Neutral Citation Number: [2022] EWHC 1854 (Admin)

Case No: CO/879/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/07/2022

Before :

SUSIE ALEGRE
(Sitting as a Deputy High Court Judge)

- -

Between :

THE QUEEN
on the application of

Claimant

ZK

- and –

LONDON BOROUGH OF HAVERING **Defendant**

- -
- -

Ciar McAndrew (instructed by **Hopkin Murray Beskine Solicitors**) for the **Claimant**
Andrew Lane (instructed by **OneSource Solicitors**) for the **Defendant**

Hearing date: 6 July 2022

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Approved Judgment

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives.
The date and time for hand-down is deemed to be 10am on 18 July 2022

SUSIE ALEGRE (Sitting as a Deputy High Court Judge):

1. ZK, a refugee who is married with three children, challenges what he alleges to be a failure of the London Borough of Havering to carry out a lawful housing needs assessment ("HNA") and to prepare and keep under review a personalised housing plan ("PHP") for him in accordance with section 189A of the Housing Act 1996 ("the 1996 Act").

Factual Background

2. ZK is a homeless refugee. He lives with his wife and three young children in temporary accommodation provided by the Defendant.

3. ZK came to the UK as an asylum seeker having suffered appalling human rights abuses in his home country. The impact of these traumatic experiences has been significant and ongoing for his mental health and, as a result, he suffers from post-traumatic stress disorder (PTSD), anxiety and depression. ZK also has other health issues resulting from torture. As an asylum seeker, ZK and his young family were housed in a series of temporary accommodations across multiple London boroughs under the National Asylum Support Service (NASS) scheme. They were housed in the London Borough of Havering in NASS accommodation from November 2017. The constant moves through temporary accommodation were very unsettling for the Claimant and his family.

4. In January 2019, ZK was given refugee status with limited leave to remain. At that point, he became eligible for mainstream housing assistance under Part 7 of the 1996 Act. And he also applied to be admitted onto the social housing register under Part 6 of the 1996 Act. The Defendant accepted his Part 6 Application but put him in a very low priority band due to the short time he had been in the Borough. ZK challenged this banding decision through judicial review proceedings (the first judicial review) which were withdrawn when the Defendant accepted its policy was indirectly discriminatory against refugees on grounds of race and agreed that higher priority banding will be backdated for ZK (although the challenged policy remains in place).

5. In March 2019 the Defendant accepted that ZK was eligible for housing assistance under Part 7 of the 1996 Act as he was threatened with homelessness. It also accepted it had a duty to assess his housing needs (HNA) and provide him with a Personalised Housing Plan (PHP). In June 2019 the Defendant issued the first PHP ("the first PHP") and it accepted that ZK was homeless and that it owed him a duty to provide suitable accommodation. In September 2019 the Defendant placed ZK and his family in temporary accommodation in Havering. This is the accommodation that ZK lived in until June 2022 ("the previous accommodation"). ZK felt that the previous accommodation was unsuitable and in October 2020 he sent pre-action correspondence to the Defendant requesting re-assessment of his housing needs, a revised PHP and a review of the suitability of the previous accommodation. In response the Defendant provided another PHP ("the second PHP") amending the first PHP and agreed to review the previous accommodation. ZK, however, felt that the second PHP was no more lawful than the first PHP and, as a new assessment was not forthcoming, he issued a second judicial review. Those proceedings were withdrawn by consent as the Defendant agreed to reassess ZK's housing needs, provide another PHP and undertake a review of the previous accommodation.

6. The mental health issues suffered by ZK as a result of the traumatic experiences that led to him seeking asylum in the UK have been ongoing throughout the period that he and his family have been housed in Havering. He has provided extensive evidence on the ways that his insecure housing situation has impacted on his mental health and the particular needs arising from his conditions. In particular, he shared reports from a range of experts that stressed his housing needs. These included a report from a clinical psychologist, Mr Peter Thorne (the "Thorne Report" provided to the Defendant in March 2021). In this report, it was noted that the Claimant had found the numerous house moves *"very difficult to cope with"* and stressed that, as a survivor of torture and someone who has lost family members due to violence and murder, the Claimant has *"core needs for safety within a secure base for himself and his family, from which to venture out into the world to rebuild hope and trust...."* The Thorne report concluded that *"priority should be given to securing this psychologically vulnerable man, and his family, suitable and permanent accommodation."* An expert report prepared by an occupational therapist, Pauline Hilton, (the "Hilton Report" provided to the Defendant in February 2021) also concluded that *"the family needs a permanent housing solution primarily to support [ZK's] mental health and thus the wellbeing of the family."* In another clinical psychologist's report filed in the context of the first judicial review ("the Walsh Report") Dr Eileen Walsh explains that refugees who suffer from mental health issues including PTSD often have an increased need for settled long-term accommodation. These reports reinforce the comments of ZK's psychotherapist at Freedom from Torture, Zohreh Rahimi, who wrote a letter in August 2019 stating that *"this is a very vulnerable family, and it is my professional opinion that in view of the considerable needs of this family, suitable settled accommodation...is crucial not only for [the Claimant's] recovery but also his wife and children's psychological needs and well-being."* ZK provided these expert reports to the Defendant as evidence of his housing needs, in particular the need for secure, long-term accommodation.

7. In October 2021 it seems the Defendant produced an update to the second PHP but did not share it with ZK. And in November 2021, the Defendant provided ZK with another PHP ("the third PHP"). This is the PHP directly challenged in these proceedings on the basis that the third PHP is not lawful either. ZK also challenges the ongoing failure of the Defendant to provide a lawful HNA.

8. The Defendant, in response to the challenge, said it would provide a revised PHP and suitability review of the previous accommodation. In late January 2022, a housing officer, Ms Williams, attended the previous accommodation and spoke to the family. She concluded that the previous accommodation was not suitable for the family and made a Home Visit Housing Review ("the Williams report"). She made a recommendation to managers that the previous accommodation was unsuitable. The reasons she gave were:

    a. The 26 steps up to the property which were a health and safety concern for the family, and
    b. The distance from the previous accommodation to the children's school which was a concern given both ZK and his daughter's medical issues.

    Her recommendations were not immediately actioned. So, in the absence of response to correspondence, ZK issued these judicial review proceedings.

9. Since these proceedings were issued, ZK and his family have been moved to new accommodation ("the current accommodation") but they have not been provided with a new HNA or a PHP. In May 2022, in the context of these proceedings, the Defendant accepted that the previous accommodation was not suitable but did not provide reasons. Two reasons for the unsuitability of the previous accommodation were provided by the Defendant in detailed grounds of opposition reflecting the recommendations of Ms Williams:

    a. the long flight of steps up to the property, and
    b. distance from the children's school.

    ZK has raised several other reasons why the previous accommodation was not suitable which he says reflect his and his family's housing needs. In addition to the two reasons given by the Defendant, the Claimant says that the previous accommodation was unsuitable because it did not meet three other needs, he says he and his family have:

        a. The need for secure and long-term accommodation
        b. The need for reasonably quiet accommodation
        c. The need for four bedrooms.

    Together, these form the five core housing needs that ZK says he and his family have.

10. In June 2022, the Defendant made an offer of accommodation which ZK accepted, and the family has now moved into the current accommodation. While ZK does not accept that the current accommodation is suitable, the question of suitability of the current accommodation is not before this court. Of relevance to these proceedings, however, is ZK's claim that a duty for a lawful needs assessment and PHP is still not met. He also argues that these are still needed for any effective decision to be made on the suitability of current or future housing.

Grounds of Challenge

11. This application for judicial review concerns the lawfulness of the Defendant's assessment of ZK's housing needs through the HNA and the resulting PHP describing the steps to be taken so that the Claimant can secure and retain suitable accommodation.

12. The grounds of challenge are:

    a. Ground 1 – The Defendant is in ongoing breach of its assessment and planning obligations under section 189A of the 1996 Act.
    Specifically:

        i. The Defendant has failed to assess the housing needs of the Claimant and his family in a manner which complies with the mandatory requirements of section 189A.
        ii. The Defendant has failed to provide the Claimant with a PHP which complies with the mandatory requirements of section 189A.

b. Ground 2 – The HNAs and/or PHPs relied upon by the Defendant are otherwise irrational or vitiated by a failure to take account of relevant considerations and/or reliance on irrelevant considerations.

13. A third ground of challenge relating to the suitability of the Claimant's previous accommodation was withdrawn as the family has accepted the current accommodation since proceedings commenced. The suitability of the current accommodation may be challenged through proceedings in the County Court if necessary and therefore this issue is no longer a matter for the Court in these proceedings.

The Assessment and PHP: The law

14. In considering the merits of ZK's substantive arguments, I have considered the relevant legislative provisions. The main arguments in this case turn on an interpretation of the requirements imposed on local housing authorities in relation to needs assessments for housing provision under Part 7 of the 1996 Act.
15. The duty to provide a HNA and a PHP arises from Section 189A of the 1996 Act:

> ***189A Assessments and personalised plan***
> (1) If the local housing authority are satisfied that an applicant is—
> (a) homeless or threatened with homelessness, and
> (b) eligible for assistance,
> the authority must make an assessment of the applicant's case.
> (2) The authority's assessment of the applicant's case 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.
> (3) The authority must notify the applicant, in writing, of the assessment that the authority make.
> (4) After the assessment has been made, the authority must try to agree with the applicant—
> (a) any steps the applicant is to be required to take for the purposes of securing that the applicant and any other relevant persons have and are able to retain suitable accommodation, and
> (b) the steps the authority are to take under this Part for those purposes.
> (5) If the authority and the applicant reach an agreement, the authority must record it in writing.
> (6) If the authority and the applicant cannot reach an agreement, the authority must record in writing—
> (a) why they could not agree,
> (b) any steps the authority consider it would be reasonable to require the applicant to take for the purposes mentioned in subsection (4)(a), and
> (c) the steps the authority are to take under this Part for those purposes.
> (7) The authority may include in a written record produced under subsection (5) or (6) any advice for the applicant that the authority consider appropriate

> (including any steps the authority consider it would be a good idea for the applicant to take but which the applicant should not be required to take).
> (8) The authority must give to the applicant a copy of any written record produced under subsection (5) or (6).
> (9) Until such time as the authority consider that they owe the applicant no duty under any of the following sections of this
> Part, the authority must keep under review—
> (a) their assessment of the applicant's case, and
> (b) the appropriateness of any agreement reached under subsection (4) or steps recorded under subsection (6)(b) or (c).
> (10) If—
> (a) the authority's assessment of any of the matters mentioned in subsection (2) changes, or
> (b) the authority's assessment of the applicant's case otherwise changes such that the authority considers it appropriate to do so, the authority must notify the applicant, in writing, of how their assessment of the applicant's case has changed (whether by providing the applicant with a revised written assessment or otherwise).
> (11) If the authority consider that any agreement reached under subsection (4) or any step recorded under subsection (6)
> (b) or (c) is no longer appropriate—
> (a) the authority must notify the applicant, in writing, that they consider the agreement or step is no longer appropriate,
> (b) any failure, after the notification is given, to take a step that was agreed to in the agreement or recorded under subsection
> (6)(b) or (c) is to be disregarded for the purposes of this Part, and
> (c) subsections (4) to (8) apply as they applied after the assessment was made.
> (12) A notification under this section or a copy of any written record produced under subsection (5) or (6), if not received by the applicant, is to be treated as having been given to the applicant if it is made available at the authority's office for a reasonable period for collection by or on behalf of the applicant.

16. The Defendant accepts that ZK fulfils the requirements set out in s.189A(1) of the 1996 Act and that it therefore owes a duty to him under this provision. The dispute turns on whether or not it has fulfilled that duty lawfully.

17. Section 189A is prescriptive as to the matters which a local housing authority must assess in a HNA: the circumstances that caused the homelessness, the "housing needs" of the applicant including the suitability of any accommodation for the applicant and his family, and "the support" needed for the applicant and his family to have and retain suitable accommodation. This duty is important because it determines any decision on the suitability of accommodation. While it does not need to include an exhaustive list of housing needs, it does need to include the key needs: those that would provide the "nuts and bolts" for any offer of suitable accommodation: *c.f. R(S) v Waltham Forest LBC* [2016] EWHC 1240 (Admin) [2016] H.L.R. 41 at [92].

18. It is also clear from section 189A that an assessment must be notified in writing followed by a process to agree steps to be taken to make sure that the applicant and his family have and can retain suitable accommodation. These steps must be recorded, even if they are not agreed, and this forms the PHP.

19. The third stage is the requirement to "keep under review their assessment of the applicant's case, and the appropriateness of any agreement reached.... or steps recorded" (section 189A(9)). This requirement continues until "such time as the authority consider that they owe the applicant no duty under any of the following provisions of this Part. The duty to review is ongoing until the local housing authority owes no further duty to the applicant." (section 189A(9)) This is important because the changing needs of the applicant and their family could affect the suitability of any future accommodation offered to them.

20. In considering the standards required to fulfil the duty I have taken account of the guidance on these duties in the *Homelessness Code of Guidance for Local Authorities, 2018 ("the Code").* The most relevant parts of the Code are included in part 11: (underlined emphasis added)

> ***Assessment of circumstances and needs (section 189A (2))***
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> *11.7 Applicants who are eligible and homeless or threatened with homelessness must have an assessment of their case, which includes assessing:*
>
> *a. the circumstances that have caused them to be homeless or threatened with homelessness:*
>
> *b. their housing needs, and what accommodation would be suitable for them, their household and anybody who might reasonably be expected to live with them; and,*
>
> *c. the support that would be necessary for them, and anybody who will be living with them, to have and sustain suitable accommodation.*
>
> *11.8 When assessing the circumstances leading to a threat of homelessness housing authorities will need applicants to provide all relevant information to inform their assessment. This will usually include enquiring into their accommodation history at least as far back as their last settled address, and the events that led to them being threatened with or becoming homeless.*
>
> *11.9 Applicants should be encouraged to share information without fear that this will reduce their chances of receiving support, and questions should be asked in a sensitive way and with an awareness that the applicant may be reluctant to disclose personal details if they lack confidence that their circumstances will be understood and considered sympathetically. Housing authorities should ensure staff have sufficient skills and training to conduct assessments of applicants who may find it difficult to disclose their circumstances, including people at risk of domestic abuse, violence or hate crime.*
>
> *11.10 When assessing the housing needs of an applicant housing authorities will need to consider the individual members of the household, and all relevant needs. This should include an assessment of the size and type of accommodation required, any requirements to meet the needs of a person who is disabled or has specific medical needs, and the location of housing that is required. The applicant's wishes and preferences should also be considered and recorded within the assessment; whether or not the housing authority believes there is a reasonable prospect of accommodation being available that will meet those wishes and preferences.*

11.11 An assessment of the applicant's and household member's support needs should be holistic and comprehensive, and not limited to those needs which are most apparent or have been notified to the housing authority by a referral agency. Housing authorities will wish to adopt assessment tools that enable staff to tease out particular aspects of need, without appearing to take a 'checklist' approach using a list of possible needs. Some applicants may be reluctant to disclose their needs and will need sensitive encouragement to do so, with an assurance that the purpose of the assessment is to identify how the housing authority can best assist them to prevent or relieve homelessness.
11.12 Some applicants will identify care and support needs that cannot be met by the housing authority; or which require health or social care services to be provided alongside help to secure accommodation. Housing authorities should be mindful of duties under the Care Act 2014 including those relating to assessment and adult safeguarding; and the use of Care Act powers to meet urgent care and support needs where an assessment has not been completed.
Arrangements for carrying out assessments
11.13 Housing authorities should provide assessment services that are flexible to the needs of applicants. The Secretary of State considers an individual and interactive process will be required to fully and effectively assess circumstances and needs. Whilst advice and information services could be provided via an online process, housing authorities could not rely solely on such means to complete assessments into individual circumstances and needs for people who are homeless or threatened with homelessness within 56 days.

[…]

11.16 Assessments should be specific to the applicant and the results of the assessment must be notified in writing to them.
Reasonable steps
11.18 Housing authorities should work alongside applicants to identify practical and reasonable steps for the housing authority and the applicant to take to help the applicant retain or secure suitable accommodation. These steps should be tailored to the household, and follow from the findings of the assessment, and must be provided to the applicant in writing as their personalised housing plan.
11.19 Housing authorities will wish to develop resources and tools that can be used regularly to address common issues, whilst also ensuring genuine personalisation in response to the wide range of circumstances and needs experienced by applicants. The Secretary of State expects this to result in significant variation in the staff time and other resources invested with each applicant in accordance with the nature and complexity of the issues they face.
11.20 Personalised housing plans should be realistic, taking account of local housing markets and the availability of relevant support services, as well as the applicant's individual needs and wishes. For example, a plan which limited the search for accommodation to a small geographic area where the applicant would like to live would be unlikely to be reasonable if there was little prospect of finding housing there that they could afford. The plan might instead enable the applicant to review accommodation prices in their preferred areas as well as extending their home search to more affordable areas and property types. In their interactions with applicants, housing

authorities are encouraged to provide sufficient information and advice to encourage informed and realistic choices to be identified and agreed for inclusion in the plan.
[…]

Process and timing
11.24 Housing authorities are required to notify applicants of the assessments they have made, and also provide written personalised housing plans. In practice, these two notifications might be combined to provide a clearer response to applicants.
11.25 The duty to issue written notifications should not prevent a housing authority from taking immediate action to assist an applicant where necessary. […]

11.26 Where initial prevention or relief work is undertaken in parallel with the assessment and planning process it follows that in some cases successful prevention or relief will have been largely achieved before the assessment and personalised housing plan have been completed and the applicant has been informed in writing. Where this is the case, the record of actions taken might be included in the section 189A assessment, whilst any further steps needed to sustain the accommodation arrangements are included in the personalised housing plan.

[…]

Reaching agreement and reviewing the plan (section 189A(4) to (11))
11.29 Housing authorities should make every effort to secure the agreement of applicants to their personalised housing plans. Identifying and attempting to address personal wishes and preferences will help achieve that agreement, and improve the likelihood that the plan will be successful in preventing or relieving homelessness.
11.30 If the housing authority is unable to reach an agreement with the applicant about the reasonable steps to be included in their personalised housing plan, they must record why they could not agree; and provide the written plan to the applicant indicating what steps they consider it reasonable for the applicant and the housing authority to take.
[…]

11.32 Assessments and personalised housing plans must be kept under review throughout the prevention and relief stages, and any amendments notified to the applicant. Housing authorities will wish to establish timescales for reviewing plans, and these are likely to vary according to individual needs and circumstances. Some applicants will need more intensive housing authority involvement to achieve a successful outcome than others, and the timescales for regular contact and reviews should reflect this. […]
11.33 If the housing authority become aware that the information the applicant has provided for their assessment is inaccurate or if there is new information or a relevant change in the applicant's circumstances and needs there will be a need to initiate a review of the assessment and plan. The

> *housing authority should also arrange a review if they believe the applicant is not cooperating with the personalised housing plan for whatever reason.*
> *11.34 If the housing authority considers that their assessment of the applicant's circumstances and needs have changed, or that the agreement reached as to reasonable steps is no longer appropriate they must notify the applicant in writing. The housing authority must notify the applicant if it considers any of the agreed steps are no longer appropriate, and there will be no consequence of failure to take any of the 'removed' steps after written notification is given.*
> *11.35 For practical purposes a review of the plan might be conducted by telephone, email or video-link, especially if the applicant is unable to or declining to attend office-based appointments.*
> *11.36 Applicants have a right under section 202 to request a review of the steps the housing authority is to take under sections 1898(2) and 195(2) which includes having regard to their personalised housing plan within the prevention and relief stages. Housing authorities should encourage applicants to raise any concerns they have about their plan and work to resolve disagreements to minimise the occasions on which the applicant will feel the need to request a review.*

21. I have also taken account of the principles derived from the leading case on the nature and scope of a local authority's duties under section 189A of the 1996 Act, *XY v London Borough of Haringey* [2019] EWHC 2276 (Admin). The following extracts from that judgment in particular outline the principles relevant to this case: (emphasis added)

> "51. Section 189A is prescriptive as to the matters which a local housing authority must assess: the circumstances that caused the homelessness, the "housing needs" of the applicant including the suitability of any accommodation for the applicant and others living with her, and "the support" necessary for the applicant and others living with her to have and retain suitable accommodation. This is clearly an important duty, as it informs the nature of the accommodation that must be provided for the applicant, as well as her support needs to retain that accommodation. The assessment does not, in my judgment, have to deal with and set out every need that an applicant might possibly have. It should, however, set out the key needs: those that would provide the "nuts and bolts" for any offer of accommodation: c.f. R (S) v. Waltham Forest LBC [2016] EWHC 1240 (Admin) at [92].
>
> […]
>
> 54. In my judgment, the assessment and the agreement or steps do not need to be recorded in one document, as Mr. Johnson urged upon me. There is nothing in the statutory language that mandates a single document, whether initially or following review. Nor is this construction dictated by the realities of those working in the housing department. As a practical matter, it

> would be expected that the housing officer dealing with a particular case would read all of the housing file, so as to be fully acquainted with the background and needs of the applicant and her family. It is not necessary for those needs to be set out in one document.
>
> […]
>
> 56. The London Borough of Haringey carried out an initial assessment of XY and produced a PHP on 17th December 2018. In my judgment, the initial assessment was inadequate as it did not set out XY's primary housing need, which was for her to have a property close to her parents' home. In the assessment and PHP, this was described as XY's "housing wishes", rather than as her housing needs.
>
> […]
>
> 62. I acknowledge that this Court should not treat the documents in the housing file as if they were a piece of exquisite draftsmanship, and a commonsense approach should be taken. The Court should ask itself how a reasonable and sensible housing officer would understand what had been written. […]"

The arguments on behalf of ZK

22. Ms McAndrew on behalf of ZK argues that the Defendant has failed and continues to fail to assess the housing needs of ZK and his family, and to provide him with a PHP setting out the steps required for him to have and retain suitable accommodation in a manner that is compatible with the mandatory statutory requirements. While the HNA and the PHP represent two aspects of the duty on the Defendant under s.189A of the 1996 Act, the arguments relating to the Defendant's failure to provide naturally overlap somewhat. I will summarise her main points here.

23. Firstly, she says that the various documents submitted by the Defendant including three PHP's, the Williams Report and the Support Plan, whether taken together or separately, do not constitute a HNA compliant with the mandatory requirements of section 189A of the 1996 Act. Ms McAndrew submitted that "a reasonable and sensible housing officer picking up the Claimant's file... could not be expected to: (i) identify all documents relied upon as forming part of the Claimant's HNA and/or PHP; nor (ii) understand the Claimant's key housing needs."

24. Secondly, she argues that the Williams Report may not be considered as a HNA as it is expressly intended to be an assessment of the suitability of the previous accommodation rather than an overall assessment of the housing needs of ZK and his family. While it identified key reasons that the previous accommodation was unsuitable, it cannot determine the Defendant's assessment of the general suitability of

any future properties it may offer the family. The Williams Report, she argues, can therefore not remedy the gaps in the third PHP or be considered as a HNA.

25. Thirdly, Ms McAndrew says that none of the documents relied on by the Defendant includes an adequate assessment of the circumstances in which ZK became homeless as required by Section 189A(2)(a). She argues that, while the third PHP refers to the fact that the Claimant approached Housing Solutions after being given notice to leave NASS accommodation by the Home Office and the Williams Report records the fact that the Claimant and his family had been repeatedly required to move between different temporary accommodation, neither of these is an adequate assessment. She noted, in particular, that no explicit link was made between ZK's homelessness and his refugee status and there was no recognition of the inherently traumatic nature of the circumstances that led to ZK and his family's homelessness.

26. Fourthly, Ms McAndrew says that none of the documents could be seen to address the "nuts and bolts" of ZK and his family's housing needs. She says that the documents provided by the Defendant generally describe discussions and comments made by ZK rather than providing an assessment of needs. Similarly, she notes that the documentation refers to "wishes" rather than "needs" which she says is not sufficient to satisfy the statutory requirement of a needs assessment under s.189A of the 1996 Act. As a result, she argues that a "reasonable and sensible" housing officer reading the Third PHP in particular would not understand that ZK had a fundamental need for secure and settled accommodation. She adds that such a hypothetical officer would not be able to tell whether the Defendant had even considered that the Claimant had such a need and decided that he did not.

27. Ms McAndrew says that there is a failure to address the needs or describe the circumstances of other family members in any detail in any of the documents provided by the Defendant. Although there is a mention of ZK's daughter having special educational needs and receiving support at her current school, there is no specific assessment of what that might mean in terms of housing needs. Similarly, while there is mention of issues relating to noise in the previous accommodation, she says there is no express finding that the family needs to be housed in a quiet environment.

28. Although the Claimant accepts that the HNA need not deal with each and every potential need that ZK and his family may have, it was argued that, in response to evidence provided by ZK as to their needs, it was incumbent on the Defendant to consider the materials and either accept that the family has some or all of the needs claimed, or, explain why the Defendant does not accept some or all of those needs.

29. Ms McAndrew argues that the documents do not identify the support which ZK and his family require in order to have and retain suitable accommodation contrary to section 189A(2)(c). This is connected to the alleged failure to provide ZK with a lawful PHP. As Ms McAndrew explained, a PHP must follow from the findings of the HNA. Therefore, if the HNA was unlawful, any PHP based upon that HNA is necessarily unlawful.

30. In relation to the Third PHP in particular, Ms McAndrew pointed out several flaws. She said that the steps set out in the document were out of date and therefore the PHP was no longer relevant, and the steps could no longer be considered as practical,

reasonable or rational. She also argued that the suggested steps in the Third PHP relating to private rented sector accommodation were inappropriate as this type of accommodation was likely unaffordable for the Claimant and would not provide long-term secure accommodation of the kind needed by ZK and his family. Finally, Ms McAndrew noted that the Third PHP was not agreed by the Claimant but that there was no indication of or explanation for this in the PHP contrary to the requirements of section 189A(6) of the 1996 Act.

31. On the second ground of irrationality, Ms McAndrew submitted that the Defendant had failed to take account of relevant considerations and/or placed reliance on irrelevant considerations. In particular, she argued that the conclusions in the documents are unsustainable on the basis of the evidence before the Defendant and that the steps set out in the Third PHP are irrational as they are either in the past and/or inappropriate for resolving ZK's housing needs.

32. In support of her arguments, Ms McAndrew says that the Defendant's position in relation to its obligations under section 189A was unclear at the time the proceedings were issued. And she noted that the Defendant's position in relation to two of the five core needs ZK argues for was only clarified at the hearing.

Arguments on behalf of the London Borough of Havering

33. The Defendant accepts that it has owed an ongoing duty to the Claimant to provide both a HNA and a PHP in compliance with section 189A since 2019. Mr Lane, on behalf of the Defendant, also recognised the extremely difficult and upsetting situation ZK and his family have been in for many years, exacerbated by the fact that they do not have secure, long-term housing. The Defendant contends, however, that it has discharged this duty lawfully through the various documents that it has provided to the Claimant including three PHPs, one Support Plan and the Williams Report. And Mr Lane pointed out that the factual and legal context of ZK's situation had changed significantly since the proceedings were issued with the effect that, regardless of the position at the start of proceedings, the position as pertains now, is that those duties have been satisfied. In particular, ZK and his family have now been offered and have accepted new accommodation. While ZK does not accept that the new accommodation is suitable, he does have an alternative route to review the suitability of that accommodation that is not related to these proceedings.

34. Mr Lane submitted in essence that the documentation provided by the Defendant should be considered as a "living document". In this context, it was adequate and serving its purpose as a lawful HNA and PHP. He pointed out that the Williams report, in particular, identified ZK's needs and that the recommendations in that report in relation to the suitability of the previous accommodation had the practical effect of the Defendant offering ZK the current accommodation that they now live in and which responds to at least two of the core needs identified – it is ground floor accommodation close to the children's school.

35. The Defendant recognised the genuine medical issues and the history of trauma facing ZK and his family. If these and other matters were not referred to in detail in the documentation, that did not mean they were not taken into account. By taking "a

commonsense approach", what was written would be sufficient for a "reasonable and sensible housing officer" to understand the context sufficiently.

36. While accepting on behalf of the Defendant, that long-term, secure accommodation was a core need for ZK and his family in light of their personal circumstances, Mr Lane argued that this need could only be met effectively by way of public housing allocation under Part 6 of the 1996 Act. As such, he said that steps towards this need could not practically be included in a PHP under Part 7 which would only be relevant to temporary accommodation.

37. Save for the question of the number and size of bedrooms needed, Mr Lane argued that there is no substantial disagreement between the parties as to the family's housing needs and the Defendant continued to discharge its duties towards ZK and his family as evidenced by the recent move to the current accommodation. Both parties now agree that the following are core housing needs in this case:

    i. Secure, long-term accommodation;
    ii. Safe and easy access to accommodation on either ground floor or by a small number of steps;
    iii. Accommodation close to the children's current school in Havering;
    iv. Accommodation in a relatively quiet area.

    They do not agree on the number of bedrooms required for the family. ZK says they need 4 bedrooms and the Defendant says that 3-bedroom accommodation would be suitable.

Analysis of the Grounds of Challenge

38. There is no disagreement between the parties that a duty is owed by the Defendant, under section 189A of the 1996 Act to provide a lawful HNA and a lawful PHP to the Claimant in this case. The question for me, therefore, is whether, in this particular case, the documents provided by the Defendant discharge that duty in a way that is lawful and rational.

39. It is clear from the arguments before me that, while there is a distinction to be made between the duty to provide a HNA and the duty to provide a PHP, the two duties are intrinsically linked. It is also apparent that, while the HNA needs to address the "nuts and bolts" of an applicant's housing needs (c.f. *R (S) v. Waltham Forest LBC* [2016] EWHC 1240 (Admin) at [92]), it does not necessarily need to do so in one clearly indexed document (c.f. *XY v London Borough of Haringey* [2019] EWHC 2276 (Admin) at [54]). Similarly, there is no requirement that the HNA and the PHP are produced as two separate documents. There is, however, a requirement that the HNA and the PHP are communicated to the applicant in writing. To decide whether or not the duty on the local authority to provide a lawful HNA and/or a lawful PHP has been discharged requires, therefore an assessment of the totality of the written housing file as it might be viewed by a "reasonable and sensible housing officer." The documents provided by the Defendant to support their case that their duty under section 189A has been discharged include three PHP's, one support plan and the Williams Report. I have considered all these documents in reaching my judgment in this matter.

40. I note the observations of Lord Neuberger in *Homes-Moorhouse v Richmond upon Thames LBC* [2009] 1 W.L.R. 413 with respect to statutory review decisions:

> "47. ...are prepared by housing officers, who occupy a post of considerable responsibility and who have substantial experience in the housing field, but they are not lawyers. It is not therefore appropriate to subject their decisions to the same sort of analysis as may be applied to a contract drafted by solicitors, to an Act of Parliament, or to a court's judgment.
>
> […]
>
> 50. Accordingly, a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit- picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions."

41. In my consideration of the lawfulness of the Defendant's approach, therefore, I have taken account of the documents submitted as a whole rather than looking for internal inconsistencies on specific documents. And I have adopted the approach set out by DHCJ Clive Sheldon QC at para 54 of his judgment in *XY* that the court should take a holistic approach when addressing the section 189A duties and essentially consider substance rather than form. It is not for the Court to assess the housing needs of ZK and his family or to go behind the judgment of the local authority unless it is obviously inadequate and therefore Wednesbury unreasonable. However, I do need to decide whether the needs identified, in particular the four core needs that are now agreed, are adequately reflected in the documentation provided by the Defendant to be considered as a lawful HNA. These four core needs may properly be considered to be the "key needs: those that would provide the "nuts and bolts" of any housing offer" [*XY v Haringey LBC* at para 51] for ZK and his family. These must, therefore, be clearly identifiable and apparent as current and ongoing needs in the documentation.

42. In my judgement there is an important distinction to be made between an applicant's "needs" and an applicant's "wishes." While there may be some crossover between the two, it is clear that "needs" are required whereas "wishes" are merely desirable. A "reasonable and sensible housing officer" reading the claimant's file should be able to understand what is needed as distinct from what would be 'nice to have' when considering the suitability of current or future accommodation. I have looked at the housing file as a whole, but, while there are observations relating to the core needs, I cannot see that these are clearly identified as "housing needs" accepted by the Defendant. In particular, the third PHP repeatedly uses the phrase *"you have advised"* in the basic assessment information section. A further section entitled *"Wishes to resolve your housing situation"* goes on to say: *"Your wishes to resolve your housing situation: You stated the assistance which would be helpful would be helping you*

secure a suitable stability [sic] home for your wife and your children. You stated that you would like an extra bedroom to accommodate yourself due to your medical issues."

43. The email dated 3 February 2022 from Ms Williams following the Home Visit and Housing Review does include concrete recommendations regarding the suitability of the previous accommodation, in particular the location and the problem of stairs to access the property. This might be understood, by the "reasonable and sensible housing officer" to reflect two of the core needs of ZK and his family. But it is in relation to the previous accommodation rather than an overall assessment of needs and it was not addressed to the Claimant. While this goes some way to addressing the lacunae in the third PHP and preceding documents insofar as the understanding of a reasonable and sensible housing officer looking at the file, it is not sufficient to make the file as a whole sufficiently detailed in relation to ZK and his family's needs so as to comply with the requirements of section 189A of the 1996 Act. And it does not fulfil the requirement for "housing needs" to be set out in writing and shared with the applicant.

44. Ms McAndrew argued that there were many other deficiencies in the documentation provided by the Defendant including a failure to adequately address the circumstances that caused the homelessness, the physical and mental health of other family members, or to engage with the evidence provided by ZK about the connection between his need for stable, long-term accommodation and his ongoing and severe mental health issues. In my judgement, while section 189A sets out requirements for the issues that must be covered in an HNA, it does not require a particular level of detail or format for addressing these points. They are important because they inform an assessment of needs. But they do not need to be set out in forensic detail.

45. Taking together the various PHPs and the Williams Report (the documents that were provided to ZK) I find that the distinction between the Claimant's "wishes and desires" and his "needs" is not sufficiently clear as for it to be obvious to the "reasonable and sensible housing officer" what exactly is needed for the Claimant and his family to find and retain suitable accommodation. The three PHPs make reference to "housing wishes" and there are notes throughout the documentation making reference to issues the Claimant has advised about including health issues, information about his family and matters relating to the four core needs and the Claimant's assertion that they need an extra bedroom. However, taken together, these observations do not amount to an assessment or identification of the Claimant's housing needs that is accepted by the Defendant. For these reasons, in my judgement, the current file does not constitute an adequate and lawful assessment of ZK's needs as required under s.189A of the 1996 Act.

46. I have taken account of the documents shared by the Defendant with the Claimant including the First PHP (22 March 2019), the Second PHP (28 October 2020), the Third PHP (1 November 2021) and the Williams Report (27 January 2022) as well as the follow up email with recommendations from Ms Williams (3 February 2022) and the "Support Plan" from June 2020 which was not shared with the Claimant. I have also noted the expert evidence the Claimant shared with the Defendant. Considering the documentation "holistically", in my judgement it does not adequately set out the "nuts and bolts" of the Claimant and his family's housing needs, as opposed to their wishes, such that a "reasonable and sensible housing officer" would understand what their key housing needs are in order to assess the suitability of current and future

accommodation. As such, in my judgement, the Defendant has not fulfilled its duty under section 189A to provide the Claimant with a lawful HNA. In addition, the steps set out in the Third PHP were not sufficiently clear or relevant at the time and, as the current housing situation of the Claimant and his family is now substantially different, there is an ongoing requirement for a lawful PHP which is not currently met.

47. Having found that the Defendant has failed to fulfil its duty to provide a lawful HNA and PHP under s.189A of the 1996 Act, I do not find that considering the issue of irrationality under Ground 2 is necessary as it would make no material difference to the outcome.

48. In conclusion, I consider that the London Borough of Havering acted and continues to act unlawfully in providing an inadequate assessment and PHP for ZK. As the HNA and PHP are "living documents" I do not consider it useful to quash the Third PHP. I note that, despite the failure to provide a lawful HNA and/or PHP, it has become clear, in recent correspondence in the proceedings and during the hearing, that the Claimant and the Defendant are in fact substantially in agreement as to the Claimant and his family's core housing needs but there is still an ongoing duty to set out those needs in writing in a manner that fulfils the requirements of s.189A of the 1996 Act.

Disposal and relief:

49. For the reasons I have given, the Defendant has acted unlawfully by failing to carry out its duties under s.189A of the 1996 Act.

50. I propose to make the following orders sought by the Claimant:
1) A declaration that the defendant has failed properly to carry out its duties under s.189A and a mandatory order requiring the Defendant to make a lawful housing needs assessment and personalised housing plan in compliance with that duty.
2) I will consider any submission on the precise wording and, if possible, the wording to be agreed between the parties in an agreed draft order for the court.
3) However, I decline to make the mandatory order, which I am invited to make by the Claimant to quash the Third PHP as I believe that this forms part of a "living document".
