



Neutral Citation Number: [2024] EWHC 2501 (Admin)

Case No:AC-2023-LON-02393

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 October 2024

Before :

HHJ Karen Walden-Smith sitting as a Judge of the High Court

Between :

THE KING (on the application of RR)	<u>Claimant</u>
- and -	
THE LONDON BOROUGH OF ENFIELD	<u>Defendant</u>

NICK BANO (instructed by **CAMDEN COMMUNITY LAW CENTRE**) for the **Claimant**
MICHAEL PAGET (instructed by **LONDON BOROUGH OF ENFIELD LEGAL SERVICES**) for the **Defendant**

Hearing dates: 25 July 2024

Approved Judgment

HHJ KAREN WALDEN-SMITH:

Introduction

1. These judicial review proceedings are concerned with the obligations of the local housing authority pursuant to the provisions of part 6 of the Housing Act 1996 (“HA 1996”).
2. The proceedings were initially brought on 18 August 2023 by the claimant (“RR”) against the defendant, the London Borough of Enfield (“Enfield”).
3. An anonymity order was granted on the papers in favour of the claimant by Roger ter Haar KC, sitting as a Deputy High Court Judge. He adjourned the application for permission to bring the judicial review proceedings on the basis that the proceedings might be rendered academic, in whole or in part, as a consequence of the request for a statutory review of the suitability of the accommodation being offered by the defendant.
4. The application then came before Benjamin Douglas-Jones KC, sitting as a Deputy High Court Judge, again on the papers, on 29 November 2023. In light of the decision of the Supreme Court in *R (Imam) v London Borough of Croydon* [2023] UKSC 45, published that day, an order was made for both RR to file and serve an amended statement of facts and grounds and for Enfield to file and serve an amended summary grounds of resistance.
5. Permission to bring judicial review proceedings against Enfield was granted on the papers, in light of the amended grounds of both RR and Enfield, by Andrew Burns KC, sitting as a Deputy High Court Judge, on 5 February 2023.
6. I heard this matter on 24 July 2024 and since that date I have received further written submissions. I have also been informed that, in pursuance of its obligations under part 7 of the HA 1996, Enfield offered, and RR has accepted, alternative suitable accommodation. That does not impact upon the judicial review proceedings which are concerned with part 6 of the HA 1996. I am sorry that this judgment has not been as prompt as I would have expected, but the parties have been informed of the difficulties.

The challenge

7. RR challenges Enfield’s scheme for the allocation of social housing.
8. RR contends that the scheme for allocation of social housing operated by Enfield is unlawful both on a public law basis but also, more specifically as it is said to be contrary to anti-discrimination legislation. I will set out the grounds below, having dealt first with the factual background.

Factual Background

9. RR is now aged 39 (date of birth, 31 March 1985) and is a married man with two young children, aged 4 (date of birth, 12 April 2020) and 1 (date of birth, 1 June

2023), and acts as a full-time carer for his wife (known as “ED” for these proceedings). He arrived as a refugee from Iran approximately 25 years ago. He married ED and their first child was born on 12 April 2020. ED applied for and was granted the right to join RR as his spouse on 10 March 2021. Unfortunately, a few days after that decision, ED was very seriously injured in a car accident in Iran when she sustained brain damage and life-changing physical injuries including a fractured pelvis, liver damage, spleen removal, a broken left collar bone, broken ribs and a bleed into the lungs.

10. These injuries have caused her mobility problems, problems with her vision and dizziness, and have put her in constant pain in her legs, lower back and pelvis. RR had flown to be with ED in Iran immediately after the accident until she was well enough to travel to the UK. Prior to his wife’s arrival in the UK with their young child, and ED settling as a permanent resident in October 2022, RR states that he was working as a taxi driver and planning to train as a lorry driver. When she came to the UK, RR became ED’s primary carer, and was therefore unable to work. The occupational therapist has set out that ED suffers from leg cramps which can cause her to lose power in her legs and fall; she has little power in her left arm, and is unable to lift it above shoulder level, which limits her ability to grip and her ability to wash and get dressed independently. Her brain injury appears to have heightened her emotions and she can become very upset and frustrated.
11. The occupational therapy (“OT”) assessment from Caroline Logan, dated 7 September 2023, sets out in detail the extent to which ED requires RR’s support and assistance with her daily living, including washing and dressing and transfers to and from the bath and toilet. In summary, the OT set out that ED not only has physical injuries and limitations, but that she also sustained brain damage and has sensory issues. The recommendation was for ground floor accommodation with a wet room.
12. On 8 November 2022 an application was made by RR and ED for housing assistance from Enfield. Enfield treated that as an application for homelessness assistance pursuant to the provisions of part 7 of the HA 1996, but also placed RR onto the housing register (pursuant to the provisions of part 6 of the HA 1996). It is said by Enfield that RR has not made a housing register application and has not completed forms with respect to the health and well-being consideration. However, the decision letter of 23 May 2023 indicated that there was a housing register application which was assessed on 20 February 2023 for which RR was awarded 200 points. ED was granted access to benefits by the Home Office on 14 April 2023.
13. Enfield initially provided bed and breakfast accommodation, between 18 November and 9 March 2023. On 17 February 2023, Enfield accepted that it owed the family of RR the main housing duty and on 20 February 2023 accepted the application of RR’s family to join the allocations scheme. As they were living in temporary accommodation, the family were awarded 200 points for being in the “Homeless or threatened with homelessness” cohort.
14. In March 2023, and subsequent to a pre-action protocol letter sent on 8 March 2023, the family were moved into a small one-bedroomed flat as temporary accommodation allocated pursuant to the provisions of section 193(2) of the HA 1996, which RR said was extremely difficult to live in given ED’s needs and disabilities

15. On 16 March 2023 RR challenged the decision to award them only 200 points, as they were occupying temporary accommodation, and sought a review of the 200 points awarded as he contended that he ought to have been granted a medical and welfare priority.
16. In the review decision, Enfield determined that as RR and his family fell within the “Homeless or threatened with homelessness” cohort, that meant they fell outside the “health and wellbeing” cohort and were not entitled to further preference in respect of either health or well-being.
17. The second child of RR and ED was born on 1 June 2023 and Enfield determined at that time that the one-bedroomed flat that the family were being housed in was not suitable. The alternative accommodation initially offered by Enfield was not considered suitable. Enfield has (subsequent to the hearing of this challenge) now provided alternative accommodation, which I understand has been accepted by RR.
18. The current offer of temporary accommodation, which has been accepted, does not render academic the part 6 challenge.

The Allocation Scheme

19. RR challenges the allocations scheme operated by Enfield as being unlawful. The challenge is based upon the way in which, it is said by RR, the allocations scheme treats those who benefit from temporary accommodation and how that disadvantages them when seeking allocation of permanent accommodation pursuant to part 6 of the HA 1996.
20. The interrelationship of parts 6 and 7 of the HA 1996 and the way in which those parts deal with two separate duties was recognised by the Supreme Court in *R (Imam) v Croydon LBC* [2023] UKSC 45:

“Parts 6 and 7 of the Act deal with different topics and it has been observed that the duty to secure that accommodation is available for a homeless family under section 193(2) is “quite separate from” the allocation of council housing under Part 6: *Birmingham City Council v Ali* [2009] UKHL 36. [2009] 1 WLR 1506 (“*Ali*”), paras 14 and 47 (Baroness Hale of Richmond). But they interact.” Per Lord Sales
21. Section 166A of the HA 1996 provides that:

“(1) Every local housing authority in England must have a scheme (their “allocation scheme”) for determining priorities, and as to the procedure to be followed, in allocating housing accommodation. For this purpose “procedure” includes all aspects of the allocation process, including the persons or descriptions of persons by whom decisions are taken”

and, by virtue of section 166A(14) a local authority is prohibited from allocating housing accommodation other than in accordance with their allocation scheme.

22. Section 166A(3) provides that, subject to subsection (4), the scheme shall be framed so as to give reasonable preference to people who are homeless, within the meaning of part 7 (s.166(3)(a)); people who are owed a duty by any local authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the HA 1985, or are occupying accommodation secured by the local authority under section 192(3) of the HA 1996 (s.166A(3)(b)) that is, people who are owed the main housing duty; and people who need to move on medical or welfare grounds (including any grounds relating to a disability) (s.166A(3)(d)).
23. The Enfield allocations scheme (“the allocations scheme”) was approved on 30 September 2020 and amended on 21 July 2021. It sets out how Enfield intends to fulfil its statutory obligations by setting out how it intends to make sure that social housing goes to those who need it most, including the selecting of people to be a secure, flexible or introductory tenant of Enfield. It is said that it is designed “*to give priority for housing to those people that are most in need of help. In looking at need, we want to ensure that we look at the lifetime needs of a household rather than just looking at their immediate situation. In developing the approach, we have two aims * To allocate council homes according to the lifetime needs of a household * To support residents to improve their housing situation without social housing*”. In seeking to fulfil the aims of ensuring that housing goes to those who cannot meet their own needs in a fair and transparent manner, allowing (as far as possible) residents to have choices over where they live and in what type of housing, Enfield set out that the allocations scheme sets out (i) who is eligible to be considered for social housing; (ii) the relative priority given to households with different needs; and (iii) how residents can choose which homes they want to live in.
24. The allocation scheme sets out (in section 9) that there is a points system for assessing applications for council and housing association homes: “*People who qualify for our housing register will be awarded points to measure their housing priority by their circumstances. Due to the severe shortage of housing in Enfield, only applicants with 100 points or more are eligible to bid. This figure will be reviewed periodically and, depending on the supply of housing, may be increased or reduced. The maximum number of points within the scheme is 1000.*”
25. A number of the provisions within section 9 of the allocation scheme apply, or potentially apply, to RR and his family.
26. In section 9.1 of the allocation scheme reference is made to the cohort “homeless or threatened with homelessness”. Taking into account the shortage of social rented housing, the allocation scheme is said to reflect that shortage and is intended to improve opportunities for households in the private rented sector to access social housing with Enfield expressing itself as being committed to ensuring that residents have access to high quality, affordable private rented sector accommodation. The points are said to be given only to those for whom the main homelessness duty under housing law is owed. The number of points awarded to an applicant living in accommodation provided by Enfield owed a main homelessness duty under the housing legislation (as RR is) who became homeless after November 2012 and is living in temporary accommodation is 200 (see appendix A to the allocation scheme). RR has been placed into group 1.6 of the homelessness cohort.

27. In section 9.4 of the allocation scheme, reference is made to health and wellbeing. In this section the scheme provides that health and wellbeing priority will be considered “*where the applicant, or a member of their household, has a long-term health and wellbeing issue which is being affected by their current housing.*” Appendix B sets out the details considered as part of the health and wellbeing assessment. The points summary provides that the applicant with a high health and wellbeing need will be awarded 1000 points.
28. The top of the points summary table provides as follows:

“Applicants will qualify for the housing register if they meet one of the criteria set out below. Applicants may meet more than one of the criteria set out under each of the groups, in which case, they will be put in whichever category would award them the highest level of points. Applicants will not be awarded points from more than one of the below boxes at any one time. The maximum number of points is 1000.”
29. The points summary table further provides as section headed “Additional Preference Groups”. This sets out that applicants are eligible for additional points dependent on their circumstances. Additional preference points will only be awarded in addition to points gained through the Reasonable Preference categories. Health and Wellbeing points are not available to applicants who have points awarded as being Homeless or Threatened with Homelessness.
30. The points for a medium health and wellbeing need is 150 points and a low health and wellbeing need is 50. These points are not available if the applicant is assessed as being Homeless or Threatened with Homelessness, for which 200 points are awarded. Only if an applicant falls within the high level of health and well being priority would the 1000 points be awarded.
31. The allocation scheme sets out the categorisation of high, medium and low as follows. High is where the applicant has an urgent need to move, because current living conditions put the applicant’s life at risk if they do not move; or causes the applicant to be completely housebound and they would regain substantial independence if an alternative property were made available (including a wheelchair adapted home for a wheelchair user); or puts the lives of others at risk – for example an inability to self-evacuate in the event of a fire. Medium is where the applicant’s need to move is less urgent and not life threatening but their living conditions are unsuitable and if left unresolved their quality of life will deteriorate. Low is where the applicant’s living conditions cause them difficulty in carrying out their daily activities, but this is neither life threatening nor would greater harm or progression of the illness be caused if they did not move. Both medium and low priority for health and wellbeing will give an applicant additional points provided that they meet one of the other reasonable preference criteria, subject to the exclusion of those applicants who have points awarded as being Homeless or Threatened with Homelessness.
32. The challenge on behalf of RR is that applicants in the homelessness cohort will not be awarded an alternative or additional priority based on their personal circumstances and will be capped at 200 or 300 points, depending upon the nature of their homelessness rather than their personal circumstances, whereas non-homeless

applicants can be awarded up to 1000 points. The contention is that the homeless and disabled applicant will receive far fewer points than the comparable applicant who is not homeless. Further, a homeless applicant with disability needs is said, by those acting on behalf of RR, to have no more priority than other homeless households. It is said by RR that Enfield is acting unlawfully as it is capping the person's priority for social housing regardless of whether the applicant has a disability resulting in a person who is both homeless and disabled finding it more difficult to access social housing than a person who is disabled but not homeless.

33. The practical consequences of the points-based system, and the lack of public sector housing, is that if an applicant does not score highly on points then they are unlikely to be able to successfully bid for socially-rented homes that become available. The scheme provides that once a socially rented property becomes available, Enfield will contact the bidder with the highest level of points to invite them to view the property and if the applicant accepts the property then they will be given advice regarding moving in and their application on the housing register will be closed; if it is refused then it will be offered to the next bidder with the next highest priority. The practical consequence is that someone with a low number of points is unlikely to ever be sufficiently high within the cohort of those seeking social housing to enable them to bid. The amended summary grounds of resistance from Enfield denies that the awarding of 200 points was unlawful on the basis that the same was in accordance with its allocation scheme and that there is nothing unlawful in the allocation scheme.

The Grounds

34. RR, through his representatives, divided his grounds of challenge into two parts:
 - (i) grounds 1 and 2 which challenge Enfield's own interpretation of its allocation scheme and allege that there is nothing within the allocation scheme which means that there is a cap on the priority to be afforded to RR;
 - (ii) grounds 4 to 7 which assert that if there were such a cap then it would be unlawful as it breaches the anti-discrimination provisions as set out in the ECHR and/or the Equality Act 2010.
35. There was a discrete issue between the parties with respect to the admissibility of various documents before the court, RR formally applying for permission to rely upon Shelter's Life in Limbo report dated October 2023, the All-Party Parliamentary Group (APPG) on Households in Temporary Accommodation dated January 2023; and a response from Enfield dated 1 May 2024 to a freedom of information request.
36. Enfield objected to RR being given permission to rely upon this additional evidence on the basis that the same was irrelevant to the challenge being brought by RR. The reports being relied upon, from both Shelter and the APPG, highlight the concerns expressed by individuals about temporary accommodation and the potential impact of temporary accommodation on children and on fundamental issues, such as health and well-being. That may be the case, but it is not a matter for this court. The reports do not assist in establishing whether Enfield are misapplying their own allocation scheme

or whether, if there is a cap on priority for a homeless applicant, that is discriminatory.

37. The evidence that RR needs to provide is that the allocation scheme creates a provision, criterion or practice (“PCP”) that can place a disabled person at a disadvantage compared to a non-disabled person and this documentation does not assist with establishing that point. In the circumstances I am not going to allow either of the reports from Shelter or the APPG as they do not assist the court. That decision does not, of course, undermine the importance of that work. Insofar as it is being suggested that permanent social housing is more stable than temporary housing, again that may be something that can be accepted by Enfield (in general, not specific terms) but even if that were accepted, that does not necessarily mean that a disabled applicant is placed at a disadvantage in comparison with a non-disabled applicant for housing. Similarly, the response to the freedom of information request does not support the argument raised that the allocations scheme operated by Enfield is indirectly discriminatory. In the circumstances, therefore, I am not going to permit reliance upon those three documents.

The Decision Letter

38. The decision that is being challenged by these proceedings is that contained in the letter dated 23 May 2023 in which it is recorded that the homeless application was made on 9 November 2022 and that RR was given temporary accommodation in furtherance of Enfield’s obligations under section 193 of the HA 1996 and that the housing register application was assessed on 20 February 2023 for which he was awarded 200 points.
39. In the summary of the allocations scheme, the letter sets out that due to the severe shortage of housing in Enfield only applicants with 100 points or more are eligible to bid; that pursuant to the provisions set out under the additional preference groups that additional preference points will only be awarded in addition to points gained through the reasonable preference categories but that health and well being points (which is only for medium or low health and well being need) are not available to applicants who have points awarded as being homeless or threatened with homelessness. The summary further sets out that 50 points are awarded to applicants who are homeless or threatened with homelessness if they have no accommodation they can reasonably occupy (appendix A, section 1.1), and that 200 points are awarded to applicants who reside in temporary accommodation owed a main homelessness duty under the homelessness legislation, (appendix A, section 1.6).
40. The letter sets out that RR’s legal representatives have raised the issue of ED’s health conditions and how the reasonable preference or additional preference should be awarded on the grounds of health and well being and that as the allocations scheme *“does not award reasonable preference or additional preference to homeless households on this basis it is discriminatory and therefore unlawful.”*
41. The decision, contained in paragraph 17 of the decision letter is that while ED’s medical conditions are noted *“the Allocations Scheme specifies that applicants who are homeless or threatened with homelessness are not entitled to health and wellbeing points either as reasonable preference, or additional preference. As such, a health*

and wellbeing assessment for the purpose of awarding priority on this basis is not required.”

Grounds 1 and 2

42. RR contends that the refusal by Enfield to give any medical priority is a misreading or misapplication of their own allocation scheme. It is said that there is no “cap” by reference to being homeless. Further, or alternatively, RR contends that the policy is unclear and contradictory.
43. Enfield’s contention is that its allocation scheme excludes the homeless group from the health and wellbeing group because that group are already being provided with suitable accommodation by Enfield in pursuance of its part 7 obligations. Reliance is placed upon the decisions of Lord Neuberger in *R(Ahmed) v London Borough of Newnham* [2009] UKHL 14 and Dyson LJ in *R(Lin) v London Borough of Barnet* [2007] HLR 30.
44. Enfield contend that RR has misread the rubric on Appendix A and have confused the term “group” with “category”. What is said in the allocations scheme is set out in paragraph 28 above.
45. Under the heading “Reasonable Preference Group” are the following groups: 1: Homeless or threatened with homelessness; 2. Insanitary of unsuitable housing; 3. Overcrowding; 4. Health and Wellbeing; 5. Need to move to a particular locality; 6. Emergency and Exceptional. The only two groups that are relevant for RR are 1. and 4. The applicant is placed, pursuant to the scheme, in the category within the group which awards the highest number of points. In the Homeless or threatened with homelessness group, RR falls within the category that awards 200 points. The issue is whether, because RR falls within Group 1, he cannot come within Group 4.
46. It is clear from the wording of the allocation scheme that RR cannot obtain additional points from the Additional Preference Groups which are 7. Health and Wellbeing and 8. Armed Forces. This is because the rubric provides:

“Applicants are eligible for additional points dependent on their circumstances. Additional preference points will only be awarded in addition to points gained through the Reasonable Preference categories. Health and Wellbeing points are not available to applicants who have points awarded as being Homeless or Threatened with Homelessness”
47. The court’s role is not to get involved in questions of how priorities are accorded in housing allocation policies as that is a matter of judgment requiring local knowledge and expertise. The same was set out clearly by Lord Neuberger in *R(Ahmed) v LB of Newnham*:

“...as a general proposition, it is undesirable for the courts to get involved in questions of how priorities are accorded in housing allocation policies. Of course, there will be cases where the court has a duty to interfere, for instance if a policy does not comply with statutory requirements, or if it is plainly

irrational. However, it seems unlikely that the legislature can have intended that judges should embark on the exercise of telling authorities how to decide on priorities as between applicants in need of rehousing, save in relatively rare and extreme circumstances. Housing allocation policy is a difficult exercise which requires not only social and political sensitivity and judgment, but also local expertise and knowledge.”

48. However, the challenge under grounds 1 and 2 is not with respect to how priorities are accorded in the allocation scheme, but the meaning of that allocation scheme. While it is accepted that the allocation scheme is clear that additional points cannot be awarded to an applicant who has points awarded as being Homeless or Threatened with Homelessness (that is the 150 points or 50 points respectively awarded to an applicant with medium or low Health and Wellbeing points), RR does not accept that his application is excluded from the Health and Wellbeing reasonable preference group because the application is entitled to be in the Homeless or threatened with homelessness. If RR’s application falls within the Health and Wellbeing Reasonable Preference Group, which requires a high health and wellbeing need, then the application ought to have been awarded 1000 points. These applicants are made one direct offer.
49. In *R(Nur) v Birmingham City Council* [2020] EWHC 3526, it was accepted by both parties that the meaning of the allocations policy is a matter for the court and not for the interpretation of council officers.
50. RR’s representatives have misinterpreted the reference to “category” as being a reference to the Reasonable Preference Group. There is no “highest RPG wins”, rather if the applicant falls within a particular group then the highest category is awarded.
51. However, while the allocation scheme prohibits additional points under the Additional Preference Groups being awarded to an applicant awarded points as being Homeless or Threatened with Homelessness, that does not mean that an applicant, in the appropriate circumstances, cannot fall within a different Reasonable Preference Group. The allocation scheme does not include such a prohibition.
52. In order to fall within the Health and Wellbeing Reasonable Preference Group, the applicant must establish high priority and the allocation scheme provides that Enfield will assess whether the priority is high, medium or low. If medium or low then an applicant within the Homeless or Threatened with Homelessness Reasonable Preference Group is not entitled to any additional points. The allocation scheme sets out, in Appendix B, the following definition as to who would fall within the “high” priority grouping:

High: This is where the applicant has an urgent need to move, because current living conditions:

 - Put the applicant’s life at risk if they do not move, or
 - Cause the applicant to be completely housebound and they would regain substantial independence if an alternative property were made available,

including needing a wheelchair-adapted home because the applicant is a wheelchair user, or

- Put the lives of others at risk (for instance they are unable to self-evacuate from a building in the event of a fire)

In some circumstances, applicants will also be awarded a high level of points if medical treatment vital to the long-term or life-long health of the applicant is only available in Enfield.

Applicants with high health and well-being priority do not need to meet the requirements of the Reasonable Preference criteria.

53. Enfield's Housing Allocation Scheme dated November 2015 provides, amongst other things, the basis of the entry onto the Housing Register which is either as homeless applicants to whom Enfield have accepted a main housing duty and who are automatically entered onto the register, and other residents who can apply to join the housing register via an online portal. As at 2015, there were just under 3,300 households in temporary accommodation awaiting rehousing comprising roughly 75% of the households on the register.
54. A household registered on the Housing Register in the Homeless or Threatened with Homelessness Reasonable Preference Group as a household to whom Enfield has accepted a main housing duty will not meet the high Health and Wellbeing criteria as the obligations of Enfield pursuant to the provisions of part 7 of the HA 1996 means that the criteria cannot be met. The housing authority is assumed to be complying with its other statutory obligations, and in this particular case alternative suitable accommodation has now been offered and accepted by RR's family. A homeless applicant is awarded relatively low points because suitable alternative accommodation is already being provided by the local authority and as Dyson LJ (as he then was) stated in *R(Lin) v Barnet LBC*:

"It is clear that a factor which weighed heavily with the council in its decision to give no more than 10 points to the homeless person who is owed a Part 7 duty was its view that such persons are housed in suitable accommodation under Part 6 is less than that of other persons ... These were matters which the council, in the exercise of its discretion, was entitled to take into account"

55. Grounds 1 and 2 of this judicial review challenge are not made out. There has been no misreading of the allocation scheme and it is neither unclear nor contradictory. Enfield have not fallen foul of the principles enunciated by Lord Dyson in *R(Lumba) v Secretary of State for the Home Department* [2012] 1 AC 245. There is no contradiction between "highest RPG wins" as it is put by RR and the decision challenged. It is not "highest RPG wins" but the highest category within the RPG that the applicant can be placed in, and that has happened here. For the reasons already set out, RR cannot fall within the high Health and Wellbeing Reasonable Preference Group given the circumstances of the part 7 housing.

Ground 3

56. Ground 3, the allegation that Enfield has fettered its own discretion, is no longer pursued in light of the decision in *R (Willott) v Eastbourne Borough Council* [2024] EWHC 113 (Admin).

Ground 4

57. Those acting for RR contend that he has been discriminated against contrary to the provisions of Article 14 of the ECHR. Article 14 provides:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or status.”

In order to rely upon Article 14, it is accepted on behalf of RR that the claim must fall within the ambit of Article 8.

58. In *R(Z & anr) v Hackney LBC & Anr* [2019] EWCA Civ 1099, the Court of Appeal held that the challenge to the local authority’s allocation scheme, brought by a family living in temporary accommodation, did not fall within Article 8. RR contends that the decision in *Z* was on its own particular facts. However, the issue as to whether a housing allocation policy falls within the ambit of article 8 was earlier considered in *R(H) v Ealing LBC* [2018] PTSR 541, referred to in *Z*. Neither Davis LJ nor Underhill LJ in *H* accepted that there was a right to settled or permanent accommodation protected by or within the reach of Article 8 and, insofar as Sir Terence Etherton in *H* was relying on an obiter statement of Goss J in *R(HA) v Ealing LBC* [2016] PTSR 16 to find that one of the local authorities’ groups within its housing allocations policies fell “*within the scope of family life protected by article 8*”, that was not followed by Lewison LJ for good reason. In *Z*, Goss J. had not been referred to the decision of Michael Supperstone KC (when sitting, as a Deputy High Court Judge) in *Dixon v Wandsworth LBC* [2007] EWHC 3075 (Admin.) where he found that there was not a sufficient link between the right to the enjoyment of a family life and settled accommodation. Dyson LJ (as he then was) refused permission to appeal in *Dixon* on the basis that, if Article 8 applied at all, part 6 of the Housing Act 1996 struck the required balance required by Article 8.
59. *Z* is authority for the broader proposition advanced by Enfield that the workings of the allocations policy does not engage Article 8. In these circumstances, RR cannot challenge Enfield on the basis that there is a breach of Article 14 rights. That does not mean that Article 8 can never be engaged in the context of housing provision. By way of example, RR relies upon Mr Nigel Poole KC, sitting as a Deputy High Court Judge, in *R (McDonagh) v Enfield LBC* [2018] EWHC 1287 (Admin.) where he stated:

“ *I accept that the art.8 right to a private life includes a person’s right to physical and psychological integrity which might be infringed if they are unable, for example, to access a toilet or washing facilities at home for a prolonged period or,*

potentially, if their private and family life is grossly undermined by having to look after a family member because they do not have such access.”

and referred to Sullivan J. in *R(Bernard) v Enfield LBC* [2002] EWHC 2282 Admin. In those cases, the local housing authority had specific duties that required compliance, and which impacted upon private and family life. The Article 8 rights would be engaged when dealing with the accommodation allocated pursuant to Enfield’s obligations under Part 7 of the HA 1996 and with respect to any complaints raised in a section 204 appeal regarding suitability of accommodation. In the circumstances, Ground 4 of this judicial review challenge cannot be made out as Article 8 is not engaged.

Grounds 5, 6 and 7

60. With respect to Grounds 5, 6 and 7, which are all challenges under the Equality Act 2010, section 136(2) provides that if a prima facie case is made out then the burden falls upon the respondent to establish that there was no contravention of the provisions of the Equality Act 2010 (“EA 2010”):

“If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provisions concerned, the court must hold that the contravention occurred.”

61. The reason for this “reverse burden of proof” was explained by Hooper LJ in the employment case *EB v BA* [2006] EWCA Civ 132:

“If an employer takes the stance adopted by the respondent, namely “You prove it” – then claimants, particularly those with limited or no means, who challenge large corporations in cases of this kind would be at a great disadvantage. Such an approach may well render the reverse burden of proof provision of little or no use to a claimant.”

Ground 5

62. RR contends that Enfield have failed to comply with its duty to make reasonable adjustments and is therefore unlawfully discriminating against him and his family.

63. Section 20 of the EA 2010 imposes a duty to make reasonable adjustments. Section 20(3) EA 2010 provides that:

“The first requirement is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”

64. RR contends that the provision, criterion or practice (PCP) of Enfield's allocation scheme disentitles homelessness applicants from accruing any additional Health and Wellbeing priority and that the PCP puts people with disabilities at a particular disadvantage so that, pursuant to section 20(3) of the EA 2010, Enfield has a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. It is RR's case that his household has serious disability-related needs and that the housing they have fails to meet those needs. It is not clear to me that the current accommodation, offered and accepted after the hearing, similarly fails to meet those needs but it is the contention of RR that his priority for social housing is "capped" by reason of their homelessness status and that Enfield has failed to differentiate the needs of RR as a household with disability needs with the requirements of non-disabled homeless people as both groups are afforded the same priority, despite the disadvantages faced by households with disabilities.
65. RR needs to establish a prima facie case that his household is disadvantaged as compared to other households in order for the burden to fall upon Enfield to establish that there has not been a contravention of the requirement to make reasonable adjustments. RR points to the fundamental difficulty in obtaining statistical evidence to prove that disadvantage, but RR does have to show that there is a disadvantage (see Margaret Obi sitting as a Deputy High Court Judge in *R(TX) v Adur DC* [2022] EWHC 3340 para 59). Disadvantage is not defined by the EA 2010 but it includes a denial of an opportunity and in *Essop v Home Office* [2017] 1 WLR 1343, Baroness Hale set out that in order to make a comparison "*the pool should consist of the group which the provision, criterion or practice affects (or would affect) either positively and negatively, while excluding workers who are not affected by it, either positively or negatively.*" There is no requirement that every person with disabilities be disadvantaged by the PCP (*Essop*) but there must be a high proportion of people with disabilities who would be disadvantaged by the PCP as compared to the proportion of people without those disabilities.
66. RR's contention is that people with disabilities are put at a disadvantage as Enfield's equality impact assessment recognises the government data on the high and rising proportion of people with disabilities who are waiting for social housing, with the allocation scheme providing that an applicant with a high Health and Wellbeing need being given 1000 points and one direct offer, and that those with a medium or low Health and Wellbeing need given additional points (if they are not homeless or threatened with homelessness). The disadvantage to people with disability is said to be because all homeless household (regardless of disability) are, by virtue of the point system, channelled into non-secure accommodation and it is RR's case that it would be reasonable to allow a household with a serious disability to gain additional priority over non-disabled people in the same homeless or threatened with homelessness cohort.
67. The question of whether an adjustment is reasonable is an objective question for the court, bearing in mind all the circumstances of the case (see Dyson LJ in *Royal Bank of Scotland v Allen* [2009] EWCA Civ 1213). Even if RR were able to make out that his disabled household required an adjustment, in my judgment it would not be a reasonable adjustment in these circumstances to provide the disabled household with additional points as that would run counter to the allocation scheme that the local authority is entitled to have devised for the purpose of ensuring that those who have a

high priority (as set out in the scheme and explained above) have access to housing. Those who are homeless or threatened with homelessness have rights pursuant to the provisions of Part 7 of the HA 1996. Any discriminatory affect caused by the allocation scheme not awarding Health and Wellbeing points (either because the Part 7 rights means that an applicant could not fall within the “high” category or because “low” and “medium” Health and Wellbeing points are not available to applicants who have points awarded as being Homeless or threatened with homelessness) is justified because the local authority can resolve the homeless person’s homelessness by making an offer of suitable accommodation under Part 7 of the HA 1996. The only adjustment would be to place a household with disability into the Health and Wellbeing category, but that would run entirely counter to the policy devised by the local authority which is a matter for the local authority to determine (see *Ahmed*).

Ground 6

68. RR contends that the allocation scheme indirectly discriminates against those households with disability in that it is said that the policy creates a disproportionate negative outcome for households with disability. Section 19 of the EA 2010 provides that:

“(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”

69. In order to further his claim that the allocation scheme with respect to this specific PCP, namely that applicants owed the main housing duty are excluded from Health and Wellbeing points, RR needs to establish a prima facie case that disabled households are put at a particular disadvantage when compared with non-disabled households. That is not the case. The PCP applies to disabled and non-disabled households alike. There is no difference in treatment and no evidence that disabled households are disproportionately impacted.

70. While it is said on behalf of RR that it is difficult to obtain the evidence to establish that a household with a disability is disadvantage as compared with a household

without a disability, it is necessary to establish a causal link between the PCP and the alleged disadvantage. As is set out in *TX*: “Having identified the pools for comparison, it is necessary to compare the impact of the PCP on each group. Indirect discrimination requires a causal link between the PCP and the particular disadvantage suffered by the group and the individual. However, there is no requirement that every member of the group is disadvantaged.” In the case *R (Willott) v Eastbourne BC* [2024] EWHC 113, Ellenbogen J. set out that it is necessary to show statistical evidence or other evidence to the effect that a greater proportion of those having disabilities are disadvantaged. The additional evidence that RR endeavoured to have admitted (which I refused as set out above) would not have assisted RR.

71. RR cannot establish that there is any disadvantage. Any evidence would need to be germane to the PCP and it is not sufficient for bald assertions to be made in order to make out a prima facie case. In the circumstances ground 6 also cannot succeed.

Ground 7

72. The final ground of challenge in this judicial review is that Enfield has breached its Public Sector Equality Duty (“PSED”) in a number of ways.

73. Section 149(1) of the EA 2010 provides that public authorities must, in the exercise of its functions, have due regard to the need to:

- “(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

74. Enfield rely upon the fact that an equality impact assessment was undertaken when the allocation scheme was approved and that, in applying that scheme since its approval, Enfield have been considering the needs of particular applicants, including those with a disability within the definition of section 6 of the EA 2010, and satisfies the PSED by its application of the allocation scheme.

75. RR contends that Enfield are in breach of the PSED as there is a failure to monitor or record how many households with disabilities are owed the main housing duty by Enfield, and therefore have the protections afforded by part 7 of the HA 1996; Enfield does not record how many households with disabilities are in unsuitable accommodation; and how long such households typically wait to be housed.

76. In *R(DXK) v Secretary of State for the Home Department* [2024] EWHC 579 (Admin), Paul Bowen KC, sitting as a Deputy Judge of the High Court, held that the Secretary of State was in breach of the PSED under section 149(1) of the EA 2010 in failing to effectively collect and monitor statistical equality data relating to the

provision of accommodation to vulnerable individuals once he had accepted that he had a duty to accommodate. However, it is clear from *DXK* that there is no requirement to monitor. The requirement under section 149 of the EA 2010 is to have due regard to the three equality aims. If the public authority properly considers it has exercised its duty to have regard to the three equality aims then the gathering of further information is not necessary. There is a duty of inquiry, if the relevant information is not available (see *SoS for Education and Science v Tameside MBC* [1977] AC 1014; *R(Bracking) v SoS for Work and Pensions* [2013] EWCA Civ 1345; and *R(TW) v Hillingdon LBC* [2019] EWCA Civ 692) and Fordham J in *R (Rowley) v Minister for the Cabinet Office* [2021] EWHC 2108 referred to the virtues of evidence-based thinking and the “legal sufficiency of enquiry” embodied in section 149 of the EA 2010.

77. The intensity of the review required is dependent upon the subject matter, context being everything. In this matter, Enfield say that the decision to allocate housing in accordance with the allocations scheme is not putting any group, including homeless households with a disability, at any disadvantage as all applicants are treated the same.
78. After the close of oral submissions, RR’s representatives made reference to the report of the Equality and Human Rights Commission (“EHRC”) which provides some insight into the issues faced by disabled households. Enfield say that the inclusion of the EHRC report was not agreed to be before the court because it was not relevant to the challenged PCP as it is a report dealing with disabled persons’ experience of housing generally in the context of a UN Convention right to housing. It does not deal with disabled people who are owed the main housing duty and who are accommodated by local authorities and it does not provide relevant statistical evidence. The only piece of evidence that is potentially relevant is that which deals with waiting times on housing registers, but it is not limited to disabled people in the “Homeless or threatened with homelessness” cohort, but is all disabled applicants, and it does not have an average waiting time for a comparator. Consequently, Enfield submit that the EHRC report does not support RR’s contention that the average waiting time for non-disabled persons is less than that of the disabled applicant.
79. I accept Enfield’s submissions that the EHRC, while highlighting the very real difficulties faced by households with a disability, does not provide the evidence that RR is seeking. It does not show that there is a disproportionate impact upon households with a disability. However, it does provide support for the contention raised on behalf of RR that Enfield is failing to collect and analyse data relating to the impact of allocation decisions upon households with a disability and, in my judgment, Enfield has failed in fulfilling its PSED obligations in this respect.
80. This judicial review challenge is therefore partially made out under Ground 7, namely the failure on the part of Enfield in fulfilling its PSED obligations under section 149 of the EA 2010 by its failure to both monitor and record statistics relating to the allocation of housing to disabled households. It is not accepted by Enfield that the PCP puts any group with a protected characteristic at any disadvantage, and it is Enfield’s case that in dealing with housing it is focussed on disability. What Enfield does not have is the data to support its position and the duty of inquiry is therefore not satisfied.

Section 31(2A)

81. Section 31(2A) applies to this matter. Enfield's determination would not have been different had it complied with its duty of inquiry under section 149 of the EA 2010. Suitable accommodation has now been offered and accepted pursuant to the obligations of Enfield under part 7 of the HA 1996, and RR was always able to challenge the suitability of the accommodation provided by Enfield under those provisions.
82. Further, RR has not, to my knowledge, made an application or filled out the self-assessment required to establish Health and Wellbeing needs. In those circumstances, there would have been no different decision and no remedy is available to RR.

Conclusion

83. This judicial review challenge must therefore fail. For the reasons set out, RR fails to establish Grounds 1-2 and 4-6, Ground 3 not being proceeded with. The challenge succeeds to an extent under Ground 7, in that Enfield have failed in their duty of inquiry pursuant to section 149 of the EA 2010. There is no remedy, however, as the outcome would not have been any different for RR and his family had Enfield complied with its obligations.
84. Finally, I am grateful to both Mr Bano and Mr Paget for their helpful written and oral submissions, including after the hearing, and for their patience in awaiting this judgment.