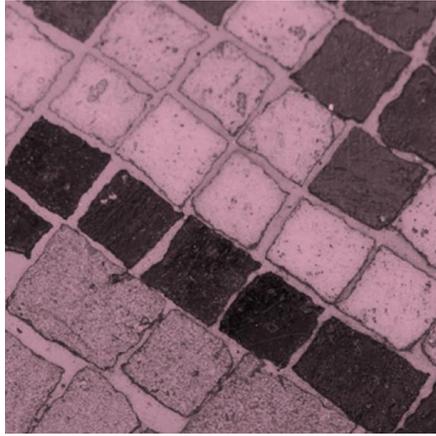
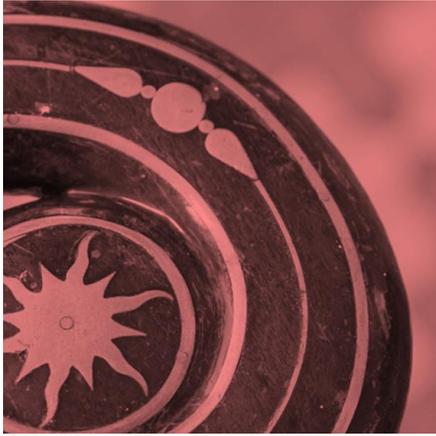


HOMELESSNESS UPDATE JANUARY 2026

Speakers:

- Martin Westgate KC, Barrister Doughty Street Chambers
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Key developments in homelessness – annual review



Josh Jackson

OUTLINE

1. Themes:

- a) Alternative remedies
- b) Housing needs assessments
- c) Suitability

2. Cases

- a) *R (Bano) v Waltham Forest LBC* [2025] 1 WLR 2557
- b) *Ofori-Addo v Haringey LBC* [2025] PTSR 1589
- c) *RZH v Sutton LBC* [2025] HLR 35
- d) *Norton v Haringey LBC* [2025] HLR 39
- e) *R (AA) v London Borough of Waltham Forest* [2025] HLR 40
- f) *R (Shaker) v Hammersmith and Fulham LBC* [2025] EWHC 2820 (Admin)
- g) *R (AN) v London Borough of Barking and Dagenham* [2025] EWHC 2265 (Admin)
- h) *Fatolahzeh v London Borough of Barnet* [2025] EWCA Civ 1174
- i) *Enfield London Borough Council v A* [2025] EWCA Civ 1355
- j) *R (MKM) v London Borough of Ealing* [2025] EWHC 3182 (Admin)

HNAs

S.189A(1): local authorities *“must make an assessment of the applicant’s case”* where an applicant is homeless or threatened with homelessness and eligible for assistance.

S.189A(2): HNA must include an assessment of:

- “(a) the circumstances that caused the applicant to become homeless or threatened with homelessness,*
- (b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside (‘other relevant persons’), and*
- (c) what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation.”*

s.189A(3): The authority must notify the applicant, in writing, of the assessment that the authority make.

ss.189A(4)-(8): The **“PHP duties”**: Authority *“must try to agree”* with the applicant any steps that the applicant must take to secure that he has and can retain suitable accommodation (s.189A(4) HA96); Must be recorded in writing and a copy given to the applicant (ss.189A(5) and (8)); Where they cannot agree, the authority must record the reasons for the absence of agreement and the steps they consider would be reasonable to require the applicant to take (s.189A(6))

ss.189A(9)-(11): The **“review duties”**:

- Until *“such time as the authority consider that they owe the applicant no duty under [Part VII], the local authority must keep under review”* its HNA and the appropriateness of the steps in the PHP (s.189A(9))
- If the authority’s assessment under s.189A(2) HA96 or of applicant’s case or steps in PHP changes, the authority must notify the applicant in writing (s.189A(10)-(11))

HNAs

Requirements of the assessment duty:

1. The assessment duty entails a duty to take reasonable steps of inquiry to be able to identify or assess potential housing needs (*R (YR) v London Borough of Lambeth* [2023] HLR 16, [86]; *UO No.1*, [59]).
2. The local authority must analyse and evaluate the nature, extent and severity of one's needs, and "what accommodation would be suitable" (s.189A(2)(b)), which imports the suitability standard and mandatory considerations in ss.205-210 (*YR*, §§28, 88(i)-(iii); *UO No.1*, §61). The assessment "must address the needs that provide the "nuts and bolts" for any offer of accommodation" (*UO v London Borough of Redbridge* [2025] HLR 2, §44).
3. The HNA must identify and set out those "key needs" (*XY*, §51), so that a "reasonable and sensible housing officer" can understand what an applicant's needs are (*XY*, §62). There is an "important distinction to be made between an applicant's "needs" and an applicant's "wishes"" (*R (ZK) v London Borough of Havering* [2022] HLR 27, §42).
4. The HNA must be provided in writing (s.189A(3)) and must be "sufficiently reasoned to demonstrate that the authority has addressed the statutory matters in s 189A(2)(a)-(c)" and ss.206-210, and has complied with s.11(2) CA and its policies (where applicable) (*YR*, §88(i)-(iii); *UO No.1*, §62; *AN*, §59(c)).

Themes to watch?

Alternative remedies

- JR is a remedy of last resort (*R (Archer) v HMRC* [2019] 1 WLR 6355 at [77, 91]).
- No ouster clause in the Housing Act 1996. Section 202 reviews and s.204 appeals are not exclusive remedies.
- Alternative remedies are a discretionary bar: *R (Glencore Energy Ltd v HMRC* [2017] 4 WLR 213, [54]. Admin court “retains a residual discretion to entertain a claim for judicial review notwithstanding the existence of alternative remedies”: *R (Sambotin) v Brent London Borough Council* [2017] EWHC 1190 (Admin), [17].
- Position under the Housing Act 1996:
 - Where statutory reviews/appeals are available, “challenges to decisions of local housing authorities relating to homelessness should generally be pursued” under those provisions: *Ahamed v Haringey LBC* [2024] PTSR 205, [68]
 - Yet, the Admin court has exercised its residual discretion in appropriate homelessness cases, such as in *Sambotin* ([17]-[20]), *UO No.1* ([127]-[133]) and *UO No.2*.
- There must be “exceptional circumstances” such that interests of justice weigh heavily in favour of JR: **. What factors are relevant to the assessment?

R (Bano) v Waltham Forest LBC [2025] 1 WLR 2557

- Where an applicant accepts or refuses a PRSO having been informed in writing of the statutory matters in s.193(7AB), the local housing authority's main housing duty under s.193(2) will automatically come to an end per s.193(7AA): [54]-[55].
- There is no requirement for local authorities to have made a decision to the effect that its main housing duty had come to an end or to have notified the applicant that it considered that its duty had come to an end. No duty to inform applicants of the consequences of the decision under Part VII: [54]-[55].
- The same conclusion does not apply to offers under s.193(5): [54].
- Right of review under s.202 available in respect of confirmatory discharge of main housing duty (even if long after the duty automatically came to an end): [67]. Reaffirming primacy of statutory review and exceptional circumstances required to apply for judicial review:

“In the present case, it was clearly Parliament's intention in enacting section 202 of the 1996 Act that challenges to decisions such as are identified in section 202(1) should be pursued by way of review and, if necessary, appeal to the county court, not through judicial review.” [69]

- What will the UKSC have to say?

Ofori-Addo v Haringey LBC [2025] PTSR 1589

- Section 202 doesn't give applicants a blanket right to request a general review of the approach or outcome adopted or proposed by a local housing authority; it gives an applicant a right to request a review of certain specific decisions identified in s.202(1)(a)-(h): [42].
- A request of suitability of accommodation offered per s.202(1)(h) would not require the local authority to conduct a review of any other decision they have made about what duty (if any) is owed to the applicant under Part VII: [42]-[43].
- Identifying the specific decision under review and the correct basis upon which it is being reviewed matters. The difference between s.202(1)(a)-(h) are matters of "substance", not only form.
- If there had been an additional decision made as to the scope of duty owed to the applicant, a review had to be requested under s.202(1)(a)-(b) (not merely a suitability review under s.202(1)(h)): [62].
- If there had been a failure to make a decision under s.184 as to what residual duties, if any, were owed to the applicant upon the relief duty coming to an end, the appropriate remedy to challenge that failure would be judicial review: [61].

RZH v Sutton LBC [2025] HLR 35

- Simultaneous s.204 appeal and JR, with county court transferring the appeal to the High Court to be heard with the JR.
- The duty under the PSED is to have “due regard” to the need to advance equality of opportunity for disabled persons; the fact that accommodation involves an impact which is especially burdensome for an individual by reason of their disability is not determinative of whether it is reasonable for them to continue to occupy that accommodation: [50]–[53].
- S.19 EQA failed on the facts as the reviewing officer, as reviewing officer considered all circumstances of case in considering reasonableness to occupy, rather than applying a PCP of automatically applying statutory overcrowding standards in HA85 to determine suitability of size of accommodation: [53], [58].
- Points of law concerning or relating to the lawfulness of a review decision should be determined in the county court:
 - A claim that a review decision is unlawful because of breach of the PSED falls within a s.204 appeal;
 - A s.204 appeal can be transferred to the High Court, particularly for points of general public importance or issues which the county court considers it cannot determine for itself;
 - A claim that a s.202 review decision is unlawful because of discrimination cannot be dealt with in a s.204 appeal but the county court remains the appropriate forum by virtue of s.114(1) EQA;
 - Where such a claim would be susceptible to judicial review it should be brought by way of a CPR Pt 8 claim in the county court which can then be listed to be heard with the s.204 appeal [65].

Norton v Haringey LBC [2025] HLR 39

- Affirming the role and significance of the s.189A HNA duty:

"I do not doubt that an assessment of suitability based on an unlawful or otherwise legally flawed assessment under section 189A is itself legally flawed. But what these cases do not address is whether an authority is precluded from independently and lawfully assessing suitability in the absence of a section 189A assessment or a PHP." [31]

"There is no doubt that a section 189A assessment fulfils an important role in the overall framework for helping the homeless. Mr Johnson rightly submitted that the purpose of the section 189A assessment and the PHP is to provide a road map which will inform subsequent decisions; and will enable a housing officer to pick up the file with relevant information. As paragraph 11.2 of the Code of Guidance puts it:

"The section 189A duties to assess an applicant's case and develop a personalised plan provide a framework for housing authorities and applicants to work together to identify appropriate actions to prevent or relieve the applicant's homelessness."

- But, failure to conduct an HNA or carry out a lawful assessment does not necessarily or automatically vitiate any decisions that follow: [34], [53]. Nb. The structure of Part VII [47], the limited prejudice to the applicant [49], and the practical effect of the contrary conclusion on the discharge of local authority's functions [50]-[52].
- The key is whether the decision under challenged was **based** on the defective HNA.

R (AA) v London Borough of Waltham Forest [2025] HLR 40

No alternative remedy in respect of challenges to HNAs: [38]-[42]. Noting:

"I can understand why a local authority might wish that the statute did provide such an alternative remedy in these cases. However, wishing that the law was so does not make it so. The legislation is explicit about what is covered by the review under s.202 and appeal under s.204. It does not include s.189A assessment or planning." [41]

Alternatively, Court would have exercised residual discretion to entertain JR:

- If applicants could not challenge a housing needs assessment or a personalised housing plan by way of judicial review, they would lack an effective remedy unless and until a reviewable offer was made [39].
- Would frustrate the purpose of HNA and PHP to contribute effectively to the desired outcome of suitable accommodation: [39]

In a case where an applicant requires support from the authority to make an application for accommodation under Pt 6, it is unreasonable for a local authority to exclude such support from the steps to be taken by the authority in the applicant's PHP [69].

R (Shaker) v Hammersmith and Fulham LBC [2025] EWHC 2820 (Admin)

"His second reason for coming directly to this court appears to be to seek interim relief. As I have already explained, the 22 April decision letter required him to vacate his interim accommodation by 13 May. I have considerable sympathy for the claimant, who found himself in a very stressful situation, as someone who has health problems and was at risk of becoming street homeless. Nevertheless, there would have been options available to him for seeking to remain in interim accommodation provided by the Council in circumstances where he had requested a statutory review. What the claimant could have done was to request an internal review and also request the defendant to continue providing him with interim accommodation, pending the outcome of that review. The Council would have had a discretion to provide interim accommodation in such circumstances. If he was refused such interim accommodation, then he could then have challenged that decision in this court. But I cannot treat these proceedings as a challenge to a refusal by the defendant to provide interim accommodation pending the outcome of a statutory internal review, in circumstances where no such decision has been taken by the Council, and the claimant has not exercised his right to request an internal review." [8]

"It is very important to the proper functioning of the Administrative Court that this court remains a last resort for people who genuinely have no alternative remedies. Parliament has required people in the claimant's situation to go through a procedure of requesting an internal review and then, potentially, appealing to the county court, in order, partly, that the High Court does not become overburdened with an unmanageable volume of housing cases seeking interim relief."[9]

R (AN) v London Borough of Barking and Dagenham [2025] ***EWHC 2265 (Admin)***

"2. It cannot be doubted that the London local authorities face a difficult task in carrying out their duties under Part VII, given the high level of demand for housing assistance and the scarcity of affordable rented accommodation. Many homeless people in the London boroughs who are in 'priority need', and who are thus owed the 'main' housing duty under s.193 HA 1996, wish to be housed within the same, or a neighbouring, London borough, or at least within the Greater London area. Many of those people have good practical reasons for wishing to be accommodated locally, such as the locations of their children's current schools, caring responsibilities towards extended family members, or a reasonable desire to maintain contact with existing support networks. But the scarcity of available housing in London, and the finite nature of local authority budgets, means that local authorities have to disappoint many such people, even if this results in some degree of hardship for those individuals or their families.

3. This makes it all the more important that local authorities carry out proper and informed assessments of homeless persons' housing needs, as required by s.189A HA 1996 (as inserted by the Homelessness Reduction Act 2017). Such assessments play an important role in enabling a local authority's housing officers to carry out their daily tasks of allocating available housing resources – including, in particular, flats and houses that are located within the local area – to housing applicants in a way that is consistent and fair, based on relative levels of need.

AN - s.189A: Legal Principles

- “(a) The initial assessment duty under s.189A(2) HA 1996 entails a duty to take reasonable steps of inquiry so as to enable the housing authority to identify or assess housing needs (UO No.1, [59]).*
- (b) The HNA must address the needs that provide the “nuts and bolts” for any offer of accommodation. The assessment does not need to be an exhaustive list of housing needs but does need to identify the housing applicant’s key accommodation needs (ZK, [17] and [42]).*
- (c) Whilst s.189A(2) HA 1996 sets out requirements for the issues an HNA must cover, it does not require a particular level of detail or format for addressing these points. The issues do not need to be covered in forensic detail (ZK at [44]).*
- (d) Describing an applicant’s “wishes” in relation to their housing situation is not an assessment of their housing needs. The HNA must make clear what a claimant needs as distinct from what would be “nice to have” (ZK at [42]; XY, [56] to [62]; YR, [83]).*
- (e) The HNA must be sufficiently reasoned to demonstrate that the authority has considered the statutory matters in s.189A(2) and ss.205-210 HA 1996, and s.11(2) CA 2004 (YR at [88(i)] to [88(iii)]; UO No.1 at [62]).*
- (f) The HNA and the PHP can both be set out within a single document, or as two separate documents, or by way of several documents that are to be read in conjunction with each other (XY at [54]; ZK at [39]; SK,, at [38]-[40]). Housing officers can be expected to read all of an applicant’s housing file in order to be fully acquainted with their needs.*
- (g) The review duty under s.189A(9) HA 1996 requires that the housing authority keep the HNA and PHP under review. This duty requires the authority to consider afresh the s.189A criteria by reference to the same statutory relevant factors in light of any new information (UO No.1 at [64]).*
- (h) The Court should adopt a commonsense approach when reviewing HNAs. The question is what a reasonable and sensible housing officer would understand an applicant’s needs to be, from reviewing the housing file (XY at [62]; ZK at [42]).*
- (i) Assessments under Part VII of the HA 1996 will be unlawful where they are Wednesbury unreasonable (UO No.1 at [56] and [74]).”*

AN - s.11 Children Act 2004: Legal Principles

“(a) S.11(2) CA 2004 is a “process duty” which applies to formulations of policy and also to individual decisions (Nzolameso, at [24]).

(b) In addition to identifying children’s needs, the local authority must “actively promote” children’s welfare in its decision-making process (HC, at [46]).

(c) The s.11 CA 2004 duty is independent of duties contained in Part VII of the HA 1996, but it is relevant to the way in which local authorities carry out those duties. The authority must have regard to and assess the needs of children in a household in its HNA and any subsequent reviews (YR at [45] and [81]; UO No.2, at [64]).

(d) An assessment must involve an analysis and evaluation of the nature, extent and severity of a child’s needs, and consider what accommodation would be suitable for the applicant’s household (UO No.1 at [61]).

(e) The ability of a property to meet the needs of a child is a key component in suitability generally. This includes consideration of disruption to education and other support networks (Nzolameso, [27]).

(f) The fact that authorities are in the invidious position of choosing which households with children are offered particular accommodation does not absolve them of the duty under s.11(2) CA 2004. The difficulty of these decisions does however point to the need to explain the choices made and to demonstrate that proper consideration has been given to the relevant matters (Nzolameso, [30]-[32]).”

AN - The HNA Ground

Tested the limits of the totality of the housing file principle: [83]-[89]

Overall approach for the court to take:

"92. The question as to what would constitute "suitable" housing for the Claimant is not for me to decide in these proceedings. [...]"

93. A question for me to consider is what the Defendant knew, or should have known, about the needs of the Claimant and EB, in particular EB's requirements in relation to her proximity to her school, and whether this was properly recorded in the assessments. In my view, the key issue that a HNA relating to the Claimant needed to grapple with, was whether EB's disability-related difficulties in travelling to school meant that she needed accommodation within 30 minutes' walk of her Current School."

Against that:

"The Plans failed to record a reasoned assessment or identification of the Claimant's core housing needs, and in particular, none make clear whether the Claimant requires housing within the borough by reason of EB's school arrangements, nor how close any property needed to be to EB's school": [94].

"The educational needs of EB and any disruption to her education should she be forced to relocate were the "nuts and bolts", or "key needs" for a lawful assessment. No mention, let alone assessment, is made of the relevance of EB's ASD, her schooling, or the potential for disruption to her education and wellbeing should she be required to move school or undertake a lengthy commute": [97].

AN - The HNA Ground

Setting out relevant facts regarding an applicant's needs, recording her wishes, and providing advice on seeking rental properties outside the Borough in the PHP didn't constitute a lawful assessment of whether she had a need for in-borough accommodation: [100]-[104], [111].

Local authorities must not hedge their position on housing needs:

"In the context of extreme pressures on housing systems, it is critical for assessments to demarcate clearly what an applicant needs in terms of suitability (with the consequence that housing officers should not offer accommodation to the applicant which is incapable of meeting those needs), and what may be desirable. 'Hedging' between needs and desires deprives the HNA of its purported function, i.e. providing information to assist housing officers in properly allocating a suitable property, and enabling the applicant to understand what the local authority has assessed their needs as being." [104]

"the Defendant needs to "nail its colours to the mast" and explain what it has assessed the Claimant and EB's needs as being. Is there a need for accommodation to be provided within the borough or not? How far away from EB's school can a property be located without being unsuitable, and why?" [113]

Didn't rule out the possibility that a move out of borough could be suitable *if certain conditions were met*, but those conditions hadn't been assessed: [115]-[116]

No breach of the *Tameside* duty. Issue wasn't that the authority hadn't taken other steps to acquaint itself with relevant information, it was it hadn't lawfully assessed and considered that information: [121]

Breach of PSED: No "*sharp focus*" on child's disabilities and needs/disadvantages arising out of them, and their relevance to C's housing needs: [131]-[132].

AN -The Policy Ground

The Test

R (A) v SSHD [2021] 1 WLR 3931: “Does the policy in question authorise or approve unlawful conduct by those to whom it is directed?” [38]. “Three types of case” ([46]) where a policy may be unlawful by reason of what it says or omits to say about the law when giving guidance for others:

“(i) where the policy includes a positive statement of law which is wrong and which will induce a person who follows the policy to breach their legal duty in some way [...]; (ii) where the authority which promulgates the policy does so pursuant to a duty to provide accurate advice about the law but fails to do so [...]; and (iii) where the authority, even though not under a duty to issue a policy, decides to promulgate one and in doing so purports in the policy to provide a full account of the legal position but fails to achieve that, either because of a specific misstatement of the law or because of an omission which has the effect that, read as a whole, the policy presents a misleading picture of the true legal position.”

Those types of cases illustrative. Not straightjackets: *R (CPH) v Secretary of State for the Home Department* [2025] EWHC 848 (Admin), [146].

AN -The Policy Ground

The Issue

- The 2003 Homelessness Order, Arts 3 and 4: B&B accommodation will *only* be suitable for applicants with family commitments if two conditions are satisfied: (i) the local authority has satisfied itself that no other accommodation is available; and (ii) the applicant has occupied the B&B accommodation for a period not exceeding 6 weeks (*R (Pickford) v Sandwell Metropolitan Borough Council* [2024] PTSR 1374, § § 56-65).
- **The Placement Policy:** housing officers will, “[w]here possible”, limit the use of B&B accommodation for applicants with family commitments. They will “endeavour to move such households to more suitable accommodation within six weeks”.
- **The context:** Importance of policies in guiding housing officers in exercise of functions under P7: see *Nzolameso*, [40]-[41]; *Zaman*, [47(v)].

The findings

- Placement Policy did not fall in any of the 3 categories in A [146].
- Did not contain an *“implicit positive statement of law in respect of B&B accommodation which is wrong”* and will induce breach. If anything, it made compliance with the 2003 Order more likely [147].
- Policy did not purport to provide a comprehensive or accurate account of legal position, so as to be liable to mislead housing officer to believe the 6-week limit was not an absolute requirement [148]; it was a *“practical guide”* to assist housing officers [148]-[149].
- Effective cause of breaches of 2003 Order is scarcity, not formulation of policy: [150]

Fatolahzadeh v London Borough of Barnet [2025] EWCA Civ 1174

Endorsed the following principles (at [24]):

1. *The initial assessment duty entails a duty to take reasonable steps of inquiry so as to be able to identify or assess potential housing needs; and, in doing so a local authority should adopt a positive and collaborative approach towards applicants [...]: see UO at [59]*
2. *An assessment and the agreement referred to in section 189A of the Act do not need to be recorded in one document [...]: see XY at [54];*
3. *To decide whether or not the duty on the local authority to provide a lawful housing needs assessment and/or a lawful PHP has been discharged requires an assessment of the totality of the written housing file as it might be viewed by a “reasonable and sensible housing officer”: see ZK at[39].*

Where a local authority’s suitability review under s.202 adequately addressed and remedied deficiencies in its initial housing assessment under s.189A, the review decision could not be challenged on the basis of those original deficiencies:

- Echoing *Norton*: “when a decision is quashed subsequent decisions that are dependent upon the underlying decision may also fall to be set aside” [56]
- The existence of a due regard duty in respect of the HNA (s.195(3)) didn’t change the analysis: “Parliament has provided an additional remedy (over and above any remedy that may have been available in judicial review proceedings) which is designed to remedy specified deficiencies in decisions made by a local authority. It would, in my judgment be bizarre to the point of incoherence to impute to Parliament an intention that even an entirely faultless review decision could then be set aside because of the earlier deficiency which it has remedied.” [55]

Fatolahzadeh - Remedies

“There is no provision under section 202 for an applicant to request a review of the authority’s assessment of their case or the PHP produced by the authority. Section 202 does not provide a blanket right to request a general review where an applicant is dissatisfied with the approach or outcome being adopted or proposed by the local authority. The right provided by section 202 to request a review of a decision is specific to the types of decision identified in section 202(1): see Ofori-Addo v Haringey LBC [2025] EWCA Civ 277 at [42].”

“45. I would readily accept that there may be circumstances where a failure to carry out an appropriate assessment of an applicant’s case as required by section 189A may be challenged by way of judicial review proceedings. [...] Where an underlying decision (e.g. the assessment of the applicant’s case) is quashed, subsequent decisions that are dependent upon the underlying decision may have to be set aside. However, that is not the present case. No challenge to Barnet’s assessment has been brought by way of judicial review proceedings. As I have mentioned, section 202(1) identifies specifically the decisions that are susceptible to a request for a review. The present proceedings arise from a suitability challenge pursuant to section 202(1)(f) and come to this court via the County Court pursuant to section 204 of the Act.”

“46. The absence of judicial review proceedings cannot be glossed over. On established public law principles, administrative acts are valid unless and until quashed by a Court: see Hoffman-La Roche & Co v Secretary of State for Trade and Industry [1975] AC 295, at 366 (Lord Diplock), cited in R (Noble Organisation) v Thanet DC [2005] EWCA Civ 782; [2006] Env LR 8, at para 42 (per Auld LJ). In theory, at least, the requirement under section 195(3) for Barnet to have regard to their assessment of the applicant’s case under section 189A is a mandatory relevant consideration, failure to comply with which could found a vires challenge to the validity of the assessment. [...] In this case the assessment was not challenged at the time and, having not been quashed, it remains valid.”

R (MKM) v London Borough of Ealing [2025] EWHC 3182 (Admin)

The legal context

S.188(2A):

"For the purposes of this section, where the applicant requests a review under section 202(1)(h) of the authority's decision as to the suitability of accommodation offered to the applicant by way of a final accommodation offer or a final Part 6 offer (within the meaning of section 193A), the authority's duty to the applicant under section 189B(2) is not to be taken to have come to an end under section 193A(2) until the decision on the review has been notified to the applicant."

The Code at [15.11]: *"in the event that the relief duty is brought to an end following refusal of a final accommodation or Part 6 offer, and the applicant requests a review as to the suitability of the accommodation offered, the section 188(1) duty will continue until a decision on the review has been notified to the applicant"*.

The preliminary issue of alternative remedies

Considering to exercise the Court's inherent residual jurisdiction to set aside permission on the basis that the "knock out blow" of alternative remedies had been overlooked without hearing from the Defendant (applying *R v SSHD, ex p Chinoy* [1991] CLY 816; *R (Webb) v Bristol CC* [2001] EWHC 696 (Admin)): [13]. Refused:

- No alternative remedy for the s.188 challenge, which was of material benefit to C (n.b. Interim relief): [20]
- No alternative remedy for "important question" over lawfulness of HNA, and would be desirable for D to have Court's guidance before making its s.202 decision: [21]
- Not in interests of justice or of efficient disposal of disputes to bar claim at late stage: [22]

MKM – The HNA Ground

"I am in no doubt that the HNA in this case was unlawful. It failed to address or assess one of the claimant's key housing needs. On the established principles, it was not sufficient for the Defendant to record that the Claimant "does not want" to move out of London because of her trafficking history. The critical question, given the undisputed background and what had been communicated to the Defendant about it by the Claimant and those supporting her, was whether that "want" amounted to a "need", or whether there was some other location-based "need", such as accommodation reasonably close to the existing support network in London. Nor was it sufficient in this regard to advise the Claimant (no doubt correctly) that accommodation in Ealing was scarce and that she would need to consider accommodation further afield. In my judgment, the duty in the legislation to "assess" an applicant's housing "needs" called in this case for an evaluation of the Claimant's particular circumstances, and an assessment of whether she had a relevant location-based need; for example, to be housed within the borough, or within London, or within a reasonable distance of her existing support network." [26]

- Rejected the argument that an identification of a wish and/or the absence of an assessment of need amounted to an implied assessment [28].
- Alternatively, even if there was an implied assessment that C had no location needs or no need to be located within a reasonable distance of the Borough, it would have been unlawful as (1) irrational to conclude no location needs at all, and (2) no evidence D had regard to desirability of maintaining C's access to support network or to the risks of re-trafficking [29].

Rejecting a broad totality of the housing file argument that the PHP had to be read with other documents in the housing file, such as two letters from C's support workers:

"Nowhere does the HNA in this case suggest that the Claimant's needs are to be, or have been, assessed by reference to the 3 July and 9 July letters. The reality is that the HNA does not engage with, still less accept, the points made in those letters, insofar as they relate to the Claimant's needs. I cannot accept that the Defendant, upon whom the assessment duty lies, can demonstrate that it complied with that duty simply by referring to the fact that written submissions made on the Claimant's behalf were kept on file, having not been accepted. Conflating a submission with an assessment is, I am afraid, no more coherent or sustainable than conflating a wish with a need." [32]

MKM – The Suitability Grounds

The relief duty and interim accommodation duty decisions were unlawful in that they were based on a flawed HNA:

- *"Given the relatively short period between the HNA (11 July) and the section 189B offer (23 July), the clear purpose of the HNA exercise (which was to inform future decisions on suitable accommodation and to avoid the Claimant and her children from becoming street homeless), and the contents of both documents, I consider it to be clear that the section 189B offer was based on the legally flawed HNA. For that simple reason, the section 189B offer of accommodation was itself legally flawed. The relevant distinction here is between an offer which is "based on" an unlawful HNA and one which is not: see Norton v Haringey LBC [2025] EWCA Civ 746 per Lewison LJ at paragraphs 28-31."* [34]
- *"In my judgment, the section 188 offer was unlawful, primarily because it was, again, based on the unlawful HNA which the Defendant had carried out. It specifically referred to the HNA, and consistently with the approach taken in the HNA, there was no reference either in the offer or in any of the relevant correspondence to any need that the Claimant might have to access her existing support network in London or to avoid living in any particular areas of the country. The section 188 offer was, in the circumstances, vitiated by the Defendant's failure to assess the claimant's key needs in a lawful manner."* [41]

Further, there was no rational consideration of whether C would have access to adequate trafficking support if she were moved to Durham, nor the adverse consequence in disrupting her access to current support: [42]

While the existence of an alternative remedy and ongoing s.202 review was not a sufficient reason to bar the claim, it informed the Court's approach to relief: [45].

Enfield London Borough Council v A [2025] EWCA Civ 1355

- When a local housing authority discharged its homelessness functions under the Housing Act 1996 Pt VII by securing accommodation for an applicant outside its district, a failure to give notice of that to the host authority (as required by s.208(2)) within the time limit specified in s.208(4) did not affect the suitability of the accommodation offered and did not impugn the lawfulness of a review decision under s.202.
- A failure to notify under s.208 therefore fell outside the scope of any appeal under s.204, which was limited to grounds concerning the legality of the review decision.



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Homelessness update January 2026



Martin Westgate KC



ELIGIBILITY- FERTRE V VALE OF WHITE HORSE [2025] HLR4 46, CA

- Persons from abroad not eligible unless re-included by regs (s. 187)
- If resident in UK on 31/12/20, EU citizens could apply for 'settled' or 'pre-settled status' (Withdrawal Agreement; EU (Withdrawal) Act 2018; Immigration rules, App EU)
- 'Pre-settled status' gave a right of residence – but only eligible (per eligibility regulations) if exercising a relevant EU right on 31/12/20. E.g. working
- F argued that Articles 18 and 13(4) preventing the watering down of rights attaching to pre-settled status – should be eligible
- Art 13(4) provides – No discretion to apply limitations and conditions other than in favour of person concerned
- CA rejected argument – not unlawful to restrict eligibility for those with pre-settled status



REASONABLE TO CONTINUE TO OCCUPY: BACKGROUND

- Homeless if accommodation is 'no longer reasonable to continue to occupy' (175(3))
- Intentionally homeless if a person ceases to occupy accommodation that was 'reasonable to continue to occupy' (191(1))
- Birmingham CC v Ali (2009) – Test not whether A can suffer another night but whether it is no longer reasonable to continue to occupy *'for so long as they would need to do so if the local authority did not intervene'* –
- Test looks to the future. Hale referred to 'long term'/'indefinite' accommodation
- *Awua* (1996) – the future can be short: I/H if A refuses accommodation resulting in discharge of duty and loss of temporary (188/193 etc) accommodation.
- Query re *Awua*/*Ali* – could accommodation be reasonable to continue to occupy if, had the alternative offer been accepted, it was only going to be available for another few days/weeks
- How to square the circle – is there a different meaning for the same phrase in the two sections (175 and 191)?

REASONABLE TO CONTINUE TO OCCUPY: BACKGROUND

- *Kyle v Coventry CC* (2023) – K not homeless despite living in half-way house for drug addicts. Acc. secured pursuant to 193. Held:
 - *Ali* did **not** find that it was only reasonable to continue to occupy accommodation if it was available indefinitely or long term.
 - Rather accommodation would only ‘no longer be reasonable to continue to occupy’ if it was not reasonable to occupy it over the period that would elapse before the local authority re-housed the applicant
 - The half-way house was temporary – the 193 duty continued - it was reasonable to continue to occupy it until such time as K was rehoused elsewhere by the authority

REASONABLE TO CONTINUE TO OCCUPY: *BEACH V SOUTH HAMS DC* [2025] EWCA CIV 609

- Single father with two dependent children – in priority and owed 193 duty
- Offered one bed flat in a seaside hotel – at time of offer children removed by social services and put with mother because father was living with them in a storage container
- Seaside hotel booked for a few nights; no visitors; no children; no cooking facilities; had to move room every month to allow cleaning
- Moved in for one night – then left. Authority discharged duty – intentionally homeless from accommodation offered.
- Mr B argued that conditions of property and inability to have children meant not reasonable to continue to occupy
- Note:
 - Authority accepted that 193 duty continued *and* that children could reasonably be expected to live with Mr B – such that they were a part of his household;
 - But took the view that children were adequately housed with mother until better accommodation could be found for Mr B and children.

REASONABLE TO CONTINUE TO OCCUPY: *BEACH V SOUTH HAMS DC [2025] EWCA CIV 609 (CONT.)*

Held:

- Accommodation at a seaside resort capable of being accommodation for purpose of 175 and 191
- S. 193 only required offer of accommodation that met family's needs *at the time that of the offer.*
- Likewise whether it was reasonable to continue to occupy depended on the facts *at the time of the offer/for period of expected occupation* – children were adequately housed with mother even if they could reasonably be expected to live with father in the long term
- Whether it was reasonable to continue to occupy depended on whether it was reasonable to do so until alternative 193 accommodation was found by the authority for the family as a whole.
- By abandoning the seaside hotel, Mr B had made himself intentionally homeless

INTENTIONALITY AND CAUSATION: *CIFCI V SUTTON LBC* [2025] EWCA CIV 1480

- *Haile v Waltham Forest* (2015) - To be homeless intentionally the act of intentionality must cause:
 - a cessation of accommodation; *and*
 - the current homelessness
- Mr C owed 193 duty by Bromley; Landlord served NTQ for unrelated reasons; Bromley offered alternative s. 193 T/A but C refused it – duty discharged
- On discharge Mr C asked for alternative accommodation. Bromley agreed to provide emergency accommodation for 28 days only. Mr C accepted and moved into emergency accommodation.
- Mr C was homeless in the emergency accommodation. He made a second application – this time to Sutton
- C argued he was not Intentionally homeless
 - he left because landlord had demanded property back – not because of the subsequent refusal of alternative 193 accommodation.
 - no causal connection between intentional act (refusal) and cessation of occupation
 - Refusal may have caused homelessness but it did not cause cessation of occupation –not I/H per *Haile*

INTENTIONALITY AND CAUSATION: *CIFCI V SUTTON LBC* [2025] EWCA CIV 1480 (CONT.)

Held:

- On the facts C was not evicted by landlord – no possession proceedings – no steps other than NTQ.
- C left for two reasons: (i) landlord's NTQ; and (ii) desire to take up emergency 28 day accommodation being offered.
- Where there are two operative reasons for moving – enough that one is connected with/caused by the intentional act (per *Chishimba* (2013))
- The short term emergency accommodation was offered because the duty had been discharged following the refusal of alternative acc.
- The cessation of the original accommodation was therefore caused, in part, by the intentional act of refusal the alternative 193 offer.



INTENTIONALITY AND CAUSATION: *CIFCI V SUTTON LBC* [2025] EWCA CIV 1480 (CONT.)

Comment:

- What if C had decided to await eviction by the landlord.
- If so, how could it then be said that he had ceased to occupy as a consequence of his refusal of the alternative accommodation?
- If C had waited for the eviction, there would only be one reason for the cessation: the landlord's desire to recover his property.
- *Cifci* is expressly a policy decision - per Falk LJ at [53]:
 - Many 193 offers of alt. acc. are the consequence of external factors – e.g. private sector landlord turnover of stock
 - Applicants should not be allowed to avoid their own wrong by waiting out the eviction and making a second application
- How will that policy imperative trump logic of s. 191?

SECTION 193 ENFORCEMENT – EL-KUNDI CASES

- *R (Hammad) v Kensington and Chelsea RLBC* [2025] EWHC 2425 (Admin).
 - L/A failed to provide adequate evidence to justify refusal of relief –
 - Ordered to provide accommodation within one month.
- *R (Hassen) v Westminster CC* [2025] EWHC 2579 (Admin).
 - Order by consent – no authority for anything!
 - But good example of how to navigate enforcement claims:
 - Agreed Tomlin order for Part VI offer
 - When offer did not come, applied for court order to enforce
 - Application for court order settled on terms that included identified property, £3K damages, costs and a later hearing in case there was a further breach and a committal application was required



SECTION 193 ENFORCEMENT AND DISCRIMINATION: *R (BEGUM) V TOWER HAMLETS LBC [2025] EWCA CIV 1049*

- TH operated a database that recorded:
 - Applicants in unsuitable accommodation in breach of s. 193 duty
 - Applicants owed the 193 duty who were in suitable accommodation but had requested better accommodation
- Claimant argued database was discriminatory (s. 19, 29 EA 2010):
 - operating the database (coupled with the provision of unsuitable accommodation) was a provision, criteria or practice (PCP);
 - It's operation disadvantaged single mothers with children who were more likely to be in unsuitable accommodation.
- Held:
 - the database was merely a record of applicants' needs so that accommodation could be matched – it did not create a hierarchy of priority – it was not a PCP;
 - Even if it was a PCP, the statistical evidence did not support the assertion that women were being treated less favourably than men;
 - Even if they were being treated less favourably, there was no causative link between being on the database and any treatment that was less favourable



FORUM FOR CHALLENGING DISCHARGE OF 193 DUTY *WANDSWORTH LBC V YOUNG [2025] EWCA CIV 1336*

- Possession proceedings: Y had been made a final offer in discharge of 193 – he accepted it but did not move in and stayed in his temporary accommodation
- He requested a review of suitability. On review he was told the offer was suitable and that the 193 duty was discharged
- Wandsworth duly sought possession of the T/A. D defended on the basis that the 193 duty was not discharged because D had not been of the 202(1)(b) right to review the discharge decision
- Held:
 - 193 discharge was automatic (s. 193(6); *Ravichandran*).
 - There was no duty to notify Y of the discharge (per *R (Bano) v Waltham Forest LBC* (2025) but if notified, that triggered a right of review
 - There was NO entitlement to be notified of the right of review.
 - Consequently the absence of any notification did not render the discharge unlawful
 - Even if it did, D could not bring a challenge by way of defence in the county court (given 202/204 review/appeal procedure) save in exceptional circumstances
 - Failure to give notice of right of review was not an exceptional circumstance



LOCAL CONNECTION

HUSSAINI V ISLINGTON LBC [2025] H.L.R. 20

- H was housed as an asylum seeker in Barking and Dagenham. When given refugee status he applied as homeless to Islington. Islington referred him back to D&G
- H asserted he had a local connection with Islington by reason of 'special circumstances' (s. 199(1)) – his PTSD issues were supported by an Islington charity and by a family just outside the borough.
- On appeal H contended that the review decision had determined that unless there was a need to live in the borough, there could be no local connection for special circumstance
- Held:
 - Whether there was a need to live in the borough could not be determinative of whether a local connection had been established by reason of special circumstance
 - It was a factor, it was persuasive but it was not determinative
 - On the evidence the reviewer did not in fact apply that test. She had regard to all the circumstances and not just the absence of any need to live in the borough

EXTENSION OF TIME FOR REVIEW: *R (CONDE) V RBKC [2025] H.L.R. 28*

- C refused offer – duty discharged. C and Social worker raised doubt about whether offer in fact discharged. RBKC refused to withdraw decision but instead pointed to right of review and the 21 day time limit. Urged C to request review on several occasions.
- Neither C nor social worker requested a review until 4 days after the deadline.
- RBKC refused extension explaining C was repeatedly advised to request in time; no good reason for failure to do so; merits of the review would have been poor in any event
- High Court dismissed claim for judicial review – nothing irrational or unsound in reasons given.



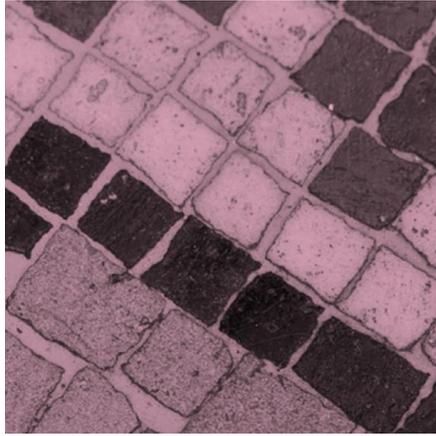
REPEAT APPLICATIONS: *R (IVORY) V WELWYN HATFIELD BC* [2025] H.L.R. 22

- First application:
 - Applicant asserted that she was not I/H despite rent arrears as they were the consequence of a mental health breakdown
 - LA reject claim on review claiming no evidence of such a breakdown
- Second application:
 - A repeated allegation of mental health breakdown but submitted detailed psychiatric report in support.
 - Authority refused to accept application, because same facts as the first.
- Newey LJ:
 - Comparison was between facts as *found* on first application (at final review) and facts as *alleged* on new application.
 - If rejected allegation was now supported by evidence, the 'new facts' could not be said to be fanciful and the authority had to take the new application
- Males LJ: Comparison is between the first and second application. A second application with significant new evidence should not be accepted.
- Phillips LJ – agrees with Males on comparator.

HOMELESSNESS UPDATE JANUARY 2026

Speakers:

- Martin Westgate KC, Barrister Doughty Street Chambers
- Josh Jackson, Barrister Doughty Street Chambers
- Sarah Steinhardt, (Chair) Barrister Doughty Street Chambers



Doughty Street Chambers

Homelessness Update – January 2026

Martin Westgate KC
Joshua Jackson

(for cases without commentary please see Joshua Jackson’s slides)

HOUSING NEEDS ASSESSMENTS – REMEDY AND RELEVANCE TO SUITABILITY

1. *R (AA) v London Borough of Waltham Forest* [2025] EWHC 1625 (Admin) – Housing needs assessments and alternative remedies
2. *Norton v Haringey LBC* [2025] EWCA Civ 746 – s.202 suitability reviews, Housing needs assessments and alternative remedies
3. *R (AN) v London Borough of Barking and Dagenham* [2025] EWHC 2265 (Admin) - Housing needs assessments
4. *Fatolahzeh v London Borough of Barnet* [2025] EWCA Civ 1174 – statutory reviews, Housing needs assessments and alternative remedies
5. *R (MKM) v London Borough of Ealing* [2025] EWHC 3182 (Admin) – Housing need assessment, suitability of s.188 and 189B accommodation, alternative remedies

SUITABILITY GENERALLY

6. *Enfield LBC v A* [2025] EWCA Civ 1355 – failure to give s. 208 notice did not render accommodation unsuitable.

ELIGIBILITY

7. *Fertre v Vale of White Horse* [2025] EWCA Civ 1057; [2025] H.L.R. 46
 - Persons from abroad are not eligible for assistance unless they are re-included as eligible by regulations (s. 187 HA 1996; reg.5, Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006/1294). A person with settled status (because they lived in the UK for five years) will be eligible (see the Withdrawal Agreement and the European Union (Withdrawal) Act 2018; see also Immigration rules Appendix EU).
 - A person with the lesser of ‘pre-settled status’ (given because they were lawfully living in the UK on 31 December 2020 but for less than 5 years) has the right to be in the UK but will only be eligible for housing assistance if they would have been eligible prior to 31 December 2020. Such eligibility depends on whether they were exercising a relevant right of free movement at that time, for instance because

they were working in the UK. The lesser Pre-settled status consequently only gives eligibility for housing assistance *conditionally*.

- Ms Fertre applied for and got pre-settled status but (because she couldn't provide the relevant references to a prospective employer) she was not working on 31st December 2020. The authority consequently found that she was not eligible under Part VII.
- On appeal she argued that article 18(1) of the Withdrawal Agreement gave a general right to settled status (pre-settled status) and that article 13(4) prevented restrictions on that right. They argued that the additional requirement that she had to have been working was unlawful at the relevant time was an unlawful gloss.
- Article 13(4) provided that the state must not impose any limitations on a person's right to reside under the Withdrawal Agreement other than those set out in the Agreement and that there:
shall be no discretion in applying the limitations and conditions provided for ... other than in favour of the person concerned
- The court of appeal rejected the argument finding that 13(4) did not apply to a grant of pre-settled status and that any rights granted under 18(1) were not rights under the Withdrawal Agreement. Art 18(1) merely created a new residence status that was a gateway to other (protected) rights under the Withdrawal Agreement.
- It was not unlawful to restrict the eligibility of those with pre-settled status.

HOMELESSNESS/INTENTIONAL HOMELESSNESS – REASONABLE TO CONTINUE TO OCCUPY

8. *Beach v South Hams DC* [2025] EWCA Civ 609; [2025] H.L.R. 36

- A person who has accommodation available for their occupation is still homeless if it is accommodation that is *no longer reasonable to continue to occupy* (s. 175(3)).
- A person will be intentionally homeless if they deliberately do or fail to do anything in consequence of which they cease to occupy accommodation which is available for their occupation and which it would have been *reasonable for them to continue to occupy* (191(1)).
- *Birmingham City Council v Ali* [2009] UKHL 36 at [34] and [42] explained that 'reasonable to continue to occupy' had a specific meaning for the purposes of defining homelessness in s. 175. A person would be homeless if they had accommodation but it was not reasonable to continue to occupy it *'for as long as they would occupy it if the local authority did not intervene'*. It did not matter that the applicant could get by in the accommodation in the short term. Was it reasonable to continue to occupy having regard to how long the applicant would be expected to occupy it in the absence of intervention from the authority.
- *Ali* also decided that a woman in a refuge would not be homeless intentionally if she loses her place in a refuge because it would not have been reasonable for her to continue to occupy the refuge 'indefinitely'.
- *In R. v Brent LBC, Ex p. Awua* [1996] A.C. 55 it was held that a person becomes intentionally homeless if they lose temporary accommodation provided under Pt

VI duties following a refusal of an alternative offer and a consequent discharge of duty. At the point of refusal it was reasonable to continue to occupy pending the move to the alternative offer.

- *Ali* consequently raised a number of uncertainties: did ‘reasonable to continue to occupy’ have the same meaning in 175(3) and 191(1)? How could it be reasonable to continue to occupy if the occupation was not indefinite or long term. In *Awua* acceptance of the offer would have meant occupation for only a matter of days?
- *Kyle v Coventry City Council* [2023] EWCA Civ 1360; [2024] H.L.R. 7 considered whether a person was homeless whilst occupying a ‘half-way house’ for drug addicts (within the meaning of s. 175). K had been provided the refuge under s. 193 and been evicted for ASB. It was argued he had not become homeless intentionally as he was already homeless. As with women’s refuges, the case centred on the meaning of ‘reasonable to continue to occupy’. The court added a new gloss to the definition and squared the *Awua/Ali* circle by holding at [42] and [43] that:
 - *Ali* did not find that it was only reasonable to continue to occupy accommodation if it was available *indefinitely* or *long term*. Rather accommodation would only no longer be reasonable to continue to occupy if it was not reasonable to occupy it over the period that would elapse before the local authority re-housed the applicant.
 - The length of time over which a person had the *right* to remain in accommodation *might* be of significance, but it was much less likely to matter. The real question was whether it could be occupied until the authority intervened and found somewhere else. For instance because the section 193 duty continued to be owed.
 - Consequently someone occupying a halfway house for recovering drug addicts (provided under s. 193) was not homeless. The half-way house was accommodation that was temporary but it was still reasonable for him to continue to occupy it until such time as K was rehoused by the authority.
- Comment: the implication of *Kyle* is that a distinction is to be made between:
 - cases where no duty is owed (where there is no foreseeable likely intervention by an authority) so that whether or not it is reasonable to continue to occupy can be seen as a long term question; and
 - Cases where a duty exists (for instance because the 193 duty is owed to the applicant) and the question is whether accommodation can be occupied until the authority intervenes to prevent the applicant occupying accommodation for a period that is longer than is reasonable (thus preventing him from ever being homeless).
- In ***Beach v South Hams DC***:
 - The applicant was found to be in priority need because two of his six children were ordered to live with him by a family court. The authority therefore accepted the s. 193 duty. Offers were made but refused. In the meantime, when he and the two children were found living in a shipping container, his children were removed by social services and put with their mother.

- The authority remained subject to the 193 duty but noted that the two children had been moved to their mother's care. The authority continued to accept that the two children were 'reasonably to be expected to live with' A (per s. 176) but only offered a single room at a seaside hotel pending on the basis that the children were currently adequately housed. The authority nevertheless accepted that it would need to find accommodation in the near future that could be occupied by both A and his two dependent children.
- The seaside hotel had rules preventing visitors after 8 pm. It was booked for only a short period, required occupation every night, and required the applicant to move to another room every 28 days to facilitate cleaning. It had no cooking facilities.
- The Applicant occupied the room for a single night before leaving the hotel. The authority consequently discharged its duty on the basis that he was intentionally homeless from accommodation provided to him. On appeal the Applicant asserted that he could not be homeless intentionally as the room the hotel was not reasonable to continue to occupy given the rules it imposed and/or given the absence of space for the two dependent children.
- The court held:
 - Whether or not accommodation was suitable or reasonable to continue to occupy was fact specific. Accommodation in a seaside hotel was capable of being accommodation for the purposes of Pt VII.
 - Whilst both parties agreed that a change in priority need would not end the s. 193 duty, the authority was nevertheless entitled to meet its duty to provide suitable accommodation according to the applicant's needs *at the time of the offer*.
 - Likewise whether accommodation was reasonable to continue to occupy depended on the facts as known at the time of the offer and for the period of expected occupation. Whilst the two children could reasonably be expected to live with their father in the long term, at the time of the offer the children could not reasonably be expected to live with him. They were adequately housed with mother.
 - As the seaside hotel was a temporary step to longer term housing, there was nothing in the hotel rules that prevented it being accommodation that was reasonable to continue to occupy - at least until alternative 193 accommodation was found by the authority for the applicant and the children. In leaving the accommodation, he had made himself intentionally homeless.

INTENTIONALITY AND CAUSATION

9. *Cifci v Sutton LBC* [2025] EWCA Civ 1480

- Mr Cifci was housed in 193 accommodation in the private sector by Bromley LBC ('Property A'). The landlord decided to recover Property A for reasons unconnected with Mr Cifci and notice was served requiring possession (although no proceedings were taken). Bromley offered the applicant alternative 193

accommodation at Property B. Mr Cifci refused Property B causing Bromley to discharge its 193 duty.

- Recognising that the family were now occupying Property A as trespassers (the notice requiring possession having expired), Bromley agreed to assist further by providing temporary accommodation elsewhere (Property C) but only for a limited period of 28 days. Mr Cifci consequently left Property A and moved his family to Property C.
- When the 28 days was up, Bromley stated that it would not be extending the stay at Property C.
- Mr Cifci made a new application to Sutton LBC as homeless. Sutton agreed that Mr Cifci was homeless (although overstaying at Property C) but found that he was intentionally homeless as he had ceased to occupy Property A as a consequence of his refusal of Property B.
- On appeal Mr C argued that the reason he left Property A was because the landlord had served notice to quit. The notice had been served for reasons unrelated to anything that he had done. He may have ceased to occupy accommodation but **not** because of his refusal of property B – rather because the landlord wanted Property A back for other reasons.
- To be homeless intentionally there are two causal requirements. The act of intentionality must cause: (i) a *cessation* of accommodation; and (ii) the homelessness being experienced at the time of the application (*Haile v Waltham Forest London Borough Council* [2015] UKSC 34; [2015] AC 1471 at [25]). Mr C accepted the latter but denied the former.
- The court of appeal rejected the argument.
 - On an examination of the evidence the landlord did not evict Mr C from Property A – indeed no proceedings had been issued.
 - Although Mr C left in part because the landlord wanted possession, he also left in order to take up the offer of Property C (being offered as a temporary 28 day solution to his potential homelessness). It was only after the offer of Property C was made that Mr C left Property A.
 - The offer was one of the reasons for moving even if the landlord’s notice to quit was another. Where two operative causes for an intentional act exist, it is sufficient that one of them is the deliberate act or omission identified (*Chishimba v Kensington and Chelsea Royal London Borough Council* [2013] EWCA Civ 786, [2014] PTSR 49 at [8]).
 - As the need to take up the offer of Property C was one of the reasons for the move on the day that it occurred, it was relevant to ask why that offer had been made. As the answer was that it was made as an emergency measure following the discharge of duty, it followed that the cessation of Property A was caused by the deliberate act of refusing property B.
- Comment:
 - What would be the result if Mr C had decided to await eviction from Property A by the landlord. How could it then be said that he had ceased to occupy as a consequence of his refusal of Property B? If Mr C had waited the eviction would be for one reason only: the landlord’s desire to recover his property.

- Note the public policy drive behind the decision. Many offers of alternative 193 temporary accommodation are the consequence of external factors – it could not be right that in each of those cases a refusal of alternative accommodation could be done without the risk of a subsequent finding of intentionality on a second application? (per Falk LJ at [53]). Despite that imperative, it is difficult to see the tortuous logic needed to plug that potential outcome where an applicant simply waits for a court eviction.

PROVISION OF INTERIM ACCOMMODATION – JUDICIAL REVIEW AND COSTS

10. *R. (on the application of Shaker) v Hammersmith and Fulham LBC [2025] EWHC 2820 (Admin) | 19 Aug 2025 – Interim relief – failure to exhaust all alternative remedies*

SECTION 193 ‘MAIN’ HOUSING DUTY – ENFORCEMENT/DISCRIMINATION/DISCHARGE

11. *R (Hammad) v Kensington and Chelsea RLBC [2025] EWHC 2425 (Admin).*

- Where a s. 193(2) duty to house is accepted under Pt VII, the duty is absolute and may be enforced by a mandatory order (*R (Imam) v London Borough of Croydon* [2023] UKSC 45; [2025] A.C. 335 at [38]). The court nevertheless has a discretion whether to give relief. In exercising that discretion, the following are relevant (per Imam at [39] to [57]):
 - The unqualified nature of the s. 193 duty. The ordinary position is that a breach should be remedied. A refusal of relief needs clear justification;
 - The court will not order an impossibility; The onus is on the authority to prove impossibility; detailed explanation for the impossibility must be given;
 - All reasonable steps to perform the duty must have been taken - assessed objectively by the court;
 - In considering the resources to be applied, it was relevant that the duties under Part VII (homelessness) were mandatory whereas the requirement of Part VI (allocations) involved discretionary grants of accommodation.
- Mr Hammad’s son had a rare medical condition that required him to be no more than 45 minutes from his hospital. Although he lived in suitable accommodation, a possession order had been obtained by the landlord – hence the homelessness application. The authority accepted the 193 duty but had made no offer of suitable accommodation. Mr Hammad sought a mandatory order to avoid his son being homeless on eviction from their current home.
- The judge found that what was needed was a three bed property less than 45 minutes from the hospital. No special adaptations were required. There was a paucity of evidence addressing the steps taken to find suitable accommodation and insufficient evidence to show that it had taken all reasonable steps to find it. Although the breach had only been for just under a year, the court noted that in March 2025, in the course an ombudsman complaint, the authority had promised the ombudsman that it would secure suitable accommodation within a month.

- The court consequently made an order that accommodation be provided within one month.

12. *R (Hassen) v Westminster CC [2025] EWHC 2579 (Admin).*

- The Claimant was owed the section 193(2) duty. No suitable accommodation had been provided and the claimant issued a claim for a mandatory order. At the hearing the parties compromised the claim by agreeing a Tomlin Order. (It is unclear whether damages or a formula for damages was also agreed.) The Tomlin schedule required the authority to offer the claimant an introductory tenancy of a property that met specified parameters and to do so within 9 months of the order. No accommodation was offered in that time.
- In March 2025 the claimant sought to convert the requirements of the Tomlin schedule into a mandatory order. At trial the authority admitted the breach and the parties compromised the application: a mandatory order was made; The authority agreed to pay costs and damages of £3000 for breach of the Tomlin order.
- The judge also listed the matter for a further hearing to deal with any committal application in case a further breach occurred.

13. *R (Begum) v Tower Hamlets LBC [2025] EWCA Civ 1049* – enforcement and discrimination

- The Claimant was owed the section 193(2) duty. She was given a studio flat. She later gave birth to her son and asserted that the accommodation was no longer suitable. The authority operated a database which recorded information about two categories of applicants: (1) those occupying accommodation that had been found to be unsuitable and who needed immediate transfer (per *Imam*); and (2) those who were in suitable accommodation but had asked for better accommodation (for instance because the accommodation was overcrowded).
- The claimant was put in category 2 for about 8 months before the authority conceded that the accommodation was unsuitable. She was then put in category 1. She was given suitable accommodation two months later.
- In a claim for judicial review the Claimant asserted that the authority had discriminated against her pursuant to sections 19 and 29 of the EA 2010 (reasonable adjustments; public functions). She asserted that:
 - the operation of the database and the provision of unsuitable accommodation to those on the database was a provision, criterion or practice (PCP) within the meaning of section 19.
 - the PCP put women at a disadvantage as they were more likely to be provided unsuitable accommodation than men as women applicants included a large number of single parents with children.
- The central issue was whether the housing authority had applied a PCP to men and women which put women at a particular disadvantage and, if so, whether the authority could show that the PCP was a proportionate means of achieving a legitimate aim.

- The authority's evidence was that the database was not operated as a waiting list but was merely a means of recording and capturing a person's needs for the purpose of matching an applicant to suitable accommodation as it became available. The authority's case was that the database was no more than a data management tool recording who was in unsuitable accommodation. It was not a means of categorising and establishing priority.
- The claimant pointed to statistical evidence which she said showed that (i) the proportion of single women on the database (and thus in unsuitable accommodation) was greater than the proportion of single parents in temporary accommodation overall and (ii) more single female parents were in unsuitable accommodation than single male parents. There were also more women than men in unsuitable accommodation.
- The court held:
 - There was no PCP being applied to applicants ([43] onwards). For the conduct to be a PCP it had to put certain persons at a disadvantage when compared to others. Any disadvantage suffered (as compared to others) had to be the consequence of the provision, criterion or practice identified by the claimant.
 - The storage of information is not, of itself, a PCP. It may be a practice but it is not one that differentiates between different groups of persons.
 - The court also doubted that being put on the database and being provided unsuitable accommodation was a PCP but proceeded on the basis that it could be.
 - The court rejected the statistical conclusions put forward by the claimant:
 - The evidence – when properly analysed - did not justify an inference that households with a single female parent were more likely to be in unsuitable accommodation than single male parents.
 - Nor was there good evidence that being on the database and being in unsuitable accommodation gave rise to any adverse differential affecting women more than men.
 - The statistical material consequently failed to provide evidence from which it could be inferred that a higher proportion of women with a child or children, or women generally, as compared with men with a child or children, or men generally, are put at any disadvantage.
 - Even if a disadvantage had been shown, there was no causal link between the PCP relied on (being on the database and being provided with unsuitable accommodation) and the particular disadvantage said to be suffered by women. All that the database did was to record information about individuals.
 - Being on the database was not what caused the particular disadvantage alleged by the Claimant.:
 - Those in the category 2 of the database are in it because the statute creates a s. 193 duty in their favour.

- Those in section (1) are there because the authority does not have enough accommodation and the authority is in breach of its 193 duty.
- Being on the database is not the cause of any unsuitable accommodation – it is merely a tool used to record information to match need with accommodation as and when it becomes available.

14. *Wandsworth LBC v Young* [2025] EWCA Civ 1336 – discharge of 193 duty/forum for challenge

- Y was owed a duty under section 193 and provided with temporary accommodation. He was offered permanent accommodation and told that if he accepted it, the duty would be considered discharged. Y took the property but challenged its suitability. He did not move in but stayed in the temporary accommodation.
- On review the authority found the accommodation was suitable and notified Y that its acceptance had discharged the 193 duty (per s. 193(6)). Thereafter the authority took steps to recover the temporary accommodation and issued possession proceedings.
- Y defended the proceedings on public law grounds asserting that the section 193 decision had not ended. As there had been no notification of the right to request a review of the discharge duty it could not be a lawful discharge. Although there was no express requirement, Y relied on a combination of s. 184, s. 202 and comments made in *Ravichandran v Lewisham LBC* [2010] EWCA Civ 755, [2011] PTSR 117 to assert that it was an implicit requirement. The defence was rejected by a district judge and a circuit judge and a possession order was made.
- The court of appeal held:
 - The acceptance of a final offer results in a cessation of duty regardless of notification (193(6)(c)). A decision that is confirmatory of the discharge can nevertheless be the subject of a review (per *Ravichandran v Lewisham LBC* [2010] EWCA Civ 755, [2011] PTSR 117).
 - Where a final offer is accepted, there was nothing in section 193 that *required* notification that the duty had been discharged: per *Bano* above. (Note *Bano* is being appealed to the supreme court.) That said, once notified (as in this case) the applicant had 21 days to request a review (s. 202(1)(b) and 202(3)).
 - Where notification of discharge was given there was no obligation to also notify the applicant of the s. 202 right or review or the 21 day deadline for any request: *Ravichandran* distinguished.
 - Consequently there was no basis for impugning the 193 discharge decision whether by way of defence or otherwise.
 - Even if that were not the case, and the discharge decision was unlawful, Y could not challenge its unlawfulness in the county court by way of defence to the recovery of the temporary accommodation.
 - Where there is an alternative statutory provision for review and appeal and that right was not taken up, it cannot later be raised

(absent exceptional circumstances) as a public law defence to possession proceedings: *Tower Hamlets LBC v Rahanara Begum* [2005] EWCA Civ 116, [2006] HLR 9.

- Nor was the absence of notification of the right to a review an exceptional circumstance. Y could have asked for an extension of time. No such request was made despite the passage of three years before the district judge heard the claim – that was too long to make the circumstances exceptional.

LOCAL CONNECTION

15. *Hussaini v Islington LBC* [2025] EWCA Civ 22; [2025] H.L.R. 20

- Mr Hussaini was a young asylum seeker who suffered from PTSD. He received support from a mental health charity (Baobab) based in Islington. Just outside Islington lived a university lecturer who treated Mr Hussaini as family and was a considerable support to him. Before being given refugee status, whilst still an asylum seeker, Mr H was housed in Barking and Dagenham.
- When granted refugee status, Mr H applied to Islington as homeless. Islington stated that he had no local connection with their borough and referred his application to Barking and Dagenham. Mr H requested a review asserting that he had a local connection with Islington by reason of special circumstances (s. 199).
- The review decision found that Mr H had no ‘need’ to be near the Baobab Centre to access services or to live in Islington and there was no connection with the borough in real terms.
- The applicant appealed asserting that the authority had incorrectly restricted itself to considering whether there was a *need to live in the borough* rather than whether special circumstances created a connection with the borough.
- The court of appeal held:
 - Reviewing the authorities: a local connection had to exist in ‘real terms’ by reason of normal residence, employment, family associations and ‘special circumstances’; Those matters related to ‘having a place in the community’;
 - Regard could be had to any need to live in a district; Such a need pointed to there being a local connection; Its absence pointed to a local connection being less probable; the frequency of the need to use specialist services in a district will be relevant.
 - When considering local connection by reason of special circumstances, the local authority cannot impose a ‘threshold requirement’. The absence of a ‘need to live in the district’ cannot be determinative. It is was simply a relevant factor.
 - There was no evidence that the reviewer had applied a threshold test. A benevolent approach to interpretation of the letter was required. The references to there being no requirement to live in Islington were expressed in those terms because of the way in which submissions had been put to the reviewer. Read as a whole, the reviewer had regard to all the circumstances of the case.

REVIEWS

16. *Ofori-Addo v Haringey LBC* [2025] EWCA Civ 277 – ambit of s.202(1)(h) reviews

17. *R (Bano) v Waltham Forest LBC* [2025] EWCA Civ 92 – ending s.193 duties, s.202 reviews

18. *R (Conde) v Kensington and Chelsea RLBC* [2025] EWHC 715 (Admin); [2025] H.L.R. 28
– Extending time for reviews

- The claimant had mental health issues and the support of a social worker. He applied as homeless. The relief duty was accepted and he was offered accommodation in Hackney in discharge of the duty. The offer letter notified him of his right to accept and review. The authority took the view that in a conversation in which the he raised issues about suitability, the claimant had refused the offer. It consequently notified him that it had discharged its duty and that he could request a review of the discharge.
- In the following 21 days a social worker contacted the authority on numerous occasions to explain that the offer had not been rejected. The authority refused to change its decision but both the social worker and the claimant were repeatedly told that the claimant could request a review of the discharge decision and had 21 days to do so. Despite those warning no request was made.
- Five days after the deadline expired, the claimant's son asked the authority to extend the time for requesting a review (per s. 202(3)). The authority refused on the basis that numerous warnings had been given, that the Defendant could have made the request notwithstanding his mental health issues, that there was no good reason for the delay and that the merits of any review were in any event unlikely to be strong.
- On a claim for judicial review, the court refused to interfere with the refusal, finding that there was nothing wrong with the authority's view on the merits of any review and that the decision was not otherwise irrational.

REPEAT APPLICATIONS

19. *R (Ivory) v Welwyn Hatfield BC* [2025] EWCA Civ 21; [2025] H.L.R. 22; [2025] PTSR 1179

- The applicant was evicted for rent arrears. She applied as homeless and asserted over the course of three reviews that she was not responsible for the rent arrears.
- In the course of the last review she asserted that the arrears were not deliberate but were caused by a mental health breakdown. On review the authority said there was no evidence of a mental breakdown and found that she was intentionally homeless. An appeal to the county court was dismissed.

- The applicant made a second application. She submitted a new psychiatrists report evidencing that she had indeed lacked capacity to manage her tenancy at the time of the accrual of her arrears. She asserted that the authority were bound to accept the new application as it was not based on the same facts as the first one: per *Begum (Rikha) v Tower Hamlets LBC* [2005] EWCA Civ 340; [2005] 1 W.L.R. 2103; [2005] H.L.R. 34;
- The authority refused. The high court refused permission to apply for judicial review. On appeal to the court of appeal, the court granted permission and heard the appeal itself. It held (per Newey and Phillips LJ):
 - In comparing whether the new application is based on new facts when compared to the original application, the issue is not whether there is new evidence but whether there are new facts;
 - The facts to be compared are the fact now *alleged* on the new application against the facts as *found* in the first application. The repetition of a previous allegation that has been rejected is still an assertion of a new fact.
 - However, absent fresh evidence in support of the previously rejected allegation, the allegation will be a ‘new fact’ that falls to be dismissed as fanciful.
- Males LJ (Phillips agreeing) adopted a different approach. The comparison was between the applications and not the findings. Both could have the same allegations (whether or not rejected) but if the second application included additional evidence, it was an application that was not the same. The existence of additional supporting evidence made the second application one that was factually different (because it included new evidence). An application which repeats an earlier, rejected allegation but which is supported by significant new evidence may not be refused.
- On either view the new application had to be taken. Phillips LJ summarised the position as follows:

“I would add that, despite the difference in the routes they take, Newey LJ and Males LJ appear to arrive at the same destination. Put simply, they both recognise that a further application must be accepted if either (i) it is based on a factual assertion which has not previously been made and which is not trivial or fanciful; (ii) it adduces significant fresh evidence in support of a previously made factual assertion, whether or not rejected. That appears to be an appropriately straightforward test for a housing authority to apply”.

APPEALS

20. *RZH v Sutton LBC* [2025] HLR 35 – reasonableness to occupy, ambit of s.204 appeals/dual listing