Neutral Citation Number: [2019] EWHC 3480 (Admin)

Case No: CO/4135/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/12/2019

Before MR SAM GRODZINSKI QC (sitting as a Deputy High Court Judge)

- -

BETWEEN:

THE QUEEN
on the application of
EDYTA BUKARTYK **Claimant**

- and –

WELWYN HATFIELD BOROUGH COUNCIL

Defendant

- -
- -

Matthew Feldman (instructed by **Duncan Lewis Solicitors**) for the Claimant

Kuljit Bhogal (instructed by **Welwyn Hatfield BC Legal Department**) for the Defendant

Hearing dates: 10 December 2019

- -

Judgment Approved by the court for handing down

Mr Sam Grodzinski QC:

Introduction

1. In this claim for judicial review, the Claimant challenges the Defendant's decision of 9 October 2019, refusing to accept her homelessness application pursuant to sections 183 and 184 of the Housing Act 1996 ("**the Act**"); and refusing to provide her with suitable interim accommodation under s.188(1) of the Act.

2. This was not the first homelessness application that had been made by the Claimant, and the Defendant's decision of 9 October stated that there were "no relevant new facts that were not known about at the time we dealt with your previous application, or that any new facts presented are trivial".

3. The key issues in the claim are whether the Defendant's decision complied with the relevant legal principles concerning second applications such as this, in particular as set out in the decision of the Court of Appeal in *Rikha Begum v Tower Hamlets LBC* [2005] 1 WLR 2103; and whether the decision was a rational one on the facts before the Defendant.

Factual background

4. On 28 March 2019, the Claimant made an application for accommodation to the Defendant on the basis that she was homeless ("**the first application"**). In an earlier "Homeless Initial Approach" form which she completed in connection with that application, the Claimant did not tick the box which asked whether she had a history of mental health problems.

5. The Claimant was provided with temporary accommodation whilst enquiries were carried out into her position by the Defendant under s.184 of the Act.

6. By letter dated 10 July 2019, Loreen Daly, a Housing Options Officer with the Defendant, informed the Claimant that although the Defendant accepted that she was homeless and eligible for assistance, she was not considered to be in priority need for the purposes of the Act ("**the first decision**"). The first decision stated, *inter alia*:

> "You stated that you have no medical conditions, physical or psychiatric and that you are of good general health. ….
>
> You were moved out of the shared unit [at Howlands House] due to inappropriate behaviour, giving us reason to believe that you may suffer with mental health issues. I have asked you if you have a current mental health diagnosis and you said that you do not. I then completed a referral to the mental health team for them to undertake and [sic] assessment, which you refused; again, stating that you have no mental health issues or needs.
>
> I have asked you to evidence this through your GP, however you have failed to engage with me and have not provided me with any medical information to say that you have any medical diagnosis, physically or mentally."

7. On 25 July 2019, the Claimant requested a review of the first decision. The Defendant carried out a review and continued to provide temporary accommodation pending the outcome of the review.

8. On 9 September 2019, Mr David Trewick, the Defendant's Housing Options Manager, wrote a letter to the Claimant in which he upheld the finding that the Claimant was not in priority need ("**the Review Decision**"). The Review Decision letter included the following passages (emphasis added):

> "Enquiries were made with you in the course of this application, but you repeatedly stated that you did not have any mental health issues. An attempt to refer you to the mental health team was made but you refused this referral and restated that you had no mental health issues.
>
> Whilst you have stated in your review request that you have mental health problems, no evidence has been provided….
>
> You are 32 years old, with no medical issues and no dependents. Despite attempts to seek further medical information, you have not provided any supporting evidence and have prevented any further enquiries being made by refusing assistance or assessment….
>
> Without any evidence to support a decision of priority need… a decision of non-priority is the correct outcome."

9. The Claimant was given notice to leave her temporary accommodation on 23 September 2019. She subsequently became street homeless and from time to time "sofa-surfed" between various friends' houses.

10. On 25 September 2019, David Miller of the Citizens Advice Bureau emailed Mr Trewick stating that the Claimant was in the process of obtaining a letter from her psychologist, and making what amounted to a second application on the Claimant's behalf ("**the second application**"). In a further email sent to Mr Trewick a few minutes later, Mr Miller attached a letter dated 25 September 2019 from Dr. Anthony Okoye, Locum Speciality Doctor in Psychiatry. This letter from Dr Okoye stated that the Claimant was "currently struggling to cope with her mood and anxiety. She told me she is due to be evicted soon from her current accommodation. Further deterioration in her mental state/health can be exacerbated by psycho-social stressors."

11. On 30 September 2019, the Claimant's solicitors lodged an appeal in Luton County Court under s.204 of the Act against the Defendant's Review Decision. That appeal is listed for hearing on 8 January 2020.

12. On 3 October 2019, the Claimant's solicitors emailed the Defendant asking it to exercise its power under s.204(4) of the Act to secure interim accommodation for the Claimant pending the outcome of the s.204 appeal. That email attached a further copy of the letter from Dr Okoye of 25 September, and a copy of a prescription dated 1 October 2019 from Dr Okoye for 50 mg of Sertraline.

13. On 7 October, the Claimant's solicitors emailed a pre-action protocol letter to the Defendant challenging the Defendant's "failure to provide a decision in relation to a

request that they exercise their discretion to provide s.204(4) Housing Act… interim accommodation pending the appeal of the s202 decision dated 9 September 2019". More relevantly for present purposes, that email also attached the following: (i) a further letter from Dr Okoye to the Claimant's GP dated 30 September 2019, and (ii) a letter from Charles Watson, Physician Associate, to the Claimant's GP dated 2 October 2019.

14. The letter from Dr Okoye of 30 September 2019 noted that the Claimant had been seen at a clinic on 23 September 2019, and included the following statements:

> "[The Claimant] is suffering from recurrent episodes of intrusive thoughts that she should kill herself. She describes having had these episodes since she was a young child, from around the age of 7. During these episodes she feels extremely low in mood and anxious.
>
> She does not seem to be depressed, and has good levels of self-care. She reported that she has positive self-image and coping strategies that help her feel good about life. She says she is in a good mood more often than not, but struggles with these episodes of intrusive thoughts and low mood… She reported being able to maintain relationships and she denied being impulsive or engaging in any self-destructive behaviour…
>
> **Mental State Examination**
>
> She was well kempt and maintained good eye contact. Her speech was normal in tone and volume but was quite rapid. Her mood was subjectively and objectively euthymic. She experiences unwanted thoughts that she should kill herself. She has insight and says she understands life is worth living, but during her episodes of low mood she doesn't feel like this is the case…
>
> **Risk**
>
> She has episodes of suicidal thoughts but no current plan. She had previously bought a rope but has since got rid of it. She does not drink alcohol or take drugs. Risk is low.
>
> **Impression**
>
> Edyta suffers from intense emotional lability, and while she is usually able to manage her daily needs, she feels unable to cope with the episodes of low mood and suicidal thoughts. She has some traits of an emotionally unstable personality disorder.
>
> **Care Plan Agreed with Patient**
>
> - I have called her and recommended contacting Sunflower to arrange some therapy.
>
> - I have commenced her on Sertraline 50mg mane and given her a prescription for 28 days. Please continue to prescribe this medication to her…"

15. The letter from Dr Watson dated 2 October 2019 to the Claimant's GP referred to the Claimant attending a psychiatric outpatient clinic the previous day, having asked to be seen as an emergency as her mood had deteriorated. The letter referred to a distressing dream that the Claimant had mentioned in which she saw herself dead, and recorded that the Claimant experienced "fleeting suicidal thoughts but denied any active plans". The letter concluded that "She is currently experiencing an adjustment disorder following her recent eviction. …she presents with traits of an emotionally unstable personality disorder".

16. On 6 October 2019, Bianca Moreira, a Senior Housing Options Officer employed by the Defendant, responded to Mr David Miller indicating that she had met the Claimant on 25 September 2019; that the Claimant had shown her the letter from Dr Okoye as well as a handwritten prescription for "antihistamine" which the Claimant had told her had been prescribed for her mental state; but stated that in Ms Moreira's view, the Claimant had "not provided any evidence to substantiate any changes to her circumstances or to trigger a fresh application".

17. On 8 October 2019, the Defendant replied to the Claimant's email dated 3 October 2019 indicating that it would not offer accommodation pending the statutory appeal in Luton County Court.

18. On the same day, the Claimant's solicitors emailed Ms Moreira and Mr Trewick of the Defendant, referring to the earlier email from David Miller dated 25 September 2019, and saying that this amounted to a fresh homelessness application with new evidence in support.

19. On 9 October 2019, David Trewick emailed the Claimant's solicitors stating that there were "no relevant new facts that were not known about at the time we dealt with the previous application, and that any new facts presented are trivial" and reiterating that the Defendant would not offer accommodation pending the county court appeal.

20. Later that day, Mr Trewick sent a more detailed letter, setting out the Defendant's position as to why no application had been "taken" (i.e. accepted) from the Claimant. This is the decision under challenge in these proceedings.

The decision of 9 October 2019

21. The decision of 9 October 2019 ("**the 9 October Decision"**) contained the following passages:

> "The outcome of our assessment is that no application has been taken because the council is satisfied that there are no relevant new facts that were not known about at the time we dealt with your previous application, or that any new facts presented are trivial".
>
> [After referring to the decision of the Court of appeal in the *Rikha Begum* case, supra, the letter continued]:
>
> "I have reached this decision because I am satisfied that the facts presented by you most recently are the same as the facts that were known to the Council at the time

of your previous application and there have been no other change [sic] in your housing circumstances that would trigger a new application…

Whilst you have presented information, the mere presentation of different information is not sufficient to lead to a new application being made. This would not be the case were the information presented to be of such weight that it would trigger a duty to provide interim accommodation or if the circumstances had changed in any way. As stated above, they have not.

Having considered what has been provided, I am satisfied that the information provided does not give reason to believe that you may be in a priority need.

It would be helpful at this point to explain what has been provided and why it does not change the decision of priority need. The new information we have received is:

1) A prescription for sertraline dated 1.10.19. Sertraline is an anti-depressant and according to the advice provided on the NHS website, 50mg is the usual dose for adults. I am satisfied that this new information would not lead to a change in the decision that you are not in priority need.

2) A letter from Dr Anthony Okoye, dated 25 September 2019, stating that you are under investigation by mental health services, that you are struggling to cope with your mood and anxiety and a request for Welwyn Hatfield Borough Council to take account your mental health problems. I am satisfied that the information contained in this letter would not lead to a change in the decision that you are not in priority need.

3) A letter from Dr Anthony Okoye dated 30 September 2019. I have read the letter and I am satisfied that the information contained in this letter would not lead to a change in the decision that you are not in priority need. Important passages in this letter include 'she does not seem to be depressed and has good levels of self-care', 'she reported she has …coping strategies', 'she is in a good mood more often than not but struggles with …low mood', 'she denied engaging in any self-destructive behaviour'.

4) A letter dated 2 October 2019 from Charles Watson to Dr Restell at Burvill House Surgery. I have read the letter and I am satisfied that the information contained in the letter would not lead to a change in the decision that you are not in priority need. Important passages in this letter include 'she denied any active plans [for suicide]', 'she has been able to maintain her job', 'she appears to be cognitively intact' and 'risk is low [for suicide].' …

As a result the Council is not under any duty to consider your most recent approach as a new application for housing assistance. We are therefore not obliged to make any further enquiries into your circumstances to decide the statutory tests set by the homelessness legislation. Your representatives have requested that interim accommodation be provided and this request has also been turned down.

> There is no statutory right of review to this decision, and your representatives will advise as to whether there is merit in taking further action such as judicial review of this decision."

22. Following pre-action correspondence, the current claim for judicial review was issued on 22 October 2019, together with an application for interim relief. On the same day, Chamberlain J adjourned the application for interim relief to be considered on the papers together with the application for permission, time for the Defendant to file an Acknowledgment of Service was abridged to 30 October 2019, and the papers were referred to a judge for a decision on interim relief and permission by 1 November 2019.

23. On 1 November following consideration of the papers, Steyn J granted permission to apply for judicial review; refused the application for interim relief; and ordered the hearing to be expedited. At a renewed application for interim relief before Dan Squires QC sitting as a Deputy High Court Judge on 12 November, interim relief was refused again.

24. The hearing before me took place on 10 December 2019. During the course of the hearing, Mr Feldman properly brought to the Court's attention a recent development concerning the Claimant's situation. In particular, on 2 December 2019 the Claimant had signed a Licence Agreement with "One YMCA" in Watford, by which the YMCA agreed to the Claimant having the use of a room at its premises in Welwyn Garden City. The Licence states that it is an excluded Licence within the meaning of s.3A of the Protection from Eviction Act 1977, so that the YMCA is not obliged to give a minimum of 4 weeks' notice. By clause 48, the YMCA can end the Licence at any time, although normally it will give not less than 7 days' notice in writing. I was also told by Ms Bhogal that her solicitors had recently been informed by the YMCA that the plan was to review the Claimant's position in three weeks' time. Mr Feldman did not take issue with these facts. I will return to the relevance of this development at the end of my judgment.

The Housing Act 1996

25. Part VII of the Act, comprising ss 175-218, deals with homelessness and threatened homelessness. The provisions so far as relevant to this claim are set out below.

26. Section 175, "Homelessness and threatened homelessness"

> (1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he—
>
> (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
>
> (b) has an express or implied licence to occupy, or
>
> (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
>
> ….

(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.

(4) A person is threatened with homelessness if it is likely that he will become homeless within [56] days."

27. Section 183, "Application for assistance"

(1) The following provisions of this Part apply where a person applies to a local housing authority [in England] for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he is or may be homeless or threatened with homelessness.

(2) In this Part—

"applicant" means a person making such an application,

"assistance under this Part" means the benefit of any function under the following provisions of this Part relating to accommodation or assistance in obtaining accommodation, and

"eligible for assistance" means not excluded from such assistance by section 185 (persons from abroad not eligible for housing assistance) or section 186 (asylum seekers and their dependants).

28. Section 184 "Inquiry into cases of homelessness or threatened homelessness"

(1) If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves—

(a) whether he is eligible for assistance, and

(b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part.

(2) They may also make inquiries whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.

(3) On completing their 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.

29. Section 188 "Interim duty to accommodate in case of apparent priority need"

(1) 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.

30. Section 189 "Priority need for accommodation"

(1) The following have a priority need for accommodation—

(a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;

(b) a person with whom dependent children reside or might reasonably be expected to reside;

(c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;

(d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

31. Section 202 provides for a right to request a review of any decision of a local housing authority as to the applicant's eligibility for assistance. Section 204(1) provides a right of appeal to the county court on any point of law from a s.202 review decision. Section 204(4) provides a power to secure accommodation during the period for appealing the s.202 review decision. Section 204A provides a separate right of appeal to the county court against the local housing authority's decision not to exercise its s.204(4) interim accommodation power.

Legal principles relevant to second applications for homelessness assistance

32. The leading authority on the proper approach to be taken where a person makes a second application for homelessness assistance is the decision of the Court of Appeal in *Rikha Begum v Tower Hamlets LBC* [2005] 1 WLR 2103.

33. In his judgment, Neuberger LJ (as he then was) considered the relevant caselaw in detail, including the decision of the House of Lords in *R v Harrow London Borough Council, Ex parte Fahia* [1998] 1 WLR 1396. In particular, Neuberger LJ cited the following passages from the speech of Lord Browne-Wilkinson, ibid at p1401 and 1402:

> "The problem is this. When a local authority, having discharged their statutory duties in relation to one application for accommodation, then receive a second application from the same applicant, are they bound in all circumstances to go through the whole statutory inquiry procedure and provide interim accommodation or is there a 'threshold test' which the second application must satisfy if it is to be treated as an application under [Part III of] the [1985] Act?"…
>
> "Under section 62 [of the 1985 Act] the statutory duty to make inquiries arises if (a) a person applies for accommodation and (b) 'the authority have reason to believe that he may be homeless or threatened with homelessness' … when an applicant has been given temporary accommodation under section 63 and is then found to be intentionally homeless, he cannot then make a further application <u>based on exactly the same facts as his earlier application</u>: see *Delahaye* …"

34. At [39], Neuberger LJ stated (emphasis added):

> "The effect of the reasoning of the House of Lords in *Fahia* is that, at least under Part III of the 1985 Act, on receipt of what purports to be an application, an authority are bound to make inquiries, if they have reason to believe that the applicant is or may be homeless, unless the purported application can be shown to be no application. The only relevant basis upon which a purported subsequent application may be treated as no application, according to *Fahia* at p 1402, appears to be where it is based on "exactly the same facts as [the] earlier application". That is a rather different formulation from the "material change of circumstances since the original decision", as stated in *Campisi* at p 565, and as applied in *McBain* [1985] 1 WLR 1351, 1356 c– e."

35. At [43], Neuberger LJ accepted the following submission from Counsel:

> "…on receiving a subsequent purported application, an authority should compare the circumstances revealed by that application with the circumstances as they were known to the authority to have been at the date of the authority's decision (or their review, if there was one) on the earlier application, in order to determine whether the subsequent application is "no application"

36. At [46] he continued:

> "Accordingly, in order to check whether a subsequent purported application is based on "exactly the same facts" as an earlier application, the authority must compare the circumstances as they were at the time when the earlier application was disposed of (i e when it was decided or when the decision was reviewed) with those revealed in the document by which the subsequent application is made (and any other associated documentation). This should prove less onerous on the authority, and should involve less delay and uncertainty for the applicant, than if the comparison was with the circumstances as they are discovered after inquiries by the authority to be after receipt of a subsequent application."

37. At [48] Neuberger LJ held that the reasoning in *Fahia* in relation to the 1985 Act was equally applicable to the 1996 Act.

38. At [59] to [61], Neuberger gave guidance as to the approach housing authorities should adopt to subsequent applications under Part VII of the Act. That guidance was as follows (emphasis added):

> "59 First, it seems to me that it is for an applicant to identify, in the subsequent application, the facts which are said to render that application different from the earlier application. If the authority are to assess the question of whether the circumstances of the two applications are "exactly the same" by reference to the facts revealed by the document by which the subsequent one is made, then that, I think, must be the logical, indeed the inevitable, consequence. Accordingly, if no new facts are revealed in that document (or any document accompanying it or referred to in it), the authority may, indeed at least normally should, reject it as incompetent.
>
> 60 Secondly, if the subsequent application document purports to reveal new facts which are, to the authority's knowledge, and without further investigation, not new, fanciful, or trivial then the same conclusion applies. The facts may not be new

> because they were known to, and taken into account by, the authority when it offered the applicant accommodation to satisfy the earlier application. It is not appropriate to expand upon what may constitute or are fanciful or trivial alleged new facts, because that must inevitably turn on the particular circumstances of the particular case.
>
> 61 Thirdly, I turn to a case where the subsequent application document appears to reveal new facts, which are, in light of the information then available to the authority, neither trivial or fanciful, although they may turn out to be inaccurate or insufficient for the applicant's purposes on investigation. In such a case, I consider that the authority must treat the subsequent application as a valid application, because that is what it is, in light of the reasoning of the House of Lords in *Fahia* [1998] 1 WLR 1396. In particular, I do not consider that in such a case the authority would be entitled to investigate the accuracy of the alleged new facts before deciding whether to treat the application as valid, even where there may be reason to suspect the accuracy of the allegations. Such an investigation would, in my view, fall foul of the manifest disapproval in *Fahia* of non-statutory inquiries. Even if an investigation to decide whether the application is valid is expected to be comparatively short and simple, it seems to me that it would transgress that disapproval, as well as running into the other difficulties I have referred to, based on the wording and structure of Part VII of the 1996 Act."

39. Keene LJ agreed with Neuberger LJ. Pill LJ gave a more detailed concurring judgment, and while he took a somewhat different view to what Lord Browne-Wilkinson meant in *Fahia,* Pill LJ did not disagree with the guidance referred to above.

Discussion

40. The Claimant's primary case, advanced by Mr Feldman, is that in light of the new medical evidence which was provided to the Defendant in support of her second application, it was irrational for the Defendant to conclude in the 9 October Decision that there were no new facts, or that such facts were trivial or fanciful. Alternatively, Mr Feldman submits that the Defendant failed to have proper regard to the relevant medical evidence.

41. Mr Feldman also submits that in the 9 October Decision, Mr Trewick went beyond considering whether there was a valid fresh application, and strayed into considering whether the Claimant had established a priority need, without first conducting the necessary inquiries under s.184 of the Act.

42. In assessing these submissions, it is important to recall that the express basis of the earlier Review Decision of 9 September 2019 was that while the Claimant had asserted that she mental health problems, she had provided no evidence in support, and had refused the attempt to refer her to a mental health team. The Review Decision referred on several occasions to the absence of supporting medical evidence; and stated that the Claimant had "no medical issues". Yet in her second application, the Claimant had provided such evidence, in the form of the prescription and the three letters referred to above.

43. Thus on the face of the 9 October Decision, it is in my judgment very difficult to see how the Defendant could rationally conclude that the new medical evidence disclosed

no new facts, or could regard such facts as trivial or fanciful. On its face, the evidence showed that Dr Okoye, a Speciality Doctor in Psychiatry, considered the Claimant to be suffering from "intense emotional lability"; and that she had "some traits of an emotionally unstable personality disorder". Dr Okoye had recommended therapy and had also prescribed her with 50mg Sertraline. Likewise Dr Watson, an Adult Community Mental Health Service doctor, considered the Claimant to be experiencing an adjustment disorder following her eviction, and that she presented with "traits of an emotionally unstable personality disorder".

44. In an early passage of the 9 October Decision, Mr Trewick did correctly refer to the test of whether there were new facts that were unknown at the time of the first application, whether any such facts were trivial, and I accept the submission of Ms Bhogal that one must read the decision as a whole (including this passage). However, having set out the correct test at the outset, Mr Trewick then appears clearly to have taken a different approach, when he stated that "I am satisfied that the information provided does not give reason to believe that you may be in a priority need". Ms Bhogal submitted that this was simply an infelicitous use of language, but I do not consider that it can be read in that way.

45. In particular, when Mr Trewick came to consider each item of the recent evidence in the four numbered paragraphs on the last page of the 9 October Decision letter, he did not state, let alone explain why, the facts revealed in the recent medical evidence were not new, or were trivial. Rather, he stated again, in each of paragraphs 1, 2 and 4, that the information "would not lead to a change in the decision that you are not in a priority need".

46. In my judgment, this approach clearly conflicts with the guidance in *Rikha Begum* for two related reasons. First, because it fails to analyse whether the facts were new or (if not new) trivial, contrary to the guidance in *Rikha Begum* at [59] – [60]; and second because it focusses instead on the separate question whether those facts will establish that the Claimant was vulnerable and thus in priority need, contrary to the guidance in *Rikha Beghum* at [61]. That latter question is one that has to be addressed when the Defendant carries out its s.184 inquiries, and not at the prior stage of deciding whether there is an effective application in the first place.

47. For instance, the fact that Dr Okoye had prescribed only the "usual" dose for adults, might be relevant to the subsequent assessment as to whether or not the Claimant was "vulnerable" within the meaning of s.189(1)(c) of the Act (see test for vulnerability as explained in *Hotak v Southwark LBC* [2016] AC 811), but it cannot rationally lead to a conclusion that there was no new fact at all, or that such a fact (i.e. the Claimant's need for medication) was only "trivial". And as I say, Mr Trewick did not state, let alone explain, why this would be the case.

48. Furthermore, I agree with Mr Feldman's submission that the approach taken in numbered paragraphs (3) and (4) on the final page of the 9 October Decision Letter "cherry picks" certain parts of the medical letters. In my judgment it cannot be appropriate, when a housing authority is discharging its public law duty conscientiously to assess whether there are no new facts (and to assess whether any such facts are trivial or fanciful) to focus just on those parts of the evidence which are favourable to such a conclusion, and to ignore those that point against it.

49. Ms Bhogal for the Defendant, in her helpful and clear submissions, sought to defend the 9 October Decision on the basis that there was nothing new revealed in the additional medical evidence. She submitted that: (a) the additional evidence revealed no more than "low level" mental health issues; and (b) that such issues had already been known to, or at least suspected by, the Defendant at the time of the Review Decision.

50. In support of that submission, Ms Bhogal pointed to various entries made by Loreen Daly in the Defendant's housing file, from April and May 2019, showing that Ms Daly had been aware of concerns about the Claimant prior to the Review Decision, for example the fact that the Claimant had been waking up with bad dreams, and had knocked on another resident's door (in her then temporary accommodation) with scissors in her hand.

51. I do not accept that submission, for two related reasons. First, as noted above, the whole basis of the Review Decision was that the Claimant had failed to produce any evidence to support her claim to be suffering from mental health problems, and the Defendant concluded that the Claimant had "no medical issues". The Review Letter did not say that the Defendant understood the Claimant to be suffering from low level mental health problems but that these were insufficient for her to have a priority need within s.189(1)(c) of the Act.

52. Second, the 9 October Decision itself neither stated nor implied that the Defendant had, in reaching the earlier Review Decision, taken into account that the Claimant had mental health problems (low level or otherwise). It is important to recall that, as Neuberger LJ's judgment in *Rikha Begum* explains at [60], what is relevant is whether the facts were "known to, and taken into account by" the authority on the earlier application. There is nothing in either the Review Decision, or the 9 October Decision, to support that conclusion.

53. Ms Bhogal submitted that such knowledge and consideration could be imputed to Mr Trewick (the decision maker in both letters) from the fact that there were several entries in the Defendant's housing file by Loreen Daly, as summarised above.

54. Again, I cannot accept that submission. First, there is no principle of law by which the knowledge of one official in a public authority can generally be imputed to another when the latter makes a decision. Indeed, the position is to the contrary: see *R(National Association of Health Stores) v Secretary of State for Health* [2005] EWCA Civ 154 at [26] to [38] per Sedley LJ.

55. Second, there is nothing on the face of the Review Decision indicating that Mr Trewick was aware of and had taken into account the Claimant's mental health issues, in the sense contended by Ms Bhogal – i.e. that in making the Review Decision, he had taken them into account as "low level", and nonetheless found that the Claimant was not in priority need.

56. For these reasons (which broadly correspond to the Claimant's primary ground of challenge) I find that the Defendant's 9 October Decision was unlawful.

57. It is therefore not necessary for me to address the Claimant's second ground of challenge, concerning breach of the public sector equality duty ("PSED") in s.149 of the Equality Act 2010. Mr Feldman accepted during the hearing that the PSED ground

did not advance his case, because he could not identify any basis on which he could succeed on this ground if he had failed on his main ground. Despite the well-recognised importance of the PSED, I therefore propose to say nothing more about it.

Alternative Remedy

58. Ms Bhogal's Skeleton Argument contended that because the Claimant had an ongoing statutory appeal to Luton County Court against the Review Decision, the claim for judicial review should be dismissed because the Claimant had an alternative remedy.

59. It is well established that judicial review is a remedy (or more accurately a judicial process) of last resort, so that where a claimant has an alternative statutory appeal, ordinarily the Administrative Court will, in the exercise of its discretion (rather than as a matter of jurisdiction) refuse to entertain a claim for judicial review: see e.g. *R(Glencore Energy UK Ltd) v HMRC* [2017] 4 WLR 213; *R(L) v Serious Fraud Office* [2018] 1 WLR 4557.

60. However in my judgment, the s.204 appeal to the county court against the Defendant's Review Decision would not provide the Claimant with an alternative remedy, for the simple reason that that court will not be able to consider the new medical evidence referred to above. Rather, the county court will be confined to considering whatever material was before the Defendant at the time of the Review Decision. Ms Bhogal accepted that this was the case, and in fairness to her did not press the alternative remedy argument with much force at the hearing.

The relevance of the new YMCA Licence

61. As mentioned earlier, the Claimant has very recently been provided with accommodation by the YMCA, pursuant to a Licence Agreement dated 2 December 2019.

62. At the start of her submissions, Ms Bhogal argued that this recent development meant that the claim should be dismissed altogether, on the basis that it had become academic.

63. While the fact of the new YMCA accommodation is clearly relevant to the question of relief, as explained further below, I do not consider that it means the claim should be dismissed on the basis that it has become academic. The possibility that the Defendant may, once it has carried out its enquiries into the Claimant's new claim, arrive at a conclusion that she is not homeless or threatened with homelessness (after taking into account the YMCA accommodation), does not mean that this Court should, in the exercise of its discretion, decline to decide the separate and anterior question of whether the Defendant's decision of 9 October 2019 was reached lawfully.

64. Indeed at the end of her submissions, Ms Bhogal accepted that it could not be said with certainty that the Defendant would conclude that the Claimant is neither homeless nor threatened with homelessness. In that context, it is relevant that under s.175(4), a person "is threatened with homelessness if it is likely that he will become homeless within 56 days". As noted above, the Licence provides that "the YMCA can end this Licence at any time, although normally the Licensee will be given not less than 7 days' notice in writing". As also noted above, the current plan is to review the Claimant's

position at the end of three weeks. Thus there is clearly at least some risk of the Claimant being made homeless in less than 56 days.

65. However the fact that the Claimant currently has accommodation does affect the question of relief, as explained below.

Relief

66. In light of my conclusion as to the Claimant's primary ground of challenge, I consider that it is appropriate to quash the decision of 9 October 2019, and to direct the Defendant to treat the Claimant's second application as an effective application.

67. Of course the Defendant will, in deciding how to deal with the Claimant's case, have to take into account all current circumstances, both as they relate to whether she is or may be homeless or threatened with homelessness (which will include the circumstances relating to her YMCA accommodation), and as to the question of whether she is vulnerable (which will include the additional medical evidence referred to above).

68. I do not consider it is necessary or appropriate to go further. In particular, I do not consider it appropriate to direct the Defendant to exercise its power under s.188(1) to provide interim accommodation (which was the final remedy sought in the Claim Form). In contrast to s.184, s.188 does not apply simply where a local authority has reason to believe that a person is threatened with homelessness. Given that the Claimant is currently being accommodated at the YMCA, one of the questions for the Defendant to determine, in its inquiries, will be whether "it would be reasonable for [her] to continue to occupy" that accommodation (s.175(3)). Mr Feldman submitted that there were grounds to think that it might not be, in particular given the shared nature of some of the facilities there and given the Claimant's vulnerability. That may be so, but I am not in a position to decide that issue, and it will be for the Defendant to determine whether and how to exercise its statutory powers under Part VII of the 1996 Act, including s.188, in light of this judgment.

Conclusion

69. For these reasons, I allow this claim for judicial review.