be homeless by the S175(3) definition: namely in accommodation which it would <u>not</u> be reasonable for him to continue to occupy.

Clarification before accepting the duty under S.188(1)

120. To determine eligibility the local authority will need to know that the Claimant had a British passport. On the facts that was not sent to them until 26.8.2022 but I imply that the pre-existing file satisfied that requirement so this check would not take more than a short while.

121. As for the judgment call on whether they had *reason to believe* that the applicant may be in "*accommodation which it would not be reasonable for him to continue to occupy"* and whether he may have had a priority need, the application was based on the Claimant's asserted medical disabilities and the needs arising as a result of those disabilities. This Court is required to decide whether the Defendants were entitled to clarify their own pre-existing medical, care and housing needs decisions against the application on an interim basis to make the judgment call. I consider that they were entitled to do so. This is because the Claimant was asking for two bedroom

accommodation for himself and his carer against the background that over the course of their dealings with the Claimant the Defendants had decided that his disabilities required one bedroom accommodation and day care with equipment. The Defendants had received advice from a medical assessor. The Defendants had never accepted that he needed overnight care or a second bedroom or adapted accommodation.

122. In the absence of any medical evidence from the Claimant, without clarification how could the Defendants overturn their previous decisions? How could the Defendants determine on an urgent interim basis whether there was *reason to believe* the Claimant "may" need a two bed flat without current updated medical evidence? Or that he could not reasonably stay where he was for one night longer (or one week longer or one month longer)? The nature of the accommodation which the Defendants were to offer in the interim had to be determined temporarily and the current adequacy and reasonableness of his Park West flat was to be considered quickly. But to do so without any updating medical evidence (GP notes; hospital discharge summaries; GP letters; consultant's letters; anything showing a diagnosis) on the scope of his current disabilities and his needs provided by the Claimant would be illogical.

123. I accept that, as Hickinbottom J ruled, the Defendants are not entitled to frustrate or delay or fetter the urgent right of a vulnerable homeless person to suitable interim accommodation by non-statutory enquiries. The Defendants were not entitled to fetter or hold up the S.188(1) duty once it was engaged or to hold up the acceptance thereof where requests are in reality a frustration of the principle behind the duty to provide immediate assistance for the homeless. However in this case there was a pre-existing file for the Claimant. It contained decisions with which the Claimant did not agree. It contained a medical assessment with which the Claimant did not agree. An assessment which was partly based on his own GP notes which did not support his asserted medical conditions. In these circumstances in relation to deciding whether they had *reason to believe* what the nature of the priority need may be under S.188(1) arising from the disabilities, the Defendants had a judgment call to make decide what that had *reason to believe* "may" be needed in relation to the correct interim allocation of housing for the person who may be homeless but housed. The Defendants had to determine on a very provisional basis whether they had *reason to believe* what the Claimant's priority need may have been in the light of the assertions which contradicted the decisions on their own long held file. The Defendants could have decided that the Claimant's mere assertions did not give *reason to believe* such they would override their previous decisions on the disabilities. In my judgment this sort of decision on what provides *reason to believe* the Claimant may need or may suffer from cannot just be an uninformed guess nor a decision made purely on the demands or assertions of the applicant where the Defendants' own historic file contains firm contrary evidence and decisions based on on medical advice.

124. So in relation to this application, taking into account the following circumstances I consider that the Defendants were entitled to seek clarification of whether the Claimant would provide any current medical evidence in support of the Claimant's asserted current disabilities and needs and to wait for the responses before they determined whether they should change their pre-existing decisions and accept that they had *reason to believe* the Claimant may have been homeless.

Factors

124.1 The Claimant had chosen his private rental whilst he was a wheelchair user.

124.2 The Claimant had lived at his private rental flat for 4 years as a wheelchair user.

124.3 The Claimant had not previously asserted that he was homeless.

124.4 The Claimant had been assisted, on his own assertions, by 24 hour care provided for the last four years at the flat.

124.5 The Claimant had an adapted toilet and other equipment in the flat (albeit he could not use the larger hoist).

124.6 The Claimant had historically been provided with State funding for 35 hours of day care per week (average 5 hours per day).

124.7 The Defendants' own medical assessor had assessed the Claimant in mid 2020 after an examination and after seeing the Claimant's GP records. The assessor determined that the Claimant needed only a one bedroom flat and no night care and was able to walk and was likely going to progress to better mobility.

124.8 The Claimant had chosen not to provide any medical letters or notes in support of the nature or extent of his asserted current multiple disabilities or of any asserted diagnosis or of any prognosis of any worsening of his conditions in support of his homelessness application despite having legal representation.

124.9 The Defendants' long standing Adult Social Care approach on file had been that the Claimant did not need 24 hour care (night care).

124.10 The Claimant failed for 14 days to return the forms which he was sent on 12.8.2022 and when he did so he failed to provide details of his NHS number, GP or any treating consultants.

125. In my judgment S.188(1) is not a trump card route to overturn or bypass unchallenged decisions made by Social Services or housing authorities which have been taken in previous years after proper investigation and deliberation and in particular which are based on medical opinion. In my judgment there was no immediate duty imposed on the Defendants on 10th or 12th August 2022 after the unevidenced assertions by the Claimant of homelessness caused by disabilities more extensive and severe than the Defendants had accepted previously and the Claimant's repeated demand for a larger property.

126. I consider that the *Housing Act 1996* permits housing authorities to seek to understand if there is any *reason to believe* that there is any real potential substance in the demands and assertions made when such are in conflict with their historic files and previous decisions. Whilst the clarifications the Defendants may seek cannot be

anything like as long or detailed as the full investigation (the statutory enquiries) I do not accept that a housing authority has no power to seek clarification where assertions founding a "homeless at home" application based on medical conditions contradict the authority's previous evidence and decisions on those same conditions.

127. It would have been different if the Claimant had produced a letter from a consultant orthopaedic surgeon or his GP saying, for instance, that his discectomy operation had gone poorly and his back condition was deteriorating and he had become wheelchair bound in the last few weeks because his spinal cord was compromised.

128. The rule against allowing non statutory enquiries, which I accept applies in its full force, does not in my judgment turn the Defendants into a post box or a tick box authority. It all depends on the circumstances. The Defendants are required to exercise judgment about the necessary "*reason to believe*". Assertion may provide a potential reason but it must still be a judgment call. Gaining the reason to believe entails three steps in my judgment: (1) consideration of the assertions in the application and whether there is evidence provided to support them, (2) consideration of the contents of the housing authority's historic file (and the Social Services file if necessary) and then if there is good or strong reason not to believe the decisions in the file in the Defendants' possession: (3) clarification of the medical matters which can be clarified quickly with the applicant or third parties. All of this of course depends on the context of the application. If the applicant is street homeless and has priority need the timescale is probably shortened to hours or a day. If the applicant is, like the Claimant was, living in a private rental flat, and had been for four years, a flat which he himself chose, with 24 hour care support and has equipment to assist provided by the local authority and medical care provided by neurologists, pain management teams, physiotherapists and cardiologists, the timescale for clarification will probably be somewhat longer. If the applicant fails to provide any current medical evidence in support, refuses to clarify and blocks requests reasonably made for clarification, the timescale may extend or the engagement of the duty may reasonably be rejected.

129. In the event the Claimant failed to provide any medical notes or evidence to support his application. He also failed or refused to complete the clear questions in the medical assessment form which he was sent on 12.8.2022. He returned the form 14 days after being asked for the information, so on 26.8.2022 and he refused to disclose his medical evidence and records with or on the forms.

130. What then is the position with an applicant who fails to provide obviously necessary supporting evidence and fails to assist the housing authority by answering reasonable clarification requests? No case law authority was cited to me on this issue.

131. If the duty to accept is imposed on the housing authority immediately upon the application. If the duty is imposed just on mere assertion and there is no scope for clarification, that would be unworkable. It would permit a two legged man to assert he

had one leg and seek priority housing and the authority would not be able to clarify the existence of the disability. If the authority were then sent a photo the next day of the applicant swimming in Hyde Park lake with two healthy legs what could they do? Disengage or terminate the duty which they had already been required to accept?

132. I do not consider that the housing authority has to provide interim housing despite considering that there is no real *reason to believe* that the application is genuine. For instance if it is based on a fraud. It seems to me that matters here have shades of grey depending on the facts. The decision to engage in my judgment depends on the facts asserted and the need for clarification in certain cases.

133. Thus I consider that after an application is made by a homeless person who has a roof, the housing authority are entitled to clarify the vital points asserted when they conflict with the authority's previous decisions made after proper previous investigations. The clarification should be sought in a quick and reasonable way and in my judgment the applicant is under a duty to assist them by answering quickly. Then after a short time a decision has to be taken by the authority on whether the S.188(1) duty is engaged.

Homeless at home after acceptance of the duty

134. The Claimant submits that the Defendants' decision that he was suitably housed as "homeless at home" pending the decision and final outcome of the application could only be made once the Defendants had accepted the S.188(1) application and notified the Claimant of that and had offered interim temporary accommodation which was suitable and could only be made by the Claimant (not the Defendants). I do not consider that submission to reflect accurately the ruling in *Ali*. In my judgment in law a housing authority is entitled within its discretion to reach a decision that an applicant is suitably accommodated in his current accommodation pending investigation and resolution of the main issues despite being homeless under the statutory definition. It is not a matter of informed consent but rather informed decision making. However I consider that the applicant should be told of any such decision so he may challenge it.

Suitability of the Park West Flat

135. On the facts of this case in my judgment the Claimant could not be determined as safe in his flat by any reasonable housing authority due to the fire safety risk. This risk was or should have been apparent to the Defendants' because they had accepted that the Claimant did have a level disability requiring equipment and wheelchair use and day care on their own files. No one appears to have doubted the accepted level of disability would have prevented him descending 7 flights of stairs fast, if a fire arose and the lift was not to be used. This Court was provided with no evidence to show that the Defendants had considered whether the Claimant was suitably housed at home at his 7th floor flat taking into account the fire risk. I find that the Defendants, on the balance of probabilities, failed to take into account this crucial factor. Defence counsel at the hearing did not make submissions in response to the Claimant's fire

risk point. It is not mentioned in the Defendants' response letters. Nor do the Grounds of Response deal with this issue. So in my judgment the Defendants' case that they were fulfilling their S.188(1) duty after 26 September 2022 by deciding the Claimant was suitably housed at home was irrational. They failed to take into account a really important matter: fire safety.

136. However that irrationality had no effect in law or in fact because the Claimant had suspended or ended the Defendants' duty in relation to his application by choosing to stay put on 26.9.2022 instead of accepting the Defendants' offer of suitable alternative interim accommodation. In circumstances where the Claimant was refusing to move into suitable interim accommodation it cannot be said that the Defendants were in breach of their duty to provide accommodation thereafter whatever their subsequent decision was. This was so unless the Claimant later changed his mind and told the Defendants that he had changed his mind on the need for interim accommodation and that he would accept a one bed ground floor property or because there was a change of circumstances. I have been provided with no evidence that he changed his mind or told the Defendants that he had done so or that there was any change in circumstances.

Grounds for challenge

Statement of facts

137. The Claimant's Statement of Facts in the Amended Grounds makes no reference whatsoever to the offer made to the Claimant on 26.9.2022 of interim temporary accommodation and the Claimant's rejection thereof.

Notification

138. **Ground 1** The pleaded ground is set out below:

> "Ground 1: the Defendants unreasonably and in breach of s188(1) failed to offer accommodation under s188(1) upon acceptance of the homeless application and/or unfairly failed to notify the Claimant that they considered that the Property discharged the duty under s188(1) but he had a right to challenge the suitability by way of judicial review and/or the Defendants carried out non statutory enquiries."

139. The first part of this ground was repeated in ground 2 as counsel accepted in submissions and so I will deal with the second sentence here.

140. At paragraph 33 of the Amended Grounds and in submissions the Claimant went further on notification and stated that Defendants had a duty to inform the Claimant when the duty was accepted and that arose on 12.8.2022. As I have explained above I consider that despite the fact that the statute does not require notification of a decision on S.188(1), for reasons of procedural fairness and because legal costs would be wasted by a failure to inform and appeal and review rights would be delayed, I

consider that once a housing authority has made a decision that should be communicated to the applicant but I make no ruling or declaration on that because it is not a stated ground in this judicial review.

141. I reject the assertion in the submissions in the Amended Grounds of Claim that the duty to decide arose on the day that the application was made. That will be so in many cases of homeless applicants but not in this case of this applicant who had been in a housing application process for long term council housing for years. In my judgment the duty arose in the circumstances of this case after the Defendants had carried out reasonable clarification requests because of the issues raised by their own previous decisions on the extent of his needs arising from his disabilities and on the basis of the Defendants' own medical assessments on file and in the absence of any medical evidence from the Claimant. The Claimant eventually answered those requests for clarification on 26.8.2022. I consider that although the starting point for consideration of the S.188(1) engagement was the application, the finish point for the decision was 26.8.2022. There was a delay until 26.9.2022 in the Defendants offering interim accommodation to the Claimant which was not lawful.

142. I consider that the law is clear that there was a low threshold for engagement but in the light of the Defendants' pre-existing decisions on the Claimant's medical conditions, his need for one bedroom accommodation and day care, the Defendants had a responsibility to clarify the obvious issues quickly by asking for current medical evidence in the form of current GP notes and letters or consultant's letters or reports or any medical evidence in support which the Claimant had in his possession or could provide and details of the treating GP and consultants and NHS number so the Defendants could clarify issues. I do not consider that these were non statutory inquiries.

143. I have dealt with the right to clarification above. I do not consider that the Defendants carried out inappropriate non statutory inquiries.

144. **Ground 2.** The Claimant asserted in the first part of Ground 1 and likewise in Ground 2 that in breach of the S.188(1) duty the Defendants failed to offer the Claimant suitable alternative accommodation on an interim basis. In ground 2 the Claimant also asserted that the decision that the Park West Flat was suitable was irrational or became irrational over time.

The offer

145. As a fact I have already found that the Defendants did offer suitable temporary interim accommodation on 26.9.2022, which was one bedroom accommodation, and the Claimant refused to move.

146. It is not for me to descend into the details of the substance of the offer but I have found that the offer of alternative accommodation was rightly made because of the fire risk at the Claimant's current flat. Therefore I consider that this ground is not

made out from the date on which the Defendants made the offer. That was within the discretion of the Defendants and the judicial review did not proceed on the basis that the offering of ground floor one bed accommodation was or would have been unlawful and so unsuitable. In any event the Claimant failed to provide any medical evidence to the Court to support the need for larger accommodation.

The Claimant's refusal

147. After the Claimant refused to move the Defendants took the view that the Claimant was suitably housed by staying put until the issues were investigated and determined. I accept the submission that there was irrationality in that approach in relation to the fire risk. It cannot have been suitable for a wheelchair user needing day care to live on the 7th floor in relation to fire risk. However the Claimant had refused to move to suitable one bedroom accommodation and that refusal discharged the duty on 26.9.2022. The Defendants' "homeless but stay at home" decision after 26.9.2022 was therefore irrelevant because the duty was discharged or suspended. In addition, on the evidence before me, the Claimant would probably not have accepted alternative one bed accommodation on an interim basis even if it had been offered earlier.

148. In Amended Ground 2 at paragraph 39 the Claimant asserted he would be better off in a hotel with disabled adaptation. I have considered this against my finding that he refused the Defendants' offer of interim accommodation made on 26th September 2022. These two positions are probably not consistent. I consider the dispute (1 bed versus 2 bed) and his expressed intention not to move twice would probably have led him to decline an offer of hotel interim accommodation.

Delay

149. Since September 2022 the delay in the Defendants reaching a full decision has in my judgment probably been caused by the Claimant's refusal to provide the details of his GP and consultants and refusal to supply his NHS number to the Defendants. That cannot be laid at the Defendants' door. The evidence showed that they have asked many times for those details starting on 12.8.2022. I was told at the hearing that only the GP details have been provided and they were provided in January 2023.

Did the Claimant actually request suitable alternative interim accommodation after 26.9.2022?

150. The judicial review was started 4 days before the Claimant refused the Defendants' offer of interim accommodation so the Claimant's decision to stay put was made after the claim started. The judicial review claim was therefore not a change of mind.

151. In my judgment the S.188(1) duty could have been revived if the Claimant had changed his mind and notified the Defendants that he wanted suitable interim accommodation after 26.9.2022 or there had been an asserted change of relevant circumstances. But what is a *real* request and what was "suitable" in relation to such a request? Did the Claimant ask for ground floor one bed wheelchair accessible interim

accommodation thereafter? There is no evidence that the Claimant ever changed his mind and told the Defendants that he would do so. He persisted with his claim that he was entitled to two bed accommodation, needed night care and needed wheelchair adaptation and access. So is that a change of mind sufficient to re-engage the duty to accommodate under S.188(1)?

152. In paragraph 56 of the Claimant's Grounds of Claim it was asserted that the Claimant has continued to request alternative interim accommodation but no facts or details were set out supporting that. No relevant facts are stated in the "factual background" paras 5-13. Under procedural background the offer made by the Defendants of alternative accommodation in Northolt is mentioned. This was rejected by the Claimant as unsuitable. So I look to the Claimant's witness evidence.

153. In the Claimant's 2nd witness statement dated 12.10.2022 he completely omitted to mention the conversation he had with the Defendants on 26.9.2022. He disputed the Defendants' Personal Housing Plan restating the long running issues between the parties over the extent of his disabilities and needs. He made it clear he would only accept accommodation which had two bedrooms (one of which would be for his night carer), disabled access and disabled adaptations. In addition it would need to be in an area to which his carers could travel.

154. In his third witness statement dated 13.12.2022 the Claimant stated he would accept suitable alternative interim accommodation if it was offered but the whole thrust of his evidence was that it would only be accepted if it was his chosen size. In relation to the offer of interim accommodation in Northolt he instructed his solicitors to reject it. So in relation to the correspondence in October 2022 about the Northolt property it is clear that the Claimant was only seeking a two bedroom wheelchair accessible and wheelchair adapted property from the Defendants, on an interim basis and at no stage did he state that he would accept a ground floor one bed or studio property with wheelchair access.

155. Thus the battle lines were drawn. The Claimant would not accept a one bed flat of any sort and the Defendants would not offer anything other than a one bed flat. The Defendants receded into the decision that the Claimant's Park West flat was "suitable", he being homeless at home and the Claimant proceeded with his judicial review seeking a two bed property.

156. The real question here is whether the Defendants were and are under any continuing S.188(1) duty to the Claimant after they had already offered what they regarded as suitable interim alternative accommodation tailored to their medical evidence in the face of the Claimant asserting his needs were far greater on medical grounds but refusing to provide any medical evidence in support for the interim decision.

157. This is not an easy decision. Disability is not to be taken lightly. It is serious and has far reaching effects. Disabled applicants are entitled to protection. However I do not consider that the S.188(1) duty did continue after 26.9.2022 unless and until the Claimant indicated that he would accept "suitable" wheelchair accessible interim accommodation on the basis of the Defendants' medical assessment of his needs. The definition of suitable is firstly in the discretion of the Housing Authority which discretion is to be exercised lawfully and rationally. It can of course be reviewed. So for instance in this case if the Defendants consider that one bed (ground floor or fire safe) accommodation which is wheelchair accessible and to which his carers can reasonably be expected to travel would be suitable then that would be within the range of their discretion in my judgment. The Claimant does not agree. But the choice of number of rooms is not the Claimant's in the circumstances of this case where he has failed to evidence *reason to believe* his need may be for more when the Defendants have a medical assessment to the contrary. So I consider that the duty was discharged on 26.9.2022 and has not been reactivated.

158. On the issue of whether the Defendants' categorisation of the Park West flat as suitable is legal I consider that it is not, it is irrational due to the fire safety risk.

159. **Ground 3: PSED.** I do not consider that ground 3 is made out on the evidence. To the contrary the Defendants have focussed intensely on the Claimant's disabilities and needs arising therefrom and have been blocked and frustrated in doing so by the Claimant's long term refusal to provide access to his own treating doctors' records and opinions.

Conclusions on the parties' agreed list of issues

160. Taking each of the parties' list of agreed list issues in turn.

161. *When did the duty under s188(1) arise?* In my judgment the duty arose around the 26th of August 2022 after the Claimant returned the forms requested by the Defendants. Before then the Defendants were reasonably awaiting clarification of the medical issues raised by the application in the light of the historic decisions taken that the Claimant needed one bed accommodation and day care, not two bed or 24 hour care and was improving in mobility. The Defendants have accepted the engagement of the duty. That is not in issue. The correct date of acceptance was not agreed. In my judgment the Defendants were thereafter in breach of their duty to offer suitable interim accommodation for a month (until 26.9.2022) and then properly accepted that the Claimant's application engaged the duty under S.188(1) and offered temporary interim accommodation but the Claimant refused to move. That discharged or suspended the S.188(1) duty.

162. *Did the Defendants carry out non-statutory enquiries as those should properly be understood?* In my judgment the Defendants did not carry out unjustified, unfair or unreasonable inquiries which would properly be classified as inappropriate and/or non

statutory. They were seeking clarification of the issues which were longstanding in the light of their historic decisions and the new homelessness application and the Claimant's assertions of medical, accommodation and care needs therein. In my judgment these were necessary for the Defendants to be able to clarify the issues which arose from the clash between the application and the Defendants' own recent decisions. These were necessary to enable the Defendants to determine whether the Defendants had *reason to believe* the Claimant may have become homeless at home and may have had a priority need for 2 bedroom accommodation instead of 1 bedroom, whether he needed widened doorways because he could not weight-bear and could not use stairs and so may have needed to be accommodated elsewhere and whether there was a fire risk.

163. *Was the Authority under a duty to notify the applicant that the duty under S.188(1) had arisen and was being performed by advising the Claimant to remain in his current accommodation?* I consider that procedural fairness required the Defendants to inform the Claimant as soon as reasonably practicable after they had made the decision to accept the applicability of the S.188(1) duty. This the Defendants did on 26.9.2022 but in my judgment should have done on 26.8.2022 and so the Defendants did not properly discharge that duty. However this question does not arise from any pleaded ground of judicial review.

164. *Is it lawful in principle for an authority to discharge the S.188(1) duty by advising an applicant to remain in their current accommodation?* In my judgment, if the evidence so permits, it is lawful for an authority to discharge their duty by advising the applicant that they consider that the current accommodation is suitable short term pending resolution of the inquiry on the main duty and other duties under the 1996 Act. I do so because I consider that the wording of S.206(1)(c) is sufficiently wide to encompass that interpretation as a method of discharging the duties under Part 7 and because of the rulings set out above in the case law: *Ali; Edwards* and *Elkundi.*

165. *If so, was it lawful for the Authority to discharge the s188(1) duty by advising the Claimant to remain in his current property?* In the light of the Defendants' pre-existing decisions in relation to the Claimant's housing needs and care needs, to the effect that he did not need two bedroomed accommodation or 24 hour care, could walk and would improve with physiotherapy, I consider that the decision which the Defendants took was within the scope of their reasonable discretion, save as to the fire risk. That part of the decision was both irrational and Wednesbury unreasonable in my judgment because the decisions on file did not support the Claimant being able to rush down 7 flights of stairs in case of fire. However such unlawfulness was irrelevant after 26 September 2022 because the Claimant refused to move when offered suitable alternative interim accommodation by Mr/Ms Anene.

166. *If so, was the decision that the current property was suitable in the short term irrational?* I consider that it was irrational due to the fire risk.

167. *If not, is the decision now irrational because the short term has elapsed?* I do not consider that the decision has become irrational as a result of the delay of 4-5 months because the issue at the root of the main determination is the medical evidence relating to the diagnoses and prognoses and the sequelae therefrom for each of the Claimant's asserted disabilities. The Claimant has blocked the Defendants from investigating these by refusing to provide the medical notes and the names and addresses of his GP and his consultants.

168. I consider that if the Claimant had asked for the Defendants to rehouse him in suitable alternative interim one bed ground floor accommodation which is wheelchair accessible after 26 September 2022 that would have resuscitated the duty, but on the evidence before me he never did. He kept pressing for accommodation which he regarded as suitable to meet his unevidenced greater needs.

169. *Is the Authority in breach of PSED?* In my judgment the Defendants have carefully focussed on the Claimant's disabilities save in relation to the fire risk. They have been frustrated in their ability to do so by the Claimant's refusal to provide any medical evidence, notes, reports and treating doctors' details so that proper information can be obtained and assessed.

170. *What, if any, are the appropriate remedies*? The Claimant seeks a declaration. The Claimant also seeks a mandatory injunction ordering the Defendant to provide suitable temporary accommodation. The draft order does not specify whether that would be one or two bed accommodation so it lacks particularity and will lead to more satellite litigation which will be expensive.

171. The Court's power to grant a mandatory injunction flows from S.37(1) of the *Senior Courts Act 1981*. It depends on the "just and convenient" test.

172. The House of Lords set out guidance on mandatory injunctions in *Co-operative Insurance v Argyll Stores* [1998] A.C. 1. That was a case involving a business and the Claimant sought an injunction to force the Defendant to continue running it. Lord Hoffman listed inter alia four matters to take into account at para. 4.

173. **The need for constant supervision.** Lord Hoffman stated:

> "The most frequent reason given in the cases for declining to order someone to carry on a business is that it would require constant supervision by the court. In *J. C. Williamson Ltd. v. Lukey and Mulholland (1931) 45 C.L.R. 282*, 297-298, Dixon J. said flatly: 'Specific performance is inapplicable when the continued supervision of the court is necessary in order to ensure the fulfilment of the contract.'"

And further:

> "… The judges who have said that the need for constant supervision was an objection to such orders were no doubt well aware that supervision would in practice take the form of rulings by the court, on applications made by the parties, as to whether there had been a breach of the order. It is the possibility of the court having to give an indefinite series of such rulings in order to ensure the execution of the order which has been regarded as undesirable."

174. **The expense of enforcement.** Breach of a mandatory order may lead to contempt proceedings therefore it may lead to heavy and expensive litigation. On this topic Lord Hoffman said:

> "… A principal reason is that, as Megarry J. pointed out in the passage to which I have referred, the only means available to the court to enforce its order is the quasi-criminal procedure of punishment for contempt. This is a powerful weapon; so powerful, in fact, as often to be unsuitable as an instrument for adjudicating upon the disputes which may arise over whether a business is being run in accordance with the terms of the court's order. The heavy-handed nature of the enforcement mechanism is a consideration which may go to the exercise of the court's discretion in other cases as well, but its use to compel the running of a business is perhaps the paradigm case of its disadvantages and it is in this context that I shall discuss them."

And further:

> "Secondly, the seriousness of a finding of contempt for the defendant means that any application to enforce the order is likely to be a heavy and expensive piece of litigation. The possibility of repeated applications over a period of time means that, in comparison with a once-and-for-all inquiry as to damages, the enforcement of the remedy is likely to be expensive in terms of cost to the parties and the resources of the judicial system."

175. **The need for precision.** Lord Hoffman ruled as follows:

> "One such objection, which applies to orders to achieve a result and a fortiori to orders to carry on an activity, is imprecision in the terms of the order. If the terms of the court's order, reflecting the terms of the obligation, cannot be precisely drawn, the possibility of wasteful litigation over compliance is increased. So is the oppression caused by the defendant having to do things under threat of proceedings for contempt. The less precise the order, the fewer the signposts to the forensic minefield which he has to traverse. The fact that the terms of a contractual obligation are sufficiently definite to escape being void for uncertainty, or to found a claim for damages, or to permit compliance to be made

a condition of relief against forfeiture, does not necessarily mean that they will be sufficiently precise to be capable of being specifically enforced. So in *Wolverhampton Corporation v. Emmons,* Romer L.J. said, at p. 525, that the first condition for specific enforcement of a building contract was that

> 'the particulars of the work are so far definitely ascertained that the court can sufficiently see what is the exact nature of the work of which it is asked to order the performance.'

Similarly in *Morris v. Redland Bricks Ltd. [1970] A.C. 652* , 666, Lord Upjohn stated the following general principle for the grant of mandatory injunctions to carry out building works:

> 'the court must be careful to see that the defendant knows exactly in fact what he has to do and this means not as a matter of law but as a matter of fact, so that in carrying out an order he can give his contractors the proper instructions.'

Precision is of course a question of degree and the courts have shown themselves willing to cope with a certain degree of imprecision in cases of orders requiring the achievement of a result in which the plaintiffs' merits appeared strong; like all the reasons which I have been discussing, it is, taken alone, merely a discretionary matter to be taken into account: see *Spry, Equitable Remedies* , 4th ed. (1990), p. 112. It is, however, a very important one."

176. **Unjust enrichment of the Claimant.** In the context of the facts of the *Co-operative* case Lord Hoffman considered whether damages were an adequate remedy rather than an injunction in the light of the principle that unjust enrichment should not result from the granting of the injunction.

177. A year later in *R (Ojuri) v Newham LBC* [1999] 31 H.L.R 452, Collins J considered the suitability of the interim accommodation offered by the defendant HA. He ruled as follows:

> "7. Where a ground for judicial review is made out, the court retains the discretion to refuse to grant relief. The exercise of this discretion involves close consideration of both the nature of the illegality of the decision and its consequences: *R. v. Secretary of State for the Environment, ex p. Walters* , *R. v. Brent London Borough Council, ex p. O'Malley (1997) 30 H.L.R. 328, C.A.* ; *R. v. Islington London Borough Council, ex p. B (1997) 30 H.L.R. 706, Q.B.D.* ; *R. v. Islington L.B.C., ex p. Degnan (1997) 30 H.L.R. 727, Q.B.D.*"

178. Conduct is relevant to whether a mandatory injunction is granted. This is part of the equitable principle that the Claimant must come before the Court with "clean hands". In this case the Claimant's conduct has not assisted either the Defendants or the Court. The failure to provide, with his homelessness application, any current medical notes, doctors' diagnoses or prognoses and any letter from his GP or treating neurologists, pain management experts or consultant orthopaedic surgeon in particular

about his spinal condition and ability to walk, was particularly unhelpful. This unhelpfulness flowed over into the judicial review claim because the Claimant attached no medical evidence to his witness statements and provided no medical notes to the Court. I do not consider that the Claimant has complied with his duty of candour to this Court.

Declaration

179. In my judgment a declaration could have been justified in relation to the Defendants' failure to accept that the S.188(1) application engaged their duty between 26.8.2022 and before 26.9.2022 but there is no main ground of review asserting any claim for such. In addition all of the circumstances, the Claimant's lack of candour and his refusal of the interim accommodation offered, lead me to consider that a declaration to that effect is not warranted now.

180. After 26.9.2022, because I have ruled that the Defendants' decision that the Claimant is suitably housed at home is unlawful due to the fire risk, a declaration to that effect could be granted, however the need for such a declaration does not exist. The reason why the Claimant is still at his Park West flat is that he refused to accept alternative accommodation on that very day. Since 26.9.2022 I have found that the Defendants' S.188(1) duty was suspended. I have found that the Claimant had not revived his application because since then he has refused to accept the Defendants' assessment of his medical condition and refuses to accept the Defendants' assessment of his interim accommodation needs yet at the same time he has refused to evidence his own assertions of medical conditions.

181. Making a declaration that the Claimant is entitled to suitable interim accommodation will not resolve the root issues: (1) What is the diagnosis of the Claimant's asserted spinal condition? (2) Which symptoms are supported by the treating doctors? (3) Can the Claimant walk? (4) Does the Claimant need 24 hour care? (5) Does the Claimant need accommodation with one bedroom or two? (6) Should the property be wheelchair adapted or not? I do not consider that a declaration will resolve these issues.

182. As for a mandatory injunction. The Defendants have offered and I have no doubt will continue to offer suitable interim accommodation if properly requested but it will not meet the Claimant's criteria unless and until medical evidence is obtained to clarify the issues. There is no evidence in my judgment that the Defendants are being unreasonable over their S.188(1) duty, save for their assessment of the Claimant's current flat from a fire risk point of view.

183. Applying the just and convenient test and taking into account the factors set out by Lord Hoffman above and the Claimant's conduct I do not consider that the Claimant has substantive grounds to justify a mandatory order and in any event I do not consider that it would be right or fair, just or convenient to make a mandatory order.

184. *The Authority has accepted that the duty under s188(1) is immediate and non-deferable and therefore it is no longer in issue. However the Claimant still seeks a declaration to that effect.* This acceptance was made between the parties without any agreement as to the date on which the decision to accept the S.188 (1) duty was required. The evidence shows it was accepted on 26.9.2022 and I have found that the duty was discharged the same day by the offer of interim accommodation. I do not consider that a declaration is necessary or justified on the facts.

Conclusions

185. For the reasons set out above I dismiss the claim for a declaration and I also dismiss the claim for a mandatory injunction.

186. The Claimant shall draw up the order and submit it to the court within 7 days of the judgment being handed down.

187. If the parties can agree consequentials so much the better. If not a 30 minute hearing can be requested for listing before me within I would hope 7 days of the judgment being handed down.

END