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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2020] EWHC 1687 (Admin)

No. CO/1485/2020

Royal Courts of Justice

Tuesday, 5 May 2020

Before:

THE HONOURABLE MR JUSTICE MARTIN SPENCER

B E T W E E N :

THE QUEEN
ON THE APPLICATION OF
BEVIS ESCOTT

Claimant

- and -

CHICHESTER DISTRICT COUNCIL

Defendant

Mr Lindsay Johnson (instructed by Hopkin Murray Beskine) appeared on behalf of the Claimant.

Miss Felicity Thomas (instructed by Chichester District Council Legal Department) appeared on behalf of the Defendant.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

- 1 This is an application by the claimant, Mr Bevis Escott, for interim relief against Chichester District Council relating to the accommodation with which he has been provided pursuant to his application as a homeless person.
- 2 The claimant was born on 11 November 1988. It is an important part of his background that he was a member of the traveller community and at times was itinerant and without any fixed abode, but, in June 2019, he was admitted to hospital as a result of suffering an assault in which his jaw was broken. Unfortunately, he suffered complications from the operation to fix his jaw, as a result of which he needed to be admitted to the intensive therapy unit, having developed collections, angina and sepsis. Then, to make matters worse, whilst he was in the intensive therapy unit, he developed aspiration pneumonia. He was in hospital for a significant period of time and, upon his discharge, it was clear that he had ongoing medical needs, including the need for therapy and continuing medication.
- 3 It should also be noted that there is a background past medical history of sciatica, substance misuse, involving ketamine and cocaine, excess taking of alcohol, whereby he needed to be admitted on a previous occasion for detoxification, and also a smoking habit.
- 4 In March 2020, the defendant was exercising its Part 7 duty, under the Housing Act, to house the claimant and he was housed in a bed-and-breakfast or hostel-type accommodation. But, on 10 March 2020, the defendant District Council gave the claimant notice that it considered that its duty under s.189B(2) of the Housing Act was now at an end and it concluded that the claimant did not have a priority need for accommodation. The letter stated,

“I am satisfied that you do not have a priority need as you are not a person who is vulnerable as a result of old age, mental illness or physical disability or other special reason. However, even if it could be said that I am wrong, so that it can be said that you would suffer more harm in managing homelessness than an ordinary person, I do not believe that the harm you would suffer would make a noticeable difference to your ability to manage and cope with being homeless when compared to an ordinary person.”
- 5 In April 2020, after the lockdown in relation to the COVID-19 pandemic had been ordered by the Government, the claimant approached an organisation called “Friends, Families and Travellers” and, on 16 April, that organisation, on the claimant’s behalf, requested a review of the decision of the local authority to discharge its duty to house the claimant. The basis for the request was the claimant’s extreme vulnerability and priority need under s.189(1)(c) of the Act, because of his mental health, his physical health and his financial position.
- 6 In relation to physical health, it was stated that he was suffering from the effects of the assault the previous summer, it being stated that his physical health would be at significant risk if he were to be made street homeless, because he would struggle to undertake daily activities, such as cooking and feeding himself. It was also stated that it would be injurious to his mental health as it would place him at substantial risk of harmful self-abuse.
- 7 On 20 April, the defendant rejected the request for a review on the basis that the request had been made out of time. At that stage, Mr Escott instructed solicitors in the form of Ms Rebekah Carrier in the firm of Hopkin Murray Beskine.

- 8 On 21 April 2020, Ms Carrier sent a pre-action letter of claim to the local authority, with a deadline for reply of 4 p.m. the following day. The letter is slightly inconsistent in that it is dated 21 April and gives the deadline for reply as being 4 p.m. tomorrow, 21 April, but that is a misprint for 22 April. In any event, the proposed challenge concerned the claimant's urgent need for safe accommodation during the coronavirus pandemic, on the basis that the accommodation being provided by the local authority was shared accommodation which was not safe, because of the claimant's vulnerabilities arising out of his complex health history.
- 9 It was stated that the proposed challenge also concerned the authority's refusal to deal with a review of the decision of 10 March, the authority's failure to allow the claimant to join the Housing Register and the authority's failure to produce a lawful housing-needs assessment.
- 10 However, as matters then progressed and has become clear in the course of the proceedings for relief by way of an interim order, the focus has been the claimant's asserted extreme vulnerability to the pandemic and COVID-19, as a result of his past medical history.
- 11 In the letter, Ms Carrier refers to that medical history, the fact that he contracted pneumonia and sepsis, was homeless on discharge, he had a history of serious mental illness, including psychotic episodes, that he was struggling with his addictions to alcohol and drugs and he had experienced both a difficult childhood and adult life; his parents having both committed suicide and he having been in care from the age of 11.
- 12 Ms Carrier also referred to the claimant's significant back pain, with intermittent sciatica, possibly related to a car crash in which he had been involved in 2006, and a bulging intervertebral disc.
- 13 The pre-action letter was followed up by the issuing of the claim form in this matter on 24 April 2020 and that was supported by the first witness statement of Ms Carrier dated 23 April 2020 in support of the claim. Ms Carrier referred to the claimant's travelling background, his health, and she stated:

“I was keen to ensure that this was accurate and I have spoken to his GP, Dr Yeld. I spoke to her today and she confirmed the claimant's medical history means he is vulnerable to COVID-19 infection and should be shielded and so needs self-contained accommodation. I have asked for written confirmation from the GP and, once that is obtained, I will provide it to the court and the defendant.”

The court has not yet been provided with any such confirmation from the GP, although I understand that the GP has been pressed to do so and has been recalcitrant in providing the necessary written confirmation.

- 14 Ms Carrier goes on in the statement to refer to the claimant's risk of serious illness or death should he be infected by COVID-19 and the public health measures in place predicate the need to protect vulnerable people, such as those with a history of pneumonia.
- 15 The witness statement refers to the defendant housing authority having provided the claimant with temporary accommodation in a hostel. It says,

“The claimant has his own room but shared use of bathroom and a kitchen. It is, therefore, impossible to shield in this accommodation.”

- 16 Miss Carrier refers to having spoken to the claimant and been told that he will not stay at temporary accommodation because of the risk of COVID-19 infection from the shared facilities. She says that he described himself to her as terrified of COVID-19, because of his pneumonia, and saying that the other occupants of the temporary accommodation, who shared amenities with him, were not practising social distancing.
- 17 Ms Carrier referred to the defendant's response to the letter of claim, which had been received on 22 April. The defendant had offered to accept a fresh application from the claimant and had offered four options for accommodation, which, on the face of it, she acknowledged appeared to be a reasonable response. However, having gone through the four options with the claimant on the telephone, she said it was apparent, on analysis, that not one of the four options, in fact, provided the self-contained accommodation that the claimant needed to keep safe from COVID-19. She says that, for the claimant to be able to self-isolate and to shield himself appropriately, he needs accommodation which is exclusively available for his household unit of one person.
- 18 The letter of the defendant of 22 April (at p. C42 of the bundle), in which the defendant accepted the application for housing, stated there were four proposed accommodation options. The housing officer, Mr Graham Thruswell, stated that the available housing options were, firstly, that Mr Escott remained in his current offer of temporary accommodation and that the Council put up signs requiring other placements to stick to the social distancing guidelines and detailing the consequences of failing to do so; secondly, a room at the Chichester Travel Lodge was offered, at £35 a night, which would have an *en-suite* bathroom but no cooking facilities on site; thirdly, an *en-suite* room at Westward House with a shared kitchen; that would be accommodation within the Council's own temporary accommodation stock, the room would be two metres from the door to the outside and there are signs of an enforcement of social distancing, permitting only one person to use the kitchen at a time; and then, finally, a self-contained flat on the first floor of a conversion in Bayford Road, Littlehampton, that being a flat with a bathroom, fridge and microwave and shared use of a full kitchen with laundry facilities also. It was stated that the door to the flat had a lock and was approximately one metre from a single flight of stairs. Just like any accommodation, it was stated that it was likely to be suitable for a single young man. There was an element of shared space inside the property, but that was absolutely minimal.
- 19 Those options were all rejected by the claimant and the proceedings were issued, but the matter remained fluid, from the point of view of the defendant, because, on 24 April, a further offer of accommodation was made, which had become available to the Council. Mr Graham Thruswell, who is a member of the defendant's legal team, wrote on 24 April saying,

“Late yesterday afternoon, Mr Dixon, who is the Council's housing officer, became aware of the possibility of a fully-self-contained flat at Westward House in Chichester becoming available. He has, himself, been to view the accommodation this morning and has personally helped to prepare this for new occupancy. He has received confirmation that, as at 12.15 today, the flat has been cleaned and it is now ready for immediate occupation. This is an unfurnished one-bedroomed flat with kitchen and bathroom with its own front door to the outside world with absolutely no shared facilities. This would enable him to self-isolate in the way that you have emphasised is necessary in his case. There is an extensive CCTV network at Westward House, onsite staff are available during 24 hours. There is within the flat an emergency response

pull cord and the accommodation is within 400 metres walking distance of a large Tesco superstore.”

The letter goes on to state that

“It is important to state that this accommodation was due to be offered to a family with three young children who have recently started occupying bed-and-breakfast accommodation with shared facilities. However, we are prepared to offer this flat first to Mr Escott.”

- 20 Mr Escott then accepted that accommodation and took up residence there that evening. I understand that the defendant’s housing officer, aware that there was no bed as yet in the unfurnished flat, but knowing that Mr Escott would be entering the premises that night, obtained a mattress from his own home, which he brought to the flat so that the claimant would at least have somewhere on which to sleep. That is reflected in an email which is at p.B44 of the bundle, where it is stated,

“Mr Dixon, please extend my thanks to both your team members giving up their evening to enable this gentleman to get into this flat. I appreciate all your team has been working long hours every day and weekend day for well over a month to support those needing you during the pandemic access accommodation in exceptional difficulties. It truly is appreciated that again they do this tonight. I know you came in from leave to help today. Thank you.”

However, the steps taken by the defendant still did not satisfy the claimant or those advising him.

- 21 On 27 April, Ms Carrier sent a further email to the defendant stating, as follows:

“In our view, accommodation for a homeless person dependent on benefits who should be shielded during a pandemic and has ongoing mental health issues, such that the authority has been explicitly informed in writing by his GP of a suicide risk, is not sufficient to discharge your duty to accommodate, if it does not have the bare necessities and, in particular, a cooker and fridge and somewhere to sit and somewhere to sleep. It happens that the bare essentials are particularly important for this applicant. My client has a chronic back condition, he needs a proper bed. My client has a particular need for adequate nutrition. He needs cooking facilities and a fridge. However, any household needs cooking and storage facilities. When we have to remain inside during the pandemic, such facilities are even more important.”

- 22 In those circumstances, Ms Carrier signed a further witness statement on the same date, 27 April, referring to the developments since her previous witness statement and reiterating the case that the accommodation, lacking a fridge, cooker, bed and basic furniture, was not suitable, because of the claimant’s particular vulnerability to COVID-19. At para.10 she stated, as follows:

“I therefore wrote to the defendant again this afternoon in a letter which explained why it is that the claimant needs to have a fridge, cooker and basic furniture. I also explained that, because of his vulnerability to COVID-19, he cannot go to a launderette. I thought carefully about our request to the defendant for assistance with furniture and white goods. I would always take

care before suggesting that a local authority must provide furniture in this way, but, currently, of course, I am aware of the pressures facing the local authority because of COVID-19. Careful deliberation and discussion with counsel led me to the view that, given the potential consequences of COVID-19 infection for my client, because of his underlying health condition (which his GP had confirmed to me on the telephone last week), he had no option but to ask the defendant to provide him with the facilities he needs to enable him to stay home and stay safe. Accordingly, in the light of the defendant's failure to provide what he needs and with as yet no explanation for this failure, I advised the claimant to amend his application for interim relief."

- 23 It is in those circumstances, and with that background, that this application for interim relief was made. It was considered by Murray J on 28 April and he ordered that the application be adjourned to a hearing, on notice, and that is the hearing which has happened before me today.
- 24 In the meantime, the local authority had sent a further email on 28 April, that being another email from Mr Thrussell. In that email, Mr Thrussell explains that he had obtained further instructions that there had been a problem with the Council's emails the previous day and setting out the local housing authority's position, as follows:

"(1) There was already a fitted wardrobe in the flat, so that item is not required by your client and should be disregarded. (2) A Council officer could personally loan a chair for use by Mr Escott and a table. This officer has also personally provided the mattress being used by your client. (3) Save as aforesaid and after careful consideration, the LHA is not in a position to provide by buying and, where required, also paying for the installation, the remaining items listed in your letter. It has no standing stock of the stated items. (4) Temporary accommodation being provided to Mr Escott at Westward House is, it is contended, suitable within the statutory meaning. He is being treated no differently than any other client so accommodated at Westward House over the years, for example, someone who is pregnant, and with the LHA, facing no less than anyone else, the critical demands of the current constraints and circumstances in providing for all of its customers, it has done the best it can for your client in this situation and at short notice. (5) The LHA will, of course, continue to assist Mr Escott in any way it can insofar as that is reasonably practicable. For example, it will endeavour to assist him in applying for charitable grants, etc., to acquire these items and/or to apply for a discretionary housing payment in respect of the outlay. There is also Chichester District Council's rough sleeper outreach worker, Lisa Atoumb, who has been copied into this response with whom he can liaise and her contact details can be made available to him. (6) Your original letter of 21 April sought safe self-contained accommodation on Thursday last week. Fortunately, this became available on Friday morning at WWH. It was due to be offered to a family in bed-and-breakfast accommodation but your client was accorded precedence. This is precisely what he was offered and accepted. Yesterday you raised a new issue of content/facilities. Some of the items in your letter were last Friday and still would be, available both in the bed-and-breakfast accommodation, which he has vacated, it is, I am instructed, still in his name and/or the Travel Lodge. Those were the alternative options presented to him last Friday."

25 On behalf of the claimant, it is submitted that the claimant has a strong *prima facie* case that the defendant Council has acted unlawfully in failing to provide suitable accommodation. The claim for suitable accommodation arises out of the statutory duties which are imposed by s.188(1) and s.206 of the Housing Act 1996. In particular, s.206 provides:

“(1) A local housing authority may discharge their housing functions under this Part only in the following ways----

(a) by securing that suitable accommodation provided by them is available,

(b) by securing that he obtains suitable accommodation from some other person, or

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

26 The word “suitable” is used in all three sub-sections of sub-section (1) and the principal issue in this case is what amounts in law to “suitable accommodation” and whether the Council has, unarguably, failed to fulfil its statutory duties, in that it is said they have failed to provide suitable accommodation.

27 It is the claimant’s argument that accommodation without facilities for cooking or storing food cannot be considered suitable in circumstances where the claimant is housed so as to enable him to self-isolate and to shield and that the defendant is under a legal obligation to make the accommodation suitable and that they can only do that by providing facilities for cooking and for food storage and by providing basic furniture.

28 In support of his argument that the accommodation can be regarded as unsuitable, Mr Lindsay Johnson, who represents the claimant, has sought to draw guidance from the provisions of the Housing Act 2004, which identifies hazards for the purpose of monitoring housing standards, and The Housing Health and Safety Rating System Regulations. These provide that a hazard includes an inadequate provision of facilities for the storage, preparation and cooking of food. A Category 1 hazard exists where, within the period of 12 months, there is a reasonably foreseeable risk of death from any cause. He draws attention to para.17.25 of the Homelessness Code of Guidance, which provides that,

“When determining the suitability of accommodation secured under the homelessness legislation, housing authorities should, as a minimum, ensure that all accommodation is free of Category 1 hazards.”

29 He submits that the lack of facilities is plainly a hazard. At any time, the absence of facilities for the storing of food would amount to a risk to life, but, in circumstances where that absence necessitates the claimant leaving the flat every day during a public health crisis and obtaining cooked food from elsewhere, that risk is made more acute. He says that it follows that there is here a Category 1 hazard.

30 So far as the question of suitability is concerned, he, and indeed Ms Thomas, for the defendant, refers me to the judgment of Auld LJ in *Codona v. Mid-Bedfordshire District Council* [2004] EWCA Civ. 925, where at para.46, the learned Lord Justice said, as follows:

“... I draw three main criteria for ‘suitability’ of an offer by a local housing authority of accommodation to homeless or vulnerable people like gypsies to whom it owes a statutory duty to secure the availability of accommodation: 1) suitability to a *Wednesbury* minimum level of suitability in the nature, location and standard of condition of the accommodation having regard to the circumstances of the applicant and his or her resident family, including the duration of their likely occupation of it; 2) the absolute nature of the duty which, though coupled with an elastic concept of suitability taking account of financial constraints and limited availability of accommodation, is not so elastic as to permit an offer below the *Wednesbury* minimum standard ... and 3) special consideration, in the regulatory provision for and in decision-making in individual cases, for the housing needs of particularly vulnerable applicants such as traditional gypsies with a view, so far as practicable and when considered with all the other circumstances, to facilitating their traditional way of life.”

- 31 Mr Johnson relies particularly on the use of the words “the standard of condition of the accommodation having regard to the circumstances of the applicant”. He says that the circumstances of this applicant, in the particular circumstances of the COVID-19 pandemic, are such as to combine to mean that he needs not just to be provided with accommodation where he can self-isolate and be shielded and, thus, not have to share facilities, such as kitchen and bathroom facilities, but also, to enable him to remain indoors, it needs to be accommodation which has basic provision of white goods, such as a refrigerator, a cooker and furniture, such as a bed. On that basis, it is claimed that not only is there a strong *prima facie* case, which is seriously arguable, but that the balance of convenience should lead to the making of an interim order that the local authority provide these facilities.
- 32 For the defendant, Ms Thomas submits that the defendant, far from acting unlawfully in its response to the application for housing by the claimant, has responded as fully as it could in the circumstances and has, in fact, gone beyond its legal duties and taken steps which, to use a colloquialism, “went the extra mile”. She submits that the application has been made prematurely, when the local authority has been responding positively, not only to the original request for accommodation, but also to the follow-up requests for the furniture and other goods which have been requested by the claimant. She refers to the evidence from Mr Dixon, which has been filed in support of the defendant, to show the steps and extent to which the defendant has gone in this case, not just to fulfil its legal duty, but beyond fulfilling its legal duty.
- 33 In that statement, dated 4 May, Mr Dixon says that the fourth of the original four housing options presented to the claimant on 22 April had been a self-contained flat, which had food preparation facilities, albeit basic. He says that the claimant could have been accommodated there and would have been able to shield from that day, had it not been declined as being unsuitable on the basis that the flat was accessible by a single flight of stairs, which was from a communal front door. He says that the LHA contends that it was suitable in order to shield in line with Government guidelines and the fact that the LHA had no other accommodation available at that time other than the other three options. Thus, Mr Dixon contends that, in the first instance, the LHA, in fact, complied with its legal obligations in relation to the first response of 22 April and the four options presented in that response.
- 34 Mr Dixon goes on to assert that the self-contained flat at which the claimant is now living at Westward House is suitable accommodation and that the LHA has endeavoured to provide

or facilitate certain items to assist the claimant in living there, such as cooking facilities. By this, he is referring to the provision of a microwave oven. He says,

“I refer the court to a letter sent to the claimant’s solicitors last Friday evening which sets out what has been offered by way of facilities or contents and the extent of his voluntary interaction with staff at Westward House. In short, the LHA has now provided or offered to provide the claimant with the following (in some cases there are newly-purchased items as a gift to him) two separate mattresses, a sofa, a microwave, a kettle and a fridge/freezer. It should be appreciated that ordinarily residents at Westward House receive none of these items as part of the accommodation provision itself. The foregoing listed items give him the means to prepare some food while he seeks assistance to obtain other items which he would like to have. The claimant has been collecting items, it is understood, from both his B&B temporary accommodation in Bognor Regis and in Brighton, using public transport to travel. It is believed that he has friends and/or family in or near Chichester and they might be able to assist him in obtaining some of the items he seeks or desires.”

35 Mr Dixon also refers to various other sources of resources which can be pursued and states that

“The LHA will do all that it reasonably can in the challenging circumstances existing at the moment, and consistent with its duties to many customers, to demonstrate its continued commitment to help the claimant in his accommodation situation.”

Thus, he refers to the various hub agencies, charities and the Government food packages, which are available, as well as food available from local community groups and so forth.

36 The reference to the letter of 1 May is a reference to the three-page letter sent on that date by Mr Thrussell to the claimant’s solicitors in which Mr Thrussell states,

“That position in 2 above, namely the provision of accommodation at Westward House is without prejudice to the defendant’s case that your client’s self-contained flat at Westward House is suitable both in law and having regard to all the material considerations, notwithstanding it has been unfurnished temporary accommodation.”

That letter refers to the consistent efforts made by the defendant to assist the claimant insofar as it is able to do in the extremely challenging constraints caused by the COVID-19 pandemic.

37 Those constraints are also referred to by Mr Dixon in his witness statement, where he says at para.3, as follows:

“By way of a summary of the homelessness situation in the Chichester District, since the declaring of the nationwide lockdown on 23 March 2020, we have received 100 requests for housing assistance, accepted 70 new homeless applications, placed more than 20 applicants into temporary accommodation, brought in 23 rough sleepers off the streets in response to the Government’s Directive in that regard. The following is currently available to the claimant as temporary accommodation, the self-contained unfurnished flat at Westward

House, which he is currently occupying, a B&B room with shared facilities, a room at Chichester Travel Lodge, with an *en-suite* bathroom, but no cooking facilities. None of that accommodation would be more suitable for the claimant than where he is currently residing. Due to the pandemic, the Council is facing an unprecedented challenge regarding the provision of emergency accommodation and it is only because of the equally unprecedented partnership working we have conducted that the above list is not shorter.”

38 Ms Thomas argues, in the light of that evidence, not only is the application for interim relief premature, as indeed was the original claim made for judicial review, but that it is misconceived. She submits that suitability remains a broad concept and, in the circumstances of this particular case, the local housing authority’s priority has been to provide accommodation as swiftly as possible in order to allow the claimant to be shielded so as to reduce his risk of infection. That has been accomplished and, thanks to what she describes as “the tireless work” of the defendant’s staff and the assistance of the community, he has, in fact, now been provided with the basic items he needs to be able to maintain shielding in the short term according to the Government guidelines.

39 Ms Thomas submits that the question of what is suitable is in the first instance for the local housing authority to decide and that has always been the basic position, as shown, for example, in the decision of the House of Lords in *Pulhofer and Another v. Hillingdon Borough Council* [1986] 1AC 484. Although she acknowledges that that case was from an earlier era and referred to earlier legislation which did not provide that there was an obligation to provide suitable accommodation, she submits that the dicta of Lord Brightman at pp.518 to 519 have equal application today as they did when that case was decided. Lord Brightman said,

“Parliament intended the local authority to be the judge of fact. ... It is not, in my opinion, appropriate that the remedy of judicial review, which is a discretionary remedy, should be made use of to monitor the actions of local authorities under the Act save in the exceptional case. The ground upon which the courts will review the exercise of an administrative discretion is abuse of power - e.g. bad faith, a mistake in construing the limits of the power, a procedural irregularity, or unreasonableness in the Wednesbury sense - unreasonableness verging on an absurdity: see the speech of Lord Scarman in Reg. v. Secretary of State for the Environment. Ex parte Nottinghamshire County Council [1986] AC 240 at 247-248.. Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely.”

40 Ms Thomas submits that the development of the law, in relation to the modern legislation and, in particular, the decision of the Court of Appeal in the *Codona* case to which I have referred, does not detract from the generality of the point being made by Lord Brightman that the bar is set high for challenges to local authorities, where they are purporting to exercise their public duty and where they are provided by Parliament with the duty to decide what is required. In particular, I would add that those words have particular resonance and application in the circumstances where the country is suffering from lockdown measures in the light of the COVID-19 pandemic and where, to my knowledge, not just from the evidence in this case, but from other cases which I have heard, local authorities are

struggling to comply with their duties, with staff who are ill or having themselves to self-isolate and with the strain on their facilities and resources caused by the pandemic of the nature described by Mr Dixon in his witness statement.

- 41 In those circumstances, Ms Thomas submits that the court should be slow to criticise, or, indeed, condemn as unlawful, actions taken by local authorities in good faith and exercising, to the best of their ability, their statutory duty in what are, on any view, the most difficult of circumstances.
- 42 In those circumstances, Ms Thomas submits that the local authority, in providing the accommodation at Westward House, has complied with their statutory duty and that they continue to endeavour to assist the claimant as best they can, in a way which is wholly admirable, she would submit, and which more than satisfies their legal duty.
- 43 In my judgment, it is, perhaps, instructive that, although this is an area of law in which there has been significant litigation over the years, there is not one authority that I have been able to find that sets out that, in order to comply with its duty to provide suitable accommodation, a local authority must provide furnished accommodation; a search on the usual search engines for furnished and unfurnished accommodation yielded no results.
- 44 In those circumstances, and in any event, I take the view that it cannot seriously be argued that a local authority, when providing accommodation, must always provide basic furniture and local authorities, to my knowledge, frequently comply with their statutory obligations by providing unfurnished flats of the kind which has been provided here. In those circumstances, insofar as Mr Johnson submitted at one stage that the argument on behalf of the claimant applied outwith the circumstances of COVID-19 and the claimant's particular vulnerability, I reject such a submission. In my view, local authorities may well often, and do, fulfil their statutory duty by providing unfurnished accommodation.
- 45 However, the stronger argument on behalf of the claimant is not a general one, but a specific one relating to his particular circumstances, namely, that, because of his particular vulnerability, he needs not to just self-isolate but to shield from the risk of infection and, by doing that, he needs to be in accommodation which is not only appropriate for him to avoid contact with others, but also has sufficient facilities to enable him to remain in the accommodation for 24 hours a day and not expose himself to the outside world and the risk of infection.
- 46 Whilst, on the one hand, I can see that the individual needs of a particular person may be enhanced by the COVID-19 pandemic and the consequences of it in relation to the need to self-isolate and to shield, it must also be the case that the heightened requirements, as illustrated by the need to get homeless people off the street and into emergency accommodation, is balanced by the difficulties faced by local authorities in meeting the demands which arise where accommodation is scarce, where the needs of the public are heightened and enhanced and where the local authority's own staff are struggling to cope with the demands made on them, where they also have to work from home and do the best they can to assist people in the community, risking their own health in so doing.
- 47 In my judgment, Ms Thomas is right in her submission that this claim is premature and that this application is misconceived.
- 48 I do not consider that the local authority have in any way acted unlawfully in failing to provide a fridge or a cooker or a bed. Their primary duty is in relation to the provision of accommodation and they can only offer accommodation which is available to them. There

are different types of accommodation, which they have been able to obtain, to offer to customers: hostel accommodation, bed-and-breakfast accommodation, hotel accommodation or self-contained flats, which are unfurnished. They have to juggle the demands made on them with what they have available and it is reasonable, in my judgment, for the local authority to satisfy those demands by acting in the way that they have and giving the options that they have done to this particular claimant.

- 49 I consider it to be significant that the claimant accepted the offer at Westward House, although he was told when the offer was made that it was unfurnished. I do not consider that the local authority has a legal obligation to provide the items which are the subject matter of this application: that is the fridge, the bed and the cooker.
- 50 I was surprised, and I reject, the suggestion that a microwave oven is not capable of cooking food only heating it, as it seems to me to be wholly self-evident that a microwave is capable of cooking food and a microwave oven is an appropriately-useful piece of equipment for basic food preparation. The claimant has been provided with that and it is unarguable, in my view, that the local authority acted unlawfully in failing to provide a cooker as opposed to a microwave oven.
- 51 There is an issue over whether the local authority has or has not provided a fridge. It appears that a fridge was offered but the claimant appears to have rejected it on the basis that he would need to clean it himself and might, thereby, expose himself to the risk of infection if COVID-19 viruses should be present in the fridge. In my judgment, this was a wholly unreasonable attitude for the claimant to take and could be described as precious, or worse than that. The fact is that the local authority has been bending over backwards to assist him and his rejection of the assistance has been, in my judgment, wholly unreasonable in that regard.
- 52 Equally, he now has a sofa upon which he can sleep and that is reasonable as a short-term measure, given the very tight time constraints, in which the local authority was required to operate by the claimant's solicitors, in responding to their letters of claim and emails.
- 53 I have taken the very firm view that it is not reasonably arguable that the local authority, in this case, has acted unlawfully and, in those circumstances, this application is rejected.
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This transcript has been approved by the Judge.