Neutral Citation Number: [2023] EWCA Civ 975

Case Nos: CA-2022-000408
CA-2023-000291

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Upper Tribunal Judge Ward (sitting as a Judge of the High Court)
[2022] EWHC 1086 (Admin)

AND ON APPEAL FROM A DECISION ON A REVIEW UNDER SECTION 202 OF THE HOUSING ACT 1996

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/08/2023

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
and
LORD JUSTICE NEWEY

- -

Between:

THE KING **(on the application of AMINA AHAMED)**	**Claimant/ Appellant**
- and -	
LONDON BOROUGH OF HARINGEY	**Defendant/ Respondent**

And between:

AMINA AHAMED	**Claimant/ Appellant**
- and -	
LONDON BOROUGH OF HARINGEY	**Defendant/ Respondent**

- -
- -

Rea Murray (instructed by **Lawstop**) for the **Appellant**
Stephen Evans (instructed by **London Borough of Haringey Legal Services**) for the **Respondent**

Hearing date: 19 July 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 11 August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. The appellant, Ms Amina Ahamed, has since December 2021 lived at Northumberland Park Hostel ("the Hostel") in Tottenham, where she has a room of her own ("Room 7") but shares bathroom and kitchen facilities. The accommodation is provided on half board terms.

2. In these proceedings, Ms Ahamed contends that the respondent, the London Borough of Haringey ("the Council"), has failed in its responsibilities under the Housing Act 1996 ("the 1996 Act"). More specifically, she contends that Room 7 does not amount to "suitable" accommodation and that it is not reasonable for her to continue to occupy it, with the result that she is "homeless" for the purposes of the 1996 Act.

Basic facts

3. Ms Ahamed, who is single and now aged 48, came to the United Kingdom from Somalia in 2010. In August 2021, she was granted leave to remain and, as a result, told that she would have to leave the accommodation provided through the National Asylum Support Service ("NASS") in which she was living.

4. On 3 November 2021, a homelessness application was submitted to the Council and a housing needs officer ("the Officer") was allocated to her case. On 17 November, the Officer spoke to Ms Ahamed with the assistance of an interpreter and recorded that the NASS accommodation would be ending on 2 December and that Ms Ahamed had "blood pressure, hearing impairment – hearing aid, diabetes 2, high cholesterol". On 30 November, the Officer told Haringey Migrant Support Centre, which had been corresponding with the Council on Ms Ahamed's behalf since 11 November, "Eligibility and homelessness confirmed, it is the priority need threshold I am unable to ascertain".

5. On 1 December 2021, the Officer received Ms Ahamed's medical records and also interviewed her, again with the help of an interpreter, and a "vulnerability questionnaire" was completed. This included questions on "Physical and/or mental health issues" and "Management of day-to-day activities (ability to fend)". Ms Ahamed explained that she had "diabetes type 2, cholesterol, high blood pressure, heart pain". Asked how her health affected her on a daily basis, she explained that her eyesight had been affected and that she wore glasses. She further confirmed that she was able to prepare meals for herself and to go food shopping.

6. Following this interview, the Officer recorded in the case notes for Ms Ahamed, "No overt reason to believe more vulnerable than the average person". She said the same in an email to Haringey Migrant Support Centre of 1 December, but added:

> "With this being said. I have contacted Northumberland [P]ark hostel as Amina is over 35 yrs old and receiving UC [i.e. universal credit]. They advised to call tomorrow for vacancies."

7. On 2 December 2021, the Officer wrote to Ms Ahamed enclosing an "Assessment and Personalised Housing Plan". She explained that she had found Ms Ahamed to be homeless and eligible for assistance and that the Council therefore had a duty to make an assessment of her case and to take reasonable steps to help her to secure that suitable

accommodation became available for her occupation. The "Assessment and Personalised Housing Plan" recorded as regards "Clients' needs":

> "Support needs:
> - Somali interpreter is needed
> - Can read in Somali but struggles with writing as she never attended school
> - Benefits have been applied for on behalf of client, who is now in receipt of UC"

8. Also on 2 December 2021, the Officer told Haringey Migrant Support Centre in emails that the Hostel had proved to have vacancies and that Ms Ahamed could "make her way now". The Officer further explained that the room in the Hostel which Ms Ahamed was to have was single occupancy, that it was "not temporary accommodation or supported", that the Hostel provided a licence agreement rather than an assured shorthold tenancy, that the Hostel provided three meals a day for which a service charge would be payable and that the Council would pay the first month's service charge. Ms Ahamed moved into the Hostel that same day. It is to be noted that the reference to the Hostel "provid[ing] three meals a day" was a mistake: it in fact supplies breakfast and dinner, but not lunch.

9. In a letter dated 14 December 2021, the Officer informed Ms Ahamed that the Council's "relief duty" under section 189B of the 1996 Act had come to an end because Ms Ahamed had "accommodation that is available to you for at least 6 months and which is suitable for your household to occupy". The Officer further said that, under section 184(3) of the 1996 Act, she was notifying Ms Ahamed that "the S193 main duty does not apply to you as you are not homeless" and that Ms Ahamed could request a review of the decision under section 202 of the 1996 Act.

10. On 21 January 2022, Lawstop solicitors sent the Council a letter pursuant to the judicial review pre-action protocol asking that Ms Ahamed be provided with "alternative, suitable accommodation, pursuant to section 188 of the Housing Act 1996". Replying on 4 February, the Council said that Ms Ahamed's accommodation "was not provided under s.188 but offered to end our relief duty". It further said that it would treat Lawstop's letter as an out-of-time request for a review.

11. On 7 February 2022, Ms Ahamed applied for permission to proceed with a claim for judicial review, contending that the "decision to accommodate [Ms Ahamed] in the accommodation was unlawful because the accommodation is unsuitable". That application came before Upper Tribunal Judge Ward, sitting as a Judge of the High Court, on 24 February. In a judgment given that day, Judge Ward refused permission to apply for judicial review, agreeing with the Council that Ms Ahamed had an appropriate alternative remedy through the review procedure and, potentially, an appeal to the County Court pursuant to section 204 of the 1996 Act.

12. In the meantime, on 22 February 2022, the review officer, Mr Minos Perdios, had sent Ms Ahamed and Lawstop a letter in which he had explained that he was "minded to" conclude that the Council had been entitled to end its relief duty under section 189B of the 1996 Act and that Ms Ahamed was no longer homeless. Explaining why he considered the accommodation in the Hostel to be suitable for Ms Ahamed, Mr Perdios said, among other things, that he was satisfied that the accommodation was affordable

and that it was suitable in terms of cooking facilities, Ms Ahamed's medical conditions and sharing facilities. Mr Perdios said, however, that he would like to invite further representations before he made his final decision.

13. Lawstop made written representations on 8 March and 1 April 2022. In the course of those of 8 March, Lawstop suggested that Mr Perdios "contact Ms Ahamed's GP for information about the specific diet plan and what he has advised her". On 8 March, Mr Perdios spoke to the surgery and, on 15 March, he spoke to the practice's Health Care Assistant.

14. Mr Perdios gave his final decision in a letter dated 7 April 2022 ("the Decision Letter"). He confirmed that he was satisfied that the Council's section 189B duty to Ms Ahamed had come to an end as she had accommodation that was available for her for at least six months and which was suitable for her household to occupy and, hence, that section 189B(7)(a) of the 1996 Act applied to her.

15. With regard to the availability of the accommodation, Mr Perdios said in paragraph 3 of the Decision Letter:

> "The legislation does not state that an applicant needs to have a particular licence or tenure in order to be able to bring to an end the relief duty on the basis that they have six months accommodation. The only stipulation is that there is a reasonable prospect of it being available for at least six months and suitable. Homes for Haringey has an excellent working relationship with the hostel and we know very clearly the nature of the agreement and how long a person can occupy it. Irrespective of the fact that the Accommodation Agreement states that only 13 weeks of accommodation is guaranteed the reality is that, as long as you adhered to the terms of the Accommodation Agreement, the accommodation would remain available to you not just for six months but indefinitely."

16. Turning to affordability, Mr Perdios noted that Ms Ahamed had asserted that she received £324 each month from universal credit and that, having paid service charges of £156 per month, she was left with only £168 per month, equivalent to £38.76 per week. However, Mr Perdios observed that the rent and service charge between them covered "rent, utilities, water, food (breakfast and dinner), tv licence, council tax" and he then addressed in turn the costs of clothing, laundry, travel (in respect of which he allowed £5 per week on average for occasional bus journeys), a mobile phone, lunches and other reasonable items such as shampoo, deodorant and soap, concluding in paragraph 12 of the Decision Letter that it was evident that the cost of the accommodation did not deprive Ms Ahamed of her basic needs or mean that she was unable to pay for her reasonable living expenses.

17. Mr Perdios considered "Cooking Facilities & Medical Issues" in a separate section of the Decision Letter comprising paragraphs 14-33. In paragraphs 21-22, he explained that the Hostel manager had provided sample menus and said that "residents had a choice of vegetarian and meat-based meal (meat is halal) options at dinner times and are able to swap side dishes between the options as they choose and includes a range of salads and vegetables", that the breakfast options include porridge, cornflakes, eggs and

vegetarian sausages and that both white and brown bread are offered. After referring to Ms Ahamed's blood pressure, cholesterol, diabetes and BMI issues, Mr Perdios said in paragraph 23 that she could "not only eat fairly healthily with the food options available to you at the hostel but you can also control the amount that you eat to aid weight loss". In the next paragraphs, Mr Perdios said:

> "24. Your solicitor highlighted that on one Friday there was battered fish and chips and the alternative was pizza. On the odd day there might be an option that is not considered healthy, e.g. pizza. However, you are not prevented from eating pizza occasionally and I have highlighted that the NHS advise that you can eat anything but just merely limit certain foods. In any case, on the odd day that there is something like pizza you do have the financial resources to purchase something more healthy.
>
> 25. Given the above, I am satisfied that the hostel does meet your dietary needs in terms of your diabetes.
>
> 26. When I put the above to you in my letter dated 22nd February 2022 your solicitor stated that I have no knowledge of the conversation between you and your doctor. However, despite my request you have been unable to provide evidence that your doctor has told you to avoid eating rice and pizza. I rang your surgery on the 8th March 2022 and they informed [me] that they have no details of your GP advising you not to eat rice and pasta. Indeed, they informed me that diabetes reviews are carried out by the Health Care Assistant and the advice they provide to patients is in line with those provided by the NHS. On the 15th March 2022 I spoke to the Health Care [Assistant] who is involved with you and she confirmed that you have not been advised to avoid any specific foods. She sent me the leaflet that you had been given."

18. Concluding this part of the Decision Letter, Mr Perdios said this:

> "31. Given the above, I am satisfied that your accommodation is suitable in terms of the cooking facilities and your medical conditions. Although it has been suggested that your health has deteriorated since moving to the hostel there is no evidence to support such an assertion. In the reasons for urgency it was asserted that you risk serious complication to your health and 'most immediately the threat of slipping into a diabetic coma, hyper or hypo glycaemic shock.' Not only do your detailed medical records make no reference to you ever having any of these symptoms neither is there any statement from you that you have … suffered these

> since moving into your accommodation nearly three months ago. The hostel manager has also confirmed that since moving to the accommodation you have not made any complaint to the hostel staff with regards to the food or the accommodation.
>
> 32. What the above also shows is that there is absolutely no need for you to go to restaurants and spend '£8 to £10 per meal from Somali restaurants' and have additional travelling costs as asserted by Lawstop in their letter dated 8th March 2022. Given that I am satisfied that the hostel provides you with adequate meals at breakfast and dinner this provides clear evidence that the accommodation is affordable for you as you also have enough money to buy food for lunch.
>
> 33. In their letter dated 1st April 2022 Lawstop advised that they were waiting to gain representations from your doctor and health advisor in relation to the menus and were waiting for these. I had extended the time for you to obtain their opinion and make representations. Indeed, your solicitor has had these menus as far back as February 2022 and they could have contacted your doctor and health adviser sooner. I consider the deadline that I gave you to obtain an opinion from your doctor and health adviser a reasonable one and waited almost a further week before making a final decision. In any case, I have reviewed your extensive medical records (68 pages), received the actual advice you have been given in relation to your diet and spoken to your health adviser. I am satisfied that I have all the information available to me to be able to reach a reasonable decision and … that I am entitled to make a decision."

19. Mr Perdios was satisfied, too, that the accommodation was suitable for Ms Ahamed in terms of sharing facilities: paragraph 36 of the Decision Letter. He noted that it had been asserted that, as a result of her diabetes, Ms Ahamed needed to use the toilet every 20 minutes, but said that there was nothing in her medical records to that effect; observed that, if this were the case, Ms Ahamed would have difficulty going out; and commented that "there is a toilet adjacent to your room, a walking distance of about three feet" and that "there are other toilets in the building": see paragraphs 34-35.

20. A further section of the Decision Letter had the heading "S184 Not Homeless Decision". Mr Perdios said here, in paragraph 39:

> "I am satisfied that you have accommodation that is available for you for longer than 56 days and which is also reasonable for you to continue to occupy. This is based on the details that I have provided above. This means that you are not homeless and that the main duty does not apply."

21. Mr Perdios then said, in paragraph 40 of the Decision Letter:

> "In reaching both these decisions I have had regard to the Equalities Act 2010 where I do consider you to be disabled. I am satisfied that I have advanced equality of opportunity in accordance with s149(3) Equality Act 2010 and have considered the possible need to treat you more favourably than another under s149(6) of the Act. Even in doing so I am still satisfied that I am entitled to conclude that the accommodation is suitable and that in turn Homes for Haringey is entitled to end its relief duty towards you. This also means that the main duty does not apply as you are not homeless. Homes for Haringey therefore has no further duty to rehouse you."

22. Ms Ahamed applied to this Court for permission to appeal against Judge Ward's decision. On 3 November 2022, Snowden LJ granted permission on a single ground, to the effect that Judge Ward had been wrong to consider that, supposing the relief duty under section 189B of the 1996 Act to have come to an end by reason of the provision of suitable accommodation, that also meant that Ms Ahamed was not homeless and was not owed the "main housing duty" under section 193 of the 1996 Act.

23. By this point, Ms Ahamed had also appealed to the County Court under section 204 of the 1996 Act. On 31 January 2023, in the light of the pending appeal from Judge Ward's decision, His Honour Judge Luba KC, sitting in the County Court at Central London, transferred the appeal to this Court and, on 21 April, Andrews LJ accepted the transfer.

24. There were thus before us both the appeal from Judge Ward's decision and the appeal under section 204 of the 1996 Act.

The legal regime in outline

25. Part VII of the 1996 Act, comprising sections 175-218, is concerned with homelessness. By section 184, where a local housing authority has reason to believe that an applicant may be homeless or threatened with homelessness, it is required to make such inquiries as are necessary to satisfy itself whether the applicant is eligible for assistance and, if so, whether any, and if so what, duty is owed to him under the 1996 Act. Section 184(3) stipulates that, on completing its inquiries, the authority "shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision".

26. If a local housing authority is satisfied that an applicant is homeless or threatened with homelessness and eligible for assistance, it is obliged under section 189A of the 1996 Act to "make an assessment of the applicant's case". By section 189A(2), the assessment must include:

> "(a) the circumstances that caused the applicant to become homeless or threatened with homelessness,
>
> (b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant

> resides or might reasonably be expected to reside ('other relevant persons'), and
>
> (c) what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation".

By section 189A(3), the authority "must notify the applicant, in writing, of the assessment that the authority make".

27. Section 189A of the 1996 Act is one of a number of provisions which were inserted into the 1996 Act by the Homelessness Reduction Act 2017 ("the 2017 Act"). The 2017 Act placed duties on local housing authorities to intervene at earlier stages to prevent homelessness and required them to provide certain homelessness services to all affected rather than merely those with "priority need".

28. To this end, a new section 189B of the 1996 Act provides for an "Initial duty owed to all eligible persons who are homeless" (which I shall call "the relief duty"). Section 189B reads:

> "(1) This section applies where the local housing authority are satisfied that an applicant is—
>
> (a) homeless, and
>
> (b) eligible for assistance.
>
> (2) Unless the authority refer the application to another local housing authority in England (see section 198(A1)), the authority must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least—
>
> (a) 6 months, or
>
> (b) such longer period not exceeding 12 months as may be prescribed.
>
> (3) In deciding what steps they are to take, the authority must have regard to their assessment of the applicant's case under section 189A.
>
> (4) Where the authority—
>
> (a) are satisfied that the applicant has a priority need, and
>
> (b) are not satisfied that the applicant became homeless intentionally,

the duty under subsection (2) comes to an end at the end of the period of 56 days beginning with the day the authority are first satisfied as mentioned in subsection (1).

(5) If any of the circumstances mentioned in subsection (7) apply, the authority may give notice to the applicant bringing the duty under subsection (2) to an end.

(6) The notice must—

(a) specify which of the circumstances apply, and

(b) inform the applicant that the applicant has a right to request a review of the authority's decision to bring the duty under subsection (2) to an end and of the time within which such a request must be made.

(7) The circumstances are that the authority are satisfied that—

(a) the applicant has—

(i) suitable accommodation available for occupation, and

(ii) a reasonable prospect of having suitable accommodation available for occupation for at least 6 months, or such longer period not exceeding 12 months as may be prescribed, from the date of the notice,

(b) the authority have complied with the duty under subsection (2) and the period of 56 days beginning with the day that the authority are first satisfied as mentioned in subsection (1) has ended (whether or not the applicant has secured accommodation),

(c) the applicant has refused an offer of suitable accommodation and, on the date of refusal, there was a reasonable prospect that suitable accommodation would be available for occupation by the applicant for at least 6 months or such longer period not exceeding 12 months as may be prescribed,

(d) the applicant has become homeless intentionally from any accommodation that has been made available to the applicant as a result of the authority's exercise of their functions under subsection (2),

> (e) the applicant is no longer eligible for assistance, or
>
> (f) the applicant has withdrawn the application mentioned in section 183(1).
>
> (8) A notice under this section must be given in writing and, if not received by the applicant, is to be treated as having been given to the applicant if it is made available at the authority's office for a reasonable period for collection by or on behalf of the applicant.
>
> (9) The duty under subsection (2) can also be brought to an end under—
>
> (a) section 193A (consequences of refusal of final accommodation offer or final Part 6 offer at the initial relief stage), or
>
> (b) sections 193B and 193C (notices in cases of applicant's deliberate and unreasonable refusal to co-operate)."

29. Section 193A of the 1996 Act, to which there is reference in section 189B(9), states that a local housing authority's duty to an applicant under section 189B(2) comes to an end, and the main housing duty under section 193 does not apply, where:

> "(a) a local housing authority owe a duty to an applicant under section 189B(2), and
>
> (b) the applicant, having been informed of the consequences of refusal and of the applicant's right to request a review of the suitability of the accommodation, refuses—
>
> (i) a final accommodation offer, or
>
> (ii) a final Part 6 offer."

The terms "final accommodation offer" and "final Part 6 offer" are defined in section 193A(4) and (5).

30. Where the conditions specified in section 189B(1) and (4) of the 1996 Act are all met, the relief duty stands to be succeeded by the main housing duty under section 193 of the 1996 Act. By section 193(1), the section applies where:

> "(a) the local housing authority—
>
> (i) are satisfied that an applicant is homeless and eligible for assistance, and

> (ii) are not satisfied that the applicant became homeless intentionally,
>
> (b) the authority are also satisfied that the applicant has a priority need, and
>
> (c) the authority's duty to the applicant under section 189B(2) has come to an end".

In such circumstances, unless the authority refers the applicant to another local housing authority, it "shall secure that accommodation is available for occupation by the applicant": section 193(2). However, the duty can come to an end if, among other things, the applicant refuses an offer of accommodation which the authority is satisfied is suitable for him or a "private rented sector offer": see subsections (5) and (7AA).

31. For section 193 of the 1996 Act to be in point, a local housing authority must be "satisfied that the applicant has a priority need". A duty to "secure that accommodation is available for the applicant's occupation" can, however, arise where an authority just has "reason to believe that an applicant may ... have a priority need" under section 188, headed "Interim duty to accommodate in case of apparent priority need". Section 188(1) states:

> "If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation."

32. Section 189 of the 1996 Act identifies those with "priority need". They include, by section 189(1)(c), "a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason". In *Hotak v Southwark London Borough Council* [2015] UKSC 30, [2016] AC 811, Lord Neuberger (with whom Lords Clarke, Wilson and Hughes agreed) held in paragraphs 53 and 58 that "vulnerable" in section 189(1)(c) "connotes 'significantly more vulnerable than ordinarily vulnerable' as a result of being rendered homeless" in comparison with "an ordinary person if made homeless". By section 175, a person is "homeless" if he has "no accommodation available for his occupation" and, by section 175(3), "A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy".

33. By section 206 of the 1996 Act, a local housing authority may discharge its housing functions under Part VII:

> "only in the following ways—
>
> (a) by securing that suitable accommodation provided by them is available,
>
> (b) by securing that he obtains suitable accommodation from some other person, or

> (c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person."

34. Section 182 of the 1996 Act requires local housing authorities to have regard to guidance issued by the Secretary of State. Sections 177 and 210 empower the Secretary of State to specify by order matters to be taken into account in determining whether it would be "reasonable for a person to continue to occupy accommodation" and whether accommodation is "suitable". Article 2 of the Homelessness (Suitability of Accommodation) Order 1996, which was made pursuant to these powers, requires the affordability of accommodation to be taken into account in both contexts.

35. Section 202 of the 1996 Act confers on an applicant a right to request a review of various decisions of local housing authorities. Such decisions include, by section 202(1)(b) and (ba), "any decision of a local housing authority as to what duty (if any) is owed to him under sections 189B to 193C and 195 (duties to persons found to be homeless or threatened with homelessness)" and "any decision of a local housing authority (i) as to the steps they are to take under subsection (2) of section 189B, or (ii) to give notice under subsection (5) of that section bringing to an end their duty to the applicant under subsection (2) of that section".

36. In *Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7, [2009] 1 WLR 413, in a passage endorsed by the Supreme Court in *Poshteh v Kensington and Chelsea Royal London Borough Council* [2017] UKSC 36, [2017] AC 624, Lord Neuberger said this about review decisions at paragraph 50:

> "a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions."

On the other hand, "[i]t must be clear from the decision that proper consideration has been given to the relevant matters required by the Act and the Code" (*Nzolameso v Westminster City Council* [2015] UKSC 22, [2015] PTSR 549, at paragraph 32, per Baroness Hale, with whom Lords Clarke, Reed, Hughes and Toulson agreed).

37. By section 204 of the 1996 Act, a person dissatisfied with a review decision may appeal to the County Court on "any point of law arising from the decision or, as the case may be, the original decision". "Although the county court's jurisdiction is appellate, it is in substance the same as that of the High Court in judicial review" (*Runa Begum v Tower Hamlets London Borough Council* [2003] UKHL 5, [2003] 2 AC 430, at paragraph 7, per Lord Bingham). The grounds of challenge can include "procedural error, the extent of legal powers (vires), irrationality and inadequacy of reasons": see *James v Hertsmere Borough Council* [2020] EWCA Civ 489, [2020] 1 WLR 3606, at paragraph 31, per Peter Jackson LJ, and also *Abdikadir v Ealing London Borough Council* [2022] EWCA Civ 979, [2022] PTSR 1455, at paragraph 8, per Lewison LJ.

The issues

38. In her letter to Ms Ahamed of 14 December 2021, the Officer said that she was satisfied both that Room 7 was "suitable" accommodation and that it was reasonable for Ms Ahamed to continue to occupy it. On that basis, the Officer considered that the Council's relief duty had come to an end and, further, that Ms Ahamed was not "homeless" and so could not be owed the main housing duty under section 193 of the 1996 Act. Mr Perdios endorsed these views in the Decision Letter.

39. Ms Rea Murray, who appeared for Ms Ahamed, disputed the conclusion that Room 7 was "suitable" accommodation. She also argued that, even if the Council was entitled to bring the relief duty to an end in reliance on section 189B(7)(a) of the 1996 Act on the basis that "suitable" accommodation was available, it was not "reasonable" for Ms Ahamed to continue to occupy Room 7 and so she remained "homeless" and someone to whom the main housing duty could be owed.

40. In contrast, Mr Stephen Evans, who appeared for the Council, submitted that the appeals should be dismissed. He maintained that Mr Perdios was justified in concluding both that the Council's relief duty had come to an end and that section 193 did not apply since Ms Ahamed was not homeless.

41. The issues to which the appeals give rise can conveniently be considered under the following headings:

    i) The relationship between sections 189B and 193 of the 1996 Act;

    ii) Suitability;

    iii) Homelessness.

The relationship between sections 189B and 193 of the 1996 Act

42. Ms Murray stressed that accommodation may be "suitable" but nevertheless such that it would not "be reasonable for [a person] to continue to occupy" it within the meaning of section 175(3) of the 1996 Act. On that basis, she argued that an applicant may have "suitable accommodation available for occupation" and "a reasonable prospect of having suitable accommodation available for occupation for at least 6 months" for the purposes of section 189B(7)(a) but yet be "homeless" and so a person to whom the main housing duty is owed under section 193.

43. The authorities confirm that reasonableness and suitability are distinct concepts. In *Birmingham City Council v Ali* [2009] UKHL 36, [2009] 1 WLR 1506 ("*Ali*"), one of the issues before the House of Lords was, as Baroness Hale explained in paragraph 27, "whether accommodation which it is not reasonable to expect the applicant to continue to occupy can nevertheless be suitable accommodation for the purposes of the duty under section 193(2)". The House of Lords answered the question in the affirmative. "[I]t is proper for a local authority", Baroness Hale said in paragraph 46, "to decide that it would not be reasonable for a person to continue to occupy the accommodation which is available to him or her, even if it is reasonable for that person to occupy it for a little while longer, if it would not be reasonable for the person to continue to occupy the accommodation for as long as he or she will have to do so unless the authority take

action". A person living in such accommodation would thus be "homeless", but it would not necessarily follow that the local housing authority had failed to fulfil the main housing duty. As Baroness Hale explained in paragraph 47, "There are degrees of suitability. What is suitable for occupation in the short term may not be suitable for occupation in the medium term, and what is suitable for occupation in the medium term may not be suitable for occupation in the longer term". Hence, it was "lawful for [Birmingham City Council] to decide that an applicant is homeless because it is not reasonable for him to remain in his present accommodation indefinitely but to leave him there for the short term": paragraph 64. Accordingly, as Baroness Hale observed in paragraph 48:

> "Birmingham were entitled to decide that these families were homeless even though they could stay where they were for a little while. But they were not entitled to leave them there indefinitely. There was bound to come a time when their accommodation could no longer be described as 'suitable' in the discharge of the duty under section 193(2)".

In paragraph 66, Baroness Hale said that the House of Lords would "declare that it is lawful for the council to decide that a family is homeless because it is not reasonable for the family to remain in their present accommodation indefinitely and to accommodate them there for as long as it is suitable as short-term accommodation; but that it is not lawful for them automatically to leave such families where they are until a house becomes available under the council's allocation scheme".

44. *Ali* was the subject of careful analysis by the Court of Appeal in *R (Elkundi) v Birmingham City Council* [2022] EWCA Civ 601, [2022] QB 604 ("*Elkundi*"). Lewis LJ with whom Underhill and Peter Jackson LJJ agreed, concluded in paragraph 101:

> "Analysing the speech, the basis for Baroness Hale's decision for allowing the appeal is that a person may be homeless for the purpose of section 175 of the 1996 Act if he is in accommodation which it is reasonable for him to occupy at present, albeit that at some stage in the future it will cease to be reasonable for him to occupy. Given that, a local housing authority would not necessarily be in breach of section 193(2) of the 1996 Act by leaving a person who is homeless in his present accommodation. The reason is that it may become unreasonable for him to continue to occupy that accommodation in the medium or longer term but it is not necessarily unreasonable for him to occupy the accommodation at present. A local housing authority would not therefore necessarily be in breach of section 193(2) by leaving a person in his present accommodation as the accommodation may be suitable in the short term."

Underhill LJ added in paragraph 155 that "the requirements of suitability in the longer term may be substantially more demanding than in the short term, where an authority is responding to an immediate situation of homelessness".

45. *Ali* and *Elkundi* were both discussed in *Rowe v Haringey London Borough Council* [2022] EWCA Civ 1370, [2023] PTSR 579. Stuart-Smith LJ commented in paragraph 27:

> "Logically, the questions of reasonableness of occupation and the suitability of accommodation provided in the discharge of an authority's housing functions, though conceptually similar, are different and arise in different contexts. The first arises where the applicant is in accommodation which may fall to be disregarded in assessing whether the person is homeless; the second arises where the authority is proposing to provide accommodation for a person who has been adjudged to be homeless, for whatever reason."

Stuart-Smith LJ went on, however, to note that "[i]t is easy to accept that they are 'related concepts'" and that "it is obvious that factors that may go to whether continued occupation is 'reasonable' may, depending on the factor and all other relevant circumstances, also be capable of going to the question of 'suitability', and vice versa".

46. In the circumstances, I would not exclude the possibility of a person being "homeless" and so owed the main housing duty under section 193 of the 1996 Act despite having "suitable accommodation available for occupation" and "a reasonable prospect" of retaining it for at least six months within the meaning of section 189B(7)(a). The fact, however, that section 189B(7)(a) requires "a reasonable prospect of having suitable accommodation available for occupation for at least 6 months" makes that scenario much less likely. Typically, the matters rendering the accommodation potentially "suitable" for "at least 6 months" will also tend to make it such as "it would be reasonable … to continue to occupy".

47. Ms Murray pointed out that Baroness Hale used the word "indefinitely" a number of times in *Ali*: see paragraphs 9, 47, 48, 52, 64, 65 and 66. There is no question, however, of Baroness Hale having meant that accommodation had to be available "indefinitely" for it to be reasonable for a person to continue to occupy it. Her concern, reflecting section 175(3) of the 1996 Act, was with whether a person could be expected to *put up with* accommodation indefinitely (or "for so long as he or she will have to do so unless the authority take action", to quote from paragraph 46), not with ensuring that the person would be able to *remain* there indefinitely. She was not suggesting that, for it to be reasonable for a person to continue to occupy accommodation, the person had to be able to stay there indefinitely, or even for any particular period of time.

48. In the course of her submissions, Ms Murray suggested that Ms Ahamed's accommodation in the Hostel must have been supplied pursuant to the interim duty for which section 188 of the 1996 Act provides. I can see that accommodation secured on that basis is less likely to satisfy section 175(3): it may well be provided on a temporary basis and designed for no more than short-term use. I should have thought, however, that in all probability the factors preventing the accommodation from being such that "it would be reasonable … to continue to occupy [it]" would also mean that it did not meet the requirements of section 189B(7)(a). In any case, there is no good reason to think that Ms Ahamed's accommodation was secured under section 188. Not only did the Council state in terms on 4 February 2022 that the accommodation "was not provided under s.188 but offered to end our relief duty", but, for section 188 to have

been in point, the Council would have had to have reason to believe that Ms Ahamed had a priority need, whereas the Officer saw "[n]o overt reason to believe [that she was] more vulnerable than the average person".

49. The upshot is that, where a local housing authority duly brings its relief duty to an end pursuant to section 189B(5) and (7)(a) of the 1996 Act on the basis that suitable accommodation is available, that may not necessarily prevent the applicant from being owed the main housing duty as "homeless". However, it must very often at least be the case that a person for whom such suitable accommodation is available is not "homeless". Where that is so, the condition specified in section 193(1)(a)(i) will not be met and so the main housing duty cannot arise. Contrary to a submission advanced by Ms Murray, the local housing authority would not need to make a "final accommodation offer" or "a final Part 6 offer" (as defined in section 193A) for the main housing duty to be inapplicable. The fact that the applicant was no longer "homeless" would of itself have the consequence that the applicant could not be owed the main housing duty.

50. There remains the question whether, on the particular facts of this case, Ms Ahamed was "homeless" and so potentially owed the main housing duty even if the Council was entitled to bring its relief duty to an end on the strength of "suitable" accommodation being available. I shall return to that issue later in this judgment.

Suitability

51. Ms Murray argued that, while Room 7 might have been suitable as emergency accommodation, it was not suitable in the longer term. It is evident from the Decision Letter, however, that Mr Perdios considered the suitability of Room 7 on a long-term basis, not just as emergency accommodation. The grounds on which Ms Murray challenged that conclusion related essentially to whether Mr Perdios and the Council had made adequate inquiries and complied with the "public sector equality duty" (or "PSED") for which section 149 of the Equality Act 2010 ("the 2010 Act") provides.

Inquiries

52. Ms Murray emphasised the duty to make inquiries imposed by section 184 of the 1996 Act. That provision does not, however, require a local housing authority to make all possible inquiries, but only such inquiries as are necessary to satisfy itself as to whether an applicant is eligible for assistance and, if so, what duties are owed to him. In this connection, Lewison LJ, with whom Moylan and Nugee LJJ agreed, explained in *Ciftci v Haringey London Borough Council* [2021] EWCA Civ 1772, [2022] HLR 9:

> "34. The duty is not a duty to make all possible inquiries: it is a duty to make necessary inquiries. The general parameters of a public body's duty to inquire was summarised by this court in *R. (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673; [2019] 1 W.L.R. 4647 at [70]. That part of the summary which is relevant for present purposes is as follows:
>
> > 'First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly,

> subject to a *Wednesbury* challenge…, it is for the public body and not the court to decide upon the manner and intensity of inquiry to be undertaken…. Thirdly, the court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further inquiries if no reasonable authority possessed of that material could suppose that the inquiries they had made were sufficient.'
>
> 35. The same approach applies to inquiries made under Part VII of the Housing Act: *R. v Kensington and Chelsea RLBC Ex p. Bayani* (1990) 22 H.L.R. 406; *Cramp v Hastings BC* [2005] EWCA Civ 1005; [2005] H.L.R. 48 at [58]; *Williams v Birmingham City Council* [2007] EWCA Civ 691; [2008] H.L.R. 4. Moreover, since an applicant dissatisfied with an initial decision has the right to a review (which entails at least two opportunities to make representations if the review decision is likely to be adverse to them), the court should be wary of imposing on the reviewing officer a duty to inquire into matters that were not raised: *Cramp* at [14]."

53. Amongst the criticisms which Ms Murray advanced were that there were inadequate inquiries into whether Ms Ahamed was disabled; that it was unreasonable not to obtain further medical advice; and that Ms Ahamed should have been asked more about her living expenses. However, Mr Perdios was aware of Ms Ahamed's medical conditions and accepted that, as a result, she was disabled: he did not therefore need to undertake any additional inquiries into whether there was disability. Nor can he be criticised for failing to obtain extra medical advice. He investigated the implications of Ms Ahamed's (relatively common) medical problems both by considering NHS advice and, as suggested by Lawstop, by speaking to her surgery and the Health Care Assistant involved with her. On top of that, Mr Perdios allowed Lawstop extra time to make any representations they wished. In all the circumstances, it seems to me that Mr Perdios was clearly entitled to think that he knew enough about the relevant medical matters. Further, Mr Perdios was not, in my view, obliged to ask Ms Ahamed more about her expenditure. Many of the costs which an applicant normally has to bear were here covered by the Hostel's service charge. That being so, I do not think it was unreasonable for Mr Perdios to consider that he was in a position to assess the affordability of Room 7 without additional information, the more so since Lawstop had the chance to draw his attention to any costs which he might have overlooked after he had told them what he was "minded to" conclude.

54. Ms Murray was critical of the "Assessment and Personalised Housing Plan" which the Council prepared and sent to Ms Ahamed. Mr Evans argued that, seen in the context of the "vulnerability assessment" which had already been completed, the "Assessment and Personalised Housing Plan" sufficed. Whether or not that is correct is, however,

unimportant. An omission could have mattered if it had somehow resulted in Mr Perdios being unaware of something significant. There is, however, no reason to suppose that any deficiency in the "Assessment and Personalised Housing Plan" affected Mr Perdios' decision-making.

The public sector equality duty

55. The PSED requires a public authority to have due regard to, among other things, the need to advance equality of opportunity between persons who share a relevant "protected characteristic" and persons who do not share it. "Relevant protected characteristics" include "disability", and "disability" involves having a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out day-to-day activities: see sections 149(7) and 6(1) of the 2010 Act.

56. The significance of the PSED in the context of the suitability of accommodation was considered in *Haque v Hackney London Borough Council* [2017] EWCA Civ 4, [2017] PTSR 769, where a review officer had concluded that accommodation ("room 315") made available to Mr Haque was suitable. Briggs LJ, with whom McCombe and Beatson LJJ agreed, said in paragraph 43:

> "The next question is what, in that context, does the PSED as set out in section 149 of the Equality Act require of the reviewing officer on the particular facts of this case? In my judgment, it required the following:
>
> (i) A recognition that Mr Haque suffered from a physical or mental impairment having a substantial and long-term adverse effect on his ability to carry out normal day to day activities; ie that he was disabled within the meaning of the EA section 6, and therefore had a protected characteristic.
>
> (ii) A focus upon the specific aspects of his impairments, to the extent relevant to the suitability of room 315 as accommodation for him.
>
> (iii) A focus upon the consequences of his impairments, both in terms of the disadvantages which he might suffer in using room 315 as his accommodation, by comparison with persons without those impairments: see section 149(3)(a).
>
> (iv) A focus upon his particular needs in relation to accommodation arising from those impairments, by comparison with the needs of persons without such impairments, and the extent to which room 315 met those particular needs: see section 149(3)(b) and (4).
>
> (v) A recognition that Mr Haque's particular needs arising from those impairments might require him to be treated more favourably in terms of the provision of accommodation than other persons not suffering from disability or other protected characteristics: see section 149(6).

> (vi) A review of the suitability of room 315 as accommodation for Mr Haque which paid due regard to those matters."

Briggs LJ went on to explain in paragraph 44 that the PSED "did not … require [the review officer] to consider whether Mr Haque needed accommodation which was more than suitable for his particular needs", but "required him to apply sharp focus upon the particular aspects of Mr Haque's disabilities and to ask himself, with rigour, and with an open mind, whether the particular disadvantages and needs arising from them were such that room 315 was suitable as his accommodation".

57. In the present case, Mr Perdios specifically recorded that he considered Ms Ahamed to be disabled and that he had had regard to the 2010 Act: see paragraph 40 of the Decision Letter. More than that, Mr Perdios had earlier in the Decision Letter identified the medical conditions from which Ms Ahamed suffered and addressed in detail their implications in relation to the accommodation in the Hostel. Among other things, he discussed at length whether the Hostel met Ms Ahamed's dietary needs in the light of her diabetes and the suggested need to use the toilet every 20 minutes.

58. Ms Murray pointed out that Mr Perdios did not spell out the basis on which he took Ms Ahamed to have a disability, but I do not think that is of any consequence. It is plain from the Decision Letter that Mr Perdios gave careful consideration to the particular medical problems Ms Ahamed has and their effects. Further, "a benevolent approach should be adopted to the interpretation of review decisions": see paragraph 36 above.

59. One of Ms Murray's criticisms was that Mr Perdios failed to recognise that it was the combination of needs arising from Ms Ahamed's disability that rendered Room 7 unsuitable for her: the need to urinate frequently, Ms Murray said, arises where Ms Ahamed's blood sugar levels become elevated in response to the food she is given. However, Mr Perdios considered both whether Ms Ahamed's diabetes made the food served at the Hostel inappropriate and, even supposing that Ms Ahamed needed to use the toilet every 20 minutes, whether adequate toilet facilities were available.

60. In all the circumstances, it seems to me to be apparent from the Decision Letter that Mr Perdios "appl[ied] sharp focus upon the particular aspects of [Ms Ahamed's] disabilities and [asked] himself with rigour, and with an open mind, whether the particular disadvantages and needs arising from them were such that [Room 7] was suitable as [her] accommodation" (to adapt words of Briggs LJ).

Conclusion

61. In my view, Mr Perdios was entitled to conclude that Room 7 was "suitable" and, accordingly, that the relief duty came to an end pursuant to section 189B(5) and (7)(a) of the 1996 Act..

Homelessness

62. The Decision Letter included a paragraph headed "S184 Not Homeless Decision" in which Mr Perdios said that he was satisfied that Ms Ahamed was not "homeless" and that the main housing duty did not apply. It is true that the paragraph in which this was stated was brief, but it included reference back to the previous parts of the Decision

Letter. Mr Perdios said in terms that his conclusions were "based on the details that I have provided above".

63. Ms Murray pointed out that section 184(3) of the 1996 Act requires a local housing authority to notify an applicant of its decision and, so far as any issue is decided against the applicant, to give the reasons for the decision. It seems to me that the Decision Letter met this requirement and, further, that Mr Perdios' conclusion that Ms Ahamed was not homeless and so that the main housing duty did not apply was an entirely reasonable one having regard to the matters discussed elsewhere in the Decision Letter.

64. Earlier in this judgment, I rejected any suggestion that accommodation must be available "indefinitely" for it to be reasonable for a person to continue to occupy it. However, Mr Perdios did in fact state in terms in paragraph 3 of the Decision Letter that the accommodation in the Hostel would in reality "remain available to [Ms Ahamed] not just for six months but indefinitely".

Overall conclusion

65. I would dismiss both appeals.

Postscript

66. The procedures for review and appeal to the County Court for which sections 202 and 204 of the 1996 Act provide were an innovation. Commenting on the change in *Nipa Begum v Tower Hamlets London Borough Council* [2000] 1 WLR 306, (2000) 32 HLR 445, Auld LJ said at 314:

> "the introduction by section 204 of the Act of 1996 of the new right of appeal to the county court in homelessness cases was intended to transfer from the High Court to the county court the main strain of the High Court's otherwise onerous task of judicial review of those decisions for which section 202 provides. I say 'transfer ... the main strain' of such jurisdiction to the county court, because the Act does not deprive the High Court of its traditional jurisdiction in such matters. Such jurisdiction simply becomes residual; that is, it has become normally inappropriate to grant judicial review in them because there is now another, and generally more appropriate, avenue of challenge …."

67. In a similar vein, *De Smith's Judicial Review*, 9th ed., states in paragraph 17-036:

> "By the mid-1990s, a third of all judicial review applications to the High Court concerned homelessness decisions; often the dispute was essentially one of fact and primary judgment (was the person intentionally homeless? was the accommodation offered suitable?) rather than of law. … In Access to Justice, Lord Woolf recommended that the supervisory jurisdiction over the lawfulness of homelessness decision-making should be transferred to the county courts and this was swiftly implemented by Pt 7 of the Housing Act 1996. … The right of

> appeal does not extend to decisions about the provision of temporary accommodation pending final determination by the local authority or review by the county court; here judicial review continues to be an important method of challenge. The courts have, however, indicated that they will intervene in challenges relating to temporary accommodation only in exceptional circumstances. The existence of a review procedure in the county courts has not taken away the Administrative Court's jurisdiction to exercise its judicial review jurisdiction in the context of decisions relating to homelessness, but that jurisdiction will now be used only in exceptional circumstances."

68. For my part, I would stress that, given the existence of sections 202 and 204 of the 1996 Act, challenges to decisions of local housing authorities relating to homelessness should generally be pursued under those provisions and not by way of judicial review. I would thus echo in this respect Judge Ward.

Lord Justice Underhill, Vice-President of the Court of Appeal (Civil Division):

69. I agree.

Sir Geoffrey Vos, Master of the Rolls:

70. I also agree.