OUTER HOUSE, COURT OF SESSION

[2022] CSOH 35

P733/21

OPINION OF LORD ERICHT

In the cause

X

Petitioner

against

GLASGOW CITY COUNCIL

Respondent

Petitioner: Dailly (sol adv); Drummond Miller LLP
Respondent: Graham Middleton, Harper Macleod LLP

27 April 2022

[1] The central issue in this Judicial Review is whether a local authority is under an absolute legal obligation to provide accommodation which is suitable for occupation by a homeless household, taking into account the needs of a household. The petitioner says it is. The respondent says that it is not: the respondent has a discretion to balance the needs of the household against other demands on the respondent's finite resources.

The facts

[2] The petitioner's household consists of the petitioner, the petitioner's husband, three daughters aged 14, 12 and 10 and a son aged 12.

[3] On 4 February 2020 the petitioner and her husband were notified by the Home Office that they had been granted refugee status. Prior to that, they had been residing at accommodation provided by the Home Office. The effect of granting refugee status was that the petitioner and her family were no longer entitled to Home Office accommodation. Instead they became homeless persons and the obligation to house them passed to the respondent as the local authority. The respondent provided them with temporary homeless accommodation. That accommodation was in a four apartment property.

[4] The petitioner's son has been diagnosed as autistic. He is disabled within the meaning of section 10 of the Equalities Act 2010.

[5] The respondent conducted an investigation of the petitioner's housing needs. The assessment was conducted by Jacci Bickerstaff, an occupational therapist. Her report dated 21 July 2021 was headed:

> "Homeless Occupational Therapy Service
>
> Housing Needs Recommendations"

The report included the following:

> "[the petitioner] does not want a ground floor property despite having difficulty with stairs. She was observed as managing 15 steps utilising a handrail to assist, however, she needed to rest due to breathlessness. They are open to styles of property but should a 2 storey property be offered, it is likely that a downstairs toilet will be required. **This family need a 5 apartment property in order to accommodate their son's additional support needs** and a garden would also be beneficial with regard to this." (Emphasis added).

[6] Despite the respondent's assessment that the family needed a five apartment property in order to accommodate their son's additional needs, the respondent continued to house them in a four apartment property. On 10 August 2021, the petitioner's solicitor wrote to the respondent requesting that it urgently review the suitability of the current

accommodation and outline its plans to move the family to alternative housing as a matter of urgency.

[7] The respondent's Jackie Gordon, senior homeless worker, replied on the same day stating:

> "I write with reference to the concern you raised regarding your clients … and … temporary accommodation while awaiting a permanent offer of housing.
>
> It has not been possible to provide a further temporary furnished flat (TFF) at this stage due to a lack of this type of accommodation becoming available. As you will be aware this Local Authority does not maintain its own housing stock and is reliant on third party providers such as Responsible Social Landlords otherwise known as Housing Associations. There are significant pressures on resources currently and unfortunately a TFF transfer has not been available.
>
> Unfortunately, the Team have found it extremely difficult to secure an offer of settled housing for the family due to their requirement for a 5/6 apartment property.
>
> This problem is not unique to your client and affects all larger families who are currently in Temporary Homelessness Accommodation, since there is a very limited supply and turnover of larger properties in the Housing Association sector in Glasgow. This in turn, unfortunately, means that in general larger households require to wait substantially longer for an offer of settled housing than other households.
>
> The areas in which the family have chosen either have been no six apartments or some of the areas have very few properties of five apartments. Due to the pressures which we are under we would expect a degree of flexibility in relation to rehousing areas.
>
> In regards to the children's school there is adequate school provision throughout Glasgow for the children to attend whilst in temporary accommodation.
>
> In addition, I have asked Billy Fulton to discuss with your client to consider options in relation to the Private Rented Sector through our 'Glasgow Key Fund Service' operated by Y People, this can work well for larger households as it gives added degrees of choice and availability."

[8] The reference to the Glasgow Key Fund was a reference to a scheme that assists people looking for accommodation to make their own arrangements to enter into a private let of property with a private landlord. It is not relevant to the subject matter of this petition

which is about the provision of accommodation by the local authority, not private arrangements made by the petitioner.

[9] The caseworker assigned to the petitioner was William Fulton. He provided an affidavit, from which it was clear that he was not unsympathetic to the petitioner and her family and had been doing his best to assist them. However, the difficulty which he faced, and which formed the basis of Ms Gordon's decision letter 10 August, was set out in his affidavit:

> "10. Glasgow City Council does not have its own housing stock. Glasgow City Council transferred all its housing stock as part of a stock transfer process on 3 March 2003. The stock was transferred to Glasgow Housing Association and since that time some of it has been transferred to other registered social landlords. This means that Glasgow City Council gets the houses it uses for interim accommodation from registered social landlords. It also means that the offers of permanent accommodation are offers secured from registered social landlords. Registered social landlords will usually cooperate with Glasgow City Council in making both interim and permanent accommodation available. However, what Glasgow City Council receives is dependent on what registered social landlords have available….
>
> 13. This a five apartment case. That means that the permanent accommodation that is eventually secured must be a five apartment house: four bedrooms and a living room….
>
> 15. The difficulty with a five apartment case is the scarcity of five apartment accommodation. Five apartment accommodation is generally occupied by permanent tenants and becomes available when someone passes away or moves. It can take a very long time to get an offer of five apartment accommodation, even longer if a person will not consider offers outwith specified areas. In respect of [the Petitioner's] application, no five apartment houses have become available during the time of her application. I check this at intervals. Even if one did become available, it is by no means certain that it would be offered to [the Petitioner] as there will be families in similar circumstances who have earlier homelessness application dates. There are larger families who would need a five apartment as interim accommodation while waiting for an even scarcer six apartment. All this means that it could be many months or more than a year before a five apartment house becomes available to [the Petitioner] and her family.
>
> 16. I asked registered social landlords in the [area where the Petitioner's family lives and goes to school] about their turnover of five apartment houses. Sanctuary Housing Association stated that they have around 9 five apartments in [that area]

but had not let any in over 10 years. GHA told me that they had let only one five apartment house in [that area] since March 2016. [That area] is not a particularly unusual area. There will be other south side area that are more highly sought after. This should give some idea of the rate at which five apartment houses become available….

27….There is certainly no five apartment interim accommodation within the preferred areas and there is unlikely to be any soon…."

Statutory provisions and Scottish Government guidance

[10] Section 29 of the Housing (Scotland) Act 1987 provides:

"29. — Interim duty to accommodate.

(1) If the local authority have reason to believe that an applicant may be homeless they shall secure that accommodation is made available for his occupation—

(a) pending any decision which they may make as a result of their inquiries under section 28;
(b) …

(c) where, by virtue of a decision referred to in paragraph (a) or (b), the authority have a duty under section 31 to secure that accommodation of a particular description becomes available for the applicant's occupation, until such accommodation becomes available.

(3) In subsection (1), '*accommodation'*, in the first place where the expression occurs, does not include accommodation of such description as the Scottish Ministers may, by order made by statutory instrument, specify.

(4) Such an order may—

(a) specify any description of accommodation subject to conditions or exceptions,"

[11] Section 31 provides:

"31. — Duties to persons found to be homeless.

(1) This section applies where a local authority are satisfied that an applicant is homeless.

(2) Where they are not satisfied that he became homeless intentionally, they shall, unless they notify another local authority in accordance with section 33

> (referral of application on ground of local connection) secure that [permanent] accommodation becomes available for his occupation."

[12] In exercise of their powers under section 29(3), the Scottish Ministers have specified unsuitable accommodation which is not included within the definition of "accommodation". *The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014* ("the 2014 Order") provides:

> **"3.** This Order applies to accommodation provided to an applicant under section 29 of the 1987 Act (interim duty to accommodate an applicant who may be homeless).
>
> **4.** In all circumstances, accommodation is unsuitable if it is—
> (a) not wind and watertight;
> (b) not suitable for occupation by a homeless household, taking into account the needs of the household; or
> (c) not meeting minimum accommodation safety standards.
>
> **5.** … accommodation is also unsuitable if it—
> (b) is not in the locality of facilities and services for the purposes of health and education which are being used, or might reasonably be expected to be used, by members of the household, unless those facilities are reasonably accessible from the accommodation, taking into account the distance of travel by public transport or transport provided by a local authority;
> (c) lacks within the accommodation adequate toilet and personal washing facilities for the exclusive use of the household which meet the accessibility needs of the household"

[13] The Scottish Ministers have published a code of guidance to help guide local authorities in their duties to assist people who are threatened with or who or are experiencing homelessness. The *Homelessness: code of guidance* includes the following:

> "Homelessness: code of guidance
>
> **Annex A: Advisory Standards for Temporary Accommodation**
>
> This guidance provides a set of advisory standards to be applied by local authorities to their temporary accommodation and also to any temporary accommodation provided from other providers. These standards relate to all types of temporary accommodation including Bed and Breakfast, to ensure that the quality of temporary accommodation is of good standard and to meet the needs of the household.

> Local Authorities across Scotland utilise a diverse portfolio of temporary accommodation beyond bed and breakfast accommodation including local authority, housing association and private rented stock as well as hostels. The majority of people who are homeless are housed on a temporary basis in the social rented sector.
>
> The following details the physical standards that should apply where appropriate across all tenures to ensure that temporary accommodation is an adequate, safe and secure space for the household. The temporary accommodation should:
>
> - Be accessible and able to meet the needs of any disabled person within the household;
> - Have adequate toilet and personal washing facilities for the exclusive use of the household;
>
> When considering offering a household temporary accommodation it is important to discuss with the household the location of the property and its proximity to services and local amenities.
>
> - Accommodation provided should be located so that the main essential services used by a household can be reached by foot, by public transport or by transport provided by a local authority. Services to include education/school/nursery, supermarket or convenience store, doctors, dentists, support or other health providers and advice agencies (where applicable);
>
> - The location of the property should also take into account the needs of all household members in terms of reasonable access to place of employment and formal or informal support networks."

Submissions

[14] The solicitor advocate for the petitioner submitted that the accommodation provided by the respondent did not conform to the 2014 Order. The current accommodation did not meet the petitioner's son's needs as a disabled person. He further submitted that the explanation given in the 10 August 2021 letter for failure to provide suitable accommodation was irrational and *Wednesbury* unreasonable. The respondent can source temporary homeless accommodation privately or commercially and is not restricted to registered social landlords as a matter of law. No reasonable local authority would decline to take action where the accommodation was unsuitable in terms of the 2014 Order.

[15] Counsel for the respondent submitted that the wording of Article 4(b) of the 2014 Order did not have the effect of imposing an obligation upon the respondent to provide accommodation that meets the needs of the household in question. In contrast to Articles 4(a) and (c) it did not define accommodation as unsuitable with reference to any fixed standard but merely requires that the needs of the household be taken into account. It conferred a discretion upon the respondent. Provided the respondent had properly taken into account the needs of the household in deciding whether temporary accommodation was suitable, that temporary accommodation would not be deemed unsuitable pursuant to Article 4(b). Further, Parliament must have been taken to be aware of the fact that a local authority's resources are limited and it is impossible for a local authority to fulfil every conceivable need (*R* v *Barnet London Borough Council* [2004] 2 AC 208 at paragraph 30, 75, 81-82). On a true construction, Article 4(b) conferred a discretion on a local authority to balance the needs of the petitioner's household against the other demands on the authority's finite resources. Further, section 29(1) c of the 1987 Act provided that a local authority may provide temporary accommodation under section 29 which did not meet the description. The legislation clearly envisaged that temporary accommodation may not meet the particular requirements of an applicant for permanent accommodation.

[16] Counsel further submitted that the respondent had discharged its duty under 29 by taking into account the needs of the petitioner's household: the decision-maker took account of the petitioner's preference for locality, took account of the requirement to have four rooms which could be used as sleeping accommodation and continues to endeavour to provide the petitioner with temporary accommodation that, as far as possible within the constraints of the respondent's finite resources, meets the needs of the petitioner's household. Counsel further submitted that the property is a four apartment property which

would allow the petitioner's son to have his own bedroom if two of his sisters shared a room and therefore meets the needs of the household on a temporary basis.

[17] Counsel further submitted that the respondent's duty was to have regard to the guidance, which did not itself confer any duties upon the respondent or absolute rights on the petitioner. An inference that the respondent failed to have regard to the guidance ought not to be drawn readily (*South Bucks District Council* v *Porter (No 2)* [2004] 1 WLR 1953 at paragraph 36). The decision-maker had regards to the needs of the petitioner's son and proximity to support networks. The fact that the respondent was not able to offer the petitioner a five apartment property in one of the petitioner's preferred areas was not a basis for drawing an inference that the respondent had failed to have proper regard to the guidance.

Analysis and decision

[18] How a local authority prioritises its finite financial resources is in general a matter for the council members, who are accountable to the local electorate (*R* v *Barnet London Borough Council* paras [11], [75]). However, as Lord Nicholls explained in that case:

> "12. The ability of a local authority to decide how its limited resources are best spent in its area is displaced when the authority is discharging a statutory duty as distinct from exercising a power. A local authority is obliged to comply with a statutory duty regardless of whether, left to itself, it would prefer to spend its money on some other purpose. A power need not be exercised, but a duty must be discharged. That is the nature of a duty. That is the underlying purpose for which duties are imposed on local authorities. They leave the authority with no choice.
>
> 13. The extent to which a duty precludes a local authority from ordering its expenditure priorities for itself varies from one duty to another. The governing consideration is the proper interpretation of the statute in question. But identifying the precise content of a statutory duty in this respect is not always easy. This is perhaps especially so in the field of social welfare, where local authorities are required to provide services for those who need them. As a general proposition, the more specific and precise the duty the more readily the statute may be interpreted as

> imposing an obligation of an absolute character. Conversely, the broader and more general the terms of the duty, the more readily the statute may be construed as affording scope for a local authority to take into account matters such as cost when deciding how best to perform the duty in its own area. In such cases the local authority may have a wide measure of freedom over what steps to take in pursuance of its duty."

[19] That quotation neatly identifies the problem in the current case: is there an absolute duty on the respondent to provide accommodation that is suitable for the needs of the petitioner's autistic child, or does the respondent have freedom not to do so?

[20] At first sight, it might be thought that as the facts are similar the answer is to be found by coming to the same decision as in *R (A)* v *Lambeth London Borough Council* [2004] 2AC 208 (conjoined with *R v Barnet London Borough Council*). The claimant in the Lambeth case was a single mother with autistic children. The local social services authority assessed the autistic children's needs and concluded that the family needed to be rehoused in accommodation which was away from the road, had an outside play area and was larger. The claimant sought an order against the local social services authority compelling it to provide suitable accommodation in accordance with the children's assessed needs. The court refused to grant such an order.

[21] However, matters are not as simple as that as each case must turn on the wording of the particular statutory provision setting out the duty applicable in the particular case. The result in *R (A)* v *Lambeth London Borough Council* cannot simply be read over and applied in the present case. The duty sought to be enforced in *R (A)* v *Lambeth London Borough Council* was the general duty on English local authorities under section 17(1) of the Children Act 1989 which states:

> "(1) It shall be the general duty of every local authority….
> (a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs."

[22] That duty is expressed in general and wide-ranging terms. It is very different from the wording of the specific duty in relation to homelessness which is sought to be enforced in this judicial review.

[23] The duty relevant to this particular case can be found in section 29 of the 1987 Act which states:

"29. — Interim duty to accommodate.

(1) If the local authority have reason to believe that an applicant may be homeless they shall secure that accommodation is made available for his occupation…."

[24] By virtue of section 29(3) and the 2014 Order, certain unsuitable accommodation is excluded from the meaning of the word "accommodation" in section 29(1). Article 4 of the 2014 Order makes the following exclusion from the meaning of the word "accommodation" in section 29(1):

"In all circumstances, accommodation is unsuitable if it is—
(a) not wind and watertight;
(b) not suitable for occupation by a homeless household, taking into account the needs of the household; or
(c) not meeting minimum accommodation safety standards."

[25] The issue in this case is whether section 29 taken together with Article 4(1) (b) constitute an absolute duty on the respondent, or whether the respondent has the freedom not to give effect to these provisions.

[26] Section 29 states the local authority "shall secure that accommodation is made available." Article 4 of the 2014 Order states that "in all circumstances, accommodation is unsuitable if [the circumstances in 4 (a) (b) or (c) apply]." In my view the specific and

precise wording of these provisions is a strong indication that they should be interpreted as imposing an obligation of an absolute character.

[27] The respondent sought to draw a distinction between on the one hand Article 4(a) (wind and watertight) and 4(c) (safety standards) and on the other Article 4(b) (suitable for occupation by household taking into account their needs). Its position was that 4(a) and 4(c) were of an absolute character and gave rise to an absolute duty and 4(b) was not and the respondent had the freedom to depart from it. I do not accept that distinction. There is nothing in the structure of the Act which suggests that 4(b) should be treated differently. 4(a), (b) and (c) all fall under the obligation under section 29 that the respondent "shall" provide accommodation: section 29 does not say that the respondent **shall** provide accommodation which is not excluded under (a) and (c) but **may** provide accommodation which is excluded under (b). Nor is there anything in the structure of Article 4 which suggests that 4(b) should be treated differently from 4(1) (a) or (c): 4(b) comes in the middle of a list of absolute duties and there is nothing which identifies it as being of a different character from the rest of the list.

[28] Article 4(b) refers to accommodation which is "suitable for occupation by a homeless household, taking into account the needs of the household" (Article 4(1)). In some circumstances a statutory provision referring to "needs" may be too open-ended to found an absolute duty. In *R* v *Barnet London Borough Council* for example, Lord Nicholls found that section 17(1) of the Children Act 1989 did not impose an absolute duty on authorities to meet the specific needs of every child who was in need, whatever these needs may be (paragraph 30), and Lord Hope stated that it was impossible for the authority to fulfil every conceivable need (paragraph 74). However these concerns do not arise in the present case where the needs are not of the wide ranging general nature which could arise under

section 17(1) but are specifically restricted to housing needs. The housing needs of a homeless family are not open-ended and are capable of being assessed and being met. Indeed the respondent has itself made such an assessment of the petitioner's family and concluded that the family need a five apartment property in order to accommodate their son's additional support needs.

[29] The respondent submitted that the phrase "taking into account" was not language apt to confer an absolute right to be provided with accommodation which met the needs of the household, but conferred a discretion on the local authority to balance the needs of the household against other demands on the authority's finite resources. I do not agree. Read in the context of section 29 and Article 4 as a whole, the phrase does not displace the absolute statutory duty under section 29 and replace it with a discretionary balancing exercise whereby the authority is required to weigh up the household's needs against other calls on the authority's resources. The words "taking into account the needs of the household" in Article 4(b) merely indicate that the needs of the household are a factor to be considered in deciding whether accommodation is suitable for occupation by the household. If the household has a need for a five bedroom apartment, then that is the accommodation which is suitable for that household and which the authority is obliged to provide.

[30] The respondent also submitted that the effect of section 29(1) (c) was that the respondent is entitled to provide unsuitable temporary accommodation. Again I do not agree. Section 29(1) (c) does not stand in isolation and section 29(1) must be read as a whole. The obligation under section 29(1) is to "secure that accommodation is made available". Unsuitable accommodation is excluded from the definition of "accommodation" and therefore does not satisfy the obligation under section 29(1). The structure of section 29(1) demonstrates that section 29(1) (c) is subsidiary to, and in implementation of, the duty under

section 29(1) to provide suitable temporary accommodation. There is nothing in the wording of section 29(1) (c) which disapplies the obligation under section 29(1) to provide suitable temporary accommodation. Accordingly, section 29(1) (c) does not override the duty under section 29(1) to provide suitable temporary accommodation.

[31] Accordingly, I find that the respondent is under an absolute duty to provide temporary accommodation to the petitioner which is suitable for occupation by the petitioner's household, taking into account the additional support needs of the petitioner's son. To put it in another way, the respondent is under an absolute duty to provide a five apartment property.

[32] As this duty is an absolute one, the respondent is not entitled to avoid compliance with its duty for reasons such as those set out in its letter of 10 August 2021 i.e. that it is reliant on third party providers or that there were significant pressures on resources. As Lord Nicholls made clear in the passage quoted above, a local authority is obliged to comply with an absolute duty regardless of whether or not it would prefer to spend its money otherwise: the authority has no choice.

[33] That is enough to determine this case. It is not necessary for me to consider separately the parties arguments on irrationality as these stand or fall by the decision on the section 29 duty. However I shall address briefly the arguments advanced under the Equality Act 2010.

Equality Act 2010

Submissions

[34] The petitioner submitted that in exercising its homelessness functions to the petitioner under section 29 of the 1987 Act the respondent ought to have made a reasonable

adjustment by providing a five apartment or larger property to meet the petitioner's son's needs as a disabled child. This would have ensured the petitioner's accommodation was suitable for her disabled child in terms of sections 20 and 29 of the 2010 Act. It would have prevented her son being placed at a substantial disadvantage due to his disability in comparison to a person who is not disabled. His autism means that having to share a bedroom with his sister adversely effects on his health and wellbeing. The respondent is under a public sector equality duty in exercising its duties under section 29 and has failed to carry out that statutory duty.

[35] Counsel for the respondent submitted that the public sector equality duty in section 149 of the 2010 Act was not a duty to achieve a result, but a duty to have regard to the need to achieve the goals (*Hotak* v *Southwark LBC* [2015] 2 W L R 1341 at 74). Failure to provide the petitioner with a five apartment property cannot itself amount to breach by the respondent of its duty under section 149 and on the contrary the respondent's decision making process was entirely compatible with the goals in section 149.

[36] Counsel further submitted that a five apartment property would not be "reasonable adjustment" within the meaning of section 20 of the 2010 Act. A requirement to provide the petitioner with a five apartment property would not be a requirement to change a provision criteria or practice. The petitioner did not argue that any reasonable adjustments ought to be made to any physical feature of the property but sought to be provided with a different property. The duty to make reasonable adjustments in the provision of a service or the exercise of a public function did not confer upon the recipient of that service a right to any particular outcomes.

Analysis and decision

[37] Section 20 (3) of the Equality Act 2010 imposes a duty:

> "where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."

[38] A failure to comply with that requirement is a failure to comply with a duty to make reasonable adjustments (section 21(1)). Person A discriminates against a disabled person "if A fails to comply with that duty in relation to that disabled person" (section 21(2)).

[39] The respondent has the practice, as described in Mr Fulton's affidavit, of getting the houses it uses for interim accommodation from registered social property owners. The section 20 issue in this case is what the respondent should do if the registered social landlords are unable to provide accommodation which is suitable for a disabled person. Is the respondent required to make a reasonable adjustment to that practice so that it provides suitable accommodation other than from a registered social landlord? Or is the respondent entitled to apply the practice with the result that it fails to provide suitable accommodation for a disabled person? In my opinion the former is correct. The respondent has a wide range of statutory powers under which it can provide accommodation to homeless disabled persons, whether directly or through landlords in the social rented sector or private rented sector. It can source temporary homeless accommodation privately or commercially. It is not restricted as a matter of law to sourcing only through registered social landlords. Indeed, the *Homelessness: code of guidance* points out that local authorities across Scotland utilise a diverse portfolio of temporary accommodation including local authority, housing association and private rented stock, hostels and bed and breakfast accommodation. Where suitable accommodation cannot be provided by the respondent by following its

practice of sourcing accommodation from registered social landlords, obtaining suitable accommodation from other sources would be a reasonable adjustment. Accordingly, had I not found in favour of the petitioner on section 29 of the Housing (Scotland) Act 1987, I would have in any event found in her favour on section 10 of the Equality Act.

[40] A further issue which arises under the Equality Act is in respect of the public sector equality duty under section 149 which provides:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to-
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
>
> …
>
> (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant characteristic and persons who do not share it involves having due regard, in particular, to the need to-….
>
> (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;…
>
> (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities."

[41] The public sector equality duty is not a duty to achieve a result, but a duty to have regard to the need to achieve the statutory goals (*Hotak* para [74]). The duty must be exercised "in substance, with rigour and with an open mind" (para [75]).

[42] I am satisfied that within the constraints of the practice of only getting temporary homeless accommodation from registered social landlords, the individual officers of the respondent were aware of the needs of the disabled child and did their best, unsuccessfully, to try to provide accommodation suitable for the child's disability. However that does not necessarily mean that the public sector equality duty has been complied with by the

respondent. It is not enough to look only at steps taken by individual officers in applying the practice and working within its constraints: consideration has also to be given to the practice itself. I was not addressed on the wider background to the practice, nor on what steps (if any) were taken in respect of the practice itself with a view to take account of disabled persons' disabilities, nor on whether the respondent had exercised the public sector equality duty "in substance, with rigour and with an open mind" when setting the practice for its officers to follow. In these circumstances I make no finding as to whether or not the respondent has complied with its duty under section 149.

Remedies

[43] The petitioner seeks various declarators and also an order for specific performance of the respondent's duty to provide suitable temporary accommodation to the petitioner and her family.

[44] The order for specific performance was opposed by respondent. It is not unusual for respondents in judicial reviews to take the position that an order for specific performance should not be granted. Normally that is because their position is that if the court finds against them they will comply with the court's decision and so an order for specific performance will not be necessary. In this case however the respondent adopted the wholly extraordinary position that an order for specific performance should not be granted because it proposed not to comply with the court's decision and instead continue to act unlawfully.

[45] Counsel for the respondent submitted that specific performance was an equitable remedy and should not be granted in the circumstances of this case. It would be impossible for the respondent to comply with the order for the reasons set out in Mr Fulton's affidavit: there were no five apartment properties available from its third party providers. It was

impossible for the respondent to provide a five apartment property that met the needs of the petitioner and her family. It was not a cost issue: there were simply no five apartment properties. Counsel even went so far as to suggest that if an order for specific performance was granted the respondent would have to use its compulsory purchase powers to acquire properties, then demolish them and re-build them as five apartment properties.

[46] It is fundamental to the rule of law that public authorities obey the law and obey the courts. If a court decides that public authority is in breach of a statutory duty, the public authority must comply with the duty. The authority cannot just say that it chooses not to do so because, in its view, it is impossible to do so. It must find a way to comply with its duty. The duty must be discharged: the authority has no choice. It is not up to the court to decide the precise way in which an authority complies with its statutory duty. The authority must find a way and must allocate appropriate resources to do so. If the authority's usual third-party providers cannot provide it with the means to comply with the duty, then the authority must find other providers who can, or find another way to comply with the decision of the court.

[47] Having said all that, I appreciate that there may be practical issues for the respondent in complying with an order for specific performance immediately upon the issue of this opinion. I shall put this case out by order for discussion of the appropriate interlocutor in the light of my decision. At the by order, I will expect to be addressed by the respondent in detail as to how it proposes to comply with its statutory duty within a reasonably short timescale. It will not be acceptable for the local authority to say that it does not intend to comply.