Neutral Citation Number: [2023] EWHC 2914 (Admin)

Case No: AC-2003-LON-001270

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/11/2023

Before:

KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE

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Between:

THE KING (on the application of Ms ULYANA KUKHTYAK)	**Claimant**
- and -	
THE LONDON BOROUGH OF HOUNSLOW	**Defendant**

- -
- -

Matthew Ahluwalia (instructed by **Osbornes Law**) for the **Claimant**
Michael Paget (instructed by **HB Public Law**) for the **Defendant**

Hearing dates: 14 September 2023

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JUDGMENT

Karen Ridge sitting as a Deputy High Court Judge:

INTRODUCTION

1. The Claimant is a Ukrainian national. Following the outbreak of war in Ukraine, the Claimant came to the United Kingdom with her husband Petro Khariv, to live with her daughter, Irina Nowosielska, who is the Defendant's registered applicant for housing. Neither the Claimant, nor her husband, speak or understand any English. Mr Khariv had just been diagnosed with pancreatic cancer, had undergone surgery and had started chemotherapy when war broke out. His treatment has resumed in the UK but, sadly, his condition is terminal.

2. The Claimant herself has complex health needs, as does the younger of Irina's two children. Irina is now living with her two daughters and her parents in a two-bedroom flat. The Claimant and Petro are obliged to sleep on the floor. There has been a significant history of anti-social behaviour caused by the next-door neighbour resulting in Irina's dog being killed and Irina injured by the next-door neighbour's dog. Notwithstanding a successful prosecution under the Dangerous Dogs Act, the anti-social behaviour is alleged to have continued as a consequence of which Irina suffers from anxiety and stress.

3. Irina had made a previous housing application and was told that she is eligible for a three-bedroomed property and was placed in the second highest priority band (band 2). Irina asked the Defendant to revisit her housing application in light of the changed circumstances with her parents now living in the household and having complex medical needs. On 11 January 2023 the Defendant made two decisions which are the subject of this challenge. The first decision was not to include the Claimant and her husband on the same housing application as Irina. The second decision was a refusal to refer the case to the Exceptional Needs Referral Panel (ENR Panel).

4. The Claimant seeks an order quashing the decision not to include the Claimant and her husband on their daughter's housing application and an order quashing the decision not to refer the case to the Exceptional Needs Referral Panel, together with a mandatory order compelling the Defendant to reconsider these decisions as soon as possible.

PROCEDURAL HISTORY

5. Judicial review proceedings were issued on 11 April 2023. On 8 September 2023, May J made an order granting the Claimant's application for permission to commence proceedings and for expedition. The Claimant was further granted permission to amend the statement of facts and grounds and the hearing was listed for 14 September 2023.

6. The oral hearing was on the 14 September 2023. At that hearing the Defendant raised issues as to the Claimant's standing to bring a claim. In her order of 8 September May J. had commented "It is arguable that the Claimant, although not herself the registered applicant for housing, has sufficient interest as a member of her daughter's household to bring this claim on behalf of herself and her husband (Petro)".

7. The Claimant's representatives had understood that standing was not in issue. With the agreement of the parties, I directed written submissions to be made on the question of standing following the hearing and we proceeded with the substantive hearing. I have received the Defendant's submissions dated 21 September 2023 and the Claimant's submission dated 27 September 2023 and have taken those into account.

FACTUAL BACKGROUND

8. The Claimant and her husband are currently living with their daughter and their two granddaughters in a two-bedroom council house in Hounslow, TW4 5AY ("the Property"). The Defendant is the landlord of the property. The Claimant and her husband fled the war in Ukraine and moved into this house in March 2022. The household therefore comprises the claimant, Ulyana Kukhtyak, aged 74 years, her husband Petro Khariv aged 74 years, the registered occupier Irina Nowosielska, aged 47 years, and her two daughters GC1, aged 21 and GC2 aged 14 years.

9. The Claimant has been diagnosed with critical coronary artery disease and a history of angina. Petro was diagnosed in Ukraine with pancreatic adenocarcinoma. He is blind in one eye with around 60% vision in his other eye. His cancer has metastasised, and his doctors estimate that he has less than 12 months to live. He does not speak English, which means that a Ukrainian-speaking carer would be needed.

10. Irina (the Claimant's daughter) has been on the Defendant's housing register with a priority date of 3rd February 2021. Irina suffers from post-traumatic stress disorder and has received treatment for anxiety and stress. Irina acts as a carer for the Claimant and Petro, and also as an interpreter. Irina's application was made prior to her parents' arrival in the UK. On 14 July 2022 the Defendant emailed Irina and confirmed that she had been placed in Band 2 of the Allocation Policy on medical grounds, for three-bedroomed accommodation.

11. GC2 suffers from permanent hearing loss, balance problems, asthma and scoliosis. She takes acne medication which results in mood swings and as a result of her medical conditions she requires her own room. Her sister, GC1 has failed her A-levels which is said to be as a result of the disruption from the housing situation.

12. The Claimant contends that the Defendant's refusal to include Irina's parents in Irina's housing application (Decision 1) and not to refer to the ENR Panel (Decision 2) is that the Claimant has not been able to have her housing situation properly considered.

13. In its email of 11 January 2023, the Defendant further confirmed that:

> "The Defendant would find a 3-bed property suitable for 5 people, under Band 2 of the allocation scheme;
>
> b. The parents (Petro and Ulyana) could apply for their own accommodation, which would likely be able to be provided in a far quicker time than it would to find a 4-bed property; the Defendant indicated that they would try and find a place close to Irina's home;

> c. The parents could consider finding accommodation in the private sector, in the alternative;
>
> d. The case was not referred to the Exceptional Needs Referral Panel because the Council can offer alternative solutions."

14. The Claimant's position is that her family are content to accept a three-bedroom unit, thus taking up only one unit of housing for the family. The Claimant wants Petro's diagnosis to be considered, which may place the family in band 1 rather than band 2 and give them higher priority for accommodation.

STANDING

15. Standing to bring a judicial review claim arises if the putative claimant has 'sufficient interest in the matter to which the application relates' pursuant to section 31(3) Senior Courts Act 1981. That test has generally been interpreted liberally and excludes 'busy bodies' but allows persons with a genuine interest.

16. On behalf of the Defendant, Mr Paget contends that the sufficient interest test is subject to an important qualification in the form of the 'obviously better-placed challenger'. Here, he says the claim is narrow, it is not a challenge to the allocations policy but an assertion that the Defendant has acted irrationally when applying that policy in relation to Ms Nowosielska's application. In this case, Ms Nowosielska as the applicant for housing, is a better-placed challenger.

17. Mr Paget further asserts that the Claimant does have sufficient interest to make a separate application to the Defendant on behalf of herself and her husband. This is a challenge to how Ms Nowosielska's application has been determined and she is the best-placed challenger. The Claimant was never part of the original application and Decision 1 confirmed that. The Claimant was not the best placed challenger to Decision 1 and has no interest in Decision 2. Ms Nowosielska has chosen not to challenge Decision 1 and there is no reason to allow the Claimant to challenge Decision 1.

18. On behalf of the Claimant, Mr Ahluwalia submits that the approach to standing should begin with the guidance set out in *Axa General Insurance Ltd v HM Advocate [2011] UKSC 46* at §170:

> "...what is to be regarded as sufficient interest to justify a particular applicant's bringing a particular application before the court, and thus as conferring standing, depends therefore upon the context, and in particular upon what will best serve the purposes of judicial review"

19. In this instance, the Claimant, her husband and Ms Nowosielska and her daughters are directly affected by the Defendant's decisions. In some cases, if one or more claimants are directly affected or otherwise well placed to bring the claim that may mean that others who are not directly affected, or are less well-placed to bring the claim, will lack standing. That is not the case here, all of the family are directly affected.

20. I further accept Mr Ahluwalia's point that in practical terms the identity of the Claimant (Ms Kukhtyak, Mr Khariv or Ms Nowosielska) would have made little difference to the grounds of challenge, the evidence and the issues to be determined. In addition, there is no authority for the proposition that, in circumstances where a number of persons are directly affected, there is only one person deemed to have standing to bring a claim. Therefore, I am satisfied that the purposes of the judicial review are equally well-served by Ms Kukhtyak being the Claimant.

21. For the above reasons I conclude that the Claimant has sufficient standing and interests pursuant to section 31(3) of the Senior Courts Act 1981 to bring this claim.

THE HOUSING ALLOCATIONS POLICY

22. In considering the substantive issue, it is first appropriate to set out the relevant legislation and the Defendant's priority housing scheme pursuant to the legislation. Section 166A of the Housing Act 1996 provides for allocation of housing within a local authority's housing scheme. The relevant provisions are as follows:

> "subsection (1), every local authority must have a scheme for determining priorities, and as to the procedure to be followed, in allocating housing accommodation. The procedure includes all aspects of the allocation process including the person or descriptions of persons by whom decisions are taken.
>
> subsection (3) as regard priorities, the scheme shall, subject to secure that a "reasonable preference" is given to a number of categories of persons. This includes: (c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions."

23. The Defendant's allocation scheme is contained within its Housing Allocations Policy 2018. That document sets out who can be included on a housing register application. It does not count non-dependent children/parents as part of the same household, but it does have exceptions regarding those who have an exceptional need to live with the applicant to provide or receive care. So far as relevant, the Defendant's housing allocation policy contains the following provisions

> "3.3 Who can be included on a Housing Register application? An applicant can include only members of their immediate family who normally live with them (or who would live with them if it were possible for them to do so) or other people who have an extenuating need to live with them.
>
> 3.3.1 Immediate family
>
> Immediate family includes:

-The applicant's spouse, civil partner or partner. By 'partner' we mean anyone who lives with the applicant as their partner or who would live with them as a couple if they were able to do so.

-Dependent children. This includes children aged under 21 who live with the applicant all the time, including those for which the applicant has legal guardianship and children that are adopted or fostered. The applicant is required to provide the council with official papers when requested, such as an order from a court, and other documents relating to any agreement that is currently in place regarding the residency of children.

Exception to the above rule

If an applicant has been accepted as statutorily homeless by the council, the household will be assessed as all members who are reasonably expected to reside with the applicant, included as part of the original homelessness application. Changes to the household composition will be assessed on a case by case basis and a reduction in the number of household members will be taken into account in the size of property allocated.

3.3.2 People, who are not an immediate family member (see 3.3.1 above), who have an exceptional need to live with the applicant in order to provide or receive care or support.

People who have an exceptional need to live with an applicant means people who are currently living with the applicant but are not included in the definition of immediate family, but who have a real need to live as part of the household in order to give or to receive care or support. This may include the following people who have not applied for housing separately:

• A child (of the applicant or partner) aged 21 or over who has lived with the applicant for at least the last 5 years and cannot live independently because of a disability or care need;

• A carer, if someone in the household needs full-time care which cannot be provided with a care package and no one in their immediate family is able to provide this;

• An adult (or elderly) relative who has lived with the applicant for at least the last 5 years and needs to receive care that cannot be provided with a care package and can only be provided by the applicant. Applicants must explain in their Housing Register application why they wish to include people who are not regarded by the council as immediate family. The council requires applicants to provide supporting documents to confirm this need such as:

• A social services care plan;

• An occupational therapy assessment;

• Proof of carers allowance being received;

• Other evidence the council thinks appropriate"

24. Paragraph 4.3 of the Housing Allocations Policy sets out the provisions in relation to prioritising Housing Register applicants. They are assigned to 3 bands: band 1 high priority; band 2 medium priority; band 3 low priority. Applicants are allocated to band 1 if they satisfy any one of 7 defined criteria. For the purposes of the claim criteria B1.1, B1.2 and B2.1, B2.2 are relevant:

Band 1: High priority to move	Summary of criteria
B1.1 – Medical Needs High priority medical or disability cases	■ Where an applicant has a life expectancy of 12 months or less and rehousing is required to provide a basis for the provision of suitable care. ■ The applicant's health is so severely affected by the home they currently occupy that it is likely to become life threatening. ■ The applicant is housebound in their current home and needs to move to an alternative home suitable to their needs. ***See Appendix B: B1 and B2 for more information***
B1.2 – Exceptional Needs High priority need to move approved by the Exceptional Needs Referral Panel[5]	■ Self-explanatory, including threats of domestic, hate or gang violence. Cases approved for Band 1 by the Chief Officer using their discretion will also be placed in this Band reason. ***See Section 6.2 for more information on the Exceptional Needs Referral Panel***

Band 2: Medium priority to move	Summary of criteria
B2.1 – Medical Needs Medium medical priority grounds	■ Where an applicant's housing is unsuitable due to severe medical reasons which significantly aggravate the medical condition of the applicant or a member of their household but is not life-threatening. ■ Where the applicant's current home is highly unsuitable for them or a member of their household but is not life-threatening. ***See Appendix B: B1 and B2 for more information***
B2.2 – Exceptional Needs Medium priority to move approved by the Exceptional Needs Referral Panel	■ Self-explanatory. Cases approved for Band 2 by the Chief Officer using their discretion will also be placed in this Band reason. ***See Section 6.2 for more information on the Exceptional Needs Referral Panel***

25. Paragraph 6 of the policy contains provisions relating to exceptions and referrals to the Exceptional Needs Referral Panel (ENR Panel). This is designed to cover situations of housing need which are recognised as not falling within a defined policy. Paragraph 6.2 sets out the arrangements with regards to the ENR Panel as follows:

> "Households with multiple or complex support and rehousing needs, including high public profile cases, not covered by other Panels or by the Allocations Policy; "

> "The ENRP meets once per month unless there is a particularly urgent case which needs immediate consideration. The Panel is chaired by the head of service for allocations. Other panel members include senior officers invited as required from other teams in the council depending on the type of cases being assessed. Cases for consideration are selected by the Lettings Co-ordinator (or equivalent) in consultation with the Chair of the panel. Cases for consideration by the panel are presented by team leaders (or equivalent) rather than officers.

> Decisions of the ENRP to award Band 1 priority to an applicant are ratified by the Chief Housing Officer.
>
> The ENRP may also decide to award Band 2 and Band 3 priorities to applicants based on exceptional circumstances at the discretion of the panel."

26. Local authorities have a wide discretion regarding the securing of reasonable preference to classes specified under s.166A(3) as was established in *R (Ahmad) v Newham London Borough Council* [2009] UKHL 14 in which Baroness Hale said:

> "No one suggests that [the Claimant] has a right to a house. At most, he has a right to have his application for a house properly considered in accordance with a lawful allocation policy. Part VI of the 1996 Act gives no one a right to a house. This is not surprising as local housing authorities have no general duty to provide housing accommodation".

27. Preference is not the same as success and it is possible for a lawful allocations scheme to give reasonable preference to a person even if the person is never allocated accommodation. Whether a preference is reasonable is a decision for the authority (*R (Lin) v Barnet LBC* [2007] EWCA Civ 132 as Dyson LJ explained:

> "26. Preference should not be confused with prospects of success. Prospects of success depend on many factors, of which the most material is the fact that the demand for accommodation greatly exceeds the supply. It is quite possible for a lawful scheme to give reasonable preference to a person within s.167(2) and for that person never to be allocated Pt 6 housing. Such a person is entitled to no more than a reasonable preference"

28. In *R (Ariemuguvbe) v Islington LBC [2009] EWCA Civ 1308* Lord Neuberger said:

> "It is plainly right for the court to apply a common sense and practical approach to the interpretation of the scheme, and indeed an interpretation which allows a sensible degree of flexibility when it comes to dealing with individual cases".

THE CHALLENGE

29. The Claimant accepts that she and her husband do not fall within the definition of immediate family and the Claimant asserts that the Defendant has declined the consider waiving the 5-year-residency requirement under paragraph 3.3.2. However, the Defendant has indicated that it would waive the requirement if the Claimant and her husband made their own application. The Claimant avers that this is irrational or inadequately reasoned. The Claimant further takes issue with the reliance which the Defendant has placed upon the opinion of its own Independent Medical Adviser, over the opinions of the family's treating medical practitioners who have seen the Claimant and family members.

30. The Claimant also takes issue with the section of the policy on exceptions to the rule on households (at paragraph 3.3.2) which, it is contended, is arguably unlawful for lacking rationality, saying that it is difficult, if not impossible, to conceive of a situation whereby a care package can only be provided by an applicant.

31. The decision not to refer the case to the ENR Panel is said to be irrational or inadequately reasoned. The Defendant's proposed alternative solution of making an application, finding private sector accommodation and separating out households to make separate applications are remedies which would be available in all cases, thus precluding the possibility of referral to the ENR Panel. In this respect, the Claimant contends that the Defendant has not followed its own policy since this is a case which clearly falls within the ambit of the ENR Panel referral provisions.

32. The Claimant further asserts that the references to a lack of evidence in relation to Petro requiring 24-hour care is a further example of the Defendant's failure to follow its own policy, since there is no such requirement in paragraphs 3.3.2 or 6.2.

33. As a consequence of these failings, it is contended that the refusal to include the Claimant and her husband on her daughter's application is also a breach of the Claimant's Article 8 rights under the European Convention on Human Rights, due to the outcome proposed by the Defendant essentially being to separate the household.

34. The amended grounds allege a failure to make adequate enquiries before carrying out a decision in accordance with the Tameside duty enunciated in *Secretary of State for Education and Science Appellant v Tameside Metropolitan Borough Council Respondents [1977] AC 1014*. This arose directly out of the Claimant's request that the Defendant reconsider its position once a care needs assessment was carried out by social services, in accordance with its own policy at paragraph 3.3.2.

THE DEFENDANT'S CASE

35. The Defendant's summary grounds of resistance request that permission be refused on the following bases: lack of standing; the Defendant's decision not to include the Claimant as part of her daughter's household was in accordance with its allocations policy and even if the daughter had sought to challenge the decision, no remedy would be granted because she is already in three-bedroomed accommodation. The last ground has fallen away given that the Defendant now accepts that Ms Nowosielska is in two-bedroomed accommodation.

36. On behalf of the Defendant, Mr Paget contends that Mr Khariv is not part of Ms Nowosielska's immediate family and neither does he have an exceptional need to live with her to receive care or support. Paragraph 3.3.2 is a discretionary category, it may include an adult who has lived with the applicant for at least five years and needs to receive care that cannot be provided with a care package and can only be provided by the applicant. Mr Paget argues that the applicant would need to show care could not be provided by a care package and that the applicant is the only person that can provide care. The Defendant did not impose the five-year qualification but found that there was no evidence that a care package could not cater for Mr Khariv's needs.

DISCUSSION

37. It is accepted that the Claimant and her husband do not fall within the definition of 'immediate family' for the purposes of inclusion on Ms Nowosielska's housing application. Mr Ahluwalia accepted that GC1 is now over the age of 21years and therefore she now falls outside the definition of dependent children. However, I note that GC1 was under 21 years at the date of the decision, so I make no further comment on that matter.

38. Paragraph 3.3.2 sets out exceptions to the general rule on immediate family members. The requirement for the exception is contained within the first sentence:

> "People who have an exceptional need to live with an applicant means people who are currently living with the applicant but are not included in the definition of immediate family, but who have a real need to live as part of the household in order to give or to receive care or support"

39. The second sentence of paragraph 3.3.2 goes on to say "This <u>may</u> include the following people who have not applied for housing separately"(my emphasis) and it sets out a number of examples which include "An adult (or elderly) relative who has lived with the applicant for at least the last 5 years and needs to receive care that cannot be provided with a care package and can only be provided by the applicant". The operative part of the second sentence is the word 'may', it indicates that the categories which follow are examples and it is not therefore a closed list.

40. I therefore conclude that, in order to satisfy the Defendant that the Claimant and her husband did fall within the exception, it was necessary to establish that they had a real need to live as part of the household in order to receive care and support. I do not accept the narrower definition contended for by Mr Paget. However, I further accept that the decision is an evaluative judgment and one which the Defendant was entitled to come to, based on the evidence before it at the date of the decision. The evidence base included a letter from the family GP which states that Petro needs 24-hour support from his daughter with regards to food preparation, medication and attending hospital appointments. The Defendant took advice from its own medical advisor, and I am satisfied that it made a decision based on proper advice on the evidence before it at the date of the decision. Ground 1 fails.

41. Having concluded that the Claimant and her husband did not qualify under the exception in paragraph 3.3.2, it was incumbent upon the Defendant to ask whether an exceptional needs referral should be made. The decision email of 11 January 2023 states:

> "The Exceptional Needs Referral Panel (ENRP) considers urgent, complex housing cases which are outside the council's Allocations Policy. Ms Nowosielska's case was not referred to the Exceptional Needs Panel. This is because the Council can offer alternative resolutions. Waiting times for 4 bedrooms can exceed over 5 years. Again, we have advised the parents can submit an application, which we will assess and band accordingly and they would be housed a lot sooner.

> • Ms Nowosielska's parents can apply in their own right and submit an application – we could try and locate accommodation close by
>
> • The family can consider accommodation in the private sector
>
> • Ms Nowosielska's housing application was assessed, and it attracted Band 2 priority for a 3 bedroom. We agreed we would provide the family with a 3-bedroom 5-person property."

42. The relevant policy provides that 'urgent, complex housing cases which are outside the allocations policy' are considered by the Panel. Having concluded that the case was outside the allocations policy, the Defendant should have asked was it an urgent and complex case. At the point in time that the decision was made, the Defendant had a great deal of information about the family's needs. The Claimant's instructing solicitor's letter of 2 August 2022 contains a number of supporting documents evidencing the family's various medical conditions and other matters. The matter was urgent by virtue of Mr Khariv's diagnosis and it was arguably complex due to the family's multiple health problems and the language and cultural needs.

43. The reasons given for declining to refer the matter to the ENR Panel are not consistent with a proper application of the allocations policy. The suggestion that there are alternative resolutions does not obviate the need to consider whether the case was urgent and complex and a referral should be made. The whole rationale of the exceptions policy is to cater for those situations which do not fit neatly within the previous allocation categories and to ensure that there is no injustice as a result of genuine applicants in true need falling through the cracks.

44. I conclude that the decision not to refer the matter to the ENR Panel was irrational for these reasons. The Defendant has not followed its own policy in relation to this aspect of the application and ground 2 therefore succeeds.

45. Ground 3 contends that a refusal to include the Claimant and her husband on Irina's application was a breach of the Claimant's article 8 rights. The Claimant says that the practical effect of this decision was to separate the household and deprive Mr Khariv of his preferred choice of care. Providing that the policy on referral is properly and fairly applied, it is inevitable that there may be situations in which households are separated. That is a proportionate response by a public body fulfilling its statutory obligation to ration scarce public housing resources according to a prioritisation policy.

46. There is no absolute right for the household to remain together and for Mr Khariv to have his preferred choice of care. Insofar as there has been a failure of the Defendant to apply the policy in relation to referral to the ENR Panel, this has only deprived the Claimant and family of the possibility of the family being kept together. There can be no guarantees about the outcome of an exceptions referral and for this reason ground 3 fails.

47. On 10 and 11 April 2023 the Defendant was invited by the Claimant's solicitors to reconsider its position once a care needs assessment had been carried out. The Claimant contends that this amounted to a breach of the Defendant's *Tameside* duty

of reasonable enquiry. As set out in *Secretary of State for Education and Science Appellant v Tameside Metropolitan Borough Council Respondents [1977] AC 1014*, in particular Lord Diplock at 1065 (emphasis added):

> "It was for the Secretary of State to decide that. It is not for any court of law to substitute its own opinion for his; but it is for a court of law to determine whether it has been established that in reaching his decision unfavourable to the council he had directed himself properly in law and had in consequence taken into consideration the matters which upon the true construction of the Act he ought to have considered and excluded from his consideration matters that were irrelevant to what he had to consider: see Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223 , per Lord Greene M.R., at p. 229. Or, put more compendiously, the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?"

48. However, the request postdated the decisions under challenge and in any event the Defendant had a significant amount of information before it regarding the family's social and medical situation. Further, paragraph 3.3.2 suggests that documents such as an occupational therapy assessment may be provided. It is not an absolute requirement, and I am satisfied that the Defendant was entitled to conclude that it had sufficient information on which to make a determination, and there were no further reasonable enquiries which were necessary. Ground 4 therefore fails.

49. The decision not to refer the matter to the ENR Panel was unlawful due to irrationality. Mr Paget contends that any remedy thereafter is discretionary and that because Claimant has the alternative remedy of making her own housing application and obtaining suitable accommodation. However, this ignores the fact that the family want to remain together as one household and have their collective needs considered together. Referral to the ENR Panel would enable that exercise to happen, without any guarantees as to the outcome. I therefore quash the Defendant's decision not to refer to the panel and declare it as unlawful. I further order that the Defendant do reconsider the matter at the next available ENR Panel.

50. I would ask that Counsel draw up an appropriate order for my consideration.