Neutral Citation Number: [2024] EWHC 2279 (Admin)

Case No: AC-2023-LON-00031

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/09/2024

Before :

DAVID PITTAWAY KC
Sitting as a Deputy High Court Judge

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Between :

THE KING	**Claimant**
(on the application of Anisa Begum)	
- and -	
LONDON BOROUGH OF TOWER HAMLETS	**Defendant**

- -
- -

Michael Sprack (instructed by **Bindmans**) for the **Claimant**
Genevieve Screeche-Powell (instructed by **London Borough of Tower Hamlets**) for the **Defendant**

Hearing dates: 26 June 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 4 September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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David Pittaway KC

DAVID PITTAWAY KC :

1. This claim for judicial review is concerned with the way in which the Defendant exercised, and exercises, its homelessness functions under Part 7 of the Housing Act 1996 ("HA 1996").

2. There are three aspects to the substantive claim for judicial review before me relating to the performance of the Defendant's duties as a housing authority towards the Claimant under Part VII, HA 1996. The first issue is whether the Defendant provided unsuitable accommodation for the Claimant. The relevant dates being either 13 October 2022 or 17 June 2023. It is admitted that suitable accommodation was allocated to the Claimant from 25 August 2023. The second issue is whether the Defendant operated a 'transfer list', or alternatively a 'database', for households in unsuitable accommodation, which was indirect discrimination against women, contrary to s. 19 of the Equality Act ("EqA") 2010. The related issue is whether the Defendant's operation of the transfer list constitute a breach of its Public Sector Equality Duty ('PSED') s. 149, EqA 2010.

3. The factual background is as follows. On 28 May 2021 the Claimant approached the Defendant and applied as being homeless under Part VII of HA 1996. On the same day the Defendant provided the Claimant with accommodation at Studio 2, Verdant Lane, London SE16 1TW ("the Catford Studio"). On 24 October 2021 the Claimant gave birth to her first child. 0n 6 June 2022 the Claimant complained to the Defendant about the suitability of the Catford Studio. 0n 5 October 2022 the Defendant accepted a main housing duty towards the Claimant under s.193 HA 1996 to provide her with accommodation at the Catford Studio that is suitable for her and child until longer-term accommodation, was found or until the duty ends for another reason. On 13 October 2022 an internal memo from the Defendant reported that the Claimant had requested a transfer owing to overcrowding. On 23 March 2023 the Claimant was referred for NHS antenatal services, with a due date of mid-September 2023 for the birth of her second child. Between 24 May and 4 July 2023 there was correspondence between the Claimant's solicitors and the Defendant concerning the suitability of the accommodation at the Catford Studio. There was also an internal memo on 16 June 2023 from one of the Defendant's Housing Officers which, in my view, misread the Defendant's internal memo of 13 October 2022, as identifying the Catford Studio as being unsuitable due to overcrowding, to which I will return later.

4. Following correspondence between the parties' solicitors, the Claimant applied for interim relief, which was granted on 22 August 2023. On 25 August 2023 the Defendant made an offer of accommodation at 12 Collins House, Newby Place, London E14 0AX to the Claimant which she accepted and where she continues to live. There followed a stay in the claim which was removed after the Defendant served a Notice to Quit which was subsequently withdrawn. Meanwhile on 9 September 2023 the Claimant gave birth to her second child. Procedural steps were then taken by both parties in the claim. On 10 April 2024 Shelter was given permission to intervene in these proceedings.

5. It is accepted by the Defendant that the accommodation provided to the Claimant in the Catford Studio between 17 June 2023 and 25 August 2023, was unsuitable contrary to s. 193 and/or s. 206, HA 1996. That concession arises out of the fact that after the Claimant's solicitors submitted a request for a review in May 2023, on 16 June 2023 one of Defendant's Housing Officer's mistakenly invited the Claimant to

withdraw the request because it would be academic. The Defendant's case is that it was satisfied that the Claimant was suitably accommodated until 16 June 2023, and it was not required to secure alternative accommodation before that date. The Claimant's case is that the Catford Studio was unsuitable for her household for the period between 13 October 2022 and16 June 2023.

6. It is common ground between the parties that, for the purposes of the claim for indirect discrimination, the Claimant is a woman, s. 11, EqA 2010. It is also common ground that the Defendant is a provider of services to the public, namely homeless accommodation under Part VII, HA 1996. In providing such accommodation and/or services, the Defendant is a public authority who owe the Public Sector Equality Duty. s. 49, EqA 2010. The Claimant is a person requiring the services ('service-user') provided by the Defendant, s. 29, EqA 2010.

7. The Claimant's case is that the Defendant applied to the Claimant a 'provision, criterion and/or practice' ('PCP') and would have applied the same PCP to other homeless applicants and/or adult service-users, including both men and women. It is submitted that the Defendant's application of the PCP placed the Claimant at a particular disadvantage when compared with men on average and/or as a group. It is submitted that the application of the PCP to women generally places women at the same particular disadvantage generally when compared with men on average or as a group.

8. The Claimant submits that the evidence of the matters set out above is sufficient to 'reverse the burden of proof,' pursuant to s.136, EqA 2010. Namely, s.136(2) states:

   "*If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred,"* and
   "(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

9. It is submitted by the Claimant that the Defendant cannot justify the PCP in this case as employing a proportionate means of achieving a rationally connected legitimate aim. Finally, it is alleged that the Defendant's conduct overall breached the Public Sector Equality Duty.

10. Ms Screeche-Powell maintains that the claim is academic and disputes that there is a wider point of principle as to how the Defendant discharges its duty under s. 193, HA 1996.

11. I should say at this stage that Shelter's written submissions do not offer a view as to whether the Defendant's database was a PCP but set outs its view as to whether the operation of the transfer list put women at a particular disadvantage when compared with men, and whether women more likely than men to be placed on the transfer list.

12. The legal framework is set out in the written submissions from Shelter, which, as I understand it, is not contentious and succinctly and helpfully sets out the law.

13. **Housing Act 1996**

"*3. Local housing authorities have a number of duties and powers to provide accommodation to homeless applicants under Part 7 HA 1996.*
"4. The interim duty under s188(1) HA 1996 arises where a local housing authority have reason to believe that an applicant may be homeless, eligible for assistance, and have a priority need. The authority must secure that accommodation is available for the applicant's occupation: s188(1) HA 1996. The duty comes to an end in the circumstances set out in s188(1ZA)-(1A) and (2A) HA 1996.
"5. The main housing duty under s193(2) HA 1996 arises where a local housing authority are satisfied that an applicant is homeless and eligible for assistance and has a priority need, are not satisfied that the applicant became homeless intentionally, and the relief duty under s189B(2) HA 1996 has come to an end: s193(1) HA 1996. Unless they refer the application to another local housing authority, the authority must secure that accommodation is available for occupation by the applicant: s193(2) HA 1996. The main housing duty is "immediate, non-deferrable and unqualified": ***R (Imam) v Croydon London Borough Council*** *[2023] UKSC 45, [2023] 3 WLR 1178 at §37. The duty comes to an end in the circumstances set out in s193(5)-(7F) HA 1996.*
"6. In addition to these, a local housing authority:
a. Must secure that accommodation is available for an applicant who is homeless, who is eligible for assistance, who has a priority need, and in respect of whom the relief duty has ended, but who has become homeless intentionally, for such period as will give the applicant a reasonable opportunity of securing his or her own accommodation: s190(2)(a) HA 1996.
b. Must secure that accommodation is available for an applicant who meets the main housing duty criteria but in respect of whom the relief duty ended because he or she deliberately and unreasonably refused to co-operate: s193C(4) HA 1996.
c. Must secure that accommodation is available for certain applicants pending the referral of their case to another local housing authority: ss199A and 200 HA 1996.
d. May secure accommodation for an applicant pending review or appeal of certain decisions on his or her application: ss188(3), 199A(6), 200(5), and 204(4) HA 1996.
e. May secure accommodation in discharge of the relief duty under s189B(2) HA 1996.
7. Any accommodation secured by a local housing authority in discharge of their functions under Part 7 HA 1996 must be suitable: s206(1) HA 1996. It must be "suitable to the needs of the particular homeless person and each member of her household": ***Nzolameso v Westminster City Council*** *[2015] UKSC 22, [2015] PTSR 549, per Baroness Hale at §13.Statutory guidance on suitability, and on local housing authorities' functions under Part 7 generally, is provided in the Homelessness Code of Guidance (Department for Levelling Up, Housing and Communities, 2018).*

14. **Indirect discrimination**

"8. The Equality Act 2010 ("EA 2010") prohibits certain types of conduct in respect of the protected characteristics set out at s4 EA 2010. The protected characteristics include sex: s4 EA 2010. This is defined as being a man or a woman: s11 EA 2010.
"9. One of the types of conduct which is prohibited is discrimination. The Claimant relies on indirect discrimination, which is defined at s19(1) and (2) EA 2010:
(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory

in relation to a relevant protected characteristic of B's if—
(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, (c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim.
"10. If there are facts from which the Court could decide, in the absence of any other explanation,
that a person contravened a provision of the EA 2010, then the Court must hold that the contravention occurred, unless the person can show that he or she did not contravene the provision: s136(2) and (3) EA 2010.
"11. Indirect discrimination was considered by the Supreme Court in the case of ***Essop v Home Office (UK Border Agency)*** *[2017] UKSC 27, [2017] 1 WLR 1343. At §§24-29, the Supreme Court confirmed as follows:*
a. Indirect discrimination occurs when a particular provision, criterion, or practice ("PCP") puts one group at a disadvantage when compared with others.
b. There is no requirement for there to be an explanation of the reasons why a particular PCP puts the group at that disadvantage. The reason need not be unlawful in itself or under the control of the employer or provider of services.
c. There is also no need for a causal link between the less favourable treatment and the protected characteristic.
d. Instead, there must be a causal link between the PCP and the particular disadvantage suffered by the group and the individual.
e. There is no requirement that the PCP in question put every member of the group sharing the protected characteristic at a disadvantage. The issue is whether the proportion of the group which is disadvantaged by the PCP is larger than the proportion of other groups.
f. It is commonplace for the disadvantage to be established on the basis of statistical evidence.
g. The courts should not be reluctant to reach the point where the respondent is required to show that the PCP is justified. It is always open to the respondent to do this.
"12. When considering whether a PCP is justified, the Court will apply the four-stage test described by Lord Reed JSC in ***Bank Mellat v HM Treasury (No 2)*** *[2013] UKSC 39, [2014] AC 700 at §74:*
…it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter … In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure.
"13. The burden is on the policy maker to justify the PCP: ***R (TW) v Hillingdon London Borough Council*** *[2019] EWCA Civ 692, [2019] PTSR 1738, per Lewison LJ at §76. It is not a legal requirement that the reasons put forward to justify the PCP must have been present in the mind of the policy maker when the PCP was introduced, but an ex post facto justification will call for greater scrutiny by the Court: TW, per Lewison LJ at §76.*

It is not for the Court to "'search around' for a justification that the policy maker has not advanced": TW, per Lewison LJ at §95.
"14. Discrimination in the provision of public services and in the exercise of public functions is unlawful by virtue of s29 EA 2010:
(1) A person (a "service-provider") concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.
(2) A service-provider (A) must not, in providing the service, discriminate against a person (B)—
(a) as to the terms on which A provides the service to B;
(b) by terminating the provision of the service to B;
(c) by subjecting B to any other detriment.
...
(6) A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation."

15. **Public Sector Equality Duty**

"15. The public sector equality duty ("PSED") is contained in s149 EA 2010. This provides that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment, victimisation, and any other conduct prohibited by the EA 2010; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it: s149(1) EA 2010. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic and to take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it: s149(3) EA 2010. Compliance with the PSED may involve treating some persons more favourably than others, but that does not permit conduct that would otherwise be prohibited under the EA 2010: s149(6) EA 2010. The relevant protected characteristics include sex: s149(7) EA 2010.
"16. The following principles regarding the PSED can be derived from the case law:
a. The aim of the PSED is to "bring equality issues into the mainstream, so that they become an essential element in public decision-making": ***Haque v Hackney London Borough Council*** *[2017] EWCA Civ 4, [2017] PTSR 769, per Briggs LJ at §21. It "seems to have been the intention of Parliament that these considerations of equality of opportunity (where they arise) are now to be placed at the centre of formulation of policy by all public authorities, side by side with all other pressing circumstances of whatever magnitude":* ***R (Bracking) v Secretary of State for Work and Pensions*** *[2013] EWCA Civ 1345, [2014] Eq LR 60, per McCombe LJ at §60.*
b. The duty is a matter of substance rather than form. It requires a conscious approach and state of mind: Haque, per Briggs LJ at §22. It must be exercised "in substance, with rigour and with an open mind" and it is "not a question of ticking boxes": Haque, per Briggs LJ at §22. Whilst the use of a "mantra referring to the statutory provision" will not in itself show that the duty has been performed, "so too a failure to refer expressly to the statute does not of itself show that the duty has not been performed."

Submissions

Unsuitable Accommodation

16. Mr Sprack on behalf of the Claimant submits that as of 13 October 2022, the accommodation provided to the Claimant in the Catford Studio was unsuitable owing in part to overcrowding. He relies upon an internal email of the Defendant of 13 October 2022 which refers to overcrowding and an apparent admission that it was unsuitable made later by one of the Defendant's Housing Officers in emails on 16 June 2023. Alternatively, he says that objectively the studio was unsuitable. The Claimant's first child had been born on 24 October 2021. The internal email on 13 October 2022 stated *a. 'Subject : Transfer – Overcrowded Anisa Begum Ref: 3105010. b. 'Reason for request : Overcrowded currently in a studio baby 12 months' c. 'Current TA size : Studio'.* He submits that there is no reference to floor size, meaning that the Defendant's decision was made without reference to the provisions of Part X, HA 1985, which he says was in accordance with paragraphs 17.4 to 17.9 of the Statutory Code of Guidance.

17. He also relies upon an email of 16 June 2023, from one of the Defendant's Housing Officers, which referred back to the internal email of 13 October 2022, expressly identifying it as a decision which renders 'academic' any suitability review pursuant to s. 202, HA 1996. He submits that the fact that it was interpreted in this way by Sean Dixon is strong evidence that this was the essential nature and effect of the decision. He rejects the submission that the Defendant had not decided that the Claimant was in unsuitable accommodation because she was placed on the transfer list or database with a priority code which did not denote unsuitability. The only disclosed version of the transfer list featuring the Claimant is from January 2024, showing the Claimant's priority code as 'O/LL'. The 'O' referring to overcrowding. He submits that the only internally consistent analysis of Defendant's contemporaneous communications is that the Catford Studio was unsuitable from 13 October 2022.

18. He accepts that the Claimant does not allege that her accommodation was statutorily overcrowded. The Code of Guidance sets out that, although the test for statutory overcrowding in Part X, HA 1985 is a factor to be considered, the local authority must in any event consider the physical layout of the property, location, and needs of the household. The Claimant sets out in the letter from her then representatives of 24 May 2023, the following factors as rendering the accommodation unsuitable: the distance from Catford to LBTH, a history of post-natal depression, the layout of the Catford Studio, in particular one room with no room for a cot, so that the Claimant and her 1 year old son had to share a bed, from which he had fallen and been injured, no heating at night, and a negative impact of the above factors on the Claimant's mental health.

19. Ms Screeche-Powell concedes the Defendant cannot resist a finding it was in breach of duty from 17 June 2023 for the reasons contained in the witness statement of Mohammed Shamir Ahmed. She says that the reviewing officer simply assumed

because the Claimant's name was included in the database, her accommodation was unsuitable and did not query this with the relevant teams. The Defendant denies being in breach prior to 16 June 2023 and does not accept it had determined a property previously secured for the Claimant in performance was unsuitable. Given the Claimant forwent her suitability review in June 2023, the Defendant acknowledges it is now only fair that the issue of suitability should be decided as having been resolved in her favour from that date. The Defendant also submits this ground is academic. The Claimant having accepted suitable accommodation on 25 August 2023.

20. Ms Screeche-Powell submits that suitability is primarily a matter of space and arrangement, but other factors will be relevant to an assessment of suitability, including those directed by the Secretary of State pursuant to s. 210, HA 1996. For example, location in the broader sense, encompassing matters such as disruption caused by location and proximity to medical facilities and any other support. The main issue of whether accommodation is suitable is a question of fact and degree for the local authority to determine. There is a minimum standard of suitability, but it is a relatively modest, ***R v LB Camden ex p Jibril*** (1997) 29 HLR 785). Suitability is a flexible concept. What may not be suitable in the long term may be suitable in the short or medium term; ***Ali v Birmingham City Council v Ali and others*** [2009] UKHL 36. The *"lack of alternative accommodation may also be a factor affecting what is suitable in the short or medium term as may be the fact that the housing authority has limited resources available to it to secure accommodation."*

Decision

21. Bearing in mind Ms Screeche-Powell' submissions, the conclusion that I have come to on this narrow issue is that the Catford Studio was unsuitable accommodation for the Claimant and her child by the end of October 2022, who was by then 12 months old. Whilst it is not alleged that the property was statutorily overcrowded, the criticisms, which go beyond overcrowding, made in the letter from the Claimant's then representative of 24 May 2023 were as valid in October 2022 as in June 2023. I do not, however, find that the Defendant's internal memo of 22 October 2022, and the placing of the Claimant on the database, was a recognition by the Defendant that the property was unsuitable. In my view, it only evidenced a request for a transfer. I note that the internal memo was also misinterpreted by the Defendant's Housing Officer in his emails on 16 June 2023.

22. The sequence of events is, in my view, of significance. The Claimant was provided with the accommodation in the Catford Studio, the same day she approached the Defendant and applied as homeless under Part VII, HA 1996. It was not until 6 June 2022 that she complained about the suitability of the Catford Studio. On 5 October 2022 the Defendant accepted a main housing duty under s.193, HA 1996, towards the Claimant. There was then a period of eight months that elapsed before the Defendant conceded that the property was unsuitable. Nevertheless I accept the Defendant's submission that this ground is academic because the Claimant moved to suitable . ommodation on 25 August 2023.

Indirect Discrimination

Claimant's Submissions

23. Mr Sprack submits that the Defendant applied to the Claimant and other homeless applicants (both men and women) the following PCP or PCPs, which placed both the Claimant and other female homeless applicants at a substantial disadvantage when compared with male homeless applicants: (a) the practice of operating a database for homeless applicants who seek a transfer ('the transfer list') and providing to some or all of those applicants unsuitable accommodation while they remain on the list, and (b) more broadly, the Defendant's 'system of allocating temporary accommodation to homeless applicants'.

24. He has referred me to the EHRC Code which sets out at para 5.21 a number of questions the court should ask itself: What proportion of the pool has the particular protected characteristic? Within the pool, does the provision, criterion or practice affect service users without the protected characteristic? How many of these service users are (or would be) disadvantaged by it? How is this expressed as a proportion ('x')? Within the pool, how does the provision, criterion or practice affect service users who share the protected characteristic? How many of these service users are (or would be) put at a disadvantage by it? How is this expressed as a proportion ('y')?

25. He relies on a statistical analysis and relies upon the questions to be considered pursuant to the EHRC Code. I have set out part of the analysis as to the first question, which contains the core information. I have not set out the whole of his analysis in respect of the remaining questions. The Claimant relies on a pool of all homeless applicants in temporary accommodation provided by the Defendant, as evidenced by gov.uk published data. Between April 2019 and March 2021, then April to June 2023, the statistical make-up of that pool was as follows:

    (a) Total number of individuals in the pool ranged between 3,112 and 3,839.
    (b) Male applicants with no resident partner or children represented 8 to 13% of the pool.
    (c) Female applicants with no resident partner or children represented 6 to 12% of the pool (roughly equivalent to the proportion of male applicants).
    (d) Male applicants with resident children but no resident partner represented 2% to 4% of the pool.
    (e) Female applicants with resident children but no resident partner represented 34 to 44% of the pool.
    (f) Except for a few 'other' households, applicants with a partner and children represented the remainder, constituting roughly to 27 to 50% of the pool.

26. Further, he relies upon the relevant period being April to June 2023 as that is the only period (a) for which there is direct evidence (b) during which time, he submits, the Claimant was subjected to the PCP. For that period, there were a total of 2,677 households in temporary accommodation, including 916 single female led households with children (34.22%) and 96 single male led households with children (3.59%) . He calculates that of single adult households with children, 90.5% were single female led, and 9.5% were single male led. The figures for April to June 2023 also show the figures with the least high proportion of women as the heads of single-adult households with children.

27. Based on that information, he submits that there are two key potential 'particular disadvantages' on which the Claimant relies : (a) being placed in unsuitable accommodation which is either (i) statutorily unsuitable and/or (ii) substantially deficient with regard to the household's needs and (b) being placed in unsuitable accommodation with children. He relies on the evidence set out in Shelter's witness evidence from Ms Pennington.

28. It follows, he submits, from the best evidence available, that female 1+[x] households constitute 34.2% of 1+[x] of households in the Defendant's temporary accommodation, but between 50.4% and 55.8% of households to whom the PCP is being applied and who are or were provided unsuitable accommodation. The other categories of household appear either neutral as to sex and/or gender, or possibly slightly disproportionately female and almost certainly include male adult service-users. He submits that the application of the Defendant's admitted combination of both neutral criteria, and criteria tending towards households with children, is therefore likely to tend towards households with children having a higher instance of being provided unsuitable accommodation.

29. He submits that the proper approach is for the Court first to consider whether the Claimant has reversed the burden of proof, s. 136, EqA 2010. The Claimant submits that the facts set out and analysed above are *'facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned."* It follows that the Court must hold that the contravention occurred. It would then be for the Defendant to show that it has not applied a PCP which has a prima facie discriminatory effect, which, he submits, the Defendant cannot do.

30. Further he submits that the Defendant does not rely upon its conduct being justified as constituting a proportional means of achieving a rationally connected legitimate aim, s.19(2)(c), EqA 2010. If the Defendant were to seek to assert a defence of justification, he submits that this cannot apply where the application of the PCP is itself unlawful, as with the provision of unsuitable accommodation to homeless applicants.

31. Further he relies upon a breach of the Public Section Equality Duty, that throughout the period October 2022 to August 2023, the Defendant failed to have regard to the matters required by s. 149, EqA 2010. He submits that there is no evidence that the Defendant has had due regard to the need to advance equality of opportunity or removal of disadvantage.

Defendant's Submissions

32. The fundamental objection by Ms Screeche-Powell as to the how the Claimant puts her case is that the Defendant does not accept the inclusion of information about an applicant in a database is a PCP. She submits that to manage and to organise information is not to apply a practice, provision, or criteria. Neither the holding of this information in a paper file nor entering the same information about an applicant's needs into a database makes it a PCP. If that is incorrect, then she submits that the Claimant's selection of a hypothetical comparator is one that produces artificiality.

33. Further, if the database is a PCP, then there was no disadvantage to the Claimant and/or no causal link between it and the particular disadvantage identified. Alternatively, Ms Screeche-Powell maintains that the holding of information in a database is a rationale and justifiable response to managing information and balancing needs against resources. Finally, in this respect, the claim is academic. The Claimant's name is no longer included in the database, and she has no continuing interest in these proceedings having been suitably accommodated since 25 August 2023.

34. The Claimant identifies the hypothetical comparator as a male homeless applicant and has produced a range of statistics that it contends illustrates its argument on discrimination. She submits that given the categories of applicant to whom the duty under s.193(2), HA 1996 duty is owed, this type of data is artificial.

35. Ms Screeche-Powell raises five issues:

(1) what is the correct starting point for this exercise. Is it all applicants for homelessness assistance? Or only those to whom some kind of duty has been accepted? Or only those found to have been owed a s.193, HA 1996 duty?
(2) the Claimant has identified the comparator as the male homeless applicant. This renders the pool of comparators inherently unrepresentative in the first place because their circumstances are materially different. This is because households with children are deemed to be in priority need, as are pregnant women, and women who have become homeless because of domestic abuse.
(3) Even within that pool of comparators itself there might be other reasons why an accommodation duty would be owed (vulnerability on account of health or other special reason). There may also be other protected characteristics (e.g. disability).
(4) For the pool not to produce artificiality, there would need to be a comparison with the proportion of all women who are suitably accommodated, and all women with children who are suitably accommodated, as against their male counterparts.
(5) Finally, the crux of the complaint is women with children are affected by homelessness more than men with children by being left in unsuitable temporary accommodation. To establish this discrimination, there would need to be evidence that the hypothetical male homeless applicant is statistically more likely to receive an offer of permanent suitable accommodation as a result of the PCP.

36. Leaving aside the criticism of the representativeness of the pool of comparators, Ms Screeche-Powell disputes the application of the database puts those that share the same protected characteristic (sex) as the Claimant at a disadvantage because:

(1) The s.193(2), HA 1996 duty is immediate and unqualified. The use of the database to quickly identify those requiring a move does not alter the nature of the duty. It does not place a limitation on the Claimant's protected right.
(2) The database is not a "waiting list."
(3) The database is a tool that gives practical assistance to officers in sifting through vast quantities of information and matching the demands on its service to supply. It does not contain all the information before an officer. Further information will be investigated from the household's case file. The quantity of information contained on a file varies, but typically includes the housing application, identification such as

passports/birth certificates (eligibility), benefit entitlement documents, bank statements, affordability assessments, self-assessment medical forms, interview notes, medical records, medical reports (vulnerability) and could easily include other documents such as ECHP reports, Care Act Assessments, MARAC assessments.
(4) If, at any given time, the database reveals there are a greater number of applicants in need of, for example, 3-bedroom accommodation or ground accommodation, officers can concentrate their searches for accommodation of these types of properties.
(5) The inclusion of the Claimant's name and household needs onto the database in October 2022 did not place her at a disadvantage. It organised information to facilitate efficient decision-making under time and resource constraints.
(6) The way information was included in the database at the relevant time in October 2022 was to the Claimant's advantage, Had a surplus of alternative accommodation become available, it had already anticipated her future need for a larger property and allowed her to be matched to it early.
(7) It did not cause a disadvantage by leaving an applicant in a property "deficient" in some respect (to use the Claimant's language). A "deficiency" is not the statutory standard. Suitability is. There may be host of reasons why a property (even one with a deficiency) may be suitable in the short or medium term (such as nothing else available in borough or at all, or applicant preference).
(8) The inclusion of an applicant's name on the database in October 2022 operated to their advantage. It flagged them as requiring a move and helped ensure they do not become one of the invisible homeless at home. It was a tool which gave practical assistance to officers as part of the process of giving due consideration to an applicant's case, balancing the competing needs of others, and forming a judgment about what should be done to satisfy the obligation that has arisen; ***Imam v Croydon*** [2023] UKSC 4513.
(9) The database assisted officers in efficiently evaluating a multitude of applicants with a multitude of circumstances and matching them to an offer of suitable accommodation under pressure of time.
(10) There is no causal link between the inclusion of an applicant's details on a database and the particular disadvantage complained of. Any disadvantage is attributable to the lack of suitable and affordable housing.
(11) There is no measurable disadvantage by reference to any hypothetical comparator because every applicant owed the s.193(2), HA 1996 duty will be in priority need. Statistically, this is overwhelmingly going to be attributable to a protected characteristic, for example, sex, pregnancy, dependent children, domestic abuse, disability or age.
(12) The Claimant has been in suitable accommodation since 25 August 2023. Her details are no longer included in the database. It is unclear what continuing interest she can be said to have in these proceedings.

37. Ms Screeche-Powell submits that given the academic quality of this claim, this is not the right case for a Court to rule on whether a local housing authority must organise information in such a way that the needs of a single female led household should take precedence over, say, a household with disabled occupants or severe medical needs.

38. Ms Screeche-Powell submits that the Defendant's evidence addresses the justification of maintaining the database. It maintains a database to equip it with a mechanism to manage applicants in need of a move and available stock in the context

of the severe shortage of accommodation well known to this court. The pressure on the Defendant's limited resources, including officer time, are severe. It is in competition for accommodation with other authorities and the public to source properties quickly. Their role has to be seen in the context of the range of factors regarding suitability, including size, affordability, housing conditions, location, fit and proper landlords, and in the current housing crisis, the shortage of affordable housing.

39. She submits that the database acts as a "pivot table" for the Defendant's Housing Officers. It drives the procurement of accommodation as to volume and type. It assists officers in looking for properties based on data as to where the needs are. If the greatest demand is revealed to be 3-bedroom properties within LHA rates, or ground floor accommodation, it can focus its resources on that.

40. Finally, the way the Defendant now holds this information by reference of the priority code used to distinguish between households has been updated and reduced from 27 to 9 codes. Only four categories of applicants in suitable accommodation who required a planned move are now included, decanters, landlord returns, unaffordable and under-occupying. She submits that the holding of information in this way is part of the process that enables it to give due consideration to an individual's case and balance the competing claims of others to its limited housing resources in forming a judgement about what to do in a particular case.

41. As to the Public Sector Equality Duty, Ms Screeche-Powell does not accept every single administrative act it performs must be accompanied by a separate Equality Act assessment. Nevertheless, Ms Screeche-Powell submits that the Defendant demonstrated due regard for the duty by:

    (1) Recognising a single parent household with children should be considered for more spacious properties.
    (2) Seeking to assist suitably housed single parents with young children such as the Claimant into 1-bedroom units from studio flats by considering them for a move when their child reaches 12 months old in the event of surplus stock.
    (3) Absorbing a rental increase of approximately 33% so the Claimant could remain in her current accommodation.
    (4) Devising a system of holding information that fairly and equally identified the essential needs of an applicant requiring a move (and, prior to August 2023, an anticipated move to support growing families into larger accommodation)
    (5) More generally, proactively taking steps to address the housing crisis and "leading the way" with new build schemes.

42. I have also considered the written submissions from Shelter on as to whether the operation of the transfer list put women at a particular disadvantage when compared with men, and whether women are more likely than men to be placed on the transfer list, which I do not propose to repeat in detail here.

Decision

43. I accept that women are more likely to be placed in temporary accommodation, as set out in Shelter's written submissions, but also accept that there are particular reasons,

as identified by the Defendant as to why that is the case. As Shelter said in paragraph 27 of its written submissions: *"This disparity is caused, at least in part, by the fact that households consisting of single parents with dependent children are over-represented in temporary accommodation and such households are significantly more likely to be headed by women."*

44. I am not satisfied that the creation of a database in the manner described by the Defendant is a PCP. I accept Ms Screeche-Powell' primary submission that the inclusion of information to manage and to organise information is not to apply a practice, provision, or criteria but is a tool that gives practical assistance to the Defendant's Housing Officers in sifting through vast quantities of information and matching the demands on its service to supply. It is not a complete database for all the information which is available to the Defendant's Housing Officers.

45. If that conclusion is incorrect, then I am not satisfied that the statistical evidence which has been produced shows true comparators that demonstrate that women are at a disadvantage. The analysis of the information available, as set out in Ms Screeche-Powell's submissions, raises too many imponderables as to the categories referred to make meaningful comparison to show that women are at a disadvantage. The fact that more women as a percentage are placed in unsuitable accommodation is recognized above but I am doubtful that the statistics relied upon show discrimination. I should say that I fully accept the helpful witness evidence of Ms Pennington which explains the adverse effects of women being placed in unsuitable accommodation.

46. Whilst I accept the generality of Ms Screeche-Powell's submissions on this issue, it seems to me that the crucial point is that in order to show that more women with children are affected by homelessness than men with children by being left in unsuitable temporary accommodation, it would be necessary to establish that the hypothetical male homeless applicant is statistically more likely to receive an offer of permanent suitable accommodation as a result of being on the database. There is no evidence that that is the case. I am also not satisfied that there is a causal link between the use of the database and the particular disadvantages identified by the Claimant. As said by Ms Screeche-Powell, the database merely gathers together some of the information on tenants and acts as a "pivot tool" for the Defendant's Housing Officers.

47. If that conclusion is incorrect, and the PCP is discriminatory, I have concluded that the creation of the database was a proportionate means of achieving a legitimate aim. I have been referred to the decision in ***R (Elkundi) v Birmingham City Council*** [2022] EWCA Civ 601, [2022] QB 604, where the CA held that it was unlawful for a local housing authority to postpone compliance with the duty under s. 193(2), HA 1996 by placing applicants on a waiting list. I do not accept that the database operates as a waiting list or as a means of delaying the provision of suitable accommodation to applicants, in breach of the Defendant's duties under Part VII HA 1996. Its purpose is the exact opposite.

48. I accept Ms Screeche-Powell submissions that the database is a tool that gives practical assistance to officers in sifting through vast quantities of information and matching the demands on its service to supply. It is a powerful point that it does not

contain all the information before an officer, which typically includes the housing application, identification such as passports/birth certificates (eligibility), benefit entitlement documents, bank statements, affordability assessments, self-assessment medical forms, interview notes, medical records, medical reports (vulnerability) and could easily include other documents such as ECHP reports, Care Act Assessments, MARAC assessments.

49. I also accept Ms Screeche-Powell submissions that the Defendant was not in breach of its Public Sector Equality Duty. I agree that not every administrative act has to be accompanied by a separate Equality Act assessment. The generality of her submissions that the database was created to facilitate in a non-discriminatory way the finding of accommodation, in my view, discharges that duty.

50. It follows from the conclusions above that I do not consider that this is a case where the Defendant is required to show that s. 19, EqA 2010 has not been contravened. If that is incorrect, then I am satisfied, for the reasons set out above, that the Defendant has done so.

51. In these circumstances the claim is dismissed.