Neutral Citation Number: [2024] EWHC 3016 (Admin)

AC-2024-LON-003495

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 November 2024

Before:

Mr Jonathan Glasson KC sitting as a Deputy Judge of the High Court

- -

Between:
THE KING **Claimant**
On the application of
EM

- and -
THE LONDON BOROUGH OF HAVERING **Defendant**

- -

Ms Clíodhna Kelleher (instructed Hopkin Murray Beskine, Solicitors) for the Claimant
Mr Andrew Lane (instructed by OneSource Legal Services) for the Defendant

Hearing date: 5th November 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30 a.m. on 25 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JONATHAN GLASSON KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT:

1. Ms EM ("the Claimant") seeks to challenge the decision dated 24 August 2023 of the London Borough of Havering ("the Defendant") to refuse to add her to its social housing register. The Defendant declined to add her to the register because the Claimant did not meet the residence requirements under its "*Housing Allocation Scheme 2021*" ("the Scheme"). The Claimant is a victim of domestic abuse and wishes to move to the Defendant's borough so that she can be close to her sister and away from her ex-husband.

2. The Claimant's case is put on two alternative bases. The first is predicated on the basis that the Claimant comes within certain of the exceptions to the residence requirements in the Scheme. The second is put on the basis that if, contrary to the Claimant's primary submission, she does not come within the exceptions, the Scheme is unlawfully discriminatory against her under section 19 of the Equality Act 2010 and/or under Article 14 of the European Convention on Human Rights ("ECHR") read together with Article 8 ECHR. Thus, the Claimant's Detailed Facts and Grounds sets out two grounds of review:

   (a) The Defendant has not complied with the Scheme.

   If the Defendant has complied with the Scheme, then:

   (b) The Scheme indirectly discriminates against the Claimant under section 19 of the Equality Act 2010 and/or Article 14 ECHR read together with Article 8 ECHR.

3. For the purposes of the hearing, I was provided with a bundle of documents and correspondence as well as a bundle of authorities. Both parties submitted skeleton arguments in advance of the hearing, and both made detailed oral submissions at the hearing. I am grateful to counsel as well as those instructing them for their assistance.

4. For the reasons which I give below, I have concluded that on the evidence before the Court the Claimant does come within certain of the exceptions to the residence requirement in the Scheme. That being so, and reflecting the agreement of the parties, I have not determined the alternate basis upon which the Claimant had argued her case.

5. The judgment is divided into the following sections:

   a) The procedural history and the Defendant's application to participate in the hearing.

   b) The factual background.

   c) The statutory framework.

   d) The Defendant's Scheme.

   e) Ground One: does the Claimant come within any of the exceptions to the residence requirements in the Scheme?

   f) Disposal and relief.

(A) THE PROCEDURAL HISTORY AND PRELIMINARY ISSUES RAISED AT THE OUTSET OF THE HEARING

6. On 23 November 2023 the Claimant issued her claim form and on 13 December 2023 the Defendant filed an Acknowledgment of Service with its Summary Grounds. There was then a regrettable delay in the Administrative Court in dealing with the application for permission. However, on 23 May 2024, Mr Jonathan Moffett KC, sitting as a Deputy Judge of the High Court, granted permission for judicial review in respect of both grounds. The Deputy Judge also granted the application for anonymity that had been made by the Claimant.

7. The Deputy Judge ordered the Defendant to file its Detailed Grounds within 35 days of the service of his order file. Alternatively, in accordance with CPR 54.8, the Defendant was required to serve a document which stated that the Summary Grounds would stand as the Detailed Grounds. In the event, the Defendant did not file Detailed Grounds, nor did it file a document indicating that it wished its Summary Grounds to stand as the Detailed Grounds. Mr Lane candidly informed me that it was only when the Defendant received notification of the listing of the substantive hearing that he became aware that the Defendant was in default of the Deputy Judge's order.

8. On 8 October 2024, the Defendant issued an application notice seeking permission to be heard at the substantive hearing and for its Summary Grounds to stand as its Detailed Grounds. The Defendant referred to paragraph 10.1.5 of the Administrative Court Guide 2024 which states "*a defendant or interested party who has not filed Detailed Grounds (or informed the court and the parties that the Summary Grounds are to stand as Detailed Grounds) within the time specified in CPR 54.14 (as varied by any order of the Court) requires permission to be heard at the substantive hearing.*"

9. The Claimant was invited by the Administrative Court Office to file observations on the application. On 28 October 2024 the Claimant informed the Court that her "*view is that the Defendant does not require permission to be heard at the substantive hearing on 5 November. As is set out in their application notice, the Defendant failed to file Detailed Grounds of resistance within 35 days of permission being granted, or alternatively to inform the court that the Summary Grounds are to stand as the Detailed Grounds. We think that the only consequence this failure is that the Defendant is limited to relying on its Summary Grounds and cannot rely on further evidence or arguments not contained in its Summary Grounds. We do not object to the Defendant's Summary Grounds standing as its Detailed Grounds*."

10. I heard brief argument on the Defendant's application at the outset of the hearing. I commented that it was regrettable that in its application the Defendant had neither apologised nor explained its reasons for failing to comply with the Court order. Mr Lane explained that he was unable to explain why the Defendant had not complied with the order. He apologised however on behalf of the Defendant, and he also confirmed that the Defendant's case would not go beyond that set out in its Summary Grounds. For the Claimant, Ms Kelleher confirmed that the Claimant did not object to the Defendant's application to be heard at the hearing, subject to being limited to the position as set out in its Summary Grounds.

11. Having heard the parties, I granted the Defendant's application. I noted that despite the clear guidance in the Administrative Court Guide there is no provision in the CPR which directly supports that guidance. CPR 54.33 under Part III of CPR 54 (which governs

environmental claims under the Environment Act 2021) does provide that a defendant who does not comply with any direction regarding the filing and service of detailed grounds may not participate in the hearing of the claim unless the court allows them to do so. However, there is no equivalent provision in Part I of CPR 54 which governs judicial review claims more generally.

12. I indicated that the Defendant should not seek to introduce arguments that had not been set out in its Summary Grounds, albeit recognising that the Defendant was likely to amplify those arguments. I concluded that the court was likely to receive assistance from the participation of the Defendant at the hearing and in being able to hear adversarial argument on the claim.

B) THE FACTUAL BACKGROUND

13. The Claimant is a 58-year-old woman. She lives in the London Borough of Islington in social housing provided by Clarion Housing. The Claimant has suffered significant violence from her ex-husband over a lengthy period of time. On one occasion he hit with such force that her eardrum was perforated. He has stabbed her and, on another occasion, he pulled the Claimant though the street by her hair. The Claimant's ex-husband persisted in physically abusing her for a number of years despite the fact that she obtained a restraining order against him in 2004. In October 2013 the Claimant suffered a severe attack by him which resulted in her hospitalisation and in profound injuries requiring surgery, including broken bones and nerve damage in her face. The Claimant's ex husband was imprisoned for three years as a result of this assault and is permanently barred from contact with the Claimant. The Claimant now suffers from chronic pain and numbness in her face. Her psychological symptoms are severe.

14. In late 2014 the Claimant became aware that her ex-husband was due to be released from prison in February 2015. As a consequence of the risk to her, a panic room was installed in her home in 2015. This involved converting one of the bedrooms in the property into a room with a securely lockable, outward opening door; the fitting of bars on accessible windows, and the installation of various other safety features including fire safety equipment.

15. The Claimant's ex-husband has had another child with a woman who lives in Islington. The child was conceived while the Claimant and her former husband were married. These circumstances have resulted in public altercations with the ex-husband's new partner and members of their family. The Claimant continues to see her ex-husband's partner and her family locally.

16. The Claimant says that her current accommodation is not suitable for two main reasons. First, it is too large for her, and she cannot afford to heat and to maintain it. It is a four bedroomed house and only her youngest child now lives at home. Secondly, it is a house that she suffered life-changing violence at the hands of her ex-husband. In her witness statement she explains that she faces daily reminders of her abuse in her current accommodation.

17. The Claimant relies on an expert report from Dr Eileen Walsh, a clinical psychologist, dated 8 October 2021. Dr Walsh explains that, in her professional opinion, the Claimant needs to move to recover from the abuse she suffered. Dr Walsh notes that EM is "*reminded of specific incidents of abuse by features of her property*" and that her current accommodation is "…*preventing her from making further recovery* ..." and that moving

away from the "*site of the abuse*" is "*necessary for her rehabilitation*".

18. Dr Walsh concludes that the Claimant does need to move from her current accommodation on both medical and welfare grounds:

> "In my professional opinion, she does have a need to move on both medical and welfare grounds. She has significant mental health problems, which are clearly exacerbated by living in her current house, and in that locality. These interact with her physical problems, and the distress she feels related to her chronic pain and other difficulties. She continues to have difficulties with engaging with some aspects of healthcare due to her trauma history. For example, when I asked her about options to improve her facial pain, she told me that she has been offered an operation that could assist her pain in her sinuses but cannot contemplate it a present. This is because it is likely to result in her nose bleeding and black eyes, which she feels unable to tolerate as this would remind her so much of the past. While moving property and locality would not change the fact that she has permanent injuries and will have some problems for the rest of her life, it would reduce some of the others triggers that remind her of these events, and in doing so, leave her less vulnerable to a worsening of her mental health. On welfare grounds, this would also offer her greater opportunities to feel safer, and eventually to focus on other parts of life and move a bit further away from the impact of her severe trauma history.
>
> [EM] also reported stresses related to trying to maintain a large property, and feeling pressure to keep it clean. She ends up cleaning the house too much, and finds she cannot relax unless it is all done. She also reports stresses in relation to being able to afford the house. These are additional pressures that contribute to her very high level of anxiety, and are significantly more difficult for her to manage due to her trauma-related mental health problems."

19. The Claimant wants to move to the Defendant's area in order to be close to her sister. In her witness statement the Claimant explained:

> "My mental health problems often feel overwhelming, and make it hard to do day to day tasks. I rely on the emotional support of my sister […] who has lived in Havering
> for over 14 years. I am able to talk with my sister about my mental health and about what has gone on in my past. She is one of the only people I feel able to talk to about this. If I was living nearer to my sister she would also be able to offer me practical support with things like doing the shopping, housework and taking my dog out."

20. In her statement, the Claimant went on to explain that she first applied to join the Defendant's social housing register in December 2020 but was immediately notified that she did not meet the requirement of having lived in Havering for six years or more. In her statement, the Claimant said: "*I have lived in Islington for the last 52 years and therefore I obviously don't meet the 6 year requirement in Havering; I won't meet a residence requirement anywhere except Islington. As I have explained above, however, I need to move away from Islington so that I can recover from the serious and long-term violence and abuse from my ex-husband, and I would like to move to Havering where I have the support of my sister*."

21. The Claimant accepts that even if she is admitted to the Defendant's social housing register there is no guarantee that she will ever be offered social housing there: she says, "*I may have a very long wait for social housing in Havering, or may even never get*

social housing there. But it is very clear that as things stand I have no chance, ever, of getting the safe home I need to start to get better, because I am not even allowed to join the register."

22. Subsequent applications to the Defendant have similarly been refused. Its most recent refusal was on 24 August 2023, and it is that decision which is subject to this challenge.

23. In the impugned decision the Defendant stated:

> "Your application has been assessed in line with the Allocation Scheme, but I regret to advise you that at this stage the application has been rejected.
>
> The reason is that in accordance with our Housing Scheme you do not meet the residency criteria for Havering which is that you need to have been living in the Borough for 6 continuous years to date. Therefore we cannot process your application
> any further. I have checked with our housing solutions team and confirmed that currently no homelessness duty is owed to you by Havering. I have taken the information you have provided into consideration and in respect of this as you are a social housing tenant your Landlord can look into moving you within their own housing stock if they are unable to do this they can put in a reciprocal request to Havering council"

24. The decision also stated that the Claimant could request a review of the decision within 21 days of the decision, and provided that a response to an "*informal review*" would "*usually*" be provided within 48 hours. This could be followed by a "*formal review"*, and a response would be provided within 56 days of the request for a formal review.

25. The Claimant asked for an informal review on 12 September 2023 arguing that she came within a number of the exceptions to the residence requirements in the Scheme. The only response to that request was an email asking for a written consent form from the Claimant which was provided by return. No further response was ever received.

(C) THE STATUTORY FRAMEWORK

26. Section 166A (1) of the Housing Act 1996 ("the 1996 Act") provides that *"(e)very local housing authority in England must have a scheme (their "allocation scheme") for determining priorities, and as to the procedure to be followed, in allocating housing accommodation. For this purpose "procedure" includes all aspects of the allocation process, including the persons or descriptions of persons by whom decisions are taken*.".

27. The 1996 Act requires that the scheme shall be framed so as to secure that reasonable preference to certain categories of person that are specified in s.166A(3) that are known as the "*statutory reasonable preference groups*":

> "(3)As regards priorities, the scheme shall, subject to subsection (4), be framed so as to secure that reasonable preference is given to—
>
> (a) people who are homeless (within the meaning of Part 7);
>
> (b) people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act

1985) or who are occupying accommodation secured by any such authority under section 192(3);

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

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

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

28. Section 166A(14) of the 1996 Act provides that a "*local housing authority in England shall not allocate housing accommodation except in accordance with their allocation scheme*".

29. Residence requirements are a frequent feature of housing allocation schemes. Statutory guidance issued under s.169 of the 1996 Act, *Providing social housing for local people*, provides:

> "7. The Localism Act has also given back to local authorities the freedom to better manage their social housing waiting list, as well as providing authorities with greater flexibility to enable them to tackle homelessness by providing homeless households with suitable private sector accommodation. Local authorities can now decide who qualifies for social housing in their area, and can develop solutions which make best use of the social housing stock. This guidance is intended to assist housing authorities to make full use of the flexibilities within the allocation legislation to better meet the needs of their local residents and their local communities.
> …
>
> 12. The government is of the view that, in deciding who qualifies or does not qualify for social housing, local authorities should ensure that they prioritise applicants who can demonstrate a close association with their local area. Social housing is a scarce resource, and the government believes that it is appropriate, proportionate and in the public interest to restrict access in this way, to ensure that, as far as possible, sufficient affordable housing is available for those amongst the local population who are on low incomes or otherwise disadvantaged and who would find it particularly difficult to find a home on the open market.
> …
>
> 15. Housing authorities may wish to consider whether there is a need to adopt other qualification criteria alongside a residency requirement to enable and ensure that applicants who are not currently resident in the district who can still demonstrate a strong association to the local area are able to qualify. Examples of such criteria might include: family association – for example, where the applicant has close family who live in the district and who have done so for a minimum period of time employment in the district – for example, where the applicant or member of their household is currently employed in the district and has worked there for a certain number of years"

30. The Secretary of State for Housing, Communities and Local Government has issued guidance under s. 169 of the 1996 Act to local authorities as to how they exercise their

functions under Part 6 of the 1996 Act: "*Improving access to social housing for victims of domestic abuse*". The guidance states:

> "30. Section 166A(3)(d) provides that local authorities must frame their allocation scheme to ensure that reasonable preference is given to people who need to move on medical and welfare grounds, including grounds relating to a disability.
>
> 31. Those who are recovering from the impact of domestic abuse are likely to have medical and welfare needs, including physical and mental health issues, which may be complex and long lasting. Children who are victims of abuse may be affected in particular. Authorities are also reminded that a serious and long-lasting mental health condition is likely to come within the definition of a disability under the Equality Act 2010.
>
> 32. Annex 1 to the Allocations guidance which sets out possible indicators of the medical and welfare reasonable preference category already recognises that this could include those who need to recover from the effects of violence or threats of violence, or physical, emotional or sexual abuse. This guidance goes further and strongly encourages all local authorities to apply the medical and welfare reasonable preference category to victims and their families who have escaped abuse and are being accommodated in a refuge or other temporary accommodation."

(D) THE SCHEME

31. The purpose of the Scheme is explained at the outset:

> "1.1 The purpose of this scheme is to explain how Havering Council ("the Council") decides how available social housing is allocated. It sets out the Council's eligibility, qualifying and housing need criteria to ensure priority is fairly allocated in accordance with the statutory requirements and Council's aims. It also sets out how the Council will enable access to other forms of affordable housing such as shared ownership and intermediate rented housing.
>
> The Housing Act 1996 Part 6 requires local authorities to give reasonable preference in the way they allocate their available social housing to certain specified groups of persons referred to at 1.3 below."

32. Paragraph 1.3 of the Scheme states:

> "The Housing Act 1996 (as amended) requires local authorities to give reasonable preference in their allocations policies to people with high levels of assessed housing need. The 'reasonable preference' categories are:
>
> ° People who are homeless as defined by the Housing Act 1996, Part 7;
> ° People who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985), or who are occupying accommodation secured by any such authority under section 192(3);
> ° People occupying insanitary or overcrowded housing, or who are otherwise living in
> unsatisfactory conditions;
> ° People who need to move on medical or welfare grounds (including any grounds

relevant to a disability); and
° People who need to move to a particular locality in the district of the Council, where
failure to meet that need would cause hardship (to themselves or to others).

The Council can also give additional preference to households in one of the reasonable preference groups listed above. By law the Council must give additional priority to applicants who are current or previous members of the armed forces and who are in housing need."

33. Paragraph 2 sets out the eligibility and qualification criteria for the Scheme. Paragraph 2.3 sets out the detailed criteria to be placed on the Scheme. Paragraph 2.3.i. provides that the applicants must be aged 18 or over and paragraph 2.3.ii sets out the residence requirements and the exceptions to those requirements. It is that provision of the Scheme which lies at the heart of this case.

34. The Claimant argues that she comes within the exception in paragraph 2.3.ii. b. ("exception (b)") and two of the reasonable preference exceptions within paragraph 2.3.ii.c ("exception (c)"). In the alternative, she argues that if she does not come within those exceptions then she comes within the exception in paragraph 2.3.ii.h ("exception h").

35. Paragraph 2.3.ii. provides:

"Residency – Applicants must have lived in the borough of Havering continuously for at least six years

Local residency qualification within the terms of this scheme will normally mean that an applicant has lived in this borough continuously, through their own choice, (not through detention or hospitalisation), for a minimum of six years up to and including the date of their application. The applicant should remain resident in-borough in order to continue to qualify.

Time spent placed by the Council in designated temporary accommodation outside of the borough will count towards time spent in Havering.

Those placed in Havering via temporary accommodation, residential or supported housing by another local authority will not normally be considered as having met the local residency qualification.

Time spent away from the main/principal home in Havering due to periods of study, such as at university, will count as time in the borough.

Exceptions:

a) The residency qualification criterion will not be applied to the groups specified in The Allocation of Housing (Qualification Criteria for Armed Forces)(England) Regulations 2012:
- Members of the Armed Forces and former Service personnel, where the application is made within five years of discharge;
- Bereaved spouses and civil partners of members of the Armed Forces leaving Services Family Accommodation following the death of their spouse or partner;

- Serving or former members of the Regular or Reserve Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service.

b) People who are under-occupying their current social housing tenancy.

c) Persons who fall within the statutory 'reasonable preference' groups:
- people who are homeless (within the meaning of Part 7);
- people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);
- people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
- people who need to move on medical or welfare grounds (including any grounds relating to a disability); and
- people who need to move to a particular locality in the district of the Council, where failure to meet that need would cause hardship (to themselves or to others).

d) Emergency cases where homes are damaged by fire, flood or other disaster - where it is not possible to repair the existing home, or if any work to repair is to take such a long period of time that there will be serious disruption to family life.

e) Cases nominated under the Police Witness Protection Scheme or other similar schemes of which the Council has agreed to be party to.

f) Households who need to move to the borough and where failure to meet that need would cause exceptional hardship to themselves or to others. Hardship grounds include applicants with the need to move:
- Under the Right to Move scheme where there is a genuine intention of taking up an offer of work;
- To specialist facilities where they receive care;
- To receive or give care/support which could otherwise result in higher care costs, or even the use of residential care for those who cannot move.

g) People who qualify for assistance through specialist external mobility schemes (e.g. Housing Moves, HomefinderUK4).

h) Cases with exceptional need that are not covered under this scheme. For example, where child or public protection issues require rehousing, or for domestic abuse cases where it is not possible for the applicant to remain in their home.

i) Applicants who the Director of Housing and, at the very least, one other statutory agency (e.g. the Police, NHS), has agreed are unable to access suitable accommodation other than that given by the Council or a housing association.

j) To ensure compliance with the judgment of the Court of Appeal in *R (Ward & Ors) v Hillingdon LBC; R(Gullu) v Hillingdon LBC, Equality and Human Rights Commission intervening* [2019] P.T.S.R. 1738.

This paragraph applies to an applicant whose household is either Irish Traveller/Romany Gypsy or non-UK national with refugee status in the UK and would qualify under the scheme for inclusion on the housing register, or once

included be entitled to additional preference, but for their inability to demonstrate at least six years continuous residence in Havering"

(Emphasis added to indicate the key provisions in issue)

36. The Scheme operates by placing applicants within "*bands*". At p.26 of the Scheme, it explains that:

"Havering Council's housing bands system is used to help determine how applications for housing are fairly prioritised.

It comprises five levels (bands) of priority and has been framed to help ensure that 'reasonable preference' is given to applicant households in order of their assessed housing need"

37. Each of the parties relied on particular bands in the Scheme as supporting their competing contentions as to whether or not the Claimant fell within one or more of the relevant exceptions to the residence requirement. The key provisions relied upon were as follows:

Band 1 – Urgent Need People who have an urgent need to move	
Domestic Abuse (Reasonable preference category S.166A(3)(a)(d))	This applies to existing secure tenants of the Council, or spouses or civil partners of existing secure tenants (including where living together as husband and wife/civil partners), where they need to permanently leave or have had to already leave their current accommodation because they or a household member have been experiencing domestic abuse and it is unreasonable to expect them to remain at/return to the Council accommodation.
[….]	
Band 2b	
Under-occupation (Reasonable preference category S.166A(3)(e))	The applicant is a Havering assured or secure tenant who wishes to downsize. ° Please note that this excludes tenants living in privately leased accommodation.
[…..]	
Band 3 **People who have a need to move but do not qualify for Community contribution priority.**	
Homeless	The Council has accepted a duty to

households owed a full homeless duty under section 193(2) or 195(2). (Reasonable Preference categories s166A(3)(a)(b))	accommodate within the meaning of the Housing Act 1996, Part 7.
Homeless Households (Reasonable Preference category s166A(3)(a))	People who are homeless or threatened with homelessness (within the meaning of Part 7, as amended by the Homelessness Reduction Act 2017).
[….]	
Moderate medical grounds (Reasonable Preference category s166A(3)(d))	The applicant's housing is unsuitable for medical reasons or due to their disability, but they are not housebound or their life is not at risk due to their current housing. However, the housing conditions directly contribute to causing serious ill-health.

(Emphasis as per original)

38. The Scheme gives priority to those who "*make a community contribution*". Paragraph 2.5 of the Scheme explains:

> "The Council believes that people who make a community contribution should have greater priority for accommodation allocated by the Council than those who do not, and operates a Community Contribution priority scheme. This scheme gives successful applicant's increased priority for housing.
> Examples of the community contribution are:
> • working
> • membership of the British armed forces
> • volunteering
> Full details are contained in appendix 1.
> An applicant can apply for a Community Contribution priority at any time they apply to join the Housing Register, or at any time once they have been placed in the band 3 on the Housing Register."

39. Paragraph 3.2.5 of the Scheme provides:

> "The Housing Moves scheme enables tenants of London boroughs or housing associations fleeing domestic abuse to move to a home in another borough.
>
> The Council's Housing register qualification rules do not allow someone to go on the waiting list if they have not lived in Havering for at least six years. However, an exception is made for applicants who apply through Housing Moves.
>
> The HomeFinderUK National Mobility Scheme enables households on the Havering Housing Register to access social housing in other parts of the UK."

40. At the hearing, the Claimant provided a "Fact Sheet" that the Defendant had produced when the Scheme was introduced which summarised the changes to the Scheme from its

previous iteration. Unsurprisingly the Defendant did not object to the Claimant's reliance on the Fact Sheet, albeit that it was a document that Mr Lane had not seen before the hearing. The only difference in the residence requirements highlighted between the Scheme and the previous policy was not material to this challenge. However, the Claimant argued that the summary of the new priority bands was of use in interpreting the Scheme, in particular the summary given for Band 3 which stated this covered "*Households with an identified housing need only*".

(E) GROUND ONE: DOES THE CLAIMANT COME WITHIN ANY OF THE EXCEPTIONS TO THE RESIDENCE REQUIREMENTS IN THE SCHEME?

The issues under Ground One

41. The parties agreed that Ground One gave rise to the following issues:

> Issue 1. Does the Claimant qualify for inclusion on the Defendant's housing register because she is under-occupying her current social housing tenancy, or does the relevant exception apply only to those under-occupying social housing in Havering?
>
> Issue 2. Does the Claimant qualify for inclusion on the Defendant's housing register because she needs to move on medical or welfare grounds, or does the relevant exception apply only to those with a need to move on medical or welfare grounds within Havering?
>
> Issue 3. Does the Claimant qualify for inclusion on the Defendant's housing register because she is homeless, or does the relevant exception apply only to those who are homeless in Havering?
>
> Issue 4. Does the Claimant qualify for inclusion on the Defendant's housing register because she is in exceptional need, or does the relevant exception apply only to those who are in exceptional need in Havering?

The approach to interpreting the Scheme

42. There was no disagreement between the parties as to the correct legal approach to the interpretation of the Scheme. The approach to such a question was summarised by Males LJ in *R (Flores) v Southwark LBC* [2020] EWCA Civ 1697; [2021] H.L.R. 16 at [39]-[40]:

> "39. The meaning of a housing allocation scheme, like that of any other comparable policy document, is for the court to determine (cf. in a planning context, the well-known passage from Lord Reed's judgment in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13, [2012] PTSR 983 at [18] and [19]), but the court's approach to its interpretation should be in accordance with the guidance given by this court in *R (Ariemuguvbe) v Islington LBC* [2009] EWCA Civ 1308, [2010] HLR 14. Sullivan LJ said:
>
> > "24. … since this is a local authority housing allocation scheme and not an enactment, it has to be read in a practical, common sense, and not in a legalistic way."
>
> 40. Lord Neuberger MR added: "31. … While any document prepared for public consumption should be as clear, short and simple as possible, it is particularly true of housing allocation schemes required to be prepared under [what was then] Section 167, and published under Section 168, of the Housing Act 1996. They are intended to be read by, and administered for, the benefit of people who require public housing and their families, and they are intended to be applied in multifarious different circumstances in which great difficulties can often arise. … It is plainly right for the court to apply a common sense and a 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. That this approach is appropriate is reinforced by the wide discretion given to local housing authorities …"

The parties' overarching Submissions

43. The Claimant argues that on a plain reading of the Scheme the Claimant comes within exception (b) and two of the exceptions in (c). If she is wrong about that, then she would come within exception (d). The Claimant says that it would be wrong to read into those exceptions that an applicant must be resident in Havering. If the Scheme had intended that requirement, then it would have stated so explicitly.

44. The Defendant argues that the Claimant does not come within the exception (b) or the two exceptions in (c). Moreover, she cannot come within exception (d) as the facts of the Claimant's case brings her within paragraph 3.2.5 of the Scheme (cited above at paragraph 39). The Defendant argues that that conclusion is consistent with paragraphs 7 and 12 of the statutory guidance "*Providing social housing for local people*" (cited above at paragraph 29). Critically (in the Defendant's view) the exceptions to the residence requirements are to be interpreted by reference to the specific categories in the Priority Bands. Every exception to the residence requirements must equate to one of the specific categories in the Priority Bands, and Priority Band 3 is not to be read as containing applicants who are on the register, but whose circumstances are such that would not fall within any of the specific categories in the Priority Bands.

45. Insofar as those overarching submissions bite on the specific issues, I address them below.

Issue 1

46. The parties are agreed that the Claimant is under-occupying her current social housing tenancy and, on that basis, could come within the scope of exception (b). That is the extent of the parties' agreement.

47. The Defendant argues that this exception only applies to those who are resident in Havering and thus, although the Claimant would otherwise come within the exception, she does not as she is not resident in Havering.

48. The Claimant rejects that argument on the basis that it requires reading into exception (b) language that is not otherwise there. The Claimant says that such an implied reading is inconsistent with the rest of the Scheme and draws particular attention to the phrasing of Band 2b which explicitly refers to applicants "*who are Havering assured or secured assurance tenants*" (see paragraph 37 above). The Claimant argues that that provision demonstrates that where the Scheme specifically wishes to restrict a category to someone who is resident in Havering it is explicitly stated.

49. The Defendant's riposte to that argument is that exception (b) is to be read consistently with Band 2b which expressly refers to applicants who are "*Havering assured or secure tenants*" who wish to downsize. The Defendant argues that the specific categories in the Priority Bands set out in the Scheme provide an exhaustive list and as the Claimant does not come within Band 2b then the Claimant's interpretation is not sustainable. The Defendant submits that that Band 3 is not to be read as a residual category for all applicants on the register. The Claimant counters that argument by asserting that the Defendant's contention is clearly wrong: exceptions (e), (g), (h), (i) and (j) do not come within any of the specific categories in the Priority Bands. Consequently, the Claimant argues, Band 3 should be interpreted as a residual category, containing not only the specific cases that are listed within Band 3 but also all other cases households with an "*identified housing need only*". In any event, the Claimant comes within exception (g)

which is explained at paragraph 3.2.5 of the Scheme.

50. In my judgment, a plain reading of the Scheme leads to the conclusion that the Claimant comes within this exception.

51. *First*, a reading which requires words to be read into exception (b) is inconsistent with a practical and common sense interpretation of the Scheme. Requiring words to be implied into exception (b) is a legalistic interpretation of the Scheme which is not consistent with the approach set out in *Flores* and *Ariemuguvbe,* cited above. If exception (b) had been meant to be read in the way contended for by the Defendant, then it would have been explicitly stated, as is the case with the reference in Band 2b of the Scheme to "*a Havering assured or secure tenant who wishes to downsize*".

52. *Secondly*, and relatedly, I do not accept the Defendant's argument that the reference in Priority Band 2b of the Scheme to "*a Havering assured or secure tenant who wishes to downsize*" compels exception (b) to be interpreted as only applying to applicants who are resident in Havering because otherwise there would be no other specific category in the Priority Bands that an applicant falling within exception (b) would otherwise be placed. The Defendant's argument that the interpretation of the residence exceptions is to be predicated on the basis that each exception must relate to one of the specified categories in the Priority Bands falls down when exceptions (e), (g), (h), (i) and (j) are considered. Those exceptions do not fall within any of the specific categories within the various Priority Bands. Applicants within those exceptions can only be placed within Band 3 if that is interpreted as a residual category, containing not only the specific cases that are listed within Band 3, but also all other cases of "*people who have a need to move but do not qualify for Community Contribution priority*", the overarching description of Band 3. The interpretation of Band 3 as a residual category is also consistent with the Defendant's Fact Sheet that explained the changes to the Scheme, and which glossed Priority Band 3 as referring to households with an "*identified housing need only*".

53. *Thirdly*, I do not accept the Defendant's contention that the Claimant's interpretation is inconsistent with the statutory guidance "*Providing social housing for local people*". It is not in issue that the Defendant (and other local authorities) are entitled "*to prioritise applicants who can demonstrate a close association with their local area*". The question is whether exception (b) of the Scheme is to be interpreted as limited only to those already resident in Havering (but not meeting the six years' residence requirement). If the Scheme had intended to be read in that way, then, as I have already concluded, such a qualification would have been explicitly stated. I note in any event that, on the evidence before the Court, the Claimant can demonstrate a close association with Havering because her sister has lived there for over 14 years.

54. *Fourthly and finally*, the fact that the Claimant could come within exception (g) if she applied to the Housing Moves Scheme does not mean that she does not come within this exception (or indeed other exceptions).

Issue 2

55. The Claimant argued that the evidence clearly demonstrated that she came within the statutory "*reasonable preference*" groups because she needed to move on medical or welfare grounds. That was the unequivocal conclusion of Dr Walsh. The Defendant's argument that the Claimant could not come within this exception as she did not live within Havering was not a requirement that was explicitly stated in the Scheme and to imply otherwise was "*wholly illogical*". The Claimant submitted that the fact the

exception applied (on her analysis) to those outside Borough was consistent with the statutory guidance in relation to "*Improving access to social housing for victims of domestic abuse*" (set out above at paragraph 30).

56. In the course of the hearing, the Defendant accepted that the Defendant had no basis to challenge the evidence before the Court that the Claimant needs to move on medical or welfare grounds. The Defendant argued however that this exception was to be read, as with exception (b), as being applicable to only to those resident within Havering at the time of application to the register. Once again, the Defendant relied on the argument that the exceptions were to be interpreted consistently with a reading of the priority banding which did not permit Band 3 to be read as a residual category.

57. On this issue, I accept the Claimant's arguments.

58. *First*, there is no dispute that, prima facie, the Claimant needs to move on medical or welfare grounds. That is the expert opinion of Dr Walsh.

59. *Secondly*, as already set out, a reading that requires words to be read into this exception is inconsistent with a common sense reading of the Scheme as a whole.

60. *Thirdly*, there is a specific provision in the Priority Bands for applicants who fall within this exception. Priority Band 3 has a specific category of those who fall within reasonable preference category in s.166A(3)(d) of the 1996 Act where the "*applicant's housing in unsuitable for medical reasons or due to their disability, but they are not housebound or their life is not at risk due to their current housing. However, the housing conditions directly contribute to causing serious-ill health*" (see paragraph 36 above).

61. *Fourthly,* this interpretation is consistent with the statutory guidance "*Improving access to social housing for victims of domestic abuse*", cited above at paragraph 30.

Issue 3

62. The Claimant argued that she came within the exception for those who are homeless within the meaning of Part 7 of the 1996 Act as an individual who is "*homeless*" as she does not have accommodation that is "*reasonable for [her] to occupy*".

63. The Defendant accepts that the evidence before the Court indicates that the Claimant is homeless within the meaning of Part 7 of the 1996 Act. Once again however the Defendant argues that the exception is confined to individuals who are homeless within the meaning of Part 7 of the 1996 Act and living in Havering.

64. In my judgment the Claimant's interpretation of this exception is to be preferred.

65. *First*, it is common ground that the Claimant is homeless within the meaning of Part 7 of the 1996 Act.

66. *Secondly,* the Claimant's reading is consistent with Band 3 of the Scheme which includes not only those homeless households where the Council has accepted a duty to accommodate but those who are homeless within the meaning of Part 7 of the 1996 Act. The Scheme encompasses those who are homeless within the meaning of Part 7 of the 1996 Act but who do not meet the six-year residence requirement.

67. *Thirdly*, for the reason I have given already in relation to the first two issues, the plain

terms of the exception contain no qualification that the applicant must reside in Havering in accommodation that is not reasonable for them to occupy. A common sense reading does not require words to be read in to the Scheme as contended for by the Defendant.

Issue 4

68. This issue only arises if the Claimant does not come within any of the exceptions discussed in Issues 1, 2 and 3. However, I have concluded that, for the reasons I have give above, the Claimant does, on the evidence before the Court, come within exceptions (b) and (c). This issue does not therefore arise for determination.

(G) DISPOSAL AND RELIEF

69. The Claimant's claim succeeds on her first ground of challenge. That being so, it is agreed that it is unnecessary for me to determine the alternate bases upon which the claim had been argued.

70. In her claim form, the Claimant sought declaratory relief in the form of a declaration that she falls within exception 2.3(ii)(b) of the Scheme and/or exception 2.3(ii)(c) of the Scheme.

71. At the hearing, Mr Lane put down a marker that if I was to allow the claim on Ground One, he would wish to argue that it would nonetheless be open to the Defendant to assess any further application on the basis of the Defendant's investigation of the Claimant's application and circumstances guided by the terms of my judgment.

72. When this judgment was circulated in draft, I invited the parties to agree the terms of a declaration that reflected my judgment. The parties subsequently agreed the terms of a declaration which I approved.

73. The declaration is in the following terms:

> *On the information before the Court:*
>
> *1. The Claimant comes within the following exceptions to the Defendant's requirement that successful applicants to its Housing Allocation Scheme dated 2021 are required to have lived in the borough of Havering continuously for at least six years (paragraph 2.3(ii)):*
>
> *"(b) People who are under-occupying their current social housing tenancy"*
>
> *"(c) People who fall within the reasonable preference groups:*
> *...*
> *- People who are homeless (within the meaning of Part 7)"*
>
> *"(c)People who fall within the reasonable preference groups:*
> *...*
> *- People who need to move on medical or welfare grounds (including any grounds relating to a disability)"*
>
> *2. The Defendant's decision dated 24 August 2023 is accordingly wrong in law.*