Case No: B40CL369

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand
London
WC2A 2LL

BEFORE:

HIS HONOUR JUDGE LUBA QC

BETWEEN:

Shaja Butt	**Appellant**
- and -	
London Borough of Hackney	**Respondent**

Miss Patricia Tueje of counsel on behalf of the **Appellant**

Mr Adrian Davies of counsel on behalf of the **Respondent**

Judgment date: 22nd February 2016

Judgment

The Transcription Agency, 24-28 High Street, Hythe, Kent, CT21 5AT
Tel: 01303 230038

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His Honour Judge Luba QC:

Introduction

1. This is an appeal in a homelessness case. The Appellant is Mr Shaja Butt and the Respondent Local Authority, to whom he applied for homelessness assistance, is the London Borough of Hackney. The appeal is brought under the provisions of the Housing Act 1996 section 204 which enables an Appellant to appeal to this Court but only on a point of law from a decision of the Local Housing Authority.

2. This is yet another appeal in which this Court is asked to grapple with the impact upon reviewing officers' decisions of section 149 of the Equality Act 2010, as explained in the Supreme Court's decision in Hotak -v- Southwark London Borough Council [2015] UKSC 30.

Factual Background

3. The Appellant, Mr Butt, is a single man now in his late 40s. He applied to the London Borough of Hackney for homelessness assistance in the summer of 2014 having been without any settled accommodation since the loss of his previous abode in November 2012. The Local Authority, whom I shall hereafter call 'Hackney', was it seems satisfied that he was a homeless person but was not satisfied that he was a person with a priority need.

4. There are many different forms of priority need recognised by Part 7 of the Housing Act 1996 and the regulations made under it. The relevant form of priority need in play in Mr Butt's case was that contained in section 189(1)(c) of the 1996 Act i.e. that Mr Butt had a priority need because he was 'vulnerable' for one of the reasons contained in that subsection.

5. The Local Authority's cause to enquire into that aspect of his homelessness assistance request was triggered by documentation that he had earlier submitted in support of a request for rehousing.

6. In February 2015, Mr Butt had completed one of the council's own pro forma sheets in which he was asked a series of questions about his circumstances. In answer to an invitation to describe his current health problem, he wrote:

> **"Depression, anxiety, achalasia (a condition of the narrowing of the oesophagus), swollen ankles (with restricted mobility and constant pain.)"**

7. In answer to the question as to how his homelessness affected his health, Mr Butt wrote:

> **"Having nowhere to call home is getting me down and making me feel suicidal which in effect makes me anxious as to where I will be staying that day or night."**

8. The completion of the form continued by his giving a list of the various forms of medication he had been prescribed by his and answering a series of further questions which included an indication that he had not spent time in hospital in the previous three years and that he did not need help from anyone because of his health problem.

9. He went on to answer a series of questions as to his mobility, in relation to which he indicated that he could walk no more than 30 yards on level ground and no steps to a greater extent than 10. In answer to the question whether he walked with any aid he answered 'none'.

10. Finally, in a wrap up question asking for any other relevant information, he wrote:

> **"Achalasia, my gullet muscles and opex muscles don't work. What feels like heartburn is food rotting in my gullet and it lasts for days, very painful and uncomfortable. I'm about three stones underweight because of this condition."**

11. As I have indicated, that information prompted consideration by the Local Authority as to whether Mr Butt was a man within the terms of section 189(1)(c). He might be within its provisions because he was vulnerable by reason of a physical disability or by reason of mental illness, i.e. his depression. He might indeed be within its terms if he was vulnerable for some 'other special reason'.

12. The Local Authority initially reached an adverse decision on his application, albeit that, very properly, they had meanwhile provided him with temporary accommodation. On receipt of the initial adverse decision, Mr Butt applied for a review. That produced what is known in the homelessness field as a "Minded To" letter in which the council set out the approach and conclusions that they were likely to take on the review.

13. Mr Butt was by this time assisted by solicitors and they put in representations on his behalf seeking a positive outcome rather than an affirmed negative decision. It is right to record that in the period between July 2014 and the ultimate decision on review in October 2015 there had been passed into Hackney's hands a significant amount of medical related reports and materials and the advice not only of the general practitioner assisting Mr Butt but also the medical advice of the Hackney's own retained medical advisors.

14. Indeed, with commendable specificity, the council drew up a series of questions about Mr Butt which they posed to his general practitioner. For example, the general practitioner was asked:

> **"It has been reported that Mr Butt had a procedure approximately six weeks ago whereby a balloon was dilated in his oesophagus and lower intestine and this resulted in Mr Butt vomiting more blood and his condition worsening. Are you aware of this? If yes, why is he vomiting blood or has he vomited blood? What further treatment has been administered and what is the status of his condition presently?"**

15. There are several other similarly specific and detailed questions posed to the general practitioner in that form which Hackney sent to the GP in September 2015. Sadly, the GP's response is not as helpful as might perhaps have been expected. For example, in relation to the question I have lastly reproduced, the GP wrote back:

"I attach the latest hospital report."

16. That document simply revealed that, as Mr Butt had himself reported to Hackney, he had been in hospital on the 8th May 2015 when a procedure had been carried out which can be accurately summarised as expanding the oesophagus by inflating a balloon. Upon that occasion, the treating specialists had found that Mr Butt was suffering from oesophageal thrush. That is a fungal infection of the oesophagus. So, in addition to treating his narrowing of the oesophagus by the inflation procedure identified, the medical notes from the hospital indicate that he was given a course of:

"Long term anti-fungal therapy to cover two weeks."

17. Unsurprisingly, the hospital's letter indicated that there would be follow up visits to the outpatient department to monitor his condition. The letter from the hospital did not deal at all with the questions about vomiting blood and about the present condition, as in September 2015, because as I have indicated, the letter dealt with an admission in May 2015.

18. The general practitioner might be forgiven for not having provided more information from the hospital because it appears that, from the responses the GP gave, Mr Butt missed his appointment in a dietetic gastroendology clinic on the 8th September 2015. That, no doubt, would have represented the latest position as understood by his specialists but nothing up to date was forthcoming from the GP.

19. At the same time, Hackney was pursuing enquiries of its own medical advisor and on the 22nd October 2015 it received advice from Dr Geovana Hornibrook. In her report she deals in turn with each of the facets of the particular mental illness and physical conditions that Mr Butt experienced.

20. She remained of the view that Mr Butt's conditions, whether individually or in total, did not render him vulnerable. Of course, the decision that fell to be made is not one for the medics. It is a decision for a reviewing officer to take. In this case the decision was taken by Mr Michael Banjo, who is the Review and Appeals Team Manager for Hackney. His decision letter of the 22nd October 2015 opens with a series of paragraphs setting the scene and illuminating the various different categories of priority need that are covered by the legislation and the regulations made under it.

21. With specific reference to the present application, paragraph 16 of the reviewing officer's letter sets out a very long list, in bullet form, of all the relevant material that the officer had before him and took into account in reaching his decision. In paragraphs 17 through to 26, the reviewing officer, under the heading "test of

vulnerability", sets out the approach or self direction that he adopted as to the correct measure for determining whether Mr Butt was 'vulnerable'.

22. In paragraph 27, he sets out the factual background and in paragraphs 28 to 29 he provides an overview of all the various medical problems and circumstances Mr Butt. He then deals with those in turn under a series of four headings: depression/anxiety, muscular skeletal problems, achalasia and aniscoria. He also deals, separately, with the further categories Allgroves Syndrome, alcohol misuse and other medical issues.

23. Having dealt with each in turn, he reached, at paragraph 54, this conclusion:

> **"I am not satisfied that you have any medical problems which make you vulnerable."**

24. He then turned to consider whether vulnerability might be established by:

> **"Other special reasons"**

He took the view, in paragraphs 55 and 56, that there were no such other special reasons.

25. He dealt with the question of 'support' for the Mr Butt from others in paragraphs 57 through to 60 and then with the his ability to attend treatments and appointments in paragraphs 61 and 62. He drew the various strands together under the heading 'composite assessment' in paragraph 63 onwards.

26. He reached the conclusion that he was not satisfied that Mr Butt was a vulnerable person. After 14 pages of typescript, the decision letter concludes, very properly, by indicating to Mr Butt his right of appeal to this Court.

<u>This Appeal</u>

27. Mr Butt, as I have indicated, has brought such an appeal. Since having done so, his counsel has sought to amend the grounds of appeal. At the outset of the appeal hearing I heard an application for permission to amend the grounds. Strictly, such permission had already been given by an order for directions promulgated in this Court. But Miss Tueje, appearing for Mr Butt, required an extension of time in order to admit the proposed amendment.

28. Neither the extension of time nor the application for permission to amend was opposed by Mr Davies, appearing for Hackney, and I considered it proper, in the exercise of my discretionary powers relating to case management, to grant the application for permission to amend.

29. The amended grounds of appeal are described as containing four discrete ground. Their headings are: firstly, Ground 1, error of law; Ground 2, decisions contrary to the facts; Ground 3, failure to take relevant facts into account; and Ground 4, inadequate reasons. As will be seen in just a moment, several of the grounds have various sub-grounds within them.

30. To my mind, these grounds of appeal raise two grounds of some general importance relating to the treatment of reviewing officers' decisions in relation to this class of case. That is to say 'vulnerability' decisions. Mr Davies very sensibly extracted these two significant points and dealt with them in the latter part of his submissions in reply. I consider it proper to deal with them straight away as they are, in my judgement, at the heart of the appeal.

Ground 1

31. The first of them emerges from ground 1, and it is expressed in this way:

> **"The Respondent is in breach of its public sector equality duties set out at section 149 of the Equality Act 2010 in that the review decision fails to address the following aspects of that duty:**
>
> **(i) whether the Appellant is 'disabled' as defined by section 6 of the Equality Act 2010;**
>
> **(ii) if so the extent of his disability; and**
>
> **(iii) apart from finding he is allegedly able to manage his affairs and/or the basic activities of daily living, there is no assessment of the likely effect of his disability when homeless, for instance, whether the effects of his disability may be exacerbated."**

32. In sum, Miss Tueje submits that the reviewing officer has erred in law because he has not engaged with the obligations cast on the Local Authority, in the context of the function of a reviewing officer, of engaging with section 149 of the Equality Act 2010.

33. How does this point of law arise? It would appear to do so in this way. The Equality Act 2010, replacing earlier anti-discrimination legislation of a variety of types, not only protects certain persons from unlawful discrimination but it also extends to them the advantages of certain duties owed by public authorities and others.

34. Those protected from discrimination and those who are the beneficiaries of the duties enacted are described as persons who have 'protected characteristics'. A list of those persons with such protected characteristics is given in section 4 of the Act. One of the protected characteristics is "disability" and section 6 of the Act offers a statutory definition of 'disability'. It provides that a person has a disability if they have a physical or mental impairment and that impairment has a substantial and long term adverse effect on their ability to carry out normal day to day activities.

35. As I have indicated, the Act protects persons with a disability from adverse discrimination and confers on them certain advantages. But persons of that protected characteristic, and indeed of the other protected characteristics, are also

the beneficiaries of what is described in section 149 of the Act as the ‘public sector equality duty’:

(1)A public authority 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.

(2)A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3)Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a)remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
(b)take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
(c)encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4)The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5)Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a)tackle prejudice, and
(b)promote understanding.

(6)Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7)The relevant protected characteristics are—

age;

disability;
gender reassignment;
pregnancy and maternity;
race;
religion or belief;
sex;
sexual orientation.

(8)A reference to conduct that is prohibited by or under this Act includes a reference to—

(a)a breach of an equality clause or rule;
(b)a breach of a non-discrimination rule.

(9)Schedule 18 (exceptions) has effect.

36. The purpose of section 149 is pithily summarised in a quote from Lord Wilson which appears in paragraph 74 of the Hotak case. Lord Wilson is there referred to in Lord Neuberger's judgment as explaining that the parliamentary intention behind section 149 was that there should be:

> **"a culture of greater awareness of the existence and legal consequences of disability."**

37. That much is, with great respect, evident from the structure of section 149(1). In 149(1)(a) the duty of a public authority is to have regard to the need to eliminate discrimination and other unlawful conduct prohibited by the Act. But subparagraphs (b) and (c) of subsection (1) take the matter a good deal further. They refer to the need to have regard to the advancement of equality of opportunity and to the fostering of good relations, each of which is more fully particularised in the remaining subparagraphs of section 149.

38. It is settled law that section 149 has application to the duties and functions of local housing authorities as much as to the duties and functions of other public authorities. Indeed, it is now well settled that section 149 bites on the functions of a local housing authority when they arise under the provisions of Part 7 of the Housing Act 1996.

39. But what is the effect of section 149 being potentially applicable in this class of case? Guidance as to the answer to that question is helpfully provided by Lord Neuberger in the judgment in the Hotak case. In paragraph 76 he described section 149, again borrowing the words of Lord Wilson in an earlier case:

> "As complementing the duties of local authorities under Part 7"

40. To my mind 'complementing' in this context means adding something or standing together with. The most direct guidance on these matters for the assistance of both reviewing officers, and the courts who deal with appeals from their decisions, is given in paragraphs 78 and 79 of the judgment:

> "78. In cases such as the present, where the issue is whether an applicant is or would be vulnerable under section 189(1)(c) if homeless, an authority's equality duty can fairly be described as complementary to its duty under the 1996 Act. More specifically, each stage of the decision-making exercise as to whether an applicant with an actual or possible disability or other "relevant protected characteristic" falls within section 189(1)(c), must be made with the equality duty well in mind, and "must be exercised in substance, with rigour, and with an open mind". There is a risk that such words can lead to no more than formulaic and high-minded mantras in judgments and in other documents such as section 202 reviews. It is therefore appropriate to emphasise that the equality duty, in the context of an exercise such as a section 202 review, does require the reviewing officer to focus very sharply on (i) whether the applicant is under a disability (or has another relevant protected characteristic), (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other features, on the applicant if and when homeless, and (iv) whether the applicant is as a result "vulnerable".
>
> 79. Mr Underwood QC argued that the equality duty added nothing to the duty of an authority or a reviewing officer when determining whether an applicant is vulnerable. I quite accept that, in many cases, a conscientious reviewing officer who was investigating and reporting on a potentially vulnerable applicant, and who was unaware of the fact that the equality duty was engaged, could, despite his ignorance, very often comply with that duty. However, there will undoubtedly be cases where a review, which was otherwise lawful, will be held unlawful because it does not comply with the equality duty. In Holmes-Moorhouse [2009] 1 WLR 413, at paras 47-52, I said that a "benevolent" and "not too technical" approach to section 202 review letters was appropriate, that one should not "search for inconsistencies", and that immaterial errors should not have an invalidating effect. I strongly maintain those views, but they now have to be read in the light of the contents of para 78 above in a case where the equality duty is engaged.

41. That being the guidance, when one turns, for the purposes of this present ground of appeal, back to the reviewing officer's decision to see the extent to which, in the light of the guidance offered by Lord Neuberger, the reviewing officer has engaged with the responsibilities cast by section 149.

42. In his list of matters taken into account, in paragraph 16 of his decision letter, Mr Banjo has referred to:

> **"section 149 of the Equality Act 2010 and the Supreme Court judgment in Hotak."**

Indeed, he has gone somewhat further. In paragraph 21 of his decision letter, having recounted that he is not satisfied that Mr Butt is vulnerable for the purposes of the statute, he continues:

> **"I can confirm that I have reached this decision with the equality duty well in mind and carried out this exercise in substance, with rigour, and with an open mind. I have focussed very sharply on 1) whether you are under a disability bracket or have another protected characteristic 2) the extent of such disability 3) the likely effect of the disability when taken together with any other features on you if and when homeless and 4) whether you are as a result vulnerable."**

43. Those passages, submits Mr Davies for Hackney, more than discharge the requirements imposed by Hotak. They demonstrate that he has had regard to both section 149 and to the rubric of the guidance offered in paragraph 78 of Lord Neuberger's judgment. That, submits Mr Davies, is all that is required.

44. Miss Tueje submits that this is only the starting point. What the reviewing officer was required to do, she submits, and the error of law he made relevantly by omission of it, is to undertake the exercise of having 'due regard' for the purposes of section 149.

45. Does the reviewing officer's decision in its full extent over its 14 pages, make any reference to having regard to the public sector equality duty in the sense of the detail of its application as opposed to simply the recital of its prospective application?

46. This is a matter in which the sin complained of is one of omission. Miss Tueje asks, rhetorically; Where has the reviewing officer made or reached or directed himself to a decision upon whether Mr Butt has a protected characteristic? With specific reference to this case, where has he reached any conclusion as to whether Mr Butt is a disabled person? Where has he mentioned any application of the definition of disability in section 6 and Schedule 1 of the 2010 Act?

47. Miss Tueje answers her rhetorical questions by pointing me to the reviewing officer's letter and indicating that the answers are not provided by it. In those circumstances, she couples this ground of appeal with her "reasons" challenge under Ground 4 and most specifically its second alternative which is framed in the following language:

> **"No, or no adequate, reasons are given as to whether the public sector equality duty applies and, if so, how that duty has been fulfilled in this case. In particular, no adequate reasons are given in respect of any assessment the Respondent may have carried out dealing with the matters set out in [Ground 1](b).**

48. For the Hackney, Mr Davies submits that there is no requirement for a reviewing officer to do more than was done here in spelling out that regard had been had to the public sector equality duty. It was not, submits Mr Davies, an express

requirement upon the decision taker to determine, and give reasons for determining whether the applicant was a disabled person. It was sufficient, submits Mr Davies, that the substance or body of the reviewing officer's decision engaged with each of the various conditions that Mr Butt was himself asserting and addressed their impact on his ability to cope compared to an ordinary person if made homeless.

49. Unsurprisingly, Mr Davies relies in particular on the mid part of paragraph 79 of Lord Neuberger's judgment in the Hotak case. As he very properly reminds me, Lord Neuberger was there accepting that:

> "in many cases"

a reviewing officer looking into vulnerability, who was unaware of the engagement of an equality duty, could:

> "despite his ignorance, very often comply with that duty."

50. If, submits Mr Davies, it is possible that in many cases a reviewing officer can make a lawful decision without even knowing that the duty is engaged, how can it be said that there is any obligation on him to reach a decision as to whether there is a protected characteristic and to spell out his reasons.

51. In my judgement, the terms of paragraph 78 read together with 79, and read with the reviewing officer's duty to give reasons contained in section 203 of the Housing Act 1996, require a reviewing officer to be transparent in his treatment of the issues of whether an applicant has a protected characteristic and whether, and with what effect, the public sector equality duty is in play.

52. I take that construction of paragraphs 78 and 79 together from, firstly, the reference in paragraph 78 to the requirement for the equality duty to be kept:

> "well in mind"

and to be exercised:

> "in substance, with rigour and with an open mind"

53. Moreover, the reference in paragraph 78 to requiring:

> "the reviewing officer to focus very sharply on …"

the matters specified at the end of that paragraph.

54. At the other side of the passage that Mr Davies relies upon, paragraph 79 ends with reference by Lord Neuberger to:

> "a case where the equality duty is engaged."

To my mind that demonstrates that, in respect of this function of a local housing authority, there is a requirement on the reviewing officer to determine whether the equality duty is engaged in the case he is dealing with or not.

55. That, in my judgement, in almost all cases, will require reviewing officers to spell out, at least in summary form in their decisions, what conclusions they have reached on the four matters set out at the end of paragraph 78 of the judgment in Hotak. What is not sufficient, as Lord Neuberger made clear in paragraph 78, is for reviewing officers' decisions to simply contain:

> "no more than formulaic and high-minded mantras."

56. Miss Tueje reminds me that this criticism of decision making in respect of homelessness, namely that there is simply a recital or recounting of relevant questions, has been previously identified for criticism. She drew my attention, in particular, to the decision of Mr Justice Forbes in Paul-Coker, R (on the application of) -v- London Borough of Southwark [2006] EWHC 497 (Admin).

57. In that case the Court was concerned with a different exercise under the provisions of the Housing Act 1996. That is to say, the exercise of a discretion arising from a different statutory provision. But the learned Judge in paragraphs 47 and 49 of his judgment made it clear that it is not sufficient for lip service to be paid to factors which must be taken into account. The exercise required by the Act must have been:

> "fully or properly carried out by the decision maker."

58. In the instant case, the only evidence of any engagement by Mr Banjo with the requirements and obligations of the Equality Act 2010 is his recounting of the number of the statutory provision which includes the public sector equality duty and his reproduction, almost verbatim, in paragraph 21 of the material in paragraph 78 of Lord Neuberger's judgment.

59. The reviewing officer has taken himself to the well but there is no indication that he has drunk from it. In my judgment that is sufficient to demonstrate error of law and to get Miss Tueje home on paragraph (b) of her ground 1. It is moreover in my judgement an instance of failure to give reasons for a decision. In the post Hotak environment, it seems to me that the statutory obligation to give reasons contained in section 203 of the 1996 Act is an obligation to give reasons explaining what has happened after the application of the rubric contained in Lord Neuberger's four roman numerals.

60. As I have indicated, I consider that to be one of the two grounds of appeal that gives rise to a substantive issue in the present case which is of some general importance. I indicated to both counsel before they addressed me in some detail on this aspect that this is not the first case in which I have formed the conclusion that I have just set out in my judgment. Mr Davies, if I may say so, very eloquently sought to persuade me that my previous judgments on the point had been erroneous. Having carefully heard and considered both his written and oral submissions, I have remained of the view expressed above.

61. As I say, there is a second point of substance in this case and it emerges from the next asserted error of law mentioned in ground 1 of the grounds of appeal. That is expressed as follows:

> **"Hotak confirms the assessment of vulnerability is relative. The Respondent accepts the Appellant may be more vulnerable than the ordinarily vulnerable but denies he is significantly more vulnerable. However, contrary to HB -v- Haringey noted in December 2015 Legal Action page 46, the reviewing officer's decision fails to quantify significantly and fails to explain why any difference in the Appellant's vulnerability to the ordinary comparator is insubstantial."**

62. The material passage of the reviewing officer's decision related to that ground of appeal is contained in paragraph 59. That reads as follows (and I remind myself that it follows a consideration of each of the specific medical conditions and the question of support from others):

> **"I must conclude that Mr Butt is not in priority need under section 189 of the Housing Act 1996. As I have stated earlier I have considered his circumstances both singularly and as a whole and do not consider that he is significantly more vulnerable for the reasons given above. It may very well be the case that he is more vulnerable than ordinarily vulnerable, however I am not satisfied that these mean that he is *significantly* more vulnerable than ordinarily vulnerable."**

I have used an inflection of voice to give emphasis to the word significantly in the last sentence of that paragraph but I believe in doing so I am not doing an injustice to the reviewing officer as his paragraph must be understood, I think, as giving emphasis to that word just as much as if he had underlined it.

63. What error of law, if any, is shown by that paragraph? Miss Tueje's submission is straightforward. She submits that the reviewing officer in that paragraph is not explaining to the reader what he means by 'significantly'. Does he mean "to a greater extent than simply insignificant or peripheral", or does he mean "something really serious"?

64. In order to see the context in which this issue arises, it is important to go back to the Hotak case and the important judgment of Lord Neuberger. In his judgment in that case Lord Neuberger introduced this concept of 'significantly'. What he says at paragraph 53 is as follows:

> "Accordingly, I consider that the approach consistently adopted by the Court of Appeal that "vulnerable" in section 189(1)(c) connotes "significantly more vulnerable than ordinarily vulnerable" as a result of being rendered homeless, is correct."

The judgment of Lord Neuberger does not offer any assistance directly as to what is meant by 'significantly', as the word is used in that context. Does it mean on the one hand "something more than trifling" or does it mean "to a much greater extent or to a greater extent"?

65. Mr Davies submits that the meaning of significantly is clear. It is an ordinary English word and it falls to be given its ordinary meaning. The difficulty with that submission is that it seems to me that the word significantly is a word with at least two potential meanings or shades of meaning. It could mean, as I have indicated, 'something more than trifling' or 'more than insignificant', or it could mean 'something of real importance' or 'of real and significant extent'.

66. The ground of appeal that I have read from refers, as indicated, to another case in which in this Court the issue has arisen on appeal. The very short note available to me of His Honour Judge Lamb's judgment in that other case indicates that the Judge took the approach that 'significantly' introduces a band or range or spectrum of possible meanings. Whether it has several meanings or a band of meanings or a range of meanings, it seems to me that it is important for reviewing officers to know which approach they are taking and to spell out in their decisions what that approach is.

67. As became clear in exchanges, this is not the first time that a relatively simple or straightforward word concerned with matters of social welfare has caused difficulties. For present purposes it is sufficient to mention section 6 of the Equality Act 2010. That statutory provisions, as I have already intimated, uses the term 'substantial' in section 6(1)(b). What does 'substantial' mean? It could mean something very significant or it could mean something simply more than insubstantial.

68. In the context of the Equality Act 2010, the appellate courts have determined that it has its latter meaning, that is to say 'anything more than insubstantial'. Bringing that across to the present context, it might well be thought that in a protective statute concerned with the situation of the homeless, Lord Neuberger may have been taken to be meaning "something more than insignificantly different between the condition of the applicant and an ordinary person". That seems to me the more natural reading or understanding of the term.

69. But for present purposes, the ground of appeal before me is that the reviewing officer has failed to "quantify" significantly, or explain why the difference between Mr Butt's condition and that of an ordinary person is not at least more than insubstantial. Indeed, paragraph 59 is pregnant with the suggestion that there is something more than insubstantial in the difference between Mr Butt and other persons.

70. I have read very carefully, a number of times, the whole of the reviewing officer's decision to see if one can gleam from it any indication of the sense in which the reviewing officer has approached the question of significance or of, in this case, 'significantly'.

71. This is not a task on which, in my judgement, I should have to embark. But it is right to record that certain of the language used by the reviewing officer does suggest that he is applying an approach which requires a substantial or extensive difference between the Applicant and that of others. I have in mind his reference in paragraph 62 to the term:

> **"This will be impossible for him."**

72. In paragraph 64 there is reference to his situation appearing to be "challenging" and to "challenges he would face" that in my judgement indicates that the position of Mr Butt is more challenged than that of the ordinary person. Likewise the reference in paragraph 65 to the concept of "utter poverty". This all seems to me to indicate that the reviewing officer might well be taking one approach to significantly rather than the other. But in sum, one simply does not know.

73. Here again, in my judgement, the obligation to give reasons in section 203, taken with the obligation to direct himself in accordance with the judgment of Lord Neuberger in Hotak, required the reviewing officer to identify the sense in which he is using the term 'significantly'. I accept entirely Mr Davies' point that that is not a task Lord Neuberger undertook for himself. That has left the courts and reviewing officers having to do the best they can in this class of case. Doing the best I can, I am satisfied that here there is an error of law established and that insufficient reasons have in this respect been given.

Other Grounds

74. Those being to my mind the substantial points in the appeal, I can deal relatively briefly with the others. First, Ground 1 has an initial variant. Paragraph (a) states:

> **"Contrary to Hotak paragraphs 10.13 and 10.14 of the Code of Guidance (2006) the review officer treats the ability to manage one's own affairs and/or carry out the basic activites of daily living as the test, or the primary test, of vulnerability."**

75. To make good this ground of appeal Miss Tueje took me to the reviewing officer's treatment of each of the individual conditions which Mr Butt experiences and showed me that he had used a rubric by which he measured the impact on Mr Butt and the consequent effect on his ability to manage for himself.

76. To my mind, far from demonstrating any error of law, this indicated a correct application of the approach of determining whether there was any differential in how the applicant would experience homelessness and how an ordinary person would do so. I cannot detect any misdirection here.

77. Miss Tueje relies on paragraphs 10.13 and 10.14 of the Code of Guidance but I accept entirely Mr Davies' submission that down that pathway one will find error. Those paragraphs were settled well before the decision of the Supreme Court in Hotak and must now be read subject to them. To my mind Miss Tueje can take no comfort from those passages. Indeed, I note that the reviewing officer has

recounted in paragraph 16 of his decision that he had regard to the whole of chapter 10. In my judgement that was the right approach for him to take.

78. **Ground 2** asserts that the decision reached by the reviewing officer was contrary to the facts of the case before him. In the course of submissions, Miss Tueje explained that she was not suggesting that this Court had to determine any question of precedent fact. In those circumstances her challenge had to be on the footing that there was a material error of fact sufficient to mount to an error of law. Error of fact is in the modern landscape recognised as an aspect of error of law.

79. Her difficulty was not, in my judgement, with the principle, but with its application. The ground as formulated appears to alight upon two matters. Firstly, a deterioration in the pre-existing illness of Mr Butt. The difficulty with that submission is that the deterioration in condition is addressed in terms and accurately by the reviewing officer in paragraph 35 of his decision, the very paragraph mentioned in Miss Tueje's ground of appeal.

80. Moreover, the second error of fact based on the hospital admissions history transpires not to have been error of fact at all. In my judgement there is nothing in this ground of appeal whatsoever. Certainly nothing sufficient to amount to an error of fact which constitutes an error of law. Nor is it suggested by Miss Tueje that there was here any irrationality and for those reasons, very sensibly in my view, this ground of appeal was only faintly pressed by her in oral submissions.

81. **Ground 3** asserts a failure to take certain relevant matters into account and, of course, such a failure can amount to an error of law. I will deal with each of the aspects of alleged failure using the subparagraph references contained in the ground of appeal itself.

82. First, at paragraph (a) it is said that the reviewing officer failed to take into account evidence of recent deterioration in mental health. That point can be quickly dealt with. As I have already indicated, paragraph 35 of the reviewing officer's decision deals expressly with the point.

83. Miss Tueje abandoned the contention set out in her paragraph (b). The complaint in paragraph (c) was that the reviewing officer had failed to take into account that, if Mr Butt was homeless, he would be at greater risk of being exposed to an infection such as the thrush or candidiasis of the oesophagus with which he has recently suffered. The difficulty with that proposition is, as Mr Davies made clear in his pithy reply, that there is no evidence that being homeless would give rise to an increased risk of such infection.

84. Paragraph (d) complains of a failure to take account of paragraphs 10.13 and 10.14 of the Code. To my mind it was right for the officer to give only limited treatment of those paragraphs in his decision as they had both been overtaken by clarification of the law.

85. The complaint in ground (e) is that in deciding whether he was vulnerable, the reviewing officer failed to take into account an expression of opinions by the

general practitioner for Mr Butt. It is right to record precisely what that expression of opinion was. The GP was asked by Hackney in the series of questions to which I have already referred, the question:

> **"Is he at risk to himself and/or others? If so, please provide details."**

and the answer given was:

> **"He is at risk of neglecting his physical needs due to his depression."**

86. What is submitted by Miss Tueje is that the officer in reaching his decision has failed to have regard to that particular opinion expressed by the general practitioner. To my mind there has been no such failure in this case at all. The reviewing officer recites the materials he has taken into account which include this enquiry and the reply to it.

87. It is one of a whole series of expressions of medical opinion on numerous points. As Mr Davies submits, a reviewing officer does not have to mention in the course of his decision each and every piece of material to which he has had regard. I do not consider that an error of law is made out here.

88. The last subparagraph of this ground of appeal, paragraph (f), complains that the reviewing officer failed to take into account that Mr Butt had been 'street homeless' between November 2012 and July 2014. That is relevant, submits Miss Tueje, because it shows that he couldn't manage for himself to obtain accommodation. To my mind there is nothing in this limb of the grounds of appeal either.

89. Firstly, as is very plain from the reviewing officer's decision, see for example paragraph 27, he was fully appraised of the factual history and the places where the applicant had or had not lived. Moreover, as a result of developments in the jurisprudence, the test of vulnerability is no longer concerned with a person's ability to obtain accommodation for themselves. It is concerned with the risk of harm they may suffer if they have no accommodation.

90. For all those reasons, I do not consider that there is anything in Ground 3 of the grounds of appeal. Ground 4, as I have previously indicated, is concerned with the adequacy of reasons. I have already allowed the appeal in this respect in the dimension related to the reasons touching on public sector equality duties and 'significantly'.

91. The remainder of the ground is expressed in this way:

> **"Apart from referring to the Appellant's ability to manage the basic activities of daily living and/or his affairs, the Respondent has failed to give any or any adequate reasons why the Appellant is not vulnerable despite the cumulative effect of his multiple health problems and support needs."**

92. In my judgment this is a hopeless ground of appeal that ought never to have been advanced. To my mind, the reviewing officer has comprehensively and conscientiously tried to address in turn each of the specific conditions that the Applicant was himself advancing in order to consider whether that point or that aspect rendered him at disadvantage compared to an ordinary person who might be facing homelessness.

93. I do not place particular emphasis on the overall length of the reviewing officer's decision but it is right to say that its length was justified in this case by its full treatment of the various individual conditions relied upon by Mr Butt and the need to look at things compositely under section 189(1)(c).

94. Had it not been for the deficiency relating to 'significantly' and the public sector equality duty, this reasons challenged would have failed altogether. In sum, however, this appeal must be allowed because the Appellant has succeeded in respect of Ground 1(b) and Ground 4(b) in addition to Ground 1(c).