



Neutral Citation Number: [2022] EWHC 2813 (Admin)

Case No: CO/3125/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 November 2022

Before:

Paul Bowen KC sitting as a Deputy Judge of the High Court

Between:

The King (on the application of YR)
- and -
London Borough of Lambeth

Claimant

Defendant

Joshua Jackson (instructed by **Hansen Palomares Solicitors**) for the **Claimant**
Mathew McDermott (instructed by **the London Borough of Lambeth**) for the **Defendant**

Hearing dates: 18-19 October 2022

APPROVED JUDGMENT

This judgment was handed down remotely, the date for hand-down is deemed to be on 8 November 2022.

Paul Bowen KC sitting as a Deputy Judge of the High Court:

Introduction

1. I am concerned with an application for judicial review of the decision of the London Borough of Lambeth ('the Defendant') dated 17 August 2022 assessing the Claimant and her family's housing needs arising out of their homelessness and the steps taken on 18 August 2022 to meet those needs, including by the provision of interim accommodation, under Part 7 of the Housing Act 1996 (the 1996 Act). The gravamen of the Claimant's complaint is that the interim accommodation is not suitable for her and her family to occupy because of its location so far from her previous home, and the children's schools, in Lambeth. This has required her and her family of seven children to move from Lambeth which has caused, and will continue to cause, significant impact and disruption to her and, in particular, to the children, who will have to move schools if a further offer of suitable accommodation is not made. The grounds of review allege that the Defendant has failed to discharge its duty to carry out a lawful housing needs assessment and to produce a lawful personalised housing plan under s 189A of the 1996 Act (as introduced by the Homelessness Reduction Act 2017 (the 2017 Act)) taken with s 11(2) of the Children Act 2004; is in breach of its duty to keep that assessment and plan under review, contrary to s 189A(9) and s 11(2); has failed to apply its own homelessness placements policy; and is in breach of its continuing duty under s 188(1), read with s 206 and 208 and in the light of s 11(2), to provide the Claimant and her family with interim accommodation which is 'suitable' and which, so far as reasonably practicable, is in or near Lambeth.
2. This matter came before me on an expedited basis following the grant of permission on 16 September with further directions on 27 September 2022, both by Antony Dunne DHCJ. The case raises some novel questions concerning the duties introduced by the 2017 Act and their interrelationship with existing duties under Part 7 of the 1996 Act. Given the complexities of the issues I reserved judgment. I am grateful to Counsel for their helpful written and oral submissions.
3. I am satisfied that the anonymity order made by Ockleton DHCJ, Vice-President of the Upper Tribunal, and which I ordered should continue in force during the hearing and until my judgment, should continue indefinitely. The Claimant and her family members have all been anonymised pursuant to CPR 39.2 given the private nature of much of the information and to protect the interests of the seven children of the family which outweighs the public interest in identifying them. The report of this judgment can, however, be published in its current form.

Factual background

4. The Defendant is a local authority with housing duties under, materially, Part 7 of the 1996 Act.
5. The Claimant is a homeless single mother responsible for the care of seven children whose ages range between 4 months and 16 years. A, her youngest child, is 6 months old; R is 4; Y is 7; B is 9; H is 12; J is 12; and S is 16. The

Claimant is the mother of three of the children, J, B and A; the other four (S, H, Y and R) are children by the Claimant's husband and the Claimant's sister, making the seven children both half-siblings and cousins. Until December 2021 the children were being cared for by the Claimant's sister in the Dominican Republic. The Claimant has power of attorney to make decisions on behalf of her sister's children.

6. The Claimant was born in the Dominican Republic but is a Spanish national. Her English is poor. She moved to the UK, on her own, in 2018. She has applied for, and been granted, 'pre-settled status' under the EU Settlement Scheme and will be entitled to 'settled status' in 2023, as will the dependent children. She was in employment in cleaning and hairdressing roles until August 2021 when she became pregnant with her youngest child. The Claimant has lived at a number of addresses in the UK but has been settled in the London Borough of Lambeth since December 2021. At that time, she was joined in the UK by her husband, her two elder children and his (and the Claimant's sister's) four children from the Dominican Republic. The family were unable to stay where the Claimant was then living and became homeless. They were taken in by a lady who lives locally, Ms. GS, who lives in Lambeth. The Claimant and Ms. GS have since become good friends. In January 2022 the Claimant and her family had to move out of Ms. GS's home and were temporarily accommodated by the Defendant in a two-bedroom flat in London SW6 ('the Lambeth flat'). Six of the children have been enrolled in secondary and primary schools in Lambeth, five since February or March 2022 and one since September 2022. They are reported to have made friends, have positive relationships with their teachers and to be progressing academically. In March 2022 the Claimant's relationship with her husband broke down and she commenced divorce proceedings. Her youngest daughter, A, was born on 10 May 2022. She is now a single mother with seven dependent children.
7. The Lambeth flat was unsuitable given its limited size for such a large family (two rooms with kitchenettes, two beds, a bathroom and patio). The Claimant's solicitors wrote to the Defendant on 25 July 2022, highlighting the unsuitability of the property and seeking a 3-4 bedroom property in the borough within reasonable proximity of the children's schools and employment opportunities for the Claimant. A formal application for homelessness assistance under s 183 of the 1996 Act was submitted to the Defendant on 29 July 2022, together with a request for interim accommodation under s 188(1). This highlighted the Claimant's eligibility for assistance, the fact that the children were at schools in Lambeth and the family's limited finances. An application was also made for children in need assessments for each of the children under s 17 Children Act 1989. The Defendant's social work department confirmed that s 17 assessments would be carried out on 17 August 2022. I am informed these were completed on 18 October 2022, although I have not seen copies. It appears this process was begun as early as January 2022, as I have seen a document titled 'CSC Child and Family Assessment' dated 1 February 2022, which predates the decision in this case and was completed before the children entered school. This document, among other things, had recommended that the family be provided with suitable accommodation and that the children be enrolled in local schools.

8. On 17 August 2022 the Claimant was interviewed in connection with her housing application by a Housing Adviser with the Defendant, Ms. Scott. The interview took place by telephone, with the assistance of a Spanish speaking interpreter. No face to face interview was carried out. The Claimant states that during the interview no questions were asked about the Claimant's family circumstances or the children's needs. No record of this interview has been produced by the Defendant and there is no evidence from Ms. Scott which contradicts the Claimant's evidence. On the same day, Ms. Scott completed a 'Relief Assessment and Personalised Plan' ('RAPP'), which purported to discharge the Defendant's duty to conduct a housing needs assessment and prepare a personalised housing plan under s 189A of the 1996 Act. The Claimant's first Ground of judicial review relates to the alleged inadequacy of this document in discharging those duties and I will need to consider this in more detail.
9. According to the Defendant's evidence, there were no suitably sized properties for the Claimant and her family available in Lambeth on 18 August 2022. On that morning, Ms. Scott informed Mr. Varghese that *'The placement team have no properties in Lambeth – the family are likely to be housed outside the borough - Romford and Gillingham!'* Later that morning, the Defendant contacted the Claimant to offer her a four-bedroom property in East Tilbury, Essex ('the Property') by way of interim accommodation under s 188(1) of the 1996 Act. The Offer Letter stated: 'We believe that the property is suitable for your occupation. We may take into account the interim nature of a placement when assessing whether or not it is suitable, as accommodation may be suitable for a few days or weeks that would not be suitable for a longer term placement. In making this offer we have taken into account information on your housing file, including our assessment of your housing needs.' The letter warned the Claimant that if she refused the offer, the Defendant would cease to be under a duty to provide accommodation under s.188(1) and would not provide her with further accommodation whilst her claim was assessed. The letter recorded that because this was interim accommodation there was no statutory right of review under s 202 of the 1996 Act, but that 'you can request an internal review if you consider the offer is unsuitable'.
10. East Tilbury is a village with a population of c.6000 in Essex, in the local authority area of Thurrock Council. The Claimant's evidence is that the commute from the village to central London takes over an hour (at a cost of £17.40 for an adult return) and four hours by bus. The location of the Property, in particular the distance from Lambeth and central London, causes (she says) considerable disruption for her and her family in terms of securing employment for herself; the children's education; social isolation (separating her from her support networks) and affordability (it is said that the cost of living is higher in Tilbury than in London when the higher costs of basic foodstuffs in smaller local stores and transport costs are factored in).
11. The Offer Letter was accompanied by two further documents, the RAPP and a cover letter to the Claimant from the Defendant headed 'Re. Your homeless assessment 17.08.2022' ('the Cover Letter'). The RAPP records, under the heading 'Assessment', that the Defendant accepted the Claimant was homeless

and eligible for assistance under Part 7 of the 1996 Act and that it owed her a duty under s 189B(2) of the 1996 Act ‘to take reasonable steps to help you to secure that suitable accommodation becomes available for your occupation’. The circumstances that caused the family to be homeless were recorded as the fact the existing temporary accommodation is ‘unsuitable for family size’; the housing needs of the applicant were identified as a ‘4/5 bed need suitable accommodation/ affordable’. The Claimant points out that a 3/4 bedroom property would be sufficient to meet the family’s requirements. The document then identified that it was her ‘wish’, rather than a ‘need’, to be in ‘Lambeth in suitable accommodation’. Under the heading ‘Personalised Plan’ the RAPP records the ‘steps to be taken by the Council to help the applicant retain suitable accommodation’ as: ‘PRS [Private Rented Sector] Accommodation – Provide information on LHA rates/ affordable areas ... Provide information on renting in the private sector’. The Cover Letter included the following: ‘How must the Council help me? We must - take reasonable steps to help you find housing that is suitable and available for at least six months - provide suitable temporary accommodation’. The Cover Letter explained that, if the Claimant disagreed with the assessment, she could ask for a statutory review (under s 202) of ‘what steps we’ll be taking to help you find accommodation’ under the ‘housing plan’ and ‘our decision about the duty you are owed under s 189B’ of the 1996 Act. However, it stated, ‘the only way you can challenge the suitability of your temporary accommodation [under s 188(1)] is by applying for judicial review’.

12. The Claimant complains that the RAPP and the Cover Letter *do not*: contain any reference to, or any assessment of, the welfare needs of the Claimant’s children, in particular how their education would be disrupted by an out of area move to East Tilbury or the availability of school placements in the Thurrock area; any reference to the Defendant’s ‘Housing ‘Placements Policy’ dated February 2022 (the ‘Placements Policy’) or any consideration of whether the Claimant fell within ‘Group B’ for priority accommodation in the area of Lambeth by virtue of the fact the eldest child, S, was due to start Year 11 (see further, paragraph 16 below); identify the Claimant’s support networks in Lambeth or the difficulty she would have in maintaining those networks, and in finding employment, if she was moved out of the borough; record that it was the Claimant’s ‘need’ to be housed in Lambeth as opposed to that being merely her ‘wish’. These omissions lie at the heart of the Claimant’s claim for judicial review, considered in more detail, below.
13. Following the offer of accommodation on 18 August 2022, the Claimant responded the same day, through her solicitors, asking for the offer to be withdrawn. The solicitors’ letter explained that the Property was unsuitable because of its distance from Lambeth, the disruption a move would cause to the children’s schooling and the Claimant’s loss of support from a friend living in the borough, particularly with helping provide care for her young baby. If the offer was not withdrawn the Claimant would accept the offer, but would ask for a change in accommodation. The Defendant responded the same day, acknowledging the disruption likely to be caused to the Claimant and her family, but contending that it remained satisfied that the property was suitable and refusal might result in discharge of its duty under the 1996 Act. Fearing that the Defendant would not offer her further accommodation if she refused, and

notwithstanding her concerns, the Claimant accepted the offer and moved into the property on 18 August 2022. Following further pre-action correspondence, the Claimant issued these proceedings on 31 August 2022.

14. The Claimant has produced four witness statements in support of her claim in which she sets out, in some detail, the impact upon her and her children if they are required to live in East Tilbury rather than Lambeth. I have read those statements (having given permission to rely upon the last of those) and have had particular regard to the following evidence: the impact and disruption on the schooling of the six school-age children, as described below; the loss of her Spanish speaking support networks, including a number of friends, some of whom she has known since before she came to the UK and – in one case – since 1999, and the impact this will have on the Claimant’s ability to work and care for the children; the prohibitive cost of travel between Lambeth and East Tilbury; and the reduced opportunities for employment outside London for a Spanish speaking individual.
15. As to the children’s education, the Claimant was, and is, faced with a dilemma as to whether to leave them in their existing schools or to enrol them in schools in Thurrock. If she moves them to new schools in East Tilbury it would (it is said) be highly disruptive for the school-age children, who have settled in their schools, despite not being English speakers. If a further offer of accommodation is then made in Lambeth, she will then have to take them out and re-enrol them in schools in Lambeth. Rather than face this risk of double-disruption, shortly before the start of the new term in September, the Claimant arranged for two of her children to stay with family friends in Lambeth so they could attend school. Since 25 September 2022, the whole family has moved back to live with the Claimant’s friend, Ms. GS, so all the school age children are attending their existing schools. The second youngest child has now also started in reception at a school in Streatham, so six of the children are in Lambeth schools. However, the family’s situation with Ms. GS is precarious and it is clearly not sustainable for the long term. The flat has only two bedrooms and Ms. GS has twin babies of her own. If the landlord discovers the Claimant is living there she will have to leave. If no further offer of accommodation is made, the Claimant and her family will have to return to the Property. The dilemma of whether to move the children or leave them where they are will then become more acute.
16. Any move of schools will, it is asserted, be particularly disruptive for the eldest child, S, who started year 11 in September 2022 and takes her GCSEs in the summer of 2023. The Claimant points out that given the presence of a child in year 11 within the household she should be given priority for accommodation closer to Lambeth. The Defendant’s Placements Policy allocates accommodation under three priority categories: Group A are prioritised for accommodation within Lambeth; Group B for accommodation within Lambeth and its ‘local area’ (namely, adjacent boroughs or within approximately thirty minutes travelling time on public transport from any Lambeth boundary); and Group C will be allocated accommodation ‘wherever the borough is able to procure it including outside of London’. The Claimant’s eldest child, S, falls within Group B which includes:

Households with one child (or more) in secondary school in the borough in their final year of Key Stage 4 (normally Year 11).

17. So far as employment is concerned, the Claimant has recently started working part-time as a cleaner in London. She is able to leave her youngest child with a Spanish-speaking friend who lives locally; this support would not be available if she was to be living at the Property. There are also local Spanish-speaking support organisations in Lambeth. Her evidence is that she will be unable to work if she has to live in East Tilbury; the combination of caring for a young baby without her support network and enabling the six older children to get to school (whether in Lambeth or in East Tilbury) will make it impossible for her to work, leaving her caught in the 'benefits cap' trap.
18. The Defendant's evidence is given in a witness statement from Mr. Ogwu, the Defendant's Temporary Accommodation Team Manager. He asserts that the Property is suitable and the children can attend schools in or near East Tilbury. While this may be disruptive, he highlights the fact that the Claimant has only been in Lambeth since January 2022 and the children have only attended schools in Lambeth since February and March 2022. Mr. Ogwu exhibits a document, dated 12 September 2022, prepared by him and titled 'Suitability Assessment'. This document is said by the Defendant to be the review of the Claimant's case as required by s 189A(9) of the 1996 Act and as evidence to demonstrate the suitability of the Property. The Claimant disputes that the document constitutes such a review and submits this is *ex post facto* reasoning to support the original decision. I will need to resolve the status of this document and the weight to be given to it.
19. The Suitability Assessment is a lengthy document so I will highlight the key salient features. One key underlying fact to which it attests is the scarcity of temporary accommodation in Lambeth. As at 7 September 2022, the Defendant was housing 3,469 households in temporary accommodation. 2,593 of these households were families; 1,712 were accommodated outside Lambeth. Larger properties for families are in particularly short supply. For 3 bedroom properties, there are 231 households in temporary accommodation within Lambeth and 486 outside the borough. The corresponding figures for 4 bedroom properties are 17 households within Lambeth and 45 outside. These figures make for stark reading, although the Claimant points out that they do not give any details of how many of those households are accommodated outside, but *near* to Lambeth. The Defendant's '*Homelessness and Rough Sleeping Strategy and Action Plan*', notes that, as of March 2019, the Defendant had 2,315 temporary accommodation properties, 55% of which are outside of the borough but over 90% of the out of borough temporary accommodation is in adjoining boroughs (at p.27). The Claimant would be content with temporary accommodation that is closer to Lambeth, if not in the borough.
20. Against that background of underlying scarcity (at least of in-borough placements), Mr. Ogwu states his opinion that the Property is suitable in relation to opportunities for education, employment, local amenities/ services, transportation and healthcare. Under the heading 'Education', he lists the 10 closest primary schools (all within 3 miles) and secondary schools (all within 3.8 miles) of the Property and states (emphasis added):

Looking at this there are primary and secondary schools local to the address. I am satisfied the property is suitable in terms of the children's access to local education. It is of course up to the client to decide whether to keep her children at the same schools and incur travel costs associated with this or transfer them to schools in the local area.

None of the children as far as I am aware have an Education Health Care plan or are receiving special education needs the disruption of which would have a particularly detrimental effect on their education learning. I have had regard to the children's limited English and the support they may be receiving at their schools, and I am satisfied the same or similar support can be provided at other schools. I accept the location of the children's education may cause some disruption to the children's education. *I have had regard to the fact the none of the children were at a critical stage of their education when the family was placed in this accommodation.* I have also had regard to the severe shortage of accommodation available to the council with which to discharge our statutory duties wherein the highest level of suitability may not be achievable.

I am satisfied the location of the accommodation is suitable having regard to the children's education.

21. He continues:

I have had regard to the Childrens Act in considering this allocation. While I accept it would benefit the children to be located in reasonable proximity to their schools, I have also had regard to the severe shortage of accommodation available to the council in Lambeth or local to it and the particular shortage of family accommodation and larger family accommodation. It is not possible to provide every household who is being accommodated under part 7 with accommodation in close proximity to schools.

22. The Suitability Assessment also addresses the Claimant's concern that she will be cut off from her friends and support network and the impact that has on her ability to find work.

In assessing the continued suitability of this accommodation, I have had regard to the clients preference to be accommodated close to her friends and support in Lambeth and the fact that English is not her first language (the client's first language is Spanish). While I accept that accommodation in close proximity to her friends and support networks might be beneficial I do not accept the present accommodation is unsuitable because it isn't near her friends and support network or that the equality rights of the client and or members of her household been breached by the allocation of this accommodation. I have taken into

consideration the clients desire to find work and the employment support the council can provide to the client to assist her into work.

23. The document also addressed whether the Claimant fell within the Defendant's Placements Policy, Group B, so as to be accorded priority accommodation within Lambeth or its 'local area' because the eldest child, S, was entering Year 11. Mr. Ogwu's conclusion was that she did not, based on his conclusion '*none of the children were at a critical stage of their education when the family was placed in this accommodation*' (above, paragraph 20).

I have had regard to the councils Placements policy – find attached. The overall aim of the policy is to secure where possible accommodation in Lambeth but also recognizes this will not be possible in all cases. The policy therefore priorities certain categories of need for accommodation located in Lambeth and local to Lambeth. *It is not felt that the client falls into either of the priority categories for accommodation in or local to Lambeth as outlined in the policy.*

...

We have had regard to our Placements Policy in allocating this property. It is not felt that the client falls into the category of person who having regard to our Placements Policy needs to be placed in Lambeth or local to Lambeth.

Grounds of judicial review

24. Against that background I turn to the Grounds of judicial review. The Claimant challenges the decision on four Grounds. The first three were raised by the pleadings, and a fourth was raised during the course of the hearing and in respect of which the Claimant needs permission to amend which I consider at the end of the judgment. The three Grounds as pleaded, in summary, are as follows:
- i) Ground 1: the Defendant (i) failed to carry out a lawful assessment of the Claimant and her family's housing needs and/ or (ii) to prepare a lawful personalised housing plan under s 189A(1) of the 1996 Act; and/ or (iii) failed to conduct a lawful review of the Claimant's housing needs under s 189A(9)-(11).
 - ii) Ground 2: the Defendant failed, in the discharge of its housing functions, to 'have regard to the need to safeguard and promote the welfare' of the Claimant's children as required by s 11(2) Children Act 2004.
 - iii) Ground 3: the Defendant is in breach of its continuing duty under s 188(1), taken with s 206 and s 208, to provide 'suitable' accommodation that 'so far as reasonably practicable' is in the Lambeth area, in that: (i) the decision was based on an unlawful s 189A assessment and review; (ii) the authority unlawfully failed to apply its own Placements Policy that an applicant with a child entering Year 11 will be afforded priority

accommodation within the Lambeth area; (iii) the decision that the property is ‘suitable’ for the purposes of s 206, 208 and the Homelessness (Suitability of Accommodation) (England) (Order) 2012 (the ‘Homelessness Order’) was irrational.

Legal Framework

Duties to assess for and provide accommodation: Part 7 Housing Act 1996

25. As Baroness Hale explained in *R (Aweys) v Birmingham City Council*, (HL) [2009] 1 WLR 1506 [17-19], ‘Homelessness gives rise to a graduated series of duties on the local housing authority’ under Part 7 of the 1996 Act. Any person who is homeless or threatened with homelessness may apply to a housing authority for accommodation under s 183. If the authority has ‘reason to believe’ that an applicant ‘may be homeless or threatened with homelessness’, they must ‘make inquiries in order to satisfy themselves whether he is eligible’ for their help and if so what duty, if any, they owe to him under Pt 7 (s 184) (the ‘**duty to make inquiries**’). The authority has an interim duty to provide accommodation if they have reason to believe that an applicant ‘may be homeless, eligible for assistance and have a priority need’, whereupon they ‘must secure that accommodation is available for his occupation pending a decision as to what duty is owed’ (s 188(1)) (the ‘**interim accommodation duty**’). ‘Priority need’, materially, includes families with dependent children (s 189(1)(b)). If the local authority are satisfied that an applicant is homeless and has a priority need, and are not satisfied that he became homeless intentionally, then they ‘shall secure that accommodation is available for occupation by the applicant’ (s 193(1) and (2), unless they are able to refer the applicant to another local authority under s.198) (the ‘**full accommodation duty**’). The duty under s 193(2) is ‘immediate, unqualified and non-deferrable’ (*Elkundi v Birmingham CC* (CA) [2022] 3 WLR 71, [77]) and ‘the highest duty which is owed under Pt 7’ (*Aweys*, [19]).

The duties introduced by the Homelessness Reduction Act 2017

26. *Aweys* was decided in 2009. Since then the 2017 Act has amended the 1996 Act with effect from 3 April 2018. The 2017 Act introduces a number of important additional duties which sit within the ‘graduated series of duties’ described by Baroness Hale.
27. First, s 189A(1) creates a duty to make an ‘assessment of the applicant’s case’ (the ‘**initial assessment duty**’). This is a structured assessment duty which is new to the homelessness context but familiar in others, for example under s 9 Care Act 2014. This initial assessment duty supplements the authority’s duty to ‘make inquiries’ under s 184 and requires a higher threshold to be satisfied before it is triggered, namely that the authority *is* satisfied an applicant *is*, rather than *has reason to believe* that they *may* be, homeless or threatened by homelessness and eligible for assistance. In practice, however, the s 184 duty and the s 189A(1) duty will often be discharged at the same time, alongside each other, as they were in this case. By s 189A(2), an ‘assessment of the applicant’s case’ must include an assessment of (emphasis added):

... (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' (emphasis added).

28. What is or may be 'suitable' accommodation for the purposes of s 189A(2)(b) and (c) (and s 188(1)) is considered, below, at paragraph 35. This initial assessment duty applies to all eligible applicants who are homeless or threatened with homelessness, regardless of whether they have a 'priority need'. The duty applies not only to the applicant but also (as s 189A(2)(b) makes clear) to 'any persons with whom the applicant resides': see also the Code of Guidance, paragraphs 11.10 and 11.11. The Code of Guidance also gives guidance as to how authorities should conduct the assessment process, including by the provision of assessment services that are 'flexible to the needs of applicants' and a recommendation that at least one face to face interview should be carried out before the assessment process is completed, particularly where the applicant requests it: paragraphs 11.14-15. In *XY v Haringey LBC* [2019] EWHC 2276 (Admin), Clive Sheldon KC DHCJ emphasised that the initial assessment duty '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' [51]. A lawful s 189A assessment should, 'set out the key needs: those that would provide the 'nuts and bolts' for any offer of accommodation', although 'does not ... have to deal with and set out every need that an applicant might possibly have': *ibid*, [51]. Once the assessment is completed it must be notified to the applicant in writing: s 189A(3).
29. Second, s 189(B)(2) creates a duty, if the authority is satisfied an applicant 'is homeless' and 'eligible for assistance', to 'take reasonable steps to help the applicant to secure that reasonable accommodation becomes available for the applicant's occupation' for up to 12 months. This is the '**relief duty**' (as it is termed in Chapter 13 of the Code of Guidance). The 'reasonable steps' that may be taken include the provision of accommodation, but 'only if the authority decide to discharge the duty by securing that accommodation is so available' (s 205(3)). The duty does not replace the interim accommodation duty under s 188(1) in cases of priority need: in such cases the authority 'must provide interim accommodation under s 188(1) whilst fulfilling the relief duty' (Code of Guidance, paragraph 13.3). I will come back to the interrelationship between s 189B(2) and s 188(1) at paragraph 108, below. The relief duty may come to an end in a number of ways, including (s 189B(4)) after 56 days where the authority are satisfied that the applicant has a priority need and are not satisfied that the applicant became homeless intentionally, i.e. at the point the authority has concluded the applicant is owed the full accommodation duty under s 193(2). Otherwise the duty may end if the authority gives written notice under s 189(5) to that effect because it is satisfied one of the circumstances in s 189(7) are met. The duty may also end if one of the criteria in s 189B(9) are met.

30. Third, s 195(2) creates a duty, in similar terms to that in s 189B(2), which is owed to those who are *threatened* with homelessness and eligible for assistance and requires the authority to ‘take reasonable steps to help the applicant to secure that accommodation does not cease to be available for the applicant’s occupation’. Again, that can include the provision of accommodation (s 205(3)). This is called the ‘**prevention duty**’ (see Chapter 12 of the Code of Guidance).
31. Fourth, in deciding what ‘reasonable steps’ to take in fulfilling the ‘relief duty’ or the ‘prevention duty’ under s 189B(2) or s 195(2), the authority have certain **procedural duties**:
- i) The authority must ‘have regard to their assessment’ under s 189A: ss 189B(3) and s 195(3). The Code of Guidance at paragraph 13.6 states that this duty ‘will assist the authority with understanding the applicant’s particular situation and tailoring the support it provides under the relief duty, both directly and through engaging relevant specialist services’.
 - ii) The authority must notify the applicant in writing of the assessment they have made (s 189A(3)) and ‘try and agree with the applicant’ both ‘the steps the applicant is required to take’ and ‘the steps the authority are to take’ in fulfilling the relief duty or prevention duty under s 189B(2) or s 195(2): s 189A(4) and (5). The Code of Guidance, paragraph 11.18, makes clear that authorities ‘should work alongside applicants to identify practical and reasonable steps’ both the applicant and authority should take to help retain or secure accommodation, which ‘should be tailored to the household, and follow from the findings of the assessment’.
32. Fifth, the authority must record in writing the steps that they have agreed with the applicant that they are to take, and that the applicant is to take, in fulfilling the relief or prevention duty: s 189A(5). If they cannot reach agreement, the authority must record in writing why they could not agree and the steps that the authority consider it reasonable for the applicant to take and the steps that it will take: s 189A(6). The written record should also include any advice the authority considers appropriate: s 189A(7). The authority must then give the applicant a copy of any written record produced under s 189A(5) or (6). This is the ‘**personalised housing plan**’ duty.
33. Sixth, the authority must keep under review both their assessment of the applicant’s needs and the ‘appropriateness of any agreement reached or steps recorded’ in the personalised housing plan (the ‘**review duty**’): s 189A(9). This duty continues until ‘such time as the authority consider that they owe the applicant no duty under any of the following provisions of this Part’: s 189A(9). This duty is reinforced by the Code of Guidance, paragraph 17.8 which states that ‘authorities have a continuing obligation to keep the suitability of accommodation under review, and to respond to any relevant change in circumstances which may affect suitability, until such time as the accommodation duty is brought to an end’. In *XY v Haringey LBC*, Clive Sheldon KC DHCJ stated that ‘the duty to review is an important one, as changes in the applicant’s needs could affect the suitability of the

accommodation offered to her' [53], as is apparent from the case-law at paragraph 36, below.

34. All of these duties, with the exception of the prevention duty in s 195(2), are relevant in the present case, as I will explain when I come to consider the Grounds of challenge.

S 206 'suitable accommodation'

35. Whether the authority are securing interim accommodation under s 188(1) pending a decision, or securing accommodation after a decision has been made under s 193(2), the accommodation must be 'suitable' (1996 Act s 206(1) read with s 205(1)). So, also, following the 2017 Act, accommodation must be 'suitable' for the purposes of s 206 if the authority decides to discharge its relief duty or prevention duty under s 189B(2) or s 195(2) by 'securing that accommodation is available': s 205(3). The initial assessment duty in s 189A(2), and the review duty in s 189A(9), also require the authority to determine what accommodation is 'suitable'. 'Suitable' accommodation is not defined in the 1996 Act. In deciding what is 'suitable' the authority must 'have regard' to Pts 9 and 10 of the Housing Act 1985 and Pts 1-4 of the Housing Act 2004 (which relate to slum clearance and over-crowding) and also to matters specified by the Secretary of State (1996 Act s 210(1) and (2)). These 'matters' include those set out in the Homeless (Suitability of Accommodation) (England) Order 2012/2061 (the Homelessness Order), made under s 210(2), to which I will come under the next heading.
36. The concept of 'suitability' may differ depending upon the context, including the nature of the accommodation; the length of time the homeless person has spent in their current accommodation; the needs of the homeless person and his family; the lack of alternative accommodation; and the housing authority's resources: *R (Princess Bell) v Lambeth LBC* [2022] EWHC 2008 (Admin), [52], per Hill J. Other relevant factors include the urgency of the situation and the length of time for which the accommodation is to be provided. What may be 'suitable' for a short period may not be suitable for a longer period: *Kannan v Newham LBC* [2019] HLR 22, [6]; *Waltham Forest LBC v Saleh (CA)* [2020] PTSR 621, [17]. Similarly, what may be 'suitable accommodation' for one person 'may evolve or change over time depending on all the circumstances': *Elkundi*, [108]. Suitability may also differ depending on the duty that is being discharged: 'what is regarded as suitable for discharging the interim duty [under s 188(1)] may be rather different from what is regarded as suitable for discharging the more open-ended duty in s.193(2)': *per* Baroness Hale in *Aweys*, [19]; Code of Guidance, paragraph 17.7. That 'suitability' is a relative concept is mirrored in the approach that the courts have taken in determining whether a person is 'homeless' because they are in accommodation which it is not 'reasonable for them to continue to occupy' within the meaning of s 175(3), discussed at paragraph 59 below. The accommodation must be 'suitable' not only for the applicant but for all members of the household: Code of Guidance, paragraph 17.2. Authorities 'have a continuing obligation to keep the suitability of accommodation under review, and to respond to any relevant change in circumstances which may affect suitability, until such time as the accommodation duty is brought to an end': Code of Guidance, paragraph 17.8.

Suitability and location: s 208 and the Homelessness Order 2012

37. A key factor that an authority must take into account in determining the ‘suitability’ of accommodation is the location of the property. The Homelessness Order 2012 (made under s 210(2)), Article 2 provides (emphasis added):

... 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*; (c) [not included] (d) the proximity and accessibility of the accommodation to local services, amenities and transport.

38. Also relevant is s 208, which requires an authority ‘so far as reasonably practicable ... [to] secure that accommodation is available for the occupation of the applicant in their district’. Guidance relevant to the location of accommodation is to be found in the Code of Guidance, paragraphs 17.48-66. The Guidance provides, ‘where possible, housing authorities should try to secure accommodation that is as close as possible to where an applicant was previously living’ and ‘should seek to retain established links with schools, doctors, social workers and other key services and support’: 17.51. The effect of these provisions is that, where ‘suitable accommodation’ is available in or nearer to an authority’s area than accommodation that is further away is ‘to be regarded as unsuitable even if, in the absence of other suitable accommodation, it could be said to meet the needs of the applicant and his or her family’: *Saleh*, [24] per Patten LJ. I address the key cases on s 208 and the Homelessness Order, in particular *Nzolameso v Westminster City Council* [2015] UKSC 22, [2015] PTSR 549, at paragraph 48, below, after first outlining how the authority’s duties are affected when a homeless applicant has children.

Duty to discharge functions having regard to the need to safeguard and promote the welfare of children: s 11 Children Act 2004

39. Section 11(2) of the Children Act 2004, which applies (by virtue of s 11(1)) to a local authority such as the Defendant, provides:

(2) Each person and body to whom this section applies must make arrangements for ensuring that – (a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and (b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.

40. S 11(2) was held to apply in the specific context of the discharge of an authority's homelessness duties in *Nzolameso*, to which I will need to return. However, the following propositions may be stated in relation to the s 11(2) duty which are of relevance.
41. First, the 'welfare' of a child includes, materially, their 'education, training and recreation': s 10(2). The welfare of the child has 'long been given a broad meaning in family proceedings, encompassing physical, psychological, social, educational and economic welfare': *Nzolameso*, [23].
42. Second, the s 11(2) duty applies not only to the formulation of general policies and practices but also to the authority's decisions in individual cases: *Nzolameso*, [24]; *R (Gullu) v Hillingdon LBC* [2019] EWCA Civ, [104].
43. Third, s 11(2) does not change the nature or scope of the functions to which it relates: *Mohammoud v Kensington & Chelsea LBC* (CA) [2015] HLR 762, [66-69]. In *Mohammoud*, it was held that s 11(2) does not create a specific duty to conduct a 'child in need' assessment whenever it is exercising its functions under Part 7 of the 1996 Act, as such an interpretation would sit uneasily with the Children Act 1989, which already makes provision for such an assessment.
44. Fourth, s 11 'does not in terms require that the children's welfare should be the paramount or even a primary consideration': *Nzolameso*, [28]. As Baroness Hale went on to observe, s 11 does not reproduce the wording of article 3.1 of the United Nations Convention on the Rights of the Child (1989) (Cm 1976) ('UNCRC'), which provides that 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration': *ibid*, [28]. As she pointed out, it is well-established that where Convention rights under the Human Rights Act 1998 are applicable, those rights are to be interpreted and applied consistently with article 3 UNCRC. However, the 'interesting question' of whether s 11 of the Children Act 2004 must be read consistently with article 3 UNCRC even where no Convention right is involved 'must be a question for another day'. That is a question that I am asked to determine, under Ground 2, although for reasons I will come to it is not necessary for me to do so.
45. Fifth, the question of whether accommodation offered is 'suitable' for the applicant and each member of her household for the purposes of s 206 of the 1996 Act (see below) 'clearly requires the local authority to have regard to the need to safeguard and promote the welfare of any children in her household': *Nzolameso*, [27]. Baroness Hale continued with this important passage:
 27. ... [The accommodation's] suitability to meet [the children's] needs is a key component in its suitability generally. ... [I]t is not enough for the decision-maker simply to ask whether any of the children are approaching their GCSEs, or other externally assessed examinations. Disruption to their education and other support networks may be actively harmful to their social and educational development, but the authority also have to have regard to the need to promote, as well as to

safeguard, their welfare. The decision-maker should identify the principal needs of the children, both individually and collectively, and have regard to the need to safeguard and promote them when making the decision.

46. As Baroness Hale emphasised in the later case of *R (HC) v Work and Pensions Secretary* [2019] AC 845, [46] ‘Safeguarding is not enough; [the children’s] welfare has to be actively promoted’.
47. Sixth, when contemplating the transfer of a school-age homeless child into temporary accommodation out of borough, s 11(2) (read with Article 2 of the Homelessness Order and the Code of Guidance) requires authorities to: ‘minimis[e] the disruption to the education of children and young people, particularly (but not solely) at critical points in time such as leading up to taking GCSE (or their equivalent) examinations’ (Code of Guidance, 17.53); liaise with the receiving authority and ‘make every reasonable effort to ensure arrangements are or will be put in place to meet the child’s educational needs’ (ibid, 17.54); and ‘make contemporary records of its decision-making and its reasons, capable of explaining clearly how it evaluated the likely impact of the transfer on the educational welfare of the child’: per Ben Emmerson KC DHCJ in *R (E) v. Islington LBC* [2018] PTSR 349, [120], applying *Nzolameso*, to which I now turn.

Nzolameso v Westminster City Council [2015] UKSC 22, [2015] PTSR 549

48. *Nzolameso* is the leading case on an authority’s duties when discharging its homelessness functions under Part 7 in relation to the location of suitable accommodation under s 208 and the Homelessness Order, and in the light of s 11(2) of the Children Act 2004. I will also make reference to the Court of Appeal decisions in *Alibkhiat v. London Borough of Brent* [2018] EWCA Civ 2742 and *Abdikadir v London Borough of Ealing* [2022] EWCA Civ 979 which post-date *Nzolameso* and explain and amplify the reasoning in the Supreme Court’s judgment.
49. Ms. Nzolameso applied to Westminster as a homeless person. She was a single mother with health problems and had five children aged between 8 and 14, all of whom were in local schools. Westminster accepted she was owed the ‘full’ housing duty under s 193(2) and offered her temporary accommodation which it considered suitable near Milton Keynes, some 40 miles away. Ms Nzolameso refused the offer on the grounds that she had lived in Westminster for some years, had many supportive friends there and wished to remain registered with her doctor and for her children to continue at their existing schools. Westminster rejected her grounds concluding, in particular, that since the children were not of GCSE age it was suitable for them to move schools. It then confirmed its decision that the property was suitable and, since she had refused the offer, had discharged its duty towards her. Ms Nzolameso sought a review under s 202 which upheld Westminster’s decision. The review letter stated the reviewing officer’s conclusion that the accommodation was not unsuitable; the applicant’s ‘medical and support needs’ did not require her to live in Westminster; she had only lived in Westminster since 2008 (5 years); and none of the children were ‘currently sitting national exams and could ... move schools without their

education suffering’. An appeal to the County Court under s 204 was unsuccessful. The Court of Appeal upheld the County Court decision but the Supreme Court allowed Ms. Nzolameso’s appeal.

50. The Supreme Court held, materially, that the duty in s 208 ‘so far as reasonably practicable’ to secure accommodation within the borough ‘imports a stronger duty than simply being reasonable’: [19]. As Lewison LJ later put it in *Alibkhiat*, [42], the question is not whether it is reasonable to offer an applicant accommodation in another borough, but whether it is ‘reasonably practicable’ to offer accommodation in their own borough. If it is not ‘reasonably practicable’ to secure accommodation within the borough, the authority should try to place the household as close as possible to where they were previously living: *Nzolameso*, [19]. The Code of Guidance makes the same point, at paragraph 17.51, using materially the same words as in paragraph 49 of the version of the Code then in force, referred to in *Nzolameso*, [18].
51. The Supreme Court held that a number of factors are relevant in assessing the suitability of accommodation, but a key component is its suitability to meet the needs of any children in the household: [27]. The local authority is also obliged to have regard to the need to safeguard and promote the welfare of any children in the household under s 11(2) of the Children Act 2004: [27], considered above at paragraph 45.
52. The Supreme Court also made clear that the authority has a number of public law duties of a procedural nature when discharging its homelessness functions under Part 7: [31-36]:
 - i) The authority must ask questions and make appropriate inquiries to establish, for example, how practicable it will be for the family to move to another location and whether school places will be available for the children: [36]; see also *R (E) v. Islington LBC*, [120]. As the Court of Appeal later made clear in *Abdikadir*, this duty of enquiry requires the authority to make such inquiries as are reasonable in the circumstances, which will be judged on the *Wednesbury* standard: [51-52], considering *R (Balajigari) v Secretary of State for the Home Department (CA)* [2019 1 WLR 4647, [70] and *R (Bayani) v Royal Borough of Kensington and Chelsea (CA)* (1990) 22 HLR 406, p. 415. So, even if an applicant has not specifically raised the issue, the decision-maker ‘must take such steps as are reasonable to inform himself of the practicability of an in-borough placement’: *Abdikadir*, [53]. This is the familiar *Tameside* duty of enquiry, after Lord Diplock’s famous dictum in *Secretary of State for Education v Tameside* [1977] AC 1014, 1065B.
 - ii) The authority must give reasons for its decision which demonstrate that it has taken relevant factors properly into account, including: the matters set out in the Homelessness Order; that they have ‘had regard’ to the Code of Guidance as required by s 182; and that they have discharged their duty under s 11 Children Act 2004. A particularly strong duty to give reasons is owed if the authority have departed from statutory guidance (‘clear reasons’) or if they have departed from their own published policy (‘very good reasons’). While the court ‘should not

adopt an overly technical or ‘nit-picking’ approach to the reasons, they have to be ‘adequate to fulfil their basic function’ of enabling a person affected by the decision to know why they have won or lost and to judge whether the decision may be challenged, and to enable a court to determine whether the authority have properly discharged their functions: [31-32]. The Court should not simply infer that the authority has taken into account relevant considerations and has had regard to relevant parts of the statutory guidance: [33-35].

53. Baroness Hale’s instruction at [31-32] not to take ‘an overly technical’ or ‘nit-picking’ approach is drawn from the speech of Lord Neuberger in *Holmes-Moorhouse v Richmond upon Thames LBC* (HL) [2009] 1 WLR 413, [50] directing courts to take a ‘benevolent’ approach when determining the sufficiency of reasons given on a review under s 202, and to ‘not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach’. As Baroness Hale made clear, however, the reasons must be adequate to fulfil their basic function.
54. The Supreme Court went on to find that Westminster’s decision had been unlawful: [36-37]. In summary, the authority had:
- i) Failed to carry out reasonable inquiries at the time of the decision, in particular as to the practicability for the family to move out of area and for the children to move schools.
 - ii) Failed to give adequate reasons to show that the authority had discharged their duty under s 11 of the Children Act.
 - iii) Failed to give adequate reasons for their decision to show that consideration had been given to providing accommodation in or nearer to the borough. There was no indication of the accommodation available in Westminster and why that had not been offered to Ms. Nzolameso. There was no indication of the accommodation available near to Westminster, or even in the whole of Greater London, and why that had not been offered to her. There was, indeed, no indication that the reviewing officer had recognised that, if it was not reasonably practicable to offer accommodation in Westminster, there was an obligation to offer it as close by as possible.

The relevance of an authority’s resources and the adoption of a placements policy

55. In *Nzolameso* the Supreme Court recognised an authority is entitled, when determining whether it is ‘reasonably practicable’ to accommodate an individual in or near its district, to take into account the resources available to them, the difficulties of procuring sufficient units of temporary accommodation at affordable prices in their area, and the practicalities of procuring accommodation in nearby authorities: [38]. However, the authority should have in place a policy, particularly where there is a shortage of ‘in borough’ accommodation, which explains the factors which will be taken into account in allocating accommodation either ‘in borough’, outside but near the borough or

further away: [39]. The Code of Guidance, paragraph 17.49, makes the same point. The decision in an individual case may then be taken on the basis of that policy: *Nzolameso*, [38].

56. The Defendant has adopted and published such a temporary placement policy, the Placements Policy. Where an authority has published such a policy, they must be able to show either that any placement decision is in accordance with that policy (*Abdikadir*, [58]) or, if they have departed from the policy – as it did in *Abdikadir*, see [57-58] – that there is a ‘very good’ reason for doing so: *Nzolameso*, [31]. It is a free-standing principle of good administration, based originally on legitimate expectation, that an authority will apply its published policy in an individual case unless there are good reasons not to do so: *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59, [2015] 1 WLR 4546, [29], cited in *Alibkhiet*, [48]. Provided that policy is lawful and it is applied correctly, a decision in an individual case will be lawful, as the Court of Appeal held in *Alibkhiet*, [48]. In such a case, all that is required by way of reasons is for the authority to state that it has followed its policy and how it has done so: *Abdikadir* [58].
57. The Court in *Nzolameso* made no finding that Westminster had failed to give reasons as to whether and how it had applied its policy: that was because the authority had ‘produced no evidence of their policy in relation to the procurement of accommodation in order to fulfil their 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’ [8].

The duty to give reasons

58. The duty to give reasons identified by the Supreme Court in *Nzolameso* at [31-35] was articulated in the context of a decision that had been subject to review under s 202, for which there is an express duty to give reasons: s 203(4). There is no express duty to give reasons in relation to decisions made under s 188(1). There is Court of Appeal authority that an authority does not have to give reasons, either under the statute or at common law, for its decision that a property is suitable for the purposes of s 188(1) or s 193(2): see *Alibkhiet*, [82-86] and *Akhtar v Birmingham City Council* [2011] EWCA Civ 383, [48]. Mr. McDermott submits that *Nzolameso* is therefore to be distinguished in the present case as the Defendant was under no duty to give reasons why it considered the Property to be suitable for the Claimant’s needs under s 188(1). I consider this submission when I come to the Grounds, below at paragraph 88.

‘Homeless’: whether it is ‘reasonable ... to continue to occupy’ accommodation: s 175(3)

59. The Claimant was considered ‘homeless’ because she and her family were living in accommodation that it was not ‘reasonable for [her] to continue to occupy’: s 175(3). This concept of ‘homeless’ is, to a certain extent, a protean one. In *Aweys*, the House of Lords held that a person may be ‘homeless’ because it is not ‘reasonable for him to continue to occupy’ accommodation in the medium or long term, even though it might be reasonable for them to do so

in the short term: *Aweys*, [34, 40, 42, 47, 50-51, 64]. A duty may therefore be *owed* under one of the interim duties or s 193(2), but the time at which that duty must be *discharged* may differ depending on the circumstances. In *Elkundi*, [108], the Court of Appeal had to consider whether the duty to secure accommodation under s 193(2) was one that had to be discharged immediately or within a ‘reasonable time’. They held, following *Aweys*, that where a person was ‘homeless’ because they were in accommodation which was not ‘reasonable for him to continue to occupy’, even in the short term, then the duty under s 193(2) had to be discharged immediately. If, on the other hand, they were in accommodation that it was ‘reasonable for him to continue to occupy’ in the short term, but not in the medium to long term, the duty under s 193(2) was owed (*per Aweys*) but would not need to be discharged at that point: see [101, 105, 108]. In deciding whether a person is ‘homeless’ because it is not ‘reasonable for him to continue to occupy’ accommodation the authority is entitled to have regard to the availability of housing within its area. That is also a relevant factor in deciding whether it is ‘reasonable for him to continue to occupy’ the accommodation in the short term: *Elkundi*, [130]. However, once it becomes unreasonable for the applicant to continue to occupy the accommodation, even in the short term, the s 193(2) duty becomes ‘immediate, unqualified and non-deferrable’ and ‘financial restraints cannot justify non-compliance’: *ibid*, [131].

60. Even in that situation, though, the applicant may *prefer* to remain in their current accommodation rather than move to interim accommodation while the local authority conducts a search for other ‘suitable’ accommodation under s 193(2). The first offer does not discharge the authority’s duty to provide accommodation under s 193(2) unless the applicant waives their right on the basis of fully informed consent: *Elkundi*, [115-118, 294]. An applicant will need to be given sufficient time to make an informed choice, particularly where an offer of accommodation is made outside the district: Code of Guidance, 17.65, 15.
61. The same approach applies to the interim accommodation duty under s 188(1). The s 188(1) duty may be owed because it is not reasonable for the applicant to continue to occupy the accommodation in the medium to long term, but need not be discharged immediately if it is reasonable for the applicant to continue to occupy the accommodation for a short period. In that case the authority can leave the applicant in their existing accommodation while it continues its s 184 inquiries and assessment of the applicant’s housing needs under s 189A(1) and a decision is made whether the full s 193(2) duty is owed. Furthermore, even if the duty arises immediately on the grounds it is not reasonable for the applicant to continue to occupy the present accommodation even in the short term, the applicant may still prefer to remain where they are, for example because the alternative is to move out of their area, while any s 189A assessment is completed and pending a decision as to whether the full s 193(2) housing duty is owed. The authority is not in breach of the s 188(1) duty by allowing the applicant to remain where they are, ‘so long as the applicant is aware that he is entitled to interim accommodation until a decision is made on the homeless application’: *Elkundi*, [116], citing *Hickinbottom J in R (Edwards) v Birmingham City Council* [2016] HLR, [105]. This implies that the applicant

must be informed that they at least have the option of remaining where they are. This has some relevance in the present case, which I discuss at paragraph 85, below.

S 202 rights of review and s 204 rights of appeal

62. Section 202 provides that an applicant has a right to request a review of an authority's decision as to, materially:
- i) What duty (if any) is owed to him under s 189(B) (the relief duty), s 193 (the 'full' duty), or s 195 (the prevention duty): s 202(1)(b).
 - ii) The steps the authority are to take in the discharge of their duty under 189B(2) or s 195(2): s 202(1)(ba), (bc).
 - iii) The suitability of accommodation offered to him 'in discharge of their duty' under s 189B(2), s 193(2) or s 195(2): s 202(1)(f).
63. Section 203 provides for the procedure on a review, including that the review shall be by a person of appropriate seniority who was not involved in the original decision and a right to the reasons for the decision to the extent it is 'to confirm the original decision on any issue against the interests of the applicant': s 203(1), (4). The procedure is supplemented by regulations which are not material for present purposes. By s 204 an applicant who has requested a review under s 202 and is dissatisfied with the decision on review may appeal to the county court on any point of law arising from the decision. I note, in particular, that where the authority provides interim accommodation pursuant to s 188(1) there is no right of review, whether as to the existence of the duty or the suitability of accommodation that is so provided. By contrast, the 2017 Act has conferred a right of review (and subsequent appeal) against decisions made by the authority, including as to the suitability of accommodation provided pursuant to either the relief duty in s 189B(2) or the prevention duty in s 195(2). This may give rise to an anomaly, as it has in this case, which I discuss at paragraph 108, below.

The submissions

The Claimant's Submissions

64. Mr. Jackson for the Claimant submitted that the s 189A housing needs assessment and the personal housing plan based upon it were unlawful (Ground 1(i) and (ii)). That was because, first, there is no reference in the assessment to the children's education and the importance of their being close to school and the disruption that would be caused by a move of school. In particular, there is no mention of the fact the eldest child was about to move into year 11, her GCSE year, and the particular need for continuity of education. Indeed, there is no mention of the children at all. Furthermore, second, there was no mention of the importance of the Claimant's support network or the importance to the Claimant of finding employment and how these needs would be compromised if she had to move so far out of the borough. As a result, third, the authority had erroneously identified the Claimant's need to remain in Lambeth as merely a 'wish', rather than a 'need'. The assessment therefore failed properly to assess

the ‘key needs’ of the Claimant and her family – the ‘nuts and bolts’ for any offer of accommodation. Without a proper assessment of needs of the Claimant and of each member of the household, the Defendant could not make a properly informed decision as to what accommodation would be suitable for the Claimant and her family, in particular by reference to its location, and the support necessary to have and retain that accommodation. He relied, in particular, on the cases of *XY v Haringey LBC* [2019] EWHC 2276 (Admin) and *R (ZK) v London Borough of Havering* [2022] EWHC 1854 (Admin) where inadequate s 189A assessments were quashed. My attention was also drawn to *R v Newham LBC ex p Ojuri* (1999) 31 HLR 452, 459, a case that preceded the 2017 Act, but where Collins J nevertheless quashed a decision under s 188(1) for failure to conduct a proper assessment in making that decision.

65. Mr. Jackson further submitted that the housing needs assessment and personal housing plan were inadequately evidenced or reasoned, as it is not possible to determine from those documents or the case file whether or not, in assessing what accommodation was suitable and what support the Claimant and her family required to have and retain such accommodation for the purposes of s 189A(2) and s 188(1), the Defendant had complied with its duties:
- i) So far as reasonably practicable, to locate the Claimant and her family in or near Lambeth, as required by s 208 and paragraph 17.51 of the Code of Guidance. There must be a ‘proper evidential basis for determining that the provision of local accommodation is not reasonably practicable’: *R (Calgin) v Enfield BC* (2006) HLR 4, [32]; *Nzolameso*, [36].
 - ii) To have regard to the significance of the disruption which would be caused by the location of the accommodation to the ‘education of members of the person’s household’ as required by s 210(2) of the 1996 Act and article 2 of the Homelessness Order 2012.
 - iii) To have regard to the need to safeguard and promote the welfare of the children in the Claimant’s household under s 11(2) of the Children Act 2004 (Ground 2). Mr. Jackson accepted that the s 11(2) duty does not change the nature or scope of the underlying functions to which it relates: *Mohammoud*, [66]. However, the passages quoted at paragraphs 45-47 above from *Nzolameso*, [27] and *R (E) v. Islington LBC* are authority that s 11(2) applies to the functions here being discharged, notably s 188(1), s 189A, s 206, s 208 of the Housing Act 1996 and article 2 of the Homelessness Order, and have a particular application in cases where an authority is contemplating the provision of accommodation that will require school age children to move to schools in another area.
 - iv) To apply the provisions of its Placements Policy and, if it has departed from that policy, to give ‘very good reasons’ for having done so.
 - v) To conduct such inquiries as were reasonable to enable it to discharge those duties. Mr. Jackson noted, for example, that there was no evidence that any inquiries had been made of the children’s existing schools as to the likely impact upon them of being required to move schools.

66. Mr. Jackson relied, in particular, on *Nzolameso* and *R (E) v. Islington LBC* as to the requirement for an assessment under s 189A to be adequately reasoned so as to demonstrate an authority has taken into account statutory relevant considerations and has applied its own policy correctly.
67. He went on to submit that the Defendant had failed to carry out a lawful review of the housing assessment and plan, as required by s 189A(9) (Ground 1(iii)). The Suitability Assessment of 12 September 2022 had not been a genuine ‘review’ but, rather, an *ex post facto* attempt to justify the original decision. He relied on the principle that where further reasons are advanced by a decision-maker which contradict the original decision or introduce wholly new evidence they may not be admitted in evidence at all. If they merely bolster existing reasons then the Court may admit but attach less weight to them, particularly where they post-date the issue of legal proceedings, given the natural tendency of a decision-maker to seek to defend and bolster a decision that is under challenge: *R v Westminster City Council ex p. Ermakov* [1996] 2 All ER 302; *R (Nash) v Chelsea College of Art and Design* [2001] EWHC 538 (Admin), cited by Chamberlain J in *Inclusion Housing Community Interest Co v Regulator of Social Housing* [2020] EWHC 346 (Admin), [75-78].
68. Last, he argued that, by offering the Claimant the Property as ‘suitable accommodation’, the Defendant was in breach of its continuing duty under s 188(1), taken with s 206 and s 208, to provide ‘suitable’ accommodation that ‘so far as reasonably practicable’ is in the Lambeth area because (i) the offer was based on an unlawful housing assessment and plan under s 189A; (ii) the Defendant had failed to apply its own Placements Policy that an applicant with a child entering Year 11 will be afforded priority accommodation within the Lambeth area; (iii) the decision that the property was ‘suitable’ for the purposes of s 206, 208 and the Homelessness (Suitability of Accommodation) (England) (Order) 2012 (the ‘Homelessness Order’) was irrational. He submitted that a greater intensity of review was justified given the profundity of the impact on the Claimant and her family: *R (KM) V Cambridgeshire CC (SC)* [2012] PTSR 1189, [36]. That was particularly so in the light of the Defendant’s duty under s 11(2) of the Children Act 2004 (Grounds 2 and 3). It is in this context that his argument that s 11(2) was to be read in the light of article 3.1 UNCRC so that the best interests of the children were not only a relevant consideration, but a ‘primary’ consideration, carrying commensurately more weight in the balancing exercise, is most relevant.

The Defendant’s Submissions

69. Mr. McDermott, for the Defendant, advanced the following submissions in response.
70. First, it is not necessary, as a matter of law, in all cases where an out of borough placement is contemplated for homeless, school-age children, for a local authority to assess the housing needs of the children, including the potential disruption of their education, as part of its assessment under s 189A. In any event, an assessment of the children’s needs was not necessary on the facts of this case having regard to the short length of time the children had been living (since January 2022) and at school (since February/ March 2022) in the borough

and the urgent need to provide the family with alternative suitable accommodation.

71. Second, alternatively and in any event, an adequate assessment of the children's needs was carried out for the purposes of s 189A and the Homelessness Order, adopting a 'benevolent' rather than 'an overly technical' or 'nit-picking' approach: *Holmes-Moorhouse*, [50]. There had been a reasonable identification of the key needs given the urgency of the situation and the limited information that had been provided by the Claimant. In particular, there had been no mention in the information provided by the Claimant that she had a need to be in Lambeth either for educational reasons, employment reasons or to maintain her support networks; that information was only provided after the decision had been communicated on 18 August 2022. The assessment identified the family's needs for a 4/5 bedroom house which was affordable; and which recorded the Claimant's 'wish' to be in Lambeth. A need for a '4/5 bedroom house' plainly took into account the needs of the whole family, including the children, as a house of that size could not be for the Claimant alone. Given relevant factors had been taken into account, it was within the Defendant's broad discretionary area of judgment to treat the Claimant's desire to be in Lambeth as a 'wish' rather than a 'need'. The children's needs had been considered as part of the assessment, as evidenced by the email correspondence between Ms. Scott and Mr. Varghese. Mr. McDermott accepted that there was no evidence to show explicitly that the Defendant had assessed the children's housing needs, in particular any disruption that a move to a school in another borough would cause to their education, but he invited me to infer that they had.
72. Third, to the extent that the Defendant had been under a duty to conduct its own inquiries to obtain information not provided by the Claimant, the Defendant had made such inquiries as was reasonable, judged by the *Wednesbury* standard, applying *Abdikadir* and *Bayani*. Even in the context of s 11(2) of the Children Act 2004, the Court of Appeal in *Mohammoud* had found there had been no breach in circumstances where the affected individual had opportunities to draw the authority's attention to significant features that were relevant to its decision and had not done so.
73. Fourth, the Defendant had complied with s 11(2) of the Children Act 2004, essentially for the same reasons that it had complied with s 189A. He submitted that urgency is part of the context relevant to compliance with s 11(2): *Mohammoud*, [11]. The 'particular function' that was being discharged was the provision of interim accommodation under s 188(1). He relied on *R (H) v Ealing LBC (CA)* [2018] HLR 2 for the proposition that the Court should not apply an approach that was 'too exacting'. I was invited to infer that the Defendant had had regard to the need to safeguard and promote the children's welfare. Mr. McDermott also referred me to the decision of UT Judge Ward in *R (Fokou) v Soutwhark LBC* [2022] EWHC 1452 (Admin), as an illustration of a claim under s 11(2) being made, and rejected, on facts that are similar to the present case.
74. Fifth, there was no duty on the Defendant to give reasons for its decision as to why it considered the Property to be suitable for the purposes of s 188(1), applying *Akhtar* and *Alibkhiyet*. *Nzolameso* was to be distinguished as it related

to a decision on review for which there is an express statutory duty to give reasons under s 203(4).

75. Sixth, even if the assessment under s 189A was unlawful, it did not follow that the provision of accommodation under s 188(1) was unlawful.
76. Seventh, in any event, even if the original decision to provide accommodation was unlawful, the Suitability Assessment of 12 September 2022 demonstrated that all relevant factors had been taken into consideration for the purposes of the review.
77. Eighth, the Defendant had been entitled to conclude that the Claimant's eldest child, S, did not fall within Group B of the Placements Policy.
78. Ninth, the decision that the Property was 'suitable accommodation' and was as close to Lambeth 'so far as reasonably practicable' given the scarcity of similar housing was plainly one that the Defendant was entitled to reach both at the time of the original decision and the review on 12 September 2022. The decision was therefore not irrational read in the light of s 11(2) Children Act 2004. Irrationality is context specific (*R (Begum) v Tower Hamlets LBC* [2003] 2 AC 430, [49-50]) and is a 'high hurdle' in this context: *R v Haringey LBC ex p Karaman* (1996) 29 HLR 366, 376. Section 11(2) is not to be read in the light of article 3.1 UNCRC. He reminded the Court of Baroness Hale's warning against the 'judicialisation of claims to welfare services' in *R (A) v Croydon LBC (SC)* [2009] 1 WLR 2557 and Lewison LJ's cautionary dictum in *Alibkhiat*, [38]:

38. A court must be wary about imposing onerous duties on housing authorities struggling to cope with the number of applications they receive from the homeless, in the context of a severe housing shortage and overstretched financial and staffing resources. That said, the court is the guardian of legality; and it must not hesitate to quash an unlawful decision.

Discussion and decisions

79. It is convenient to consider the Grounds under the following headings.
 - i) (1) Whether the initial s 189A housing needs assessment and personal housing plan of 17 and 18 August 2022 were unlawful: Ground 1(i) and (ii), with elements of Ground 2.
 - ii) (2) Whether the Defendant was in breach of its duty to carry out a review of the Claimant's needs under s 189A(9), which requires consideration of the Suitability Assessment of 12 September 2022: Ground 1(iii).
 - iii) (3) Whether the Defendant's decision to provide 'suitable' accommodation under s 188(1), 206 and 208 was unlawful because it was based on an unlawful s 189A assessment and review: Ground 3(i).

- iv) (4) Whether that decision was unlawful because of a failure to apply the Placements Policy: Ground 3(ii).
- v) (5) Whether that decision was irrational, read in the light of s 11(2) Children Act 2004: Grounds 3(iii), with Ground 2.
- vi) (6) The interrelationship between s 188(1) and s 189B(2) and the Claimant's application to amend to include Ground 4.

(1) Whether the original housing needs assessment and personal housing plan was unlawful (Ground 1(i) and (ii) and Ground 2)

80. In my judgment, both the initial housing needs assessment and the personal housing plan conducted under s 189A of 17-18 August 2022 were unlawful, as well as the inquiries required by s 184 and s 188(1), for the following reasons.
81. First, there is no reference at all in the RAPP (which contains both the housing assessment and plan) to the needs of the children and the disruption that the provision of interim accommodation outside the borough, and a consequent move of school, would cause to their education. Those were 'key needs' for s 189A purposes, the 'nuts and bolts' of any lawful assessment, to adopt the phrase used in *XY* and *ZK*. I do not accept Mr. McDermott's first submission that there is no general duty to assess the housing needs of the children as part of assessment of what accommodation will be suitable under s 189A(2) or, for that matter, under s 184 and s 188(1). Section 189A(2)(b) requires the assessment of what accommodation would be suitable for the applicant '*and any person with whom the applicant resides*'. This is reinforced by the Code of Guidance, to which the Defendant is obliged to have regard by s 182 of the 1996 Act, at paragraph 11.10 that an assessment under s 189A(1) must '*consider the individual members of the household and all relevant needs*'. The Homelessness Order 2012 sets out matters to which the Defendant is obliged to have regard when considering the suitability of accommodation by virtue of s 210(2) of the 1996 Act, including '*the significance of any disruption which would be caused by the location of the accommodation to the ... education of ... members of the person's household*'. The educational needs of the children and the disruption of their education caused by relocating the family to another area are also matters to which the authority must have regard in the discharge of their welfare duty under s 11(2) Children Act 2004: *Nzolameso*, [27], *R (E) v Islington LBC*, [120]. These are considerations an authority is statutorily obliged to take into account; they are not factors which it is for an authority to decide are or are not relevant, to be judged only by a *Wednesbury* standard: as to this distinction, see Sir Michael Fordham's *Judicial Review Handbook*, 7th ed., [56.2]. An authority must take these factors into account in every case where it is contemplating the transfer of a homeless school-age child to another borough, although the weight to be attached to them, and the inquiries that they must conduct in order to discharge that duty, will depend on the facts of the case and will generally be a matter for the authority to determine, subject to *Wednesbury*.
82. Nor do I accept Mr. McDermott's alternative submission that, on the facts of this case, where the Claimant's children had only been in school for a short

period and given the urgency of the matter, there was no need for the Defendant, as part of its suitability assessment, to consider the children's educational needs and how these would be affected by an out of borough transfer. The disruption that a move would have on their education is a statutory relevant factor. In any event, the fact that five of the six school-age children had only been attending school for a term and a half did not obviate the need for the Defendant to assess their welfare and how a move to another school would affect them. These were children with little or no English, who had recently moved to the UK and had found some stability in their new schools. The Defendant's duty was to have regard to the need not only to safeguard but to *actively promote* their welfare, including their educational welfare: *Nzolameso*, [27]. The Defendant knew that five of the children were in school at the time of its assessment on 17 August 2022, even if other information (for example, as to the Claimant's support networks) was not. That was sufficient information for the Defendant to be on notice that it was obliged to take into account the children's welfare, in particular whether they had a need to be based in or near Lambeth for educational reasons, as statutory relevant factors. I address the urgency issue separately, below.

83. I do not accede to Mr. McDermott's invitation to infer from the evidence before me that the children's housing needs were, in fact, assessed. 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' and that the question to ask is 'how a reasonable and sensible housing officer would understand what had been written': *XY*, [62]. I also accept I should adopt a 'benevolent approach', and avoid being overly technical or nit-picking. But a hypothetical 'reasonable and sensible' housing officer considering this assessment of needs, which says only that there is a need for a '4/5 bedroom house' which was affordable, and a 'wish' to be housed in Lambeth, would not be able to conclude whether the children's housing needs had been assessed or what those needs were, in particular what the impact of a move of school would have upon their welfare.
84. Nor do I accept Mr. McDermott's submission that the housing assessment and plan were adequate given the urgency of rehousing the family. I accept there are circumstances that are so urgent that there will be a need for immediate action to be taken, namely where the criteria for the provision of immediate interim accommodation under s 188(1) are met. But that does not mean there is the same urgent need to complete the housing assessment and plan under s 189A. The s 188(1) duty arises independently of, and may arise before, the duty under s 189A: that is clear from the fact the first is triggered where an authority has 'reason to believe' that the applicant 'may' be homeless, eligible for assistance and in priority need, but the second requires the authority to be satisfied the applicant *is* homeless or threatened with homelessness and eligible for assistance. The authority may start providing interim accommodation under s 188(1) even before it has begun a s 189A assessment, and may certainly do so before it has concluded the assessment process. The housing assessment and plan require a number of steps to be taken: see paragraphs 31-32, above. This assessment process is likely to be most effective when adequate time is taken for the various stages to be carried out. In my judgment, and subject to my

conclusion in the next paragraph, any need for urgency could have been met by an immediate offer of s 188(1) accommodation. No reasons have been advanced as to why, in the present case, the assessment had to be completed on 17 August 2022 or why the statutory steps had to be compressed or, in some cases, missed altogether. There was no face to face interview; there was no consultation stage after the written assessment of needs during which the Defendant sought to agree with the Claimant what steps she, and they, would take; and no agreement (or lack of it) was recorded in the personal housing plan, which is unsigned.

85. I am not convinced, in any event, that the Claimant's circumstances were such as to require such a precipitate offer of the Property under s 188(1). I have explained, at paragraphs 59-61 above, how a person may be considered 'homeless' for the purposes of 175(3) because it is not reasonable for them to continue to occupy accommodation in the medium to long term, but it may nevertheless be reasonable to remain in the short term, particularly having regard to the unavailability of other suitable accommodation. Even where it is unreasonable for the applicant to continue to occupy their home in the short term, so that s 188(1) requires the immediate provision of alternative suitable accommodation, the applicant may prefer to stay where they are rather than move to the accommodation offered by the authority. These factors illustrate the importance of dialogue between the authority and the applicant. There is no evidence any consideration was given, or any discussion had with the Claimant, as to either of those possibilities. Indeed, the Claimant was told expressly that if she refused the offer of the Property then she would lose the right to be provided with interim accommodation: above, paragraph 9. I have some doubt whether that threat was lawful, in the light of *Elkundi*, [116]: above, paragraph 61. Neither this, nor the failings in the s 189A process referred to in the previous paragraph, founded any pleaded Ground of challenge and I heard no argument on either point, and my finding that the s 189A assessment was unlawful does not turn on them. But in so far as the Defendant relies on the urgency of the matter to justify an otherwise inadequate s 189A assessment, these are further reasons why I do not accept that submission.
86. Second, in my judgment, the duty of assessment in s 189A and the duty to make inquiries under s 184 and s 188(1), read in the light of s 11(2) of the Children Act 2004 and *Tameside*, required the Defendant to conduct further inquiries: see above, paragraph 52.i). No reasonable authority with the information available to the Defendant would have failed to undertake inquiries as to the disruption to the children's education if they were required to move school before concluding accommodation far from their schools was 'suitable' for the purposes of s 206 and that it was not 'reasonably practicable' to accommodate them in or near Lambeth. Moreover, those inquiries would also have needed to establish, if accommodation was to be provided by another council, that suitable arrangements were or would be in place for the children's education in that council's area, pursuant to the duty under s 11(2)(b) of the Children Act 2004, set out above, at paragraph 39. The Code of Guidance, paragraph 17.54, stipulates that in those circumstances an authority must liaise with the receiving authority and 'make every reasonable effort to ensure arrangements are or will

be put in place to meet the child's educational needs': see also *Nzolameso*, [36] and *R (E) v Islington LBC*, [117], per Ben Emmerson KC DHCJ:

117. As I have said, it follows from the terms of section 11(2)(b) that where an authority's housing department is considering whether to transfer a school-age child out of borough, the authority must take all necessary steps to satisfy itself that the receiving authority has satisfactory arrangements in place to safeguard the child's educational welfare. If the principles laid down in *Nzolameso*'s case [2015] PTSR 549 fall to be applied to this statutory duty, as I find they do, then the sending authority would also need to put itself in a position to demonstrate objectively, and by reference to contemporary reasoning and records, how and why it came to the conclusion (if it did) that the delegation of its housing obligations would not imperil the child's educational welfare. *In practice, this is something that the sending authority could only be able to do if they had liaised with the education department of the receiving authority and satisfied themselves that suitable arrangements were or would be in place.*

87. Neither the housing assessment and plan, nor any other material put in evidence, demonstrate that any such inquiries were carried out. There is no evidence that any inquiries were made, for example, of the authority's social services department or the children's schools as to the disruption a change in school would cause to their education: see paragraph 83, above. It is particularly concerning that no such inquiries were made in relation to the eldest child, S, who was entering Year 11, her GCSE year. The Defendant relied upon emails between Ms. Scott and a social worker, Mr. Varghese, of the Defendant's social services department between 17 and 18 August 2022 in which they discussed the family's situation. I have read those emails. It is sufficient to observe that Ms. Scott did not make any enquiry of Mr. Varghese as to the likely disruption to the Claimant's ability to provide care and to the children's education and the consequent impact upon their welfare if they had to move to another area. Furthermore, there is no evidence, before the s 189A assessment was completed and the Property was offered, that any contact had been made with Thurrock Council to establish whether school places were available at local schools. In my judgment, those inquiries should have been made and the failure to make them was a breach of both s 189A and section 184 and s 188(1) taken with s 11(2) of the Children Act 2004 and *Tameside*.
88. Third, the s 189A housing assessment and plan were inadequately evidenced and reasoned to demonstrate that the Defendant had regard to the statutory relevant factors and other matters set out at paragraph 65, above, even applying a 'benevolent' rather than 'an overly technical' or 'nit-picking' approach to the construction of those documents. I do not consider it appropriate for me to infer that the Defendant had regard to those matters, for the reasons given by Baroness Hale in *Nzolameso*, [31-35]: above, paragraph 52.ii). I accept the Defendant's argument that Baroness Hale's observations as to reasons in *Nzolameso* [31-35] were made in the context of a statutory duty to give reasons

in s 203(4). I also accept that there is neither a statutory nor a common law duty to give reasons as to the suitability of accommodation provided under s 188(1), applying *Akhtar* and *Alibkhiat*: above, paragraph 58. However, the latter cases are to be distinguished, and *Nzolameso* is relevant and persuasive, for the following four reasons:

- i) In my judgment, s 189A creates a statutory duty to provide a written assessment and housing plan that is sufficiently *reasoned* to demonstrate that the authority has addressed the statutory matters in s 189A(2)(a)-(c), including ‘what accommodation would be suitable’ to the needs of the applicant and her household. In considering that question the authority must apply the test of ‘suitability’ in s 206: see s 205(3). The authority must also have regard to the matters required by s 210, including the Homelessness Order (disruption etc. to a child’s education), as well as the welfare considerations in s 11(2) of the Children Act 2004. Where, as here, s 188(1) accommodation is provided *after*, and in the light of, a s 189A housing assessment and plan, the reasoning in the assessment must also demonstrate that the authority has addressed the statutory suitability factors for the purposes of s 188(1). For the reasons I have given at paragraphs 81-85, above, the reasoning is inadequate for those purposes. The statutory duty in s 189A to provide a written assessment and housing plan, which I conclude must be reasoned, is sufficiently analogous to s 203(4) that the decision in *Nzolameso*, [27, 31-35] is highly persuasive. That is also mandated by the Code of Guidance, paragraph 17.9, which provides: ‘case records should demonstrate that [the authority] have taken the statutory requirements into account in securing the accommodation’. By contrast, *Akhtar* and *Alibkhiat* predate the 2017 Act, which introduced s 189A, and are to be distinguished for that reason.
- ii) In conducting its assessment and plan under s 189A the local authority must also demonstrate that it has discharged its duty under s 208 ‘so far as reasonably practicable’ to provide accommodation within or (per paragraph 17.51 of the Code of Guidance) near its district. That is so whether it elects to discharge its interim duty to accommodate under s 188(1), its full accommodation duty under s 193(2) or its ‘relief duty’ to accommodate under s 189B(2) and s 205(3). In my judgment, s 189A creates a statutory duty to produce a written housing assessment and plan that is sufficiently reasoned to show ‘what, if any, consideration had been given to providing accommodation in or nearer to the borough’ (*Nzolameso*, [37]) and a ‘proper evidential basis for determining that the provision of local accommodation is not reasonably practicable’: *R (Calgin) v Enfield BC* (2006) HLR 4, [32], per Elias J. The reasoning in the housing assessment and plan (above, paragraphs 11) does not satisfy that test. Again, this statutory duty in s 189A is sufficiently analogous to the duty to give written reasons in s 203(4) for *Nzolameso* to be followed and *Akhtar* and *Alibkhiat* to be distinguishable.
- iii) The Defendant must be able to demonstrate that it has applied its Placements Policy properly: above, paragraph 56. In my judgment, that

duty to demonstrate compliance with a published policy by way of a contemporaneous, reasoned decision, applies even when there is no statutory duty to give reasons. It is a well-established common law duty which was not considered in, and is distinguishable from, *Alibkhiat*, [82-86], as is demonstrated by *Abdikadir*, [57-58], which postdates *Alibkhiat*: further illustrations are given in Sir Michael Fordham's *Judicial Review Handbook*, 7th ed., [6.2.9]. In any event, this is one of the matters which must be addressed as part of the s 189A assessment process which must also be adequately reasoned to demonstrate compliance with the Placements Policy. It was not, for the reasons set out at paragraph 104, below.

- iv) The Defendant was under a *Tameside* duty to make further inquiries: see paragraphs 86-87, above. In the absence of any reasoned decision or other evidence to show that those inquiries have been carried out, the Court will infer that the duty has not been discharged, as in *Nzolameso*, [36]. Again, this situation was not contemplated in, and is distinguishable from, *Alibkhiat*, [82-86]. The reasonable inquiries that an authority is required to take as part of its assessment should be evident from the s 189A assessment or housing plan, or at least should be evidenced on the housing file. They are not.

89. Fourth, the personal housing plan contained in the RAPP was also unlawful because it was based on a flawed s 189A(2) assessment. I would add that, in concluding the housing plan, the Defendant did not go through the stages mandated by s 189A set out at paragraphs 31-32 above, which was not justified by the urgency of the matter: see paragraph 84, above. However, as these failings were not advanced as a Ground of challenge I do not base my conclusions as to the unlawfulness of the housing assessment and plan upon them.
90. In conclusion, in my judgment the s 189A housing assessment and plan were unlawful. I also conclude that the Defendant failed to make adequate inquiries for the purposes of s 184 and s 188(1) for the reasons at paragraphs 86-87 above.

(2) Whether the Defendant conducted a lawful review (Ground 1(iii))

91. In my judgment the Defendant also failed to conduct a lawful review of the Claimant's housing needs and the suitability of her accommodation as required by s 189A(9) and the Code of Guidance, paragraph 17.8. In particular, the Suitability Assessment of 12 September 2022 did not satisfy that duty.
92. Section 189A(9) requires an authority to keep under review both their assessment of the applicant's needs and the 'appropriateness of any agreement reached or steps recorded' in the personalised housing plan: above, paragraph 33. By necessary implication, that requires the authority to consider afresh the s 189A criteria by reference to the same statutory relevant factors in the light of any new, relevant information it has obtained. Paragraph 17.8 also requires the authority to keep under review the suitability of accommodation they provide. Any changes in the applicant's or their household's circumstances may alter the authority's assessment of what is suitable: *Elkundi*, [108], above paragraph 36.

The duty requires the authority to consider not only the suitability of accommodation they have already offered but also whether *alternative* suitable accommodation is available either within or closer to the authority's district. In *Saleh*, the Court of Appeal held that on a review brought under s 202 challenging the suitability of accommodation provided under s 193(2) on the grounds of location, an authority was obliged to 'reconsider its decision in the light of all material circumstances at the date of review *including the availability of suitable accommodation either within or closer to its district* and the school which his daughter attends': [39]. If there is such accommodation and it is 'reasonably practicable' to provide that accommodation (for example, there is no other applicant with a higher priority), the authority is under a duty to secure its provision. Any accommodation a further distance away will then become 'unsuitable', even though it is otherwise suitable: *Saleh*, [24]. The Court of Appeal's conclusion in *Saleh* was particularly influenced by the review duty in the Code of Guidance, paragraph 17.8. In my judgment, s 189A(9) read in the light of the paragraph 17.8 imposes a similar obligation on the authority, at the time of its review, to reconsider both the suitability of the present accommodation and the availability of alternative accommodation nearer to the authority's district that is or might reasonably become available.

93. The Defendant asserts that it has carried out a review for s 189A(9) and paragraph 17.8 purposes, namely the Suitability Assessment of 12 September 2022. I do not accept that this evidence constitutes *ex post facto* reasons that I should treat with particular caution, contrary to Mr. Jackson's submission based on *Ermakov*. I accept that the Suitability Assessment was a genuine attempt to assess the Claimant's housing needs and the suitability of the Property in the light of the more up to date information that had been provided by the Claimant by 12 September 2022, bearing in mind that relatively limited information had been available on 17 August 2022. I take into account the fact the Defendant was under a statutory duty to keep the assessment under review, which duty the Suitability Assessment is said to discharge, and a significant amount of new information was provided by the Claimant after the initial decision. I also accept that Mr. Ogwu conducted his assessment by reference to the 'key needs' of the Claimant and her family, including the Claimant's need for employment and to maintain support networks. His assessment also included the crucial issue of the children's educational needs, and he considered the potential disruption that a move of schools would cause and identified a number of schools local to the Property in or near East Tilbury. He took into account the benefits to the children of being within reasonable proximity to their schools, but concluded that in the light of the severe shortage of available accommodation within or near the borough that was not possible, and declared himself satisfied that the location of the Property was suitable having regard to the children's education: see paragraphs 19-22, above. Reading the document benevolently, and avoiding too exacting an approach, I am satisfied he took into account the considerations required by s 210, including the matters in the Homelessness Order; he addressed himself to the duty in s 11(2) Children Act 2004; and he concluded it had not been 'reasonably practicable' to provide the Claimant with accommodation in or near Lambeth for the purposes of s 208 and paragraph 17.51 of the Code of Guidance, at least at the time the Property was

offered on 18 August 2022. Subject to two provisos, Mr. Ogwu addressed the relevant statutory relevant factors.

94. The two provisos are these.
95. First, Mr. Ogwu did not address himself to the question of whether there was any alternative suitable accommodation available *on 12 September 2022* that was closer to Lambeth than the Property, as I have concluded is required by s 189A(9) and paragraph 17.8 of the Code of Guidance, in the light of *Saleh*. Accordingly, he failed to consider the authority's duty 'so far as reasonably practicable' to provide accommodation that was in or nearer Lambeth than the Property at the date of the review. That is clear from page 2, under the heading 'Background Summary', where he rehearses the background including the offer of the Property and the subsequent judicial review. He then wrote: 'What follows is a suitability assessment *of the accommodation at [address of the Property in East Tilbury]*'. Although the document does attest to the general scarcity of suitable property in the borough as at 7 September 2022, there is no evidence to suggest that a search was undertaken for other properties in or nearer to Lambeth that were or might become available as at 12 September 2022. In any event, there is no evidence at all as to what accommodation was available near (as opposed to in) Lambeth at that time: see above, paragraph 19. The Defendant therefore did not address the statutory question in s 208 nor did they 'have regard' to paragraph 17.51 of the Code of Guidance, contrary to s 182. That is sufficient for me to conclude that the Defendant has failed to conduct a lawful review either under s 189A(9) or pursuant to paragraph 17.8 of the Code of Guidance.
96. Second, and in any event, the Defendant failed to discharge its *Tameside* duty of enquiry as required by s 189A(9), s 184 and s 188(1), read with s 11(2) of the Children Act 2004, and paragraph 17.8 and 17.54 of the Code of Guidance. I have already explained how this duty was breached at the time of the original assessment: see above, paragraphs 86-87. A *Tameside* duty may also be owed at the time of any review under s 189A(9) and paragraph 17.8 of the Code of Guidance. I accept that an authority may generally expect an applicant to provide them with the information that the applicant considers to be relevant, particularly at the time of a review. I also accept that in assessing compliance with s 11(2) this Court should not be 'too exacting'. However, the crucial question at the time of the review remained the impact on the children's education of the move to East Tilbury. At the time of the Suitability Assessment the children remained at schools in Lambeth, but there was still no evidence of any approach being made to the schools for an opinion as to the impact a move to a new school would have on the children's education and welfare. That is strikingly evident in the case of the eldest child, S. Mr. Ogwu did not know at the time he made his statement that S is taking her GCSEs this year (below, paragraph 105), which was a highly relevant factor, not least because the Defendant's own Placements Policy gives households with such children priority for accommodation closer to the borough.
97. There remains the question of whether the Defendant complied with its *Tameside* duty for the purposes of s 11(2)(b) of the Children Act 2004 to satisfy itself that suitable arrangements were or would be in place to meet the

educational needs of all of the children in Thurrock: see above, paragraphs 86-87. Mr. Ogwu did identify a number of schools local to the Property in his Suitability Statement. In his witness statement, Mr. Ogwu attests to the fact the Defendant's social worker had 'referred the family to Thurrock Council'. He cites an email from Thurrock Council to the effect that they had been in touch with the Claimant to discuss possible school placements, which I have read. I accept those steps go a long way to discharging the Defendant's *Tameside* duty in the light of its duty under s 11(2)(b). But there is no evidence that there were (or are) school places actually available at any of the schools identified in the Suitability Assessment. In the generality of cases, an applicant with children can be expected to liaise with the receiving council to ascertain whether school places are available. However, the circumstances of this case are highly unusual: the applicant is not an English speaker; she is single; she has a young baby; she has no family or other support in Thurrock; there are six school age children for whom placements need to be made; even if places were available for all of them, if they are only available at different schools then it may be impracticable for the Claimant to ensure their regular attendance at school, as she is obliged to do by s 7 Education Act 1996; and the eldest child, S, is due to take her GCSEs this year. In those, very special, circumstances, I am satisfied that the Defendant could not reasonably decide either that the Property remained 'suitable' having regard to the disruption to the children's schooling, or that it was not reasonably practicable for them to be accommodated nearer to Lambeth, or that the criteria in s 11(2)(b) were met, without satisfying itself of two matters. First, that school places were, in fact, available for all the children in Thurrock. Second, that it would be reasonably practicable for the Claimant to ensure that all the children could attend those schools. In the absence of evidence to that effect I conclude the Defendant failed to conduct the reasonable inquiries necessary to satisfy itself of those matters.

(3) Whether the s 188(1) decision was unlawful because it was based on an unlawful and inadequate assessment and inquiries (Ground 3(i))

98. The question that arises, next, is whether the Defendant's decision that the Property is 'suitable' for the purposes of s 188(1) is vitiated by the fact that it was based on an unlawful assessment under s 189A and a failure to conduct adequate inquiries for s 184 and 188(1) purposes. In my judgment, that decision was so vitiated, for two reasons.
99. The first reason requires me to assume, as the Defendant asserts, that in this case the provision of s 188(1) accommodation was not one of the 'steps' taken by them in the discharge of their duty under s 189B(2) to take 'reasonable steps to help the applicant to secure that suitable accommodation becomes available'. The s 188(1) decision was separate and distinct from the s 189B(2) decision. Accordingly, the argument runs, even if the s 189A assessment was unlawful, that does not, of itself, vitiate the s 188(1) duty. I reject this argument. The assessment of the Claimant's housing needs, including the determination that the Property was 'suitable' accommodation, was in fact based on the authority's s 189A assessment. The test of 'suitability' is identical whether s 188(1) is considered in isolation or in the light of an assessment under s 189A. To the extent that the assessment under s 189A was flawed, those flaws also

undermined the s 188(1) decision as a matter of both fact and of law. It is immaterial if the s 188(1) decision was not one of the ‘steps’ taken under s 189B(2).

100. I would add that *if* the provision of s 188(1) accommodation was, in fact, also accommodation provided under s 189B(2) and s 205(3), then the unlawful s 189A assessment vitiated the s 189B(2) decision. That is so, not least, because s 189B(3) requires the authority, in deciding what ‘steps’ to take, to have regard to the assessment it has made under s 189A(3), which I have found was unlawful. In the event, for reasons I address at paragraphs 109ff, below, I have not decided this question, the resolution of which is otherwise unnecessary to the rest of my decision.
101. Second, and in any event, the s 188(1) decision was also based upon the inquiries the authority was obliged to conduct under s 184 and s 188(1) read in the light of s 11(2) of the Children Act 2004 and *Tameside*, including as to the ‘suitability’ of the Property. I have found those inquiries also to have been inadequate, both at the time of the initial decision on 18 August 2022 and at the review on 12 September 2022: see above, paragraphs 86-87 and 96-97. In the absence of a lawful assessment and inquiries it was not open to the Defendant to conclude that: the Claimant only had a ‘wish’, not a ‘need’, to be located in Lambeth; the Property was ‘suitable’ for her and her family’s needs; it was not reasonably practicable to accommodate the Claimant in or near to Lambeth; or for the Defendant to demonstrate it had regard to the need to safeguard and promote the welfare of the children. The decision is vitiated for that reason also.

(4) Whether the Placements Policy was applied lawfully (Ground 3(ii))

102. I am also satisfied that the Defendant’s decision that the Property was ‘suitable accommodation’ under s 188(1) and s 206 and that it was not ‘reasonably practicable’ to provide accommodation in or nearer to Lambeth under s 208 was also unlawful because the authority unlawfully failed to apply their Placements Policy to the Claimant’s circumstances.
103. I have explained at paragraphs 55-56, above, that housing authorities may take into account their housing resources when determining the ‘reasonable practicability’ of accommodating a homeless applicant in or near the borough, and that *Nzolameso* and the Code of Guidance, paragraph 17.49, strongly advise that authorities have in place a policy which accords priority to certain groups, according to individual need, for accommodation in or near their district. Provided a decision in an individual case falls within the policy, and the authority can show that it does so, a decision to place an applicant outside the district will be lawful: *Abdikadir*, [58]. On the other hand, if the authority does not apply the policy to an individual who, on the face of it, falls within it, they must show ‘very good reason’ for departing from the policy: *Nzolameso*, [31]. That reasoning process must be demonstrated even in a case where there is no statutory duty to give reasons: above, paragraph 86iii).
104. The Defendant has adopted a Placements Policy which accords households with a child in Year 11 priority to accommodation within the Lambeth ‘local area’ (‘Group B’): above, paragraph 16. The eldest child, S, was due to enter Year

11 in September 2022. She was, on the face of it, within Group B at the time of the s 189A assessment on 17 August 2022 as she had finished Year 10 in the summer holiday before she began Year 11. The housing assessment and plan of 17 August 2022 are, however, silent as to whether the Policy applied. In the absence of a reasoned decision, I infer that the Defendant unlawfully failed to apply the Policy to the Claimant's case at the time of the original decision.

105. At the time of the Suitability Assessment on 12 September 2022 Mr. Ogwu did consider the application of the Placements Policy to the Claimant's case. By then there is no question that S had actually started Year 11. Mr. Ogwu's conclusion to the effect that the Placements Policy did not apply (above, paragraph 23) is, on the face of it, wrong. If, exceptionally, there was a 'very good' reason why priority should not be given to the Claimant, contrary to the Placements Policy, then that should have been recorded in writing. One possible reason is suggested by Mr. Ogwu in his witness statement of 6 October 2022, prepared for these proceedings, in which he states 'I am however unsure if she would be sitting the final year 11 GCSE exams given that she missed a large part of year 10 which is also a GCSE assessment year'. If a child in Year 11 is not, in fact, taking their GCSEs, I accept that it might reasonably be concluded that there is not the same priority need for accommodation close enough to the borough to avoid educational disruption. However, it is not disputed before me that S is indeed taking her GCSEs this year, a fact that Mr. Ogwu could, with reasonable diligence, have established but failed to do. If this was the basis upon which the decision was taken that the Placements Policy did not apply, it was based on a fundamental error of fact. In any event, in the absence of any reasoned decision (let alone 'very good reasons') explaining why the Placements Policy did not apply, I infer that the Policy was not applied properly in the Claimant's case. The s 188(1) suitability decision is therefore unlawful on that basis also.

(5) Whether the decision the Property was 'suitable accommodation' was irrational (Ground 3(iii) and Ground 2)

106. In view of the conclusions I have already reached, it also follows that the Council acted irrationally in deciding that the Property was 'suitable accommodation' for the purposes of s 188(1), taken with s 206 and s 208, read in the light of s 11(2) of the Children Act 2004, based as it was on inadequate and inaccurate information. I do not need to add to what is already a lengthy judgment to address the other failings which Mr. Jackson submits demonstrate the decision to be irrational.
107. I therefore also do not need to determine the very interesting question of whether s 11(2) must be read in the light of article 3.1 of the UNCRC so that, in any decision having an impact upon a child, the best interests of the child are a 'primary consideration'. That must await another day.

(6) The interrelationship between s 188(1) and s 189B(2) and the Claimant's application to amend to add Ground 4

108. I turn, then, to consider the Claimant's application to amend the claim to add a further Ground 4. This requires a little explanation by way of background and further analysis of the relationship between s 188(1) and s 189B(2).
109. As I have explained, at paragraph 29 above, where an applicant's need for housing is identified after an assessment made under s 189A an authority *may*, but is not obliged to, meet that need by the provision of suitable accommodation under s 189B(2) read with s 205(3). That power may be exercised provided the authority is satisfied the applicant is homeless and eligible for assistance, and having regard to any assessment made under s 189A: see s 189B(1)-(3). The power is wider than s 188(1) in that accommodation may be provided to an applicant who is not in 'priority need': see Code of Guidance, paragraph 15.34. However, s 189B(2) does not displace s 188(1): where in the course of a s 189A assessment an applicant is identified as being in 'priority need' then the authority must provide interim accommodation under s 188(1): Code of Guidance, paragraph 13.3. It is therefore not open to the authority to provide accommodation under s 189B(2) *instead* of s 188(1) where the criteria under s 188(1) are met. It is also evident, however, that the structured assessment and planning process introduced by s 189A is intended to apply in all cases where the local authority is satisfied an applicant is homeless or threatened with homelessness and eligible for assistance, including when they are or may be in 'priority need'. In all but the most urgent cases, the s 189A assessment duty will be discharged alongside the s 184 duty to make inquiries and any decision made under s 188(1) will be based upon, and informed by, a s 189A assessment and plan.
110. This begs the following question: where a need for interim accommodation under s 188(1) is identified during the course of a s 189A assessment, is the provision of accommodation under s 188(1) *also* one of the 'reasonable steps to help the applicant to secure that suitable accommodation becomes available' for the purposes of s 189B(2), which the authority has decided should be discharged by 'securing that accommodation is ... available': s 205(3)? If the answer to that question is 'yes', that is of some consequence. An applicant has a right of review of any decision of an authority as to 'the steps they are to take' (s 202(1)(ba)) and 'the suitability of accommodation' provided (s 202(f)) under s 189B(2), with a subsequent right of appeal to the County Court under s 204. No such right arises where the accommodation is provided under s 188(1) alone: see above, paragraph 62. If accommodation under s 188(1) is *also* accommodation provided under s 189B(2), a dissatisfied applicant then has a statutory right of review and appeal under s 202 and 204. Moreover, in such cases judicial review will not be the appropriate remedy.
111. The issue has arisen in the present case because the Defendant has conducted a s 189A assessment; identified that the applicant is homeless, eligible for assistance and in priority need and therefore entitled to interim accommodation; assessed her need under s 189A(2) as being a '4/5 bedroom house'; made an offer of accommodation (the Property) under s 188(1); but has not identified in the personal housing plan that the s 188(1) accommodation is one of the 'steps'

that it will take to help the applicant ‘secure that accommodation becomes available’ under s 189B(2). Those ‘steps’ are limited to the provision of information about the private rented sector: see above, paragraph 11. The Defendant has stipulated in the Offer Letter and the Cover Letter that there is no right to review the suitability of the Property because it is made under s 188(1) and can only be challenged by way of judicial review. By contrast, there is a s 202 right of review of the other ‘steps’ identified in the personal housing plan. On any view, this is an anomaly. The question is whether it is one that Parliament intended, which is a matter of statutory construction.

112. I raised this anomaly, and whether the decision under challenge should have been the subject of a review under s 202, with the parties at the outset of the hearing and invited them to consider and make submissions on the interrelationship between s 188(1) and s 189A and 189B. I also invited Mr. Jackson to consider whether the Claimant wished to apply to amend the claim, to the effect that the Defendant had acted unlawfully in failing to identify the provision of accommodation under s 188(1) as one of the ‘steps’ they had taken for the purposes of s 189B(2). I put his mind at rest that, if that ground succeeded, I would not dismiss the case on the basis that the availability of a review under s 202 was an ‘alternative remedy’. After initially declining the invitation, Mr. Jackson made an application in writing on Day 2, although the final version of the amendment was made orally. The amendment he eventually pursued, with some assistance from me in its formulation, is as follows:

The Defendant acted unlawfully in failing to identify in the s 189A personal housing plan that the provision of s 188(1) interim accommodation is one of the ‘steps’ it has taken to help the applicant to secure that suitable accommodation becomes available for the purposes of s 189B(2), which the authority has decided should be discharged by securing that accommodation is available.

113. Mr. McDermott had an opportunity to respond to the application orally and in writing after the hearing. He opposed the application to amend. His arguments would carry greater weight if the genesis for the application had not been at my intervention. After much thought, however, I have decided that it would not be appropriate to allow the application. While a degree of informality may be appropriate to enable justice to be done, procedural rigour is nevertheless important in judicial review cases, as the Administrative Court Judicial Review Guide 2022, Part A.2, makes clear. While Mr. McDermott had an opportunity to make submissions on proposed Ground 4, he pointed out that it had not been formulated in writing and is a ‘complicated’ point which has not arisen in previous cases. I do not think it is appropriate for me to give a concluded judgment on an issue of importance where, as here, the amendment is made orally and in the dying minutes of a hearing without full submissions. Accordingly, the question will have to be resolved in another case, on another day.

Conclusion

114. My conclusions are as follows:

- i) Both the initial housing needs assessment and the personal housing plan conducted on 17-18 August 2022 were unlawful for the purposes of s 189A of the 1996 Act, read in the light of s 11(2) Children Act 1989, and the Defendant failed lawfully to pursue the inquiries required under s 184 and s 188(1), for the reasons given at paragraphs 80-90 above (Ground 1(i) and (ii) and Ground 2).
- ii) The Defendant failed to conduct a lawful review of the Claimant's housing needs as required by s 189A(9) and paragraph 17.8 of the Code of Guidance. In particular, the Suitability Assessment of 12 September 2022 did not satisfy that duty, for the reasons given at paragraphs 91-97 above (Ground 1(iii)).
- iii) The Defendant's decision that the Property was 'suitable accommodation' for the purposes of s 188(1) is vitiated by the fact that it was based on an unlawful assessment under s 189A and lack of proper inquiries for the purposes of s 184 and 188(1), and an unlawful review, for the reasons given at paragraphs 98-100 above (Ground 3(i)).
- iv) The Defendant's decision that the Property was 'suitable accommodation' under s 188(1) was also unlawful because the authority unlawfully failed to apply their Placements Policy to the Claimant's circumstances, for the reasons given at paragraphs 102-105 above (Ground 3(ii)).
- v) The Defendant also acted irrationally in concluding that the Property is 'suitable accommodation' for the purposes of s 188(1), taken with s 206 and s 208 and read in the light of s 11(2) Children Act 1989, for the reasons given at paragraphs 106-107 above (Ground 3(iii)).
- vi) I refuse the Claimant's application to amend to add Ground 4, for the reasons given at paragraphs 108-113 above.

115. Accordingly, the application for judicial review is allowed on Grounds 1 to 3.

Relief

116. Following circulation of this judgment in draft the parties were invited to try and agree the terms of the order to be made. They agreed that declarations should be made that: (i) the initial housing needs assessment and the personalised housing plan, dated 17 and 18 August 2022, are unlawful; (ii) the Defendant failed to conduct a lawful review of the Claimant's needs and steps in the personalised housing plan in breach of s 189A(9) of the Housing Act 1996; (iii) the Defendant's decision that the property at East Tilbury ('the Property') was suitable accommodation for the purposes of s 188(1) of the Housing Act 1996, taken with s 206 and s 208, was unlawful. The parties also agreed that a quashing order should be made in relation to the s 188(1) decision. I make those orders.

117. The only disagreement related to the terms of a proposed mandatory order. The parties agreed that a mandatory order should be made requiring the Defendant to prepare a fresh housing needs assessment under s 189A by 15 November 2022. The Claimant submitted that the mandatory order should also stipulate that: ‘(i) the Defendant must give reasoned consideration as to whether or not it is reasonably practicable to provide accommodation within its District and, in particular, whether 3- or 4-bedroom accommodation is available closer to Lambeth than the Property; (ii) give reasoned consideration as to how the Placement Policy applies to the Claimant’s circumstances; and (iii) assess the children’s educational needs and welfare, and the need for school places to be available and practicably accessible near the location of any suitable accommodation’. The Defendant argued that this additional wording is superfluous.
118. I was also informed that the Defendant has now accepted that the Claimant is owed the full accommodation duty under s 193(2). Accordingly, in any event, the Defendant will need to make a fresh decision as to what accommodation is ‘suitable’ for s 193(2) purposes. That decision should be informed by a fresh assessment under s 189A, which the Defendant will need to carry out in consequence of my judgment and order. No doubt the decision will also be informed by the s 17 Children Act 1989 assessments that have now been completed. In those circumstances I do not consider it necessary or appropriate to make a mandatory order, either in the terms sought by the Claimant or at all. Rather, I will quash the s 189A assessment and housing plan and make a direction under s 31(5)(a) Senior Courts Act 1981 requiring the Defendant to reconsider the matter and reach a decision in accordance with the findings of this Court. I do not stipulate the matters that must be addressed as these will be clear from the terms of this judgment and the exercise of the Defendant’s powers is a matter for them, not the Court. I will not put a deadline on this process lest this proves to be the enemy of a careful assessment and housing plan, which this case plainly needs. If the outcome of the s 193(2) decision is disputed the Claimant will then have a right of review under s 202 with a subsequent right of appeal to the County Court under s 204.

Postscript.

119. I make two practice observations. Of the 29 case authorities provided to the Court in the bundle of authorities, 18 were in the form of official transcripts. All but two of these are either reported in the Official Law Reports, the Weekly Law Reports or in an authoritative specialist series of reports (the Housing Law Reports), copies of which should have been provided in accordance with *Practice Direction (Citation of Authorities) (Senior Courts)* [2012] 1 WLR 780. Also referred to was one case, *R (Fokou) v Soutwhark LBC* [2022] EWHC 1452 (Admin), an unreported judgment dismissing a renewed application for interim relief made prior to the grant of permission. This should not have been cited: as the *Practice Direction (Citation of Authorities) (Senior Courts)* makes clear, at paragraph 10, ‘an unreported case should not usually be cited unless it contains a relevant statement of legal principle not found in reported authority’. It did not. I would add that this principle holds true to an even greater extent in relation to judgments on unreported interlocutory applications.