Neutral Citation Number: [2024] EWHC 1989 (Admin)

Case No: **AC-2023-LON-003147**

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30th July 2024

Before :
Dexter Dias KC
(sitting as a Deputy High Court Judge)

- -

Between :

UO	**Claimant**
- and –	
London Borough of Redbridge	**Defendant**

- -
- -

Joshua Jackson (instructed by **Osbornes Law LLB**) for the **Claimant**
Andrew Lane (instructed by **London Borough of Redbridge**) for the **Defendant**

Hearing dates: 5 and 6 June 2024
(*Judgment circulated in draft 22 July 2024*)

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JUDGMENT

Dexter Dias KC :

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court.

2. To assist the parties and the public follow the court's line of reasoning, the text is divided into 10 sections, as set out in the table below.

3. An anonymity order was granted by this court on 28 November 2023 and continues to protect the identity of the claimant and her children. It must be respected. To avoid the possibility of "jigsaw" identification, accommodation addresses and names of schools and staff members have also been redacted.

B123: hearing bundle page number; SB123: supplementary bundle; FSB 123: further supplementary bundle. CS/DS §45 claimant/defendant skeleton paragraph number.

§I. INTRODUCTION

4. This is a claim for judicial review.

5. The claimant UO is a Nigerian national who has been granted refugee status in the United Kingdom due to a well-founded fear of her daughter suffering the harmful practice of Female Genital Mutilation in Nigeria. UO is a homeless single mother with three children, now aged 12, 6 and 4. The issue is whether the defendant local authority, the London Borough of Redbridge ("Redbridge" or "the Borough"), that acts as the local housing authority ("LHA") in the case, has lawfully assessed and reviewed the claimant's housing needs and provided her with suitable accommodation. The dispute between the parties about the lawfulness of the defendant's decisions must be seen in the real-world context of severe housing shortages in London and the South East. This problem was put graphically by Lewison LJ in *Alibkhiet v Brent London Borough Council* [2019] HLR 15 ("*Alibkhiet*") that one

> "would need to be a hermit not to know that there is an acute shortage of housing, especially affordable housing, in London."

6. The claimant is represented by Mr Jackson of counsel and the defendant by Mr Lane. The court is grateful to both counsel for their helpful submissions.

7. After several accommodation moves (a necessarily anodyne characterisation that fails to reflect the nature of the disruption to the children), the claimant ended up living with her children in Redbridge, but due to the shortage of housing within that borough, the family was moved out and on to Enfield. This has entailed lengthy journeys for the claimant to take the two youngest children, her sons, to school in Tottenham and her eldest, her daughter, has a longer journey to and from school in Redbridge, with the claimant accompanying the child on the way home for safety reasons. The claimant also works in Redbridge and is furthering her education there. Her evidence is that by being accommodated in Enfield, the hours of daily travelling during the term-time week is placing an intolerable strain on her as a single mother and on her young children who are exhausted. Therefore, the defendant's various assessments of her housing needs and the suitability of the accommodation allocated to her are unreasonable, and in public law terms irrational and unlawful. They should be quashed as being in breach of the defendant's statutory obligations towards the claimant and her children under the Housing Act 1996 ("HA 1996") and the Children Act 2004 ("CA 2004").

8. Against this, the defendant submits that in an acute housing shortage, with very limited availability of self-contained accommodation in the borough, priority must be given to those for whom living in Redbridge is "essential", in accordance with the defendant's published policy. While it was "highly desirable" for the claimant to be accommodated in Redbridge or within a reasonable travelling distance from it (in a neighbouring borough), the claimant does not fall within the highest category of "essential" need to be so accommodated. Therefore, the defendant's assessments of housing needs and suitability have been reasonable, rational and lawful.

9. Shortly put, those are the rival arguments before the court. The application engages the stated problem of housing scarcity in London and the South East not in the abstract, nor through faceless statistics, but as it affects people trying to live and work and raise and educate their children.

§II. MATERIALS BEFORE THE COURT

10. The materials the parties filed include:

- Core hearing bundle: 275pp.
- Supplementary bundle: 314pp.
- Further supplementary bundle: 385pp.

- Authorities bundle: 1071pp.
- Supplementary authorities bundle: 90pp.

11. Counsel helpfully provided detailed skeleton arguments for both the initial listing in April 2024 and the adjourned hearing in June. They supplemented these documents with careful oral submissions.

§III. FACTS

12. The background facts are complicated and extensive, but their most relevant essentials may be summarised shortly. The claimant's daughter is LO (12); her eldest son JO (8) and her youngest son AO (6).

13. The claimant came to the United Kingdom from Nigeria on a visa in 2015 to join her partner, but the relationship fell through. She made an application for asylum in 2019 and she and her children were placed in various forms of temporary accommodation, including hotels and travel lodges, by the National Asylum Support Service ("NASS"). In June 2021, the family was provided with accommodation in Tottenham and in September 2021 the claimant enrolled her children in a primary and nursery school there. This is how the historic educational connection with Tottenham arose, a significant feature that should be noted.

14. In January 2022, NASS moved the family to Redbridge. The claimant and her children had been relocated to different hotels on 13 occasions, most of which were 2 ½ hours from the children's school.

15. On or around 12 July 2022, the claimant was granted refugee status in the United Kingdom, one consequence of which was her being rendered ineligible to receive accommodation support under the Immigration and Asylum Act 1999 ("the IAA 1999"). Instead, the claimant became eligible for housing support under Part VII of the HA 1996. Faced with eviction from her accommodation, the defendant approached the defendant for housing assistance on 22 August 2022 using an online form. She submitted her homelessness application on 28 October 2022. On 8 February 2023, the defendant accepted the main housing duty towards the claimant under s.193(2) of the HA 1996.

16. After being provided by the defendant with a series of hotel rooms, on 31 May 2023 the defendant provided the claimant with temporary accommodation at an address in Ilford, and therefore within the Borough, that I shall call "C Road" (also "the Redbridge flat"). The claimant challenged the lawfulness of the authority's decisions and in a judgment dated 8 June 2023, this court granted the application for judicial review, quashing the decisions (*UO v London Borough of Redbridge* [2023] HLR 39 per Lane J ("*UO No.1*")).

17. The defendant prepared another housing needs assessment ("HNA") on 23 June 2023, which the claimant again challenged. This led to the defendant producing a revised "Move on Assessment" on 3 August 2022 ("the August assessment").

The defendant's conclusion was that it was not "essential" for the claimant to be accommodated with the Borough or a neighbouring borough as she did not fall within the Category 1 priority group ("Local accommodation only") under the defendant's "Placement and Resettlement Policy" ("the Policy"). The defendant determined that the claimant fell within Category 2 priority ("Priority for local accommodation") whereby it is "highly desirable" to be accommodated within Redbridge or neighbouring boroughs.

18. As a result of the August assessment, on 6 September the defendant proposed relocating the claimant to temporary accommodation outside the Borough in Slough. In response, on 18 September the claimant's solicitor Mr Ford sent a pre-action protocol ("PAP") letter identifying flaws in the August assessment. When the defendant did not respond, on 19 October 2023, the claimant filed a claim for judicial review.

19. On 31 October 2023, the defendant offered the claimant accommodation at an address I shall call "A Road" in Enfield (also "the Enfield flat"). In order to protect her position, the claimant accepted the offer and moved with her children to Enfield on 5 November 2023. Meanwhile, in September 2023, the claimant's daughter had begun attending the secondary school in Redbridge at a school I shall call "the Redbridge school". However, the family's relocation to Enfield resulted in daily return journeys for the claimant's daughter that were arduous, and the defendant accepts that it is "unreasonable" for the child to make these journeys.

20. On 1 November 2023, Mr Ford requested a suitability review of the Enfield flat under section 202 of the HA 1996. The court considered and granted permission to apply for judicial review of the August assessment on 29 November 2023 as expressed in an order by Anneli Howard KC, sitting as Deputy of the High Court.

21. On 14 April 2024, the defendant conducted the suitability assessment of the Enfield flat, deeming the accommodation suitable to the claimant's needs. The claimant also challenges the lawfulness of this assessment and claims that the defendant is in ongoing breach of its duty towards her and her children.

22. Following a hearing on 23 April 2024, the court granted the claimant permission to amend her Grounds to add a challenge to the 14 April 2024 decision. While there is a statutory appeal process, the court stepped back and looked at the wider picture. It relied on the observations of Moses J (as he then was) in *R v Brent LBC, Ex p. Sadiq* (2000) 33 H.L.R. 47 that the court retains a residual discretion to entertain a claim in judicial review notwithstanding the existence of alternative remedies. Helpfully, both parties agreed that the court should take this course. This approach has been more recently endorsed by Sir Wynn Williams in *R (Sambotin) v Brent LBC* [2017] EWHC 1190 (Admin) where the judge granted permission to apply for judicial review in similar circumstances to avoid "the waste of substantial sums of public money" (para 17) as grant would therefore be "in the interests of justice" (para 20). I reached the same conclusion in this case as to the optimal procedural approach.

23. It will help to draw the factual threads together by summarising the life-situation of the claimant and her children at the two key decision moments under challenge:

> **3 August 2023**. The claimant and her children were living in Redbridge. All three children had been attending primary school in Tottenham, although the school year had ended. The claimant was a part-time teaching assistant working principally at schools in east and south east London. The claimant was studying at the Redbridge Institute for Level 1 qualifications in English and Mathematics.
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> **14 April 2024**. The claimant and her children were living in Enfield. The two youngest children, her sons, remained attending primary school in Tottenham. Her daughter was in her first year at secondary school in Redbridge. The claimant was working in Redbridge and Barking and Dagenham as a support worker with Age UK. The claimant was studying at the Redbridge Institute for Level 2 courses, attending them on Monday, Wednesday and Thursday. In October 2023, she had enrolled on a 3-year BSc (Hons) Business Management degree with foundation course at the London School of Management Education in Redbridge (Gants Hill), attending on Wednesday and Friday.

§IV. IMPUGNED DECISIONS

24. The claimant challenges three of the defendant's decisions: the assessment of her housing needs dated 3 August 2023 and the housing needs review and suitability of accommodation decision dated 14 April 2024. As will become clear, there is a relevant connection between the decisions. While it is essential for each of the defendant's decisions to be read as a whole, the chief features are set out below to give a sense of how and why the decision was made. Some of the consequent correspondence between the parties is also detailed to provide context and narrative continuity.

August 2023: housing needs assessment

25. The defendant's decision was made by Mr Olusola, an Accommodation Needs Assessment Officer employed by the defendant. The defendant prepared a further HNA dated 23 June 2023. That was challenged by the claimant and then not relied on by the defendant. Therefore, Mr Olusola prepared a revised "Check List & Move on Assessment" on 3 August 2023. Under "Applicant Information", the August Assessment provides an overview of the household composition, the claimant's employment status and income, the children's education and distances from the Redbridge accommodation address.

26. Under the sub-heading "Support Needs", it notes that the children had no disclosed mental health or learning disability or support needs, the family was supported by Together with Migrant Children, and records the note of the conversation with the Tottenham head teacher ("Ms T"), who noted that the children had "been through a lot of trauma". Mr Olusola added that Ms T "did

not say what this trauma was". Under "Suitability Assessment update", the decision records: "Household is a 2- to 3-bed need"; "Applicant's areas of preference: 1st choice: Redbridge 2nd Choice: Walthamstow and East Ham"; the claimant's employment postcodes; and "No critical age to consider."

27. Under "Officer Recommendations", the August Assessment states:

> "**Essential Educational Needs:** None disclosed, none of client's children are currently sitting examinations or are of critical schooling age. Head Teacher said that multiple moves would have a detrimental effect on the children's education and wellbeing. **There are no known intervention from wellbeing teams within the school as this was not disclosed by the Head Teacher.** Head Teacher states that all is fine with the children now that the children and client moved into self-contained accommodation [the Redbridge flat]. The Head Teacher did not disclose that there had been an indication that referrals had been made to children social services or that there had been changes to the children's behaviours in terms of stresses. We have considered the concerns that the head teacher has raised, and we think that the concern is chiefly regarding the frequency of accommodation moves within a short period. We acknowledge the Head Teacher's recommendation that a move outside London will be detrimental to the children's wellbeing and unfair to the family who she stated, has been through a lot of trauma; she did not specify what this trauma was. […] We also recognise the importance of providing settled self-contained accommodation and look to offer such accommodation as quickly as possible. However, there are a number of combining supply and demand factors which mean that the council is unable to secure sufficient supply of local accommodation and self-contained to meet the demands on its services. […]
> **Priority For Local Accommodation:** In accordance with our temporary accommodation placement policy, accommodation that is not in the Borough or neighbouring Borough will be offered to households based on their priority for self-contained accommodation. Based on Ms UO's personal circumstances we have assessed her household as being under the following category: **Priority for local accommodation:** This category is second priority for local accommodation after 'local accommodation only' category but such accommodation is not considered essential. Ms UO has been awarded this priority because it is highly desirable that she remains within a reasonable travelling distance of the Borough to have access to employment. In relation to the school factors 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. The Council has chosen to prioritise families with educational needs so that those who are likely to be most affected by having to move to a new school are protected. Given that Ms UO's children are not in critical points in education, such as at GCSE and A 'levels, and there are no known Special Educational Needs or pressing social circumstances that will be especially affected by disruption, we have not assessed Ms UO's household requiring prioritising over other families with children on educational welfare grounds."
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> (emphasis added)

28. Pursuant to the August Assessment, the claimant was offered accommodation in Slough on 6 September 2023 (*UO No.1*, para 59).

29. On 18 September 2023, Mr Ford solicitor acting for the claimant sent the defendant a second pre-action letter highlighting the flaws in the August Assessment. No response was received. By letter dated 10 October 2023, Ms T stated her views that:

> "[LO] has already experienced being moved from her friendship group at [the Tottenham School]. The start of secondary school is a delicate time for children, as this is when they form solid friendships that take them through schooling. [LO] has now made those friendships and to move her would be emotionally damaging."
>
> "It would be detrimental for the children to be moved outside of London because they have already experienced too much instability and broken relationships", and moving outside London "could be the straw that breaks their mental health stability."
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> "[T]he children have suffered chronic trauma as a result of the instability they have experienced. As indicated above, not knowing where you will be sleeping, how far you will have to go to get to wherever you will be sleeping and the conditions of where you will be staying over a long period of time has a cumulative impact on mental health."
>
> "[LO] received counselling whilst at [the Tottenham School] to help her rationalise the family living condition. Both [AO and JO] have become more fidgety and have found it harder to sit still and concentrate and act out more than previously observed."

30. In response to Mr Olusola's record of their conversation on 26 June 2023, Ms T said, "I do not recall saying that there were no changes in the children's behaviour […] I did say that [LO] had become very resilient and that she was doing well in her academic studies despite all the moving around. This is a credit to them, but the pressure they have all been placed under has been extreme".

April 2024: Housing needs review and suitability assessment

31. Following a request for a statutory review under section 202 of the HA 1996, on 14 April 2024, Mr Bhattarai, acting as a review officer for the defendant, made a suitability assessment of the Enfield accommodation. He concluded that it was suitable. His reasoning, which must be viewed as a whole, included that the claimant had been assessed as priority category 2 under the Placement Policy in the August Assessment; "that this was the correct assessment, and that [UO] does not have an 'essential' need to be accommodated within the Borough or a neighbouring Borough". This is the challenged housing needs review.

32. In respect of the journey time for LO to travel to [the Redbridge School] from [the Enfield flat]:

> "59. […] I have also considered the letter from [the Redbridge School] High School. Whilst I appreciate it is a difficult situation, and that the journey from Enfield to the school in [Redbridge] is approximately 1 hour and 15 minutes each way on the public transport. However, it must be noted that Council does not expect [LO] to continue to make this journey to her current school and continue making this journey. I have been in contact with the Local Education Authority for Enfield area, and they have confirmed that they have vacancies in the schools locally. This information was also communicated with you via email on 27 November 2023. […]
>
> 60. Whilst I appreciate the difficulties in having to change schools, and I understand it would be preferable for your client to be accommodated locally and continue with the same school in [Redbridge]. I am of the opinion that the need to change school in this case does not make the accommodation unsuitable. Local self-contained accommodation is very scarce and therefore the Council is required to prioritise local accommodation for those with special educational needs, care needs, and children who are at a critical stage in their education. I appreciate that it is recognised that it is often in children's best interest to remain in the same school, and disruption can have an impact on their education. However unfortunately it is not always possible to offer accommodation to families within a reasonable travelling distance to their current schools. Therefore, the council must prioritise those who are likely to be most affected by having to move to a new school are protected. I note that [LO] is not at a critical stage of her education and nor does she have special educational needs. I think that the disruption associated with transferring schools can be mitigated by the pastoral team in the receiving school and would not be such as would make this accommodation unsuitable."

33. In respect of the claimant's employment and education, the claimant had been assessed as priority category 2 in the August Assessment; that "was the correct assessment". "I have checked on google map and I can see that the journey time from Enfield to this Redbridge Institute is under 1 hour via public transport, and by car it is 30 minutes journey."

34. In respect of AO and JO's education, "the travel time via public transport is under 50 minutes" and "the journey time [between the [the Tottenham School] and Redbridge] on bus 123 is approximately 1 hour and 7 minutes. Therefore your client is required to travel a total of two hours in order to drop her two children to primary school and then attend her work in Gants Hill." Whilst "inconvenient" to travel from [the Enfield flat] to Redbridge, this was not "an unreasonable journey" in the context of a housing crisis. Further, "when [UO] was residing in Ilford, she would have had to make the journey to drop her two younger children in [Tottenham] and continue with college courses in Redbridge" and the claimant "accepted new job role and has enrolled on another college courses at London School of management being fully aware of the distances involved".

35. "[W]hen [the defendant] places an applicant, we try to look at the case holistically, trying as best as possible to match the various needs of applicants as against the accommodation that is available". "[A]dequate consideration was given to [UO's]

household needs by allocating this accommodation" "To ensure that the limited local accommodation available to the council is used effectively, local accommodation is prioritised for those assessed as having an essential need to stay in the borough or surrounding area for work, essential medical/care needs, or middle of critical examinations."

36. Under "Alternative accommodation available for allocation", Mr Bhattarai stated that he had considered properties available "at the time of this review decision". Four three-bedroom properties were available within the Borough or closer to it than [the Enfield flat] at the time of the Suitability Decision. In respect of each, the reason for not offering was: "Reserved for household with essential need for accommodation in Redbridge or a neighbouring Borough (priority category 1)". Thus, "it is not reasonably practicable to accommodate your client closer to the Borough of Redbridge than her current accommodation. I am satisfied that your client's accommodation is within a reasonable travelling distance of the Borough and therefore meets her assessed priority for local accommodation."

37. Mr Bhattarai later wrote a witness statement that sought to explain some of the comments he made in his review decision. This evidence will be considered in due course.

§V. GROUNDS

38. The claimant relies on three grounds. They are, as formulated by counsel:

> **"Ground 1**: The defendant's "Check List & Move on Assessment" of 3 August 2023 was unlawful for the purpose of section 189A HA 1996, read with sections 205-210 HA 1996 and section 11(2) CA 2004. **["the August assessment"]**
>
> **Ground 2**: The defendant, in the suitability decision of 14 April 2024, failed to conduct a lawful review of the claimant's housing needs for the purpose of section 189A(9) HA 1996, read with sections 205-210 HA 1996 and section 11(2) CA 2004, and that failure to lawfully review the Claimant's housing needs is ongoing. **["the April assessment/review assessment"**]
>
> **Ground 3**: The suitability decision is unlawful and/or the Defendant is in ongoing breach of its duty to provide the Claimant with suitable accommodation under section 193(2) HA 1996, read with sections 205-210 HA 1996 and section 11(2) CA 2004." **["the suitability decision**"]

39. It should be added that very late in the day, the claimant sought to challenge a further housing needs assessment by the defendant dated 21 May 2024 for which no permission had been granted by the court. The addition of this additional ground of challenge was objected to by the defendant as no evidence had been filed specifically on the point and there was the risk of an adjournment should permission be granted for the late amendment. As Chamberlain J said in

R (Ecpat UK) v Kent County Council, Secretary of State for the Home Department [2023] EWHC 2199 at para 13:

> "… the courts have deprecated a "rolling" approach to judicial review, in which fresh decisions arising after the original challenge are sought to be challenged by way of amendment: see e.g. *R (Dolan) v Secretary of State for Health* [2020] EWCA Civ, [2021] 1 WLR 2326, [118]."

40. I judged that the late application clearly fell into this category. This had become a species of "rolling review". Permission was refused. Therefore, the focus was on the three grounds set out above and about which evidence was filed, thereby avoiding the risk of a further adjournment.

§VI. LEGAL FRAMEWORK

41. A substantial and burgeoning body of jurisprudence has gathered around the legal questions engaged in this case, reflected in part by the bundle of authorities provided by the parties that ran to 1071 pages. I set down in its main features, subdividing the law into seven themes for clarity and simplification:

    (a) Homelessness and housing needs assessment;

    (b) Suitability;

    (c) Children Act 2004;

    (d) Policy;

    (e) Review;

    (f) Reasons;

    (g) The unreasonableness/irrationality test.

(a) Homelessness and housing needs assessment

42. Part VII of the Housing Act 1996, as amended, regulates the assistance provided by LHAs to homeless persons or those threatened with homelessness. If an LHA is satisfied that an applicant is eligible for assistance and either homeless or threatened with homelessness, it must make an assessment of the applicant's case, a "housing needs assessment", often called an "HNA". Section 189A(1) provides:

> "(1) If the local housing authority are satisfied that an applicant is—
>
> (a) homeless or threatened with homelessness, and
>
> (b) eligible for assistance,
>
> the authority must make an assessment of the applicant's case."

43. Section 189A(2) HA 1996 sets out necessary elements of the assessment process:

> "(2) The authority's assessment of the applicant's case must include an assessment of—
>
> (a) the circumstances that caused the applicant to become homeless or threatened with homelessness,
>
> (b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside ('other relevant persons'), and
>
> (c) what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation."

44. The assessment informs any decision on suitability of accommodation. It must address the needs that provide the "nuts and bolts" for any offer of accommodation (*R (ZK) v Havering LBC* [2022] EWHC 1854 (Admin) ("ZK"); [2022] H.L.R. 47; *R (YR) Lambeth LBC* [2022] EWHC 2813 (Admin) at para 81).

45. In *XY v London Borough of Haringey* [2019] EWHC 2276 (Admin) ("*XY*"), at para 51, this court stated that the HNA "must include an assessment of […] (b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside". The court continued at para 66:

> "…An assessment does not need to be a counsel of perfection. Although the local housing authority should ask the right questions when carrying out an assessment, or on a review of an assessment, and in some circumstances may be required to seek the advice and input of other agencies (e.g. local health and children's services) to ensure that the applicant's needs were property understood, it can ordinarily be expected to rely on the fact that the applicant for housing will let it know what her fundamental needs are. The applicant is frequently the person who best knows her needs and those of any of her children. If the applicant fails to inform the local housing authority of any particular needs, this will rarely lead to a finding of unlawfulness if the local housing authority fails to identify one or other of the applicant's particular needs."

46. "If a family's needs are incorrectly assessed, it is unlikely that accommodation offered to the applicant […] will meet the applicant's needs" (*R (SK) v Royal Borough of Windsor and Maidenhead* [2024] EWHC 158 (Admin), at para 36, per Lang J ("SK")).

47. The initial assessment duty entails a duty to take reasonable steps of inquiry to be able to identify or assess potential housing needs (*R (YR) v London Borough*

of Lambeth [2022] EWHC 2813 (Admin), at para 86; *UO No.1*, para 59). In *R v Kensington & Chelsea RLBC ex p Bayani* (1990) 29 HLR 406 (CA), it was held:

> "The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable housing authority could have been satisfied on the basis of the inquiries made."

48. The adequacy or sufficiency of enquiry is susceptible to *Wednesbury* reasonableness review, while affording a decision-maker an in-built latitude (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 K.B. 223 at 229, per Lord Greene MR; and see below).

49. The HNA must be provided in writing (section 189A(3) HA 1996) and must be "sufficiently reasoned to demonstrate that the authority has addressed the statutory matters in section 189A(2)(a)-(c)" and sections 206-210, and has complied with section 11(2) CA and its policies (*YR*, paras 88(i)-(iii); *UO No.1*, para 62).

50. The assessment duties overlap with the procedural requirements under section 193(2) HA 1996, which entail continuing duties of inquiry and assessment in relation to the suitability of accommodation: *UO No.1*, paras 74-76 (see also *YR* at para 52, referring to *Nzolameso v Westminster City Council* [2015] PTSR 549, paras 31-36, per Lady Hale ("*Nzolameso*")).

51. The authority must give the applicant a copy of any written record made under section 189A(5) or (6): section 189A(7). This written record is commonly referred to as a "personalised housing plan": para.11.2, Homelessness Code of Guidance for Local Authorities, DLUHC (February 2018, as amended) ("the Code"). Until the authority considers that it no longer owes the applicant a duty under Part VII, it must keep the assessment under review and the applicant of any changes: section 189A(9), (10).

52. The Code sets out:

> "11.10 When assessing the housing needs of an applicant housing authorities will need to consider the individual members of the household, and all relevant needs. This should include an assessment of the size and type of accommodation required, any requirements to meet the needs of a person who is disabled or has specific medical needs, and the location of housing that is required. The applicant's wishes and preferences should also be considered and recorded within the assessment; whether or not the housing authority believes there is a reasonable prospect of accommodation being available that will meet those wishes and preferences".

(b) Suitability

53. As stated in section 206 HA 1996, accommodation secured under Part VII must be "suitable". The suitability requirement applies to sections 189A(2)(b) and 193(2) HA 1996 (*YR*, para 35), that is the provision of both accommodation

under both the interim accommodation duty (pending decision) and the main housing duty. The term suitable is not defined in the statute. Suitability for a short period may not be the same for a longer period of time (*Waltham Forest LBC v Saleh* [2020] PTSR 621 (CA), para 17), and not by necessity the same for the interim as opposed to open-ended main duty.

54. Whether accommodation is suitable will depend on a range of factors, including (i) the nature of the accommodation; (ii) the needs of the household; (iii) "social considerations" relating to the household; (iv) the length of time the accommodation is to be provided; (iv) the availability or lack of alternatives; (v) the authority's resources; and (vi) the urgency of the situation (*YR*, para 36; the Code, paras 17.4-17.7). The nature of suitability was summarised by Snowden LJ in *Moge v London Borough of Ealing* [2023] EWCA Civ 464 at para 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…"

55. Location is a "key factor an authority must take into account in determining the 'suitability' of accommodation" (*YR*, para 37). Article 2 of the Homeless (Suitability of Accommodation) (England) Order 2012/2061 ("the 2012 Homelessness Order" or "the Homelessness Order") provides that "the local housing authority must take into account the location of the accommodation", including (a) "the distance of the accommodation from the district of the authority" in the case of out-of-borough placements; (b) "the significance of any disruption which would be caused by the location of the accommodation to […] education".

56. The Code provides:

> "where possible, housing authorities should try to secure accommodation that is as close as possible to where an applicant was previously living" and "should seek to retain established links with schools, doctors, social workers and other key services and support" (para 17.52).

57. The suitability must encompass the needs not only of the applicant but all relevant members of her or his household: Code, para 17.2.

58. Section 208 HA 1996 requires an authority "so far as reasonably practicable […] [t]o secure that accommodation is available for the occupation of the applicant in their district". "Reasonable practicability" imports a stronger duty than simply being reasonable" (*Nzolameso*, paras 19, 31-35). The local authority has a "positive obligation to show that […] it has complied with its duty under section 208" (*R (Abdikadir) v London Borough of Ealing* [2022] PTSR 1455, at para 37(iii), per Lewison LJ ("*Abdikadir*")).

59. Even "if it is not reasonably practicable to accommodate 'in borough', they must generally, and where possible, try to place the household as close as possible to where they were previously living" (*Nzolameso*, para 19; and see further *Zaman v London Borough of Waltham Forest* [2023] PTSR 1643, at para 47(iii), per Newey LJ ("*Zaman*")). In *Nzolameso*, the authority offered the appellant a property in Bletchley, near Milton Keynes. The authority's decision was quashed because it contained no indication of what accommodation was available in Westminster or why accommodation in Westminster had not been offered nor any indication that the authority had recognised that, if not reasonably practicable to offer accommodation in its district, it was obliged to offer accommodation as near to it as possible. It was said that an authority should have a published policy explaining the factors which would be taken into account when making out-of-area offers and, ideally, should also have a publicly available policy for procuring sufficient units of temporary accommodation to meet anticipated demand (see also: *Alibkhiet*; *Abdikadir*; *Zaman*; and *Moge v Ealing LBC* [2023] EWCA Civ 464).

60. Subject to that overriding principle, a local authority is entitled to rely upon a lawful policy for the allocation of accommodation provided it has been correctly implemented: *Abdikadir*, para 37(vii); *Zaman*, para 47.

(c) Children Act 2004

61. Local authorities are required under section 11(2)(a) CA to "make arrangements for ensuring that "their functions are discharged having regard to the need to safeguard and promote the welfare of children". The key principles are:

    (1) Welfare has a "broad meaning", encompassing "physical, psychological, social, educational and economic welfare" (*Nzolameso*, para 23).

    (2) It is a "process duty" which applies to individual decisions in individual cases (*Nzolameso*, para 24).

    (3) Section 11(2) CA reflects "the spirit, if not the precise language" of the United Kingdom's obligation under Article 3(1) of the UN Convention on the Rights of the Child (*ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166, at para 23, per Lady Hale (see also UNCRC, 'General Comment No.14 (2013)' UN Doc. CRC/C/GC/14, para 6)). Authorities must therefore treat the best interests of children as a primary consideration or, alternatively, a consideration in their decisions: see discussion in *Nzolameso*, paras 28-29 and *YR*, para 43.

(4) The local authority must identify the needs of the children and evaluate the likely impact of its decisions on their welfare (*Nzolameso*, para 27; *R (E) v Islington London Borough Council* [2018] PTSR 349, at para 118 ("E")).

62. As noted by Lady Hale in *Nzolameso* at para 28, the obligation in section 11 of the 2004 Act, is to identify the needs of children but that "does not in terms require that the children's welfare should be the paramount or even a primary consideration". Beyond needs identification, the authority must have regard to the active promotion of" the children's welfare: *R (HC) v Work and Pensions Secretary* [2019] AC 845, para 46, per Lady Hale.

63. The burden is on the authority to "demonstrate how and why it took or failed to take the steps that it did" and "provide objective evidence showing how it came to the conclusion (if it did) that those steps were consistent with its statutory duty": *E*, para 119. It must demonstrate, by reference to written contemporaneous records, the process of reasoning by which it reached its decision and "[a] court should not assume in favour of a local authority" (*E*, para 114; see also *Nzolameso*, paras 33-35).

64. The section 11(2) CA 2004 duty is independent to, but informs the content of, the duties contained in Part VII HA 1996, such that the authority must have regard to and assess the needs of children in a household within its HNA, any subsequent reviews, and when assessing the suitability of any accommodation (*Nzolameso*, para 27; *YR*, paras 45, 81, 96-97).

(d) Policy

65. On 20 July 2023, the defendant formulated and approved a new policy called its "Placement and Resettlement Policy". The Policy sets out three priority groups for local accommodation:

- "Local accommodation only": Applicants "will only be offered accommodation in the Borough or neighbouring Boroughs" and "will be bypassed for accommodation that is not local unless there is no prospect of a suitable offer of local accommodation within a reasonable timescale" (p.5). "A household will be placed in this category if medical, welfare, educational, work or other factors mean that it is essential that the household remains within the Borough or a neighbouring Borough".

- "Priority for local accommodation": "Applicants will be second priority for local accommodation" and "may be offered accommodation that is not local if no local accommodation is available" (p.5). "A household will be placed within this category if it is highly desirable that the household remain within a reasonable travelling distance of the Borough in order to i) access necessary services and/ or support and which would not reasonably be available in another location, ii) maintain current work, iii) continue with education or iv) for any other reason".

- "No priority": "All other cases".

66. Relevant factors to the assessment of priority include:

> "**Work factors.** In deciding what weight to attach to employment, the Council will take in to account the location, type and amount of work. Where work is infrequent, unreliable or minimal the council may conclude it would be reasonable to pursue work in a new area. Consideration will always be given to the particular circumstances of the applicant and the impact of moving to a new area. The Council would not consider it reasonable to do so if it resulted in the loss of work, without which the applicant would lose access to welfare benefits (e.g. EEA nationals with pre-settled status). It will also consider whether it may be possible to transfer or undertake similar work in another area. Women who are on maternity leave will be prioritised in the same way.
>
> In most cases, the Council considers it reasonable to commute up to 90 minutes to and from work. The Council will also consider the affordability of travelling to work if the household were to be placed further away from the Borough when deciding whether a property is suitable.
>
> In most cases, those regularly working at least 16 hours per week within the London Borough of Redbridge will be assessed as category 2 priority. However, where there is a demonstrable essential need to live in Redbridge or a neighbouring Borough, category 1 priority will be awarded.
>
> **Needs of children**. 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 is it 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 at GCSE and A levels, those with Special Educational Needs and those with other pressing social circumstances that will be particularly affected by disruption. As a guide, the Council will look to place households with such children within 60 minutes travelling time."

(e) Review

67. Under section 202 of the HA 1996, the applicant has a right to request a review of certain decisions taken about the accommodation provided (or indeed not provided) by the defendant. Relevant to this case is the right to request a review of the main duty under section 193 and the suitability of accommodation

provided under the section 193(2) duty. The procedural elements necessary for a lawful review are set out in regulation. The critical dispute in this case is around the substance of the review decision, which must be examined in due course.

(f) Reasons

68. a local authority makes a review decision under section 202 of the HA 1996, there is a statutory duty to give reasons (section 203(4)). To determine whether a decision is sufficiently reasoned in public law terms, the court should adopt a "benevolent approach", as Lord Neuberger PSC stated in *Holmes-Moorhouse v London Borough of Richmond upon Thames* [2009] 1 WLR 413 at para 50 ("*Holmes-Moorhouse*"):

> "a benevolent approach should be adopted to the interpretation of review decisions. The court should not take too technical a view of the language used, or search for inconsistencies, or adopt a nit-picking approach, when confronted with an appeal against a review decision. That is not to say that the court should approve incomprehensible or misguided reasoning, but it should be realistic and practical in its approach to the interpretation of review decisions."

69. The overall question is "how a reasonable and sensible housing officer would understand what had been written": *XY* at para 62.

(g) Unreasonableness/irrationality test

70. The decisions of local authorities may be challenged if they do not comply with the express requirements of Part VII HA 1996, or if they are unreasonable or irrational. It is trite law that the test for irrationality or *Wednesbury* unreasonableness is a decision that is 'so unreasonable that no reasonable authority could ever have come to it' *(Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 K.B. 223, 233-24, per Lord Greene MR). Since the landmark *Wednesbury* decision, modern "simpler" formulations have been variously offered by senior courts, for example, recently by the Divisional Court in *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin) (*"Law Society (No. 2)"*). There the judgment of a strong court was given by Carr J (as she then was), and included Leggatt LJ (as he then was). At para 98, the Divisional Court said:

> "Another, simpler formulation of the test which avoids tautology is whether the decision is outside the range of reasonable decisions open to the decision-maker: see e.g. *Boddington v British Transport Police* [1999] 2 AC 143, 175, per Lord Steyn."

§VII. GROUND 1

August 2023 assessment

Rival submissions

Claimant's submissions

71. The claimant submits that section 11 of CA 2004 is engaged, and the defendant in discharging its functions must have regard to the need to safeguard and promote the welfare of the children, and by assessing the claimant's housing priority as Category 2 (non-essential), the defendant has failed to have or have sufficient regard to its section 11 duty. To interrogate this question, some intensity of review by the court is justified because of the impact on the children. The critical question is whether the claimant's needs in respect of her education and employment and the educational and emotional needs of her children were lawfully assessed. They were not by ordinary *Wednesbury* standards. It was unreasonable and irrational to conclude that the claimant did not fall into Category 1 as it was essential for her to be accommodated within Redbridge or neighbouring boroughs. Part of the error comes from the mistake of fact in concluding that there was no known intervention from "well-being teams within the school". There were. This is a relevant factor that was not considered. Further, there is a failure to consider the claimant's personal circumstances and the fact that she lives alone with three young children. Finally, there was no or no adequate assessment of the claimant's educational needs, which had been brought to the defendant's attention and must affect the global analysis.

Defendant's submissions

72. The defendant responds by submitting that Part VII accommodation, while less unstable than emergency accommodation, will not be as settled and secure as Part VI accommodation. That is an important context. The educational situation was not before the decision-maker as at the 3 August assessment. The June assessment is irrelevant as it was not relied on. It is factually accurate to state that the children were not "under" SEND or CAMHS and thus no support needs "were disclosed". On 26 June 2023, Mr Olusola made enquiries by telephone with Ms T at the [the Tottenham School]. The claimant at the time was an "itinerant" teaching assistant and her employment needs were considered. The defendant's officer has explained himself carefully and was factually accurate when he stated that "There is no known intervention as none disclosed by the teacher." There is not a long "historic" link to Redbridge, where the family was only accommodated in 2022. Therefore, the high rationality threshold required for a successful *Wednesbury* challenge has not been met.

Discussion

The claimant's children

73. The decision-maker's characterisation of the situation of the children was factually wrong. Mr Olusola stated that there were "no known interventions from wellbeing teams" or "changes in the children's behaviour in terms of stresses". Both these factual assertions were inaccurate. As to well-being interventions, the issue featured in the litigation in this court before Lane J. It is cited in his judgment (*UO No.1*) at para 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."

74. Beyond this, the defendant cannot have been under any misapprehension about the existence of well-being intervention for the children because as part of the proceedings before Lane J, a statement was filed from the children's teacher Ms T dated 3 March 2023 in which she expressed concern about the claimant's daughter's well-being. Ms T said:

> "Her mood has definitely changed. She is not as happy or upbeat as she used to be. Regrettably it has now proved necessary to refer her to receive counselling as we are so worried about the impact of the current housing problems on her mental health and well-being. The counselling has just started and is being provided by Jo Reingold, who is a qualified Social Worker and Psychodynamic Therapist working with children and families. She trained to be a therapist at the Tavistock Clinic …"

75. The claimant herself filed a second statement in those previous proceedings which was dated 6 March 2023. She stated at para 37:

> "It is true that my mental health has deteriorated since making the application to the Council. Months of being stuck on bed and breakfast hotel accommodation has taken its toll on me. It has been incredibly stressful just trying to ensure that my children get to school, as well as having to try and feed my family in accommodation that has no cooking facilities. I have seen the impact it has had on my children, which has increased my levels of stress and made me very sad. I have been referred for therapy by my GP but I am currently on a waiting list."

76. Therefore, there can be no excuse for the defendant not being alive to the issue of the well-being intervention that the claimant's daughter had been receiving, along with the adverse impacts on the children. The defendant had the very clear words of Ms T, and also those of Lane J ringing in its ears. The judgment had been handed down just weeks before Mr Olusola's 3 August assessment. If this court's judgment were not being seriously considered by the defendant, that evidences a startling lack of concern about the vulnerability of a child who had been receiving mental health support from Tavistock-trained therapist. If Mr Olusola was aware of the judgment of Lane J and Ms T's evidence, it is inexplicable that he could have concluded that there were "no known interventions from well-being teams".

77. In an after-the-decision attempt to explain his assessment, Mr Olusola states that when he spoke of no known interventions for the children, he was speaking not about the past, but the position at the time of the assessment. Thus, he claims that factually his assessment was accurate. Three things may be said about this.

78. **First**, Stanley Burnton J (as he then was) observed in *R (Nash) v Chelsea College of Art and Design* [2001] EWHC Admin 538 at para 34 that providing reasoning after a decision has been given should be treated with particular caution, since there is the obvious risk of self-serving ex post facto rationalisation. This precept was recently applied by Chamberlain J in *Inclusion Housing CIC v Regulator of Social Housing* [2020] EWHC 346 Admin at para 78, where he said:

> "Furthermore, reasons proffered after the commencement of proceedings must be treated especially carefully, because there is a natural tendency to seek to defend and bolster a decision that is under challenge: *Nash*, [34(e)]."

79. Therefore, this court views the evidence provided by Mr Olusola "explaining" his decision with a measure of caution.

80. **Second**, it is necessary to return to the precise words used in the original decision by Mr Olusola and their context (B192):

> **"Officer recommendations**
>
> **Essential Educational Needs**: None disclosed, none of client's children are currently sitting examinations or are of critical schooling age. Head Teacher said that multiple moves would have a detrimental effect on the children's education and wellbeing. There are no known intervention from wellbeing teams within the school as this was not disclosed by the Head Teacher."

81. This section of the decision form documents the officer's "recommendations", and thus is plainly of significance. The extract deals with the telephone conversation Mr Olusola had with Ms T at the end of June 2023 (she does not accept the accuracy of his account, but that is not the point for now). It appears that Mr Olusola's approach was to substitute his recollection of what Ms T told him in place of a reflective and meaningful wider contextual assessment of the children's "essential educational needs" based on the totality of what the defendant already knew as of 3 August 2023, including the evidence filed in the previous proceedings by Ms T and the very recent judgment of Lane J. This impression is strengthened by what the decision then proceeded to state:

> "The Head Teacher did not disclose that there had been an indication that referrals had been made to children social services or that there had been changes to the children's behaviours in terms of stresses."

82. Once more, it can be seen that Mr Olusola's focus is the information gleaned from the conversation with Ms T. This is echoed when Mr Olusola writes, "No support needs disclosed." Mr Olusola fails to mention what was already known to the defendant by reason of the statement Ms T filed in the previous proceedings that the claimant's daughter's mood had "definitely" changed for the worse and the concern had reached a point where therapeutic intervention was felt necessary and had begun.

83. **Third**, even if Mr Olusola's reference in the decision was to the lack intervention at the time of the August assessment, that cannot excuse his lack of recognition of the therapy that this child had been receiving due to concerns about the deterioration in her mental health, as Ms T noted. The question that Mr Olusola should have engaged with is, given her receiving of therapeutic support, what risks may further instability to her life circumstances by moving out of her Redbridge home to an area out of the borough or its neighbouring borough produce and then that assessment should feed into the overall housing needs assessment. Mr Olusola's artificially narrow focus at the expense of a proper analysis of the history and context is seen further on in the decision when he says:

> "Head Teacher states that all is fine with the children now that the children and client moved into self-contained accommodation at [the Iford address]."

84. As noted by Ms T in her March 2023 statement, LO was going to start secondary school at the [the Redbridge School] in September, and Mr Olusola's impugned decision specifically notes "In September 2023 [LO] is starting a new school at [the Redbridge School] High School." Mr Olusola should have considered what the child's history of well-being therapeutic support indicates about possible future risk from having to travel significant distances to reach her new school by being accommodated out of borough and how that impacts housing needs and priority. None of this was done and the documented history of therapy delivered to a plainly vulnerable child was ignored.

85. I judge that this was not a minor or trivial oversight. The defendant knew that the family and thus the children had experienced "a lot of trauma" as Mr Olusola documented it. He had no reason to doubt it and it has not been challenged. It is crucial that such significant trauma has manifested itself in the need for there to be therapeutic well-being intervention in school (LO) and behavioural change in the children. The evidence that the defendant had received through the evidence of Ms T's statement was that there was an ostensible connection between housing instability, the distance between the location of the accommodation and the site of the school and the affect and presentation of the child. Ms T states at §6:

> "I am also very concerned about the Claimant's eldest daughter's [LO] well-being and the impact that the ongoing instability with housing (in particular the distance from school and the nature of the accommodation) is having on her."

86. To the argument that things were stable for the children as at August 2023, that misses the point. The question is what the impact on the children would be of moving from their home in Redbridge out of borough (or neighbouring boroughs) and what that says about housing needs and priority. Thus, Mr Olusola needed to engage with the future risk of impact on welfare and emotional harm with a location out of Redbridge (or neighbouring boroughs) in the proper context: received therapeutic support and child behavioural change.

87. I judge that an important factor was not considered. The defendant's after-the-event explanation of why the interventions were not considered by its decision-maker is poor and in line with authority I am cautious about it. It was either self-serving or even if, which I find hard to accept, a reflection of the true position, cannot account for the failure to engage with Lane J's very recent judgment and the evidence filed about LO's therapy in it. I find that the failure to consider this important fact in the history of these traumatised children materially and adversely affects the rationality of the impugned decision.

Lone parent status

88. The defendant argued that the substance of the Policy was in accordance with the requirements of a lawful policy as identified by Lewison LJ in *Alibhkeit* at para 46. This is true. There is no challenge to the Policy's lawfulness. Indeed, assistance is derived from *Alibhkeit* when the Court of Appeal stated at para 48:

> "The policy must, of course, be a lawful one; and conformably with public law principles relating to policies there must be room for the exceptional case. But in principle, where a public authority has a lawful policy, then provided that it implements the policy correctly its decision in an individual case will itself be lawful: see, for example, *Mandalia v Secretary of State for the Home Department* [2015] UKSC 59; [2015] 1 W.L.R. 4546 at [31]." ("*Mandalia*")

89. This ground of challenge is about the application of the policy, not its intrinsic substance. If a vital factual matter is omitted from the assessment of needs and priorities, that has the capacity to undermine the rationality of the decision. Not every unconsidered factor will significantly affect the overall rationality of the decision, and it is a fact-sensitive question whether the failure or omission is material, and if so, how much. One prominent feature of the Policy is that there must be a case-by-case assessment and the particular circumstances of the applicant must be carefully considered. This is clear from the "Explanation of Categories" (B270):

> "All cases will be assessed on a case by case basis and households will be placed in one of the following priority groups below and in most cases local accommodation will be offered according to these priorities."

90. In the section of the Policy dealing with "work factors" (B272), the Policy makes clear that:

> "Consideration will always be given to the particular circumstances of the applicant and the impact of moving to a new area."

91. One of the "particular circumstances" of the claimant is the fact that she is a single mother bringing up three children aged between 4 and 12 years old on her own. This strikes me as being a factor that should have been engaged with properly by the defendant when assessing her housing needs and priority, if the analysis were on a truly individualised basis. It must have been entirely foreseeable to the defendant that moving to an area out of borough (or those neighbouring) creates the obvious risk of producing great strain on the claimant

and her ability to cope. The defendant should have anxiously considered the realities of her situation if she would be confronted with extensive journeys to take the children to school and back and bring her daughter home, any resulting additional strain on her capacity to cope, and the consequent potential impact on her ability to care for her children. It is not this court's function to adjudicate on the matter. It is clear from Article 2 of the Homelessness Order that the defendant must take into account the effect of disruption caused by the location of the accommodation on the "caring responsibilities" of the applicant. But I detect no or no sufficient engagement with this important issue. It seems to me that what is obvious from the personal circumstances of the claimant is that she is a lone parent with three young (and in the case of her two sons, very young) children and her ability to cope is materially engaged.

92. Her particular circumstances include the fact that the family had as at August 2023 been moved multiple times in unstable (often hotel) accommodation with evidence before the previous High Court in just-concluded proceedings of impacts on mother and children. The defendant had evidence from Ms T of "a lot of trauma" as a result of the instability. The defendant needed to consider carefully how in this historical context the strain of further extensive journeys during term time just to get two children to school and three of them back home is likely to impact a single mother. Without there being any hard and fast rule, it is noteworthy that across the public sector being a lone parent has, for all the obvious reasons, been identified as raising the question of vulnerability in the particular sense of affecting the ability to cope and the strain on the caregiver. One must be cautious about reading across from other regulatory regimes and I do not. But it is noteworthy that the Asylum Seekers (Reception Conditions) Regulations 2005 ("the Asylum Seekers Regulations") identify categories of people who might be "vulnerable" or have "special needs" when the Secretary of State is considering whether to provide support under the Immigration and Asylum Act 1999 ("IAA 1999"). Regulation 4 provides:

> "(2) When the Secretary of State is providing support or considering whether to provide support under section 95 or 98 of the 1999 Act to an asylum seeker or his family member who is a vulnerable person, he shall take into account the special needs of that asylum seeker or his family member.
>
> (3) A vulnerable person is—
>
> (a) a minor;
>
> (b) a disabled person;
>
> (c) an elderly person;
>
> (d) a pregnant woman;
>
> (e) a lone parent with a minor child …"

93. I do not apply these regulations; they relate to a different domain. But what is clear is that the Asylum Seekers Regulations recognise that single parents with minor children may face particular challenges. Both section 95 and 98 of the IAA 1999 carry to possibility of providing accommodation support for an asylum seeker, and the applicant's vulnerability must be considered. Following this claimant's application for asylum in 2019, the claimant was provided with

accommodation support under the Immigration and Asylum Act 1999, as Lane J noted in his judgment, which came to an end once she was granted refugee status on 12 July 2022 (*UO No.1*, para 13). It makes obvious sense that a mother with three young children, having to bring them up on her own, with the children attending two different schools in two different boroughs (as they would from September), will face significant challenges that need to be factored into the defendant's analysis of the extent that her lone parent status impacts her ability to cope if there is relocation out of borough and how that speaks to her housing needs and priority. I find no sufficient consideration of this obvious factor by the defendant. Not only is the claimant a lone parent with a minor child, but she has three children aged 12 or under. I emphasise that this is not to cross-apply the Asylum Seekers Regulations, and make no finding about vulnerability, statutory or otherwise, but am bound to observe that the claimant's lone parent status was an obviously material factor that was not or not adequately considered by the defendant.

The claimant's education

94. There appears to be no consideration of the impact of being placed out of borough on the claimant's education. Under Article 2(b) of the Homelessness Order, education of a relevant adult must be considered as well as that of children. There is no provision that adult education is excluded from the evaluation. For the claimant, and in particular due to her status as a lone parent, education was not simply a matter of incidental interest or intellectual curiosity; she wished to use education to further her career prospects and thus enhance her capacity to provide for her children. The defendant cannot but have been alive to the significance of the claimant's education due to the evidence she filed in the previous proceedings before Lane J. There needed to be a careful assessment of how her educational commitments within Redbridge would be affected by relocation out of borough and how any additional demands on her from new accommodation was likely to affect her capacity to care for her children, thus returning the question to the issue of priority and essential need, to which the analysis must keep returning. This analysis is absent in the August assessment, and this additional factor illustrates how and why a genuinely holistic analysis is vital.

The claimant's employment

95. As at 3 August 2023, the claimant was working an itinerant teaching assistant. A lawful assessment of the claimant's housing needs should have carefully considered how any additional demands on the claimant by being accommodated out of borough would affect her employment and the impact on the welfare of the children through her depleted coping resources. This should not have been assessed in the abstract, but in the concrete context of the claimant being a lone parent with three minor children. In this way, the "significance" of any disruption due to the change of accommodation for the purposes of Article 2(b) of the Homelessness Order could be lawfully assessed.

96. By contrast, the analysis by the defendant was attenuated and at no more than surface level. It amounted largely to an assertion that the claimant fell within Category 2 ("highly desirable") at the expense of an analysis of how and why

the additional demands of out of borough accommodation might indirectly impact the welfare of the children, a factor that defendant is obliged to have regard to. Yet again, what is missing from the defendant's assessment is a fact-sensitive examination in the "particular circumstances" of the claimant being a lone parent trying to cope with getting three children to and from school while sustaining her education and honouring her employment commitments. The reference by Mr Olusola to the Placement Policy's general approach that "in most cases" a commute to work of "90 minutes" is reasonable, was applied without engaging with the key question which was whether the claimant's "particular circumstances", including her parenting status and ages of her children, fall within the "most cases" bracket or could be distinguished. A similar lack of particularised evaluation exists for the "16 hours per week" provision.

Conclusion

97. I step back and examine Ground 1 as a whole. First, the defendant is correct in its first skeleton argument that an HNA is only part of the offer process and is designed to assist the local authority make an offer of suitable accommodation in accordance with its statutory housing duties. However, that cannot insulate an assessment from public law scrutiny. Indeed, given its pivotal importance in the offer process, it is essential that it is conducted, and its conclusions reached, in compliance with legal principle. If the argument is that the court can pass over flaws in the HNA process, or not scrutinise carefully (without "nit-picking") I am not persuaded. The claimant submits that the HNA was unlawful. She is entitled to a decision from the court about whether it can withstand lawful, albeit "benevolent", scrutiny.

98. Having examined the substance of the assessment, I am satisfied that the defendant did not make its decision in compliance with its duties under section 11(2) CA 2004, para 17.51 of the Code, Article 2(b) of the 2012 Homelessness Order and the defendant's published Placement Policy. I do not understand the defendant to claim that it has departed from the Policy, and it has not provided "very good reasons" in a *Mandalia* sense to justify such a departure (see *Mandalia,* para 29). Therefore, the question for the court is whether the defendant has properly applied its Policy and not acted in accordance with the law.

99. In reaching these conclusions, I am satisfied that the defendant has not holistically assessed the impact of a relocation on the claimant's employment and education in the context of how that may impact her housing needs with the specific demands, that is the "particular circumstances", of being a lone parent bringing up three minor children on her own and the likely increased additional demands resulting from out of borough accommodation. This was a significant misstep. The defendant's policy on prioritisation states in terms that "particular consideration" will be given to

> "those with other pressing social circumstances that will be particularly affected by disruption."

100. There was no consideration of whether the particular circumstances of the claimant fell within the "pressing social circumstances" category. The consequence is that the defendant is in breach of its duty under section 189A(9) HA 1996 and has failed to lawfully assess the claimant's housing needs in the August assessment.

101. I emphasise that the merits decision about the approach categorisation is exclusively a matter for the defendant and this court recognises and respects the "fundamental relationship between the courts and the executive", as it was put in *R (Plan B Earth) v Secretary of State Transport* [2020] PTSR 1446 at para 273 ("*Plan B Earth*"). The weight that the defendant places on any individual relevant factor, and their interaction, is for the defendant's evaluation. But should the decision-maker not take account of considerations that are so obviously material, that has the capacity of rendering the decision overall unlawful, and that, viewed as a whole, is what has happened here. That applies to factors the relevance of which is plain both implicitly and those made explicit within the defendant's policy and the Homelessness Code. I judge that it was unreasonable and irrational not to consider the factors identified above, and especially the history of trauma of the family and the children as manifested in behavioural changes, the distress of the claimant's daughter, her receiving of qualified therapeutic support, the claimant's personal educational and employment circumstances, and her status as a lone parent with three minor children. Mr Olusola made a material mistake about LO's therapeutic support. Here, therefore, was a material error of fact made by the defendant. It shares the characteristics set out by Carnwath LJ (as he then was) in *E v Secretary of State for the Home Department* [2004] QB 1044, 1071D-E ("*E v Secretary of State*") in a slightly different context. I emphasise that this is not to say that the defendant's error is a freestanding additional ground of challenge (part of the forensic debate in *E v Secretary of State*), but that the mistake feeds into the lawfulness of the decision overall. Mr Olusola's mistake of fact is "established" (not disputed that LO was in receipt of well-being intervention); it is an error for which the claimant was not responsible and was material. The lack of intervention was an explicit part of his reasoning as he stated in terms that there were "no known interventions from well-being teams". He was wrong. There had been. I am deeply cautious about his later explanation, which has all the hallmarks of being self-serving.

102. The significance of these failures is that no reasonable authority or decision-maker would be in position to properly (that is, lawfully) assess the claimant's housing needs and thus the claimant's priority for accommodation without making these reasonable enquiries and taking these factors into account. Critically, the defendant also has not complied with the section 11 CA 2004 duty to properly assess the likely impact of its decision on the welfare of the children and have regard to the promoting and safeguarding of their welfare (*Nzolameso*, para 27). All of this is the very essence – the "nuts and bolts" (in *XY* and *ZK* terms) – of a lawful decision.

Relief

103. In the defendant's skeleton there is reference to section 31(2A) of the Senior Courts Act 1981. Section 31 of the Senior Courts Act, as amended by section 84 of the Criminal Justice and Courts Act 2015, provides:

> "(2A) The High Court— (a) must refuse to grant relief on an application for judicial review, and (b) may not make an award under subsection (4) on such an application, if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.
>
> (2B) The court may disregard the requirements of subsection (2A) (a) and (b) if it considers that it is appropriate to do so for reasons of exceptional public interest.
>
> (2C) If the court grants relief or makes an award in reliance on subsection (2B), the court must certify that the condition in subsection (2B) is satisfied."

104. I state immediately that there is no "exceptional public interest" in this case. The approach to section 31(2A) was considered by the Court of Appeal recently in *Plan B Earth*. In the court's joint judgment (Lindblom, Singh and Haddon-Cave LJJ), the court provided guidance on the principled approach (paras 272-73):

> "272 The new statutory test modifies the Simplex test in three ways. First, the matter is not simply one of discretion, but rather becomes one of duty provided the statutory criteria are satisfied. This is subject to a discretion vested in the court nevertheless to grant a remedy on grounds of "exceptional public interest". Secondly, the outcome does not inevitably have to be the same; it will suffice if it is merely "highly likely". And thirdly, it does not have to be shown that the outcome would have been exactly the same; it will suffice that it is highly likely that the outcome would not have been "substantially different" for the claimant.
>
> 273 It would not be appropriate to give any exhaustive guidance on how these provisions should be applied. Much will depend on the particular facts of the case before the court. Nevertheless, it seems to us that the court should still bear in mind that Parliament has not altered the fundamental relationship between the courts and the executive. In particular, courts should still be cautious about straying, even subconsciously, into the forbidden territory of assessing the merits of a public decision under challenge by way of judicial review. If there has been an error of law, for example in the approach the executive has taken to its decision-making process, it will often be difficult or impossible for a court to conclude that it is "highly likely" that the outcome would not have been "substantially different" if the executive had gone about the decision-making process in accordance with the law. Courts should also not lose sight of their fundamental function, which is to maintain the rule of law. Furthermore, although there is undoubtedly a difference between the old Simplex test and the new statutory test, "the threshold remains a high one" (see the judgment of Sales LJ, as he then was, in *R (Public and*

> *Commercial Services Union) v Minister for the Cabinet Office* [2018] ICR 269, para 89)."

105. The section 31 argument was not developed orally before me by the defendant in any meaningful way. The defendant was correct not to. Nevertheless, as explained in *Plan B Earth*, the court once seized of the issue has a duty. The facts come nowhere near to be reaching the "high" threshold necessary for the court to find in the defendant's favour on this point. I cannot think that if the defendant had "gone about" the decision-making process lawfully it is "highly likely" that its decision would be substantially the same.

106. Therefore, I turn to the question of relief, which remains a matter of discretion. The defendant's 3 August 2023 assessment under section 189A of the HA 1996 was unlawful. Given the scale of the defects in the decision-making process, I see no reason not to quash this decision that was not made in accordance with the law, and every reason why it should be deprived of legal effect. As stated by the Court of Appeal in *Plan B Earth* at para 284:

> "the normal result in a successful claim for judicial review must follow, which is that the court will not permit unlawful action by a public body to stand."

107. Events have overtaken the requirement for a fresh housing needs assessment as there have been further assessments following the unlawful decision, and thus the need for a mandatory order falls away in respect of this decision and is academic. It is to lawfulness of subsequent decisions that I turn, only adding that if there had not been further HNAs, I would have exercised the court's discretion to grant a mandatory order requiring a fresh assessment. That is unnecessary and disproportionate as events have unfolded.

§VIII. GROUND 2

April 2024 review assessment

Claimant's submissions

108. The claimant submits that the initial offer of the Enfield property was based on an unlawful HNA. Mr Bhattarai's housing needs review for the purposes of section 189A(9) HA 1996 took as its starting-point the August assessment of Mr Olusola, endorsed it and resulted in a review process that was merely "confirmatory" in nature. If the court finds that the August assessment was unlawful, that fatally infects the April suitability assessment since the errors in the August 2023 assessment were largely replicated in the April 2024 review assessment, including failure to make reasonable enquiries about educational needs in changing school mid-year, disruption to education, and the likely emotional impact of such change on LO in the context of previous instability and trauma.

Defendant's submissions

109. In response, the defendant submits that when dealing with experienced homelessness officers, the court is entitled to assume that the officers have relevant background knowledge of what they are required to consider in the applications with which they deal (*Firoozmand v Lambeth LBC* [2015] EWCA Civ 952 at para 38). The accommodation does not need to be "life-long" accommodation (*Birmingham City Council v Ali* [2009] UKHL 36 at para 18, per Baroness Hale). It is wrong to say that the review is "vitiated" by the earlier August 2023 assessment. Mr Bhattarai clearly also reviewed housing needs as part of his section 202 suitability decision. This ground is a rationality challenge and the high *Wednesbury* threshold is not met. There has been a "complete failure" by those representing the claimant to "recommend further investigations". The lack of critical examinations and SEND remain relevant factors; the argument that there was no holistic analysis "misreads" the decision; and thus the assessment must survive the mandated "benevolent" approach explained by Lord Neuberger in *Holmes-Moorhouse*.

Discussion

110. Most of the decisions taken by a local authority under the statutory homelessness regime are subject to review. This includes a review of a suitability decision (section 202(1) of the HA 1996) and any further or review of housing needs that underpins it. The statutory requirement is for the decision to be made by a person of "appropriate seniority" and who was not involved in the original decision (section 203). Mr Bhattarai fulfils both requirements. The role of the reviewer is to consider matters afresh in light of all the material before her or him at the time of the review, including relevant material that postdates the reviewed decision. Accordingly, the remit of the reviewer is a wide one.

111. It is clear that Mr Bhattarai did not merely acknowledge Mr Olusola's August assessment, but found it "correct" and placed reliance on it. That is evident from the express terms of the April 2024 assessment where Mr Bhattarai states that the August assessment of Category 2 "was the correct assessment, and that [UO] does not have an "essential" need to be accommodated "within the Borough or a neighbouring Borough" (para 4). He continues that in terms of the claimant's education and employment, she had been assessed as priority Category 2 in the August Assessment and that "was the correct assessment". Mr Bhattarai also adopts the analysis of Mr Olusola when he states, "I note that [LO] is not at a critical stage of her education and nor does she have special educational needs." It is interesting that he uses the word "note", which suggests his noting of Mr Olusola's finding, and indicating his reliance on it, an indication that is strengthened by reading Mr Bhattarai's decision as a whole and in context.

112. The claimant submits that instead of there being an independent reassessment, Mr Bhattarai's assessment is closer to being "confirmatory in nature". There is force in that argument to the extent that substantial reliance has been placed by Mr Bhattarai on Mr Olusola's assessment. The claimant's submission is strengthened by an examination of the omissions in Mr Bhattarai's analysis, and it seems to me far from coincidental that there are common failings, revealing the extent of the reliance of the second assessment on the first.

113. It would have been very simple and straightforward for Mr Bhattarai to have said that he has considered the evidence of LO's previous therapeutic intervention for her distress and well-being problems, reflected in her presentation and behaviour, but feels that they can be managed at a new school in Enfield. He did not engage with this question. Further, if this were indeed an effective and meaningful assessment, Mr Bhattarai himself could have asked the key questions of LO's teacher at her new school within the Borough. But Mr Bhattarai fails to engage with the problem, just as Mr Olusola failed to consider this important factor. In similar vein, Mr Bhattarai fails to consider the claimant's status as a lone parent with sole care and responsibility for three minor children, and the impact of the strain a relocation to Enfield has had on her and is likely to continue to have and what that says about housing needs and priority. Therefore, there is a material replication of failings found in Mr Olusola's assessment. It is also illuminating to note the nature of the internal emailing within the defendant's department. On 2 November 2023, Ms Onoyivbe of the defendant wrote to other colleagues (FSB 160):

> "We would expect them to change school due to no SENDS or critical stage of education"

114. Once more, there is no reference to the wider context of the children's life and their history of trauma, and such approach is consistent with the approach of both Mr Olusola and Mr Bhattarai. If it is an institutional stance within the defendant's housing department, it is an unduly narrow one, placing unwarranted emphasis on examples in the Policy without engaging with the wider context and particular circumstances. Mr Bhattarai cannot but have known about the specific circumstances of the family and the children. In a letter to the defendant dated 1 November 2023, Mr Ford wrote on behalf of the claimant stating:

> "We refer you to the statement of our client dated 19 October 2023 that is contained within the permission bundle from the ongoing judicial review brought by our client against Redbridge Council. Paragraphs 19 to 23 of the statement set out the current position in relation to the children's education and the journeys taken by our client to ensure her children get to school and for her to get to her place of work or to her college course.
>
> If our client were to move to the Property this would place an intolerable strain on our client's family arrangements in terms of her children being able to attend their schools and our client to be able to get to work and to her college.
>
> Before our client is able to go to work, she would first have to drop her youngest two children at school at the [the Tottenham School] School in Tottenham (full address XXXX). This journey would take between 46 mins to 1hr 8 minutes from the Property using the shortest route. Our client and her youngest two children would need to take a Greater Anglia train from Enfield Lock to Tottenham Hale, then the XX bus to XXXX Road, and then a 7-minute walk from there. Our client has a monthly bus pass at the moment and the children travel free on the buses. However,

she would need to pay for the train tickets. A single from Enfield Lock to Tottenham Hale is £5.20 and an anytime return is £9.20.

… [continuing at FSB73]

We stressed in our Statement of Facts and Grounds dated 19 October 2023 (see paragraph 28 at page 31 of the permission bundle) that the location of [the Redbridge flat] enables our client to maintain her employment and studies, and her children to continue attending their schools. We also refer you to our client's witness statement dated 19 October 2023. At paragraph 42 of the statement (page 62 of the permission bundle) our client explained the benefits of [the Redbridge flat] in terms of location (even if it may not be long term permanent accommodation)."

115. Following that, Mr Ford wrote to him on behalf of the claimant on 12 January 2024, with a very comprehensive list of attachments, 44 in all. These attachments included a letter from Ms T from 2022, two statements from her, and a further letter from her dated October 2023. Mr Ford also provided a detailed "Factual background" running to several pages. That summary included the following (FSB167):

"In a witness statement filed in the Court proceedings dated 10 January 2023 Ms T set out her concerns about the impact on the children of not having stable accommodation. She made it clear that she did not consider accommodation offered in Peterborough to be suitable for the children.

In a second statement dated 3 March 2023 Ms T expressed further concerns regarding the impact of unstable housing on the children's wellbeing. By this time LO's mental health had deteriorated and she has been referred for counselling. Ms T also noted that LO had been accepted with a place at [the Redbridge School] High School for September 2023. She confirmed that she supported LO being able to attend this school from September 2023. Up until then Ms T reiterated the importance of LO and the other children being able to attend the [the Tottenham] Primary School, noting that LO was sitting her SATs exams this year. LO has now completed her SATs exams.

… [then at FSB174]:

At this time my client was also travelling to the [the Tottenham School] School with her two youngest children, and then getting another bus either to college or, on days she was working, a train to her place of work. She confirmed that the family were travelling for up to 6 hours a day and that this was putting a great deal of stress and strain on them.

… [and at FSB181]:

[LO's Head Teacher] has confirmed that there is a need for my client to be housed within a reasonable travel distance from the [Redbridge] school. Regard has to be had to the whole family and how my client has to juggle the responsibilities of all children getting to school, as well as her being

> able to get to work or to her college. The level of travel involved at present is not sustainable or good for the children's wellbeing. Further, we submit that it is not reasonable to simply expect my client to move her children to different schools having regard to their circumstances (as set out in detail above)."

116. Mr Ford had indeed provided Mr Bhattarai with comprehensive family-specific detail, their "particular circumstances". He furnished Mr Bhattarai with an account of the declarations and orders made by Lane J., before adding:

> "The relevant documents and evidence filed in relation to the judicial review proceedings will be available to the Council from the housing file and provided relevant context and background information."

117. I do not accept the defendant's submission that the lack of enquiry can be blamed on the claimant and/or her legal advisers as lines of enquiry were not specified by them. The *Tameside* duty falls on the defendant (*Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, at 1065 ("*Tameside*"). This was authoritatively explained in Lord Diplock's speech in *Tameside*, and more recently summarised by Haddon-Cave J in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 (Admin) at paras 99-100 ("*Plantagenet Alliance*"), with proposition (5) of particular relevance to this case:

> "(5) The principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant, but from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion (*per* Laws LJ in *(R (London Borough of Southwark) v Secretary of State for Education (supra)* at page 323D)."

118. Therefore, the obligation on the defendant to make reasonable enquiries is not a species of procedural fairness, but an "obligation" in *Tameside* terms, to ensure that the decision is rational. It includes the obligation, where reasonable, to consult "outside bodies", which in this case plainly encompasses the children's schools, if the school could furnish the defendant with information to make a rational decision. While it is entirely foreseeable that there may be instances where relevant enquiries arise that the decision-maker is not or not sufficiently aware of, that is very far from the case here. Mr Ford has been meticulous and exhaustive in alerting the defendant to the difficulties the claimant and her children face. In these circumstances, and especially in light of Lane J's judgment in this case, the narrow approach of Mr Bhattarai (repeating that of Mr Olusola before him) is puzzling. This is especially so given the defendant's awareness of the distress and trauma that the claimant's daughter has experienced, and it remains inexplicable there are no enquiries with her current school in Redbridge for its assessment, knowing the child as they do, of the likely impact of the disruption to her education by moving schools in the middle of the academic year, her ability to manage that disruption, and what measures might be put in place to support the transition of this child. These are not just desirable enquiries, but reasonable ones in *Tameside* terms that may be viewed as

essential on these facts. This is all the more significant an oversight given LO's history of distress and her need for therapeutic support due to instability and the ensuing emotional and behavioural impact. Such enquiries have a clear line of relevance to housing need within borough and thus priority. As indicated, I am unpersuaded by the defendant's argument that Mr Bhattarai had no need to make these enquiries of the Redbridge school because the claimant did not suggest making them – that seems to me to be in conflict with its duties of reasonable enquiry under *Tameside* and *Plantagenet Alliance*. The defendant has a statutory duty to have regard to the safeguarding and promoting of the child's welfare, while not having to consider it as a "paramount" consideration (cf. on this section 1 of the Children Act 1989, which imposes a higher standard). I judge for the purposes of this case that child welfare is an important relevant consideration. Being seized with evidence from the previous proceedings and the judgment of the High Court about the distress the child had experienced and the therapeutic intervention she received, it is a false step to seek to responsibilise the claimant. While I am conscious of what Lewison LJ said in *Abdikadir* at para 52 that the court should be wary of imposing a duty on the reviewing officer to enquire into "matters that were not raised", I cannot think that this relieves a local authority from considering its statutory duties, such as under section 11 of the CA 2004. In any event, these important issues were raised repeatedly by the claimant through Mr Ford's comprehensive submissions. Significantly, the duty to have regard promoting and safeguarding the child's welfare is placed firmly on the defendant by statute. Indeed, section 11 is an important element in this country's child welfare and safeguarding mechanism, making it clear to public authorities that irrespective of the acts of others, they have a duty to have regard the child's welfare and safeguarding. There can be no mistake about that. I remind myself of Baroness Hale's observation in *Nzolameso* at para 27:

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

119. Further, these issues were raised in proceedings before Lane J and the concerns about LO were including in his judgment. The failure to engage with LO's distress and therapeutic support runs counter to the proper identification of the child's "principal needs". It is difficult to understand how the defendant had regard to the active promoting of the welfare of the children, for as Baroness Hale said in *R (HC) v Work and Pensions Secretary [2019] A.C. 845,* at para 46, "Safeguarding is not enough … [the child's] welfare has to be actively promoted."

120. Further, the lack of need for Category 1 prioritisation was influenced by Mr Bhattarai's assessment of that the children were not of "critical school age". He said at para 20(g) of his assessment that local accommodation

> "is prioritised for those assessed as having an essential need to stay in the borough or surrounding area for work, essential medical/care needs, or **middle of critical examinations**"
>
> (emphasis provided)

121. This is plainly not the applicable test and he has misdirected himself. In a further statement, Mr Bhattarai seeks to "explain" his error. He states at para 8 of his statement dated 21 May 2024 (FSB221):

> "I recognise that my gloss on the policy ("middle of critical examinations") was an imprecise use of language."

122. I am satisfied that this is a further exercise in after-the-fact rationalisation. The court once more heeds the cautionary words of Stanley Burnton J and Chamberlain J. This was not linguistic imprecision, but the use of the wrong test informed by the wrong approach, providing material support for the claimant's criticism that the "critical" examination guidance had been applied with undue and unwarranted rigidity by Mr Bhattarai. The court is cautious about Mr Bhattarai's May 2024 statement, particularly since it was written and filed after the amended Summary of Facts and Grounds. I find that the focus on "critical" examinations diverted Mr Bhattarai from a wider and more contextually sensitive analysis of the life-situation of the claimant's children and her daughter in particular. Once more this is puzzling since Lane J stated in terms at para 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."

123. Mr Bhattarai's strong focus on criticality, while not reaching a "fixation" (as the claimant contends), resulted in vital considerations not being properly assessed. This was a significant failure. His assertion about pastoral care being provided in a new school was made in the absence of wholesale enquiry about its existence in any of the likely candidate schools, or more generally without asking Enfield's education department. It was unreasonable not to enquire about how attuned support may be provided to the claimant's daughter with her background of trauma and well-being therapeutic intervention. It was an assumption on Mr Bhattarai's part that appropriate and tailored support could be provided without enquiring whether it could be. That assumption is unwarranted, and indeed the Enfield department may have had views on what course might be taken if it was apprised with the facts of LO's difficulties – it was not. The reasonable course would be to email the receiving education department in Enfield. This was not just sensible or desirable, but it was unreasonable not to, given LO's history of trauma and therapy, particularly given the distress she may experience by having to leave her secondary school in the middle of the academic year.

124. As to when the children could start at any new schools, there is no information and no enquiry was made. There is no information about whether the claimant's sons could be educated together or would have to be separated, and no enquiry

was made. Indeed, as is submitted on behalf of the claimant, in previous proceedings before Lane J, there was "at least a specific school identified".

125. Turning to the claimant, Mr Bhattarai failed to consider her status as a lone parent. The general indications in the defendant's policy about what extent of travel might be "reasonable" needs to be viewed in the "particular circumstances" of the demands on the claimant as a single mother. This was not done. It is obvious that factor is a defining characteristic of this young family and requires consideration. None was given to it. Further, Mr Bhattarai embarked on the exercise of assessing travel times involved by conducting his own internet research. Thus at para 61 of his assessment he says:

> "I have checked on google map and I can see that the journey time from Enfield to this Redbridge Institute is under 1 hour via public transport, and by car it is 30 minutes journey."

126. He had evidence filed by the claimant that provided specific timings of what in fact she had experienced in making these journeys. He had no good reason to doubt the lived reality of what was actually involved on the ground. His "google map" research underestimates the burden in fact experienced by the claimant in making the necessary journeys, and the court has no reason to doubt the reasonableness or inherent plausibility of the evidence that the claimant has filed. There was no application to cross-examination her or call evidence in rebuttal. Indeed, the significance of this point goes further. It shows that the claimant's evidence about the burdens on her that the extensive travelling has produced has been unnecessarily sidelined in the defendant's analysis without good reason. I emphasise that what weight the defendant places on her evidence is ultimately a matter for the defendant and not the court. However, Mr Bhattarai assessed housing need and priority without using the plausible evidence provided to him by the claimant about the real-world extent of her regular travelling. Mr Bhattarai's conclusion that the travelling demands were not unreasonable failed to take into account not just the actual travelling time involved, but the claimant's lone parent status and the strain that balancing the exclusive caring responsibilities for three minor children imposes. One cannot insensitively apply general indicative times in a policy document without examining the "particular circumstances" of the individual, which is what the Policy requires.

127. Finally, despite his statement at his para 67 that the defendant tries "to look at the case holistically" there is no evidence that the Mr Bhattarai in fact did step back and assess these relevant factors globally, that is, side-by-side. Instead, the analysis, such as it was performed, was fragmented, incomplete and suffered from linearity. I detect no indication that the defendant meaningfully looked at all the relevant factors touching upon the question of housing need together and side-by-side and how they impacted one another. That is how a genuinely holistic analysis should be conducted. It was not.

Conclusion

128. Standing back, I judge that the defendant's April 2024 assessment fares no better than its assessment in August 2023. The April 2024 assessment's

deficiencies included: the lack of analysis of the claimant's lone parent status and its demands; the failure to engage with the significance of LO's history of trauma, distress and need for well-being therapeutic support; the erroneous misstatement of the policy as whether the child was "in the middle" of such examinations; the undue weight placed on the lack of critical examinations, and its elevation into an unnecessarily rigid rule to the exclusion of the relevant wider particular circumstances of the children and the family; the failure to enquire with the claimant's daughter's current school about the likely disruption to her education and her levels of distress and ability to cope if she were to move in the midst of an academic year; the assumption of the existence of pastoral care without enquiring whether any attuned and appropriate pastoral support would be available for LO given her personal emotional and mental health difficulties; the lack of enquiry about whether the claimant's two sons would be schooled together or separately, and if so, where; the failure to obtain any information about when the children might be able to start new schools.

129. For all these reasons I judge that the defendant failed to apply its Policy properly, which states (B269):

> "Location of the property - The Council will consider the distance of the property from Redbridge and how this impacts the family's work, education, health, school and support needs."

130. For example, as long ago as November 2022, as noted by Lane J at para 99, concern was being expressed about location and travelling and that, as the family support worker wrote to the defendant, "the commuting to and from the school was especially tiring for the younger children." Therefore, the concerns about the impact on the children were not new. Obvious enquiries, which in public law terms means reasonable ones beyond the sensible and desirable, were not made to lawfully assess the claimant's housing needs and priority. These failures were in the immediate context of the terms of Lane J's judgment, as stated at para 108:

> "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."

131. I judge that the defendant's failures on this ground fall squarely within the *Tameside* failures fleshed out in *R (Balajigari) v Secretary of State for the Home Department* [2019] 1 WLR 4647 ("*Balajigari*") at para 70:

> "Thirdly, the court should not intervene merely because it considers that further enquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further enquiries if no reasonable authority possessed of that material could suppose that the enquiries they had made were sufficient."

132. Without repeating the analysis on holistic failure in Ground 1, I find that there was a similarly fragmented and linear approach in Mr Bhattarai's review and it lacked the essential quality of providing a genuinely holistic evaluation of how the interlocking relevant factors affected one another. I judge that the enquiries the defendant failed to make were not merely sensible or desirable; they resulted in a position where no reasonable authority could conclude that its enquiries were sufficient to make its decision lawfully.

Conclusion

133. I find that due to these failures Mr Bhattarai assessment and review of the claimant's housing needs was unreasonable and irrational and I am not satisfied that the defendant has provided adequate reasons to show that it has discharged its duty under section 11 of the CA 2004. Therefore, the defendant's April 2024 review decision was unlawful.

Relief

134. For similar reasons to Ground 1, I grant the claimant's application for relief and exercise the court's discretion to quash Mr Bhattarai's review assessment dated 14 April 2024.

§IX. GROUND 3

April 2024 suitability decision

Claimant's submissions

135. The claimant submits that the suitability decision made on 14 April 2024 was based on the same errors and unlawfulness as the assessments in Ground 1 and Ground 2. There is no evidence that it was not reasonably practicable for the claimant to be accommodated in a neighbouring borough, and no consideration was given to 2-bedroom accommodation.

Defendant's submissions

136. The defendant submits that no property will be "ideal". Several of the key complaints about suitability made by the claimant such as affordability, health and safety and condition, are no longer pursued. What is left is location. It is "not a proper reading" of the decision to say that it was not considered holistically. At para 65 of his decision, Mr Bhattarai states in terms that this was the approach. Children moving schools "happens"; it is not unreasonable to expect the children to move schools. Overall, the Enfield accommodation while not ideal, was not unsuitable.

Discussion

137. The first point is that the court has found that the housing needs assessment and review for the purposes of Ground 2 is unlawful. It is difficult to conceive how the Ground 3 suitability assessment can survive the manifest flaws identified by

the court in Ground 2, further reinforced by the material connection to the unlawful assessment in Ground 1. I find myself in a similar position to Lane J in *UO no. 1* where the judge stated at para 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."

138. I remind myself of what Lang J said in *SK*, that if "needs are incorrectly assessed, it is unlikely that accommodation offered … will meet the applicant's needs". This is the essence of suitability and this is what is missing in the suitability decision in this case – lawful needs assessment. I find that the suitability decision is unlawful.

139. Further, and since this is a point the claimant also takes, I emphasise that up to the point of the 14 April 2024 suitability decision, the failure to make reasonably sufficient enquiry was ongoing. The difficulty with projecting beyond that is that one enters the realm of the subsequent May assessment for which permission has not been granted. It serves no purpose to replicate here the court's previous analysis. But the failures include those to reasonably and lawfully consider the impact of moving school to Enfield, including the lack of reasonable enquiry about pastoral support and the emotional impact on LO's levels of distress; the effect on claimant's employment and education, all of this in the materially significant context of the claimant's lone parent status in coping with these demands.

140. The defendant submitted that it was unnecessary to contact LO's secondary school to ask about the impact of LO being moved to school in Enfield from [the Redbridge School]. The enquiry obligation, as is made plain in *Tameside* and *Balajigari*, is to make reasonable enquiry (judged in a fact-specific way) to inform oneself so there is a sufficient basis to make an informed, and thus reasonable and lawful, decision. Not making such an obvious enquiry about the impact of moving school on a child with LO's history of distress and psychological support was unreasonable, depriving the defendant of important data. As such, I reject the defendant's submission that "all proper enquiries were made by the reviewing officer". They manifestly were not. There was enough to trigger the *Tameside* duty of enquiry. No enquiries were made, for example, about moving LO's school in the middle of the academic year. This failure was striking given that this was one of the flaws identified by Lane J, who held that at para 122:

> "Fundamentally there was, again, a failure to consider the suitability of a move to Peterborough in the middle of an academic year."

141. The extent of the educational enquiry is an email from Mr Bhattarai dated 24 November 2023 to Enfield School Admissions asking "if your authority would be able to accommodate the children in local schools." The reply 23 minutes later from Enfield was that "There will be schools in the borough with places but we have not received applications from the family." I find that such enquiry is manifestly insufficient and no reasonable authority could have been satisfied that it had equipped itself with the information to make a reasonable and informed decision about this child, or indeed the others.

142. Further, the defendant has not established that it was not reasonably practicable to accommodate the claimant as close as possible to the borough ("neighbouring boroughs" for the purposes of the Policy), the "positive obligation" resting on the defendant (*Abdikadir*), it being part of the defendant's discharge of duty. In *Nzolameso,* Baroness Hale said at para 19 that:

> "if it is not reasonably practicable to accommodate in borough, they must generally, and where possible, try to place the household as close as possible to where they were previously living."

143. This general principle is not disputed by the defendant. Indeed, Newey LJ observed in *Zaman* at para 47 that changes to the Code do not "excuse local housing authorities from seeking to provide accommodation as near as possible to their districts". The claimant made it clear that she was amenable to being accommodated near to Redbridge, as set out in her statement dated 19 October 2023 at para 61:

> "I would consider accommodation in the borough of Redbridge or neighbouring boroughs. Specifically, I would be interested in accommodation in Walthamstow (in the borough of Waltham Forest), and East Ham (in the borough of Newham) areas, but I am willing to be flexible."

144. There are two difficulties with Mr Bhattarai's attempt to show the unavailability of properties nearer to the Borough. First, he identifies four properties nearer to Redbridge, but then excludes the claimant as eligible as they are:

> "Reserved for households with essential need for accommodation in Redbridge or a neighbouring Borough (priority category 1)"

145. As indicated, Mr Bhattarai's decision to ascribe Category 2 status to the claimant is a designation the court has found to be unlawfully reached, without prescribing what the lawful categorisation should be. Nevertheless, the basis for the exclusion of the claimant for these "reserved" properties is undermined due to the unlawfulness of the categorisation decision. Second, Mr Bhattarai has not considered whether the claimant could be provided with 2-bedroom accommodation. Such accommodation with separate living area (and kitchen) would not transgress rules on statutory overcrowding and would meet the claimant's primary housing needs. This is something the defendant reasonably ought to have considered. The defendant has provided no evidence that this was contemplated by the defendant. The claimant's previous address at [the

Redbridge flat] was 2-bedroom accommodation and the claimant stated that she was content to remain there.

146. Next, I am not satisfied that a genuinely holistic analysis was undertaken by the defendant, as opposed to there being a mere reference to it. In oral argument, the defendant submitted that it is "much simpler" for Mr Bhattarai to "put down" each area of concern and "look at what is said about it". This fails to engage with the essence of holistic analysis which is to consider the relevant factors side-by-side and assess how they may interact with one another and their overall effect, which may not simply be the additive sum of the parts. The assertion of a holistic analysis is not the same as evidence that the analysis was holistic. The court must focus on the substance of the analysis, not claims made about the way it was performed. As the Homelessness Code of Guidance for Local Authorities makes plain at para 11.11 (in fact cited in the defendant's Summary Grounds of Resistance):

> "11.11 An assessment of the applicant's and household member's support needs should be holistic and comprehensive, and not limited to those needs which are most apparent or have been notified to the housing authority by a referral agency."

147. "Trying to look at a case holistically", as Mr Bhattarai states at para 67, is not the same as genuinely and substantively doing so.

Conclusion

148. For all these reasons, Mr Bhattarai's suitability decision was unlawful. Ground 3 must succeed.

Relief

149. I exercise the court's discretion to quash the suitability decision of 14 April 2024 for reasons similar to those given in Grounds 1 and 2.

§X. DISPOSAL

150. While a "benevolent approach" should be taken towards housing review decisions, what remains essential is that, as Baroness Hale DPSC put it in *Nzolameso* at para 32:

> "[it] must be clear from the decision that proper consideration has been given to the relevant matters required by the Act and the Code."

151. That has not happened in any of the three impugned decisions. It must be stressed that the location of accommodation is not just a question of geography or travelling times, but may impact almost everything associated with the quality of life, including the ability to cope with life stresses and emotional and physical well-being, and when these matters arise in a family with children, the public body's duty under the Children Act 2004 to have regard to promoting and safeguarding the child's welfare must be - and must remain - at the forefront

of the mind of local authority decision-makers. Further, care should be taken to consider meaningfully how accommodation decisions may impact the ability of lone parents to cope with the already demanding task of bring up a child or minor children on their own and how that may colour housing needs, priority and the suitability of accommodation. This is not to elevate the status of lone parenthood into anything akin to a statutory test of vulnerability; it is, however, an obvious factor on the facts of this case that was not or not adequately considered by the defendant.

152. Nothing said in this judgment doubts the intrinsic validity of the defendant's Policy. Instead, the case falls closer to the conclusion of the Court of Appeal in *Zaman*, where Newey LJ stated at para 52:

> "There was nothing wrong with Waltham's Forest's 'Accommodation Acquisitions Policy', but there is a dearth of evidence to show that it was followed, and common sense rather suggests that it was not."

153. Judicial restraint is a vital constitutional feature (*R (Miller) v Prime Minister* [2019] UKSC 41 at para 47, per Lady Hale and Lord Reed). But judicial vigilance remains essential to the rule of law when the life of the individual is materially affected by the decisions of public bodies. This is not to make or usurp the defendant's merits decision (*Plan B Earth* at para 273), nor to intrude into policy formulation which is "none of the court's business" (ibid. at para 281), but to ensure that the defendant acts in compliance with the law. In each of the three impugned decisions, I judge that the defendant has fallen far short of what Parliament envisaged and ordained and this is legally fatal, and these decisions should be legally nullified through quashing orders.

154. For the sake of clarity, the court's answers to the prime questions posed by the argued grounds are in very short order:

> **Ground 1**: Was the 3 August 2023 housing needs assessment unlawful? **YES**.
>
> **Ground 2**: Was the housing needs assessment and review for the suitability decision of 14 April 2024 unlawful? **YES**.
>
> **Ground 3**: Was the suitability decision of 14 April 2024 unlawful? **YES.**

155. Necessarily, the claim succeeds. The application for judicial review is allowed on Grounds 1, 2 and 3. Quashing orders are granted in respect of each decision, which are therefore deprived of legal effect (see *Judicial Remedies in Public Law*, 6th ed., para 6-002).

156. Counsel must agree an order containing the relief granted by the court within this judgment and all other consequential matters. Failing this, the parties must file and serve written submissions within 14 days of the date of the circulated draft judgment as specified on the title page.