OUTER HOUSE, COURT OF SESSION

[2024] CSOH 113

P1164/23

OPINION OF LADY DRUMMOND

In the Petition of

Y

Petitioner

for

Judicial Review of decisions of Glasgow City Council under sections 29 and 31 of the Housing (Scotland) Act 1987

Petitioner: Findlay KC, Anderson; Drummond Miller LLP
Respondent: Reid KC, Middleton; Harper Macleod LLP

23 December 2024

Summary of the issues and the court's decision:

[1] This case raises questions about the duties of a housing authority towards homeless persons and whether the court should make an order requiring the authority to fulfil its duty.

[2] The petitioner is from Sudan. She arrived in the UK in February 2019 and was granted leave to remain. She applied to the respondent, Glasgow City Council, for assistance in obtaining accommodation as a homeless person. The respondent decided she was homeless and not homeless intentionally on or around 9 September 2019. It is agreed that following that decision, the respondent owed (i) a duty to the petitioner under

section 29(1)(a) of the Housing (Scotland) Act 1987 to provide her with interim accommodation pending permanent accommodation becoming available and (ii) a duty under section 31(2) of that Act to provide her with permanent accommodation.

[3] Initially the respondent housed the petitioner in a one bedroom flat. On 23 September 2020, the petitioner's family – her husband, two sons, three daughters and niece – arrived in Glasgow from Sudan. The respondent housed the whole family on 30 September 2020 in a three bedroom flat as interim accommodation. The petitioner told the respondent at initial interview that she had difficulty with her knees and whilst she could manage one flight of stairs, would prefer ground or lower level accommodation. She subsequently informed the respondent that the accommodation was cramped and unsuitable, due to her deteriorating health and mobility. The respondent made two offers of alternative interim accommodation in October and December 2023, which the petitioner refused. The respondent has made no offer of permanent accommodation to date.

[4] The petitioner seeks declarator that the respondent has failed to comply with its statutory duties to provide the petitioner with interim and permanent accommodation. The petitioner also asks the court to order the respondent to make permanent accommodation available to her.

[5] The respondent denies that it is in breach of its duties. It argues that it has fulfilled its duties by making offers of alternative interim accommodation to the petitioner and doing all it can to provide her with permanent accommodation. It argues that if it is in breach of its duties, the court should refuse to make an order requiring it to comply with its duty to provide permanent accommodation and should grant declarator alone.

[6] The issues are:

(i) Is the respondent in breach of its duty under section 29(1)(c) of the 1987 Act to make available suitable interim accommodation to the petitioner pending permanent accommodation becoming available?

(ii) Is the respondent in breach of its duty under section 31(2) to secure permanent accommodation for the petitioner?

(iii) If the respondent is in breach of its duty under section 31(2), should the court order the respondent to make permanent accommodation available to the petitioner?

[7] I find the respondent in breach of its statutory duties under section 29(1)(c) and section 31(2) of the 1987 Act. I will make declaratory orders to that effect. I will also make an order requiring the respondent to comply with its duty under section 31(2). I put the case out by order for parties to address me on the terms of the orders and on expenses.

Background

[8] The petitioner arrived in Glasgow in August 2019 and applied to the respondent for housing as a homeless person. At a housing assessment interview she advised the respondent that she has an overactive thyroid which affects her knees, that she could manage stairs, though it would take her some time, and she would prefer ground or lower level accommodation. On 9 September 2019, the respondent accepted that it owed a duty to secure interim accommodation under section 29(1)(c) and permanent accommodation under section 31(2) to the petitioner. The respondent housed the petitioner in temporary accommodation in a one bedroom flat on 6 August 2019. On 3 October 2019, the petitioner

advised that she wanted to put her application on hold whilst she waited for her husband and family to arrive from Sudan.

[9] The petitioner's husband, two sons (born 12 May 2002 and 25 March 2003), three daughters (born 14 February 2007, 24 April 2013 and 9 March 2016) and niece (born 6 July 2007) arrived in Glasgow on 23 September 2020. The petitioner again advised the respondent that she suffers from knee pain and it is difficult for her to manage stairs. On 30 September 2020, the respondent provided a three bedroom flat to the petitioner and her family as interim accommodation in compliance with its duty under section 29(1)(c). The property is a first floor flat accessed by 16 stairs. The petitioner's three daughters and niece share one bedroom. The petitioner's two sons share another bedroom. The petitioner and her husband share the third bedroom. The living room has an open plan kitchen and is not suitable for sleeping in. There is one bathroom. The female children's room has an en suite shower room.

[10] The respondent's records show that the parties communicated in January 2021, with the petitioner's son acting as interpreter, as English is not the petitioner's first language. The family indicated they were not in a rush to be moved. The children attend local schools, they like staying in the area as it is quiet. They want housed not far from the city centre in the area they are in or in surrounding areas. The respondent's caseworker advised that there are no houses of the size required by the petitioner and her family in or near their current area and the respondent would struggle to house the family any time soon. There is a note that the family should be asked to consider if they would split into two properties so that the two sons, then aged 18 and 17, had a home of their own. There is a further note indicating that the petitioner would only accept two flats in a block of four flats, one above the other, but she was advised this was impossible.

[11] Over the next few months the respondent explained to the petitioner that the family would not be split unless she agreed to that. The petitioner required a six apartment (five bedroom) tenancy but there was a significant waiting list for these which were highly unlikely to be in an area of her choice. The petitioner indicated other areas she would be interested in. She maintained her preference for ground floor accommodation given her difficulty with stairs and advised that her son suffers from diabetes. On 11 May 2021, the respondent updated the resettlement plan to a six apartment property. On 20 December 2021, the petitioner advised that the current accommodation is too small for the family.

[12] During March to June 2022 the petitioner phoned the respondent and explained she is not fit for work, has a disability and is looking for permanent accommodation. On 7 July 2022 the respondent advised her someone will be in touch about a move from temporary to permanent accommodation. In October 2022 the petitioner had a fall which required hospital admission.

[13] On 2 March 2023 she emailed the caseworker to report that her health is not good: she has problems with her knees and lower back, referring to an assessment from occupational health. On 3 March 2023 she sent another email attaching the letter from the occupational therapist. The occupational therapist explains that the petitioner has been known to the rehabilitation service since 2022. She has longstanding issues with pain especially in her neck, back, knees and weakness in her hands. She has been seen by several services including physio and the pain clinic and been provided with equipment to help her. However, due to limited space in her living accommodation, she finds it difficult to use the equipment, particularly in the bath, and alternative accommodation may improve the situation. She needs to leave the property to attend hospital appointments. However, she only manages that with the assistance of family and is struggling with steps. She has had a

number of falls. She described the petitioner's mobility as having deteriorated and she now avoids going up and down stairs due to the risk of falling. On recent assessment she was in considerable pain negotiating the stairs and only managed half the flight with support. The petitioner had been unable to attend college due to her mobility difficulties, leaving her socially isolated, impacting her financially and affecting her mood. The therapist explained the petitioner had little privacy and dignity. For her safety and quality of life the petitioner should be living in low level accommodation and her current accommodation is unsuitable. In March and April 2023 the petitioner called and emailed the respondent stating the accommodation was overcrowded and that she needs her own bathroom due to her medical condition.

[14] On 31 July 2023, Shelter sent an email to the respondent explaining the situation: the property is overcrowded with inadequate bedrooms; the living room cannot be used as a sleeping space as it is small and has an open plan kitchen. The petitioner suffers from chronic neck, knee, back and upper limb pain due to underlying osteoarthritis, obesity, type 2 diabetes, mellitus, hypertension, bilateral cataracts, incontinence, depression and a history of Graves' disease. She requires to use walking sticks and a walking frame to get around. Because of limited space in the property, she is unable to use her walking frame effectively and has difficulty using the bathroom aids. She is unable to navigate the 16 steps leading up to the property and has fallen on a number of occasions. She is now too frightened to go out due to the fear of falling down the steps. As a result she is mainly housebound. That in turn has reduced her quality of life and impacted her mental health. On 10 August 2023 the petitioner explained in a call to the respondent that her son needs to be near her for health reasons (he is diabetic) and that the household configuration of having

two separate properties far apart is not possible due to religious reasons, which require the daughters and niece to live with the petitioner and her husband.

Offers of interim accommodation

[15] On 17 October 2023 the respondent's caseworker advised the petitioner by phone that two flats were being held for the family as alternative interim accommodation, one on the 19th floor and the other on the 14th floor at Lincoln Avenue. Each flat has two bedrooms and an additional public room capable of being used as a third bedroom with cooking and washing facilities. Flat 14/2 has lift access. Flat 19/6 can be accessed by taking the lift to floor 18 and one flight of stairs. On 19 October 2023 the petitioner rejected that offer.

[16] On 19 December 2023 the respondent made a further offer at flats 10C and 11F, Broomhill Lane. Again, these were three apartment (two bedroom) flats within the same multi-story block. Each flat has toilet and cooking facilities, two bedrooms and a public room capable of being used as a third bedroom. The properties can be accessed by lift and there are no internal or external stairs. The petitioner also refused that offer. To date, no further offers of interim accommodation and no offers of permanent accommodation have been made by the respondent to the petitioner.

The overall situation for the respondent as housing authority

[17] The respondent in affidavits explained that Scotland's housing system is under extreme pressure, with the demand for social housing far outstripping available supply in Glasgow. The Scottish Government and the respondent had declared a housing emergency during 2023-24. This followed Home Office plans to address an asylum backlog by streamlining the asylum process to make around 2,500 asylum decisions in Glasgow by the

end of 2023. As a result, there was an increase in persons seeking assistance from the respondent under the homelessness legislation. In addition, due to rising costs of development, registered social landlords were building fewer new homes. The overall result was a mismatch between supply and demand for permanent accommodation.

[18] Home Office policy is for an asylum applicant who receives a positive asylum decision to vacate their Home Office accommodation within 28 days and make a homelessness application. This policy, together with the streamlining process, caused a sharp rise in housing referrals in Glasgow, which is the main dispersal city for asylum seekers, after August 2023.

[19] The respondent does not own any social housing itself and sources social housing from stock managed by registered social landlords, of which there are about 60 operating in Glasgow. There are approximately 108,644 socially rented properties in Glasgow. Of those, 3,458 are five or six apartment properties and only some are ground floor properties or properties accessible by lift. At the start of every financial year the respondent writes to each registered social landlord to request they make a certain percentage of their housing stock available to accommodate homeless households. The percentage is calculated by reference to the previous year's turnover and demand. Each landlord provides the respondent with a monthly update of how many properties they have available and of what size. For larger properties (with more than three bedrooms) where supply is more limited, properties are allocated by the respondent as and when they become available.

[20] The respondent can request a registered social landlord to provide accommodation for a homeless person under section 5 of the Housing (Scotland) Act 2001. In deciding whether to make such a request, the respondent must have regard to the availability of appropriate accommodation in its area. A registered social landlord must, within a

reasonable period, comply with such a request unless it has a good reason for not doing so (section 5(3)). The respondent has to date made no requests under section 5 in respect of the petitioner. Under Government guidance, a registered social landlord may refuse a request where it is unable to provide the accommodation requested within 6 weeks of the request. Given the low turnover of five or six apartment properties, the respondent takes the view that working closely with registered social landlords is a more practical way of securing such permanent accommodation. Informed by its experience and knowledge of the housing stock available, the respondent anticipates a section 5 request would be unsuccessful. Repeated unsuccessful requests would be pointless.

[21] The respondent keeps a list of homeless households requiring properties of a particular size. Each household's position on the list is determined by how long it has been waiting for permanent accommodation, with the household which has been waiting the longest ranked first. When a property becomes available it is allocated to the household which is highest on the list and whose requirements are met by the property in question.

[22] However, the respondent has a discretion to allocate a property to a household which is not first on the list. Whether to do so would depend upon the particular circumstances of the individual case. At the time of the hearing the petitioner was eleventh on the list for permanent accommodation of a six apartment property. Those before her on the list have been waiting for that size of accommodation for longer than her. If those waiting for five apartment properties were to be included in the list as well, the petitioner would be in forty-sixth place.

[23] The respondent expects the number of households accepted as homeless to increase in 2023/2024. In 2022/23 a person assessed as unintentionally homeless typically waited for an average of 284 days before being allocated permanent accommodation. The average

waiting time for households requiring a five apartment (four bedroom) property is 1,421 days. Since March 2020 the respondent has secured 12,436 properties as permanent accommodation for homeless households. Of those, 7,534 were one or two apartment properties; 3,783 were three apartment properties; 1,040 were four apartment properties; 68 were five apartment properties; and 11 were six apartment properties.

[24] The respondent is involved in a number of schemes to address the shortage of housing. Under the Strategic Acquisition Programme, the respondent financed the purchase of 127 properties by registered social landlords during 2023/24 for homeless households. The Citywide Housing Transfer Incentive Scheme allows the respondent to provide support to enable tenants who are currently occupying larger properties to downsize to free up larger properties for which demand far outstrips supply. In addition the shortage is addressed by the Strategic Housing Investment Plan, the Glasgow Empty Homes Strategy, the Housing Transfer Incentive Scheme, a review of the use of compulsory purchase orders and the Affordable Housing Supply Programme. The AHSP allows the respondent to buy property on the open market. The budget is fixed by the Scottish Government: for 2024/25 it is £556 million, a reduction of about £200 million from the previous year. The allocation received by the respondent is £78.687 million, a reduction of about 25%.

[25] Under the Glasgow Empty Homes Strategy, over 1,700 homes have been brought back into use since 2019. In the 2023/24 financial year, 579 homes were brought back into use. Since 2019, 34 flats have been transferred to registered social landlords by way of compulsory purchase. There are 11 flats which are in the process of being acquired by compulsory purchase and which will be transferred to registered social landlords. The current budgeted expenditure for the Homelessness Services Department is £87.132m. In 2023/2024, there was a budget shortfall of £12m.

Statutory framework

The Housing (Scotland) Act 1987

[26] Section 28 (Inquiry into cases of possible homelessness or threatened homelessness):

"(1) If a person ("an applicant") applies to a local authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness."

[27] Section 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) where the applicant has, under section 35A, requested a review of a decision of the authority, until they have notified him in accordance with section 35B of the decision reached on review;

(c) where, by virtue of a decision referred to in paragraph (a) or (b), the authority have a duty under section 3 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,

(b) make different provision for different purposes and different areas."

[28] Section 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.
…

(5) For the purposes of subsection (2), *"permanent accommodation"* includes accommodation—
(a) secured by a Scottish secure tenancy,
(c) where paragraph 1, 2 or 2A of schedule 6 to the Housing (Scotland) Act 2001 is satisfied in relation to the applicant, secured by a short Scottish secure tenancy,
(d) secured by a private residential tenancy."

[29] Section 32 (Duties to persons found to be threatened with homelessness):

"(5) In section 31 and in this section, *"accommodation"* does not include accommodation—
(a) that is overcrowded within the meaning of section 135 or which may endanger the health of the occupants,
(b) that does not meet any special needs of the applicant and any other person referred to in section 24(2) , or
(c) that it is not reasonable for the applicant to occupy."

[30] The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 identifies when accommodation will be classed as "unsuitable" for the purposes of section 29.

Articles 4 and 5 provide:

"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. Unless any of the circumstances in article 6 apply, accommodation is also unsuitable if it—
(a) is both—
(i) outwith the area of the local authority which is subject to the duty to accommodate under section 29 of the 1987 Act; and
(ii) accommodation in which the household has not agreed to be placed;
(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;
(d) lacks adequate and accessible bedrooms for the exclusive use of the household;
(e) is accommodation within which the household does not have the use of adequate and accessible cooking facilities and the use of a living room;
(f) is not usable by the household for 24 hours a day;
(g) is not in the locality of the place of employment of a member of the household, taking into account the distance of travel by public transport or transport provided by a local authority; or
(h) is not suitable for visitation by a child who is not a member of the household and in respect of whom a member of the household has parental rights."

[31] Section 41 (Meaning of accommodation available for occupation):

"For the purposes of this Part accommodation shall be regarded as available for a person's occupation only if it is available for occupation both by him and by any other person who might reasonably be expected to reside with him; and references to securing accommodation for a person's occupation shall be construed accordingly."

[32] Section 135 (Definition of overcrowding):

"A house is overcrowded for the purposes of this Part when the number of persons sleeping in the house is such as to contravene—
(a) the standard specified in section 136 (the room standard), or
(b) the standard specified in section 137 (the space standard)."

Petitioner's submissions

Breach of duties

[33] The petitioner argued that the respondent had not provided her with interim accommodation that was suitable for occupation taking into account the needs of the household (Article 4 of the 2014 Order) or that satisfied Article 5 of the 2014 Order. The petitioner had accepted in Answer 12 that the interim accommodation has been unsuitable at least since July 2023. The court should infer that the respondent had not made any

decision on the suitability of the accommodation taking into account the needs of the petitioner's household: the petitioner had called on the respondent to provide details of that decision which it had failed to provide. If it did make such a decision, it is irrational and unreasonable. The petitioner told the respondent about her mobility difficulties from the outset, and subsequently. As is described in the reports, the petitioner's problems are longstanding.

[34] The interim accommodation is unsuitable in terms of article 5(c) (adequate bathroom facilities which meet accessibility needs) and (d) (adequate and accessible bedrooms). The respondent denies that but does not explain how it meets these requirements. Conversely, the respondent admits in Answer 11 that the interim accommodation is cramped having regard to the size of the petitioner's household. Since September 2020, the petitioner's family of four adults (one with a disability), two teenagers in their last years of school, and two younger children, have been living in a three bedroom flat. The respondent has not explained how it considers this to be suitable accommodation under the 2014 Order, or how it is otherwise a rational exercise of its discretion, despite calls on it to do so. It has been in breach of its statutory duty under section 29(1)(c) since September 2020.

[35] Accommodation which is suitable for a short period of time may not be suitable for a longer period of time (*X* v *Glasgow City Council* 2023 SC 153 per Lord Tyre at paragraph 45). This requires the respondent to consider, or at least keep under review, whether accommodation remains suitable. There is no suggestion that the respondent did this until forced to do so by the efforts of the petitioner and her representatives.

[36] The respondent did not fulfil its statutory duty by making alternative offers of interim accommodation. The properties offered were not suitable and were reasonably refused by the petitioner (*R* v *Kensington & Chelsea RLBC, ex p. Kujtim* (2000) 32 H.L.R. 579,

Potter LJ at 593). The Lincoln Avenue properties are five floors apart. There is no lift access to one of them and the petitioner could not manage the stairs. The respondent suggested the petitioner's two sons live in one of the flats and the remainder of the family in the other. But the properties do not allow the petitioner's household to live together as a family in practical terms. The flat where the respondent suggests the petitioner, her husband and their daughters and niece reside, would have had no living room or would have required the four girls to sleep in one bedroom, which is no different from their current situation.

[37] The Broomhill Lane properties are also on separate floors of a high rise building preventing the family from living together in practical terms. In order to access the 11th floor the petitioner would have to take the lift from the 10th floor to the bottom floor, switch lifts and take the lift up to the 11th floor. The petitioner could not manage the stairs between the flats. As with the Lincoln Avenue flats, the four girls would have had to sleep in one bedroom together, as they do currently, or there would be no living room. The petitioner is at risk if there is a fire and she has to leave quickly or if the lift is not working. It is a 40 minute walk along a busy road to the youngest daughter's school whereas currently it takes 5 minutes. The children could not walk that distance themselves and the petitioner would struggle to walk it or accompany them by bus. The petitioner does not want to move from the temporary accommodation where she has established life only to be moved again to permanent accommodation. It is reasonable for the petitioner to focus on obtaining permanent accommodation.

[38] It is implicit in section 29(1)(c), that instantaneous performance of the duty to provide interim accommodation may not always be possible. The 1987 Act provides no timescale within which the duty under section 31(2) to provide permanent accommodation must be performed. The point at which the equivalent duty in English law should be

enforced has been recently held by the English Court of Appeal and the UK Supreme Court to be an immediate, non-deferrable and unqualified duty. It is not a duty to secure accommodation within a reasonable period of time, the reasonableness of the period depending on the circumstances of the case (*R (Elkundi)* v *Birmingham City Council* [2022] QB 604 per Lewis LJ; *R (Imam)* v *Croydon LBC* [2023] 3 WLR 1178 per Lord Sales). If there is any grace period before any breach of duty arises, that period is short and is for consideration of how to comply with the duty only (*Elkundi* per Lewis LJ at paragraph 77). In the case of a delay of years, the breach occurs at a very early point in that period. In the absence of Scottish authority on the point, the English authorities should be followed. In this area of Scots law, English authorities have been persuasive notwithstanding differences in the relevant legislation (eg *Dafaalla* v *City of Edinburgh Council* 2022 SLT 807).

[39] The respondent's duty under section 31(2) first arose in September 2019. After, at most, a short period to allow the respondent to determine how it would comply with its duty, which has long since expired, the respondent was, and remains, in breach of that duty. Whether or not the current interim accommodation is or was previously suitable, whether alternative interim accommodation was offered and unreasonably refused, the respondent's budgets and the pressures on the local housing market, are all irrelevant to the question of breach and declarator ought to be granted. If a reasonable period for compliance with the section 31(2) duty is permitted, that period has, in the circumstances, expired.

Specific performance

[40] The court has a discretion, inherent in its supervisory jurisdiction, to enforce a statutory duty by making an order for performance of its duty. In *Elkundi*, Lewis LJ held that a bald appeal to budgetary constraints was not sufficient justification for the court to

refuse to grant a mandatory order. The test was whether the local housing authority has taken all reasonable steps to perform the duty (*Elkundi* paragraph 134; *Imam* paragraph 26). The authority should demonstrate what steps it has taken and what the difficulties are. It is unlikely to be sufficient to refer generally to the demand for housing or the shortage of accommodation (*Elkundi* paragraphs 129 to 141). A housing authority should seek to establish transparent policies as to how it plans to achieve compliance with its duties and to make allowances for possible future demands on its housing stock (*Imam,* paragraph 36). The Supreme Court in *Imam* listed various factors to consider when deciding whether to make a mandatory order (at paragraphs 37 to 70) which the court should follow.

[41] The court's discretion to grant an order for specific performance of the section 31(2) duty in judicial review proceedings has not been considered in any reported case. In the first instance proceedings in *X* v *Glasgow City Council* 2022 SLT 554, the Lord Ordinary, when faced with a local authority who would not or could not remedy a breach of statutory duty, stated that an order for performance should follow, albeit that a period of time could be allowed for the respondent to consider how it would go about securing compliance. In *McHattie* v *South Ayrshire Council* 2020 SLT 399 Lord Boyd stated that the court should be slow to decline to quash an illegal decision by a public authority, and the onus is on the respondent to make out a good reason why the court should not do so (paragraph 51).

[42] Although coercive orders may often be unnecessary in public law cases (*Craig* v *HM Advocate* 2022 SC (UKSC) 27, per Lord Reed at paragraphs 44-46), the position is different where it is plain that without an order for performance, the authority proposes to do nothing other than to continue proceeding as it was before proceedings were raised. Without such an order, the respondent would be excused performance of its statutory duty

for an indefinite period. For nearly 5 years the respondent has made no offer of permanent accommodation at all.

[43] The scope of the court's discretion in Scots law on remedies in this context is materially the same as in English law. Where declarator will not be sufficient to preserve the rule of law, enforcement is the norm. It is necessary for the respondent to demonstrate, with particular reference to the circumstances of the case, what steps it has taken to secure performance, and why performance is impossible. At the least, it should explain the impact of performance of the duty on other important interests which outweigh the public interest in the rule of law and the petitioner's personal interest in the alleviation of hardship. This is a heavy onus and it will be unusual for a local authority to be able to discharge it.

[44] Even if the court was persuaded that the authority faces difficulties with immediate compliance, before declining to grant an order the court may consider giving a respondent a short period to provide the court with its proposed solution to the problem. The court may then consider whether the proposals for compliance are satisfactory.

[45] The respondent does not explain how its current practice of working closely with registered social landlords will result in the petitioner being provided with permanent accommodation, nor why it has not exercised its discretion to move the petitioner up the housing list. It has not explained how any of its schemes targeted at meeting the undersupply of housing will fulfil the duty nor why other funds cannot be made available to do so. Impossibility of performance or something close to it is required.

Respondent's submissions

Breach of duties

[46] The respondent's position is that it has not breached any of its duties. There is no requirement for the respondent to meet the needs of any particular member of the petitioner's household when providing interim accommodation, it must only take them into account (*X* v *Glasgow City Council* 2023 SC 153 at paragraphs 39 and 40). Whether interim accommodation is suitable in terms of section 29 and the 2014 Order is primarily a matter for assessment by a local authority's experienced officers. The substance of any such assessment is only reviewable on conventional judicial review grounds (*ibid* at paragraph 46).

[47] If a local authority offers suitable accommodation within the meaning of the 2014 Order, it fulfils its duty under section 29. If the applicant rejects the offer, the authority does not need to keep it open, or to keep making alternative offers, until it secures permanent accommodation. (*R (Brooks*) v *The London Borough of Islington* [2016] PTSR 389, per Lewis J at paragraphs 41 to 45.)

[48] When the petitioner and her household moved into interim accommodation in 2020 it was suitable for the petitioner's household. The petitioner's mobility was such that she could manage one flight of stairs. Nonetheless, the respondent admits that is has been aware since 31 July 2023 that the petitioner's mobility deteriorated and she is no longer able to manage the stairs. In oral submission counsel accepted that the respondent had received the occupational therapist's letter in March 2023 and had been aware since then that the accommodation was not suitable within the meaning of the 2014 Order.

[49] The respondent's subsequent offers of accommodation fulfilled its duty under section 29. The petitioner explained in August 2023 that the household could be split across

two properties provided that they were in close proximity and that none of her daughters would reside with her older sons separately from her and her husband. Flat 14/2 Lincoln Avenue could accommodate the petitioner and her husband in one bedroom, two of the petitioner's daughters in another bedroom, and the petitioner's third daughter and niece in the third bedroom. The petitioner's sons, then aged 20 and 21, could be accommodated in Flat 19/6, each having their own bedroom. The properties are located close to public transport links, shops and amenities as well as health and education facilities. They are close to the school the younger children attend.

[50] At Broomhill Lane, flat 10C could similarly house the petitioner, her husband and all four girls using both bedrooms and the living room to sleep in. The petitioner's sons could live in Flat 11F, with each having their own bedroom and a living room. The flats are close to public transport links, shops and amenities as well as health and education facilities. Both offers took into account the "needs of the household" and the authority's decision is reasonable.

[51] The duty under section 31 is to secure permanent accommodation within the meaning of section 32(5) ie that is not overcrowded, that meets any special needs of the applicant and her household and is reasonable for her to occupy. Section 31 does not prescribe any time period within which permanent accommodation must be secured. The time period within which permanent accommodation is secured is the period that is reasonable in the circumstances. That is consistent with Part II of the 1987 Act as a whole. Nor is there a time limit for providing interim accommodation. The terms of section 29 recognise there will almost inevitably be a period between an applicant being recognised as homeless and permanent accommodation being available. That is consistent with homeless persons being placed on the housing list in accordance with section 20. Like any statutory

duty, the respondent will have to act reasonably in respect of it. The court should have regard to the practicalities of the situation as explained by Lady Hale in *R* (*Aweys)* v *Birmingham City Council* [2009] 1 WLR 1506 at paragraph 50, endorsed by Lord Hope, at paragraph 4.

[52] A reasonable period of time to secure permanent accommodation has not yet expired. The petitioner and her family have been accommodated in interim accommodation since their arrival in September 2020. Until March 2023 the petitioner had not made the respondent aware that the accommodation did not meet her accessibility needs (or any other needs which she or other members of her household had). The respondent was reasonably entitled to proceed on the basis that the accommodation was suitable. It fulfilled its duty by making reasonable offers of alternative interim accommodation taking into account the household's needs but these have been refused. The petitioner insists that her household be accommodated together in a five apartment property. There are others who have been waiting longer for similar properties. There is an acute shortage of properties of the relevant size. Numerous steps have been taken to address the housing shortage including the acquisition of further properties. The court should not expect or demand the impossible from the respondent. In all the circumstances, it cannot be said that the respondent has reached the point of acting unlawfully. The petitioner's position is unsatisfactory but the respondent has taken, and continues to take, reasonable steps to source appropriate accommodation, within the confines of severe budgetary constraints.

[53] If the court finds the respondent in breach of its duty under section 31, specific performance should be refused. The respondent has taken all reasonable steps to perform its duty. It would be impossible for it to comply with any order for specific performance without diverting funds from allocations already made in its budget *(Imam* at paragraphs 54

and 62). In deciding whether to order specific performance, the court must avoid giving an applicant undue priority over others who are also dependent on the respondent providing suitable accommodation and who may have an equal or better claim as compared to the petitioner (*Imam,* paragraph 70).

[54] There are currently no available ground floor, five apartment properties which the respondent could offer the petitioner as permanent accommodation. There are currently 10 other households who require a five apartment property and have been waiting longer than the petitioner. Any decision by a registered social landlord to provide a property must comply with the rules made by the landlord under section 21 of the 1987 Act (*Gallacher* v *Stirling Council* 2001 SLT 94 at paragraph 42). Those rules, and that system of prioritisation, are not challenged by the petitioner and are, in any event, plainly reasonable. An order for specific performance would cut across those rules. It would unfairly prioritise the petitioner's case at the expense of other households, who are not represented in this litigation. While there may be features of the petitioner's case which should receive priority over some of those ahead of her, that is ultimately speculation. The court does not have before it sufficient information to entitle it to move the petitioner to the front of the waiting list ahead of others who have been waiting longer.

[55] The respondent has limited resources and operates under severe budgetary constraints. The court should only in exceptional circumstances pronounce an order requiring the respondent to divert funds, contrary to settled and approved budgets, from other services which are also subject to financial pressures. Various steps have been taken to address the housing issues in Glasgow. None of those measures are challenged by the petitioner yet she demands an immediate solution for her, without regard to the effect of

that on others who have a similar need or the effect on the unchallenged policies in place to address the housing issues.

[56] How to resolve the matter should not be dictated by the court. Declarator signals to those with policy responsibility the urgency with which matters need to be resolved. It underscores the urgency with which the duty should be complied with. That urgency is highlighted not only to the respondent but also to the Scottish Government who have a direct role in the respondent's funding. It ultimately leaves how to comply in the hands of the respondent who is the public body that the legislature has determined as the appropriate body to address the issue. An order for specific performance would, if the respondent found it impossible to comply, risk proceedings for contempt.

[57] In the event the court is minded to make an order for specific performance, the court should put the case out by order so that the precise terms of an order could be discussed including the timescale within which such an order would apply. An order in the terms sought is too blunt and would be impossible to immediately comply with.

Decision

Breach of duties

[58] The nature of the statutory duties owed by a housing authority under section 29 and section 31 of the 1987 Act were considered by the Inner House in *X* v *Glasgow City Council* 2023 SC 153. The court held that the duties under section 29 are different to those imposed under section 31, with each having different statutory requirements to meet. Under section 32(5) the authority has a specific obligation to meet the special needs of the applicant or any other member of her household. In contrast the duty under section 29(1) is to secure that interim accommodation is made available until accommodation which satisfies the

requirements of section 32(5) becomes available. Article 4(b) of the 2014 Order requires the authority to provide interim accommodation that is suitable, taking into account the needs of the household. It does not require particular needs to be met (*ibid*, paragraphs 38-39). Accordingly, the Article 4 duty ought to be construed as a more general duty to provide accommodation that takes account of the basic needs of a household of the size and composition in question as opposed to their permanent needs. The court concluded that the Article 4 test of suitability may be met even where the temporary accommodation does not meet any special needs of individual members, so long as account is taken of the general needs of the household and the decision of the authority in that regard is a reasonable one (*ibid*, paragraph 43).

[59] The court at paragraph 44 noted their conclusion is consistent with the approach of the House of Lords in *Aweys* which also drew a distinction between what might be suitable for fulfilling a duty to provide interim accommodation and what would be necessary to discharge a duty to provide permanent accommodation (per Lord Hope at paragraph 4 and Lady Hale at paragraph 18). The court noted similar observations were made by Lewis LJ in *Elkundi* at paragraphs 81-82: that suitability is a flexible concept which will involve consideration of a number of factors including the length of time the family has been in the accommodation and the family's needs. The court also noted that in paragraph 82, Lewis LJ stated that the duty to secure suitable accommodation does not mean it must be provided immediately once the duty is owed. Different accommodation may be provided at different times to ensure that the duty is being performed. The Inner House recognised that the English legislation does not have a direct counterpart to the 2014 Order but decided that the same approach should be taken to interpretation of the duty in Article 4(b) when determining whether interim accommodation is suitable for occupation (paragraph 44).

[60] In *X*, at paragraph 45, the Inner House recognised an underlying practical problem, which arises in this case, that homeless persons, especially larger families, may find themselves accommodated in interim accommodation for a considerable period of time before permanent accommodation meeting their needs becomes available. Under reference to *Aweys* it also recognised that what is suitable as short term accommodation may not be suitable in the long term. Nonetheless if the time that is allowed to elapse becomes intolerable the court may feel that it is proper for it to step in and require an authority to offer alternative accommodation or at least to declare they are in breach of their duty if they fail to do so (per Lord Hope paragraph 4 and Lady Hale paragraph 51).

[61] At paragraph 46, the court explained that the issue for determination is the nature and scope of the Article 4(b) duty to provide accommodation that is suitable for occupation by the household, taking account of its needs. It accepted the authority's submission that whether the interim accommodation is suitable in terms of section 29 and the 2014 Order, including Article 4(b), is primarily a matter for assessment by the authority's experienced officers. In *X*, a family of two adults and 4 children had been housed in a three bedroom flat as interim accommodation although an occupational therapist had assessed them as requiring a four bedroom apartment because of one child's additional support needs. In *X*, no case had been made that the officers had acted unreasonably or left out a relevant consideration in allocating a three bedroom flat. The court rejected the proposition that the authority were under a statutory duty to provide a particular size of accommodation.

[62] I follow the same approach in assessing the merits of this petition. It is a matter for the authority's experienced officers to assess whether accommodation is suitable or not. However, any such assessment and consequent decision is subject to review on judicial review grounds.

[63] The petitioner raised the question of the timing of when the duty to provide permanent accommodation must be fulfilled. It was argued that the duty to provide permanent accommodation under section 31 is an immediate, non-deferrable and unqualified duty. It is not a duty to secure accommodation within a reasonable period of time, the reasonableness of the period depending on the circumstances of the case. (*R (Elkundi)* v *Birmingham City Council* [2022] QB 604 and on appeal in *R(Imam)* v *Croydon LBC* [2023] 3 WLR 1178.)

[64] The issue in *Elkundi* was whether on a proper interpretation of the English statutory duty to provide accommodation, section 193(2) of the Housing Act 1996, the local authority has a duty to secure that suitable accommodation is available immediately the current accommodation becomes unsuitable or within a reasonable time from when the accommodation becomes unsuitable. Lewis LJ, approved the reasoning of the Court of Appeal, Arden LJ (with whom Smith LJ agreed) in *Aweys* that the duty is immediate and that suitable accommodation is to be available from the time the duty is owed.

[65] The point was not before the Supreme Court on appeal in *Imam* (Ms Imam was one of the appellants in *Elkundi*), the appeal restricted to the question of remedy, and the court heard no submissions on it. Nonetheless Lord Sales, who gave the only judgment, noticed the point at paragraph 38, where he reserved his opinion on whether the way Lewis LJ had put it, is exactly right. Lord Sales' view was that it is clear the duty is directed towards achieving an end result (the provision of suitable accommodation) and, even if some time is required for consideration how ultimately to achieve this, it would be implicit that the end result would have to be achieved within a reasonable time. Moreover, since the end result is intended to satisfy an urgent and important need, a reasonable time to allow for consideration of the appropriate means would be short.

[66] Although Lewis LJ in *Elkundi* describes the duty to secure that suitable accommodation is available immediately the current accommodation becomes unsuitable, he accepts at paragraph 82 that the duty to secure suitable accommodation is available does not mean that permanent accommodation suitable for long-term occupation must be provided immediately once the duty is owed. Different accommodation may be provided at different times to ensure that the duty is being performed. The Inner House in *X*, at paragraph 44 refer approvingly to paragraph 82 which is noted to be consistent with the approach taken by the House of Lords in *Aweys*.

[67] I follow the approach set out by the Inner House in *X* and share the reservations of Lord Sales about the approach of Lewis LJ in *Elkundi*. It is agreed that the duties under section 29 and 31 arise once the person is recognised as homeless. It is implicit in section 29 that there has to be some period of time for suitable housing to be provided. The authority is required to provide interim accommodation until permanent accommodation becomes available. Under section 19 an applicant for housing is entitled to be admitted to a housing list, indicating it may be some time before it becomes available. What may be suitable in the short term may not be suitable longer term. As stated by the Inner House in *X* at paragraph 43, the authority's decisions in this regard must be reasonable. It will have fulfilled its duties under section 29 and 31 if suitable accommodation is provided within a reasonable time. If needs are pressing and the applicant has been housed in unsuitable accommodation, it may well be that anything more than a short period of time would not be reasonable (*Imam,* paragraph 38)

Application to the petitioner

[68] The petitioner and her family have been living in a three bedroom first floor flat with 16 steps since September 2020. As the respondent acknowledges, the accommodation is cramped having regard to the size of the household. Article 5(d) of the 2014 Order provides that accommodation is unsuitable if it lacks adequate and accessible bedrooms for the exclusive use of the household. How many bedrooms are adequate for 8 people is a matter for the housing authority's officers' judgment, subject to reasonableness. I note in contrast that section 32(5) specifies the number of bedrooms and space under section 135 to 137 of the 1987 Act. The respondent's records from 2020 show that it knew the petitioner had difficulty with stairs, that she could manage these, though it would take her some time and she would prefer ground or lower level accommodation. The petitioner's mobility issues were recorded by and known to the respondent. There is no reason to assume the respondent did not take them into account when deciding to provide the petitioner with interim accommodation. A first floor flat is not ground floor accommodation but it is lower floor accommodation provided at a time when the petitioner said she could manage stairs albeit with difficulty. Eight people in a three bedroom property is crowded but any question of adequacy of bedrooms is a matter for the respondent's officers subject to reasonableness. I bear in mind that this is interim accommodation and what may be suitable on an interim basis may not be suitable longer term. In these circumstances I find that in September 2020 it was not irrational or unreasonable for the respondent to provide the petitioner and her family with a first floor three bedroom property as interim accommodation.

[69] By March 2022, the petitioner's mobility had deteriorated. She had made the respondent aware she had a disability. On 3 March 2023, she emailed the respondent the occupational therapist's assessment that the accommodation was unsuitable. The therapist

described how the petitioner was in considerable pain using the stairs, only able to manage half a flight with support and had been unable to attend college. She could not use equipment to assist her mobility due to limited space. As described in the letter from Shelter, the petitioner was by then mainly housebound. By 3 March 2023 at the latest, the respondent knew that the accommodation was not suitable. The respondent admits as much in its pleadings.

[70] Whilst the authority is not required to meet the petitioner's household's needs when providing interim accommodation, it must take them into account and make a reasonable decision in light of them. By this point, the property lacked adequate toilet and personal washing facilities which met the accessibility needs of the household (contrary to Article 5(c)). The petitioner had been living in cramped accommodation for well over 2 years and was mainly housebound. The decision to continue to house the petitioner and her family in the first floor three bedroom flat in these circumstances at March 2023, particularly in light of the petitioner's mobility difficulties and inability to use required mobility aids or leave the flat without support, was not reasonable.

[71] The authority may discharge its duties if it offers suitable alternative accommodation which is unreasonably refused (*R* v *Kensington & Chelsea RLBC, ex p. Kujtim* (2000) 32 H.L.R. 579, Potter LJ at 593). The requirement to offer an applicant accommodation in discharge of statutory duties does not in all cases require the provision of a single unit of accommodation to a homeless household (*Sharif* v *Camden* LBC [2013] UKSC 10, [2013] H.L.R. 16, Lord Hope of Craighead at paragraph 27). However, the respondent will not have complied with its duty to the petitioner and her household if the family are not able to live together as a family in practical terms *(Sharif*, Lord Carnwath at paragraph 17).

[72] I do not consider the respondent complied with its section 29 duty by offering the family two bedroom flats at Lincoln Avenue or Broomhill Lane. The Lincoln Avenue flats are five floors apart, there is no lift access to one of them and the petitioner could not manage the stairs. They do not allow the petitioner's household to live together in practical terms as a family. The petitioner, her husband and their daughters and niece would have to stay in the same property in accordance with their cultural beliefs, resulting in the four girls sleeping in the same bedroom which is no different from their current situation. Alternatively it would result in there being no living room, in breach of Article 5(e) of the 2014 Order.

[73] The flats at Broomhill Lane present the same difficulties as they are also two bedroom flats. The properties are on separate floors, the 11th floor accessible from the tenth floor only by taking the lift via the ground floor. There are potential risks in the event of fire and they require to leave quickly or if the lift is out of order. The distance from the accommodation to the youngest daughter's school would be 40 minutes along a busy road whereas currently it is 5 minutes. They could not walk this long distance themselves and the petitioner would struggle with a bus journey or to walk them that distance. The petitioner wishes to avoid multiple moves. The petitioner's refusal of these offers of accommodation was reasonable for the reasons she has given. The respondent did not make offers of suitable accommodation that were unreasonably refused by the petitioner.

[74] In these circumstances, where it has been at least 20 months that the petitioner has been living in these conditions, the respondent having made no other offer of interim accommodation that is reasonable, I find the respondent in breach of its duty under section 29.

[75] I accept the respondent has a reasonable period of time to provide suitable permanent accommodation to the petitioner. What is a reasonable time depends on the facts and circumstances. It may be that where a household is living in accommodation and the situation is not pressing, a longer time may reasonably be taken by an authority to provide permanent accommodation. On the other hand, where there is a pressing need to provide accommodation because the current accommodation is unsuitable, the timescale may well be relatively short. It is, as Lady Hale observed in *Aweys* at paragraph 51, right to take into account the practical realities that the authority finds itself in: the financial constraints the respondent is operating under, the shortage of housing and the difficulty finding larger properties to house bigger families. However, the respondent is under a statutory duty to provide permanent accommodation. The petitioner has been living in cramped accommodation and been mainly housebound since at the latest March 2023. No offer of permanent accommodation has been made to her since she became homeless in September 2019 and her family joined her in September 2020, a period of over 4–5 years. In the circumstances, the time that has elapsed without permanent accommodation being provided is not reasonable. I find the respondent in breach of its duty under section 31(2). Accordingly, I will make declaratory orders in terms of paragraph (i) and (ii) of Statement 4 of the petition.

An order to make permanent accommodation available to the petitioner

[76] I turn to consider whether to order the respondent to make permanent accommodation available to the petitioner in compliance with its duty under section 31(2). The parties agreed that the court has a broad discretion whether to grant such an order. I find the English authorities on remedies in this context to be helpful, remedies in public law

being discretionary in both jurisdictions and authorities from the other jurisdiction cited with approval in each. How the court should exercise its discretion in deciding whether or not to make a mandatory order was recently addressed by Lord Sales in *Imam,* in the context of English housing legislation.

[77] I take the following from *Imam*:

- The starting point is that the authority is subject to a public law duty imposed by Parliament which is not qualified by reference to the authorities' resources. If resources are inadequate to comply with the duty, this is a matter for the authorities to take steps to remedy, by providing further funding or by Parliament removing the duty (paragraph 39);
- Where a breach of statutory duty is established, it is not for the court to modify or moderate its substance by routinely declining to grant relief to compel its performance on grounds of absence of sufficient resources. That would be a violation of the rule of law and an improper undermining of Parliament's legislative instruction (paragraph 40);
- Where the court finds a breach of duty, it is for the court to decide how to reconcile individual rights and any countervailing public interests (paragraph 41);
- A court should proceed cautiously in exercising its discretion to refuse to make an order and should ensure that it does so only where that is clearly justified. It may be that due enforcement of the law can be sufficiently vindicated by some other order (paragraph 43);
- Different remedies have differing degrees of impact on a public authority to carry out its functions. A mandatory order takes the matter out of the authority's

hands and makes the court the primary actor. The court has to have regard to the way a mandatory order might undermine to an unjustified degree the ability of the authority to fulfil functions conferred on it by Parliament and act in the public interest (paragraph 44);

- It is not just a question of what resources are available to the authority, but also of whether and to what extent it would be appropriate to make an order which may have the effect of disrupting existing plans for the allocation of the authority's resources. At the same time it is the court's role to enforce the law. The nature of the breach of the duty may call for mandatory relief to compel the authority to do what it has a clear legal duty to do. The issue is how to balance those various considerations (paragraph 44, 52);
- Where the authority is in breach of its duty the onus is on the authority to explain why a mandatory order should not be made to ensure it complies with its duty. The authority has to provide a detailed explanation of the situation it finds itself in and why this makes it impossible to comply with an order. The authority has to show it has taken all reasonable steps to perform its duty (paragraph 53-54);
- An authority which has limited resources available to meet is statutory duties and to fulfil discretionary functions, is obliged to give priority to using them to meet its duties (paragraph 56);
- Where Parliament has imposed a statutory duty on an authority to provide a service or benefit, it does so on the footing that the authority has the resources available to comply. It is not for the court to dilute the duty or absolve the authority from complying with its duty, with its own view of the resources available (paragraph 59);

- The effect a mandatory order might have on the due operation of an administrative process being carried out in the public interest may be relevant to the exercise of the court's discretion, if it is likely to distort this to an unacceptable degree. Relevant factors include detriment to good administration and hardship and prejudice to others who have interests which ought to be taken into account by the authority (paragraphs 62 and 64);
- If an authority has a general contingency fund to deal with unexpected calls for expenditure, consideration should be given to whether accommodation could be met out of that fund without disruption to the proper carrying out of the authority's functions (paragraph 66);
- It is a relevant factor if it emerges that an authority was on notice in the past of a problem in relation to the non-performance of its duty but failed to react to that in good time. The court cannot provide encouragement to a settled position of an authority to act in disregard of the duty imposed by Parliament. The longer that this has gone on, the more important it may be for the court to enforce the law. Inquiry as to what has been done at a policy level may be required (paragraph 67);
- Another relevant factor is the impact on the individual. If the failure to comply is serious and the need is pressing, this may justify a mandatory order despite the potential for wider disruptive effects (paragraph 68);
- If there is no sign that the authority is moving to rectify the situation and satisfy the individual's rights, this is a factor pointing in favour of a mandatory order (paragraph 69). However, the court should take care not to create a situation

> which is unfair to others by giving a claimant undue priority over others (paragraph 70).

[78] I follow the approach in *Imam,* recognising that the issue for the court is how to balance the various considerations set out there. Having found the respondent in breach of its duties, should the court take one step further and make an order requiring the authority to provide permanent accommodation to the petitioner? As was observed in *Imam,* to make such an order is to take the decision out of the hands of the authority, which has been entrusted by Parliament to secure housing for the homeless. It makes the court the primary decision maker in that matter. It differs from an order reducing an unlawful decision which leaves the matter with the authority and allows it to make the decision of new. I accept that the court should be slow to refuse to reduce unlawful decisions (*McHattie* v *South Ayrshire Council* per Lord Boyd paragraph 51). I also recognise that in many judicial review cases, coercive orders are considered unnecessary because the public authority can be expected to comply with a declarator (*Craig* v *HM Advocate* per Lord Reed at paragraphs 44-46). However where the authority proposes to continue doing what it has been doing when found to be in breach, and not act to resolve the situation anytime soon, it may be that the discretion to make an order requiring it to do something is greater (*Imam,* paragraph 44). In those circumstances, the rule of law, and the public interest in the maintenance of the rule of law, may require the court to order an authority to perform its statutory duties.

[79] The starting point is that I have found the respondent in breach of its duty under section 31. It is not for the court to excuse performance on grounds of resources alone. The onus is on the authority to explain to the court why it should not make the order. It must satisfy the court that it has taken all reasonable steps to fulfil its duty.

[80] The respondent has gone some way to explaining why it has not provided permanent accommodation to the petitioner. It has explained the very significant pressures and difficulties it has in providing accommodation to homeless persons, particularly to larger families within a housing crisis. It has explained the reduced resources, the increased demand for housing, the reduced supply, and the schemes it has adopted to address the housing shortage all as summarised above. The authority does not currently have a five apartment ground floor property available.

[81] However, questions remain. It has not been explained why suitable accommodation cannot be acquired out of the respondent's general contingency fund. If accommodation was acquired from that fund, it would not result in funds being diverted from other services which are also subject to financial pressures. The respondent has explained the schemes it has for addressing the housing shortage on a general level but not how or when that will result in the petitioner being accommodated.

[82] The respondent has explained why it cannot move the petitioner up the housing list at a general level: to do so would cut across the rules in place for allocating accommodation and deprive others ahead of her in the queue. However the respondent accepts it has a discretion to allocate a property to a household which is not first on the list. Whether it decides to do so is dependent upon the particular circumstances of the individual case. The respondent submitted that it was speculation whether those higher up the list had more pressing needs than the petitioner, in the absence of information about that. I agree. But the onus is on the respondent to show that it has taken all reasonable steps to comply with its duty. It is presumably in a position to make an assessment of the petitioner's circumstances compared to those ahead of her on the list. Having made such an assessment, the respondent would be in a position to decide whether there are grounds to exercise its

discretion in the petitioner's favour or not and to explain the same to the court. On the face of it, all that the respondent has done is to place the petitioner on a list in accordance with the date she applied for housing. The court should be careful not to create a situation which is unfair to others by giving the petitioner undue priority. However the respondent has not satisfied me that others would necessarily be unfairly deprived of resources by providing the petitioner with permanent accommodation in the exercise of its discretion.

[83] It is relevant to consider the impact on the petitioner. I have already found the petitioner's situation to be pressing and to have been so for over 20 months. The respondent has been on notice since March 2023 that the petitioner is mainly housebound and the current accommodation unsuitable. It has offered alternative properties as interim accommodation only, which I have found the petitioner reasonably refused.

[84] There is no indication that the respondent is moving to provide the petitioner with accommodation any time soon. It is not clear how working closely with registered social landlords will provide results for the petitioner in any particular time. Whilst the respondent has stated there are no ground floor five apartment properties available it has not provided information whether it is possible that such a property, or indeed any other permanent accommodation, could be made available in exercise of its discretion, out of other funding, or in terms of any of its programmes.

[85] On the information before me I am not satisfied that the respondent has taken all reasonable steps to meet its statutory duties. The petitioner's situation is urgent. Without an order for specific implement, I have no confidence that her situation will change anytime soon. I am not satisfied that making such an order will necessarily deprive others unfairly of resources. Balancing the various considerations identified above, it is appropriate to make an order requiring the respondent to comply with its duty under section 31(2).

Accordingly, I sustain the petitioner's first, second, third and fifth pleas in law and repel the respondent's pleas in law.

[86] I was invited to put the matter out by order for the respondent to address me further on whether the order should be made. I have not done so because this issue has from the start been central to the determination of this judicial review. The respondent knew the petitioner was seeking such an order and addressed the court on that at a two day hearing. I am conscious however that the terms of the order will require to be worked out including time for compliance and to take into account that practical arrangements will require to be made by the respondent. Failure to comply with the order may result in breach. I therefore put the matter out by order for parties to address the court on the terms of the interlocutor, particularly the order for specific implement, and on expenses.