



Neutral Citation Number: [2020] EWHC 860 (Admin)

Case No: CO/3047/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2020

Before :

ROWENA COLLINS RICE
(Sitting as a Deputy High Court Judge)

Between :

THE QUEEN
(on the application of LUCKY ZUAKEDE IDOLO)

Claimant

- and -

LONDON BOROUGH OF BROMLEY

Defendant

Mr Stephen Cragg QC (instructed by CALE Solicitors) for the **Claimant**
Mr Joshua Swirsky (instructed by London Borough of Bromley) for the **Defendant**

Hearing dates: 10th March 2020

Approved Judgment

MS COLLINS RICE :

Introduction

1. The claimant, Mr Idolo, is a gentleman in his early sixties with a complex medical history and disabilities. The defendant ('the council') is Mr Idolo's local authority. Its housing and social services departments have both been involved in Mr Idolo's circumstances.
2. Mr Idolo brings these judicial review proceedings in connection with a very difficult period in his life, from January 2018 until October 2019. He had been living with his wife and young daughter in an eighth-floor council flat when he suffered a medical emergency resulting in the sudden loss of the use of his legs. He spent this entire period without being able to leave his bedroom. He could not use his bathroom, and had to rely on others for all his most basic hygiene needs. He could not have a wheelchair because the doorways and corridors of the flat were too narrow. He says the council should have done more about his predicament than it did.
3. Permission to bring these proceedings was given in September 2019 on the basis that it was arguable that the council had failed in its duties to Mr Idolo under the Care Act 2014, and had been acting unlawfully and in breach of his rights to protection of private and family life under Article 8 of the European Convention on Human Rights. Determining these issues requires a clear view of what the council's legal duties were, and then the careful application of that legal framework to Mr Idolo's circumstances as they unfolded.

The council's legal obligations

The Housing Act 1996

4. Mr Idolo and his family first came to the council's attention in around March 2015 when they presented as homeless. Part VII of the Housing Act 1996 imposes duties on local authorities in relation to people presenting as homeless. The council accepted that it owed Mr Idolo and his family a duty as such, and housed them in the eighth-floor flat on 29th September 2015, at first on a temporary basis. A permanent tenancy was granted on 26th September 2017. It is not disputed that the flat was at that time suitable for the family and that the council had properly discharged its Housing Act duties.
5. This is relevant background, because some questions arise in this case about the interrelationship between the duties of the council under the Housing Act and under the Care Act. The Housing Act includes in its definition of 'homelessness' people who do have accommodation, but where the accommodation is such that it would not be reasonable for them to continue to occupy it (section 175(3)).
6. Section 166A of the Housing Act requires local authorities to have a housing allocation scheme, according to which they must prioritise the needs of all the people to whom they owe housing duties. Housing schemes are of course aimed at the fair allocation of resources which are not only limited, but sometimes fall short of the

totality of the demands made on them (in some parts of the country, including in parts of London, they often or always do so). The council in this case does not own its own housing stock, so for them this is a question of the priority for spending its housing budget on ‘social landlord’ housing. Local authorities must include in their allocation scheme a statement of their policy on offering people a degree of choice or preference about the housing to be allocated to them (s.166A(2)). The council in this case operates a ‘bidding’ system for people on its housing list so they can express an interest in properties and see what is available.

7. A housing allocation scheme must, by section 166A(3), be framed so as to secure that reasonable preference is given to people who are ‘homeless’, and to certain other categories including “*people who need to move on medical or welfare grounds (including any grounds relating to a disability)*” (s.166A(3)(d)).

The Care Act 2014

8. Section 1 of the Care Act imposes on local authorities a general duty “*in exercising a function*” in relation to a person under the first part of the Act, to promote that person’s well-being. That is a formal legal duty, in other words, but it is not at large: it relates to how other, specific, functions are performed.
9. Section 1(2) of the Care Act defines someone’s ‘well-being’ in terms of its relation to any of:
 - “(a) *personal dignity (including treatment of the individual with respect);*
 - (b) *physical and mental health and emotional well-being;*
 - (c) *protection from abuse and neglect;*
 - (d) *control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);*
 - (e) *participation in work, education, training or recreation;*
 - (f) *social and economic well-being;*
 - (g) *domestic, family and personal relationships;*
 - (h) *suitability of living accommodation;*
 - (i) *the individual’s contribution to society.*”
10. Section 1(3) of the Care Act also directs local authorities, in exercise of their relevant functions, to have particular regard to a number of factors, including: the importance of beginning with an assumption that an individual is best-placed to judge their own well-being; an individual’s own views, wishes, feelings and beliefs; the importance of enabling the individual to participate as fully as possible in decisions about them; and the importance of reducing their care and support needs.

11. The scheme of substantive duties under the Care Act begins with the duty imposed at section 9 to undertake a ‘needs assessment’ where it appears to a local authority that an adult may have needs for care and support. That must consider the impact of the individual’s needs on their well-being, the outcomes that they wish to achieve in day to day life, and whether and how far the provision of care and support could contribute to those outcomes. A local authority carrying out a needs assessment must also consider whether and how far matters other than the provision of care and support could contribute to achieving those outcomes.
12. If a needs assessment concludes that someone has needs for care and support, the next thing a local authority must do is determine whether those needs meet the ‘eligibility criteria’ (section 13). Those are set out in the Care and Support (Eligibility Criteria) Regulations 2015. Regulation 2 provides that needs will be ‘eligible’ if they arise from physical or mental impairment or illness; cause the person to be unable to achieve two or more specified outcomes; and as a result will have a significant impact on well-being. The specified outcomes include maintaining personal hygiene; managing toilet needs; being appropriately clothed; accessing and engaging in work; using public transport and maintaining family relationships.
13. If someone has eligible needs, the local authority must consider what could be done to meet them. Section 18 of the Act then, subject to cost, means and residence considerations (and various exceptions), requires a local authority to meet those needs. Section 24 sets out that it must do so by preparing a ‘care and support plan’. By section 25, the care and support plan must set out what needs are to be met and how the local authority is going to meet them. The plan must be proportionate to the needs. It must be kept under review (section 27).
14. Section 8 of the Care Act gives examples of what may be provided to meet needs. These include accommodation in a care home “*or in premises of some other type*”; care and support at home or in the community; and goods and facilities.
15. There is, however, specific provision at section 23 (which is headed ‘exception for the provision of housing etc’) to the effect that an authority *may not* ‘meet needs’ by doing anything which it is required to do under the Housing Act 1996.

The Human Rights Act 1998

16. The HRA gives effect to Art.8 ECHR, which protects people’s right to respect for private and family life from arbitrary interference by public authorities. The caselaw on Art.8 establishes that it may also require public authorities to take positive measures to secure respect for private and family life. Section 8 of the HRA sets out when courts can make an award of damages for unlawful breach of authorities’ Art.8 duties.

The chronology of events

(i) *November 2017 – January 2018: admission to and discharge from hospital*

17. On 22nd November 2017, a few weeks after Mr Idolo was granted a permanent tenancy of his flat, he was taken ill and admitted to hospital. He was treated for kidney failure. It is not clear how or why, but during his stay in hospital he became

paralysed from the waist down. The council, in consultation with the medical team, undertook a ‘hospital initial assessment’ of his needs on 9th January 2018. This is a form of needs assessment under the Care Act. Mr Idolo was assessed as lacking mobility – substantially bed-bound and needing two people with the aid of a hoist to move him in and out of bed. He was unable without assistance to dress, prepare meals, wash or manage what was identified as a degree of incontinence or at least an inability to use a lavatory. He had ‘eligible needs’.

18. A care and support plan was prepared. It noted that Mr Idolo and his wife were saying they were unwilling to return to their flat because it would not be conducive to Mr Idolo’s future well-being. His wife herself had a disability relating to one of her hands, which limited her own ability to contribute to managing his needs. An ‘access visit’ had been made by a hospital-based occupational therapist (OT) to Mr Idolo’s flat on 22nd December 2017. The OT advised that the flat was “suitable for micro-environment set up to meet his care needs on discharge”. He was to be given a specially adapted bed and chair, a hoist and a commode. The council was to provide a ‘domiciliary care package’ comprising four visits a day from two carers to help with mobility, hygiene and meals. The council was satisfied in all these circumstances that Mr Idolo could be discharged home and his needs proportionately met. He and his wife were recommended to discuss any further housing questions or wishes with the council’s housing department.

19. Mr Idolo was discharged home in January 2018. He moved into his daughter’s former bedroom, and his daughter and his wife shared the second bedroom. The care and support plan began to be implemented.

(ii) *February 2018 – October 2018: implementation and review of care and support plan, and application to the housing register*

20. On 26th February 2018 the council undertook another form of needs assessment, following a visit to review Mr Idolo’s situation and consult with his carers and his wife. His mobility was assessed. He had minimal movement in his legs. He was unable to access washing or toilet facilities (he was relying entirely on the carers for all his hygiene needs). There was no equipment to help him in and out of bed. The action plan noted that delivery of the equipment would be followed up, and that advice was given on rearranging the room to facilitate its use.

21. A follow-up visit by the council’s social services on 15th March 2018 noted that the hoist equipment had arrived, although the room had not been cleared to accommodate it properly. The carers helped Mr Idolo to his chair and back with the hoist, and the action plan adjusted their routine to a daily rhythm of rising and dressing. His wife raised the question of a rehousing move and was advised how to access the housing register “stating medical reasons and that housing is having a life threatening and restricting impact on him”. The action plan noted “liaise with Housing OT for advice” and that his wife was to clear out Mr Idolo’s room. A follow-up phone call to Mr Idolo on 12th April 2018 confirmed that the clearance had been done. A special chair was provided by the council on 25th April.

22. Mr Idolo and his family applied on 10th May 2018 to go on to the council’s housing register, citing medical and disability grounds. A delay of some months ensued. The council prepared an ‘OT housing report’ needs assessment on 24th October 2018.

This confirmed that Mr Idolo still depended on carers for all his hygiene needs, and for the only mobility available to him – being hoisted between his bed and his chair. He was unable to engage in “any form of inclusive life” because he was unable to leave his bedroom. He had been assessed for a suitable wheelchair (apparently at some time in the preceding two months), but his current home was unsuitable for the delivery and use of that wheelchair because the doors and corridors were too narrow. He was assessed as needing a move to a new home. He needed a ground floor property with three bedrooms, wheelchair accessibility including a level-access shower room, and other adaptations to enable his mobility and care needs to be met.

23. On the same date, 24th October 2018, the family was placed on to the housing register, in the second-highest priority banding, and advised on how to ‘bid’ for a suitable new home to meet Mr Idolo’s needs. The guidance given by the housing department explained how the system worked. It said there were waiting times. These would vary depending on availability and individuals’ circumstances: the type and size of accommodation needed and the priority banding. Waiting times for studio flats or older persons’ houses would be ‘far less’ than waiting times for family-sized houses.

(iii) October 2018 – October 2019: the process of re-housing

24. On 5th February 2019, Mr Idolo’s solicitors wrote to the council, alleging a failure to carry out a lawful review of Mr Idolo’s needs under the Care Act and to provide adequate care and support. It said that although Mr Idolo’s day to day physical needs were being attended to, his overall care needs, including accommodation, were not being properly met and that this was having a significant impact on his well-being and mental health. It explained that Mr Idolo’s wife had been trying to bid weekly, as advised, for a suitable new home since November 2018. It also said that ideally the family would like to be relocated to the Greenwich, Woolwich or Plumstead areas to be close to Mr Idolo’s sister, so she could provide additional support and assistance. It asked for a fresh review of Mr Idolo’s needs, considering in particular his well-being and the unsuitability of his accommodation.
25. The council responded on 8th February 2019 by placing Mr Idolo into the highest priority band for housing – ‘emergency tenant’ band. There was only one person in the borough with a higher priority need for a 3-bedroom house.
26. It also arranged for a social services visit to Mr Idolo on 12th February, and undertook a further needs assessment review on 18th February 2019. This recorded that Mr Idolo was “very happy” with his regular carers, on whom he continued to rely for all hygiene care and such mobility as he had (being hoisted between bed and chair). It also recorded that he felt he had “no quality of life”, and that his mood was low to depressed. It concluded that Mr Idolo’s current care and support plan continued to manage associated risks to his health, mobility and well-being, but his current accommodation was not conducive to his overall well-being, mental health or the meeting of his care and support needs. It noted his ‘emergency tenant’ status, but also that the wait for a suitably adapted 3-bedroom home might take some time.
27. Further to this assessment, the council prepared a further care and support plan on 19th February 2019. This confirmed that Mr Idolo needed a housing move to meet his care and support needs, enable disability-compatible access to his home environment, and provide the right number of bedrooms for his family and care needs. Ideally, the new

home should be as close as possible to the sister in Plumstead who was willing to assist with his care.

28. Mr Idolo's solicitors sent the council another letter on 5th March 2019. It alleged that the council was continuing, unlawfully, to fail to meet his needs. It said that the only solution was to provide him with a ground floor 3-bedroom property suitably adapted to allow wheelchair access. It also said that the care which could be provided by his sister was "an absolute necessity" and that it was unlawful not to house him near to her (the letter specified that there were locations within Bromley which would work for this purpose, but also asked for consideration to be given to relocation in other boroughs). The sister could attend to his hygiene needs in between the visits from the carers, and provide general household services to supplement what his wife could provide. It asked the council to "reconsider its decision not to offer adequate care and support to our client under the Care Act 2014 and Care and Support (Statutory Guidance) in the form of a suitably adapted property".
29. The council replied on 14th March 2019 that it was providing Mr Idolo with a high level of daily assistance and had properly assessed and planned for his housing needs. Its adult social care and housing departments were working together to ensure that he was suitably rehoused as quickly as possible. The only further step possible would be for the family to present to the council as effectively 'homeless', and ask for suitable *temporary* disability-adapted accommodation. But the availability of such accommodation could not be guaranteed, any such move might have to be for a short period only, and the housing scheme would require them to accept anything suitable without regard to their location preferences. It had no access to other boroughs' housing or housing lists. Mr Idolo's solicitors replied on 18th March that they were not satisfied and would be proceeding to apply for judicial review.
30. Judicial review proceedings were issued on 2nd August 2019, together with an application for expedition. The statement of facts and grounds accepted that in many cases it would be appropriate to rely on a local authority housing department to meet assessed rehousing needs, but that Mr Idolo's case had become one where the conditions in which he was living, and the length of time these had continued, required other alternatives to be considered. It might, for example, be that Mr Idolo needed a short-term rental of appropriate accommodation to meet his needs pending the availability of housing. It might be that even a temporary placement in a care home would be a better solution for the family at the present time than just continuing to wait.
31. The application for expedition was judicially refused on 6th August, and directions given for service on the council and for further case management. On 6th August also, the council informed Mr Idolo that he and his family had been shortlisted for a suitable property and that an occupational therapist would be looking at it on 13th August. The council undertook a further care review assessment on 13th August, and made an offer in principle of a short-term temporary care home placement for Mr Idolo in the meantime, which he declined, preferring not to be separated from his family. There was some intervening correspondence in which Mr Idolo's solicitors emphasised that they had no concerns about the level of care being provided by the carers and that his issue "has always been, and remains, that he needs to be provided with suitably adapted accommodation".

32. The review was completed on 18th August. Further adjustment was made to the carers' routine. Mr Idolo's wife visited the new property on 23rd August together with a housing officer. On 27th August 2019, Mr Idolo accepted the offer of the new accommodation. On the same day, the council made a referral to its complex occupational therapist team for a full assessment of the adaptations to be carried out to meet Mr Idolo's needs. The team would make the family 'top list for allocation'. Once they had moved in, a further visit would be made to assess the adaptations.
33. A tenancy agreement was signed on 4th October 2019 and the family moved in on 9th October. The council provided specialist transport and the move was overseen by a senior occupational therapist from the council. It appears that the move, including moving the special equipment, went well, and the carers resumed their routine. A referral was made for a wheelchair to be provided, and matters put in hand to review adaptations and arrangements going forward.

Analysis

General

34. This chronology of Mr Idolo's interactions with the council is set out in some detail because of the need to answer carefully the question at the heart of this case: were there failures in the discharge of their legal duties by the council during the course of these events, or, to put the question another way, what should the council have done differently? That, in turn, is highly fact-specific. A number of things may be said to start with.
35. The first is that during the period in question Mr Idolo's predicament was indisputably grim. The council does not demur from that. He had suffered a sudden incapacitating loss of both his mobility and his ability to care for the most basic of his personal hygiene needs without the help of others. As the days and weeks stretched into many months, and prospects of recovering his mobility and autonomy did not improve, his quality of life worsened. The monotony and isolation of his room was relieved only by his (inevitably compromised) family life and the daily transfers from bed to chair and back again. He could not get the wheelchair which he needed to improve his mobility and outlook. Although cared for, his well-being was in a thoroughly poor state. The council knows and knew that.
36. The second thing to be said is that, subject to some minor issues which seem to have been speedily resolved, Mr Idolo had no complaints about the services provided by his carers. What they did, they did to his satisfaction. There is no evidence that he was dissatisfied with the domiciliary package as such, or asked for anything other than what he was provided with in this respect. On the contrary, as time passed, it became increasingly clear that the only change he wanted, the only solution to his predicament, was a move. He wanted a new home which could accommodate a wheelchair, and which could be adapted to reduce his dependency on carers and give him and his family something more like the quality of life they had previously enjoyed. The council came to agree that that was exactly what he needed. It has now provided, or at least is in the late stages of finalising adaptations to, the home Mr Idolo was looking for.

37. Mr Idolo seeks no further substantive relief in these proceedings. He seeks only declaratory relief and compensation. This claim therefore resolves itself into a question about delay. Was there unlawful delay in rehousing Mr Idolo?

The first ten months

38. The first time the question of housing was drawn to the council's attention was while Mr Idolo was still in hospital and he and his wife raised the issue. Their concerns were registered by the social services and hospital teams, and the family's accommodation situation was actively researched and considered in the 'hospital initial assessment' of his needs. The format of this, and subsequent, needs assessments and action plans is designed to focus on the matters to which the Care Act directs local authorities' attention. I cannot see that the discharge plan discloses inadequacy or error in considering the accommodation issue, or other breach of duty, on the face of it.
39. This was, of course, an initial assessment only. To what extent Mr Idolo's condition was likely to improve or deteriorate was probably unclear. His witness statement says that when he got home he had a physiotherapy programme for a while. That suggests that at the time of discharge there was a realistic prospect of improvement. He was seen while in hospital by a consultant psychiatrist who recommended a psychiatric referral to investigate underlying depression and behavioural issues "manifesting as poor motivation for mobilisation and recovery". That also suggests a prospect of improvement. I do not think the council can be faulted for starting out on the basis that with the right support for his needs, as assessed by the social services and medical teams, Mr Idolo's prospects of mobility and independence could improve. In any event, the decision to discharge Mr Idolo home is not specifically challenged in these proceedings. And of course, the council had a duty to keep the care and support plan under review.
40. It appears from the sequence of visits and actions in the spring of 2018 that the council was keeping Mr Idolo's case under reasonably regular review, and focusing on ensuring that the care package set up on discharge was delivered in full and adjusted as appropriate. However, as the weeks began to stretch into a couple of months, Mr Idolo's continuing high levels of dependency would have become apparent. Mr Idolo's wife was continuing to express a preference for a move. Notwithstanding the continuing professional assessment that an adequate standard of care and support was being provided day to day, the council was required under its Care Act duties to take the whole situation, including in my view (as discussed below) the family's preferences for a move, properly into account.
41. The 15th March 2018 review records a discussion with Mr Idolo's wife about housing, and the provision of advice about how she could apply to enter the housing register in the light of the family's altered circumstances. It included an action point to "liaise with housing OT for advice". An application, on medical or disability grounds, was made two months later. Although still not assessed as a Care Act need, the housing issue was progressing – and if not at speed, at least in an apparently orderly and escalating manner, respectful of the family's wishes and their own views as to their well-being.

42. The council acknowledges that the five months before a housing decision was made in October was an administrative delay. The only account I have of it relates to difficulties in the acquisition of Mr Idolo's medical records. The council would clearly need those records in order to decide on an application made on the basis of medical and disability considerations. It is not clear whether the problem lay at the council's end or the NHS end of the process. If the latter, it may have been beyond the council's control. I have been shown no basis for assuming otherwise. I have been given an account which is consistent with a reasonable explanation of the council's actions, and that account has not been challenged.
43. Looking at this period as a whole, then, a fair conclusion might be that the council's social services department supported Mr Idolo in leaving hospital and adapting to a daily rhythm of meeting his basic needs, kept Mr Idolo's day-to-day care package under review, listened to the family's desire for a move, advised them how to take that forward with the housing department and liaised with the housing department over it; the housing department then duly actioned the application, albeit with a delay which was significant in its impact but may have been beyond their control. On the face of it, this not a narrative of obvious Care Act deficiency. However, Mr Cragg, leading counsel for Mr Idolo, says that it was not enough. He says the council went wrong, including making an error of law, in passing the housing issue into the housing department system rather than pursuing it as a social care solution in its own right. He says that the general duties under the Care Act required expedition of the housing issue above and beyond what the housing scheme would achieve.

The Care Act duties and the Housing Act

44. Mr Cragg made an argument from general Care Act principles that rehousing can and should be pursued by social services as a way to meet eligible needs. He drew support from the example given in s.8(1)(a) of the Care Act of "accommodation in a care home or in premises of some other type" as a way to meet needs. He accepted that the last phrase is not apt to include housing, or rehousing, in general. But he suggested that it is apt to include *adapted* housing of the sort Mr Idolo became in need of. The adaptation of an existing home can certainly be an appropriate care and support response to a need. If an existing home is not capable of the necessary adaptation, then the argument is that it is a small step to conclude that a move to an adapted, or at least adaptable, home can also be an appropriate way to meet needs.
45. This argument, however, has to confront the provision made in s.23 of the Care Act. That expressly excludes from the ambit of the council's Care Act responses *anything which it is required to do under the Housing Act*. On the face of it, if the council was already required under the Housing Act to rehouse Mr Idolo it had neither the duty, nor any power, to meet his care and support needs in that way; and the only obvious way to determine what it was required to do under the Housing Act was to apply its housing priority scheme.
46. Counsel were unable to identify any judicial consideration of the effect of s.23. That is perhaps surprising, since the question is likely to arise in any case in which an existing council tenant's housing needs fall to be reconsidered in the light of supervening illness or disability. The explanatory notes prepared for the legislative passage of this provision say that section 23 "*sets out the boundary in law between local authorities' care and support functions, and their housing functions*". The notes

suggest that s.23 prevents local authorities from meeting needs for care and support by doing anything the Housing Act requires them to do – “*to generally provide housing*” – but that that “*does not prevent local authorities in their care and support role from providing more specific services (such as housing adaptations), or from working jointly with housing authorities*”. This suggests that housing adaptations fall on the Care Act side of the line, while a move to, or for the purpose of, adapted housing falls on the Housing Act side. I was taken to some pre-Care Act authorities in an effort to shed light on this, one of which I consider below. But in my view the question cannot properly be answered as an isolated point of interpretation in this way, and without pulling back the focus to a broader perspective. It is necessary to consider the meaning and intention of this ‘boundary in law’ and what it is trying to achieve.

47. It is clear that there is an intention in s.23 to give a measure of priority to the general scheme of the Housing Act over the specific scheme of the Care Act. That should not come as a surprise. On the one hand, local authorities face the irresistible force of demand to meet properly assessed needs for adult social care, including needs for decent adapted or adaptable housing. On the other hand, they face the immovable object of limited housing resources, and the housing duties they owe to others in the community. The solution the law appears to provide is that (re)housing needs, even if identified through the Care Act route, cannot shortcut the detailed system of balanced priorities within Housing Act schemes, but must find their proper place within those schemes.
48. That is not a conclusion reached simply by extrapolation from s.23 of the Care Act. It is also suggested by s.166A of the Housing Act. Subsection (3) of that section *requires* housing schemes to be framed so as to secure that “reasonable preference” is given to certain categories of people including the homeless and “people who need to move on medical or welfare grounds (including any grounds relating to a disability)”, whether or not, presumably, that need itself technically amounts to ‘homelessness’ under s.175(3). This is a clear housing duty. The council’s housing prioritisation scheme has to discharge that housing duty. Section 23 ensures that the Care Act does not cut across that duty, or that scheme of priority.
49. Of course, it is the priority need for a (suitable) home which the Housing Act duty addresses. It does not address adaptations or other care and support needs. However, a ‘need to *move*’ on medical, disability or welfare grounds must be given some meaning in terms of the Housing Act duty. It cannot mean less than that those grounds point to a particular, and different, *kind* of accommodation from that occupied (or, under s.175(3), that a home has *become* unsuitable in a relevant way). So, it has at least to address such ‘ordinary’ housing issues as size and suitability for family life, location, and perhaps also other ‘liveability’ factors (accessibility and adaptability to other care and support needs). If no adaptations had been needed by Mr Idolo, it is hard to see why his primary need for three bedrooms and ground floor access would not engage the Housing Act duty. The addition of further needs for adaptability and adaptations does not obviously alter that.
50. Finding and providing homes of a particular description is what housing departments do. It is always, and quintessentially, a matter of prioritising competing demands. The legislative scheme therefore seems to envisage that where Housing Act duties are engaged, they are to be met within the housing priority allocation scheme, without

prejudice of course to the possibility that further Care Act duties may be engaged in addition. Fulfilling the Care Act duties depend on fulfilling the Housing Act duties first.

51. Mr Cragg took me to some observations of Mitting J in *R oao Hughes v Liverpool City Council* [2005] EWHC 428 (Admin), a pre-Care Act case, as an indication to the contrary. At paragraph 16 of his judgment, the learned judge expressed the view that the definition, in s.189 of the Housing Act, of categories of persons with priority need for the purposes of defining an authority's interim duty to accommodate homeless persons:

“is not directed to cases in which a person has a requirement for specially adapted accommodation: for example accommodation with wheelchair access, with no steps, and with washing and changing facilities for those who cannot care for themselves. Such persons do not only have a priority need for accommodation, they have a need for accommodation adapted to the demands created by their disabilities. Part 7 of the Housing Act does not authorise the local authority to provide such accommodation, even to those in priority need.”

52. Sections 188 and 189 of the Housing Act are particular provisions as to interim duties to accommodate which are not directly in issue in this case. They address the needs of persons who are “*vulnerable as a result of old age, mental illness or handicap or physical disability, or other special reason*”, as well as others such as pregnant women, parents of young children and people homeless as a result of flood, fire or other disaster. Mr Idolo's is not a case about ‘vulnerability’ in homelessness, as opposed to specific housing needs, arising out of disability. I would, with respect, in any event make three further observations.
53. First, the fact that someone does not ‘only’ have a priority need for housing does not obviously eliminate a duty under the Housing Act to provide for the priority housing need that they do have. Second, while the Housing Act may not authorise the adaptation of accommodation, if already adapted (or otherwise suitable or adaptable) accommodation is available to a housing authority I can see no basis for excluding it from the remit of the housing duty. Third, it is not clear to me on what basis a distinction should be made, from a housing duty perspective, between providing a sizeable home to a family with children and providing it to a family with disability needs. A disabled person may have more and further needs, but they hardly have any less need to be housed. That need engages the Housing Act duty. The issue then is relative priority.
54. Mr Cragg suggested, with text-book support, that the correct approach is two-stage: if the local authority secures adapted or adaptable accommodation for a disabled person through its Housing Act duties, Care Act duties do not come into play; however if suitable accommodation is not secured by that means, then Care Act duties are engaged. That, however, concedes that Housing Act duties are indeed primarily engaged in such cases, along with the priority scheme by which those duties are discharged. That attracts the application of s.23. It is far from clear where contrary authority for a second bite at the cherry, and the allocation of care budgets to housing acquisition (with inevitably substantial impact on the meeting of others' care and support needs), is sourced – or indeed how such a proposition, resting on an idea of the exhaustion of the ‘ordinary’ housing duty, could work in practice.

55. Clearly, there is no suggestion that this ‘boundary in law’ between the Housing Act and the Care Act is intended to operate rigidly or bureaucratically; quite the opposite. There are a number of references in the Care Act pointing to the desirability of providing information, advice and advocacy, including, as a way of meeting eligible needs, at s.8(1)(e). That could, and should, cover accessing other relevant council services, including housing. There would also be a clear expectation (encouraged in terms by the explanatory note) that people should not be passed thoughtlessly from one council department to another, but rather that departments should act supportively and co-operatively to discharge complementary duties in the interests of their service users.
56. In my view, it is also in accordance with the scheme of both Acts that duties under the Care Act as to the identification of needs should be read as extending to the *identification* (as opposed to the meeting) of housing needs. Section 1(2)(h) of the Act points in that direction and s.9(6) expressly directs needs assessments to look beyond the specifics of care and support provided under the Act. The Care Act general duties encourage a focus on the overall well-being of the individual. That is a multi-faceted proposition. It is clearly within the ambit of the Care Act duties, for example, to determine (and meet) a need for someone to move in to a care home or similar arrangement combining housing with the provision of in-house services. Social services departments are particularly well-placed to assess the overall needs of their clients. They are well-placed to decide when care and support needs have got to the point where only another home will do, what kind of home it needs to be, and what levels of either in-house support or supported autonomy are required. It is the meeting, not the identification, of the housing need which is dealt with by s.23.
57. The council in this case began by identifying and taking into account – and, as they judged it appropriate, supporting – the family’s housing preferences. That is what the Care Act general duty required them to do. They subsequently provided advice and assistance in entering the family on to the housing register. The family was accepted on to the housing register on 24th October 2018. In the OT housing report of the same date the social services department clearly identified a housing need. It was not a need for serviced accommodation such as a care home. It was a need for a home with 3 bedrooms and wheelchair accessibility, capable of being adapted, together with a package of adaptations and (reduced) carer services. The package to be delivered by social services was dependent on the primary need for rehousing being met. The only proper response of the council was an assessment of Mr Idolo’s priority in the council housing scheme by the housing department. He was placed in the second-top band and I have been shown no basis for considering that banding defective. I cannot see in this sequence of events a basis for finding that the council erred in law.

The process of rehousing

58. Mr Idolo’s circumstances fell squarely within the purview of s.166A(3)(d) of the Housing Act. He needed to move to a new home because he had become disabled. The council’s housing scheme had to deal with that need by giving him appropriate reasonable priority and it appears that they did so in October 2018. He may also have become ‘homeless’ within the terms of s.175(3) of the Housing Act, in the sense that the accommodation provided to him by the council, in which he was living, was not “accommodation which it would be reasonable for him to continue to occupy”. That may not have made a difference to his priority banding, but it was potentially relevant

to understanding the continuing interrelationship between the duties the council owed him under the Care Act and under the Housing Act, as matters developed.

59. When Mr Idolo's solicitors first wrote to the Council on 5th February 2019, Mr Idolo had been stuck in his room for over a year. Despite his properly assessed needs and action plan, and his priority banding, no suitable housing had become available. The letter made strong representations as to Mr Idolo's bad and worsening circumstances and asked the council to undertake a further needs assessment. Three days later it put him in its top housing band. He was second from the front of the queue. It also, as requested, put in hand a further needs assessment. It is hard to fault this response as such.
60. In the meantime, Mr Idolo's solicitors had written again to make the case for the move to be close to his sister. The council had a duty to take that preference into account and did so. It is easy to see that the specific location request made good sense from a well-being point of view. It is also easy to see that it amounted to a potential restriction on the range of suitable properties and a potential source of further delay in resolving the situation. But again, in the event, it may not have made much difference.
61. In any event, the 18th February needs assessment confirmed what was by now the clear consensus – that Mr Idolo's need for a move was becoming increasingly urgent as his well-being inevitably continued to deteriorate. He was one of the two most urgent cases in the borough. He was offered assistance in sourcing accommodation in the private sector (which may or may not have had a potential to produce a better or swifter outcome). He was advised that as potentially 'homeless' there might be a route to a quicker, but temporary, solution – although in accordance with the housing scheme location preference could not be taken into account on that basis. However, as he was fully entitled to do, he maintained his preferred solution to his needs, and that is what the council continued to focus on. They warned the family about housing shortages and waiting lists, particularly for larger family homes.
62. From being placed into the emergency housing band to a suitable new home first being identified took six months. The family's new home is not very near Plumstead, but it is probably on the right side of the borough, it is the right size, wheelchair-accessible and capable of being (and is being) adapted to meet Mr Idolo's needs. The council would like to account this a success. From Mr Idolo's point of view, this has all been an experience so unsatisfactory that he feels that the council has not afforded him his basic human rights and dignities. These are both recognisable perspectives. My task is not to choose between them. It is to identify whether the council acted unlawfully, and, if so, what the consequences are.
63. That requires another asking of the question about what the council could have done differently in this period. Were there other housing solutions apart from waiting on the housing register? Such as there were do seem to have been canvassed. Possible short-term interim solutions were looked at, including a temporary care home placement in response to Mr Idolo's raising of that issue, but either they offered no great prospect of success or involved the separation of the family, which Mr Idolo declined, as he was entitled to do.

64. Mr Idolo's need for a new home was accurately assessed, applying the Care Act general duties and specific processes. It was properly actioned through the council's priority housing scheme. It was not put to me that the council's housing policy or its allocation scheme were themselves unlawful. There is no sign of a failure by the social services department to attend to and support Mr Idolo on a personal and day-to-day basis. Nor indeed is it said that there was any failure in Care Act duties, by what appears to have been a sympathetic, professional and engaged social services team – other than the fundamental failure to get him a new home quicker and thereby bring his endurance of such poor well-being to an end. He was at the front of the housing queue. I was shown no evidence that there were suitable properties available to the council which could have been allocated to Mr Idolo any sooner.

The human rights perspective

65. Standing back from the examination of whether individual failures or breaches of duty can be identified along the way, the point urged by Mr Cragg was essentially this. If a man with properly assessed adult social care needs for a new home ends up stuck in the conditions endured by Mr Idolo for as long as he did, something has gone wrong. It is impossible to disagree. The length of time it took for Mr Idolo to have his needs met is utterly regrettable.
66. These proceedings are about whether it was also unlawful, not just inefficient, slow, bureaucratic, frustrating or unsatisfactory. The question is whether the council failed in its legal duties. That does not flow automatically from the length of time Mr Idolo was stuck in his room. What went wrong, in other words, might have been something other than legal failure by the council in handling his case.
67. The European Court of Human Rights has recognised that Article 8 of the ECHR may require public authorities to take positive measures to secure respect for private and family life, including as to the provision of housing. Failures in compliance with Care Act and Housing Act duties may therefore in principle constitute human rights breaches, capable of sounding in damages. I was not taken to any case in these proceedings which suggests that absent such failures in compliance, a local authority has other free-standing housing and care duties derivable directly from the Convention or from more general public law duties. It is, moreover, not every such failure and breach which will sound in damages – a degree of demonstrable culpability is required also.
68. Mr Idolo's case is not, for example, comparable to *R oao Bernard v Enfield LBC* [2002] EWHC 2282, with which there are some factual and circumstantial similarities, and on which Mr Cragg placed some reliance. That was a case in which the relevant housing department had placed a very disabled person, her carer husband and their six children into entirely unsuitable accommodation, and then simply failed to act on the recommendation of the social services department for a move, failed to respond to correspondence and court deadlines, and failed even to admit that a continuing housing duty was owed until the case came to court. Worse, it threatened at one point to evict the family because there had not been proper liaison between the housing and social care departments. No explanation or apology was at any time forthcoming. Breach of duty was conceded.

69. The factual similarities between *Bernard* and Mr Idolo's case as to the predicament of the claimant are persuasive that I should proceed on the basis that Art.8 is potentially relevant here. However, Mr Idolo's case does not disclose the same sort of category of legal failure, error and insult by the local authority. It is instead a case in which the housing he had been provided with *became* unsuitable because of what happened to him. In the initial phase, the point at which it became unsuitable was a matter of judgment and evaluation. As soon as it was formally assessed as unsuitable, by both the social services and housing departments, it appears that they co-operated to try and discharge what they agreed was the council's duty. Mr Cragg says that what went wrong was that they should have tried harder. The council says that what went wrong was that it does not have enough housing resources to meet the needs of even its top priority tenants any faster.
70. The leading case of *Anufrijeva v Southwark LBC* [2003] EWCA Civ 1406 makes the point even more clearly. There the Court of Appeal surveyed the Strasbourg authorities and considered the principles to be applied to answer the question: in what circumstances does maladministration constitute breach of Article 8? It held that it is the failure by a public body, in breach of duty, to provide an individual with a benefit or advantage to which he is entitled under public law which is capable of breaching his human rights. It will constitute an actual, compensatable, breach of Art.8, if it amounts to a lack of respect for his private and family life because of an element of culpability by the public body.
71. *Anufrijeva* confirms that delay, as well as outright failure to provide, is capable of infringing Art.8 where substantial prejudice has been caused to someone. It directs that in considering whether there has been a breach of Art.8 "*it is necessary to have regard both to the extent of the culpability of the failure to act and to the severity of the consequence. Clearly, where one is considering whether there has been a lack of respect for article 8 rights, the more glaring the deficiency in the behaviour of the public authority, the easier it will be to establish the necessary want of respect.*" (paragraph 48). Adopting that approach here, Mr Idolo's predicament could well be recognised as severe, the delay being so long, even if it did not have the 'quality of irreversibility' mentioned in some of the Strasbourg authorities. The question however remains about the conduct of the council.
72. Neither *Anufrijeva* nor *Bernard* is authority for the proposition that a compensatable breach of Art.8 through delay may be found unless the delay is attributable to a breach of legal duty with an element of culpability involved. For the reasons given, I have not found breaches of the council's Care Act or Housing Act duties on the materials before me. However, even if it were possible to regard the totality of the delay in this case as nevertheless prima facie indicating maladministration – and even if, taking the cumulative impact on Mr Idolo into account and taking a broad-brush approach, it could be argued that it raised a prima facie case of breach of statutory or more general public law duties – I do not find a basis in the authorities for simply inferring lack of respect for fundamental rights, or culpability, from the fact of delay. More is needed.
73. I do not have a basis for finding this additional element of lack of respect or culpability on the facts of this case. On the contrary, the narrative before me is one in which the correspondence, the conduct of the council officers involved, and the co-operation between the departments have the appearance of demonstrating a degree of empathy, attentiveness to Mr Idolo's plight, respect for his needs and

acknowledgment of the council's duty to help him. That does not take away from the delay in doing so. But nor does it colour the delay with culpability. If, behind the scenes in the council offices, there were culpable deficiencies – poor practice, opportunities missed or failures to expedite – they are not before me. That leads me to some procedural observations about the conduct of this case.

Procedural issues

74. Permission to bring judicial review proceedings was granted in this case on 25th September 2019, after Mr Idolo had accepted the offer to rehouse him and during the period in which matters were actively in hand to organise the move and to meet his needs for adaptations. The case has proceeded since then entirely as a claim for damages for breach of the Human Rights Act (although Mr Cragg also indicated that in his view continuation of the litigation served a necessary purpose in ensuring that the council did not 'lapse into inaction' as to the process of completing the adaptations in Mr Idolo's new home).
75. This is therefore a piece of litigation falling squarely within the terms of the detailed observations and guidance provided by the Court of Appeal in paragraphs 79 to 81 of the judgment in *Anufrijeva*. Neither party referenced this guidance in their pleadings at the permission stage.
76. The guidance could not be clearer about the public policy and administration of justice considerations engaged in cases of this sort. Concerns were raised in that case that, bearing in mind the state of the authorities on the level of damages recoverable for breach of Art.8, the cost of the proceedings would be totally out of proportion to the damages likely to be awarded, even where the proceedings were conducted as economically as possible. Giving the judgment of the court, Lord Woolf CJ said this at paragraph 80:

“The reality is that a claim for damages under the HRA in respect of maladministration, whether brought as a free-standing claim or ancillary to a claim for other substantive relief, if pursued in court by adversarial proceedings, is likely to cost substantially more to try than the amount of damages that are likely to be awarded. Furthermore, as we have made plain, there will often be no certainty that an entitlement to damages will be established at all.”
77. The Court accordingly guides that a claimant should expect to have to explain at the permission stage why it would not be more appropriate to pursue internal complaint procedures, or proceed via the Parliamentary Commissioner for Administration or Local Government Ombudsman – systems designed to deal economically and expeditiously with compensation for maladministration. There is also a strong steer towards alternative dispute resolution, and towards other ways in which proportionate resolution of this type of claim for damages can be achieved.
78. This guidance is emphatic about all of this to the point of pungency. It is incumbent upon counsel to see that these matters are addressed at the permission stage. Mr Idolo's lawyers said he was looking for compensation in the region of £10,000. This litigation, publicly-funded on both sides, will no doubt have cost the public purse very many times that sum.

79. The guidance in *Anufrijeva* has implications beyond the financial. Mr Idolo has not succeeded in his Human Rights Act claim because he has not demonstrated a culpable breach of legal duty by the council disrespecting his rights. Had this matter been pursued first through an internal complaint or ombudsman route, all the council's relevant case files (which were not before me) could have been examined for any signs of maladministration, a fuller context might have been established, a much more detailed account of the timetable could possibly have been obtained, and a more definitive answer might have been possible to the questions of what the council could have done differently and whether there was culpable delay in this case.

Conclusion

80. For the reasons set out in this judgment, this application for declaratory relief and damages is dismissed. That does not mean that what happened to Mr Idolo is anything other than deeply regrettable, or that nothing was wrong with the time it took to find him and his family a decent home. It means that the materials put before me do not establish that the council went wrong in law. That is as far as proceeding like these can go. Finding an explanation of what did go wrong would require either investigation of other materials, or seeking an answer elsewhere than in matters of legal compliance.
81. Local authorities have hard choices to make. Sometimes they are simply choices about the least unfair distribution of relative disadvantage. Sometimes there are few practical or satisfactory choices at all.