Neutral Citation Number: [2024] EWHC 2073 (Admin)

Case No: AC-2023-LON-002717

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/08/2024

Before:

JUDGE O'CONNOR
(Sitting as a Judge of the High Court)

- -

Between:

The King
on the application of

ZRR	**Claimant**
- and -	
LONDON BOROUGH OF BEXLEY	**Defendant**

Daniel Grütters (instructed by **Morrison Spowart solicitors**) for the **Claimant**
Lindsay Johnson (instructed by **Bexley Legal Services**) for the **Defendant**

Hearing dates: 20 June 2024

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Approved Judgment

This judgment was handed down remotely at 10.00am on Wednesday 7th August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Judge O'Connor:

Introduction

1. This is an application for Judicial Review of the London Borough of Bexley's claimed failure to:

    (i) Secure suitable accommodation for the Claimant in breach of its duty under section 190 of the Housing Act 1996 ("the 1996 Act") (Ground 1), and.

    (ii) Conduct a lawful needs assessment of the Claimant's children, pursuant to section 17 of the Children Act 1989 ("the 1989 Act") (Ground 2).

Factual Background – a Summary

2. The claimant is a 37-year-old woman. Her household comprises of herself, her two daughters, and her partner, who has resided with the claimant and her daughters since 2012.

3. The claimant's oldest daughter suffers from mental health problems, originating from trauma arising from sexual abuse. Her youngest daughter has diagnoses of physical illness (postural sclerosis), and mental health illness (sensory processing disorder); she was, at the material times, in receipt of an Education and Health Care Plan ("EHCP"). The Claimant's partner suffers from anxiety, depression, suicidal ideation, and bi-polar disorder.

4. In January 2012, the claimant's private landlord obtained an order for possession and the claimant applied for assistance as a homeless person. On 11 April 2012, the local authority accepted that the claimant was owed the main housing duty under section 193(2) of the 1996 Act. She was provided with accommodation in Belvedere, in performance of that duty ("the Belvedere accommodation"). On 15 October 2019, the defendant was granted possession of the property because the claimant had fallen into rental arrears. The rent arrears were subsequently cleared, but the claimant again fell into arrears and the claimant was evicted from the Belvedere accommodation on 21 February 2023.

5. On the same date as her eviction, the claimant made an application to the defendant for assistance as a homeless person. On 24 February 2023, the defendant notified the claimant that it was satisfied that she was homeless and eligible for assistance, and that it owed her the relief duty under section 189B of the 1996 Act.

6. The defendant arranged interim temporary accommodation for the family, pending inquiries ("the Erith B&B"). In a letter of the 24 February, the defendant described the accommodation as *"a room in a hostel. The property is furnished"*. It was further stated that the accommodation would initially be provided for 56 days, unless the defendant finds the claimant somewhere to live longer term during that period, there is a need for the claimant to be moved to alternative temporary accommodation or the claimant does not pay the accommodation charge. In a telephone call to the claimant, the defendant indicated that the accommodation arranged at the Erith B&B was two rooms. The accommodation was not self-contained; personal washing facilities were shared by more than one household.

7. The claimant did not take up the offer of interim accommodation at the Erith B&B and instead she, and her immediate family, moved in with the claimant's parents, where it is said that they still currently reside. The daughters stay in the main house, and the claimant and her partner reside in the garage next to the house.

8. On the 27 February 2023, the claimant wrote to the defendant asserting the Erith B&B to be *"completely unsuitable for the family's needs*". She stated that both the manager of the Erith B&B and her children's Child and Adolescent Mental Health Services ("CAMHS") nurse agreed with this assessment. The accommodation was said to be unsuitable because: (i) the claimant's daughters were expected to share a room with the claimant and her partner, with the areas separated by only an open arch. The claimant's eldest daughter suffered sexual abuse at the hands of her biological father, (ii) the communal areas in the accommodation would be shared with other families. Her youngest daughter has sensory processing disorder, severe social anxiety and will not speak to people she does not know, (iii) delay in the correct support would lead to a deterioration of the claimant's youngest daughter's mental health (supported by a letter from a Specialist CAMHS nurse), (iv) the claimant's partner suffers from severe depression and anxiety and, after viewing the accommodation, he became *"very withdrawn and anxious"* and, (v) the accommodation does not allow dogs and the family have a support dog for the children's *"social and mental health issues"*.

9. On 7 March, the defendant notified the claimant that she was eligible, homeless and in priority need but that she had made herself homeless intentionally by failing to pay rent on the Belvedere accommodation. The letter stated that, whilst the main housing duty had previously been accepted towards her, that duty had now been discharged pursuant to section 193(6)(b) of the 1996 Act, because the claimant had made herself homeless intentionally.

10. The claimant requested a review of that decision pursuant to section 202 of the 1996 Act, on the basis that she was not intentionally homeless. On 14 April, the defendant withdrew the decision of 7 March. On 3 May 2023, the defendant once again notified the claimant that the main housing duty accepted towards her in April 2012 had ended, because she had made herself homeless intentionally from the Belvedere accommodation. On 11 May, the claimant requested a review of that decision pursuant to section 202 of the 1996 Act. There was also a request for accommodation pending review.

11. On the following day (12 May), the defendant wrote to the claimant offering her accommodation *"in compliance with section 190 of the Housing Act 1996 for a period of 14 days"*. The letter identified the accommodation by provision of a room number at the Erith B&B. The letter further observed that "*there is not a right of review regarding the suitability of accommodation being provided under this legislation."* The claimant refused this offer on the basis that the accommodation was unsuitable.

12. On 12 July 2023, the defendant issued a section 202 review decision, maintaining the decision that the claimant had made herself intentionally homeless from the Belvedere accommodation and that its section 193(2) duty had consequently been discharged. The claimant later indicated that she intended to appeal against this decision.

13. The claimant wrote a letter before claim on 17 July, identifying the ongoing breaches of both section 190 of the 1996 Act, and section 17 of the 1989 Act. The defendant responded on 19 July in relation to the 1996 Act, observing that the claimant had twice been offered temporary accommodation at the Erith B&B. The letter further stated that the defendant would "*not exercise its discretion to provide s.190 accommodation at this time*". It was also noted that the claimant had not requested accommodation since April 2023.

14. On 22 July, and having assessed the claimant's case, the defendant produced a Personal Housing Plan ("PHP"). The PHP observes that the claimant's *"current entitlement is for a 3-bedroom property at the LHA rate if [she] were making an application for housing assistance."* It indicated that it was expected that the claimant would begin actively searching for privately rented accommodation and she should *"enquire for at least 7 properties a week."* and email the housing team specified information. A list of agencies was provided, with an expectation that the claimant would register with the agencies.

15. On 7 August, the defendant notified the claimant of the outcome of the section 17, children, and family's assessment. This assessment is considered in detail below.

16. On 15 August 2023, the claimant wrote to the defendant setting out why she believed the assessment of the children's needs to be unlawful. The letter also asserted that there had been no, or no adequate, consideration as to what assistance would be provided to the claimant under the section 190 duty. In an email of 18 August, the defendant observed that accommodation had been offered under section 190 on two occasions, but this had not been taken up by the claimant. Advice and assistance had been provided to the claimant.

17. These proceedings were issued on 14 September 2024. Permission was refused on the papers, but granted on grounds, restricted to those identified above, by David Pittaway KC, sitting as Deputy High Court Judge, at a hearing on 24 April 2024.

18. On 14 May 2024, the defendant wrote to the claimant in the following terms:

> "Following the S184 decision dated 9 May 2023 we provided you with interim accommodation under s.190 Housing Act Part 7 on 12 May at Room G5 [Erith B&B].
>
> You wrote to the council refusing this offer of accommodation on 12 May 2023 and as such the duty owed to secure accommodation under s.190 Housing Act 1996 Part 7 has ceased.
>
> There is no statutory right of review in relation to the offer of interim accommodation."

<u>Ground 1</u> - *The defendant failed to secure suitable accommodation for the claimant in breach of its duty under section 190 of the Housing Act 1996*

<u>Legal Framework</u>

19. Part VII of the 1996 Act imposes duties in respect of those who are homeless or threatened with homelessness. Under Part VII, when a person presents as homeless to

a local authority it is under a duty to make inquiries (s.184) to determine whether that person is: (a) homeless or threatened with homelessness (as defined by s.175); (b) eligible (i.e., not within a class of persons specified as ineligible under ss 185-187); (c) in priority need (s.189); and (d) not intentionally homeless (s.191). The definition of homelessness under section 175 includes people who do have accommodation, but where that accommodation is such that it would not be reasonable for them to continue to occupy it (s.175(3)).

20. Persons having a priority need are defined to include *"a person with whom dependent children reside or might reasonably be expected to reside…"* (s.189(1)(b)). An interim duty may be owed pending the outcome of these inquiries in cases of apparent priority need (s.188). A local housing authority is required to provide suitable accommodation where it has determined following enquiries that the main housing duty is owed (s.193). There is a procedure of internal reviews under Part VII (s.202) and ultimately a right to appeal to the County Court on a point of law (s.204).

21. Where a local housing authority is satisfied that an applicant is homeless and eligible for assistance but became homeless intentionally, then the duty it owes depends on whether the applicant has a priority need. If the local housing authority is satisfied that the applicant has a priority need, then it will, (i) *"secure that accommodation is available for his occupation for such period that they consider will give him a reasonable opportunity of securing accommodation for his occupation*" (s.190(2)(a)) and, (ii) *"provide him with (or secure that he is provided with) advice and assistance in any attempts he may make to secure that accommodation becomes available for his occupation"* (s.190(2)(b)).

Ground 1 - Discussion

22. In the pre-action correspondence, and at the time of the lodging of the claim, the lawfulness of the defendant's actions prior to 3 May 2024 were in issue. Amongst other things, there was a dispute as to whether the defendant's duties under section 190 of the 1996 Act were engaged at that time, or at all. The parties' respective cases have since matured and, it appears, crystallised into their current form at the oral permission hearing.

23. The claimant's case on Ground 1 now focuses attention on the indication by the defendant on 12 May 2023 that it had secured accommodation for the claimant at the Erith B&B, in compliance with its duty under section 190 of the 1996 Act, and the consequences of that offer.

24. The claimant seeks to identify three autonomous routes to success on Ground 1. I list them in the order the claimant presented them before the Court:

    (i) The defendant could only meet its obligations under section 190(2)(a) by way of an offer of suitable accommodation. The Erith B&B was not suitable accommodation.

    (ii) The defendant was required to provide the claimant with a valid notice discharging its duty under section 190. No such notice has been provided and therefore the duty continues.

(iii) The defendant failed to have regard to the claimant's circumstances when determining what period of time would provide her with a *"reasonable opportunity to secure accommodation for occupation"*.

The Defendant can only meet its obligations under section 190(2)(a) by way of an offer of suitable accommodation. The Erith B&B was not suitable accommodation.

25. The parties' respective positions on this issue can be summarised as follows:

(i) The claimant avers that:

(a) the only relevant offer of accommodation for the purposes of these proceedings is that of 12 May 2023, in which she was offered a room in the Erith B&B, for her, her partner and her two teenage children. This accommodation is *"patently unsuitable"*.

(b) the defendant failed to undertake an assessment of the needs of the household in order to determine whether the accommodation was suitable.

(ii) The defendant contends:

(a) the claimant has an alternative remedy.

(b) a challenge by way of judicial review is, any event, out of time.

(c) the defendant discharged its obligations under section 190(2)(a) by securing suitable accommodation. The conclusion as to the suitability of accommodation was one that was open to the defendant.

(d) in any event, to put matters beyond all doubt, the defendant notified the claimant that it had discharged its duty under section 190(2)(a) on 14 May 2024. This claim is, therefore, academic.

26. As identified above, a local housing authority's duty under section 190(2)(a) of the 1996 Act to an intentionally homeless eligible person, is discharged by securing *"that accommodation is available for occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation."*

27. Pursuant to section 206 of the 1996 Act, where a local housing authority discharges its functions to secure that accommodation is available, that accommodation must be suitable. This applies in respect of the duty to secure accommodation under section 190(2)(a). Suitability remains undefined in the legislation.

28. Although suitable accommodation does not mean accommodation which the claimant considers suitable or desirable (R (Nipyo) v Croydon LBC [2008] H.L.R. 37, at [46]), the accommodation offered has to be suitable to the needs of the particular homeless person and each member of their household (Nzolameso v Westminster CC [2015] UKSC 22, at [13]). What is regarded as suitable for discharging the interim duty may be rather different from what is regarded as suitable for discharging the main duty (Birmingham City Council v Ali [2009] UKHL 36 at [18]).

29. Section 182 of the 1996 Act provides that local housing authorities must have regard to guidance given by the Secretary of State in exercising their functions relating to homelessness. The Secretary of State has issued a Homelessness Code of Guidance for Local Authorities ("the Code"). The relevant version of the Code for the purposes of the instant proceedings was that in force between 31 January 2023 to 14 May 2023, although there were no material changes to the version which came into force on 15 May 2023.

30. The Code offers extensive guidance on suitability at [17.1] to [17.70]. Paragraphs 17.7 to 17.9 read as follows:

> "17.7 Accommodation that is suitable for a short period, for example accommodation used to discharge an interim duty pending inquiries under section 188, may not necessarily be suitable for a longer period, for example to discharge a duty under section 193(2).
>
> 17.8 Housing authorities have a continuing obligation to keep the suitability of accommodation under review, and to respond to any relevant change in circumstances which may affect suitability, until such time as the accommodation duty is brought to an end.
>
> 17.9 Housing authorities are required to assess whether accommodation is suitable for each household individually, and case records should demonstrate that they have taken the statutory requirements into account in securing the accommodation."

31. The Code includes a specific section related to Bed and Breakfast accommodation at [17.31 – 17.45], with Mr Grütters drawing particular attention to the following paragraphs:

> "17.31 Bed and breakfast (B&B) accommodation caters for very short-term stays only and affords residents only limited privacy, and may lack or require sharing of important amenities, such as cooking and laundry facilities. Wherever possible, housing authorities should avoid using B&B accommodation as accommodation for homeless applicants, unless, in the very limited circumstances where it is likely to be the case, it is the most appropriate option for the applicant.
>
> 17.32 Living in B&B accommodation can be particularly detrimental to the health and development of children. Under section 210(2), the Secretary of State has made the Homelessness (Suitability of Accommodation) (England) Order 2003 (SI 2003 No. 3326) ('the 2003 Order'). The 2003 Order specifies that B&B accommodation is not to be regarded as suitable for applicants with family commitments provided with accommodation under Part 7.
>
> 17.33 Housing authorities should, therefore, use B&B accommodation to discharge a duty to secure accommodation for applicants with family commitments only as a last resort and then only for a maximum of six weeks. Applicants with family commitments means an applicant:
>
> a. who is pregnant.
>
> b. with whom a pregnant woman resides or might reasonably be expected to reside; or,

> c. with whom dependent children reside or might reasonably be expected to reside.
>
> 17.34 For the purpose of the 2003 Order (as amended by the Homelessness (Suitability of Accommodation) (Amendment) (England) Order 2023 (the 2023 Order), B&B accommodation means accommodation (whether or not breakfast is included):
>
> a. which is not separate and self-contained premises; and,
>
> b. in which cooking facilities are not provided, or any of the following amenities is shared by more than one household:
>
> i. a toilet.
>
> ii. personal washing facilities; or,
>
> iii. cooking facilities.
>
> 17.35 B&B accommodation does not include accommodation which is owned or managed by a housing authority, a private registered provider or a voluntary organisation as defined in section 180(3) of the 1996 Act, or accommodation that is provided in a private home, such as lodging or as part of a sponsorship arrangement.
>
> 17.36 The 2003 Order provides that if no alternative accommodation is available for the applicant the housing authority may accommodate the family in B&B for a period, or periods, not exceeding six weeks in result of a single homelessness application. Where B&B accommodation is secured for an applicant with family commitments, the Secretary of State considers that the authority should notify the applicant of the effect of the 2003 Order, and, in particular, that the authority will be unable to continue to secure B&B accommodation for such applicants any longer than 6 weeks, after which the authority must secure alternative, suitable accommodation."

32. The Code also identifies (at [17.41]) that B&B accommodation is not suitable for 16- and 17-year-old applicants, even on an emergency basis.

33. Paragraph 17.42 of the Code reads:

> "The Secretary of State considers that the limited circumstances in which B&B accommodation may provide suitable accommodation include those where:
>
> a. emergency accommodation is required at very short notice (for example to discharge an interim duty to accommodate); or
>
> b. there is simply no better alternative accommodation available, and the use of B&B accommodation is necessary as a last resort."

34. Pursuant to article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2003 ("the 2003 Order"), and subject to the exceptions set out in article 4, B&B accommodation is not to be regarded as suitable for an applicant with family commitments, where accommodation is made available for occupation under section 190(2) of the 1996 Act.

35. By article 2 of the 2003 Order, an applicant with family commitments is defined as, *inter alia*, an applicant with whom dependent children reside. The claimant falls within this definition.

36. B&B accommodation is defined as accommodation which is not separate and self-contained premises and in which the toilet, personal washing facilities or cooking facilities are shared by more than one household.

37. The exception in article 4(1), where *"no other accommodation other than B&B accommodation is available"*, is limited to a period of six weeks.

38. Insofar as it is contended by the claimant that the defendant failed to carry out any proper assessment of her, and her family's, needs prior to considering whether the Erith B&B was suitable accommodation. I reject that contention.

39. If the letter of 12 May 2023 is read in isolation, there may be some force in the claimant's contention. The reality is, however, that by the time the defendant secured the claimant temporary accommodation in the Erith B&B, the defendant was very familiar with the claimant's circumstances, which had been presented by the claimant and her lawyers over the preceding two and a half months. I observe, in particular, that the claimant carefully detailed and evidenced relevant features of her, and her family members, circumstances in her letter of 27 February 2023. There is nothing before me which leads me to conclude that the defendant ignored that information when assessing the suitability of the Erith B&B. The section 190(2)(a) duty is one which requires a degree of urgency in its response, a fact that was evident from the claimant's lawyer's letter of 11 May.

40. Given the defendant's extensive previous engagement with the claimant, it also cannot be said, in my conclusion, that the defendant unreasonably failed to make further enquiries of the claimant at the point of seeking to comply with its section 190(2)(a) duty.

41. I now move on to consider what is the core issue on Ground 1: whether the local authority's decision of 12 May that the Erith B&B was suitable accommodation, was irrational.

42. As Dyson J said in R (Sacupima) v Newham LBC [2001] 33 H.L.R. 1, what is 'suitable' for an individual applicant *"ranges from their dream house to something only just adequate to meet their needs"*. Provided the accommodation is within that range, its 'suitability' is a matter for the authority's judgement.

43. An appropriate place to begin a consideration of whether it was open to the defendant to conclude that room G5 at the Erith B&B was suitable accommodation, is article 3 of the 2003 Order. Article 3 of 2003 Order deems that B&B accommodation is not to be regarded as suitable for an applicant with family commitments where accommodation is made available for occupation under, amongst other provisions, section 190(2) of the 1996 Act.

44. Article 3 is subject only to the limited exceptions set out in article 4 of the 2003 Order. Article 3 does not apply, (a) where no accommodation other than B&B accommodation is available for occupation by an applicant with family commitments;

and (b)…. the applicant occupies B&B accommodation for a period, which does not exceed 6 weeks.

45. I have not been provided with any evidence from the defendant in support of a contention that subparagraph (a) of article 4 applies in the instant matter, nor is such a contention found in the defendant's pleadings or skeleton argument. The statement of Darren Chetram of 14 May 2024 is silent on whether there was *"accommodation other than B&B accommodation available"* for the claimant's occupation, this being despite the defendant being on notice that the claimant's case included submissions relating to the 2003 Order (see [71]-[73] and [104(4)] of the Claimant's Grounds).

46. The Code, which authorities must take into account under section 182 of the 1996 Act, effectively replicates articles 3 and 4 of the 2003 Order, at [17.33]. Paragraph 17.36 of the Code further states "*Where B&B accommodation is secured for an applicant with family commitments, the Secretary of State considers that the authority should notify the applicant of the effect of the 2003 Order"*. I have nothing before me to indicate that the defendant did notify the claimant of the effect of the 2003 Order.

47. In his submissions, Mr Grütters fell short of contending that the features of this case i.e. that (i) the Erith B&B is Bed and Breakfast accommodation within the meaning of the 2003 Order, (ii) the claimant is an *"applicant with family commitments"* within the meaning ascribed to that term in the 2003 Order, (iii) that article 3 of the 2003 Order deems B&B accommodation not to be suitable 'section 190' accommodation for an applicant with family commitments and, (iv) that there is no evidence that the exception in article 4 of the 2003 Order applies, are sufficient to render the defendant's decision unlawful pursuant to the 2003 Order, without any further consideration of the nature of the accommodation or the claimant's individual circumstances.

48. I find the absence of such a contention somewhat surprising, given the hard-edged terms of article 3 and article 4 of the 2003 Order, and the clear deeming provision within article 3. As indicated above, my view, absent any substantive argument from the parties in relation to the effect of 2003 Order, is that article 3 of the 2003 Order deems (subject to article 4) B&B accommodation for applicants with family commitments to be unsuitable, and that would be the case even if it was rationally open to a local housing authority to otherwise consider the B&B accommodation suitable. If this were the case, then the claimant would succeed on Ground 1 on this basis alone.

49. Nevertheless, I recognise that this was not how the claimant's case was put, and it is not a submission that I have heard substantive argument on. As a consequence, I have not been provided with any authority on the application, or interpretation, of the 2003 Order. In such circumstances, I do not proceed on the basis that the application of the 2003 Order disposes of Ground 1 absent the need for any further consideration of the relevant factual matrix. I do, however, proceed on the basis that the 2003 Order, and the Code, provide a clear legal context to the claimant's rationality challenge to the suitability of room G5 at the Erith B&B.

50. Moving on, there is no dispute that the Erith B&B is 'Bed & Breakfast accommodation.' The claimant's grounds contend that personal washing facilities are

shared by more than one household at the Erith B&B. The defendant does not contend to the contrary.

51. I have very little information about the Erith B&B before me. Neither party has produced a witness statement providing details of the accommodation, and I have not been provided with photographs of the allocated room. What limited information I do have, is to be found in various pieces of correspondence between the parties, and in the pleadings.

52. The defendant's letter of the 12 May 2023 refers to the accommodation offered as *"room G5"* at the Erith B&B. The claimant's grounds assert that this is *"a single room"*, and contrasts this with the *"two rooms"* offered to the claimant at the same accommodation in February 2023, pursuant to the defendant's relief duty under section 189B.

53. In its Detailed Grounds, the defendant refers to the offer as being for *"two rooms in a hostel in Erith for 14 days"*. In its Skeleton Argument, the defendant avers that *"the accommodation offered was a family room, which comprises two interconnecting rooms*". During the course of the hearing of 20 June, Mr Johnson, in an interruption to Mr Grüttens' submissions, further observed that the room offered on 12 May consisted of *"two interconnected spaces"*. Mr Grütters accepted in reply that this *"may be the case"*.

54. In the absence of further evidence, and having considered the information and submissions before me, I proceed on the basis that room G5 at the Erith B&B is a family room of the type described by the defendant. I have not been provided with any details of the size of room G5, or its condition, and proceed on the basis that its condition is not of concern, and that the room would not be overcrowded if the claimant and her family were to be accommodated in it. No issue is taken with the location of the accommodation, or its affordability.

55. In considering whether it was open to the defendant to conclude that room G5 at the Erith B&B was suitable accommodation for claimant, I have taken account of the transient nature of section 190 accommodation and, in particular, that the offer of accommodation was for only 14 nights.

56. I also proceed on the basis that the claimant's immediate family unit consists of her partner, and two children. The eldest child turned 16 years old on what would have been the 14th day of occupation in the Erith B&B, had the claimant accepted the offer. The claimant's youngest child was 14 years old at the material time.

57. The relevant individual circumstances of the family members, insofar as they were before the defendant, are summarised at [2], [3] and [8] above. Of particular significance, to my mind, are the health issues of the claimant's children. Bexley Child and Adolescent Mental Health Services were involved with both children. The CAMHS specialist nurse wrote in February 2023 regarding the youngest child, following the first offer of accommodation at the Erith B&B, emphasising the Child's need for accommodation that was not shared by those outside the family unit, observing the child's heightened anxiety. A CAMHS report from earlier that month makes similar observations regarding the youngest child, including the provision of information that she is, *"very apprehensive of the wider world – feels dizzy and sick*

when has to go out". A January 2023 CAMHS report relays, in relation to the eldest child, that she had been referred to CAMHS because of concerns around self-harming, and she had disclosed sexual abuse by her father, which had subsequently been substantiated.

58. The aforementioned documents, and the claimant's concerns about the Erith B&B, were provided to the defendant in February 2023. None of this is contested by the defendant, and I am not told how the defendant took account of these issues when considering whether the Erith B&B was suitable.

59. I have considered the disadvantages of B&B accommodation, particularly for children, as identified in the Code at [17.31] and [17.32] (see [31] above), and I have set this in the context of the information the defendant had before it regarding the claimant's children, including their age. I have also taken account of the fact that the accommodation was only intended to be for a short period - as emergency accommodation, until the claimant found alternative accommodation. I further observe that there is no evidence before me that there was *"no other accommodation other than B&B accommodation available for occupation"* by the claimant and her family (article 4 of the 2003 Order), or that this was a *"last resort"* ([17.33] of the Code).

60. I have been hampered in my assessment of the rationality of the defendant's decision by the absence of any reasoning either in the decision letter itself or provided *ex post facto* by way of a statement drawn for the purposes of these proceedings. Again, I observe that [17.9] of The Code states that, *"case records should demonstrate that they have taken the statutory requirements into account in securing accommodation."* The Court has not been provided with a copy of the defendant's case notes.

61. Given the context within which such a decision was made i.e. that set out at [17.31] - [17.45] of the Code, and the specific circumstances of the claimant and her family, I conclude that no reasonable local housing authority could have found that room G5 of the Erith B&B was suitable to accommodate the claimant and her family, even for the limited 14 day duration proposed.

62. In reaching this conclusion, I find the ages and mental health of the children to be highly relevant, with the mental health of the youngest child to be of particular significance. This was referred to, amongst other places, in the section 17 Child and Family Assessment Report authored in April 2023 and the letter from the claimant to the defendant of 27 February 2023. It was also the subject of a letter from the CAMHS specialist nurse, which further relays that the highly likely consequences for the youngest child of moving into shared accommodation is highly likely to result in a *"deterioration in her mental health"*. I further observe that there is no evidence before me from the defendant seeking to justify how, taking account of the aforementioned matters, room G5 at the Erith B&B was found to be suitable accommodation.

63. For these reasons, I find that securing room G5 at the Erith B&B for the claimant and her family on 12 May 2023 for 14 days, did not discharge the defendant's duty to the claimant under section 190(2)(a) of the 1996 Act.

The Defendant was required to provide the claimant with a valid notice discharging its duty under section 190. No such notice has been provided and consequently the duty is ongoing.

64. Given my conclusion above, it is not strictly necessary for me to consider the claimant's alternative routes to success on Ground 1. Nevertheless, in deference to the clear and careful submissions made on this ground by counsel, I will now turn to consider it.

65. The defendant's initial position before the Court, identified though its Summary Grounds of Defence of 14 May 2024, was that it did not, at the material time, owe the claimant a duty under section 190 of the 1996 Act (see [48] thereof). On its face, this appears entirely inconsistent with a letter from the defendant to the claimant of the same date, which indicates that it had secured accommodation for the claimant at the Erith B&B on 12 May 2023 and that, as a consequence, its duty under section 190(2)(a) had ceased (see [18] above).

66. The defendant's case now proceeds on the basis that it did owe the claimant a duty under section 190, following its section 184 decision (dated 3 May but sent to the claimant on 9 May 2023). It is averred that the defendant complied with its duty under section 190(2)(a) by way of the offer made to the claimant on 12 May of accommodation at the Erith B&B. The defendant maintains that it did not thereafter consider its obligations under section 190(2)(a) to be ongoing and, significantly, that there was no requirement on it, imposed by the 1996 Act or otherwise, to notify the claimant of the decision that its duties under section 190(2)(a) had ceased.

67. The claimant takes a contrary position and observes that the only notice provided thus far by the defendant indicating that it considered that its section 190(2)(a) duty to have ceased, is that of 14 May 2024. The claimant asserts that this notice is invalid because it does not provide details of the claimant's right of review, as required by section 202 of the 1996 Act.

68. One would have thought, given that it has been nearly 30 years since the passing of the 1996 Act, that the question of whether there is an obligation on a local housing authority to serve a notice that it considered its obligations under section 190(2)(a) to have ceased, would have been judicially resolved. However, neither party was able to draw my attention to any direct judicial authority on the point. Mr Grütters did, however, seek to persuade me that support for the claimant's position could be drawn from the decision of the Court of Appeal in Warsame v Hounslow LBC [2000] 1 WLR 696 (Chadwick LJ and Ratten J), a decision which I will return to below.

69. The prudent place to begin a consideration of whether a local housing authority's duty under section 190(2)(a) of the 1996 Act can only be brought to an end by service of a notice to this effect, is the terms of section 190 itself.

70. A feature of section 190 is that it does not explicitly provide for service of such a notice. Indeed, the word notice is not present in the section at all. In striking contrast, Part VII of the 1996 Act, within which section 190 sits, is replete with references to the requirement for service of notices: see, for example, sections 184(3), 188(1ZB), 189B(5), 193B, 195(5) and 199A(3) of the 1996 Act. Many of these provisions also prescribe both the form that a notice must take, and the information that it must contain.

71. Mr Grütters seeks to sidestep the absence of an explicit notice provision in section 190, by contending that such a requirement is contained within section 184. I find this contention to be without merit.

72. Section 184 imposes an obligation on a local housing authority to make inquiries necessary to satisfy itself whether an individual is eligible for assistance and, if so, whether any duty, and if so what duty, is owed under Part VII. By section 184(3), having undertaken the aforementioned enquiries, the local housing authority is required to notify the individual of its decision as to whether, and if so what, duty is owed, and to provide reasons for any issues decided against the individual's interests in relation to that decision.

73. It is not the claimant's case that the defendant failed to notify her that it considered that it owed her a duty to *"secure accommodation for occupation such a period as it considers will give [her] a reasonable opportunity of securing accommodation for his occupation",* nor is it the claimant's case that, when concluding that it owed her a section 190 duty, the defendant failed to provide reasons in relation to any issues decided against her interests when making that decision. The claimant's case seeks to challenge the actions taken by the defendant in consequence of its decision that it owed her a section 190 duty. Section 184 does not trammel on this aspect of the local housing authority's decision making.

74. Mr Grütters pursued an invalidity argument as an adjunct to his submission that notice of the cessation of the section 190(2)(a) duty was required by section 184. Given my finding in relation to application of section 184, this submission falls away.

75. In a further attempt to sidestep the absence of an explicit notice provision in section 190, Mr Grütters contends that the operation of section 202 of the 1996 Act imports a requirement on a local housing authority to provide notice that it considered its duty under section 190(2)(a) discharged.

76. Mr Grütters places the decision of the Court of Appeal in Warsame v London Borough of Hounslow [2000] 1 WLR 696 at the centre of this submission. In short, Mr Grütters contends that, following the decision in Warsame, the claimant was entitled to pursue a review of a decision by the defendant that its duty under section 190 of the 1996 Act had ceased. In order for such a remedy to be effective, the claimant required notice of the cessation of the duty. There was no such notice.

77. Section 202(1) of the 1996 Act confers on an applicant the right to request a review by the local housing authority of certain decisions taken by the authority in connection with its functions under earlier provisions in Part VII of the Act:

> "(1) An applicant has a right to request a review of -
>
> …
>
> (b) any decision of a local housing authority as to what duty (if any) is owed to him under sections 189B to 193C and 195 (duties to persons found to be homeless or threatened with homelessness),
>
> …

> (f) any decision of a local housing authority of the suitability of accommodation offered to him in discharge of their duty under any of the provisions mentioned in paragraph (b) or (e)….

78. In Warsame, the Court of Appeal was addressing an appeal against a decision of the County Court, which had concluded that it had no jurisdiction to consider an appeal brought before it pursuant to section 204 of the 1996 Act. The applicants in Warsame had applied to the local housing authority for accommodation under both Part VI and Part VII of the 1996 Act. Having undertaken inquiries required by section 184 of the 1996 Act, the housing authority accepted that the applicants were unintentionally homeless, eligible for housing assistance and in priority need. In pursuance of its duty under section 193(2) of the 1996 Act, the housing authority offered the applicants temporary accommodation. The applicants accepted this offer.

79. The applicants were subsequently offered permanent accommodation under Part VII of the 1996 Act. They refused this offer. Thereafter, the housing authority concluded that the accommodation was suitable for the applicants and that it was reasonable for them to accept it. The housing authority notified the applicants of this decision on 5 February 1998. In that letter, the housing authority evinced an intention to treat the refusal of accommodation under Part VI as a ground for bringing the duty imposed by section 193(2) to an end - under the provisions of section 193(7). The applicants requested a review of the decision. The housing authority accepted the request and carried out a review. The housing authority confirmed its decision that its duty under section 193 had ceased. The applicants brought an appeal to the County Court, and the court concluded that the applicants had not been entitled to seek a review under section 202 of the 1996 Act, and, consequently, that the court had no jurisdiction to entertain an appeal against the review decision.

80. In allowing the appeal, the Court first posed itself the following questions (704G):

> ” The first question, as it seems to me, is whether a decision by the local housing authority that it no longer owes a duty—because some event has occurred which has caused an existing duty to cease—is a decision as to what duty, if any, is owed. If so, then the second question is whether a decision as to whether those events have occurred, is also within the phrase ‘any decision as to what duty … is owed.” (emphasis added)

81. The Court proceeded to answer the first question at 704H-705A:

> ” The answer to the first question is, to my mind, plain enough on the language that is used. It is plain that section 202(1)(b) is directed, at least, to the question whether a duty arises. The phrase “any decision as to what duty (if any) is owed” reflects the words in section 184(1)(6). That section requires the local authority to make enquiries to satisfy themselves “whether any duty, and if so what duty, is owed” under the provisions of the Act .
>
> But, although the paragraph plainly applies in that case, the language is apt, also, to apply to a decision that a duty, once owed, is owed no longer. …
>
> A decision that a duty once owed is no longer owed is, to my mind, plainly a decision as to what duty, if any, is owed at the time when the decision is taken. I can see nothing in the language which restricts decisions within paragraph (b) to

> decisions whether a duty arises and excludes decisions whether a duty which has arisen has ceased."

82. It can readily be seen that the scenario considered by the Court in Warsame is a long way from that which presents in the instant case. The pathway to a duty ceasing under section 190(2)(a) bears no similarity to the pathway to a duty ceasing under section 193, or indeed many other provisions in Part VII.

83. Section 193 contains explicit provisions prescribing the circumstances which lead to a local housing authority ceasing to be subject to the main (s.193) housing duty. In Warsame, the applicant refused the offer of accommodation, and the housing authority subsequently made a decision, and sent a decision letter to the applicant indicating, that it would treat the refusal of the offer of accommodation as a ground for bringing the duty imposed by section 193(2) to an end.

84. The *ratio* of Warsame is that there is a section 202(1) right to request a statutory review of *"decisions"* by a housing authority where the housing authority *decides* whether it owes or does not owe a duty under Part VII. In Warsame the Court proceeded on the basis that the housing authority makes a *decision* that the main duty has ceased, and it concluded that this *decision* would be susceptible to a section 202 review. The pathway to cessation of the Part VII duty considered in Warsame, and one of the pathways under section 193, was – offer of accommodation, refusal of offer, *decision* by the housing authority that the duty *no longer owes a duty.* There is nothing in Warsame which bites on a scenario such as that which presents in the instant case and the Court did not offer an opinion on whether the discharge of a housing authority's obligations under section 190 of the 1996 Act requires a *decision* to made to that effect.

85. Nothing within section 190 itself supports the contention that before a duty under section 190(2)(a) is discharged, the local authority must make a decision to that effect. On the contrary, section 190(2)(a) provides that a housing authority discharges its duty by securing (suitable) accommodation etc. In my view, if the requirements of section 190(2)(a) have been met, then the duty is automatically discharged. There is no need, unlike under section 193, for there to be a separate decision by the housing authority that the conditions of discharge have been satisfied.

86. In summary, I do not accept that the decision in Warsame is binding authority for the contention that a housing authority must provide notice that it considers its duty under section 190(2)(a) of the 1996 Act to have ceased, and I find no other support for the proposition that such a notice is required.

87. At the risk of embarking on an even more hypothetical scenario, even if I were to agree with Mr Grüttens' contention as the relevance of the decision in Warsame, there is nothing in Warsame, or in section 190 (unlike other provisions), which specifies the form or the ingredients of a notice that an accommodation duty has ceased. Elsewhere other than in section 190, this is left to the underlying Part VII provision to specify. In my conclusion, it is perfectly clear from the letter of 12 May 2023 that defendant considered it had complied with its section 190(2)(a) duty. If such notice were required that, in my view, was sufficient notice.

88. In conclusion, I find that a local housing authority complies with its duty under section 190(2)(a) when it *"secures that accommodation is available for occupation for such period as it considers will give him a reasonable opportunity of securing accommodation for his occupation"*. Section 190 does not mandate any further action or decision by a housing authority, including by way of service of a notice that it considers that its duty is discharged.

The Defendant failed to have regard to the claimant's circumstances when determining what period of time would provide her with a reasonable opportunity to secure accommodation for occupation.

89. As with the second of the claimant's 'routes to success' on Ground 1, it is not necessary for me to determine this limb of the claimant's case, given my findings above. Nevertheless, I will express my conclusions and provide brief reasons.

90. It is not in dispute that a 'reasonable opportunity' is reasonable for the applicant, not for the authority having regard to their resources: R (Conville) v Richmond LBC [2006] HLR 45 (CA).

91. There are no formalities associated with the requirement to assess under section 190(4) and I do not accept, for ostensibly for same reasons articulated at [38] – [40] above, that the defendant failed to take account of material circumstances when reaching the conclusion that fourteen days would provide the claimant with a reasonable opportunity to secure accommodation for occupation.

92. As far as this ground was tangentially pursued as a rationality challenge to the conclusion that fourteen days provided a reasonable opportunity for the claimant to secure occupation of accommodation, the claimant's case is founded on nothing more than assertion. There is no evidence before me from the claimant relating to this issue; for example, evidence of unsuccessful attempts made to obtain accommodation for the family, or evidence from the claimant's lawyers or a third party (such as a letting agent) bearing on the issue. In my conclusion, an evidential vacuum on this issue cannot sustain a rationality challenge and I, therefore, reject any challenge brought by the claimant on this basis.

Other matters relevant to Ground 1

93. Moving on, having concluded that the defendant failed to secure suitable accommodation for the claimant in breach of its duty under section 190 of the 1996 Act, I next turn to the matters which the defendant submits are relevant to the how this court views the consequences of that conclusion.

Is the challenge brought in Ground 1, academic?

94. Mr Johnson contends that the question of compliance with section 190 is now academic because the defendant has indicated, in its letters of 19 July 2023 and 14 May 2024, that it has discharged its duty under section 190.

95. I reject Mr Johnson's contention. A declaration or communication by a local housing authority that it has complied with its duty under section 190, does not discharge that

duty. At best, it is a statement by the authority that it believes that the duty is discharged.

96. On the facts of the instant case, the section 190(2)(a) duty is discharged by fulfilment by the local authority of the requirements therein. I have found above that those requirements have not been fulfilled. There may be other cases where the duty under section 190 lapses because, for example, an applicant's circumstances change such that they are owed a different duty under the Part VII, or the applicant finds alternative accommodation such that the duty falls away. Such circumstances may be capable of rendering a challenge to a section 190(2)(a) decision academic, but the defendant does not contend for either of these scenarios in the instant case.

Was there an alternative remedy available to the claimant?

97. The defendant's position is that it was open to the claimant to request a statutory review of the suitability of the accommodation detailed in the letter of 12 May i.e., room G5 at the Erith B&B, pursuant to section 202(1)(f) of the 1996 Act. An appeal on a point of law could then be brought before the County Court if the claimant was unsuccessful on review. This, it is said, constitutes an alternative remedy. Judicial review being a remedy of last resort, the defendant contends that the Court should not entertain the current claim in light of this alternative remedy.

98. I agree that by virtue of a combination of section 202(1)(b) and section 202(1)(f) of the 1996 Act, a decision of a local housing authority of the suitability of accommodation offered to an applicant in discharge of its duty under section 190 of the 1996 Act, can be the subject of a request for a review and, subsequently, an appeal on a point of law to the County Court (pursuant to section 204). I also agree with the defendant that this provided the claimant with an alternative remedy on the issue of suitability in the instant matter.

99. As the Administrative Court Guide 2023 says *"Judicial review is a remedy of last resort. If there is another route by which the decision can be challenged, which provides an adequate remedy for the claimant, that alternative remedy should generally be used before applying for judicial review."*

100. Nevertheless, the High Court has a discretion to entertain an application for judicial review, even when there is an available alternative remedy. One feature of relevance in the instant case when considering whether I should entertain this application for judicial review, despite there being an alternative remedy, is the stage the matter has reached. An issue of alternative remedy would usually be dealt with at the permission stage or, if it were to remain an issue after that stage, then it would be flagged in the permission decision itself. I observe that the alternative remedy point was referred to by Michael Ford KC when refusing permission on the papers, but it does not feature in the decision of David Pittaway KC, granting permission at the oral renewal hearing.

101. A second relevant feature of the instant case are the terms of the letter of 12 May 2023, which states, citing paragraph 17.63 of the 2018 version of The Code, *"there is not a right of review regarding the suitability of accommodation being provided under this legislation"*. I observe that this position is also maintained in the version of The Code applicable at the time of the defendant's letter of 12 May.

102. It would, and I put it no higher than this, be uncomfortable to decide the claim on the basis that the claimant had an alternative remedy, when the decision under challenge asserts that no such remedy was available.

103. Another feature of the instant case is that the claimant seeks to pursue challenges to other aspects of the 12 May 2023 letter, and there was no right to request a statutory review in relation to those matters.

104. In light of the specific features of the instant claim, I reach the conclusion that it would not be appropriate to dismiss the claim relating to the suitability of room G5 at the Erith B&B, on the basis of the existence of an alternative remedy.

Should the judicial review be dismissed as a consequence of it being issued 'out of time'?

105. Claims for judicial review must be started promptly and, in any event, not later than 3 months after the grounds for making the claim first arose (CPR 54.5(1)). The claim challenging the suitability of room G5 at the Erith B&B first arose on 12 May 2023. The claim for judicial review was filed on 14 September 2023. The defendant submits that the claim is out of time and should be dismissed as a consequence.

106. Once again, the issue of delay is not a matter that is explicitly referenced in the order granting of permission, nor was the issue of delay referred to in the decision refusing permission on the papers. It appears that the first time that the issue of delay in relation to the challenge to the decision of 12 May 2023 was raised in these proceedings, was at [30] of the defendant's Detailed Grounds of Defence, dated 14 May 2024. The defendant did previously raise issue of delay in bringing a challenge to the decision of February 2023, but this challenge fell away once it was understood that the defendant accepted that it owed a section 190 duty.

107. Since the decision of David Pittaway KC granting permission was silent on the issue, it is open to me to consider the timeliness of the claim: R v Lichfield District Council [2001] EWCA Civ 304. In considering this issue, I have applied CPR 3.9, Mitchell v News Group Newspapers Ltd [2013] EWCA Civ 1537, [2014] 1 WLR 795 and Denton v White [2014] EWCA Civ 906, [2014] 1 WLR 3926.

108. I concur with the defendant that the claim was not lodged promptly and was, in any event, lodged outwith the 3-month backstop provided for in the CPR. I find the delay to be significant in the circumstances of the case. Nevertheless, having considered those circumstances, I am satisfied that there is good reason to extend time under the CPR so as to enable the claimant to challenge the issue of suitability of the accommodation offered on 12 May i.e., room G5 at the Erith B&B. When reaching that conclusion, I am also satisfied that granting the claimant an extension would not put the defendant at any disadvantage in terms of advancing its case or relevant evidence in these proceedings.

109. The correct application of the 1996 Act to the claimant's circumstances has been far from clear since the letter of 12 May. As the defendant put it in its Detailed Grounds of Defence, *"prior to the oral permission hearing, all parties had been proceeding on the basis that the second application had lapsed and was of no effect."* It was the acceptance (or agreement) that the claimant's second application as a homeless person was of effect, which led the focus of challenge (it appears at the oral permission

hearing) to move decisively to section 190 of the 1996 Act. This may provide the explanation for why, in response to a question on the Claim Form requiring input of the date of decision being challenged, the claimant stated as follows: "*This is not a challenge of a decision but the challenge of the failure to provide suitable accommodation and/or process an application. As such there is no decision date."*

110. I also observe that the Summary Grounds of Defence raise the alternative remedy point, but do not take issue with the timeliness of the claim. In relation to the substance of Ground 1, for the most part the Summary Grounds of Defence address the duties owed, or more accurately the absence of duties owed, to the claimant under section 193 (the main housing duty). The defendant took the position in the Summary Grounds that it had never owed the claimant a section 190 duty, and that any submission of the claimant to the contrary was founded on a misreading of the Act.

111. In my conclusion, when the opaqueness of the application of the 1996 Act to the claimant's circumstances is taken alongside the stage of the proceedings that we have now reached, the fact that the timeliness point was not taken against the claimant at the permission stage, and particularly at the oral permission stage once the Ground as now advanced had crystallised, and, although only to a limited extent, the fact that the claimant was pursuing other routes with the defendant in order to obtain accommodation in the months after the 12 May letter, i.e. through a section 17 assessment, and via a review and appeal of the section 184 decision of 3 May, it is appropriate to extend time for the lodging of the claim which now forms Ground 1.

Ground 2 – the defendant failed to conduct a lawful needs assessment of the Claimant's children, pursuant to section 17 of the Children Act 1989 ("the 1989 Act"), and to consider whether to provide accommodation to meet the needs of those children.

Legal Framework

112. Section 17(1) Children Act 1989 states as follows:

> "(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)-
>
> (a) to safeguard and promote the welfare of children within their area who are in need; and
>
> (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs."

113. By section 17(3), any service provided under section 17 may be provided for the family of a particular child in need or for any member of his family. Section 17(6) states specifically that the authority may provide accommodation.

114. By section 17(10), a child is defined to be in need if *"(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision … of services … [or] (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services, or (c) he is disabled."*

115. Section 17(11) defines 'disability', 'development' and 'health' in wide terms.

116. In R (G) v Barnet LBC [2004] 2 AC 208, the House of Lords opined that:

a) A child who is without accommodation is a child in need.

b) Local authorities are under a duty to assess the needs of any child within their area who appears to be in need. The adequacy of assessment may be challengeable on the usual public law grounds.

c) The duty to safeguard and promote welfare under section 17 does not impose any enforceable duty to meet the unmet needs of any particular child, even where those needs have been identified on assessment. Rather it confers a power to provide assistance in any particular case, the refusal to exercise which may be challengeable on the usual judicial review grounds: [91] and [94] (Lord Hope), [106], and [110] (Lord Millet), [135] to [136] (Lord Scott).

117. What services should be provided under section 17 will thus be a matter for the local authority; the Court's function is limited to reviewing the legality of what the local authority may decide and require it to reconsider if what it has determined to do, or not do, was unlawful - it is not for the Court to determine or substitute its judgement for that of the local authority as to what may be the appropriate service to be provided under section 17 (see per John Howell QC, sitting as a Deputy High Court Judge, in R (PO) v Newham [2014] EWHC 2561 (Admin) at paragraph 15). More specifically, appropriate respect must be given to the judgements reached under section 17 by social workers, often making difficult decisions in financially straightened circumstances, whilst not losing sight of the Court's duty to scrutinise those decisions with care (see the observations made by Helen Mountfield QC, sitting as a Deputy High Court Judge, in R (O) v LB Lambeth [2016] EWHC 937 (Admin) at [17]).

118. The Court in R (Stewart) v London Borough of Wandsworth [2001] EWHC 709 (Admin), established that:

i) A duty to assess under the *"general duty"* is triggered by the physical presence of a child in need in a local authority's area. No more is needed.

ii) It follows that more than one local authority may be the subject of the duty to assess (in Stewart the child was living in one London Borough and going to school in a second).

iii) Where more than one authority is under such a duty there is no reason for more than one authority to assess and *"there is a manifest case for co-operation under s27 of the Children Act and a sharing of the burden by the authorities"*. [28]

iv) The duty is to assess the needs of the child which includes situations in which the child is unlikely to maintain a reasonable standard of health or development without the provision of services by "a" local authority; "*The provision is not restricted to services that would be provided by the authority making the assessment*". [29].

119. Guidance has been issued under section 7 of the Local Authority Social Services Act 1970 – *"Working Together to Safeguard Children"*. Authorities are bound to follow

this guidance unless there is good reason for departing from it (R v Islington LBC ex p Rixon (1997) 1 CCLR 119).

120. The question of whether a child is *in need* is an evaluative judgement made after an assessment by the allocated social worker. Guidance for Social Workers on what a good assessment should contain is set out in the "*Framework for the Assessment of Children in Need and their Families."* A social worker preparing such an assessment cannot be expected to engage in a detailed analysis of the material obtained, which will often be from multiple sources. Such assessments should not be subject to an over-zealous textual analysis which might be more appropriate to a document drafted by a lawyer in the context of a legal dispute.

Ground 2 - Discussion

121. On 8 August, the defendant notified the claimant of the outcome of a section 17, children, and family's assessment, undertaken by Bexley's Children's Services Department in relation to the claimant's two children ("the Assessment"). The Assessment is dated the 7 August 2023 and runs to 17 pages.

122. The purpose of the assessment, as identified on its second page, was "*to ascertain whether there are any additional needs to reconsider following a Proposed Matter of Judicial Review Proceedings"* (my emphasis). It is said to be *"an update on the* [Assessment] *completed in April 2023"*. The Assessment took place between 26 July and 7 August 2023.

123. The Assessment identified, *inter alia*, that the children had previously been subject to a Child in Need plan, but that interventions were stepped back in October 2021. It concluded:

> "There are no safeguarding concerns. The only concern is the family's housing issues. We therefore recommend for the family to move to a temporary accommodation: *3-bedroom accommodation in Manchester for 28 days in order the family obtain private rented accommodation.
>
> *The Local authority is willing to pay the deposit and one month's rent when they have sourced their accommodation.
>
> Though there is concern for [the daughters] re their health issues, services to deal with this can be accessed from varying Health Services across the country."

124. The 'manager's review' at the end of the section 17 assessment, *inter alia*, concluded:

> "I am aware that a temporary accommodation has been identified in Manchester which I hope [the Claimant] will consider whilst searching for her private rented property. As it stands, there remains no role for Social Care, and I therefore agree to no further action to be taken".

125. In the Grounds for Judicial Review, the Claimant contends that the defendant's assessment is unlawful for the following reasons:

> (1) It fails to identify whether the two children are "*in need*".
>
> (2) It fails to identify that the two children are disabled and therefore "*in need*".

(3) It fails to identify that the youngest child was not receiving any formal education, beyond that provided by the Claimant herself, due to the absence of a placement for her, and that, in any event, her needs meant that without the provision for her of services by the Defendant this meant she was unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of development, and that she was therefore "*in need*".

(4) It failed to identify that the two children were statutorily homeless and therefore "*in need*".

(5) It failed to identify any details about the purportedly available accommodation in Manchester, such that it could rationally conclude this would be suitable accommodation for the Claimant such that it would address the homelessness of the two children.

(6) It failed to provide any reasoning on how the purportedly available accommodation in Manchester could rationally be suitable accommodation such that it would address the homelessness of the two children.

(7) It failed to provide any reasoning on how the purportedly available accommodation in Manchester could rationally be suitable accommodation such that it would address the other needs of the two children such as their educational needs; and,

(8) It failed to provide any reasoning on how the purportedly available accommodation in Manchester could rationally enable the Claimant to secure private rented sector accommodation for her occupation within 28 days or at all.

126. Contentions 1, 2 and 4 can be taken together, each focusing on whether the assessment unlawfully failed to identify whether one or both of the children were *"in need",* on the basis of the particular reason specified therein. I reject each of these three contentions, but not for the reasons identified through Mr Johnson's pleadings and submissions.

127. The defendant's position in relation to these contentions is set out in identical terms in the Summary Grounds of Defence (at [55]), the Detailed Grounds of Defence (at [38]), and the defendant's skeleton argument drawn by Mr Johnson for the substantive hearing (at [32]). The position of the defendant was also reiterated by Mr Johnson at the hearing:

> "It is wrong to say that the assessment does not identify whether the children are "children in need" …After a detailed examination of the children's circumstances, the assessment asks the question "To increase the safety or well-being of the child, does this child need a plan?" and answers "no". That is a determination that the children are not in need as they do not need a child in need plan."

128. The Assessment is founded on enquires made by the assessing social worker of the claimant's children, the claimant, her partner, and the children's grandparents, as well as a relevant General Practitioner and Deputy Headteacher. The assessing social worker also had access to the historic social care documentation relating to the children.

129. If the conclusion in the Assessment is that the claimant's children were not 'children in need', then I would have no hesitation in finding this to be irrational. Both of the claimant's children were clearly, at the relevant time, 'children in need' within the meaning ascribed to that term by the 1989 Act. The Assessment is replete with references to *"wellbeing concerns"* for the children, and clearly identifies the children's mental health issues and how those issues manifest. The Assessment also identifies, on multiple occasions, that the younger child has *"disabilities"* (e.g., at page 178 of the bundle) and it makes reference their being mental and physical health/disability concerns, a learning disability, and concerns that *"the child may be suffering or likely to suffer significant harm due to abuse or neglect by an adult."*

130. Scrutiny of the Assessment should focus on the substance and the reasons given, not on the particular words used or labels ascribed or not ascribed. On my reading of the Assessment, it cannot be said that it fails to identify the children as being 'children in need.' Indeed, it seems to me to be axiomatic that there was such an acceptance by the assessing social worker, given that the outcome of the Assessment was a recommendation that the family move to temporary 3-bedroom accommodation in Manchester for 28 days. This offer was made to meet the concern regarding the *"family's housing issues"*. It is common ground that accommodation can be provided under section 17 of the 1989 Act. It has not been suggested that the provision of this accommodation in Manchester was made pursuant to any duty under Part VII of the 2006 Act, or indeed any other power or duty other than the general duty to children in need under section 17 of the 1989 Act.

131. I turn next to consider the issue of education, which is the focus of contentions 3 and 7.

132. In submissions, Mr Johnson asserted that the purpose of the Assessment was to "*look at social care needs and not education"*. It was said that detailed educational provision is considered in an Education, Health, and Care Plan ("EHCP"). Whilst I accept that the EHCP is the primary document that deals with a child's educational needs, that does not render those needs, and how they are to be met, an irrelevant consideration in a section 17 Assessment. Quite the contrary is the case, educational needs are part of the overall circumstances that the Assessment should consider. It is also prudent to observe that this stage that the EHCP from February 2023 drawn in relation to the youngest child identifies that the EHCP outcomes were not being met at that time.

133. In my conclusion, and contrary to the claimant's contention 3, the Assessment does clearly identify the relevant circumstances of the youngest child's education and the concerns arising therefrom, and the author of the report specifically refers, on multiple occasions, to the fact that the youngest child "… *is home schooled. A tutor comes in once a week for an hour. Mother reports that [the youngest child] relates to the tutor well…"*. Under the headings *"What is working well?"* and "*Existing Strengths"* the report also notes that the youngest child *"is due to have 1 hr per day but due to her grandparent's kitchen (where the tutoring takes place) this is not happening"*. There is further reference to the report's author engaging with the Deputy Headteacher at the school that the youngest child previously attended.

134. In addition to the above, the report further indicates that the youngest child had been referred by her school for an education plan *"from 20 June 2023"* and that the

claimant was awaiting that report.

135. Given the matters set out above, in particular that an education plan was awaited at that time, and further observing the absence of any evidence that the educational position of the youngest child was causing her detriment, I conclude that it was open to the author of the report to find that there were no concerns as to whether the education needs of the youngest child were being met.

136. By contention 7, the claimant seeks to shift attention to the defendant's consideration (or lack thereof) of the youngest child's education needs when reaching the conclusion that the appropriate response, to meets the needs of the children, was to offer the family accommodation in Manchester for 28 days.

137. The Assessment is silent as to how the youngest child's education needs would be met in Manchester. In contrast, the forward-looking section of report dealing with a potential move of the family to Manchester specifically refers to the youngest child's health issues and provides information as to how these would be met.

138. Of course, there is no obvious reason the youngest child could not be home schooled, as was the case in Bexley, and this may be sufficient, but the youngest child also has a tutor in Bexley to support home schooling. The report does not explore the significance of the youngest child having a tutor. In particular, there is no exploration as to whether assistance from a tutor would be required to meet the education needs of the youngest child in Manchester and, if so, whether a tutor would be provided. In addition, there is nothing in the Assessment which engages with the relevance of the fact that the claimant was awaiting a report/education plan regarding the youngest child, relating to the meeting of her education needs in the Bexley area.

139. The education needs of the youngest child were undoubtedly a matter that required consideration when assessing whether to offer the family short term accommodation in Manchester as the solution to meeting the identified needs of the children. Whilst the Assessment should not be subject to an over-zealous textual analysis, and appropriate respect must be given to the judgements of the social worker undertaking the assessment, the decisions arising therefrom relate to vulnerable children and must be scrutinised with care. Having done so, I conclude that the analysis of whether to offer accommodation in Manchester for 28 days as a response to 'concerns' regarding the children, is flawed for failure to take lawful account of the youngest child's education needs.

140. Moving on to contentions 5, 6 and 8, I also consider these together as each relates to the offer by the defendant of provision of three-bedroom accommodation for the family in Manchester for 28 days, in order to provide the family with the opportunity to obtain more permanent accommodation of their own. The Assessment carefully identifies the area of concern for the children regarding the accommodation with their grandparents and, moving to a three-bedroom property undoubtedly addresses the concerns that were identified. The size of the property also addresses the concerns raised by the claimant on behalf of the children in relation to the Erith B&B. There is also nothing in the documentation before me which leads me to conclude that the offer of accommodation for a 28-day period was irrational.

Conclusion

141. For the reasons given above, this application for Judicial Review is allowed on both the substantive Grounds.

Relief

142. There was some discussion at the hearing going to the issue of relief but given the multifarious nature of the grounds, I took the view that discussion regarding relief should most appropriately await a decision on the substance of the claim. The parties subsequently provided written submissions on the issue of relief in response to the Draft Judgment.

143. In relation to the defendant's duties under section 190 of the 1996 Act, the claimant seeks a mandatory order requiring that suitable accommodation be secured for her and her household, forthwith. The defendant seeks an order that they *"shall, within 14 days of this order, notify the claimant of their decision as to how they propose to perform the duty which continues to be owed to the claimant under s.190"*.

144. Whilst the Order sought by the claimant has the benefit of clarity, it does not allow for the observations made at [96] above regarding section 190. The Order sought by the defendant acknowledges that a section 190 duty continues to be owed, but it does not compel compliance with section 190(2)(a) within a specified time frame, indeed, it does not require compliance with section 190(2)(a) at all, as it only requires notification of how the defendant proposes to comply.

145. In my conclusion, the most appropriate order to make regarding the defendant's obligations under section 190(2)(a) is a mandatory order, requiring the defendant to comply with its duty under section 190(2)(a) of the 1996 Act within 14 days.

146. As to the consequences of my conclusions on Ground 2, both parties agree that the defendant's assessment of the claimant's children's needs, dated 7 August 2023, should be quashed and, also, that the defendant be ordered to undertake a fresh assessment of those needs. The only disagreement between the parties is the timeframe within which such an assessment must be undertaken, the claimant suggesting three weeks and the defendant six weeks.

147. I adopt the defendant's suggestion. The circumstances of the children's accommodation will inevitably play an important role in any proper assessment under section 17 of the 1989 Act and, as a consequence of the order I propose to make in relation to the defendant's section 190 obligations, these are currently far from settled. There is a much greater chance of these being settled within the next six weeks rather than the next three weeks, and provision of an assessment within a six-week period is not, in the circumstances of this case, unreasonable.

Judge O'Connor
Sitting as a judge of the High Court