Judgment Approved by the court for handing down.

Neutral Citation Number: [2022] EWHC 2008 (Admin)

Case No: CO-3293-2021

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 27/07/2022

Before :

MRS JUSTICE HILL DBE

- -

Between :

THE QUEEN

on the application of

PRINCESS BELL	**Claimant**
- and -	
LONODN BOROUGH OF LAMBETH	**Defendant**

- -
- -

Zia Nabi and David Cowan (instructed by **GT Stewart Solicitors & Advocates**) for the **Claimant**
Kelvin Rutledge QC (instructed by **London Borough of Lambeth Legal Services**) for the **Defendant**

Hearing dates: 7 July 2022

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Approved Judgment

Mrs Justice Hill DBE :

Introduction

1. By this claim, issued on 27 September 2021, the Claimant challenges the failure of the Defendant ("Lambeth") to provide her with suitable accommodation under the duty in section 193(2) of the Housing Act 1996 ("the 1996 Act"). Permission was granted by Richard Hermer QC, sitting as a Deputy High Court Judge, on 8 October 2021.

2. Lambeth accepts that it has been in breach of this duty since 10 December 2020. The central issue remaining between the parties is whether the court should grant the Claimant any relief, in particular the mandatory order she seeks requiring Lambeth to secure suitable accommodation for her within 12 weeks.

3. The Claimant relied on six of her own witness statements and one from her solicitor, Claire Wiles. Lambeth relied on witness statements from Gregory Carson (Principal Lawyer), Charlie Conyers (Head of Accommodation Services) and Ode Ogwu (Team Manager of the Temporary Accommodation team). These statements exhibited a large amount of the pertinent correspondence and policy documents.

4. I was also provided with the key documents from separate judicial review proceedings the Claimant is bringing against the London Borough of Croydon ("Croydon") for their alleged continuing failure to ensure appropriate education, social care and associated services for her two children.

The factual background

The needs of the Claimant and her children

5. The Claimant is a single parent living with her 3 children, a boy currently aged 14, a girl currently aged 12 and a boy currently aged 2. She has been diagnosed with autistic spectrum disorder, attention deficit hyperactivity disorder, depression and anxiety, obsessive compulsive disorder and asthma.

6. The Claimant's older son and her daughter have significant and profound disabilities. Both have neurological conditions, global developmental delay, learning disabilities, four limb motor disorder, epilepsy, variable heart block, the heart condition long QT syndrome and low muscle tone. They are both registered blind, use non-verbal communication, are incontinent, fed by tube and use wheelchairs. Each of them has respiratory vulnerabilities and sleep disturbance patterns.

7. The Claimant's older son has kyphosis (a curvature of the upper spine) and 50% migration in his right hip. This causes him considerable pain as he cannot lie on his right side and has difficulties being placed in a sitting position.

8. The Claimant's daughter has scoliosis (a curvature and twist of her spine), chronic rhinitis and recurring pneumonia. She requires home suctioning and oxygen saturation monitoring and is regularly admitted to hospital for respiratory illnesses. She was diagnosed with early puberty (at age 4) and takes regular hormones which affect her mood.

9. On 15 June 2020 Lambeth's occupational therapist, Sara Glassberg, noted that both children have high moving and handling needs, large equipment requirements, need hoisting for all transfers and are fully dependent on carers to meet all of their needs. She made the following recommendations for accommodation: (i) standard wheelchair property; (ii) essential amenities to either be on one level, or alternatively have the ability to have through floor lift installed; (iii) sufficient internal circulation space to allow wheelchair manoeuvrability; (iv) wet floor shower, or potential to have wet floor shower, or specialist bath and hoist installed; (v) front access to be level access, or ability to be adapted; (vi) the property to be of suitable design to support hoisting; and (vii) sufficient floor space and storage areas to support the use of the necessary equipment.

10. On 10 May 2021 Ms Glassberg set out in an email what she considered the "minimum level of suitability" for a property for the family. This email reiterated that both children require ground floor living as they could only access the upstairs if a lift was present. They also both need their own bedroom due to the large size and quantity of their equipment and the space required for their moving and handling needs.

388 Lower Addiscombe Road

11. On 24 August 2020 the Claimant applied to Lambeth for accommodation under the homelessness provisions contained in Part VII of the 1996 Act. Lambeth provided her with interim accommodation but determined that she was not homeless. The Claimant brought judicial review proceedings against Lambeth but these were resolved. On 11 November 2020 Lambeth provided the Claimant with accommodation at 388 Lower Addiscombe Road. This was intended to be interim accommodation for the Claimant but she still lives there.

12. On 10 December 2020, Lambeth accepted that it owed the Claimant the section 193(2) duty.

13. On 11 December 2020, Lambeth accepted that 388 Lower Addiscombe Road was unsuitable due to excessive damp. The email also referred to the delay in carrying out necessary repairs and the surveyor's view that the family would benefit from single floor, level access accommodation with an accessible bathroom for the children. The email said that Lambeth would seek to rehouse the Claimant and that suitable alternatives would be proposed in the near future.

14. Since December 2020, the damp at 388 Lower Addiscombe Road has progressively worsened and spread. This was confirmed at the re-inspection by Lambeth's surveyor on 18 October 2021.

15. The Claimant points to several significant issues with 388 Addiscombe Road which make it unsuitable accommodation for her and her children.

    (i) It is not only damp, but mouldy and infested with mice. The heating is not working effectively. The property is on a road where there is a continuous flow of traffic exposing the family to significant traffic fumes if they open the windows. In letters dated 17 June 2020, 3 October 2020 and 1 September 2021, Dr Ronny Cheung, General Paediatric Consultant from Evelina London Children's Hospital, explained that mould, rising damp, pest infestation and

poor environmental air quality will exacerbate the already vulnerable respiratory health of both the older children and put them at risk of further infections and hospitalisations in future. He therefore strongly supported the application by the Claimant to relocate to an area with less environmental pollution.

(ii) There is only one bedroom on the ground floor where the Claimant's daughter is located. The Claimant's older son is located in a bedroom on the first floor. There is no lift. He now weighs over 30 kg and there are significant safety risks to the Claimant in her carrying her son up and down the stairs safely. With his reduced mobility and bone-mineral density along with his previous fracture, he is also at increased risk of sustaining another fracture. This means the Claimant's older son is largely restricted to being in the upstairs bedroom and so rarely sees his sister, with whom he had a very close relationship, and the family cannot socialise together.

(iii) The Claimant's older son needs to be moved around every 15 minutes, but this is made much more difficult because the Claimant is having to look after children on different floors. He has developed pressure sores on his ear. The community nurse who attends to dress his bed sores has raised safeguarding concerns.

(iv) The bathroom is largely inaccessible to the children, meaning they cannot be bathed properly. This exacerbates their skin conditions.

(v) Both children require surgery, but this is being delayed due to the lack of suitable accommodation: the Claimant's son's hip surgery cannot move forward in his current housing given the difficulties in getting him up or downstairs; the damp at the property renders it unsuitable for any child, but particularly one in the post-operative period; and post-surgery recovery requires a very stringent manoeuvring and handling plan, which would be very difficult in the current property. These issues were set out in letters from Dr Fairhurst, Consultant in Paediatric Neurodisability at the Evelina London Children's Hospital dated 16 November 2021, Mr Fabian Norman-Taylor, Consultant Orthopaedic Surgeon at Great Ormond Street Hospital for Children, dated 1 June 2022 and an email from the lead nurse at Demelza Hospice, dated 8 June 2022.

(vi) Mr Norman-Taylor's evidence also confirms that further delays to the Claimant's daughter's surgery will cause deterioration in her condition and could make surgery significantly less effective.

(vii) Dr Cheung's evidence confirms that a lack of adequate space at the property will limit the ability of the Continuing Care and Occupational Therapy teams to help deliver mobility and developmental programmes for the children.

(viii) Because of the difficulties in moving the children, they have been confined to the property. They last left it in March 2021.

(ix) The children are unable to attend school. According to the Claimant's grounds in the Croydon proceedings, her daughter has not attended school since 12 November 2018 and her older son has not attended school since 11 March 2020. Some alternative education arrangements have been put in place through a small

number of virtual lessons and music sessions each week, but this has been described in the Croydon proceedings as "minimal and unlawful" provision, which places further undue pressure on the Claimant alongside her caring responsibilities.

(x) The Claimant cannot leave the property herself unless she has sufficient carers available for a long enough period of time. That has meant that she and her younger son have only been able to leave the property 5 or 6 times since they moved there.

(x) The issues with the property are preventing both children from having respite care. Emails from Demelza dated 4 November 2021 and 8 June 2022 reiterate that respite care could not be offered for the Claimant's older son as it is not possible to safely transport him up and down the stairs. While the Claimant's daughter could be offered a short respite break, the Claimant considers it important for the children to spend time together for their own wellbeing.

(xi) Janine Tooker, the Claimant's counsellor, has confirmed that her mental health has been adversely affected by the anxiety, stress and fatigue she experiences around her living situation. Ms Tooker confirms that she has been unable to work with the Claimant on the other areas of her life for which she originally sought therapy. Dr Cheung observed that the Claimant is the children's primary carer and that if her mental health were to deteriorate, there would be an immediate risk that the children's physical and developmental needs would not be met.

16. On 5 May 2022 a Child Protection Review Conference took place within the London Borough of Croydon in relation to all three of the Claimant's children. The notes of that conference indicate that two of the professionals present considered that the children were experiencing or at risk of significant harm due to circumstances beyond their mother's control. The notes record that the children were not living in appropriate housing and were not accessing education.

The Claimant's preferences

17. The Claimant is concerned about the risk of harassment from the father of her youngest child and his family. By letter dated 27 May 2020 a nurse from Lambeth Perinatal Mental Health Team referred to the altercations between the Claimant and the father of her baby (who was then 1 month old). The letter indicated that she had been receiving threatening text messages and that these had exacerbated her anxiety and impacted negatively on her wellbeing. It was noted that she felt highly anxious when having to leave the house for medical appointments and was fearful of being approached by the man and his family on the street or them coming to the house. A further letter from the Perinatal Mental Health Team dated 24 September 2020 reiterated the concerns about the Claimant's mental health.

18. On 9 March 2021 the Claimant set out her "wish list" in terms of location. She indicated that Lambeth and Southwark would be trigger areas for her anxiety in light of the risk of harassment. She indicated that for the purposes of the children's care and funding Lewisham, Croydon and Bexley would not be suitable. She said that her preferred areas would be anywhere in Kent, the outer areas of Bromley or the outer areas of Greenwich.

She said that the main issue was the need to be out of the inner areas of London for the children's health, especially as they were likely to be in the property for much of the time. The other main issue expressed in her 9 March 2021 email was the need to have two of the bedrooms on the ground floor in order to meet the children's needs, move them safely and have emergency fire exit routes available.

19. In her witness statement dated 4 November 2021 the Claimant made clear that she would consider accommodation under a Private Rented Sector Offer ("PRSO") although this would not be her preference.

20. In her sixth witness statement, dated 15 June 2022, the Claimant reiterated that she would be willing to move to "almost any area in England" albeit that she would wish to avoid "inner city areas of other major towns or cities". She emphasised her concern to ensure a move to a less environmentally polluted area because of the impact poor air quality has on her children's health conditions.

21. On 23 June 2022 Lambeth served a Part 18 request on the Claimant asking various questions arising out of her sixth witness statement. These were responded to on 27 June 2022. In these answers the Claimant provided further details of the harassment she experienced from the paternal family of her youngest child, the issues she has had in respect of funding in Croydon and her concerns about environmental pollution and the impact on her children. She said in the response that she was "extremely desperate" and believed that many places would be less environmentally polluted than where she was currently living.

Lambeth's housing and homelessness policies

22. Lambeth has adopted the following policies: (i) a Housing Allocation Scheme 2013 setting out how permanent accommodation is allocated; (ii) a Housing Placement Policy 2016; (iii) a Housing Strategy 2017-2020; (iv) a Homelessness and Rough Sleeping Strategy and Action Plan 2019; and (v) a Tenancy Strategy and Affordable Housing Statement.

The efforts made by Lambeth to re-house the Claimant

23. Mr Conyers refers to the following broad contextual matters for Lambeth's difficulties in securing suitable accommodation for the Claimant: (i) the national housing crisis, which is particularly serious in London and the south east; (ii) acute budgetary pressures, caused in part by reductions in funding for housing from central government in recent years; (iii) the very high demand for housing in the Borough; and (iv) the limited pool of properties available to meet the demand, especially larger properties which have been adapted for disabled applicants or which lend themselves to such adaptation).

24. Lambeth could discharge its section 193(2) duty to the Claimant by making her an allocation of permanent accommodation under Part VI of the 1996 Act. As to this route, the Claimant joined the Part VI housing register on 10 December 2020. Her priority banding is "A2" which means she is on the lower level of the highest property band on the register. As there are currently no applicants in Band "A1" eligible for 4-bedroom, wheelchair accessible properties, the Claimant is first in line for such a property. Her "CAT 1" mobility status means she also has priority for all disability adapted and level

access ground floor properties, currently ahead of anyone else. She is eligible for both Council and Housing Association properties. If necessary, Lambeth will make the Claimant a direct offer to avoid her having to bid for a property.

25. According to Mr Conyers, the Claimant is "in the strongest position she could be" for Part VI accommodation. However "competition is fierce": there are currently 37,311 applicants on Lambeth's housing register and in 2020/21 Lambeth allocated 850 tenancies, a success rate of around one in every 44 applicants. Further, properties of the type the Claimant needs seldom come up: the average waiting time for 4 bedroom properties with no disability requirements for those housed in 2020 was 5.2 years, and in the last five years, Lambeth has only been able to let six 4-bedroom, wheelchair accessible properties.

26. A further way in which Lambeth could discharge its section 193(2) duty to the Claimant is by using property which it owns and uses for the provision of temporary accommodation for statutorily homeless households under Part VII of the 1996 Act. Mr Conyers confirms that none of this accommodation is large enough for the Claimant's family or in the areas she seeks. The majority of Lambeth's temporary accommodation is sourced through private sector letting agents. Lambeth's Temporary Housing Team has considered at least twenty properties for the Claimant and made several formal and informal offers of accommodation to the Claimant. There has been extensive correspondence between the parties about the various properties.

27. The Claimant's solicitor has expressed concern about the basis on which some of the offers have been made. For example, in a letter dated 20 May 2021 the Claimant's solicitor noted that it seemed that no adequate suitability assessment had been completed for a particular property and that "obviously unsuitable accommodation" continued to be proposed for the Claimant. Further, on 13 September 2021 an offer was made of a property with only one bedroom downstairs under cover of what appeared to be a standard letter explaining why Lambeth considered this property to be suitable. The Claimant's solicitor highlighted that this offer did not appear to take into account the needs of the Claimant's two children in their wheelchairs and the recommendations of Lambeth's own OT expert. This offer was withdrawn the following day.

28. The only formal offer that has been made and progressed to a suitability assessment under section 202 of the 1996 Act related to 11 Knockhall Chase, Dartford, Kent. The offer was made by Lambeth shortly before the original hearing date for this claim in November 2021. The Claimant challenged the suitability of the property because one of the ground floor rooms which would be a bedroom for either of her disabled children was open plan with the kitchen and the ground floor shower room was so small that safe manual handling and carrying of the children would not be possible within it. Lambeth ultimately accepted that this property, like all the others considered, was not suitable and the offer was withdrawn.

29. Lambeth could also discharge its section 193(2) duty to the Claimant by making her an offer of a PRSO. However, this is not the Claimant's preference and Lambeth has sought to accommodate that. Further, Lambeth's evidence is that properties let in the private sector tend not to be specially adapted properties for disabled occupants. A common problem in the private rental market is that larger properties with considerable space on the ground floor are often converted by their owners into two or more separate dwellings, to maximise rental income. Living rooms are often open plan to maximise

space, so it is difficult to find properties with separate living rooms on the ground floor that can be used as a bedrooms. Lambeth would not request any adaptations itself as it would not be cost-effective to do so if the property was only being offered on a temporary or short-term basis.

30. Lambeth has sought to accommodate the Claimant's preference not to be accommodated in Lambeth itself, but in Mr Conyers view, this has added "an extra layer of difficulty" because Lambeth does not have any housing stock outside of the Borough, or working relationships with landlords outside the Borough and its neighbours.

31. In June and September 2021 Lambeth sent referrals for assistance in accommodating the Claimant to eleven other local authorities in the South East, under section 213 of the 1996 Act, all without success. In responding to Lambeth, several of the authorities referred to the difficulties they faced, particularly in identifying 4 bedroom properties for applicants. In around May 2022 three of the authorities were approached again, but could not assist.

32. "Self-sourcing" has also been explored, meaning that the Claimant has identified potentially suitable private rented accommodation, which Lambeth has then explored further. If a property is suitable, Lambeth would attempt to negotiate terms and conditions with the landlord, offering a rent deposit and a one off non-refundable cash incentive to reduce the rent over the duration of the lease. For example, in March 2022 Lambeth offered a £10,000 incentive to the landlord of a property in Buckinghamshire to bring the rent down to Local Housing Allowance ("LHA") level, but the property was ultimately let to someone else. It is not Lambeth's policy to "top up" the applicant's weekly rent for a property to meet the difference between their LHA and the market rent demanded by the landlord. It does not have the funds to do this, and so Lambeth would consider such a property to be unsuitable.

33. Lambeth has the power to make Discretionary Housing Payments ("DHP") to those struggling to pay their rent or who cannot afford a deposit or to pay rent in advance. Such payments are intended to deal with short-term crises rather than long-term affordability issues, and the DHP fund for the current financial year has been substantially cut. Lambeth's evidence is that it has no power to make DHPs to those accommodated outside the Borough.

34. Mr Conyers explains his view that purchasing a property specifically for the Claimant is not the "silver bullet solution" to the problem. This is because even if Lambeth had legal power to make such a purchase (which is disputed by Lambeth) and the necessary resources (estimated at around £400,000-£600,000), in fairness to other high-need housing applicants, it would have to do the same for them. The details of further needy applicants in different bedroom categories on the housing register were summarised in four anonymised case studies appended to Mr Conyers' statement.

35. In concluding his statement in late October 2021, Mr Conyers said he was "confident" that suitable accommodation "will become available for the Claimant at some point…it is only a question of time. Unfortunately, as this depends entirely on a suitable property becoming available, I cannot say when that would be". Through Mr Ogwu's evidence that remained Lambeth's position at the time of the hearing.

36. In his second witness statement Mr Ogwu stated that Lambeth "remained unconvinced" that the Claimant is at risk in the whole of Lambeth due to the harassment she had previously experienced. There has been no direct contact between the Claimant and the family of her youngest child, or reports to the police, for over two years. In those circumstances Lambeth does not consider that the risk of harassment would, at present, rebut its duty, so far as reasonably practicable to accommodate the Claimant within Lambeth. Less still is there a case for avoiding the neighbouring borough of Croydon.

37. Mr Ogwu indicated that if a mandatory order was made, Lambeth would be likely to make the Claimant an offer of temporary, PRSO accommodation within Lambeth or in an adjoining borough including Croydon.

The imminent possession proceedings

38. The owner of 388 Lower Addiscombe Road has issued possession proceedings and a hearing has been fixed for 27 July 2022.

39. The likelihood of possession proceedings in relation to 388 Lower Addiscombe Road has been known to Lambeth since at least 10 June 2021 when Lambeth indicated to the Claimant's solicitor that the "return date" on the accommodation (ie the date on which the owner sought the return of the property) was 26 June 2021. As the property was not returned to him by that date possession proceedings were inevitable.

40. Mr Nabi submitted that as the Claimant is a non-secure tenant, it is almost inevitable that a possession order will be made; and that it is cruel in light of her family's significant needs for Lambeth to allow her to be facing possession proceedings and eviction.

41. Mr Rutledge QC gave an undertaking in submissions on behalf of Lambeth that if a possession order is made, Lambeth will not allow the Claimant and her children to become "street homeless". It is likely that she will be rehoused by Lambeth in the same sort of accommodation as referred to by Mr Ogwu as being secured if a mandatory order was made, ie. PRSO accommodation in Lambeth or an adjoining borough. When pressed about the suitability of this sort of accommodation, Mr Rutledge QC said that the property would be one that Lambeth considered suitable, although it was likely to be "at the lower end of suitability".

The Croydon claim

42. In the Croydon proceedings, the Claimant seeks as interim relief a care and support plan setting out arrangements for urgent respite care and a full-time education placement for her two older children. As final relief she seeks declaratory orders in respect of Croydon's alleged breaches of duty and mandatory orders for residential school placements at the Children's School, Tadworth, Surrey for the children and arrangements for them to be transported to and from school to enable them to spend weekends and holidays in their family home. At the time of this judgment no order has been made requiring Croydon to provide the interim relief sought but it is anticipated that the issues of permission and interim relief will be addressed imminently.

The legal framework

The section 193(2) duty and the powers available to discharge it

43. The material provisions of section 193 are as follows:

> "**193 Duty to persons with priority need who are not homeless intentionally**
>
> (1)This section applies where—
>
> (a) the local housing authority (i) are satisfied that an applicant is homeless and eligible for assistance, and (ii) are not satisfied that the applicant became homeless intentionally, (b) the authority are also satisfied that the applicant has a priority need, and (c) the authority's duty to the applicant under section 189B(2) has come to an end…
>
> (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.
>
> (3) The authority are subject to the duty under this section until it ceases by virtue of any of the following provisions of this section…
>
> (5) The local housing authority shall cease to be subject to the duty under this section if the applicant, having been informed by the authority of the possible consequence of refusal and of his right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section.
>
> (6) The local housing authority shall cease to be subject to the duty under this section if the applicant—
>
> (a) ceases to be eligible for assistance, (b) becomes homeless intentionally from the accommodation made available for his occupation, (c) accepts an offer of accommodation under Part VI (allocation of housing), (cc) accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord or (d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.
>
> (7) The local housing authority shall also cease to be subject to the duty under this section if the applicant, having been informed of the possible consequence of refusal or acceptance and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part VI.
>
> (7A) An offer of accommodation under Part VI is a final offer for the purposes of subsection (7) if it is made in writing and states that it is a final offer for the purposes of subsection (7).

> (7AA) The authority shall also cease to be subject to the duty under this section if the applicant, having been informed in writing of the matters mentioned in subsection (7AB) (a) accepts a private rented sector offer, or (b) refuses such an offer…
>
> (7F) The local housing authority shall not (a) make a final offer of accommodation under Part VI for the purposes of subsection (7); or (ab) approve a private rented sector offer…unless they are satisfied that the accommodation is suitable for the applicant and that subsection (8) does not apply to the applicant.
>
> (9) A person who ceases to be owed the duty under this section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation".

44. Section 193 is located in Part VII of the 1996 Act. This is concerned with those "who face the immediate problem on homelessness". Part VII contains a graduated series of provisions which impose a range of obligations on a local housing authority to secure temporary accommodation for an applicant. The main housing duty under section 193 (2) is the "highest" of the Part VII duties. Part VI of the 1996 Act, by contrast, is concerned with the allocation of permanent accommodation and provides no guarantee of the same.

45. Under section 206 of the 1996 Act, a local housing authority can only discharge its functions under Part VII by securing that suitable accommodation it provides is available for the applicant, by securing that the applicant obtains suitable accommodation from another person or by giving the applicant such advice and assistance that will secure that suitable accommodation is available from another person.

46. In performing its duties under Part VII a local housing authority must have regard to relevant statutory guidance issued by the Secretary of State. This is currently the 'Homelessness Code of Guidance for Local Authorities' ("the Code"), published on 22 February 2018 and subject to amendment on several occasions, most recently on 1 June 2022. Chapter 16 of the Code, entitled 'Securing Accommodation', provides that a housing authority may secure temporary accommodation from its own stock held under Part 2 of the Housing Act 1985 ("the 1985 Act") and that a tenancy granted by a housing authority under any Part VII function is not a secure tenancy unless the authority notifies the tenants as such. Chapter 16 sets out different sources for the securing of accommodation including other local authorities, other social landlords, accommodation leased from a private landlord, private registered provider owned accommodation and privately owned accommodation.

47. Under section 208(1) of the 1996 Act, so far as is reasonably practicable, a local housing authority shall in discharging its housing functions under Part VII secure that accommodation is available for the occupation for the applicant in their own district. Under paragraph 17.50 of the Code, housing authorities should seek to locate a household as close as possible to where its members had previously lived and retain established links with schools, doctors, social workers and other key services and support. Paragraph 17.56 of the Code recognises that in some circumstances there will be clear benefits for the applicant of being accommodated outside of the district. The

example given is where the applicant and/or a member of their household would be at risk of domestic abuse inside the district and they would need to be located elsewhere to reduce the risk of further contact with the perpetrator(s).

48. Under section 9(1) of the 1985 Act, a local housing authority has power to provide accommodation by erecting houses, converting buildings into houses on land acquired by them and by acquiring houses. Under section 9(2) the authority may alter, enlarge, repair or improve a house which it has erected, converted or acquired. In *R (Clarke) v Birmingham City Council* [2020] EWCA Civ 1466 at [13] it was held that the power of a local authority to acquire, alter or improve its own housing stock was conferred by statute "in the broadest and most permissive of terms".

49. Under section 17 of the 1985 Act, a local housing authority also has the power to acquire land for the purposes of providing houses.

50. Any property acquired under sections 9 or 17 must be allocated in accordance with the housing authority's allocation scheme if it is to be offered as a secure or introductory tenancy. A housing authority is not so restricted if what is to be offered is a non-secure tenancy pursuant to the main homeless duty under section 193(2).

51. Section 213 of the 1996 Act makes provision for co-operation between different housing authorities and bodies.

52. The nature of the section 193(2) duty was recently given detailed consideration by the Court of Appeal in *R (Elkundi) v Birmingham City Council and ors* [2022] 3 WLR 71. Lewis LJ, with whose reasoning Peter Jackson and Underhill LJJ agreed, held that:

    (i) The duty under section 193(2) is an immediate, non-deferrable, unqualified duty to secure that suitable accommodation is available for occupation by the homeless person; therefore, once a local housing authority accepts that it owes the section 193(2) duty, it is under a duty to secure that suitable accommodation is available for occupation immediately, rather than a duty to secure that such accommodation is made available within a reasonable period of time;

    (ii) Whether accommodation is "suitable" will depend on a range of factors, including the nature of the accommodation, the length of time the homeless person had been in it, the needs of the homeless person and his family, the lack of alternative accommodation and the fact that the housing authority has limited resources available to secure accommodation;

    (iii) The section 193(2) duty does not mean that permanent accommodation that is suitable for the long term had to be provided immediately once the duty was owed, since accommodation can be "suitable" in the short term even if it would not be suitable in the medium or long term;

    (iv) Different accommodation can therefore be provided at different times to ensure that the section 193(2) duty was being performed and what is suitable might evolve or change over time depending on all the circumstances; and

    (v) If a local housing authority decides that the accommodation currently being occupied by a person to whom the section 193(2) duty is owed is not suitable,

or has ceased to be suitable, then it is under a duty to ensure that other suitable accommodation is available until the section 193(2) duty comes to an end: [77]-[83], [107]-[108], [151], [153] and [154]-[155].

Other pertinent legislation

53. Sections 1-3 of the Homelessness Act 2002 set out a series of duties in relation to the formulation of a homelessness strategy by a local authority.

54. The provision of suitable accommodation under Part VII is a relevant function for the purposes of the public sector equality duty ("PSED") set out in section 149 of the Equality Act 2010. This duty must be exercised in substance, with rigour, and with an open mind; *Hotak v Southwark LBC & Solihull LBC* [2015 UKSE30].

55. Section 11 of the Children Act 1989 requires a housing authority to make arrangements for ensuring that its functions are discharged having regard to the need to safeguard and promote the welfare of children. This duty applies to the formulation of general policies and practices but also to individual cases. Housing authorities should have regard to the need to safeguard and promote the welfare of the children of a household in determining whether accommodation is suitable: *Nzolameso v Westminster CC* [2015] [UKSE22]; [2015] PTSR 549.

Mandatory orders to enforce the section 193(2) duty

56. In *Elkundi* at [131] the Court of Appeal held that where a local authority is in breach of its section 193(2) duty, a range of factors will be relevant to whether it is appropriate to grant a mandatory order requiring it to comply with its duty, including (i) the nature of the accommodation currently occupied by the homeless person and the extent to which it is unsuitable; (ii) the impact of the living conditions on the homeless person and their family; (iii) the length of time the homeless person has been left in unsuitable accommodation; and (iv) the likelihood of accommodation becoming available in the near future.

57. However, the resources of and financial constraints on the local authority are not relevant to that question. If a local authority has been unable to secure suitable accommodation having taken all reasonable steps to perform its section 193(2) duty, that might be a good indication that it would not be appropriate to grant a mandatory order, since it might not be possible to secure suitable accommodation within a specified time. A local authority which resisted a mandatory order would be expected to demonstrate what steps it had taken to perform its section 193(2) duty and what the difficulties were, it being unlikely to be sufficient to refer generally to the demand for housing or the shortage of accommodation. The fact that there were a limited number of suitable properties available of the type needed might be relevant to whether the authority had done all it reasonably could to secure suitable accommodation: *Elkundi* at [131]-[137], [153], [154] and [156].

58. The rationale for the Court's approach to the resources issue was that before the section 193(2) duty arose, the authority would already have taken into account general housing conditions in their area, the limits on their housing stock and limits on their resources when deciding whether it was reasonable for the individual to continue to occupy

accommodation or in deciding whether the person's current accommodation was suitable in the short or longer term: *Elkundi* at [130].

59. The burden is on the authority to show why a mandatory order should not be made. In terms of the evidence required of a local authority, references to the general difficulties facing the authority, or the lack of availability of suitable properties, may not persuade the court that it had taken all reasonable steps, particularly where, for example, there has been a lengthy period of non-compliance with the duty or where the accommodation falls so far below any level of suitability that more immediate action might be expected: *Elkundi* at [132] and [140].

60. In *Imam* (an appeal joined with *Elkundi*), the authority had failed to explain why it could not use any of its Part VI property to meet its different duties under Part VII. The authority's evidence had also failed to explain how many other Part VII applicants had the same needs as the applicant, how long they had been waiting for suitable accommodation and whether the authority had considered purchasing or leasing accommodation for that group: *Elkundi* at [144]-[145].

61. In *Ahmed* (another of the joined appeals), the Court of Appeal dismissed Birmingham City Council's appeal against a mandatory order requiring it to secure immediate accommodation to a particular Claimant (Mr Ahmed) within 12 weeks. The accommodation had been unsuitable for 16 months by the time of the hearing before the judge. It was unsuitable because of overcrowding, the impact of which was more severe because one of his children had epilepsy and autism. The judge had considered the impact of the accommodation on Mr Ahmed and his family. The Court of Appeal held that the judge was correct to conclude that in avoiding using its own Part VI stock to provide temporary or non-permanent accommodation under Part VII, Birmingham was failing to appreciate the unqualified nature of the section 193(2) duty. Birmingham had not contended that it would be impossible for it to comply with a mandatory order and the judge had concluded that it would not be unreasonably difficult for it do so. In those circumstances Birmingham had not taken all reasonable steps to comply with its duty and if it did take reasonable steps to do so, it would be able to comply without unreasonable difficulty: [150].

The Claimant's grounds in overview

62. The Claimant advanced three grounds of judicial review in the claim form:

Ground 1: Lambeth was in breach of the main housing duty to secure suitable accommodation for her;

Ground 2: In making her offers of accommodation in the attempt to discharge that duty, Lambeth had failed to comply with the public sector equality duty; and

Ground 3: Lambeth had failed to secure suitable accommodation in breach of its duty of section 11(2) of the Children Act 2004.

63. However in submissions Mr Nabi made clear that grounds 2 and 3 were not advanced as free-standing grounds but rather as grounds that were relevant to the issue of mandatory relief.

The parties' submissions

The Claimant

64. The Claimant submitted that a mandatory order should be made. Generally, a claimant who succeeds in establishing unlawful administrative action is entitled to a remedial order. Such an order in this case would be an important way of vindicating the rights of homeless people which Parliament had enshrined in legislation.

65. The main housing duty is immediate, unqualified and non-deferable. However there is evidence suggesting that Lambeth does not have a genuine understanding of her needs. For example, on 15 April 2021 Mr Ogwu emailed the Claimant's solicitor referring to her having one child in a wheelchair with breathing equipment and needing a downstairs bedroom. The email dated 13 September 2021 making the offer of unsuitable accommodation described at [27] above also suggested a lack of understanding of her needs.

66. Lambeth admits it has been in breach of this duty for over 20 months, a very significant period of time. The unchallenged evidence is that the Claimant and her children are being very seriously adversely affected by the failure of Lambeth to secure suitable accommodation, in the ways summarised at [15] above. "Intolerable" living conditions are not a necessary pre-requisite for a mandatory order, but if such conditions were present, this may be a powerful indication that an order is called for: *Elkundi* at [35]. The conditions in which the Claimant and her children were living and the impacts on them met this threshold. The facts of this case are as extreme as one can get.

67. There was an inherent contradiction in Lambeth's argument that the question of whether it had taken reasonable steps should be assessed on a *Wednesbury* basis and its apparent recognition that the court must decide for itself whether reasonable steps had been taken.

68. The court should be very slow in any case to accept that it is impossible for a housing authority to perform its housing duty to the homeless, as mandated by Parliament. This is not the situation here in any event because:

    (i) Chapter 16 of the Code sets out a significant number of ways in which a local authority can secure accommodation.

    (ii) The fact that counsel had given an undertaking that suitable property would be secured if a possession order was made, in itself showed that it is not "unreasonably difficult" for Lambeth to comply with the duty.

    (iii) It is important not to confuse the duties under Part VI with those under Part VII. Part VI involves the allocation of permanent property to those on the housing register, whereas Part VII relates to emergency welfare provision for the homeless and in most London boroughs typically now involves temporary accommodation. Lambeth is not entitled to say that because it is looking for permanent Part VI accommodation it is not required to provide Part VII temporary accommodation: this would be a dangerous precedent. The four anonymised case studies were all families on the Part VI housing register not Part VII applicants.

(iv) By wanting to and indeed being willing to be located virtually anywhere in England the Claimant has provided Lambeth with greater opportunities for discharging its Part VII duties.

(v) There was a precedent for a judge making a mandatory order because a local authority had failed to consider purchasing a property: *R v Islington London Borough Council, ex p. Batantu* [2001] 33 HLR 76 at [43]-[46], per Henriques J. Further, sections 9 and 17 of the 1985 Act give local authorities very wide powers to build acquire and adapt properties. Sections 21 and 32 thereof give broad powers in respect of the management and disposal of land and section 32(3) means that no consent would be required for the letting of the land. *Clarke* confirmed that the section 9 power to purchase property is permissive and broad. The distinction Lambeth drew between this case and *Batantu* was therefore one without a difference.

(vi) While the Claimant was not asking for a property to be purchased for her, *Alhibkiet v Brent London Borough Council* [2018] EWCA Civ 2742; [2019] HLR 15, 221 suggested that it was lawful for a local authority to "hold back" or "earmark" property within the borough for those in higher priority categories.

(vii) Discretionary Housing Payments and/or funding from children's services could be used to fund a shortfall between benefits and the rent.

(viii) While the Claimant has expressed a series of preferences in relation to the property she seeks, Lambeth is not required to take those preferences into account: rather Lambeth is required to meet her needs. The Claimant is aware that individual preferences are often not capable of being accommodated due to the shortages and therefore that she might not obtain a property with everything on her wish list. Once an offer has been made it would be a matter for her to decide whether to accept it, decline it or accept it and request a suitability review.

69. Following *Elkundi,* budgetary constraints are not relevant to whether a mandatory order is appropriate, once a housing authority has accepted that a person is owed the main housing duty, and that her current accommodation is unsuitable. The court should not lose sight of the fact that in deciding that 388 Lower Addiscombe Road is unsuitable, Lambeth has already taken into account the general housing conditions in its area, the limits on its housing stock and its resources. Suitability is a flexible concept and what is suitable at one point in the short term may not be suitable in the long term. Accordingly once an authority has decided that property is unsuitable it has concluded that it is unsuitable even in the short-term. It is therefore only in the starkest of circumstances where a property is said to be unsuitable. The Claimant submitted that Lambeth's argument that where budgetary constraints manifest themselves in terms of competition for housing, they are relevant, appeared to contravene *Elkundi* by having resources considered "through the back door".

70. Lambeth's obligations under the PSED and section 11 of the Children Act 2004 were also relevant to the issue of relief. These duties, and the prospective duties under the Homelessness Act 2002, required Lambeth to think in advance who would need its

services, how many would have disability needs and what they would need to do to meet those needs.

71. However in her statement Ms Wiles noted that Lambeth's discharge and placement policies do not address the characteristic of disability; Lambeth did not appear able to say how many applicants had the protected characteristic of disability; and the documents did not make the conjunction of children and disability. Further, Lambeth's Homelessness Strategy makes no mention of the needs of families with disabled children and sets out no realistic plan for how it is going to be able to ensure an adequate supply of housing that meets their needs. Ms Wiles had been told that no meetings of the Housing Strategy Steering Group had taken place. It did not appear that there was any monitoring of the effect of the Lambeth's temporary accommodation policy on households with the protected characteristic of disability, rather than of those with support needs in general. In accordance with *Hotak*, the PSED must be exercised in substance, with rigour, and with an open mind. The local authority had to focus very sharply on the protected characteristics in play. That was not the case here.

72. The Claimant opposed Lambeth's proposal that I require the parties to engage in ADR rather than make a mandatory order. A wealth of evidence of the Claimant's needs including a large number of expert reports have been provided to Lambeth, such that they should be well aware of her needs. So far only one offer of a property has been made that has gone as far as a suitability assessment and Lambeth ultimately accepted that that property was not suitable. The Claimant therefore argued that ADR would achieve nothing other than further delay.

73. The extant Croydon claim involved different statutory regimes, namely those pertaining to education and social care rather than housing. In that claim Croydon was pointing to Lambeth's failure to provide suitable accommodation as an explanation for their own actions. Even if the Claimant's older children were placed in a residential school setting, there was no suggestion that they would not come home at weekends and for holidays. If Lambeth located the Claimant somewhere other than Croydon then that may have a bearing on who was the responsible social services authority but this does not impact on Lambeth's main housing duty. Accordingly the outstanding education issues were not a reason for delaying addressing the housing situation through a mandatory order in this claim.

74. Overall the Claimant contended that the proper administration of justice and the requirement that the court uphold the law mean that she should be granted the relief sought. In summary, Lambeth had to look outside their own housing stock in and out of the borough and had to do so with a real sense of urgency.

Lambeth

75. Lambeth focussed on the test as set out in *Elkundi*, namely whether it had taken all reasonable steps to secure accommodation for the Claimant, and provided rigorous evidence of its efforts. It submitted that the question of what was reasonable in terms of the steps taken was to be approached on a '*Wednesbury*' basis.

76. A fair reading of all the evidence and not isolated emails showed that Lambeth understood the family's needs and had taken all reasonable steps to secure suitable accommodation for the Claimant:

(i) It had done all it could in respect of Part VI for the Claimant. Her application for permanent accommodation has been prioritised over others, including those with larger families, on account of her disability-related needs. She is currently in "pole position" on Lambeth's housing register.

(ii) Lambeth had considered around twenty properties under Part VII which illustrated the scale of the problem. It had approached several other authorities under section 213, and none could assist. PRSO accommodation and self-sourcing had also been considered.

(iii) It had gone to extraordinary lengths to try and accommodate the Claimant's preferences for a permanent, non-private sector property. Her preference for avoiding inner city locations made identifying suitable accommodation difficult, as those locations were often where schools and other links to services were located. Reliance was placed on the statutory duty on a local housing authority under section 208 of the 1996 Act to house homeless applicants within its own area.

(iv) It was an unusual feature of this case that while the Claimant sought housing from Lambeth, she had asked not to be rehoused in Lambeth because of the harassment she had experienced. Lambeth had sought to respect the Claimant's preference not to be accommodated within the borough, albeit remaining unconvinced that she is at risk in the whole of Lambeth.

(v) It would not be lawful for it to purchase, lease, construct or adapt property specifically for the Claimant. If a local housing authority exercises its powers of occupation of land or houses under section 9 or 17 of the 1985 Act, the property or land so acquired is governed by Part 2 of the 1996 Act and any disposal of it could not be made except in accordance with the authorities housing allocation scheme: section 159(2) and 166A(14). "Earmarking" a property for a particular applicant is therefore not permissible even for Part VII purposes: *R (Begum) v Tower Hamlets LBC* [2002] EWHC 633; [2002] HLR 8, 70 at [29]. As Mr Conyers explained, earmarking a property for the Claimant will not be fair on other applicants.

77. In judging the reasonableness in Lambeth's actions it was necessary to look at the "depressing reality" that the Claimant was not alone in having an urgent need for rehousing. Mr Conyers' case studies provided details of four other cases on the housing register with similarly pressing needs. Resources were not entirely irrelevant and could be considered: Lewis LJ had accepted in *Elkundi* at [137] that the limited number of suitable properties available may be relevant to assessing whether a local authority has done all it reasonably can. Because the limited number of suitable properties available is very likely due to financial constraints, Lambeth submitted that it was clear Lewis LJ was not intending to exclude resources entirely from the court's consideration.

78. As to the policy documents, Lambeth's Homeless Strategy is not under challenge in this claim. In any event it is a broad, overarching document and it is not intended to deal in the nuts and bolts of how and where people will be housed. These issues are left to other documents, such as the Allocation Scheme. The Allocation Scheme specifically refers to those individuals or households with housing-related disabilities and makes

provision for "wheelchair, mobility and adapted housing". The Housing Placement Policy makes provision for out-of-borough placements. Households with "significant disabilities or medical needs" are prioritised for accommodation in borough. The Tenancy Strategy makes clear that vulnerable applicants, such as those with disabilities, whose circumstances are unlikely to change, should be given permanent tenancies. Further, Lambeth's efforts in respect of the Claimant were a manifestation of its consideration of the PSED and section 11 duty.

79. A mandatory order had been made in *Batantu*, but this case was different for two reasons. First, the statutory scheme under consideration in *Batantu* (namely that derived from the National Assistance Act 1948) was different and generated broader powers to acquire accommodation than those in section 9 and 17. This informed the decision of the judge in *Batantu* that the local authority could do more by buying accommodation. Second, the local housing authority in *Batantu* had denied being in breach of the duty, unlike Lambeth.

80. Lambeth relied on the general public law principle that the likely impact on good administration and /or the rights of third parties are matters to which the court may have regard in deciding whether to grant relief. Nothing in *Elkundi* suggests otherwise.

81. An immediate mandatory order had not been made in *Begum*. That case involved an extremely disadvantaged family who could not be housed together and whom the local authority placed in adjacent houses. This was not suitable. The judge held that the case would have benefited from ADR and delayed making any mandatory order to allow for further dialogue between the parties: [26]. Part of the factual background was the imminent prospect of the accommodation being lost.

82. Lambeth urged me to take a similar approach to the judge in *Begum*, and stay the case for further ADR and/or for a period of directed, structured discussions between the parties. It was suggested that this might result in a better understanding of the Claimant's needs and was likely to be a more effective way of Lambeth eventually securing suitable accommodation for her. CPR 26.4(2A) provided for a stay for one month, or a longer period, where the court considered it appropriate to allow for settlement of the claim.

83. Lambeth argued that the Croydon claim provided a further basis for this approach. There is a clear tension between the Claimant's desire to secure a residential school placement in Surrey for her children and her stated willingness to consider suitable Part VII accommodation in almost any area in England. The clear and obvious solution was for the Claimant and both authorities to work together to resolve the household's difficulties. *R (G) v Southwark LBC* at [33] underscored the expectation that local authorities co-operate with each other and the terms of section 27 of the Children Act 1989 which empower a children's authority to ask other authorities including any local housing authority for help in the exercise of any of their functions.

84. Finally, Lambeth submitted that a declaration would serve no purpose: as Chamberlain J had said in *R (Good Law Project) v Secretary of State for Health and Social Care* [2021] EWHC 346 (Admin); [2021] PTSR 1251 at [152], it is "no part of the court's function to rub the defendant's nose in his admitted breach".

Analysis

85. Lambeth accepts that it owes the section 193(2) duty to the Claimant and has been in breach of it since 10 December 2020. The only issue for me to determine is whether to stay the claim for further discussions/negotiations/ADR between the parties and potentially Croydon or whether to order relief now, and if so, in what form.

86. I deal first with the issue of a declaration in respect of the section 193(2) duty.

87. As Chamberlain J reiterated in *Good Law* at [152], a claimant who establishes that a public body has acted unlawfully will normally be entitled to a declaration, albeit that the grant of any relief in judicial review proceedings is always discretionary. One circumstance in which it might be appropriate to withhold relief is where the proceedings were unnecessary because the breach was admitted at the outset.

88. Here, Lambeth accepted that it was in breach of its section 193(2) duty at the outset of these proceedings, and indeed in correspondence before the claim was issued, and has maintained that position. Although this is not a case where proceedings were unnecessary, because of the important issue of mandatory relief, I accept Mr Rutledge QC's submission that a declaration in respect of the section 193(2) duty would not be appropriate.

89. As to whether a mandatory order should be made, *Elkundi* at [131] set out a range of factors that may be relevant. I address them in turn.

90. First, regard can be had to the nature of the accommodation currently occupied by the homeless person and the extent to which it is unsuitable.

91. Here, the accommodation currently occupied by the Claimant and her children falls fundamentally short of what Lambeth's occupational therapist concluded in her 10 May 2021 email was the "minimum" level of suitability. This is because the house does not provide two ground floor, wheelchair accessible bedrooms for the children.

92. The accommodation also falls short of several of the other requirements Ms Glassberg set out in her initial 15 June 2020 assessment. The essential amenities are not on one level and the children cannot properly access bathing facilities. It also appears from the Croydon claim that the property does not have level access from the outside.

93. Second, consideration can be given to the impact of the living conditions on the homeless person and their family.

94. The living conditions in this case are having a series of very damaging impacts on the Claimant and her children, particularly her two significantly disabled older children, as detailed at [15] above.

95. The two older children's physical health and development is being severely impacted by their accommodation. Their already vulnerable respiratory health is being exacerbated by mould, rising damp, pest infestation and poor environmental air quality at the property. The Claimant's older son has developed pressure sores because she cannot turn him as regularly as is needed due to having to care for her children on separate floors. The difficulty in accessing bathing facilities is exacerbating their skin conditions. The lack of space is impacting on their mobility and developmental

programmes. The Claimant and her son are at risk of significant physical injury by her carrying him up and down the stairs.

96. Perhaps most importantly in relation to their physical health and development, both children need surgery due to their physical disabilities but this is being delayed due to the lack of suitable accommodation. Further delays to the Claimant's daughter's surgery will cause deterioration in her condition and could make surgery significantly less successful.

97. The children's education and social development is also being very badly affected. They have not left the house since March 2021. Because the Claimant's older son is largely restricted to the upstairs bedroom he has limited contact with his family. The Claimant and her younger son have only been able to leave the property 5 or 6 times since November 2020.

98. Perhaps most fundamentally in relation to this area, due to the accommodation issues the children have not attended school for a lengthy period (since November 2018 for the Claimant's daughter and March 2020 for her older son).

99. Further, the accommodation issues are preventing both children from having respite care and adversely impacting on the Claimant's mental health. This in turn places the children at risk as she is their primary carer. Two professionals involved in the 5 May 2022 Child Protection Review Conference considered that the children were experiencing or at risk of significant harm.

100. Third, the length of time the homeless person has been left in unsuitable accommodation can be relevant.

101. Here, the Claimant and her children have been living in unsuitable accommodation for over 20 months. This is a significant period of time, especially bearing in mind the young age of the children involved.

102. Although it is not helpful to make direct comparisons between different cases, as decisions of this nature are inherently fact-sensitive, I note that Steyn J was persuaded to make a mandatory order in the Ahmed case where the accommodation had been unsuitable for 16 months by the time of the hearing before her: see [62] above.

103. I therefore consider that the first three of the factors set out in *Elkundi* are relevant to whether to make a mandatory order in this case, and taken together, militate strongly in favour of such an order. I accept Mr Nabi's submission that the conditions in which the Claimant and her children are living are "intolerable" and while this is not a pre-condition for a mandatory order, it is a powerful indication that one is called for: *Elkundi* at [35].

104. Fourth, regard can be had to the likelihood of accommodation becoming available in the near future.

105. Lambeth's evidence was to the effect that although it was confident that suitable accommodation would eventually become available for the Claimant, it could not say when that would be. It considered it unfair and unrealistic to give any commitment as to when suitable accommodation would be made available.

106. That said, Mr Rutledge QC gave an undertaking that if a possession order was made in respect of 388 Addiscombe Road, suitable accommodation would be found. As Mr Nabi pointed out, this undertaking was not Lambeth's evidence. He expressed some doubt as to whether the commitment would in fact be met.

107. At the time of this judgment, even though a possession order may be made imminently, I have been provided with no evidence by Lambeth of the specific suitable accommodation that will be provided to the Claimant or when it will be provided. The uncertainty around this issue must be further impacting on the Claimant's mental health.

108. Overall when considering this fourth *Elkundi* factor in the context of whether to make a mandatory injunction, in my view the evidence is not robust enough to be satisfied that suitable accommodation will be provided shortly, such that a mandatory order would serve no purpose.

109. However, I agree with Mr Nabi that the fact that Lambeth feels confident it can secure suitable accommodation for the Claimant if a possession order is made (and indeed, on Mr Ogwu's evidence, if a mandatory order is made) is relevant in a further way. This is because it shows that Lambeth has not taken all reasonable steps to secure suitable accommodation for the Claimant to date and that it would be capable of complying with a mandatory order within a reasonable time if one was made.

110. I am satisfied that at a high level Lambeth does understand the needs of the Claimant and her children. The advice Lambeth has received from its occupational therapist could not be clearer about the "minimum" the Claimant and her children need. However I can well understand how the repeated offers of properties which do not meet those minimum requirements have led the Claimant to conclude that her needs are not being acknowledged.

111. My overall assessment of the evidence is that suitable accommodation is available to Lambeth for the Claimant, but it has chosen not to offer it to her because of her preference not to live in Lambeth or Croydon, and not to be accommodated in a PRSO property. Ultimately, however, per *Elkundi*, the section 193(2) is an immediate, non-deferrable, unqualified duty. As Mr Nabi submitted, if the Claimant is offered a property which is suitable, it will be a matter for her to choose whether or not to accept it.

112. I am not therefore persuaded that this case falls within the category of cases discussed in *Elkundi* at [132]-[134] where the housing authority has taken all reasonable steps to secure accommodation for the applicant and a mandatory order should not be made because it may not be possible to comply with such an order in a specified time.

113. A further reason for my conclusion that Lambeth has not taken all reasonable steps is that I accept Mr Nabi's submission that the Claimant's willingness to be rehoused virtually anywhere in England does provide Lambeth with significant flexibility. I do not consider that they have done all they reasonably could in this regard. I note that when the section 213 referral process was repeated in around May 2022 only three authorities were contacted. Lambeth's position (denied by the Claimant) is that it was not until the Claimant's sixth witness statement dated 15 June 2022 that it became apparent quite how flexible she was being in respect of location. However there is no evidence that Lambeth has made section 213 referrals to local housing authorities in

any other areas of the country since receipt of that witness statement or made any other efforts to locate properties in such areas.

114. If, as appears possible, Lambeth does rehouse the Claimant within the Borough, then it remains open to it to use DHP funding as appropriate. There is also no evidence that Lambeth has explored the option raised by Mr Nabi of children's services funding to assist in making a particular accommodation option financially viable.

115. I do not consider it necessary to resolve the legal issue between the parties as to whether Lambeth could purchase or adapt a property specifically for the Claimant. Mr Nabi did not specifically put his case in that way in any event. I note, however, that there do seem to be some similarities between this case and *Imam* in that Lambeth's evidence does not explain how many Part VII (as opposed to Part VI) applicants have the same needs as the Claimant, how long they have been waiting for suitable accommodation and whether Lambeth has considered purchasing or leasing accommodation for that group of Part VII applicants: *Elkundi* at [144]-[145].

116. In my view there is force in the Claimant's argument that the combined effect of the PSED and section 11 of the Children Act 1989 is that local authorities need to be proactive in ensuring that they have available to them housing that will meet the needs of families with disabled children under Part VII. I do not accept that all of the criticisms of Lambeth's policies made by the Claimant are merited or that a declaration that Lambeth has breached the duties in question would be appropriate. However, given the very significant needs of the disabled children in his case, Lambeth's duties under the PSED and section 11 do underscore the need for a mandatory order.

117. As to the proposal for a stay, I am very conscious that the Croydon proceedings are extant and of the potential inter-relationship between that claim and this. However I accept the submissions of Mr Nabi that the breach in this case has been ongoing for a significant period of time and needs to be addressed for the reasons set out above; and that a stay would be likely to result in further damaging delay and is not merited.

118. Lambeth can continue to liaise with the Claimant during the timescale of the mandatory order and does not require a stay in these proceedings to do so. The extensive correspondence between the parties about particular properties illustrates this. It is to be expected that Lambeth would liaise with Croydon pursuant to the processes for inter-authority joint working described in *R (G)* during the timescale of the order, and again does not need a stay to enable that.

Conclusion

119. For all these reasons I am satisfied that a mandatory order is appropriate. I therefore direct that Lambeth secure suitable accommodation for the Claimant under section 193(2) of the 1996 Act by no later than 12 weeks of the date of the order.