Neutral Citation Number: [2022] EWCA Civ 979

Case No: CA-2021-001967

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
HIS HONOUR JUDGE SAGGERSON
H40CL162

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/07/2022

Before :

LORD JUSTICE LEWISON
LADY JUSTICE KING
and
LADY JUSTICE ASPLIN

- -

Between :

SHAMSO ABDIKADIR	**Claimant/ Appellant**
- and –	
LONDON BOROUGH OF EALING	**Defendant/ Respondent**

- -
- -

Toby Vanhegan and **Stephanie Lovegrove** (instructed by **Polpitya & Co**) for the **Appellant**
Genevieve Screech-Powell and **Clare Cullen** (instructed by **London Borough of Ealing**) for the **Respondent**

Hearing date : 28 June 2022

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Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.30am on 15 July 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Lewison:

Introduction

1. A housing authority offers a homeless person, to whom it owes the full housing duty, an out of district placement, which that person refuses. The housing authority decides that its duty has come to an end; and that decision is upheld on review. But the housing authority did not notify the authority for the district in which the placement was offered. On this appeal it is argued:

    i) That the failure to notify invalidates the review decision and

    ii) In any event the housing authority did not comply with its statutory duty to secure accommodation within its own district "so far as reasonably practicable".

The legal framework

2. Part VII of the Housing Act 1996 imposes duties on local authorities to assist the homeless. The highest form of duty is owed to a person who is eligible, homeless and has a priority need; but who has not become homeless intentionally: section 193. This is conventionally called "the full housing duty". The duty is to "secure that accommodation is available for occupation by the applicant": section 193 (2). The duty continues until it ceases by virtue of section 193 itself. Section 193 (5) provides:

> "(5) The local housing authority shall cease to be subject to the duty under this section if—
>
> (a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,
>
> (b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and
>
> (c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section."

3. Section 206 prescribes the ways in which a housing authority may discharge their duties:

> "(a) by securing that suitable accommodation provided by them is available,
>
> (b) by securing that he obtains suitable accommodation from some other person, or

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

4. In the exercise of their functions relating to homelessness, a housing authority must have regard to any guidance given by the Secretary of State: section 182. Section 208 provides:

> "(1) So far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district.
>
> (2) If they secure that accommodation is available for the occupation of the applicant outside their district, they shall give notice to the local housing authority in whose district the accommodation is situated.
>
> (3) The notice shall state—
>
> (a) the name of the applicant,
>
> (b) the number and description of other persons who normally reside with him as a member of his family or might reasonably be expected to reside with him,
>
> (c) the address of the accommodation,
>
> (d) the date on which the accommodation was made available to him, and
>
> (e) which function under this Part the authority was discharging in securing that the accommodation is available for his occupation.
>
> (4) The notice must be in writing, and must be given before the end of the period of 14 days beginning with the day on which the accommodation was made available to the applicant."

5. Running alongside section 208 is the Homelessness (Suitability of Accommodation) (England) Order 2012. Article 2 of that Order provides:

> "In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including—
>
> (a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;

> (b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household…"

6. The guidance given by the Secretary of State in the Homelessness Code of Guidance is to similar effect. It provides:

> "17.49 Where it is not reasonably practicable to secure accommodation within district and an authority has secured accommodation outside their district, the housing authority is required to take into account the distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the applicant has specified a preference, or the accommodation has been offered in accordance with a published policy which provides for fair and reasonable allocation of accommodation that is or may become available to applicants.
>
> 17.50 Generally, where possible, housing authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support."

7. Section 202 provides for a review of certain decisions made by housing authorities. These include any decision of a local housing authority as to the suitability of accommodation offered to an applicant in discharge of the full housing duty; and also a decision by a housing authority that its duty has ceased. There is no explicit right of review of a failure to notify under section 208 (2). Any review is conducted in accordance with the Homelessness (Review Procedure etc) Regulations 2018. Regulation 7 (2) provides that if the reviewer considers that there was a deficiency or irregularity in the original decision, but is minded nevertheless to make a decision which is against the interest of the applicant on one or more issues, the reviewer must notify the applicant that the review is so minded, and the reasons why; and that the applicant may make representations orally or in writing. This stage of the review is conventionally called a "minded to find" letter.

8. An applicant who is dissatisfied with a decision on review may appeal to the county court on a point of law arising from the decision: section 204 (1). A point of law arises from a decision if it concerns or relates to the lawfulness of the decision: *James v Hertsmere BC* [2020] EWCA Civ 489, [2020] 1 WLR 3606 at [31]. On an appeal to the county court, the court applies the same principles as those applicable to judicial review. Thus grounds of challenge extend to the full range of issues that would otherwise be the subject of an application to the High Court for judicial review. These

include challenges on grounds of procedural error, the extent of legal powers (*vires*), irrationality, and inadequacy of reasons: *James v Hertsmere* at [31].

9. An appeal from the county court to this court is, technically, a second appeal; but the focus for this court is whether the review decision was lawful. The facts are for the reviewing officer. The court has no independent fact-finding function (*R v Hillingdon LBC ex p Pulhofer* [1986] AC 484); although a finding of fact may be challenged on public law grounds: *Runa Begum v Tower Hamlets LBC* [2003] UKHL 5, [2006] 2 AC 430, 462.

The facts leading up to the review

10. Ms Abdikadir applied to Ealing LBC for assistance under Part VII of the Housing Act 1996 on 9 December 2016. On 31 May 2017 Ealing accepted that she was eligible, homeless, had a priority need and that she did not become homeless intentionally. It therefore accepted the full housing duty, which it said it would discharge by arranging an offer of an assured shorthold tenancy in the private sector for a period of at least 12 months. The letter stated:

> "You will receive ONE suitable offer. When you receive this suitable offer of private sector accommodation, this will discharge our duty to you whether you accept or refuse the property. **If you refuse a suitable offer of accommodation, the Council will have no duty to make any further offers and you will then have to make your own housing arrangements**."

11. The letter also informed her that she could apply to join the council's housing register which would enable her to bid for properties. But it went on to say that she would be placed in band C and that she would have very little realistic chance of bidding for social housing in the short or medium term. That was because of a shortage of permanent accommodation and because there were many people in higher bands who would have more priority.

12. On 21 July 2020 Ealing offered Ms Abdikadir what it said was suitable accommodation at 10, Whitehorn Avenue, West Drayton, a four-bedroom property. The head landlord was a registered provider of social housing. The offer letter stated that it was not a private rented sector offer; and that if she were to refuse it the council would consider that the duty to accommodate her had ceased. The letter went on to say that if she believed that the property was not suitable, she could move in and at the same time seek a review of its suitability. 10 Whitehorn Avenue is in the London Borough of Hillingdon; not in the London Brough of Ealing, although we were told that it was close to the boundary between the two.

13. On 22 July 2020 Ms Abdikadir viewed the offered accommodation and refused it. She gave three reasons for her refusal:

    i) Her youngest daughter was doing her GCSE exams and would have to take four buses to school;

    ii) She had three daughters in universities; and

iii) The room sizes were too small, and the living room was not enough for a family of six.

14. Ealing considered her reasons for refusal and decided that it would have been reasonable for her to have accepted the offered accommodation. In consequence, by letter dated 23 July 2020 Ealing notified Ms Abdikadir that it was satisfied that its duty towards her had ceased.

15. Ms Abdikadir requested a review of that decision. In preparation for that review the reviewing officer made enquiries about what accommodation was available at the date of the offer. The response recorded in a file note of 24 September 2020 was that 10 Whitehorn Avenue was the only four-bedroom accommodation available on that date. Apparently the decision was upheld on that review, but Ms Abdikadir successfully appealed against it to the county court. Ealing therefore undertook a fresh review; and it is that review that is in issue on this appeal. In preparation for the review, Ealing invited representations from Ms Abdikadir (who was by now represented by solicitors). Representations were made on 26 March 2021. First, it was said that the accommodation was not affordable. Second, it said that her youngest daughter's journey to school would be too long. Third, it was said that the accommodation was too small.

16. On 20 April 2021 Ealing sent Ms Abdikadir a "minded to find" letter, stating that it was minded to uphold the original decision. Under the heading "Location" the letter stated that the council operated a policy which split the temporary accommodation priorities into three separate areas:

i) Zone 1: an offer of accommodation within the borough of Ealing;

ii) Zone 2: an offer of accommodation within the west London boroughs (which included Hillingdon); and

iii) Zone 3: an offer of accommodation in any other area which might be inside or outside London.

17. An annexe to the letter contained extracts from the Temporary Accommodation Placement Policy explaining who fell into each of these zones.

18. The letter continued:

> "As stated, wherever possible, and unless it is in the household's best interest or at the household's request, the Council will aim to place applicants in the Borough. However, if there are insufficient placements available, the Council will prioritise households taking into consideration their housing needs…. Based on your client's circumstances, she would not have been prioritised within zone 1 at the date of the offer of accommodation or at the date of this review.
>
> The Council contacted the placement team to confirm if there were any other suitable properties available at the time your client was offered 10 Whitehorn Avenue… We were informed

> that the accommodation offered to Ms Abdikadir was the only 4 Bed property available and ready to let on the day the offer was made."

19. Her solicitors responded to that letter on 27 April. Once again, they said that the property was not affordable. They also repeated their points about the location of the property and, in particular, the journey time that Ms Abdikadir's daughter would have in order to get to and from school. They also made the point that journey times to work for Ms Abdikadir herself would be lengthy. Finally, they also repeated the point that the property was too small. There was no challenge to Ealing's statement that Ms Abdikadir would not have been prioritised within zone 1. Nor did they mention the fact that the offered property was an out of borough placement.

The review decision

20. Ealing issued its review decision on 4 May 2021. It is a detailed letter running to 16 pages. It upheld the original decision that its housing duty had ceased. It began by listing what the reviewing officer had considered. These included the code of guidance issued by the Secretary of State and the Suitability of Accommodation Order. In the course of the review, the reviewing officer stated that local authorities should, wherever possible, secure accommodation that is as close as possible to where applicants were previously living. The letter continued:

> "Furthermore, the Council has a legal duty to secure that accommodation is available within its district so far as is reasonably practicable. However, along with many other London Councils, Ealing is experiencing a significant increase in households requesting assistance with housing. Along with the increased local housing demand, the council is experiencing increasing difficulty in acquiring affordable temporary accommodation and private sector accommodation, particularly within Ealing.
>
> The Council is dependent upon a constant supply of accommodation to meet the needs of households who have been required to leave their previous accommodation and need emergency assistance… This has led to the Council being required to place households into accommodation outside of Ealing Borough, and in some cases out of London."

21. The reviewing officer then went through each of the reasons that Ms Abdikadir had given for rejecting the offer; and concluded that the offered accommodation was suitable. Under the heading "Location" the review decision repeated what had already been said in the "minded to find" letter about the three zones; the way that the council prioritised households; that Ms Abdikadir would not have been prioritised within zone 1; and that 10 Whitehorn Avenue was the only four bedroom property available at the date of the offer. The review decision then went on to consider journey times (both for Ms Abdikadir herself and for her youngest daughter) and concluded that they did not make the property unsuitable in terms of location.

22. An annexe to the review decision also contained extracts from the Temporary Accommodation Placement Policy explaining who fell into each of the three zones.

The duty to notify

23. The point that arises under this ground is that Ealing did not notify Hillingdon in accordance with section 208 (2). But that ground is only of any significance if the failure to notify invalidates Ealing's decision that its housing duty under section 193 had come to an end.

24. Mr Vanhegan sought to bridge this gap by arguing that unless Ealing had notified Hillingdon in accordance with its statutory duty, it was not in a position to come to the conclusion that the offered accommodation was suitable. He pointed to paragraph 17.22 of the Code of Guidance which recommends that when placing households outside their district, the placing authority should liaise with the receiving authority to check whether the latter had taken any enforcement activity against the landlord. That is general guidance and is not specifically linked to the duty to notify under section 208 (2). That duty is specifically dealt with in paragraph 17.60 which applies where a local authority "*places* an applicant in accommodation outside the district". The Code, therefore, contemplates that the duty is triggered when out of borough accommodation is both offered and accepted.

25. Mr Vanhegan suggested that notification under section 208 (2) would enable the placing authority to find out a number of matters relevant to the suitability of the proposed accommodation. That might include the landlord's track record, whether the household included any gang members who might be vulnerable out of borough, the availability of school places and so on. But there are a number of difficulties with that argument. In the first place although the placing authority has a duty to notify the receiving authority, the receiving authority has no obligation to respond to the notification. Second, the form of the notification simply gives certain information. It does not ask questions. Third, the required notification does not include the name of the landlord or the identity of anyone (other than the applicant) who will reside in the accommodation. Fourth, the duty arises if the authority "secure that accommodation is available". I do not see how a housing authority can secure that accommodation is available while it is still weighing up the pros and cons of any particular offer in order to decide whether to make it. Fifth, the duty to notify need not be complied with until 14 days after the day on which accommodation "was made available" to the applicant. I do not see how it can be plausibly argued that accommodation has been made available to an applicant at a time before it has even been offered. Sixth, the placing authority has its own duties to make inquiries independently of section 208 (2) and, as the Code advises, will liaise with a receiving authority before making an offer. To that extent, therefore, section 208 (2) serves very little purpose.

26. Ms Screech-Powell argued that the duty to notify under section 208 (2) did not arise at all before an applicant had accepted the offered accommodation. She has the support of paragraph 17.60 of the Code for that argument. She is also able to argue with some force that while there may be good reasons why a receiving authority should be notified where the applicant has *accepted* an out of borough placement, it is difficult to see what point there is in such a notification where the applicant has *refused* the offer. In the former case, the receiving authority may be required to devote some of its resources to the needs of the family (e.g. children's services, school places

etc); and it will also be useful for that authority to know when the accommodation was made available to an applicant because the date on which the applicant moved into the district may become relevant later if any question of local connection arises under section 198. In the latter case, however, there is no possible consequence for the notified authority because the applicant will not move into the offered accommodation.

27. If we were considering what the law *ought* to be, Ms Screech-Powell's argument would carry considerable force. But we have to consider what the law *is*. The Code cannot change the law. As I have said the duty is triggered if the authority "secures that accommodation is available for the occupation of the applicant". The natural meaning of that phrase is, in my judgment, that accommodation is made available to an applicant if they can move into it without delay. Accommodation is made available to an applicant on the day it is offered (although there may be some paperwork such as the signing of a tenancy agreement still to be done) whether or not the applicant accepts it. There is nothing in section 208 (2) which suggests that the duty is conditional on acceptance; and, as Mr Vanhegan correctly submitted, the securing of available accommodation by the authority is a unilateral act.

28. Ms Screech-Powell drew a contrast between the language of section 208 (2) ("accommodation *is* available") and sections 208 (3) and (4) (the date on which accommodation "*was made* available"). She suggested that accommodation was not "made available" until the applicant had accepted it. In my judgment that puts impermissible weight on the change from the present to the past tense. The reason why sections 208 (3) and (4) use the past as opposed to the present is simply to reflect the fact that the offer has been made.

29. In my judgment, therefore, the duty under section 208 (2) did not arise until Ealing made its offer on 21 July 2020; but it did arise on that date. Mrs Abdikadir's refusal came on the following day, and Ealing's decision that its housing duty had ceased was made on the day after that: 23 July. All these events took place within the 14 day window for giving notice under section 208 (2); so at the date of its decision, Ealing was not in breach of section 208 (2).

30. In *Osseily v Westminster City Council* [2007] EWCA Civ 1108, [2018] HLR 18 Laws LJ explained at [11]

> "Now, s 193(5) plainly contemplates that where an Applicant refuses what the council regards as suitable accommodation, the council's duty ends then and there."

31. Section 193 (5) contains detailed and prescriptive conditions to be met before an authority can decide that its duty has ceased. Failure to comply with section 208 (2) is not among them. On the face of it, where a public authority makes a decision, that decision is either lawful or unlawful at the time it is made. It would take clear statutory language for a decision that was valid at the time it was made to be invalidated by subsequent events (or more accurately non-events). There is no such language in Part VII of the Housing Act 1996.

32. In addition, as Waller LJ said in *Omar v Westminster City Council* [2008] EWCA Civ 421, [2008] HLR 36 at [32]:

> "So in my view the authorities do not preclude this court from holding that where the council has taken the view that it has offered suitable property and where it has completed the decision-making process by deciding, as from a certain day, that its duty had ceased, the correct question for the reviewer is whether the council were right, as at the date of that original decision; and for that purpose what they should be examining is the facts that existed as of that date, albeit they may discover what facts existed as at that date, between the date of that original decision and the date of review."

33. That principle applies in the case of a *refusal* of an offer. By contrast, where the applicant has *accepted* an offer but has requested a review of its suitability, then the question of suitability falls to be considered at the date of the review: *Omar* at [25]; *Waltham Forest LBC v Saleh* [2019] EWCA Civ 1944, [2020] PTSR 621. The relevant facts, then, are those in being on 23 July 2020.

34. Had Ms Abdikadir accepted the offer and actually moved in, then the duty to notify under section 208 (2) might have had greater significance. But that is not this case.

35. Since any failure to comply with section 208 (2) does not vitiate Ealing's decision that its duty under section 193 had ended, this ground of appeal fails.

Out of borough placements

36. As I have said, section 208 (1) imposes a duty on a housing authority to secure accommodation within its district "so far as reasonably practicable". The leading case on section 208 (1) is the decision of the Supreme Court in *Nzolameso v Westminster City Council* [2015] UKSC 22; [2015] PTSR 549. That was a case in which Westminster offered an applicant accommodation in Bletchley near Milton Keynes. The Supreme Court held that Westminster had not demonstrated that it had complied with its duty under section 208 (1). It had produced no evidence of its policy in relation to the procurement of accommodation in order to fulfil its obligations under the 1996 Act, nor of the location of that accommodation, nor of the instructions given to the temporary lettings team as to how they are to decide which properties are offered to which applicants. In that case Lady Hale said at [19]:

> "'Reasonable practicability' imports a stronger duty than simply being reasonable. But if it is not reasonably practicable to accommodate 'in borough', they must generally, and where possible, try to place the household as close as possible to where they were previously living."

37. The real problem in *Nzolameso* was that Westminster had not explained how it came to its decision. But Lady Hale went on to consider how a housing authority could or should explain why it had come to the decision that it did. The take home message I draw from that case is:

    i) A housing authority is entitled to take account of the resources available to it, the difficulties of procuring sufficient units of temporary accommodation at

affordable prices in its area, and the practicalities of procuring accommodation in nearby boroughs: *Nzolameso* at [38].

ii) If there is available accommodation within-borough, it does not follow that the authority must offer it to a particular applicant because it may be acceptable to retain a few units, if it can be predicted that applicants with a particularly pressing need to remain in the borough will come forward in the relatively near future: *Nzolameso* at [38].

iii) The housing authority has a positive obligation to show that in offering an out of borough placement it has complied with its duty under section 208 (1): *Nzolameso* at [36] and [37].

iv) The decision in an individual case may depend on a policy that the authority has adopted for the procurement and allocation of accommodation: *Nzolameso* at [38].

v) The policy should explain the factors which would be taken into account in offering households those units, the factors which would be taken into account in offering units close to home, and if there was a shortage of such units, the factors which would make it suitable to accommodate a household further away: *Nzolameso* at [39].

vi) The policy should be publicly available: *Nzolameso* at [39].

vii) In principle, where a public authority has a lawful policy, then provided that it implements the policy correctly, its decision in an individual case will itself be lawful: *Alibkhiet v Brent LBC* [2018] EWCA Civ 2742, [2019] HLR 15 at [48], citing *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59; [2015] 1 WLR 4546 at [31].

38. In *R (Elkundi) v Birmingham City Council* [2022] EWCA Civ 601, [2022] 3 WLR 71 this court considered what a housing authority in breach of its duties under section 193 had to do in order to avoid a mandatory order being made against it. Lewis LJ said at [134]:

> "I consider that the correct approach is to consider whether the local housing authority has taken all reasonable steps to perform the duty. If it has done so, and has not been able to secure suitable accommodation, that may be a good indication that it may not be appropriate to grant a mandatory order as it may not be possible to secure suitable accommodation within a specified time. A local housing authority can, however, be expected to demonstrate what steps it has taken and what the difficulties are. It is unlikely to be sufficient to refer generally to the demand for housing or the shortage of accommodation. The authority may need to explain, for example, the number of properties of the particular type in question (such as houses with particular adaptations or with a particular number of bedrooms) it has available and why it is not possible or appropriate to use those for the grant of (unsecured and

> therefore non-permanent) accommodation under Part VII. It may, for example, have a number of properties that it would like to use for allocating to applicants on its waiting list for Part VI accommodation. It can be expected to explain why it is not using those properties to ensure that its Part VII duties are met. This is not to say that the local housing authority must make a final offer of a secure tenancy of accommodation to a homeless person. Rather, given that the duty under section 193(2) will continue and may be met by the provision of accommodation on a short or long term basis (until it comes to an end, for example, by the making a final offer of Part VI accommodation), an authority may need to explain why it is not using its housing stock to secure accommodation that is suitable on a non-permanent basis to meet its Part VII duties."

39. Although the issue with which the court was concerned in that case differs from that with which we are concerned, that passage does give some guidance about what a housing authority needs to do. But as Lady Hale explained in *Nzolameso* some of the required explanation may be contained in a policy, provided that the authority then correctly implements its policy. This is what the Code of Guidance itself states in paragraph 17.49 ("the accommodation has been offered in accordance with a published policy…")

40. Mr Vanhegan takes two points under this ground of appeal:

    i) Ealing misapplied its allocation policy; and

    ii) Ealing did not make a sufficient search for in-borough accommodation before making the out of borough placement; and did not comply with its procurement policy.

41. Neither of these points were raised by Ms Abdikadir's solicitors in the course of the review. That is not determinative, but it goes some way to explain why the review decision contains no detailed, reasoned justification for Ealing's approach to those questions. Although, in general, an authority may not supplement the reasons for its review decision, except to elucidate or confirm those reasons (*R v Westminster City Council ex p Ermakov* (1996) 28 HLR 819), where the challenge is based on a ground that was not advanced in the course of the review, the authority must be entitled to defend itself against that challenge. That is why we permitted Ms Screech-Powell to rely on Ealing's Temporary Accommodation Procurement Policy.

42. On the first point, the argument is that since Ms Abdikadir had settled work in Ealing, she ought to have been placed within Zone 1. Ealing's Temporary Accommodation Placement policy states that households within certain categories will be prioritised for placement within Zone 1 "where only accommodation in Ealing would be suitable in the longer term due to the household's circumstances". Paragraph 5 includes in that category:

> "Households where one or more persons is in permanent and settled employment within the Borough for the past 12 months to the homeless application, working a minimum of 16 hours

> (one person) or 24 hours (2 persons). Working household members are expected to commute and consideration of 60 minutes commuting time from home to work is reasonable within London."

43. The policy goes on to say that the numbered list is guidance for officers and that special circumstances would be considered as part of the assessment. It also states that this will not guarantee a placement within Zone 1 "as the supply of available TA [i.e. temporary accommodation] changes on a daily basis, along with those needing assistance that are approaching the Council or already within TA awaiting a move to more suitable accommodation."

44. The information given to Ealing in connection with the review showed that Ms Abdikadir worked for 16 hours per week in Hanwell. But in the review decision, the reviewing officer found that the journey from the offered accommodation to Hanwell would have been approximately 40 minutes by public transport. Work related journeys within her working day would have been within her working hours and would not have changed if she had accepted the offered accommodation.

45. In my judgment, the meaning of the policy is that the overarching consideration is whether only accommodation in Ealing would be suitable in the longer term. That overarching question informs the numbered paragraphs of the policy. In considering that question, working household members are expected to be able to commute for up to 60 minutes each way. Since, on the facts found, Ms Abdikdir's commuting time was less than 60 minutes, she did not fall within paragraph 5 of the policy. This ground of challenge fails. Ealing did not misapply its allocation policy.

46. I cannot see that Ealing's Temporary Accommodation Allocation policy is unlawful. It rationally divides applicants into different categories of need. Some will be given priority for in-borough placement; some will be given priority for placement in West London, and others will not have that priority. But the policy also makes it clear that even those in the highest category will not necessarily be placed in-borough. That is consistent with Lady Hale's guidance; and takes proper account of what must surely be a matter of general knowledge, namely that there is a severe shortage of affordable accommodation in London.

47. The second ground of challenge is, in effect, that Ealing did not look hard enough. This, too, was not a point raised in the course of the review. So the reviewing officer did not discuss Ealing's Temporary Accommodation Acquisitions policy. We have, however, been shown a copy of it. The adoption of a procurement policy conforms both with *Nzolameso* and also with the Secretary of State's guidance. The stated aims of the policy include the following: to acquire a sufficient number of units to meet property demand suitable to the needs of households; to acquire properties within and close to the borough wherever possible; and to work with private sector landlords and agents to acquire sufficient numbers of private rented units to end the homeless duty locally. Ealing's stated aim (for 2017/8) was to maintain a portfolio of approximately 2,400 properties. The policy also explains that Ealing is experiencing increased difficulty in acquiring private sector rented accommodation for a number of reasons (including benefit levels and capping, rent rises in the private sector, and general shortage of properties to buy or rent).

48. One section of the policy set out its acquisition activities. These included: working with existing suppliers to increase affordable supply of temporary accommodation; to ensure that officers contact and visit potential new suppliers and landlords (including advertising in local papers); leasing units from registered providers; directly purchasing property; using units which are vacant pending regeneration projects; increasing hostel stock; investigating sites for modular homes and working with other boroughs.

49. The policy goes on to explain that Ealing will continue to experience high levels of competition for properties in the private sector to meet demand, and that it will need to acquire temporary accommodation and private lets in a variety of locations beyond Ealing, while noting the guidance requiring authorities to acquire so far as reasonably practicable within their own borough. It goes on to say that "it is certain that the Council will not be able to meet temporary accommodation using need within the borough".

50. The acquisitions policy cross-refers to the placement policy and the three zones; and states:

> "The Council's Acquisition officers are instructed to focus on Zone 1 and Zone 2 areas first… Acquisition Officers liaise with accommodation providers and check relevant websites on a daily basis for new supply."

51. Like any decision-maker a housing authority has a duty to make inquiries before coming to a decision. The general parameters of a public body's duty to inquire was summarised by this court in *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, [2019] 1 WLR 4647 at [70]. That part of the summary which is relevant for present purposes is as follows:

> "First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a *Wednesbury* challenge… , it is for the public body and not the court to decide upon the manner and intensity of inquiry to be undertaken…. Thirdly, the court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further inquiries if no reasonable authority possessed of that material could suppose that the inquiries they had made were sufficient."

52. The same approach applies to inquiries made under Part VII of the Housing Act: *R v Kensington and Chelsea LBC, Ex p Bayani* (1990) 22 HLR 406; *Cramp v Hastings BC* [2005] EWCA Civ 1005, [2005] HLR 48 at [58]; *Williams v Birmingham City Council* [2007] EWCA Civ 691, [2008] HLR 4. Moreover, since an applicant dissatisfied with an initial decision has the right to a review (which entails at least two opportunities to make representations if the review decision is likely to be adverse to

them), the court should be wary of imposing on the reviewing officer a duty to inquire into matters that were not raised: *Cramp* at [14]. This approach applies particularly where the matters in question are within the knowledge of the applicant: *Paley v Waltham Forest LBC* [2022] EWCA Civ 112, [2022] HLR 24. A reviewing officer is entitled to expect an applicant to bring forward any relevant information, particularly if they have been asked to do so: *Birmingham CC v Wilson* [2016] EWCA Civ 1137, [2017] HLR 4 at [36].

53. Where a statutory duty arises (in this case the duty "so far as reasonably practicable" to make an in-borough offer), the decision-maker must take such steps as are reasonable to inform himself of the practicability of an in-borough placement even though the point has not been explicitly raised: *Pieretti v Enfield LBC* [2010] EWCA Civ 1104, [2011] PTSR 565 at [32]. As Bean LJ said in *Hajjaj v Westminster City Council* [2021] EWCA Civ 1688, [2022] PTSR at [71] it is not for the applicant to raise a red flag in circumstances where they have no input.

54. This is not a case in which a new *area* of investigation was raised for the first time on an appeal from a review decision. Nor it is a case in which Ms Abdikadir is relying on matters which were (or ought to have been) within her own knowledge. Ealing was well aware of its duty under section 208 (1) which is referred to both in the "minded to find" letter and also in the review decision itself. What steps are reasonable steps to take in order to fulfil that duty is a question of judgment for the housing authority; but its decision on that question is, in my judgment, to be found in the terms of its policies which can be taken to be Ealing's considered judgment on the question.

55. The availability of suitable accommodation is to be decided as at the date of the offer unless it is an exceptional case: *Bromley LBC v Broderick* 2020] EWCA Civ 1522, [2021] PTSR 477. The key point in the policy is that acquisition officers liaise with accommodation providers and check relevant websites on a daily basis for new supply.

56. The real question, as it emerged during the course of the hearing, is whether Ealing actually complied with its policies. Following the review decision, Ms Abdikadir's solicitors asked Ealing what steps it had taken to comply with its duty under section 208 (1). On 16 and 17 July 2021 they asked what information Ealing had relied on in order to produce the response in the file note of 24 September 2020; and also asked for a list of properties available under Part 6 of the Housing Act as at the date of the offer. On 26 July Ealing replied to the effect that properties available under Part 6 were allocated under the council's allocation policy via a choice-based letting scheme LOCATA which requires an applicant to bid successfully for a property. As such, Part 6 properties were not considered by the reviewer when checking what accommodation was available at the date of the offer. Subsequent enquiries, however, revealed that there were no 4 bedroom properties available on LOCATA. Mr Vanhegan sensibly did not take this point any further.

57. But both the original letter of 31 May 2017 accepting the full housing duty and the acquisition policy contemplate the acquisition of private sector rented property and the making of private sector rental offers. Ealing's response to the inquiry about what steps they had taken to comply with section 208 (1) did not mention any steps taken to investigate the availability of private sector property. The acquisition policy stated

that acquisition officers "check relevant websites on a daily basis for new supply." But there was no evidence that that had been done.

58. Whether a search for private sector rental property in Ealing would have revealed a suitable (and affordable) property available on the date of the offer may be a matter for speculation. But I cannot say that had Ealing complied with its policy the result would have inevitably have been the same: see *Ali v Newham LBC* [2001] EWCA Civ 73, [2002] HLR 20.

59. Ms Screech-Powell rightly warned us against the "judicialisation" of welfare services; and was understandably concerned about the imposition of burdensome duties on hard-pressed and cash-strapped local authorities (particular those in London) dealing with a never-ending flow of applications for assistance with homelessness. There is undoubtedly force in these points. But that is the sort of situation against which the guidance given by Lady Hale in *Nzolameso* was designed to protect; and if Ealing had been able to demonstrate that it had followed its policy its decision would have been lawful, as Mr Vanhegan accepted. If in fact Ealing had followed its policy, all that would have been required would have been a statement saying that it had, and explaining how it had done that.

60. For these reasons, I have come to the reluctant conclusion that this ground of appeal succeeds.

Result

61. I would allow the appeal.

Lady Justice King:

62. I agree.

Lady Justice Asplin:

63. I also agree.