



## **Kirsty Brimelow KC (sitting as a Deputy Judge of the High Court)**

### **Introduction:**

1. Mr. Saint Sepulchre applies for judicial review of the decision of the Royal Borough of Kensington and Chelsea dated 17 May 2023 (“the Decision”) by which the Defendant rejected Mr. Saint Sepulchre’s request for accommodation pending the outcome of his statutory review request of the Defendant’s earlier decision under section 184 of the Housing Act 1996 (“the 1996 Act”) on 13 May 2023, that the Claimant was not homeless as defined under section 175 of the 1996 Act, although he may be eligible for assistance as defined in section 185 and 186 of the 1996 Act (part 7).
2. The Decision was further reviewed by the Housing Review and Scrutiny Officer (“the Housing Officer”) on 25 May 2023 (“the Review Letter”) in light of the receipt of additional information including a Care Act assessment, suggested mental health and physical health decline of Mr. Saint Sepulchre and pre-action protocol correspondence.
3. The Defendant has a discretion to provide accommodation in such circumstances by virtue of s188(3) of the 1996 Act.
4. Interim relief, including continued provision of accommodation under s188(3), was ordered by Lang J on 7 June 2023.
5. Permission for judicial review was granted by Kate Grange KC sitting as a Deputy Judge on 30 June 2023.

### **Factual Background**

6. Mr. Saint Sepulchre is a 51-year-old single man with serious physical and mental health conditions. He is a wheelchair user and suffers from paranoid schizophrenia. Since 18 January 2016, the Claimant has had a social housing tenancy of a property in Truro (“the Truro address”), although, from 2018, he made housing applications on at least two occasions to the Defendant on a similar basis as this application, namely the fear of and assaults by his neighbours.
7. In his witness statement dated 2 June 2023, the Claimant describes a number of incidents in Truro involving assaults upon him by his neighbours, over four years, including a neighbour drilling through his door whilst he was inside and being pulled out of his wheelchair outside (September 2018). The Claimant describes going to London after this incident and making his first homelessness application, which was rejected. He returned to Cornwall.
8. The Claimant states that the last time he was told to return to Cornwall he ended up sleeping in a tent despite being reassured that there was temporary accommodation. Cornwall Housing reported to the Defendant that, in April 2022, the Claimant was housed in a “homeless pod”, after he had pitched a tent, due to the Truro address not being habitable.
9. The two recent specific allegations concerning the Truro address relate to the summer and Halloween of 2022. Mr. Saint Sepulchre says that he was assaulted three times by

a neighbour in the summer of 2022 and pushed out of his wheelchair. In his statement, Mr. Saint Sepulchre states that on Halloween 2022 at about 3 am, he heard noises outside. He opened the door and then was attacked. He named the alleged attacker. After this incident, Mr. Saint Sepulchre again returned to London. It appears that he slept in Kensington High Street car park. He approached the Defendant for housing on 6 December 2022.

10. Mr. Saint Sepulchre also alleged police corruption and criminality in Truro which meant that he was “terrified” to go past the police station. He further described distrust of the local authority in Cornwall. He says that they had broken an agreement with him to clear his arrears and instead attempted to evict him.
11. The Defendant states that the possession order of the Truro address was suspended on 14 December 2022, on the application of the Claimant, with terms being that Mr. Saint Sepulchre pays off rent arrears of £2967.49 at £70 a month. The Claimant argues that there was no intention to return but rather Mr. Saint Sepulchre’s focus was on the dispute over arrears. The Claimant believes that he may still be evicted. It is of note that a Notice seeking Possession of the Truro address was issued prior to 7 August 2019 indicative of an ongoing issue between the local authority in Cornwall and Mr. Saint Sepulchre, supporting Mr. Saint Sepulchre’s view that the Truro address is not as stable as the Defendant’s inquiries suggest.
12. The Claimant was driven to London by an acquaintance in November 2022, a woman he referred to as a heroin addict who had stolen from him on previous occasions. He describes feeling vulnerable due to “huge gaps” in his memory and the risk of violence towards him in Cornwall. He said that he had brought with him a couple of hundred kilograms of belongings and that being with his possessions keep him sane.
13. On 23 March 2023, the Defendant’s adult social care department completed a Care Act assessment upon the Claimant in his hotel room. The report noted that the Claimant’s GP had described a long and complex psychiatric history, and that the Claimant was “*diagnosed with paranoid schizophrenia in 1995 and he has also been given various other labels including that of a schizotypal personality disorder and fabricated illness syndrome. He is also known to have OCD*”.
14. In January 2023, the Claimant became ill and attended Chelsea and Westminster Hospital where they made a further diagnosis of paroxysmal positional vertigo.
15. The Occupational therapist, Emma Fleming noted that that Claimant’s room was clean and organised. The Claimant referenced not wishing others to enter his room as he worries about risk of infection which he manages by cleaning.
16. The report identified multiple risks to the Claimant’s mental health including the risk of its deterioration over the misuse of prescribed medication, some of which he will take to excess when stressed and set out that Mr. Saint Sepulchre needed support to be integrated into local mental health services.
17. The conclusion of the report was that Mr. Saint Sepulchre has eligible needs in line with the Care Act 2014 as a result of both mental health and physical health conditions and that there was a risk of deteriorating mental and physical health if he is not linked with local services. A need for longer term professional support was identified for both

physical and mental health. The Claimant was allocated a social worker to set up a support plan. The Claimant also was referred to Ealing Mental Health Service.

18. On 8 December 2022 Cornwall Council had carried out a Care Act assessment and concluded that Mr. Saint-Sepulchre did not have any eligible social care needs. However, it appears that he was offered support in the form of a social worker but did not allow access to the Truro address and then did not engage beyond the informal doorstep assessment.

### **Section 184 Housing Act 1996 Decision**

19. As outlined above, in a letter dated 13 May 2023, the Defendant gave its decision under s184 of the 1996 Act on the Claimant's homeless application. It concluded that Mr. Saint Sepulchre was not homeless as defined under section 175 of the 1996 Act as he had accommodation which it would be reasonable for him to continue to occupy and he had a legal right to occupy that property, namely the Truro address.
20. The Claimant's solicitor requested a review of that decision pursuant to section 202 of the 1996 Act in a letter dated 15 May 2023 and also requested the Defendant to continue to provide accommodation pending the outcome of that review pursuant to its discretion in s188(3) of the 1996 Act.

### **The Impugned Decision**

21. The Decision and the Review Letter, declining to continue the provision of accommodation include the following:
  - a. "It is asserted that Mr. Saint Sepulchre has been attacked by his neighbours and that the property is unsafe for him to return to. Relevant enquiries were made to the landlord who advised that there were no reports or concerns raised in relation to Mr. Saint Sepulchre's safety that would lead them to believe that he was unable to reside [at the address]" (the Decision).
  - b. "I have also considered that Mr. Saint Sepulchre has previously approached this Authority in 2020, when he also claimed he could not return to his home in Cornwall due to safety issues, which were not confirmed." (the Decision).
  - c. In deciding whether the original decision was finely balanced, "in the absence of any compelling evidence that would support your decision that our decision was flawed, I am satisfied that the evidence clearly supported our decision." (the Decision).
  - d. Careful consideration was given to Mr. Saint Sepulchre's physical and mental health issues. Having support needs and

being linked to a local social worker could not “be considered an exceptional circumstance” and this support can be provided in Cornwall. (the Decision)

- e. There is no disagreement that Mr. Saint Sepulchre is a vulnerable person. (the Review Letter).
- f. Scarcity of housing and cost of temporary housing and need to consider responsibility to other homeless households is considered (the Decision and the Review Letter).

## **Legal Framework**

- 22. A local authority’s duties concerning homelessness applications are set out in Part 7 of the 1996 Act. Section 184 of the 1996 Act relates to the substantive decision following inquiry into whether a person may be homeless and accompanying conclusion on duty owed to the applicant. If the decision is adverse, the applicant then can seek a statutory review of that decision further to section 202(1) of the 1996 Act.
- 23. The duty on the local authority to provide interim accommodation is contained within section 188(1):

“If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation.”
- 24. Section 184 of the 1996 Act provides that the local authority is obliged to make such inquiries as are necessary to satisfy themselves whether an applicant is owed any duty under Part 7. On completion of those inquiries, the authority shall notify the applicant of their decision and, so far as any issue is decided against interests, inform the applicant of the reasons for their decision (section 184 (3)).
- 25. Where the local authority concludes its inquiries under section 184 of the 1996 Act and rejects the application, the section 188(1) 1996 Act duty to provide interim accommodation comes to an end. If the applicant applied for a statutory review of the decision, the local authority has a discretion to provide interim accommodation until the review decision is determined. Section 188(3) of the 1996 Act:

“Otherwise, the duty under this section comes to an end in accordance with subsections (1ZA) to (1A), regardless of any review requested by the applicant under section 202. But the authority may secure that accommodation is available for the applicant's occupation pending a decision on review.”
- 26. The approach by the authority to the exercise of the section 188(3) discretion is contained within the well- known case of *R v Camden LBC ex parte Mohammed* (1998) 30 HLR 315 (Admin). Latham J, as he then was, said [321]:

“The important question is whether, in applying that phrase, it is apparent that the officers of the respondent Council have either failed to take into account material considerations, have taken into account immaterial considerations or have otherwise displayed irrationality. The need that I identify as the underlying requirement of the exercise of this discretion is to keep, on the one hand, well in mind the objective of fairness between those who are homeless in circumstances where the local housing authority has in its first decision decided that there is no duty to the particular applicant and, on the other hand, to give proper consideration to the possibility that the applicant may be right, and that to deprive him or her of accommodation could result in a denial of an entitlement.”

27. In addressing the approach of the decision-maker, Mr. Justice Latham distilled the considerations as follows:

“In carrying out that balancing exercise, it is clear that there are certain matters which will always require consideration.

First, the merits of the case itself and the extent to which it can properly be said that the decision was one which was either apparently contrary to the merits of the case or was one which required a very fine balance of judgment which might go either way.

Secondly, it requires consideration of whether there is any new material, information or argument put before the local housing authority which could have a real effect upon the decision under review.

Finally, it requires consideration of the personal circumstances of the applicant and the consequences to him or her of an adverse decision on the exercise of discretion. It may well be that in some cases other considerations may prove to be relevant.”

28. The discretion is a wide one. However, it only will be applied in favour of the applicant where there are exceptional reasons. In summary, the key question is whether the local authority has either failed to take into account material considerations, taken into account immaterial considerations or otherwise displayed irrationality. The Mohammed listed considerations are not exhaustive. The approach was approved in *R v Brighton & Hove ex p Nacion* (1999) 31 HLR 1095.
29. The *Mohammed* guidelines are reflected in the Homelessness Code of Guidance for Local Authorities (the up-to-date version is as amended on 15 May 2023).
30. A housing authority is under a duty to have regard to the guidance set out in the Code (s.182(1) and (2)). The Code has been through amendments and the current Paragraph 15.26 of the Code reflects the *Mohammed* guidelines as follows:

“In considering whether to secure accommodation pending review housing authorities will need to balance the objective of maintaining fairness between homeless persons in circumstances where they have decided that no duty is owed to them, against proper consideration of the possibility that the applicant might be right. Housing authorities should consider the following, along with any other relevant factors:

1. the merits of the applicant’s case that the original decision was flawed and the extent to which it can properly be said that the decision was one which was either contrary to the apparent merits or was one which involved a very fine balance of judgement;
  2. whether any new material, information or argument has been put to them which could alter the original decision; and,
  3. the personal circumstances of the applicant and the consequences to them of a decision not to exercise the discretion to accommodate.”
31. Further it is not sufficient to refer to the above factors in *Mohammed* without demonstrating that the balancing exercise has been fully or properly carried out *R(Paul-Coker) v Southwark LBC* [2006] HLR 32 Forbes J. In other words, there should not be lip-service to the considerations.
32. The Public Sector Equality duty (PSED) in its current form, is set out in section 149 of the Equality Act 2010. The relevant protected characteristic is disability (section 149(7) of the Equality Act 2010.

### **The Grounds and Defence**

33. The grounds fall under four headings of (i) inadequate inquiries (ii) irrationality (iii) failure to consider new information and all the circumstances of the case (iv) breach of the Public Sector Equality duty. The first and fourth ground combine, and the Defendant seeks to answer the (iii) by pointing to the Review Letter.
34. The Claimant argues that the Decision was based predominantly on inquiries to the housing authority in Cornwall and it failed to make enquiries of the Claimant’s solicitors despite the solicitors being known to have been acting for the Claimant since December 2022.
35. In summary, the Claimant states that the Defendant’s lack of inquiries of the Claimant’s solicitors or of those supporting him means that the Defendant has not fully or properly engaged with considerations one or two of Mohammed. They further state that the Defendant did not properly consider new information, particularly the Care Act assessment and Mr. Saint Sepulchre’s personal circumstances which showed the effect on him of the adverse decision.

36. The Defendant argues that the Claimant's solicitors' representations and any new information were considered in the Review Letter. In that letter the Housing Officer further argued that no information was provided by the solicitors until after the original s.184 decision, despite having represented him since December 2022, and also that Mr. Saint Sepulchre had not responded to repeated attempts to call him directly and through the hotel where he is living. This does not answer why the Housing Officer did not contact the solicitors.
37. Mr. Lane on behalf of the Defendant argues that it was as a result of the lack of engagement by the Claimant that the Housing Officer contacted the social housing landlord in Cornwall. Further, the Defendant relies upon a casework interview with the Claimant on 6 December 2022, although does not go into detail as to which parts.
38. The Defendant points to an analogy with homelessness review decisions and the need not to be over-prescriptive in analysis of decisions by local authorities, which are made by experienced Housing Review and Scrutiny Officers (*Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] 1 W.L.R. 413 and *Firoozmand v Lambeth LBC* [2015] EWCA Civ 952; [2016] P.T.S.R. 65). There should not be a "nit-picking" approach.
39. The Claimant argues that the Defendant's decision was irrational as its own adult social care department has assessed the Claimant as eligible for Care Act services and the Defendant, when reviewing the Decision in its Review Letter noted that Mr. Saint Sepulchre "*has significant support needs*" but that this support could be provided in Cornwall, despite Cornwall local authority not having found that he required support, albeit that assessment was 6 months earlier.
40. The Defendant states that it is not speculation to consider that Mr. Saint Sepulchre's social worker could assist in support provision in Cornwall. Being assessed as eligible for Care Act support does not mean that section 188(3) accommodation must be provided or that it necessarily is an "exceptional circumstance". The Defendant also points out that its own Care Act assessment was considered in the Review Letter.
41. The Claimant was admitted to hospital on 2 and 5 June 2023. These admissions post-date the Decision and are relied on as evidence of the effect of the Decision upon the Claimant. The Claimant argues that the Defendant should have produced additional reasons demonstrating that the up-to-date medical information had been considered. Further, the Claimant argues that this information impacts upon the Defendant's presumptions about care available to the Claimant if he returned to Cornwall. The Claimant argues that the consideration of Mr. Saint Sepulchre's personal circumstances is flawed.
42. The Defendant points to a statement from the Housing Officer for these proceedings which set out that the Claimant was discharged from hospital with no additional medical conditions or deterioration of existing conditions identified. However, the Housing Officer in a statement dated 10 July 2023 does appear to link the illness to the Defendant's imminent termination of his accommodation but does not review or explain her undisturbed finding under the third consideration of *Mohammed*.



43. The Claimant relies upon the requirement for the Defendant to have “*due regard*” to the need to take steps to meet the needs of a disabled person (*Birmingham City Council v Wilson* [2017] HLR 4 at para 33).
44. There is no dispute that PSED is engaged, and the Claimant argues that the Defendant has relied on a pro-forma paragraph without applying a reasoned or adjusted approach to engagement in inquiries. Further he points to a “degrading” of the Claimant’s disability by the Housing Officer in the Review Letter, referring to the Claimant being able to mobilise without a wheelchair. The Claimant challenges the Housing Officer’s assertion that the evidence in the Care Act assessment that Claimant had to crawl out of his wheelchair to reach the door as not being supported by medical evidence. The same assessment says that Mr. Saint Sepulchre uses his wheelchair outdoors.
45. The Claimant also argues that his disability means that there is an enhanced duty of inquiry as opposed to awareness. The Defendant’s case is that the Housing Officer clearly took into account that the Claimant requires a wheelchair and there is not an enhanced duty but rather an awareness.
46. The Defendant refers to *Birmingham City Council v Wilson* [2016] EWCA Civ 1137; [2017] H.L.R. 4 which references the treatment of the predecessor to s. 149 in *Pieretti v Enfield LBC* [2010] EWCA Civ 1104; “*As Wilson LJ held, in a judgment with which the other members of the court agreed, that provision was intended to introduce a culture of greater awareness of the existence and legal consequences of disability...*”
47. As to the extent of the reasons, Simon Brown J in *South Bucks District Council v Porter (No.2)* [2004] 1 W.L.R. 1953 at §36:

“The reasons need refer only to the main issues in the dispute, not to every material consideration.”

## **Analysis and Decision**

48. Turning to the impact of lack of inquiries or deficient inquiries upon the balancing exercise as carried out by the Defendant, the Claimant’s primary complaint is that the results were not communicated to Mr. Saint Sepulchre through his solicitors for his comments. This was an obvious and expected inquiry due to Mr. Saint Sepulchre’s vulnerability and complex and serious mental and physical health condition.
49. Defective inquiries clearly are relevant to consideration of the first limb of *Mohammed*, namely the merits of the Claimant’s case and the extent to which the section 184 decision was one contrary to the apparent merits or was one which involved a very fine balance of judgement. Mr. Lane on behalf of the Defendant did not seek to argue that this was not the position, in oral submissions.
50. The Claimant’s solicitors, in their letters dated 15 and 18 May 2023, also argue that the Defendant failed to incorporate the Claimant’s difficulties with engaging with others in its approach to its inquiries. In summary, the Claimant states, the Housing Officer did not apply the Code of Guidance.

51. Paragraph 26.15 of the Code provides an approach to lack of corroborating evidence to a person's allegations: "*a lack of corroborating evidence from the police may reflect that the applicant was fearful approaching the police, as this could increase the risk of violence.*" Clear consideration of this part of the Code is important in this case. It is not reflected in the Decision or the Review Letter.
52. Regardless of the Claimant's lack of input, Mr. Gannon refers to *R v Gravesham BC ex p Winchester* (1986) 18 HLR 208, where it was held by Brown J that "*The burden lies upon the local authority to make appropriate inquiries.....in a caring and sympathetic way....These enquiries should be pursued rigorously and fairly albeit the authority are not under a duty to conduct detailed CID type enquiries....the applicant must be given an opportunity to explain matters which the local authority is minded to regard as weighing substantially against him.*"
53. The Housing Officer relied on information from the landlord that there were no reports or concerns raised in relation to Mr. Saint-Sepulchre's safety that would lead them to believe he was unable to live at the address.
54. The Housing Officer also noted that the police have not notified the landlord of any safety concerns "which they would normally do in the case of a vulnerable individual". However, Mr. Gannon is correct in his submissions that the Defendant does not consider that Mr. Saint Sepulchre may have a distrust of the police. Further, the information from the landlord was gathered and relied upon without referring it to Saint Sepulchre's solicitors for context of the dispute between the Claimant and the landlord.
55. The Defendant points to the Housing Officer considering Mr. Saint Sepulchre's solicitors' response in its Review Letter. However, the Review Letter focuses on lack of engagement by Mr. Saint Sepulchre and also its view of the unlikelihood of the housing office never having been notified by the applicant or neighbours of attacks. There appears to be no contemplation that Mr. Saint Sepulchre might be equally terrified of violence that he believed to have happened.
56. When further considering the Claimant's submissions, it is useful to contemplate that it might be in the interests of the landlord to present the address as a safe place for Mr. Saint Sepulchre, given the complicated background of a failed eviction followed by agreement that Mr. Saint- Sepulchre remains and pays rent arrears. Rent arrears were not considered in the context of a specific complexity within the Decision. It further underlines the importance of balancing a response from Mr. Saint-Sepulchre.
57. In relation to PSED, the Defendant relies on the Housing Officer stating that she has carefully considered Mr. Saint Sepulchre's multiple health issues and that the evidence does not satisfy her that that the Claimant will suffer particular harm or detriment as a result of the decision not to provide interim accommodation.
58. However, the reasons given that all support can be provided in Cornwall does not take into account the apparent deterioration of the Claimant's condition since his Care Act assessment in Cornwall where no eligible care needs were identified.
59. There is no reference to the issues Mr. Saint-Sepulchre experiences interacting with others. The Review Letter argues that there is no requirement that Mr. Saint Sepulchre remains in the Defendant's area or within Greater London. However, there is no

exploration with the Defendant's Care Act assessor as to the effect on Mr. Saint Sepulchre's mental health of a decision to move him back to Truro. The Defendant points to the Review Letter offering assistance with transport. There is no exploration with Emma Fleming as to the extent of Mr. Saint Sepulchre's dependency on a wheelchair. The Housing Officer's certainty that Mr. Saint-Sepulchre's social worker can liaise over continuity of care in Cornwall does not appear to be supported by inquiries of the social worker. The Defendant points to Mr. Saint Sepulchre's solicitors being in contact with Mr. Saint Sepulchre's social worker in Cornwall. However, it is the responsibility of the Defendant to make necessary inquiries so as to satisfy themselves of the duty owed to the Claimant.

60. In my view, there are deficiencies of inquiries which can be summarised into the following areas: (i) the safety of the address beyond communication with the landlord in Cornwall, (ii) combined with the lack of consideration of the complaints of assault from the perspective of Mr. Saint Sepulchre, with his particular mental illness (at minimum, he believed they happened); (iii) the Defendant's Care Act assessment in the Decision and lack of consideration of its findings in the Review Letter; (iv) personal circumstances and consequences of not providing accommodation, there is a lack of inquiry of the Care Act assessment assessor and of Mr. Saint Sepulchre's social worker as to the effect of not providing accommodation in light of his hospital admissions in June 2023; there is some challenge in the Review Letter to the wheelchair dependency without further inquiries of Ms. Fleming (v) the basis for the assertion in the both the Decision and Review Letter that Mr. Saint Sepulchre will receive the same care in Cornwall.
61. The Defendant does not seek assistance from Mr. Saint Sepulchre's solicitors to gain his view of the information from the social housing landlord in Truro and reasons for lack of police reports. This lack of inquiry means that the merits of the Claimant's case are strong as the reliance on the Truro information has not been balanced. If it was balanced, the judgement itself is a fine balance. The complexities of Mr. Saint Sepulchre's mental and physical conditions are not reflected as having been considered, beyond their description, in the approach to the inquiries. Where there is analysis, there appears to be some questioning of the Claimant's dependence on a wheelchair; a questioning that is not supported by medical evidence or further inquiry. The Defendant argues that the Claimant was given an opportunity to explain inconsistencies. However, telephoning him and having a note pushed under his door may well have been difficult for Mr. Saint Sepulchre to cope with due to his mental health struggles. The PSED engagement is recognised in the Decision and the Review Letter, but it is not obviously applied through the inquiry process.
62. In applying the second and third considerations of Mohammed, in her statement, the Housing Officer links the reason for Mr. Saint Sepulchre's collapse and admission to hospital to the Decision. This therefore is a further relevant matter which affects or should affect the Housing Officer's view that Mr. Saint Sepulchre will not suffer particular harm or detriment as a result of the decision not to provide him accommodation. There is a deficit of further inquiries but rather a reaffirmation of the Decision.
63. The Housing Officer does not refer to the detail of its own Care Act assessment where Mr. Saint Sepulchre reports that he has problems with form filling and speaks of his

overuse of prescription medicine when stressed. There is no apparent adjustment to information gathering from Mr. Saint Sepulchre.

64. In oral submissions, Mr. Gannon representing Mr. Saint Sepulchre, did not rely on irrationality as his central argument. Mr. Saint Sepulchre's case is complex and so could be approached in different, albeit rational ways, by a Housing Review and Scrutiny Officer. I do not need to consider this ground further in light of my finding of unfairness in the balancing exercise due to lack of inquiries and lack of reasoned consideration of new information.
65. Considering the balancing exercise by the Defendant in exercising its discretion pursuant to section 188(3), Mr. Saint Sepulchre's case amounts to exceptional circumstances whereby the Decision and the subsequent review decision not to exercise discretion to provide interim accommodation to the Claimant pending review was unlawful. I quash those decisions.
66. I make a mandatory order requiring the Defendant to continue to provide suitable accommodation to Mr. Saint Sepulchre pursuant to s188(3) of the Housing Act 1996 pending the completion of the review of the earlier s184 decision.