



Neutral Citation Number: [2024] EWHC 654 (Admin)

Case No: AC-2023-LON-002587

**IN THE HIGH COURT OF JUSTICE**  
**KING’S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25 March 2024

**Before :**

**Dexter Dias KC**  
**(sitting as a Deputy High Court Judge)**

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**Between :**

**THE KING**

**Claimant**

**on the application of**

**SABHYA BANO**

**- and -**

**LONDON BOROUGH OF WALTHAM FOREST**

**Defendant**

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**Adrian Marshall Williams** (instructed by **Edwards Duthie Shamash, Solicitors**) for the  
**Claimant**

**Michael Mullin** (instructed by **Legal Services, London Borough of Waltham Forest**) for the  
**Defendant**

Hearing date: 16 January 2024  
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**Approved Judgment**

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

The judgment was circulated to the parties in draft on 26 February 2024

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**Dexter Dias KC :**

*(Sitting as a Deputy High Court Judge)*

1. This is the judgment of the court.
2. To assist the parties and the public follow the court’s line of reasoning, the text is divided into eight sections, as set out in the table below.
3. I should add that the court has redacted the claimant’s precise accommodation address. It adds nothing to the legal analysis and I judge that her Article 8 right to respect for private and family life under the European Convention on Human Rights outweighs any Article 10 freedom of expression considerations.

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**§I. INTRODUCTION**

4. This judgment follows a rolled-up hearing before me in an application for judicial review.
5. The claimant is Sabhya Bano, a mother of two children, who is represented by Mr Marshall Williams of counsel. The defendant is the London Borough of Waltham Forest, the local housing authority (“LHA”) that accepted a duty to secure accommodation for Ms Bano under the Housing Act 1996 (“HA 1996” or “the Act”). The defendant is represented by Mr Mullin of counsel. The court is grateful to counsel for their focused and helpful submissions.
6. Ms Bano is a single parent whose two children are now adults, but were not when the dispute in this case began. The prime issue between the parties is whether the defendant continues to owe the claimant a duty to secure her accommodation under s.193 of the Act. In June 2020, the defendant made Ms Bano an offer of accommodation. She was living in east London; the defendant offered her accommodation in Derby, in the east Midlands. She refused the offer, saying that the accommodation was unsuitable. Her case rests on the construction of applicable law under the HA 1996. She says two things. First, that the circumstances to end the duty the defendant owed her were not met as a matter of law. Second, the defendant did

not, in any event as a question of fact, make a decision that the “main duty” owed to her under s.193(2) of the Act had ended.

7. The defendant’s case is that both arguments are flawed. The claimant was made a suitable Private Rented Sector Offer (“PRSO”) that she refused. In its skeleton argument dated 8 January 2023 (one week before the hearing), the defendant submitted that permission to apply for judicial review should not be granted or, if it is, the claim should be dismissed for three principal reasons:
  - (1) The claim has been brought out of time and there is no good reason to extend time;
  - (2) the court should exercise its discretion to refuse to grant any relief because of the undue delay since granting the relief sought would offend the principle of finality and be detrimental to good administration;
  - (3) the claimant had alternative remedies by way of statutory review and appeal, but chose not to exercise those rights.
8. Furthermore, the defendant cautions against granting the application for judicial review as it would “open the gate” to a multitude of comparable claims.

## **§II. IMPUGNED DECISION & GROUNDS**

9. The parties are in dispute about when the impugned decision was made.
10. The claimant’s case is that the impugned decision is the defendant’s refusal on 30 May 2023 to accept that a duty under s.193(2) HA 1996 continues. Hand-in-hand with this is the defendant’s refusal to treat an email from the claimant’s solicitors on 15 May 2023 as a request for a review of the defendant’s decision that the duty had ended, along with the defendant’s refusal of such review request.
11. The defendant does not accept that this is the relevant decision from which time to make a claim in judicial review should run. It says that the relevant decision was made in 2020 (either June or at the very latest October 2020) and therefore this claim has been brought years out of time. In judicial review claims there is a strict time limit. Claims must be brought “promptly” or in any event within 3 months when from the ground for making the claim arose (Civil Procedure Rules 54.5(1)). Therefore, the claim is said to be time-barred.
12. The claim is brought on a single ground. It is that the defendant erred in law in failing to recognise that it continues to owe a duty to the claimant under s.193(2) HA 1996 to secure that accommodation is available for her occupation. This is thus a “hard-edged” question: either the defendant construed and applied the law correctly or it did not. This is not a question about the reasonableness of conduct but whether it was in accordance with the law.

### **§III. LEGAL FRAMEWORK**

13. The governing principles of law can be set down briefly. I develop them in the body of the court's analysis within the Discussion (§V.) that follows. The main duty under s.193 is to secure that accommodation is available for the applicant.

“193 Duty to persons with priority need who are not homeless intentionally.

(1) This section applies where—

(a) the local housing authority—

(i) are satisfied that an applicant is homeless and eligible for assistance, and

(ii) are not satisfied that the applicant became homeless intentionally,

(b) the authority are also satisfied that the applicant has a priority need, and

(c) the authority's duty to the applicant under section 189B(2) has come to an end.

...

(2) 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.”

14. No one disputes but that the defendant correctly determined that it owed Ms Bano the s.193(2) main duty. This duty will only end where one of the circumstances set out in s.193 apply. The relevant circumstances for the purposes of this case are those in respect of PRSOs. Section 193 further provides:

“(7AA) The authority shall also cease to be subject to the duty under this section if the applicant, having been informed in writing of the matters mentioned in subsection (7AB)—

(a) accepts a private rented sector offer, or

(b) refuses such an offer.

(7AB) The matters are—

(a) the possible consequence of refusal or acceptance of the offer, and

(b) that the applicant has the right to request a review of the suitability of the accommodation, and

(c) in a case which is not a restricted case, the effect under section

195A of a further application to a local housing authority within two years of acceptance of the offer.

(7AC) For the purposes of this section an offer is a private rented sector offer if—

- (a) it is an offer of an assured shorthold tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation,
- (b) it is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's duty under this section to an end, and
- (c) the tenancy being offered is a fixed term tenancy (within the meaning of Part 1 of the Housing Act 1988) for a period of at least 12 months.”

15. These provisions were the result of amendment by the Localism Act 2011, which came into effect from 9 December 2012 and so apply to this case.
16. Section 195A provides insofar as it is material:

**“195A Re-application after private rented sector offer**

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

- (a) is satisfied that the applicant is homeless and eligible for assistance, and
- (b) is not satisfied that the applicant became homeless intentionally, the duty under section 193(2) applies regardless of whether the applicant has a priority need.

(2) For the purpose of subsection (1), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) has been given is to be treated as homeless from the date on which that notice expires.”

17. As mentioned, the defendant submits that it was open to the claimant to seek a statutory review of the accommodation offer under s.202(1). Where there is a right to request a review, there is also a right to appeal to the county court on a point of law under s.204 against the review decision or the original decision if the review decision is not given within the time limit. In *Warsame v Hounslow LBC* (2000) WLR 696 (“*Warsame*”), the Court of Appeal held that this right to review extends to “a decision that a duty once owed is no longer owed” (705). *Warsame* turned on another ending provision under s.193 - s.193(7). This provides a different route to how the duty shall cease to be owed by the LHA:

“(7) The local housing authority shall also cease to be subject to the duty under this section if the applicant, having been informed of the possible consequence of refusal [or

acceptance] and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part 6.

(7A) An offer of accommodation under Part 6 is a final offer for the purposes of subsection (7) if it is made in writing and states that it is a final offer for the purposes of subsection (7).”

18. In *Warsame*, the applicants, two sisters aged 24 and 25, applied to the LHA for accommodation under Part VI and Part VII (Part VI very broadly is about allocation of local authority housing). Having promptly satisfied itself that the applicants were eligible for housing assistance and priority, since the lead applicant had a very small dependent child, the applicants were offered temporary accommodation under Part VII. They were at a later point offered a secure tenancy elsewhere under Part VI. The offer was dated 27 January (1998). On 2 February, after having inspected the property, the applicants wrote to the LHA refusing the offer. The LHA then wrote to the applicants, informing the applicants of, as the Court of Appeal put it, its “decision by a letter dated 5 February 1998” (702G). As the court said, per Chadwick LJ at 702B-C:

“The council was intending to treat the refusal of accommodation offered under Part VI as a ground for bringing the duty imposed by section 193(2) to an end under the provisions of section 193(7). If that decision were to stand, then the authority would no longer be under any duty, under section 193(2), to secure that accommodation was available for occupation by the applicants.”

19. Thus it was clear that the LHA sent a “decision” letter to the applicants *after* their offer refusal. Having received the 5 February decision letter, the applicants requested a statutory review of the LHA’s decision that its duty to house them had ceased. When the review upheld the original decision that no duty was owed, the applicants appealed to the county court. The appeal was dismissed for “lack of jurisdiction”. The Court of Appeal allowed the appeal and remitted the matter to the county court for hearing.
20. What is spelled out in *Warsame* is that there is a s.202(1) right to request a statutory review of “decisions” by an LHA where the LHA decides whether it owes or does not owe a duty under Part VII. The judgment in *Warsame* (701A) sets out the review provision at s.202(1):

“(1) An applicant has a right to request a review of . . . (b) **any decision of a local housing authority as to what duty (if any) is owed to him under section 190 to 193 and 195 to 197 (duties to persons found to be homeless or threatened with homelessness)**”

(emphasis provided)

21. The Court of Appeal continued in *Warsame* at 701B-C that if there is a request for the review of a “decision” about whether the main duty is owed, “the authority shall

review their decision: see section 202(4).” Section 203 provides for the procedure on review, and if the review decision is to “confirm the original decision” on the ending of the main duty against the interests of the applicant, there must be notification and reasons, along with information about the right of appeal to the county court on a point of law. The Court of Appeal concludes at 701F:

“It can be seen, therefore, that in relation to decisions which fall within section 202(1), Parliament has provided a two-stage review process.”

22. The conclusion of the Court of Appeal bears setting out in a little detail. First, how the court framed the question (704G):

“The first question, as it seems to me, is whether a decision by the local housing authority that it no longer owes a duty—because some event has occurred which has caused an existing duty to cease—is a decision as to what duty, if any, is owed. If so, then the second question is whether a decision as to whether those events have occurred, is also within the phrase ‘any decision as to what duty . . . is owed.’”

23. Note how the court poses the question, focusing on “a decision by the local housing authority” that it “no longer owes a duty” “because some event has occurred which has caused an existing duty to cease”. It seems that the LHA decision post-dates the “event”. The relevant occurring event would be the “election” of the housing applicant, whether to accept or refuse the PRSO. It is not that the event will (or may occur), but “has occurred”. The court proceeded to answer the question it posed (704H-705A):

“The answer to the first question is, to my mind, plain enough on the language that is used. It is plain that section 202(1)(b) is directed, at least, to the question whether a duty arises. The phrase “any decision as to what duty (if any) is owed” reflects the words in section 184(1)(6). That section requires the local authority to make enquiries to satisfy themselves “whether any duty, and if so what duty, is owed” under the provisions of the Act.

But, although the paragraph plainly applies in that case, the language is apt, also, to apply to a decision that a duty, once owed, is owed no longer.”

24. Once more, the Court of Appeal explicitly mentions “a decision” by the LHA that the duty is no longer owed. The explanation for this conclusion is then set out (705A-B):

“A decision that a duty once owed is no longer owed is, to my mind, plainly a decision as to what duty, if any, is owed at the time when the decision is taken. I can see nothing in the language which restricts decisions within paragraph (b) to decisions whether a duty arises and excludes decisions whether a duty which has arisen has ceased. Accordingly, it seems to

me that the second question arises: namely, whether a decision as to whether certain events have occurred or certain conditions are satisfied is also within the phrase "any decision of a local housing authority as to what . . . duty is owed."

25. It is clear, therefore, that in *Warsame* the Court of Appeal proceeded at every point on the basis that the LHA makes a "decision" that the main duty has ceased and that decision by the LHA is susceptible to the right to statutory review and appeal on a point of law (and indeed further challenge to this court). The court held (705D-E):

"If the phrase "any decision" within section 202(1)(b) includes decisions as to factual situations which must exist for any duty or any particular duty to have arisen, I can see no reason why that phrase should not also apply to decisions as to the existence of events or factual situations which, if they have occurred, or do exist, will have the effect that the duty ceases to exist. The words are plainly wide enough to cover that case."

26. Once more, the Court of Appeal emphasises decisions about factual situations (such as relevant elections following offers) "if they have occurred, or do exist, will have the effect that the duty ceases". Therefore, *Warsame* provides powerful support for the proposition that the LHA must make a decision whether the main duty under s.193(2) has ceased, rather than it being something "automatic", and that decision is based on events or "factual situations" such as acceptance or refusal of offers that "have occurred".

27. The structure of the pathway to the duty ceasing to be owed under s.193(7) is materially the same as that under s.193(7AA) and (7AB). A comparison of the provisions makes this clear. Both use identical language ("shall also cease to be subject to the duty under this section"); both require notification of consequences of refusal/acceptance; both require notification of the right to review of suitability. A statutory provision must be interpreted in the context of the section, Part and statute as a whole. It makes no sense for there to be a post-election decision under s.193(7) but a species of "automatic" ending under s.193(7AA).

28. Another way to examine this question arises from *Ravichandran v London Borough of Lewisham* [2010] EWCA 10 755 ("*Ravichandran*"). There the Court of Appeal considered at [31] circumstances where an applicant had requested a review of suitability and, after it was unsuccessful, review of the LHA decision that the s.193 duty had ended. At [34], the court held that the authority had not come to a conclusion about whether its duty was discharged. That decision could be reviewed. The court set out a "Summary of principles" that include at [31(6)]:

"The applicant is also entitled to a review of the decision of the authority as to the discharge of its duty under section 193(7) by virtue of section 202(1)(b). If the review takes place before refusal of the final offer of accommodation, it will strictly be a review of the intention that the offer will, on refusal, result in cessation of the authority's duty. If the review takes place after the refusal of accommodation, it will be a review of the authority's confirmation that its duty has ceased by virtue of



satisfaction of the statutory preconditions for such cessation.  
The applicant should be informed of the right to such review.”

29. The Court of Appeal drew a distinction between “the intention” that on refusal the duty will cease and a review of the LHA’s “confirmation” that the duty it owes has ceased due to the “statutory preconditions for such cessation” being satisfied. At [32], the court said:

“The problem in the present case is that until January 2009 there never was an invitation for a review of the ‘reasonable to accept’ aspect or of the prospective discharge of duty by the making of the offer or of the satisfaction of the conditions for discharge under section 193(7) and no such review was in fact carried out until then. The only review was of suitability under section 202(1)(f ) (as amended) and not, as indicated in Warsame’s case, under section 202(1)(b) both as to the discharge of Lewisham’s duty and the reasonable to accept issue.”

30. Thus, a distinction is drawn between a prospective discharge duty by the making of an offer as against the decision by the LHA that there has been “satisfaction of the conditions of discharge”. Both “decisions” are reviewable. But this is not to say that a prospective discharge, which expresses a future intention should events occur in future is sufficient to bring the duty to an end. This is why the distinction is drawn. Once the LHA has considered the election of the applicant following offer, it can then judge whether the “conditions for discharge” have been satisfied.
31. I turn to the final legal issue. Given the availability of these review and appeal routes, the defendant places emphasis on the well-known maxim that judicial review is “a remedy of last sort” (*R (Archer) v The Commissioners for Her Majesty’s Revenue and Customs* [2019] EWCA Civ 1021 at [68] (“*Archer*”). The judgment in *Archer* cites the judgment of Sales LJ in *R (Glencore Energy UK Ltd) v The Commissioners for Her Majesty’s Revenue and Customs* [2017] EWCA Civ 1716 (“*Glencore*”):

“55. In my view, the principle is based on the fact that judicial review in the High Court is ordinarily a remedy of last resort, to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective. However, since it is a matter of discretion for the court, where it is clear that a public authority is acting in defiance of the rule of law the High Court will be prepared to exercise its jurisdiction then and there without waiting for some other remedial process to take its course. Also, in considering what should be taken to qualify as a suitable alternative remedy, the court should have regard to the provision which Parliament has made to cater for the usual sort of case in terms of the procedures and remedies which have been established to deal with it. If Parliament has made it clear by its legislation that a particular sort of procedure or remedy is in its view appropriate to deal with a standard case, the court should be slow to conclude in its discretion that the public interest is so pressing that it ought to intervene to

exercise its judicial review function along with or instead of that statutory procedure. But of course it is possible that instances of unlawfulness will arise which are not of that standard description, in which case the availability of such a statutory procedure will be less significant as a factor.

56. Treating judicial review in ordinary circumstances as a remedy of last resort fulfils a number of objectives. It ensures the courts give priority to statutory procedures as laid down by Parliament, respecting Parliament's judgment about what procedures are appropriate for particular contexts. It avoids expensive duplication of the effort which may be required if two sets of procedures are followed in relation to the same underlying subject matter. It minimises the potential for judicial review to be used to disrupt the smooth operation of statutory procedures which may be adequate to meet the justice of the case. It promotes proportionate allocation of judicial resources for dispute resolution and saves the High Court from undue pressure of work so that it remains available to provide speedy relief in other judicial review cases in fulfilment of its role as protector of the rule of law, where its intervention really is required."

#### **§IV. FACTUAL BACKGROUND & PROCEDURAL HISTORY**

32. The important background facts are largely undisputed and set out with clarity in the pleaded statements of case.
33. The claimant approached the defendant for housing assistance on 13 December 2016 and on 5 January 2017 made an application for assistance as a homeless person under Part VII of the HA 1996. On 23 February 2017, the defendant notified her that it had accepted the full duty to secure accommodation for her under s.193. On 12 May 2017, the defendant arranged for temporary accommodation to be provided at XXX Road, London E16.
34. On 11 June 2020, the defendant made an offer of accommodation (the PRSO). The "offer letter" is entitled "Offer of Accommodation to end Main Duty under Section 193(2) of the Housing Act 1996". The letter states that it is a decision to make a private rented sector offer. The accommodation offered is in Derby. Both the claimant's children were in education in the local east London area at the time. The offer letter provided details about the Derby accommodation. The defendant's housing officer liaised with the claimant's daughter who was then aged 15. The child sent a WhatsApp message on 14 June 2020 stating, "As a family we cannot move to Derby as this has been our decision from day one". The claimant consequently did not travel to the Derby accommodation on 15 June 2020. The claimant accepts that the accommodation was "refused".
35. The claimant also accepts that she did not seek a review of the suitability of the accommodation within the 21-day statutory time limit. No further letter was sent by

the defendant stating that a decision had been made that the duty had ended. A letter was sent on 19 August 2020 entitled, “Cancellation of your temporary accommodation”. It advised that the claimant was now being asked to leave the current accommodation as Covid restrictions had been lifted.

36. The next month, by a letter dated 28 September 2020, the claimant’s then solicitors asked the defendant to accept a review of the suitability of the accommodation out of time, or alternatively to accept that the claimant’s daughter’s WhatsApp message on 14 June 2020 (wrongly referred to as being sent on the 15<sup>th</sup>, but nothing turns on this) amounted to a request for a review of the suitability of the accommodation. The defendant replied by a letter dated 7 October 2020 refusing to carry out the requested review. The claimant and her family remained in the temporary accommodation. Possession proceedings were commenced after 11 November 2022. The judge in the county court ordered amended Particulars of Claim to be filed at the first hearing on 20 January 2023. At the second hearing on 4 May 2023, the claimant was assisted by the duty solicitor. This led to her instructing her current solicitors and being advised in relation to the homelessness duty.
37. The claimant’s new solicitors wrote to the defendant on 15 May 2023 setting out why the defendant’s s.193 main duty could not have ended because the defendant had failed to comply with the notification requirements under s.195A by reference to *Norton v Haringey LBC* [2022] EWCA Civ 1340 (“*Norton*”). I will explain more about this shortly.
38. The solicitors sought confirmation that the defendant accepted that the main housing duty continued. By a letter dated 30 May 2023, the defendant responded treating that as a request for a review out of time. The request was refused. The defendant’s letter did not dispute that the defendant had failed to comply with the notification requirement. It suggested these provisions did not apply because events had occurred before the *Norton* decision in 2022. The claimant’s solicitors sent a letter before action on 13 June 2023 challenging the defendant’s conduct, arguing both a failure to comply with the statutory requirements when discharging the homelessness duty and a failure to exercise the homelessness duty when put on notice.
39. The defendant responded by letter on 29 June 2023. It suggested that a further homelessness application under Part VII of the Housing Act 1996 was the appropriate remedy. It did not dispute that the notification requirements were not complied with. The response did not specifically address whether the duty continued. The claimant’s solicitors pursued a response by emails on 30 June and 5 July 2023. In its response two days later on 7 July 2023, the defendant stated, “we consider that the duty towards your client has been discharged”.
40. The claimant sent a letter before action on 8 August 2023. Then following what amounted to a request for more time by the defendant, the claimant extended time to 22 August 2023. However, the defendant failed to respond despite the extension, and the claimant issued proceedings on 5 September 2023. The claim form specified that the impugned decision as the 30 May 2023 refusal.

## §V. DISCUSSION

41. This was a rolled-up hearing. I deal first with the question of permission.
42. I judge that the claim plainly meets the standard arguability test and I grant permission. The claimant has arguable grounds with a realistic prospect of success (*Sharma v Brown-Antoine* [2007] 1 WLR 780 at [14(4)]; CPR 54.4.2 and Judicial Review Guide 2023 at §9.1.3). As explained in *Maharaj v Petroleum Company of Trinidad and Tobago* [2019] UKPC 21, the threshold for the grant of leave to apply for judicial review is “low” (at [3], per Lord Sales). I turn to the substantive merits.
43. Part VII of the HA 1996 (as amended) is focused on people who are homeless or who are threatened with homelessness (*Warsame* 698G). It imposes statutory duties on local housing authorities in England to provide accommodation for adults who are homeless and their dependents. A person is “homeless” if she or he has no accommodation available with a right to occupy, which they can physically enter, and which it is reasonable for them to continue to occupy (s.175). The categories of “priority need” include a person with dependent children (s.189). Section 193 imposes the “most burdensome of the duties under Part VII”, should the LHA be satisfied that the applicant is homeless, eligible for assistance and has a priority need (*Warsame* 699D).
44. The duty under s.193(2) may arise when the authority’s duty to “help” under s.189B(2) has come to an end. If so, should an authority be satisfied that an applicant is homeless and eligible for assistance and is not satisfied that s/he became homeless intentionally while having has a priority need, then (subject to certain exceptions) the authority must secure that accommodation is available for the applicant under s.193(2). The s.193(2) housing duty - the “main duty”. That duty continues until it ceases to be owed under one of the provisions of s.193.
45. Therefore, the scheme of the Act is that once the LHA accepts the main duty, that duty only ceases to be owed or comes to an “end” in certain prescribed ways. Those ending routes or pathways are set out in statute. There was forensic debate during the hearing about the “technicality” of this issue. In fact, this is about something different: the proper and fair protection of the rights of people, who often are vulnerable, and who are being supported with their living accommodation. Parliament has therefore set down carefully articulated pathways to ending the main duty. They cannot be ignored. Nor should they be trivialised. They exist as a matter of safeguarding, fairness and good administration.
46. Here the defendant accepted that it owed Ms Bano the main housing duty under s.193. In the summer of 2020, it expressed an intention to end that duty. The route to ending the duty that the LHA pursued was by the offer of alternative suitable accommodation within the private rented sector. That is a potentially legitimate route for the duty to cease to be owed under the statutory scheme. However, since the accommodation offered was not in east London but the east Midlands, Ms Bano was unenthusiastic about this proposal. She refused the offer. What are the legal implications of these basic facts?
47. One must consider two vital additional matters.

48. **First**, that the defendant accepts that its offer was *not* valid as it was not in accordance with the statutory requirements as explained by the Court of Appeal in *Norton*.
49. **Second**, and as a direct result of the first, the defendant accepts that the main duty owed by the defendant to Ms Bano did not come to an end by reason of this offer. Thus, the defendant accepts that the main duty continued as a matter of law beyond the 11 June 2020 offer.
50. The defendant's position is, as Mr Mullin succinctly put it, "nuanced". It submits that the claimant is wrong that for a valid ending of the main duty under the ss.7AA there must be a decision communicated to the person being accommodated. Mr Mullin submits that time begins to run for the purposes of a valid challenge by way of judicial review from any decision by the LHA that the duty ceases to be owed, whether the offer purporting to end the duty was valid (*Norton*-compliant) or not. Thus, the defendant's case is that an offer that was not in accordance with the law would be sufficient for time to begin to run. Mr Mullin further alerts the court to the bleak scenario that there must be a very large number of PRSOs that are not objectively in conformity with the wording in *Norton*. If it is really being suggested that in all these cases the main duty remains, forensic floodgates would open on a potentially enormous scale. That cannot be good for public administration, nor consistent with the principle of finality.

### **Notification**

51. I first consider the issue of notification and whether there is a need to communicate a decision to an applicant that the main duty ceases to be owed. There is certainly a requirement under s.193(5) to "notify". However, I cannot see that such a requirement is imposed under the ss.7AA ending route. There is nothing in the statute to that effect. No authority has been put before me that supports such a notification requirement. Therefore, I judge that the defendant's submission is correct: the LHA did not need to notify Ms Bano that it considered that it ceased to owe her the main duty. However, that is not the same as deciding that there is no need for the LHA to make a decision that the duty ceases to be owed. I will say more about this later.

### **Decision**

52. The lack of an express notification requirement is not an answer to the issue at the heart of Ms Bano's claim: that the defendant did not in fact make a decision that the main duty was ended through its chosen PRSO route and such a decision was necessary to end the main duty and the statutory conditions for the main duty to cease were not satisfied. The defendant submits that the LHA made such a decision. In pressing for this characterisation, it was implicit in the defendant's analysis that it accepted that a decision needed to be made that the main duty ceased to be owed. The issue between the parties was whether that had happened. This consensus is subject to one further argument advanced by the defendant about "automatic" ending of duty that I will consider in due course.
53. As to the need for a decision on the duty ceasing to be owed, the "usual procedure", as Mr Marshall Williams termed it, after a PRSO under ss.7AA was followed in *Norton* itself: offer-acceptance/refusal-ending decision (*Norton* [22]-[27]). Mr

Norton was written to by the LHA with the PRSO on 8 January 2021 ([22]). He then received a decision letter on 27 January stating that the main duty was at an end *because* he had accepted the offer by signing the tenancy agreement on 25 January and that “meant that the Council could bring the duty imposed by section 193(2) to an end” [27]. Elisabeth Laing LJ termed this “decision 1”. This letter to the applicant was a decision that was clear and could be challenged. Ms Bano’s case is that this is precisely what is missing here: there is no decision that the main duty ceased to be owed after her refusal of the offer. Mr Norton did request a review of decision 1. Elisabeth Laing LJ put it this way at [27]:

“*The Council’s letter of 27 January 2021 (“decision 1”)*”

27. In decision 1, the Council said, among other things, that A had accepted the offer on 25 January 2021 by signing the tenancy agreement for property 2. That meant the Council could bring the duty imposed by section 193(2) to an end.”

54. Thus, the LHA’s “decision” was after acceptance (an election in either direction following the offer). I take “could bring the duty imposed by section 193(2) to an end” to mean that the relevant LHA needs to decide following the applicant’s post-PRSO election (whether acceptance or rejection) whether the statutory conditions have been met to end the duty. This is an evaluative conclusion that may be correct or incorrect.
55. As was made clear by the Court of Appeal in *Warsame*, this “decision” that the main duty had ceased can be subject to review and indeed further legal challenge if it is legally erroneous. For example, if an LHA concluded that the main duty were ended, but had not complied with the conditions set out in the statutory provisions (say, the ss.7AB notifications), that ending decision would be legally flawed. However, it would appear puzzling if the relevant LHA could proceed to act as if the main duty were ended without making a decision that in fact it had come to an end. Equally, as seen in *Ravichandran*, I am not persuaded that a “prospective intention” that the duty will end on the occurrence of certain future events is the same as a decision that the duty ceases to be owed. There needs to be an assessment whether in fact the conditions set out in the statute for discharge of duty have been satisfied. It would seem strange and contrary to common sense that if the LHA expressed a “prospective intention” that the main duty would come to an end if future events occurred, it did not have to make a decision that those events had in fact occurred and thus the duty owed was at an end. The Court of Appeal in both *Warsame* (s.193(7)) and *Norton* (s.193(7AA)) consistently approached the analysis on the basis that the LHA makes a “decision” that it no longer owes the main duty, and that decision in both cases was made following applicant election after offer and in both cases the LHA documented its decision after the election in a decision letter to the applicant. As was made clear in *Warsame*, that this ending “decision” is susceptible to a right to review and appeal on a point of law.
56. In *Norton*, the LHA reviewer, a person independent of the original decision-maker, found that the “statutory conditions were met by the offer”. Elisabeth Laing LJ called this “decision 2”. The defendant’s case here is that the “ending” decision (the equivalent of a *Norton* “decision 1” decision) is clear in (1) the original offer letter of 11 June 2020, even though the main duty continues beyond this offer (as conceded in

argument); and (2) in the email of 7 October 2020. I consider these two letters in turn.

### **11 June 2020 offer letter**

57. The offer letter states:

“After careful consideration of your circumstances, the Council has decided to bring the duty under s.193(2) to an end by arranging an offer of an assured shorthold tenancy in the private sector with a fixed term of twenty-four months.”

58. The claimant’s submission is that this is not a decision that the main duty has in fact ended for the purposes of ss.7AA. It cannot be because at this offer point the defendant cannot know what the response of the claimant will be. Once the applicant decides what she will do, whether accept or refuse the offer, then the defendant can make a decision whether and in what way its main duty to the person has ended.

59. To my mind, the letter must be read as a whole. Once that is done, the letter in full context indicates an offer with *a view to* ending the main duty, as distinct from actually ending it. The way in which it is headed is instructive:

*“Re: Offer Accommodation to end Main Duty under Section 193(2) of the Housing Act 1996”*

60. Therefore, the letter is not styled as the recording of a decision that the main duty has in fact ended. Rather, it is notice of an intention (akin to a *Ravichandran* “prospective intention”). The claimant is correct about that. This is why it is phrased as an offer “to end” the duty rather than that the duty has ended. Further, the defendant accepts that this offer was not a legally valid offer as it did not inform Ms Bano of the matters in ss.7AB, not being *Norton*-compliant. The defendant also accepts that this offer, due to its legal defects, did not bring the main duty to an end. Therefore, the offer letter of 11 June 2020 did nothing objectively that succeeded in ending the main duty the defendant owed Ms Bano.

61. I should add that on 14 June 2020, Ms Hussain sent an email on behalf of the defendant following WhatsApp messaging with Ms Bano’s daughter. Ms Hussain wrote:

“As requested any further correspondence will be via e-mail. As I stated in the offer letter the councils (sic) duty to your household has been discharged, whether you accept the offer or not. Your temporary accommodation has been cancelled from tonight which means that you are required to look for your own accommodation from tomorrow if you are not accepting the offer made. I am aware that you are all very upset and nervous about the offer being out of London, however I have made the councils position very clear and also have advised you the reason for why you have been made the offer.”

62. The defendant did not submit that this communication was one of the two “decisions” to end the main duty. It was thus simply a reiteration of the original offer to Ms Bano’s daughter, who was then 15 years old. The child had requested that future communications should be sent by email as the communications directly to her were upsetting her and causing her “mental” stress. This email was in response to that request. In any event, it predated the “refusal” of the offer on 15 June 2020 and so cannot have reached the status of a termination as per the *Norton* sequence. It also stated that the duty was at an end “whether you accept the offer or not”. This cannot be, therefore, a balanced and rational decision based on what the response to the offer is since it was unknown at that point. The 14 June email rather than be an effective decision, was another notice of intention. It is no doubt for that reason that the defendant in oral argument did not seek to persuade the court that this could count as one of the trigger dates for time to start running as a challengeable decision. It is simply a reiteration of the original offer and prospective intention. There is force in the submission of Mr Marshall Williams that, “It is not a decision – how could you review the ‘decision’ in that email?”
63. This conceptual distinction between an offer expressing a prospective intention to end the main duty and an actual ending decision post-refusal (or conceivably post-acceptance) was made by the Court of Appeal in *Ravichandran*, as noted (per Stanley Burnton LJ at [35(6)]). I note that this decision was before the Localism Act 2011. However, in *Ravichandran* the Court of Appeal made a similar distinction in types of decision between a prospective intention to bring the main duty to an end expressed in an offer letter and a post-refusal “confirmation” by the LHA that its duty had now ceased. I judge that such a conceptual distinction is highly pertinent to this case. It is succinctly termed by Stanley Burnton LJ at [32E] a “prospective discharge of duty”. In short, the offer letter here was all about prospective intention and not an effective decision that the main duty did cease to be owed. At this point, the LHA cannot have known whether future events would meet the statutory ending conditions.

#### **Letter of 7 October 2020**

64. The defendant submits that “if the defendant is wrong about the June letter”, it “nevertheless relies on the letter dated 7 October 2020”. This was emailed for Ms Bano’s attention to her solicitors. Mr Mullin submits that this is also a decision to end the main duty. Once more, the precise content of the letter is important. The defendant relies upon a passage on the second page of the letter:
- “Furthermore, we have stated that the request was made out of time and this council considers itself as relieved of its homeless duty towards Mrs Bano pursuant to section 193(5) of the Housing Act 1996.”
65. Note the reference to s.193(5). This must be returned to. But was this letter, as the defendant submits, a decision that the main duty had ended? I cannot think this is right for four reasons.
66. **First**, one must look at the context. What had happened is that on 28 September 2020 Ms Bano’s former solicitors had written to the defendant and sought a review of the suitability of the accommodation offered in Derby. This review request was said to have been made through the WhatsApp sent by the claimant’s daughter on 15 June



2020. In its 7 October response, the defendant rejected the suggestion that such a review request was made. The letter states in terms: “There is no information on file to suggest that a request was made.” This is primarily what the letter is about: whether there was a valid request for a review.

67. **Second**, this understanding is supported by status of the letter’s author. Ms Barnes is a reviews “Coordinator” and wrote from the department dealing with “Reviews and Appeals”, and it is important for the statutory reviewer to be independent.

68. **Third**, the heading of the letter is:

“REQUEST FOR REVIEW UNDER SECTION 202 OF THE  
HOUSING ACT 1996 PART VII (AS AMENDED)”

69. This is plainly what the letter was principally addressing. It did not purport to be a decision letter about ending the main duty under s.193(2).

70. **Fourth**, the reference to s.193(5) must be understood for what it is. It is not, as the defendant submits, an erroneous “misquoting” of the correct statutory provision. In fact, it is an *accurate* citation of the applicable provision. Ms Bano had requested temporary accommodation pending the review of suitability she sought. Within the compass of a single sentence, Ms Barnes accurately notes that since the LHA deemed the request for suitability review “out of time” and considered itself “relieved” of its s.193(5) duty to provide temporary accommodation. Although in argument the defendant did not accept the relevance of s.193(5) for temporary accommodation, support that the provision is applicable to temporary accommodation can be found in the Court of Appeal’s decision in *Ravichandran* at [35(1)]:

“Section 193(5) is concerned with offers of temporary accommodation to meet a local housing authority’s duty under Part VII of the 1996 Act.”

71. Since this is plainly the meaning of Ms Barnes’s sentence, I do not need to engage in the dispute between counsel about whether s.193(5) is or is not restricted to temporary accommodation. It is clear that Ms Barnes was rejecting the application for temporary accommodation pending review, which was also rejected, rather than ending the s.193(2) main duty. It is as straightforward as that. Thus, the defendant’s submission that “the question is not whether the right subsection was quoted; the question is whether the main duty is owed” misses the point. The correct subsection was cited in the letter because the letter was directed at refusing temporary accommodation pending review. It was not a decision letter ending the main duty.

### “Automatic” ending

72. The defendant advanced a further basis for time running. It involved the question of “automatic” ending. The submission was that once an offer is made, the duty “automatically” ends if there is refusal by the applicant without the need for anything more from the LHA. Against this, the claimant drew a comparison with *Burkett*, a decision of the House of Lords (*R (Burkett) v Hammersmith LBC* [2002] 1 WLR 1593). Jurisdictional questions aside, that case is about when time runs when a planning committee makes a resolution conditionally making a grant of planning

permission. Lord Slynn's judgment makes plain that failure to challenge the resolution does not prevent challenge of the grant if that latter challenge is brought in time. If not, the situation would "wrongly ... restrict the right of the citizen to protect his interests" (1596D). Mr Marshall Williams draws an equivalence. He argues that the offer letter is equivalent to the planning resolution and a decision to end the main duty equivalent to grant – only here there has been no decision.

73. It seems to me that there are number of problems with the notion of an automatically ending duty without any LHA decision or action following offer. It is for the LHA to assess whether there has been offer or acceptance. It must make a decision about that. That decision is then challengeable. If there were automatic ending, when would time run for the purposes of a challenge? If it is upon refusal, when is the refusal, and similarly so upon a post-PRSO acceptance (as in *Norton* itself). Authorities such as *Nikolaeva v Redbridge LBC* [2020] EWCA Civ 1586 - in fact cited by the defendant in argument - show that there is often dispute and legal contention about what is a refusal and when that point of refusal crystallises. An LHA needs to decide whether there has been refusal or acceptance; it would be puzzling if it did not need to decide whether the main duty, such a fundamental legal concept, it owed to an individual had ended as opposed to merely expressing an intention for it to end if future events occur. It would be curious indeed if the LHA would not need to consider whether those future events in fact had occurred. If the LHA does need to consider this, then it is likely to be considering, should the event be a statutorily relevant ending event, whether the main duty is still owed or has ceased. If the LHA need *never* decide whether the s.193(2) duty had in fact ended upon a future eventuality, when should time for challenge start to run? This appears to be a recipe for chaos.
74. I judge that the LHA must make a decision, that is reach a conclusion, whether the main duty it owes to an individual has ended by one of the prescribed statutory routes that Parliament has set out. It is put this way by Stanley Burnton LJ in *Ravichandran* at [32]: the LHA makes a decision "after refusal" that "the conditions for discharge had been satisfied". The point is that beyond the expression of a prospective intention in an offer letter, that further decision about the ending of the duty is in itself reviewable. It seems to me that the absence of such a post-PRSO and post-election (here refusal) decision is the legal void in this case. The LHA has made no relevant decision that its duty has ended. The logic of the defendant's position is that an LHA need *never* make a decision that the main duty it owed to any individual was at an end beyond expressing a prospective intention. This would be, by any measure, an unhelpful state of affairs.

### **Conclusion on "Decision"**

75. The net effect of this analysis is that neither the 11 June nor 7 October 2020 letters are decisions by the defendant ending the main duty. I judge that what the defendant has sought to do is promote the original offer letter into an ending decision. It was not. It has then attempted to convert a letter by a review officer refusing a requested suitability review into an ending decision. Once more, it was not. This is why the defendant has sought to argue that its official had cited the wrong statutory provision, when in actuality, she cited the correct provision. What is lacking in this case is precisely what existed in *Norton* and *Warsame*: a decision to end the main duty *following* PRSO and refusal/acceptance, as occurred in both cases before the Court of Appeal.

## Delay

76. The lack of a clear and effective decision by the defendant to end the main duty is significant for the delay argument. The defendant's delay argument depends on a challengeable decision about ending the main duty having been made. I judge that on the facts, the defendant has not made such a decision. The result of this is that the question of whether the claimant has established exceptional or special circumstances (or other good reason) to justify delay is not relevant. There is not an operative decision by the defendant to trigger the running of time.

77. For completeness, the defendant's letter dated 30 May 2023 should be considered. This was the defendant's response to a letter from the claimant's new solicitors dated 15 May 2023. In that letter, the solicitors brought to the defendant's attention the failure in the 11 June 2020 offer to comply with *Norton* and the effect of s.195A. In its 30 May response, the defendant refused to treat the 15 May letter as a request for a review as it was out of time. The defendant advised about the law under s.202 and the 21-day statutory deadline. The letter then dealt with *Norton*:

“Following the Court of Appeal case *Norton Vs Haringey*, caselaw has made it clear that local authorities are bound to comply with the requirements as is set out in this case. It is for this reason the local authorities are now required ensure that the discharge of duty letter sets out the specifics of s195A to all applicant whom the Council is discharging duty towards.

I do not accept that the Council should go back 2 years to accept that the offer made on 11 June 2020 to discharge duty towards Mrs Bano is not correct. I do not believe that *Norton* applies respectively in case of a decision as old as that of Ms Bano's.”

78. The letter goes on to state that “*Norton* was not in force”. The defendant's position at the hearing was that the offer letter was defective for the reasons identified by *Norton*, which was not a gloss by the Court of Appeal, but a requirement that local authorities comply with the duty-ending procedures set down by Parliament. The 30 May letter continues:

“I do not agree that the Council did not discharge duty towards Mrs Bano in June 2020 or still owes Mrs Bano a duty under s193 (2) of the Housing Act 1996 Part 7 because of the *Norton* ruling as this offer was made 2 years before the ruling. In 2020, The Council ... made an offer in the private sector to end the Council's main duty towards her.”

79. The defendant has *not* suggested that this can be viewed as a “decision” to bring the main duty to an end. It is the defendant's case that the duty was ended in 2020. The court has analysed the two decisions the defendant relies upon. But even if, contrary to this, the defendant's 30 May 2023 letter is a decision to end the duty, the filing of the claim on 29 August 2023 is clearly within the three-month period and is not otherwise defeated by the promptness requirement. However, this is unnecessary. The duty was not properly brought to an end by the defendant by an effective post-

offer decision in 2020 and it is not argued by the defendant that the 30 May 2023 letter was an ending decision.

### **Status of duty**

80. I next turn to the question of where this leaves Ms Bano. The defendant submits in terms that the court “cannot assume in 2024 that the defendant’s duty to Ms Bano is still owed”. This engages the question of what is the status of an accepted duty that has not been brought to an end by one of the routes stipulated by Parliament.

81. Where an LHA has accepted the main duty to a person who is not intentionally homeless, it can only be ended in certain tightly circumscribed circumstances. This is clear from the decision in *Norton*. Elisabeth Laing LJ said at [42]:

“Section 193 imposes a series of what may seem to be rather technical requirements on an LHA. They are, however, the requirements which Parliament has imposed on LHAs in order to protect the statutory rights of people who are or may be homeless. Those rights are or may be affected by actions taken by an LHA under section 193. If the LHA is to bring the duty imposed by section 193(2) to end, those requirements must be complied with.”

82. Here the defendant purported to end the duty through the ss.7AA PRSO route. The process it adopted was defective. The defendant accepts that the offer it made to Ms Bano was not a valid offer. It was not in conformity with *Norton* and the main duty continued to be owed after it. More importantly, and this is the effect of the Court of Appeal’s decision in *Norton*, it was not in compliance with the statute. Parliament has prescribed what an LHA must do to cease to be subject to the main duty through a PRSO. This LHA did not do that. This is significant. It is not a mere legal nothing, arcana of interest to legal specialists. It is about the rights of people who are not intentionally homeless, a frequently highly vulnerable group of people. The importance of the correct procedure to end the main duty was reiterated by Males LJ in *Norton*:

“58. Nevertheless, however technical this may be, Parliament has stipulated that if an LHA’s housing duty to a person in priority need is to cease by virtue of a PRSO, the offer must comply with section 193(7AA) and (7AB)(c).”

83. He concluded at [63]:

“This appeal illustrates what is already well known, that housing law can be highly complex. More specifically, it demonstrates that local authorities who wish to discharge their housing duty by the provision of an assured shorthold tenancy with a private landlord must take care to ensure scrupulous compliance with the terms of section 193 of the 1996 Act.”

84. Both judgments were supported by Asplin LJ for the same reasons [64]. Here, there was not “scrupulous compliance” with the terms of s.193. Indeed, the defendant

accepts that the process set out in s.7AA, s.7AB and s.195A was not followed. That which the LHA needed to do to discharge its housing duty was not done. The structure of the main duty owed to people who are not intentionally homeless is that the duty continues until it is validly ended. To end the main s.193(2) duty, the statutory requirements, as Elisabeth Laing LJ underlined, “must be complied with”. Here they were not. Therefore, I find that the duty the defendant owed to Ms Bano has not been ended. The defendant made no decision that it was at an end following its offer of private rented sector accommodation. Its original offer was legally defective and not Parliamentary-process compliant in any event.

85. Returning, therefore, to the defendant’s submission that there is no evidence about the present situation of Ms Bano and whether the duty is still owed, it seems to me that the submission misunderstands the nature of the duty as set out in *Norton*. Once the duty is accepted as being owed, the defendant must make a decision that it is at an end, that is, that the statutory conditions necessary to bring it to an end have been satisfied. The LHA must follow the procedure prescribed by Parliament. If that decision is unlawful, it can be challenged. But the LHA must make a decision, that is, reach an evaluative conclusion about what the true position is. That conclusion may be correct or incorrect as a matter of law. The ending conditions prescribed by Parliament may or not have been met. But here, the defendant has not made a decision. It has not reached an evaluative conclusion. I judge, examining the case as a whole, that the claimant is correct and the defendant continues to owe a duty to Ms Bano. Throughout this, the LHA found itself in a forensically uncomfortable position. For example, Mr Mullin conceded when directly asked by the court that “the main duty did not end with the offer letter for the same reason as with the *Norton* letter.” It becomes unclear how the LHA can validly claim that it has taken the requisite steps to bring the main housing duty it owed to Ms Bano to an end or put another way: that the statutory conditions for the duty to cease to be owed were satisfied, particularly when the defendant accepts that statutory requirement explained in *Norton* was not met. Instead, the defendant relied on construing the 11 June and 7 October 2020 letters as ending decisions and then arguing that the claim was time-barred from there. However, as demonstrated, *on the evidence and facts that the evidence establishes*, neither of these were in actuality ending decisions. In any event, the offer, by the defendant’s final concession, was not legally valid in *Norton*, failing to meet the statutory conditions.

### **Alternative remedy**

86. The defendant argued that there were alternative remedies available to the claimant. She should have within the appropriate time requested a review under s.202 of the Act. I have at the forefront of my thinking the judgment of Sales LJ in *Glencore* and the fact that judicial review is a remedy of last resort. There is unquestionably in this case a relevant statutory regime in *Glencore* terms. However, its applicability is based on the assumption that the decision to be reviewed was contained in the 11 June 2020 offer letter or the subsequent letter of 7 October 2020. Such an ending decision could be subject to statutory review and then right of appeal on a point of law to the county court in the usual way. In the absence of challenging the decision in the way prescribed by Parliament, the claimant would need to demonstrate “pressing” (*Glencore* at [55]) or “exceptional” circumstances to bring this claim in judicial review (*R v Merton London Borough Council ex p. Sembi* (2000) 32 HLR 439; *R v*

*Brent London Borough Council ex p. O'Connor* (1998) 31 HLR 923, QBD). Given this court's decision on the prime question about the continuation of the main duty and the failure to make an effective decision that it was ended, these arguments about alternative remedy fall away. The fact is that the main duty has not been "brought to an end", as Elisabeth Laing LJ termed it in *Norton* at [27], in accordance with the statutory ending conditions. A fresh application under Part VII is not an alternative remedy to the recognition that the main duty continues. The question of whether Ms Bano still qualifies as a priority need would require reconsideration. This is unnecessary if the main duty has not ended. This is not, therefore, an alternative remedy to a declaration to that effect, to which I now turn.

## **§VI. RELIEF**

87. A declaration is a discretionary remedy. There has been significant delay between the defendant's offer in the summer of 2020 and this court hearing. While there is surface attraction to the defendant's submission that the court's discretion should be exercised against granting relief because of the need for administrative "finality", the fact is that the statutory conditions to bring an end to the main housing duty this LHA owed to Ms Bano did not exist because the defendant failed to comply with the statutory requirement explained by the Court of Appeal in *Norton*. That was not Ms Bano's fault. It was incumbent upon the defendant, with its dedicated housing department that routinely deals with such matters, to comply with the law and take steps to effect termination of the main duty in accordance with the law. Given that the defendant concedes that its PRSO was not in accordance with the law and the court has ruled that the defendant did not make a decision that its main duty owed under s.193(2) to Ms Bano had ended, I further find it appropriate to exercise the discretion of the court to make the declaration sought.
88. In opposing the discretionary grant of relief, Mr Mullin relied on the principles of good administration and finality of LHA decision-making. These are unquestionably important. However, there was here no decision by the LHA following offer and rejection that the main duty was at an end, which undermines the question of finality. The LHA did not make the decision that it was open to it to make.
89. Mr Marshall Williams made clear during the course of submissions that such declaration would be "sufficient" for the purposes of this claim and did not seek a mandatory order or further relief.

## **§VII. DISTINCTIVENESS**

90. I address the question of distinctiveness on the invitation of the defendant and concerns about "floodgates". The facts in this case have two distinctive features.
91. **First**, because, as has been explained above, there was no decision made by the LHA that the main duty had ended. What is fundamental – and distinctive - here is that the LHA, having chosen the ss.7AA ending route, and following Ms Bano's offer refusal, in fact made no ending decision to the effect that the LHA ceased to owe the main

duty. In both *Warsame* and *Norton*, as has been seen, there were letters post-election (refusal in *Warsame*; acceptance in *Norton*) from the LHA stating that the main duty had come to an end and explaining the basis. This must make evident good administrative sense. I cannot accept that the issuing of a decision letter as happened in *Warsame* and *Norton* creates an “onerous burden” on LHAs, as D here contends. In fact, it acts to do the opposite: provide structure, transparency and order. Nevertheless, the critical thing is for the LHA to reflect on the actions of the applicant/offeree and decide in light of her/his election whether the conditions stipulated in the statutory ending pathway chosen by the LHA have been met and the main duty under s.192(3) has therefore come to an end.

92. **Second**, it is confirmed that Ms Bano still resides in the accommodation. The court was sent the possession order that has not yet been enforced. The LHA has no information to “gainsay” that this is the true position as of the rolled-up hearing. Indeed, it has filed a statement from its Temporary Accommodation Contracts Manager Chidi Egbom that as of 16 November 2023, Ms Bano remained in the property without the defendant’s permission. The property was arranged as licenced accommodation and is not owned by the defendant. It seems that Ms Bano remains in residence.
93. For these reasons, it is likely that this case presents an unusual set of facts. The court confines itself to rule upon the dispute before it, based on these distinctive facts.

### **§VIII. DISPOSAL**

94. In the exercise of its discretion, the court makes a declaration to this effect:

**The defendant continues to owe the claimant a duty under s.193 Housing Act 1996 to secure that accommodation is available for occupation by her.**