



Neutral Citation Number : [2023] EWHC 1355 (Admin)

Case No: CO/153/2023

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 8 June 2023

**Before :**

**MR JUSTICE LANE**

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**Between :**

**UO**  
**- and -**  
**London Borough of Redbridge**

**Claimant**

**Defendant**

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**Mr J Jackson** (instructed by **Osborne Law Solicitors**) for the **Claimant**  
**Mr O Abebrese** (instructed by **London Borough of Redbridge**) for the **Defendant**

Hearing dates: 28 March 2023 and 26 April 2023  
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## **Approved Judgment**

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg <https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html>).

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MR JUSTICE LANE

**Mr Justice Lane :**

***A. INTRODUCTION***

1. The claimant is a homeless single mother of three children: (i) LO, aged 11; (ii) JO, aged 5; and (iii) AO, aged 3. The claimant challenges decisions made by the defendant with regard to the housing of her and her family, which are asserted to be in breach of the defendant's statutory obligations as housing authority. In brief summary, the claimant and her family have been accommodated in a number of different hotels, without cooking or washing facilities, in several instances a significant distance from the school in Tottenham, which the children are attending. The defendant has offered the claimant self-contained accommodation in Peterborough, which the claimant contends is unsuitable.

***B. PROCEDURAL HISTORY***

2. Judicial review proceedings were issued on 14 January 2023. On 19 January 2023, Julian Knowles J made an order granting the claimant's applications for anonymity and expedition. The defendant was ordered to file its acknowledgement of service by no later than 26 January 2023.
3. The defendant failed to file its acknowledgement of service by the date specified in Julian Knowles J's order. In an order dated 6 February 2023, Dexter Dias KC, sitting as a judge of the High Court, granted an extension of time until 13 February 2023 for filing the acknowledgment of service. The defendant failed to comply with this order.
4. On 14 February 2023, Lang J granted permission on all grounds and ordered the claim to be heard on an expedited basis. She also granted the claimant permission to amend her statement of facts and grounds. The defendant was ordered to write to the Court to explain its non-compliance with Court orders, and to serve its detailed grounds of defence and written evidence by 1 March 2023. Once again, the Defendant failed to comply with this order. Instead, the defendant filed an acknowledgment of service and summary grounds of defence and applied for relief from sanctions.
5. By an order made on 9 March 2023, I permitted the defendant to file its acknowledgement of service and summary grounds out of time. I did not consider that the overriding objective would be served by preventing the defendant from attending the hearing and relying on its summary grounds. However, I concluded that the defendant should not be permitted to file any detailed grounds or evidence in this case. This was because (to quote the reasons for my order) "fairness demands that the defendant is held to what appears to be its position; namely, that it has said all it intends to say by way of written submissions and evidence."

***C. FACTUAL BACKGROUND***

6. The following factual background is supplied by the claimant and, given the circumstances described above, I agree with her that she is entitled to ask the Court to regard what she says as uncontested.
7. The claimant came to the UK in 2015 on a visa to join her then partner. The relationship ended in 2016 and the claimant moved into a rented flat. Her visa expired in 2017,

which meant she had to stop working and could no longer afford to pay rent. The family spent a period of time living with a friend of the claimant, before she made an application for asylum in 2019.

8. In July 2019, the claimant and her children were placed in accommodation by the National Asylum Support Service (NASS) in a hotel in Croydon. The claimant's daughter LO is said to have missed out on several months of education while the family was living in Croydon, as the claimant was unable to find a school in which to enrol LO. The family was moved to different NASS accommodation in East Ham in November 2019, and LO started attending school there from January 2020.
9. The claimant and her family were relocated to NASS accommodation in Tottenham in June 2021. In September 2021, the claimant enrolled LO and JO in a school in Tottenham, and AO in the nursery attached to the school. The children have remained there since that time, despite the family being moved again to NASS accommodation in Redbridge in January 2022. This was because the claimant did not want to cause further disruption to the children's education.
10. LO is now in Year 6, JO in Year 1, and AO in nursery. The claimant's case is that all three children have settled very well at the school in Tottenham and that it has provided a welcome pillar of stability in their lives.
11. LO is excelling academically and is due to sit her SATs in May 2023 before she progresses to secondary school. She was supported by her school in making an application for a scholarship to attend a fee-paying boarding school next year. She reached the final round in the application process but ultimately was not successful. LO has since secured her a place at a secondary school in Redbridge.
12. The claimant contends that she herself has established connections in and around the London Boroughs of Haringey, Redbridge, and Newham. She volunteers in East Ham and attends English and maths courses in Ilford.

### ***Homelessness application***

13. As a result of being granted refugee status on 12 July 2022, the claimant was no longer entitled to support under the Immigration and Asylum Act 1999. Instead, she became entitled to assistance from the defendant under Part VII of the Housing Act 1996 ("the 1996 Act"). Another consequence was that she received a backdated payment of £8,673.85 in child benefit on 7 November 2022. About half of this was used by the claimant to pay debts accrued whilst seeking asylum. The claimant says her savings now stand at £750. The remaining reduction is said to be attributable to the costs the claimant has faced as a result of the type and locations of the accommodation provided by the defendant.
14. Faced with impending eviction from her NASS accommodation, the claimant made an application to the defendant for assistance on 22 August 2022 via an online request form. In her application, she stated that LO had already had to move schools several times and that it was "really important for child's well-being and development that she can stay at her current school." She was told to follow up once she had received a notice of eviction.

15. On 7 October 2022, the claimant received a letter informing her that she would have to leave her NASS accommodation by 8 November 2022. She notified the defendant of this by email on 18 October 2022. The defendant sent her a link to complete a homelessness application and told her that her application had been allocated to Katherine Okosi.
16. The claimant submitted her homelessness application on 28 October 2022. An automated response instructed her to attend an interview on “the date and time agreed”. The claimant did not hear from Ms Okosi and received no information about a date and time for an interview. She wrote to the defendant to follow up but did not receive a response. Around a week before her eviction, she attended the defendant’s offices in person to inform them that she still did not have an interview. She was told to go home and that her housing officer would contact her shortly.
17. On 7 November 2022 at 4.40pm, the claimant received a phone call from Marcia Madueira, the Defendant’s Housing Solutions Team Leader. Ms Madueira spoke briefly with the claimant on the phone and informed her that the booking department would offer her accommodation the next day and that she needed to provide her eviction letter, an authorisation form and an income and expenditure form. No questions were asked regarding the claimant’s housing needs or those of her children.
18. At 5:05pm, the claimant received an email from Ms Madueira with a letter attached. The letter acknowledged that the claimant was homeless and eligible for assistance, accepting the “Relief Duty” under section 189B(2) of the 1996 Act, and enclosing the Relief Assessment and Personalised Plan (“RAPP”). Under the title “Assessment”, the RAPP set out the following:
  - (i) the circumstances that caused the claimant to be homeless;
  - (ii) under “Housing Needs of the applicant”, it said: “Client has a 3 bedroom (sic) need”;
  - (iii) under “Housing Wishes of the applicant”, it said: “to be rehoused into alternative settled accommodation”;
  - (iv) under “Support needs of the applicant to acquire and maintain accommodation”, it said: “Client has savings to secure an AST but would benefit from assistance to find private sector accommodation”.
19. The “Personalised Plan” outlines steps that the claimant and the defendant are required to take. The boxes for the claimant and the defendant to signify agreement or lack of agreement with the Personalised Plan are unsigned.
20. Pursuant to the RAPP, the defendant has provided the claimant with accommodation in a series of hotels, and later made offers of self-contained accommodation in Peterborough. Accommodation was initially provided under section 188(1) of the 1996 Act, and latterly under section 193(2), once the defendant accepted its full accommodation duty towards the claimant on 8 February 2023.

***The hotel accommodation***

21. On 8 November 2022, the defendant provided the family with hotel accommodation. This accommodation was 1.5 hours away by public transport from the children’s

school, had no cooking or laundry facilities and required the family to share a single room with two beds.

22. On 15 November 2022 at 4:30pm, the defendant offered the family accommodation at another hotel for the next 14 days. This hotel was 2.5 hours away from the children's school. The family was required to move despite there being continued availability at the hotel where they were currently staying. At the discretion of the hotel manager, they were permitted to stay there an extra night.
23. Before accepting the offer, the claimant sent an email to the defendant's Allocations and Lettings Officer, Ms Babinder Bassan, explaining the difficulties the location of the accommodation would pose for her children's education. Ms Rix, the claimant's support worker, also made representations to Ms Bassan and Ms Madureira, highlighting the distance to the school, the need for stability given LO's upcoming SATs exams, and the lack of cooking facilities in the hotel accommodation.
24. Ms Bassan responded on 16 November 2022 with a letter, which said the following:

“You say the accommodation is too far for your children to travel to school in Tottenham.

I have had regard to the information provided [as well as any medical or specific information] and given particular consideration to the lawful thresholds required for such accommodation noting the judgements in *R (Flash) v Southwark LBC* [2004] and *Escott, R (On the application of) v Chichester District Council* [2020].

I have also given specific consideration to the Equality Act; particularly in relation to the Public Sector Equality Duty as well as Section 6 (in relation to disability).

I am satisfied that, considering the above medical information, that the offer of accommodation is suitable bearing in mind the relative thresholds [and expected duration of your stay in the accommodation].

...

I have also had appropriate regard to the Children Act and have considered the impact of the suitability of the accommodation upon your children. I am, however, satisfied that the offer of accommodation is sufficient to meet the requirements of consideration in relation to this Act” (square brackets are in the original).

25. The letter also indicated that if the claimant refused the offer of accommodation, the defendant would consider its duty under section 188 of the 1996 Act as discharged.
26. The claimant accepted the offer under the threat of termination and moved that day. The impact on the children's education and on the claimant's health, and the possible availability of other Travelodges were raised with the defendant by Ms Rix on 18

November 2022, in a pre-action letter on 23 November 2022 and in a letter from the children's headteacher on 25 November 2022. The defendant did not respond to these representations.

27. The defendant continued to move the claimant and her family between different hotels. At the time of the first day of the hearing of the judicial review, on 28 March 2023, the family had been relocated on eight occasions over some four months. The hotels have all been between 1-2.5 hours from the children's school in Tottenham by public transport and have lacked cooking or laundry facilities.
28. The cost of travel, laundry, and restaurant food while living in the hotel accommodation has put pressure on the claimant's finances and caused her to utilise her savings, which (as I have already mentioned), now stand at £750.
29. The defendant's Accommodation Needs Assessment Officer contacted the claimant on 13 January 2023 regarding her income and expenditure, which led to an income/expenditure report being completed. However, the report omitted the claimant's food costs, laundry costs and her rapidly depleting savings.
30. The claimant's evidence is that moving between hotel accommodation at short notice has taken a toll on the family. The claimant suffers from acute headaches due to the stress, for which she has been prescribed painkillers by her GP. The headteacher from the children's school reports that she has noticed a drop in their moods, and LO has been referred for counselling. The headteacher also believes that LO's scholarship applications were negatively impacted due to not having the space in the hotel room in which to study.
31. On 12 January 2023, after the issue and service of the claim, the defendant completed a "B&B Checklist", which confirmed the claimant's need for 3 bedroomed accommodation and made the following comments:

"Applicant advised that she is not happy and would want an accommodation nearer her daughter's school... Also advised that she doesn't want to rent property as she is not able to afford the rent and not able to look for job as she is stressed about her housing situation."
32. On 16 February 2023, the claimant's solicitors wrote to the defendant requesting a review of the claimant's hotel placement, as it was deemed unsuitable due to the distance from the school, the lack of cooking and washing facilities and the size of the room. The defendant's Reviews Officer replied on 17 February 2023, advising that a review would be carried out, but that the defendant could not guarantee offers within or close to *Redbridge due to a severe shortage of housing stock*.

### ***The proposed Peterborough accommodation***

33. On 21 December 2022, in purported compliance with its duty under section 188 of the 1996 Act, the defendant offered the claimant accommodation in a three-bedroom property in Peterborough. This offer was not accepted by the claimant as it would require her children to move school, particularly given LO's upcoming SATs exams and (at that time) applications for secondary school.

34. The defendant carried out a “Suitability Assessment” with respect to the Peterborough accommodation on 22 December 2022. The Suitability Assessment noted that “Property is not in reasonable distance of current school” but stated “it is reasonable to change schools as children are not in critical schooling age”. It also recorded that the Education Department in Peterborough had advised there is a school vacancy “for the year group but needs to check with the school directly for admissions”.
35. On 22 February 2023, the defendant offered the claimant alternative two-bedroom accommodation in Peterborough. The claimant’s solicitors responded by challenging the suitability of the accommodation and asking whether the defendant would terminate its housing duties if the offer was not accepted. The defendant did not respond but made a further offer of three-bedroom accommodation in Peterborough on 27 February 2023.
36. The claimant has not accepted the offers of accommodation in Peterborough, on the basis that she considers it would cause a disruption to her children’s education, which would have a particularly negative impact on LO as she prepares for her SAT exams. Moving to Peterborough would also require LO to make new applications for secondary school in a new area, and the defendant’s Suitability Assessment does not guarantee there will be a vacancy available for her.
37. On 16 March 2023, the defendant wrote to the claimant to tell her that the defendant considered that, pursuant to section 193(5) of the 1996 Act, the defendant’s duty had been discharged by the latest offer of accommodation in Peterborough. The letter addressed the suitability, availability and affordability of the offer. So far as location was concerned, the letter said that London boroughs are currently experiencing severe shortages in temporary accommodation, which has resulted in the defendant having to use commercial hotels to accommodate homeless families in the short term.
38. The letter said that whilst the writer empathised that moving out of the borough may be an unsettling experience for the claimant and her children, the “fact that you and your children do not have special educational needs and are not in key educational years, e.g. preparing for GCSE or ‘A’ level exams, means that the whole experience of moving home and starting fresh is likely to be far less disruptive than for other children in that situation who might need to remain in their current school to ensure that they have the best chance of completing their education without jeopardising their future life outcomes.”
39. The letter also noted that the claimant was not in employment and did not have any critical support needs to remain local; and that owing to the “acute shortage of accommodation locally, we need to prioritise local accommodation for those who have work commitments locally, and families who have children at critical stage of their education.”
40. After a consideration of the Equality Act 2010, the letter told the claimant to take immediate steps to secure her own accommodation. The letter ended by informing the claimant that she had a right to request a review of the decision under section 202 of the 1996 Act. This had to be done within 21 days.

#### ***D. THE ORIGINAL GROUNDS IN OUTLINE***

41. The original grounds of review are, in summary, as follows.

42. Ground 1: the initial Housing Needs Assessment (“HNA”) and Personalised Housing Plan, contained in the RAPP, were unlawful for the purpose of sections 188 and 189A of the 1996 Act, read with section 11(2) of the 2004 Act in that:
- (i) The defendant failed to take sufficient inquiries to be able to identify or assess the claimant’s potential housing needs or determine what accommodation would be suitable for her household;
  - (ii) The defendant failed to identify and/or assess the claimant and the children’s housing needs regarding the location of accommodation;
  - (iii) The HNA and PHP were inadequately evidenced and reasoned to demonstrate that the defendant had had regard to relevant factors;
  - (iv) The defendant produced a PHP not informed by a proper assessment of need; and
  - (v) The defendant failed to take steps to agree or consult with the claimant on the PHP.
43. Ground 2: The defendant failed to conduct a lawful review of the claimant’s housing needs and the suitability of the hotel accommodation and Peterborough accommodation, as required by sections 188(1), 193(2) and 189A(9) of the 1996 Act read with section 11(2) of the Children Act 2004 (“the 2004 Act”).
44. Ground 3: The defendant’s suitability decisions were unlawful and/or the defendant is in ongoing breach of its duty to provide the claimant with suitable accommodation under section 188(1), and/or section 193(2) of the 1996 Act, read with section 11(2) of the 2004 Act in that:
- (i) The decisions that the hotel accommodation and the Peterborough accommodation were suitable were vitiated in that they were based on an unlawful assessment, a lack of proper inquiries and/or an unlawful review;
  - (ii) The hotel accommodation was and is unsuitable within the meaning of section 206 of the 1996 Act on account of its distance from the School and lack of adequate facilities; and
  - (ii) The Peterborough accommodation is unsuitable within the meaning of section 206 of the 1996 Act on account of its distance from the School.

***E. EVENTS AFTER 28 MARCH 2023***

45. At the conclusion of the first day of the hearing on 28 March 2023, I granted the claimant interim relief, by requiring the defendant to provide her and her children with accommodation pursuant to Part VII of the 1996 Act, pending the resolution of the claim. On 19 April 2023, the claimant filed an application for permission to amend her grounds of claim. The purpose of the amendment was to put before the Court the up to date position of the claimant, who had been provided with further accommodation, since the first day of the hearing, in four separate hotels. At the date of that hearing, the



family had been accommodated by the defendant in the Travelodge London City Airport. On 6 April 2023, the claimant was informed that the defendant intended to accommodate her and the family at the DoubleTree Hilton, Dartford Bridge. A day earlier, the defendant had sought to move the claimant and the family to the Travelodge, Chelmsford, which was over 35 miles from their then current hotel. The DoubleTree Dartford Bridge was a 40 minute walk from the closest shops and fast food restaurants. By train, it was one hour 51 minutes from the children's school.

46. On 12 April 2023, the family was provided with accommodation in the Travelodge Enfield, which had only one double bed and one single bed for the claimant and her three children.
47. On 13 April 2023, the claimant and her family were relocated to the Travellodge Walthamstow, which is some 44 minutes by bus from the school.
48. Mr Abebrese objected to the application to amend. He pointed to the fact that there had been a number of previous amendments of the statement of facts and grounds. If the application were granted, the defendant wished to adduce new witness evidence. Amongst other matters, this evidence included what was said to be a policy of the defendant with regard to the booking of hotels.
49. No application had, however, been made by the defendant to adduce this evidence, in advance of the hearing on 26 April. Upon this being pointed out, Mr Abebrese proceeded to make an oral application to me.
50. I granted the claimant's application to amend. I considered it self-evident that the Court required to be apprised of the continuing actions of the defendant in the provision of hotel accommodation, given that those actions were the subject of the claimant's challenge in the proceedings.
51. I did not, however, grant the defendant's application to adduce evidence concerning the hotel booking policy operated by it. As the earlier description of the history of these proceedings makes plain, the defendant had had ample opportunity to adduce such evidence, which it had not taken. The defendant was in breach of court orders, leading to my order in which I permitted the defendant to file its summary grounds of defence, out of time, but noted that, given its failure to adduce evidence, the defendant would be taken to be content to make reference to such evidence emanating from it as had been adduced by the claimant. There had also been no indication at the hearing on 28 March that the defendant wished, in fact, to adduce evidence (such as its policy on until hotel bookings) which was in existence at that time.

## ***F. LEGAL FRAMEWORK***

52. Homelessness gives rise to a graduated series of duties on local authorities under Part VII of the 1996 Act. Any person who is homeless or threatened with homelessness may apply under section 183 of that Act to a local authority. If there is "reason to believe" that the applicant "may be homeless or threatened with homelessness", section 184 requires the local authority to "make inquiries in order to satisfy themselves whether he is eligible for their help and if so what duty, if any, they owe to him": R (Aweys) v Birmingham City Council [2009] 1 WLR 1506, [17] per Baroness Hale.

53. If, additionally, a local authority has reason to believe that the applicant may be eligible for assistance and have a “priority need”, the authority has an interim duty under section 188(1) to “secure that accommodation is available for his occupation pending a decision as to what duty is owed”. This is referred to as the “interim accommodation duty”.
54. If the local authority is later satisfied that the applicant is homeless, has a priority need (such as having dependent children) and is not satisfied the applicant became homeless intentionally, the local authority owes a “full accommodation duty” under section 193(2) to “secure that accommodation is available for occupation by the applicant” in the longer term: Aweys: [18] - [19].
55. Part VII was amended in 2017 to provide for additional duties. Section 189A imposes a duty to prepare a Personalised Housing Plan (“PHP”). Section 189B creates a “relief duty”, which is to “take reasonable steps to help the applicant to secure that reasonable accommodation becomes available for the applicant’s occupation” for up to 12 months. The relief duty may come to an end in different ways.
56. In determining whether there has been compliance with these duties, a “realistic and practical” approach should be taken: Homes-Moorhouse v Richmond upon Thames LBC [2009] 1 WLR 413. Outside the realm of non-compliance with the express requirements of Part VII, the decisions and assessments of a local authority under that part will be unlawful if they are *Wednesbury* unreasonable.
57. Section 189A contains its own graduated series of duties. These overlap with the procedural duties and suitability assessments mandated elsewhere in Part VII. First, section 189A(1) provides the local authority “must make an assessment of the applicant’s case” where an applicant is homeless or threatened with homelessness and eligible for assistance. This is the “initial assessment duty”. It requires, amongst other things, an assessment of the circumstances that caused the applicant to become homeless or threatened with homelessness, as well as the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides.
58. This last point is reinforced by the Homelessness Code of Guidance for Local Authorities 2018 (“the Code”). This provides that local authorities must “consider the individual members of the household and all relevant needs. This should include an assessment of the size and type of the accommodation required... and the location of the housing that is required”: paragraph 11.10.
59. The initial assessment duty entails a duty to take reasonable steps of inquiry so as to be able to identify or assess potential housing needs. The Code provides that a local authority should adopt a “positive and collaborative approach towards applicants, taking account of their particular needs and making all reasonable efforts to engage their cooperation”: paragraph 11.2. The Code recommends that at least one face-to-face interview should be carried out before the housing needs assessment process is completed: paragraphs 11.14 - 11.15.
60. Whilst the assessment does not have to deal with and set out every need that an applicant might possibly have, it should nevertheless set out the key needs that would provide the “nuts and bolts” for any offer of accommodation: R (S) v Waltham Forest LBC [2016] EWHC 1240 (Admin) [92] per Upper Tribunal Judge Grubb.

61. In R (G) v Nottingham City Council and Nottingham University Hospital, [2008] EWHC 400 (Admin), Munby J held that an assessment, for this purpose, goes beyond the mere identification and needs. It involves an analysis and evaluation of the nature, extent and severity of a child's needs. The assessment must also involve consideration of what accommodation would be suitable for the applicant's household: section 189A(2)(b).
62. The housing needs assessment must be provided in writing: section 189(A)(3). It must also be sufficiently reasoned to demonstrate that the authority has addressed the statutory matters.
63. Following the assessment, the local authority must try to agree with the applicant any steps that the applicant must take to ensure that she has and can retain suitable accommodation: section 189A(4). Paragraph 11.18 of the Code states that "these steps should be tailored to the household, and follow from the findings of the assessment, and must be provided to the applicant in writing as their personalised housing plan". The HNA and the PHP are, manifestly, intrinsically linked. Where the local authority and the applicant cannot agree, the authority must record the reasons for this and the steps it considers would be reasonable to require the applicant to take: section 189A(6). These are the "PHP duties": R (YR) v London Borough of Lambeth [2022] EWHC 2813 (Admin) per Paul Bowen KC.
64. Until such time as the local authority considers it owes the applicant no duty under Part VII, the authority must keep its HNA under review, as well as the appropriateness of the steps in the PHP. This is the "review duty": section 189A(9). The duty is reinforced by the Code, which provides that if the authority becomes aware that there is new information or a relevant change in the applicant's circumstances, there should be a review of the assessment and plan: paragraph 11.33. As observed in YR, the review duty in effect requires the local authority to consider afresh the section 189A criteria by reference to the same statutory relevant factors in the light of any new, relevant information it has obtained, and reconsider both the suitability of the present accommodation and the availability of alternative accommodation nearer to the authority's district that is or might become available.
65. I turn to the issue of suitability of accommodation under section 206. In the recent case of Moge v London Borough of Ealing [2023] EWCA Civ 464, Snowden LJ said this:-

"22. The concept of "suitability" is central to the ways in which a local authority can discharge its housing functions under Part VII: see e.g. sections 206 and 210 of the Act. That concept is addressed in The Homelessness (Suitability of Accommodation) (England) Order 2012 (the "2012 Order"). Among other things, Article 2 of the 2012 Order provides:

In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including—

  - (a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;

(b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household..."

23. Section 182 of the Act also requires that in the exercise of their functions relating to homelessness, a local authority shall have regard to guidance given by the Secretary of State from time to time. Such guidance was originally provided in a "Homelessness Code of Guidance for Local Authorities" promulgated by the Department for Communities and Local Government in 2006 (the "2006 Code"). The 2006 Code was supplemented in 2012 by "Supplemental Guidance" following the coming into force of the Localism Act 2011. The 2006 Code and the 2012 Supplemental Guidance were both considered by the Supreme Court in the leading case of Nzolameso v Westminster City Council [2015] UKSC 22; [2015] PTSR 549 ("Nzolameso"). Following that decision and further consultation, in 2018 the Secretary of State promulgated a significantly revised version of the Code of Guidance ("the 2018 Guidance").

24. Chapter 17 of the 2018 Guidance contains guidance on the suitability of temporary accommodation. In that regard, paragraph 17.1 provides that such guidance applies to temporary accommodation secured by the local authority under its interim duty or the main (full) housing duty,

"as well as settled accommodation which would bring the relief or main [full] housing duty to an end."

Although "settled accommodation" is not defined, it is plainly intended to include accommodation which is the subject of a final accommodation offer which would bring the relief duty to an end under section 193A(1) of the Act and prevent the full housing duty arising by reason of section 193A(3)."

66. Paragraph 17.51 of the Code provides that "where possible, housing authorities should try to secure accommodation that is as close as possible to where an applicant was previously living [and] should seek to retain established links with schools, doctors, social workers and other key services and support". Section 208 requires an authority "so far as reasonably practicable... to secure that accommodation is available for the occupation of the applicant in their district". That said, the Code explains that in "some circumstances there will be clear benefits for the applicant being accommodated outside of the district": paragraph 17.57. In such circumstances, it would not be reasonably practicable to accommodate an applicant within the area of the local authority.
67. The claimant seeks to extrapolate from all this the proposition that, where suitable accommodation is available nearer to the local authority's area or an area in which the applicant was otherwise living then, absent any clear benefits of being accommodated outside the relevant area, accommodation that is further away than the "nearer

accommodation” should be regarded as unsuitable even if, otherwise, it could be said to meet the needs of the applicant and her family.

68. Article 2 of the Homelessness (Suitability of Accommodation) Order 1996 provides that account must be taken of whether the accommodation is “affordable”. This includes reference to a person’s “reasonable living expenses”. In this regard, the Code provides that authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials: paragraph 17.47.
69. Article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2003 provides that “the B&B accommodation is not to be regarded as suitable for an applicant with family commitments” when provided under, amongst other provisions, section 188(1). Article 4, however, creates an exception “where no accommodation other than B&B is available for occupation”; but this exception applies only where the applicant is in B&B accommodation for six weeks or less.
70. Paragraph 17.31 of the Code explains that B&B accommodation caters for very short-term stays only and affords residents only limited privacy. It may also lack or require sharing of important amenities, such as cooking and laundry facilities. Wherever possible, housing authorities are told to avoid using B&B accommodation as accommodation for homeless applicants.
71. Paragraph 17.32 of the Code states that “living in B&B accommodation can be particularly detrimental to the health and development of children”. The Code states, as a general matter, that B&B accommodation should be used as a “last resort” and “for the shortest period possible”.
72. From this, the claimant contends that for B&B accommodation to be suitable, the local authority must first satisfy itself that no other accommodation is available. It is for the local authority to demonstrate that no alternative suitable accommodation is available. This will include through searches of its own housing stock and enquiries with accommodation providers.
73. Beyond the statutory relevant factors, whether accommodation is suitable will depend on a range of matters, including the needs of the household; social considerations relating to the household; the length of occupancy; the availability or lack of alternatives; the authorities resources; and the urgency of the situation: R (Princess Bell) v London Borough of Lambeth [2022] EWHC 2008 (Admin) [52] per Hill J; R (Elkundi) v Birmingham City Council [2022] 3 WLR 71, [81] per Lewis LJ.
74. It is necessary to examine the nature of *Wednesbury* unreasonableness in the context of housing law. A decision can be unlawful when it is “outside the range of reasonable decisions open to the decision maker”, as well as where the “process by which the decision was reached” was unreasonable or irrational: R (Law Society) v Lord Chancellor [2019] 1 WLR 1649. In the context of sections 188(1) and 193(2) of the 1996 Act, it would appear that the minimum procedural requirements are as follows.
75. First, the local authority must ask questions and make appropriate enquiries, which are reasonable in the circumstances, in order to assess and determine suitability under sections 188(1) and 193(2): YR [52], Ms Nzolameso [36]; Abdikadir v London Borough of Ealing [2022] EWCA Civ 979 [51]- [52].

76. Secondly, the local authority must give reasons which demonstrate that it has had regard to relevant factors in its assessment, including those in the Homelessness Orders and the Code. In this regard, the Code provides that a housing authority should make it clear in the offer letter why they consider the property being offered is suitable, taking into account the needs of the applicant and their household. For families with school age children, the authority should set out how the impact on the education of the children has been assessed and what arrangements have been made for their education in the area of placement: paragraph 17.60.
77. Section 11(2) of the 2004 Act requires a local authority to make arrangements for ensuring that: -
- “(a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and
- (b) any services provided by another person pursuant to arrangements made by the personal body in the discharge of their functions are provided having regard to that need”.
78. As was pointed out in paragraph [23] of Nzolameso, the expression “welfare” is to be given a “broad meaning”, so as to encompass the physical, psychological, social, educational and economic welfare” of the child. Section 11 entails a “process duty”, which applies not only to the formulation of policy but also to individual decisions: Nzolameso [24]. The local authority must identify the needs of the children and evaluate the likely impact of its decision on the welfare of the children concerned: Nzolameso [27]. In addition, the authority must “actively promote” the welfare of children in its decision making process: R (HC) v Work and Pension Secretary [2019] AC 845 [46].
79. In determining whether accommodation is suitable, the local authority must have regard to the need to safeguard and promote the welfare of any children in the household: Nzolameso [27]. As Lady Hale observed:-
- “It is not enough for the decision maker simply to ask whether any of the children are approaching their GCSE's, or other externally assessed examinations. Disruption to their education and other support networks may be actively harmful to their social and educational development”.
80. When contemplating the transfer of school-age homeless children into temporary accommodation, the local authority must make appropriate inquiries as to the impact of such a transfer on education of the children: YR [47].

### ***G. CASELAW RELIED ON BY THE DEFENDANT***

81. It is necessary to refer to a number of additional authorities, upon which the defendant specifically relies. In R (Flash) v London Borough of Southwark [2004] [EWHC 717(Admin)], Owen J made reference to R v London Borough of Newham ex parte Sacupima [2001] 33 HLR 1, in which Dyson J (as he then was) held that suitability “is

not an absolute concept”. There can be different standards of suitability, ranging from “an applicant’s dream house to something which is only just adequate to meet his or her housing needs. Both are suitable. It is a matter for the judgment of the authority to decide what accommodation on the spectrum of suitable accommodation to select”.

82. Owen J approved the dictum of Laws LJ in London Borough of Newham v Khatun and others [2004] EWCA Civ 55 that “the applicant’s subjective view of suitability is not a factor which a reasonable council is obliged in principle to regard as relevant to their decision”.
83. Owen J also cited R v Secretary of State for the Environment ex parte Nottinghamshire County Council [1986] AC 240 as authority for the proposition that where the existence or non-existence of a fact is left to the judgment and discretion of a public body, “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 say in a case where it is obvious that the public body, however consciously or unconsciously, are acting perversely”.
84. The defendant also relies on R v London Borough of Brent ex party Omar 23HLR 44, in which Henry J held that a local authority was entitled to have regard to the realities, given the practical constraints imposed by the numbers of applicants competing for a housing stock limited in quantity and quality and by financial constraints. In those circumstances, a high standard of suitability clearly could not be obtained.
85. In R v London Borough of Lewisham ex party [1993] 25 HLR 68, Sir Louis Blom-Cooper QC, held that in deciding whether accommodation was “suitable”, local authorities are bound to have regard to any factor pertaining to the individual applicant, which may be relevant to his or her housing needs.
86. More recently, in R (Escott) v Chichester District Council 2020 [EWHC] 1687 (Admin), Martin Spencer J refused an application for interim relief during the COVID-19 pandemic, in a case where the claimant objected to being provided with shared accommodation, since his medical history indicated that he was vulnerable to COVID-19 infection, should be shielding and, thus, needed self-contained accommodation.
87. Refusing the application, Martin Spencer J held that the bar was set high for challenges of this kind, in circumstances where the country was suffering from lockdown measures in the light of the COVID-19 pandemic and where, to the Court’s knowledge, local authorities were struggling to comply with their duties. The Court had not identified authority for the proposition that in order to comply with its duty to provide suitable accommodation, a local authority had to provide furnished accommodation. It could not seriously be argued that a local authority, when providing accommodation, had always to provide basic furniture. Given the circumstances of the pandemic, where the staff of local authorities were themselves facing significant difficulties, the defendant had not acted unlawfully in failing to provide a fridge, cooker and bed. The local authority could only offer accommodation which was available to it: [48].

#### ***H. THE DEFENDANT’S POLICIES***

88. The defendant’s “Temporary Accommodation Placement Policy” contains no defined bands of priority, with regard to self-contained or local accommodation. As regards B&B accommodation, the Policy provides that most families can expect to be offered

hostel accommodation, outside cases of exceptional need. Households with family commitments will be “prioritised” for self-contained accommodation where they have occupied B&B accommodation for longer than six weeks. As regards location, the Policy provides that the defendant “insofar as possible, seeks to offer accommodation locally or as close as possible”. In determining which households will be prioritised for local accommodation, the defendant will consider a broad range of factors, including the needs of the household, the availability of accommodation and needs of other families also requiring temporary accommodation. It is also stated that needs “may include” the “educational and welfare needs” of children.

### ***I. THE PRESENT GROUNDS OF CLAIM IN DETAIL***

89. Ground 1 contends that the defendant’s housing need assessment and personalised housing plan were unlawful. The defendant failed to take reasonable steps of enquiry to identify or assess the claimant’s needs as required by sections 188 and 189A read with section 11(2) of the 2004 Act. Further, the defendant failed lawfully to identify and/or assess the claimant and her children’s housing needs, as required by section 189A(2)(b) of the 1996 Act and section 11 of the 2004 Act. The RAPP was inadequately evidenced and reasoned to demonstrate that the defendant had regard to the disruption to the claimant and her children’s education. Consequently, the PHP was unlawful, not being informed by a proper assessment of need. Finally under this ground, contrary to section 189A(4)-(6), the defendant did not take any steps to agree or consult with the claimant on the PHP. Nor did the defendant record any agreement or lack thereof.
90. Ground 2 asserts that there has been a failure to conduct a lawful review of the housing needs assessment and personalised housing plan. The defendant was made aware of additional information, before the commencement of the judicial review, but failed to initiate any adequate review. Furthermore, no reviews were carried out with respect to any of the hotel accommodation offers. On each occasion, the claimant was merely instructed to relocate without further inquiry or assessment, under threat of termination. An e-mail sent by Mrs Bassan of the defendant on 16 November 2022 did not constitute a lawful review for this purpose. The suitability assessment did not discharge that duty. The defendant failed to review the claimant’s housing needs or the suitability of subsequent offers of hotel and accommodation in Peterborough, despite the evidence provided with the judicial review claim.
91. Ground 3 contends that the defendant’s decisions with respect to the hotels and the accommodation in Peterborough were unlawful and/or that there is an ongoing failure to provide the claimant with suitable accommodation under sections 188, 193(2) and 189A, read with sections 206 to 210; as well as section 11 of the 2004 Act. The decisions in question were vitiated by the failure of the defendant to assess, review and conduct reasonable inquiries into the claimant’s housing needs and the suitability of accommodation for her and her family. The hotel accommodation was unsuitable for a number of reasons, including being excessively far from the children’s school and having no cooking or washing facilities. The Peterborough accommodation was unsuitable on account of its location; in particular requiring the children to change school at a point where this would cause disruption to LO’s preparation for her SATs and her secondary school applications. It is, the claimant contends, no answer that there is a general housing shortage, in circumstances where the defendant has failed to



provide evidence regarding the availability of self-contained accommodation closer to the school, and why it could not be offered to the claimant and her family.

92. The claimant seeks to add a fourth ground, which I deal with on a “rolled up” basis. It is said to arise from ground 3 and contends that the purported termination under section 193 of the 1996 Act was unlawful as the Peterborough accommodation was not suitable: Boreh v LB Ealing [2009] PTSR 52.

## ***J. DECIDING THE CLAIM***

### ***Ground 1***

93. Ground 1 takes issue with the defendant’s housing needs assessment and personalised housing plan. In order to address this ground, it is necessary to revert to the facts.
94. When the claimant visited the offices of the defendant on 7 November 2022, she was informed that the defendant would call her on the telephone the following day and that the claimant needed to provide paperwork, including confirmation of her being required to leave the NASS accommodation.
95. I agree with the claimant that in no meaningful sense can this be described as an interview. I note in particular that no questions were asked regarding the needs of the claimant’s children. Although there is no specific statutory requirement to interview, the defendant needed to ensure that it was making its decisions on a sound factual basis.
96. On 7 November 2022, the defendant provided the claimant with a letter acknowledging that the claimant was homeless and therefore eligible for assistance. The letter accepted the “relief duty” under section 189B(2). It also enclosed the defendant’s HNA and PHP within a document entitled “relief assessment and personalised plan for (relief stage) (S189A 1996 Act)”. This constituted the RAPP. The RAPP recorded the claimant’s housing needs as being “a 3 bedroom need”. The claimant’s housing wishes were “to be rehoused into alternative settled accommodation”.
97. Later on 7 November 2022, the defendant emailed the claimant with a request that she provide documents relating to her leave to remain, a NASS eviction, an authorisation form, and then income and expenditure form. These were duly provided. Again, there was no interview with the claimant or, indeed any consultation, prior to her being furnished with the RAPP. There was no attempt to seek the claimant’s agreement as regards the steps that she and the defendant would have to take in order to retain suitable accommodation.
98. On 8 November 2022, the defendant offered the claimant interim temporary accommodation at Travelodge London City Airport. This was approximately ninety minutes journey by public transport from the children's school in Tottenham. The family had to share a room with two beds and did not have access to cooking or washing facilities.
99. On 10 and 15 November 2022, Ms Rix, the claimant’s family support worker, e-mailed the defendant to highlight the concerns that existed regarding the accommodation. In particular, Ms Ricks said that the commuting to and from the school was especially tiring for the younger children. The claimant did not want to move the school as she

wished to maintain some sort of stability for them. She also did not know it into which area she was going next to be placed. Ms Ricks highlighted the particular importance for LO of having stability as she prepared for her SAT's and apply for secondary schools.

100. The defendant's response was to move the family to the Travelodge Brentwood, which was even further away from the school. Ms Rix made further representations regarding the unsuitability of this accommodation.
101. On 16 November 2022, the defendant sent an e-mail to the claimant. This e-mail referred to the cases of Flash and Escott, as well as making reference to the Equality Act and the Children Act. The e-mail stated that, having regard to those enactments, the defendant was satisfied that the offer of accommodation at Travelodge Brentwood (East Horndon) was sufficiently suitable to meet the requirements imposed by law. The e-mail ended by saying that if the claimant continued to refuse the offer, the defendant will conclude that the duty to provide accommodation under section 188 had been concluded.
102. Altogether, before the events that followed the hearing on 28 March, the defendant relocated the claimant and her family to five different hotels within a seven week period.
103. Whilst the defendant's Temporary Accommodation Placement Policy makes it clear that the needs of the household may include but are not necessarily limited to the children's education and welfare needs; and that whilst the defendant will seek to offer accommodation that meets the family's requirements as closely as possible, in many cases a property will not meet all of an applicant's assessed needs. The defendant is experiencing extreme shortages of both local accommodation and self-contained accommodation generally. In-Borough accommodation will be prioritised for those assessed as having an essential need to stay in the borough or surrounding area. In making such an assessment, a household will be placed in the category entitled "priority for local accommodation" if it is highly desirable that the household remain within a reasonable travelling distance of the borough in order, amongst other things, to "continue with education".
104. As regards "school factors", the defendant's policy says this:-

"the Council acknowledges that it is usually in the best interests of children at any stage of their education to have stability and often to remain in the same school. Disruption in this respect can have a detrimental impact on their social and educational development. As far as possible the council seeks to keep families close enough for their children to remain at the same school and can offer support in accessing private sector accommodation to do so.

However, at present it is not possible to offer accommodation to all families which will be within reasonable travelling distance of their current schools. For this reason the council has chosen to prioritise families with particular educational needs so that those who are likely to be most affected by having to move to a

new school are protected. There is no set criteria for who will be prioritised on this basis but particular consideration will be given to children at critical points in education, such as GCSE and A levels, those with Special Educational Needs and those with other pressing social circumstances that will be particularly affected by disruption.”

105. The defendant points out that LO does not fall within those provisions.
106. I find that the defendant failed to take reasonable steps of inquiry in order to identify or assess the claimant’s potential housing needs and determine what accommodation would be suitable for her household, as required by sections 188 and 189A.
107. Whilst I accept there is no discrete legal obligation to follow the provisions of the Code, the purpose of the Code is to encourage practices which, if followed, should ensure that a local authority does not breach its statutory housing obligations.
108. The defendant’s interactions with the claimant in November 2022 were entirely inadequate. In particular, the telephone call between the claimant and Ms Madureira on 7 November 2022 was cursory. No material questions were asked, yet the RAPP was produced immediately afterwards. The defendant made no inquiries with the school in Tottenham regarding the children’s educational needs and the potential disruption to their education of either having to commute very long distances or to change school during the academic year. The headteacher of the school had written a letter on 24 November 2022, which was sent to the defendant. There, the headteacher noted that stable housing matters more to LO in the present academic year “than in any other year of her life”. The impact on the claimant’s younger children was also regarded by the headteacher as a key factor.
109. The defendant’s position was, in effect, that because none of the children had special educational needs and none was taking GCSEs or A levels, there was no point in having any regard to what the headteacher was saying. This, however, is to elevate the defendant’s policy into a rigid rule and to ignore the fact that the references to GCSE’s and A levels, and to those with special educational needs, constitute examples of where particular consideration will be given to the needs of children, rather than an exhaustive list.
110. It is also plain that the defendant approached matters from the wrong starting point in that it wrongly had regard to the history of the family, whilst in NASS accommodation, as in some way justifying the defendant’s movement of the family between different hotels. That mindset was evident in Mr Abebrese’s oral submissions. As Mr Jackson submitted, however, it was equally if not more relevant that, in the light of that history, the claimant would be anxious to introduce some stability into the lives of her children. It also should have been obvious to the defendant that, as a parent, the claimant could not reasonably countenance moving the children from school to school, each time she was given accommodation in a fresh hotel. There is, in any event, nothing in the legislation or caselaw which permitted the defendant to benchmark the claimant’s needs by reference to what she had been provided with pursuant to a different statutory scheme.

111. The defendant has failed to adduce any evidence to show that it made any enquiries regarding the availability of accommodation nearer to the school or, indeed, alternatives to Bed and Breakfast accommodation, as required by the Homelessness Orders 2003 and 2012 and as dictated by the defendant's own Policy. I agree with the claimant that, without having made such inquiries, no reasonable local authority would have been equipped with the information necessary to assess the housing needs of the claimant or what accommodation would be suitable for her and her children.
112. I also find that the defendant has failed lawfully to identify or assess the housing needs of the claimant and her children, as required by section 189A(2)(b) of the 1996 Act, read with section 11 of the 2004 Act. There is no reference in the RAPP to location, the needs of the children and the potential disruption to their education by their having to commute long distances to school or having to change school during the academic year.
113. For the reasons already given, the defendant did not consider whether the claimant has had a housing need to be located within reasonable proximity of the school. In this regard, it is difficult to understand paragraph 45 of the defendant's skeleton argument, which contends that the criticism just made "misses the point completely" because the children "are not of school age." Two of the children are of school age.
114. All this meant that the RAPP did not lawfully consider "what accommodation would be suitable" for the claimant within the meaning of section 189A(2)(b). This, in turn, leads inexorably to the further conclusion that the RAPP was inadequately evidenced and reasoned. Finally, it is manifest that the defendant did not take any steps to agree or consult with the claimant on the PHP; nor that it recorded any agreement or lack thereof in that document. This is contrary to section 189A(4) to (6).
115. The case law relied upon the defendant shows that the defendant's statutory obligations are not to be determined by reference to what the claimant subjectively considers would be in the best interests of her and her family. Mr Abebrese relied on these cases in order to urge this Court to conclude that it is the claimant's rigid insistence that she did not wish the children to move from their school in Tottenham that has caused all the difficulty. I do not accept this submission. Challenging though it may often be, it is the job of the defendant to decide whether a person's subjective views might have something relevant to say about what type of accommodation is needed in order to discharge the defendant's statutory responsibilities.
116. Ground 1 succeeds.

### ***Ground 2***

117. I have referred to the information emanating from the headteacher in order to explain why the defendant's failure to take reasonable steps of inquiry was, in the circumstances, a material failure on its part, thereby rendering unlawful the HNA and the PHP. Quite apart from this, the receipt of information from the headteacher, in the form of her letter 24 November 2022, together with emails from Ms Rix on 10, 15 and 18 November 2022, and the pre-action correspondence from the claimant's solicitors, clearly ought to have caused the defendant to initiate a review of the HNA and the PHP. This is a further instance of unlawfulness.

118. In addition, it is significant that no reviews were carried out in respect of any of the offers of hotel accommodation. In this regard, the defendant's approach was, on each case occasion, dismal. The claimant was merely instructed to relocate without further inquiry or assessment and, in some instances, under threat of termination if she did not do so. The letters offering hotel accommodation did not make clear why the defendant considered the hotel in question to be suitable, taking into account the needs of the applicant: cf paragraph 17.6 of the Code. On the contrary, the evidence makes it plain that it was left entirely to the claimant to inform the defendant of the inadequate nature and/or location of the facilities in question.
119. I agree with the claimant that Mrs Bassan's e-mail on behalf of the defendant of 16 November 2022 cannot in any sense be regarded as a lawful review. The e-mail did not disclose that any inquiries had been made with the school. Mrs Bassan did not consider the impact on the children of continuing to reside in B&B accommodation. No consideration was given to the possible availability of alternative self-contained or hostel accommodation. There was no assessment of the disruption in the claimant's access to local amenities, if required to stay at the East Horndon Travelodge. Although Mrs Bassan did mention the journey to the school, there was no real evaluation of the difficulties faced by the claimant or the impact on the education of her children (as to which, see Nzolameso [27]). Instead, there was merely a cursory reference to the cases of Flash and Escott, neither of which involved school-age children. Flash, was, moreover, decided prior to Nzolameso and the amendments made to the 1996 Act in 2017. Escott is an interim relief decision regarding a single adult in hostel accommodation during the height of the COVID-19 pandemic. The case has nothing meaningful to say about opposing a person in a situation of the claimant.
120. I also regard it as concerning that the e-mail made references to medical information and disability, with use of square brackets. This suggests it has *pro forma* origins, with no real attempt made to focus on the specifics of the matter in hand. Whilst I accept that officials working in the housing department of the defendant and other local authorities are often required to operate under significant pressure, it is impossible to avoid the overall conclusion that the defendant has fallen far short of what Parliament has ordained. It is not for this Court to usurp Parliament's functions by relaxing the intensity of judicial review in this area, by reference to these and other pressures (such as the paucity of accommodation), to such an extent as in effect to re-write the legal duties of housing authorities.
121. Ground 2 also encompasses a challenge to the defendant's suitability assessment of 22 December 2022. The assessment was prepared in respect of the offer of accommodation made by the defendant to the claimant of a 3 bedroom house in Peterborough.
122. The suitability assessment was, however, produced after that offer. Be that as it may, I find the suitability assessment is unlawful for the following reasons. There is, again, no evidence that the defendant undertook any adequate enquiries, prior to its production. The only real engagement with the appellant in this regard was a telephone call, which was more in the nature of preparing the claimant for a move to Peterborough. Fundamentally there was, again, a failure to consider the suitability of a move to Peterborough in the middle of an academic year. All that is recorded in the suitability assessment on this matter is "it is reasonable to change schools as children are not in critical schooling". The position of LO was not addressed; nor the evidence from the

headteacher of the school in Tottenham. The failings I have earlier identified under ground 1 are, thus, present in the suitability assessment.

123. Mr Jackson accepts that the defendant's inquiries with the Peterborough Education Department went some way towards showing that (otherwise) suitable arrangements would be in place to meet the children's educational needs in Peterborough. The assessment recorded that the Peterborough Education Department had "advised that there is a vacancy at Lyme Academy Watergall for the year group but needs to check with the school directly for admissions". Mr Abebrese submits this was all that was necessary at the time, given that (as transpired) the offer of accommodation of Peterborough might not be accepted by the claimant. I find myself in agreement with Mr Jackson, however, that the claimant could not reasonably have been expected to accept the offer if it turned out that the identified school did not, in fact, have any places for the children.
124. After issue of the judicial review, notwithstanding the evidence provided by the claimant in connection with her claim, the defendant failed to carry out a lawful review of the claimant's housing needs or the suitability of subsequent offers of a hotel and Peterborough accommodation. The "B&B checklist" document, produced in early 2023, suffers from the deficiencies I have just described. So far as concerns the position of the children, the only comment was that the claimant "would want an accommodation near her daughter's school". So far as it concerns the subsequent offers of accommodation in Peterborough, there was, again no proper engagement with the issues, merely broad statements that the defendant believed the offered accommodation to be suitable accommodation for the claimant.
125. Ground 2 succeeds.

### ***Ground 3***

126. Ground 3 contends that the defendant's suitability decisions and/or failure to provide suitable accommodation were unlawful. These concerned both the accommodation offers in respect of premises in Peterborough and the hotel accommodation in London.
127. The claimant has a statutory right to seek a review of suitability decisions made under section 202 of the 1996 Act. A request must be made within 21 days beginning of the day in which the person concerned was notified of the decision.
128. The defendant submits that the review process, which lies to the County Court, constitutes a suitable alternative remedy and that, for this reason, ground 3 (and the related ground 4) should be dismissed. Mr Abebrese points to case law, including R v Birmingham City Council ex parte Ferrero [1991] WL 837814, which explained that it is only in truly exceptional circumstances that the judicial review jurisdiction will be exercised where there exists an alternative remedy, which is not being used.
129. For his part, Mr Jackson relies upon the more recent authority of R (Sambotin) v Brent London Borough Council [2017] EWHC 1190 (Admin) which concerns the very issue of statutory review in respect of a decision made under the 1996 Act. Sir Wynn Williams, sitting as a High Court Judge, held as follows:-

“16. The defendant maintains that I should refuse permission to apply for judicial review on a discrete basis namely that the claimant has the right to a statutory review of the decision of 10 February 2017 and he has exercised that right. Further, in the event of a decision adverse to the claimant upon review the claimant has a right of appeal against that decision to the County Court. In the face of these alternative remedies, argues Ms Ferber, judicial review should be refused.

17. In support of this submission Ms Ferber relies, particularly, upon the decision of Moses J in *R v Brent London Borough Council, Ex p Sadiq* (2000) 33 HLR 47. While I accept that Moses J makes it clear that the existence of alternative remedies may result in permission to apply for judicial review being refused and/or relief being refused in cases of this type he makes it clear, too, that this court retains a residual discretion to entertain a claim for judicial review notwithstanding the existence of alternative remedies.

18. As will become apparent the instant case raises a discrete point of law which both claimant and defendant have addressed in detailed skeleton arguments. Counsel for claimant and defendant attended the hearing before me thoroughly prepared to debate the point which is at issue in these proceedings.

19. In my judgment the likelihood is that there would be a significant waste of substantial sums of public money should I refuse permission to apply for judicial review on the ground that the claimant should pursue alternative remedies. All the costs so far incurred in these proceedings would be wasted. In the event that the review decision made by the defendant was adverse to the claimant (which must be at least a real possibility in the light of its letters of 13 February and 20 February) there would likely follow an appeal to the County Court with further significant legal costs thereby generated.

20. In my judgment the interests of justice in this case and the need for efficient disposal of legal disputes whenever possible point strongly to the conclusion that I should determine the merits of this claim. In my judgment once a rolled-up hearing was directed in these proceedings it became inevitable that the most cost effective and efficient way of dealing with the issues between the parties was by full and proper argument followed by judgment in these proceedings. That was the stance adopted on behalf of the claimant by Ms Alice Richardson: I accede to her submission. Accordingly the remainder of this judgment considers the merits of the various issues raised by the parties in these proceedings.”

130. I am in no doubt that, in the particular circumstances of this case, I should not treat the availability of a statutory review under section 202 and/or an appeal to the County Court

under section 204 of the 1996 Act as requiring grounds 3 and 4 to be dismissed or as justifying withholding any remedy in respect of the unlawfulness of the defendant's suitability decisions.

131. It will be apparent from my judgment that grounds 3 and 4 are closely related to grounds 1 and 2. The defendant's decisions that the hotel accommodation and the Peterborough accommodation were in each case suitable for the purposes of section 188 and/or 193 were made subsequent to, and were based upon, the defendant's flawed assessment under section 189A and the defendant's failure lawfully to review that assessment under subsection (9) of that section; as well the defendant's ongoing failure to conduct adequate enquiries and suitability assessments under sections 188, 193 and 189A.
132. I also accept the claimant's submission that for her to have to embark upon the review process would inevitably unnecessary further delay and the consequent unnecessary expenditure of further public monies.
133. For these reasons, the present case is far closer to Sambotin than it is to Ferrero.
134. The hotel accommodation could not rationally be regarded as suitable. This is particularly so, given the impact upon the children of having to travel, in many cases, excessive distances to attend school; having nowhere that the claimant could prepare meals for them and therefore having to subsist on fast food outlets. That all of this was having a detrimental impact upon the performance of the children, particularly LO, was evidenced by the headteacher of the school in Tottenham.
135. I agree with the claimant that the unsuitability of the accommodation, in all the circumstances, is underscored by article 3 of the Homelessness Order 2003 and by the Code.
136. Given that the defendant has no evidence to show that no alternative suitable accommodation was available at the time of the offers, the defendant is unable to demonstrate compliance with section 188(1) and /or 193(2).
137. The decisions on or around 21-23 December 2022 and 27 February 2023 that the Peterborough accommodation was, in each case, suitable were also irrational. Although the accommodation was self-contained, its location would plainly require the children to change school during the academic year, which is of particular importance to LO.
138. Since the defendant has failed to show that it undertook any (let alone legally sufficient) inquiries, the defendant simply cannot rely on the general premise (which I accept) is that there is an acute housing shortage in London. The defendant has failed to show what accommodation was available closer to the school in Tottenham and why it could not have been offered to the claimant. What was being sought by the claimant was accommodation within an hour's commute by public transport to the school. That was not, on its face, unreasonable, so as to discharge the defendant from its statutory duty. Furthermore, if no three bedroom temporary accommodation was available within that area, a two bedroom property with a separate living room and kitchen would have avoided statutory overcrowding, whilst meeting the primary housing needs of the claimant and her family.



139. If there were no such self-contained accommodation within the relevant area, the defendant has failed to show that hotel accommodation could not have been sourced much closer to the school than the hotel accommodation actually provided, or the Peterborough accommodation. There is no evidence that the defendant considered these alternatives. On the contrary, the evidence discloses an unthinking, mechanistic series of decisions to move the claimant and her children to (what one must infer) was whatever happened to be the least expensive B&B facility which the defendant could secure with third party providers. Such an inference might have been avoided if the claimant had complied with the orders of the High Court and served evidence in a proper manner.
140. Ground 3 succeeds.

***Ground 4***

141. I have said that ground 4 is being dealt with on a rolled-up basis. Pursuant to section 193(5)(a) of the 1996 Act, a local authority shall cease to be subject to the full accommodation duty if “the applicant, having been informed by the authority of the possible consequences of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority has satisfied is suitable for the applicant”. In order for a termination to be lawful, the accommodation offered must be suitable: or Boreh v Ealing London Borough Council [2009] PTSR 52, per Rimer LJ.
142. It follows from my findings on ground 3 that the offer of the Peterborough accommodation, which underpinned the defendant’s decision to terminate the accommodation duty was not lawful.
143. Accordingly, I grant permission on ground 4 and find that it succeeds.

***K. DECISION***

144. The judicial review succeeds on grounds 1-4. Counsel should endeavour to agree an order containing relief and other consequential matters, failing which they must file and serve respective written submissions regarding the same.