Case No: G40CL262

IN THE COUNTY COURT AT CENTRAL LONDON

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

Date: 08/02/2021

Before :

HHJ RICHARD ROBERTS

- -

Between :

DANIEL PERROTT	**Claimant / Appellant**
- and –	
HACKNEY LONDON BOROUGH COUNCIL	**Defendant / Respondent**

- -
- -

Mr Grütters (instructed by **Shelter Legal Services**) for the **Appellant**
Ms McKeown (instructed by **Hackney London Borough Council**) for the **Respondent**

Hearing date: 29 January 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ RICHARD ROBERTS

HIS HONOUR JUDGE RICHARD ROBERTS :

Introduction

1. This is an appeal, pursuant to s.204 of the Housing Act 1996 ('the Act'), of the review decision by the Respondent of 26 August 2020[1]. That review decision upheld a s.184 decision of 26 March 2020[2] to end the Respondent's 'relief duty' under s.189B of the Act.

2. There are four electronic paginated and indexed bundles before the Court:

   i) Trial bundle of 372 pages. References to this bundle are prefixed TB and the numbering is that in the electronic bundle. I was informed by the Parties that the documents in the paper trial bundles (which were not provided to me) had handwritten numbers, which were different.

   ii) Supplemental trial bundle of 177 pages. References to this bundle are prefixed SB and are also to the electronic bundle.

   iii) Authorities bundle.

   iv) Supplementary authorities bundle.

3. Mr Grütters of Counsel appears on behalf of the Appellant. I am grateful for his skeleton argument, perfected on 27 January 2021[3]. Ms McKeown of Counsel appears on behalf of the Respondent. I am grateful for her skeleton argument, perfected on 26 January 2021[4].

4. On 8 February 2021 I handed down judgment in a related appeal by the Appellant pursuant to s.204 of the Act of the review decision by the Respondent of 29 July 2020[5] that the Appellant was not 'vulnerable' for the purposes of s.189(1)(c) of the Act and therefore not in priority need for accommodation ('the vulnerability appeal'). I upheld the Appellant's appeal.

Factual background

5. The Appellant was granted an assured shorthold tenancy, dated 13 August 2015 and signed on 12 August 2015[6], for 1 Beaumont Court, Lower Clapton Road, London, E5 8BG ('the Hackney Flat'). The Hackney Flat was a one-bedroomed self-contained flat.

6. On 11 November 2017, the landlord of the Hackney Flat served a possession notice on the Appellant, pursuant to s.21 of the Housing Act 1988[7].

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[1] SB79-84
[2] SB 68-70
[3] SB 23-44
[4] SB 45-63
[5] TB 165-186
[6] TB 190-192
[7] TB 195-196

7. On 23 November 2017, the Appellant signed the Respondent's completed health questionnaire for rehousing[8]. At section 17, the Appellant stated that he had "reoccurring chest problems", was "finding it difficult to breath" and was suffering from "headaches and nausea". The Appellant also said he had "a lot of stomach problems which the doctor diagnosed as gastric ulcers".

8. On 21 December 2017, the Appellant signed the Respondent's completed housing advice and homelessness affordability and accommodation suitability questionnaire[9]. He referred to his gastric ulcer as an "illness or disability" and said that he was receiving medical care at his GP's practice, Athena Medical Centre.

9. The Respondent obtained a report from Dr Hornibrook of NowMedical, dated 12 January 2018[10]. Dr Hornibrook concluded that the Appellant's gastric ulcer, chest problems and headaches and nausea were not of particular significance compared to an ordinary person.

10. On 19 January 2018, the Respondent produced a medical vulnerability assessment[11], which reproduced the contents of the Dr Hornibrook's report and concluded that the Appellant was not vulnerable.

11. On 5 February 2018, Dr Tareq El Menabawey, an Endoscopist at Homerton University Hospital, compiled a report following an esophagogastroduodenoscopy, which diagnosed the Appellant as suffering from gastritis (i.e. inflammation of the lining of the stomach) and duodenitis (i.e. inflammation of the beginning of the small intestine). On 2 March 2018, Dr El Menabawey wrote to the Appellant's GP's surgery, recommending the Appellant be prescribed helicobacter therapy to alleviate his symptoms[12].

12. On 17 October 2018, the landlord of the Hackney Flat served another possession notice on the Appellant, pursuant to s.21 of the Housing Act 1988.

13. On 13 November 2018, the Appellant signed another copy of the Respondent's completed housing advice and homelessness affordability and accommodation suitability questionnaire[13]. The Appellant said he was suffering from gastritis, duodenitis, and abdominal pain as an "illness or disability" and that he was taking up to three tablets of cyclizine (50mg) due to vomiting and nausea.

14. On 29 November 2018, the Appellant was admitted to Homerton University Hospital[14] for a gastroscopy (i.e. an examination of the oesophagus, stomach and duodenum) and ultrasound of his abdomen.

15. On 19 December 2018, Dr Nora Thoua, Consultant Gastroenterologist at Homerton University Hospital, wrote to the Appellant about the results of the procedures

[8] TB 198-205
[9] TB 207-216
[10] TB 218-219
[11] TB 220-221
[12] TB 222
[13] TB 235
[14] TB 246-247

performed on 29 November 2019[15]. Dr Thoua said the gastroscopy showed "normal upper GI tracts"; the oesophageal biopsy showed evidence of "mild reflux oesophagitis"; and the ultrasound of his abdomen was normal. It was recommended that the proton-pump inhibitors therapy was continued and that the dose be doubled.

16. On 20 December 2018, the Appellant signed another copy of the Respondent's completed health questionnaire for rehousing[16]. At section 17 the Appellant said he suffered from gastritis, duodenitis, and abdominal pain.

17. On 8 January 2019, the landlord of the Hackney Flat served another possession notice on the Appellant, pursuant to s.21 of the Housing Act 1988[17]. On 25 March 2019, the landlord filed a claim form[18] with the County Court at Clerkenwell & Shoreditch to seek possession of the Hackney Flat. On 3 June 2019, District Judge Swan granted the landlord a possession order[19] for the Hackney Flat, which required the Appellant to give possession on or before 24 June 2019.

18. Ms McKeown says at paragraph 6 of her perfected skeleton argument that on 12 February 2019, the Respondent wrote to the Appellant stating that the Respondent had a duty under s.195 of the Act, there had been an assessment of his circumstances, and that a Personalised Housing Plan was enclosed with the letter. A copy of this letter and the Personalised Housing Plan are not included in the bundles. The 'Housing Jigsaw File' contains three pages headed PHP Supplementary Information[20] but not all of this can be read as the drop down boxes cannot be seen in their entirety and the last page is blank. The Respondent's 'Housing Jigsaw File' contains a record made on 12 February 2019[21] saying that the Respondent was to refer the Appellant to the Private Sector Initiative. A note made on 12 March 2019[22] says that the Appellant was to seek to identify suitable private rental sector accommodation. He was to keep a record of actions, of about 10 properties per week that he had seen on the internet, magazines or in shop windows etc. giving details of the properties, of inquiries made and the outcome of those enquiries. A note in the 'Housing Jigsaw File' says he was asked to complete a medical questionnaire and suitability form[23].

19. On 5 June 2019, Dr Hornibrook of NowMedical provided a further medical report[24] to the Respondent, in which she concluded,

> "In summary, for the reasons given, I don't think the specific medical issues in this case are of particular significance compared to an ordinary person."

20. On 11 June 2019, the Appellant reported at Athena Medical Centre with irritable bowel syndrome, which followed reports of insomnia and stress on 3 May 2019. He

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[15] TB 253
[16] TB 254-259
[17] TB 260-261
[18] TB 262-267
[19] TB 270
[20] SB 168-170
[21] SB 175
[22] SB 175
[23] SB 168
[24] TB 268-269

was subsequently referred to the Department of Gastroenterology at University College London Hospitals (UCLH).

21. On 13 September 2019, Dr Sarmed Sami, Consultant Gastroenterologist at UCLH, wrote to Athena Medical Centre, following a consultation with the Appellant[25]. The letter detailed that the reasons for the referral were dysphagia (difficulty swallowing), dyspepsia (indigestion) and weight loss for over a year. The letter detailed the following:

> "[Mr Perrott] describes a variety of upper GI symptoms starting from a description of oropharyngeal dysphagia where he tells me that food can get stuck in the throat when he eats and therefore he has to push it down with water which happens every day. He also describes regurgitation of food and that it is difficult to ascertain whether it is actually regurgitation or vomiting. He tells me that he could wake up in the morning and finds bits of food or bile on the pillow. He also describes a feeling of dyspepsia, epigastric pain and burning after eating. (…) He also describes retrosternal and lower sternal dysphagia with a feeling of food getting stuck. (…) There was also mild chest discomfort and he reports weight loss of about a stone or two over the last year, however his weight appears to be stable in the last few months."

Dr Sami said he wanted to repeat endoscopy and ultrasound tests, "in view of his worsening symptoms and weight loss".

22. On 20 September 2019, the County Court at Clerkenwell & Shoreditch issued a Notice of Eviction[26] for the Hackney Flat, with eviction scheduled for 4 December 2019.

23. On 2 October 2019, the Appellant approached the Respondent in the light of his impending homelessness. At about this time, the Appellant had a meeting with the Respondent, at which he signed another copy of the Respondent's completed housing advice and homelessness affordability and accommodation suitability questionnaire[27]. The Appellant wrote of his "gastro problems currently being diagnosed"[28]; that he was "seriously ill"[29]; and that he felt "very weak most days and rely on family to help"[30].

24. On 3 October 2019, the Appellant underwent another esophagogastroduodenoscopy at UCLH, where the attending clinician, Farooq Rahman, diagnosed gastritis[31].

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[25] TB 275-276
[26] TB 277
[27] TB 280-292
[28] TB 283
[29] TB 286
[30] TB 286
[31] TB 209-301

Following the diagnosis by Mr Rahman, the Appellant's Medical Report Path from Athena Medical Centre recorded the Appellant as suffering from "chronic gastritis"[32].

25. On 25 November 2019 a Personalised Housing Plan[33] for the Appellant was completed. It states that the Respondent had taken into account, among other things, the housing needs of the Appellant and the type of accommodation that he required. There is no reference to the Appellant's medical conditions and how those conditions impact on the type of accommodation that is required for the Appellant. The action on the part of the Respondent was to send the Appellant a list of properties that he could go and view, and refer him to the internal Private Rented Sector scheme. The Appellant was to choose Choicelet properties to view. He was given leaflets/websites as detailed in the Personalised Housing Plan. It was said that the Respondent's main focus would be to help him find accommodation in the private housing sector, that he was expected to consider areas other than Hackney and Inner London as they were expensive (and LHA rates have stayed significantly lower). The Respondent was to provide him with information and advice regarding finding suitable and affordable accommodation within the private sector, consider helping him with deposit/rent in advance if he found a suitable property and would refer him to the Private Initiative Team. He had been issued with a step by step guide. The Appellant was to keep a record of searches, landlords contacted and property addresses, rent and properties viewed. He was given details of where to find properties for rent. It was said that the officer had discussed with him the Respondent's private sector schemes which provided financial assistance to rent privately, including the PSI Scheme, Hackney Discretionary Crisis Support Scheme, DHP. It was the Appellant's responsibility to look for suitable and affordable accommodation and he was required to engage with the Respondent, provide relevant information and to be pro-active.

26. On 4 December 2019, the Appellant started 'sofa-surfing'[34], following his eviction from the Hackney Flat on the same day.

27. On 10 December 2019, the Respondent's Ms Grimes emailed the Appellant[35]. In her message, sent at 6:54PM, Ms Grimes suggested her colleagues in the Private Sector Initiative Team had potentially located a suitable property for the Appellant to view, namely Room 6, Pine Lodge, 2A Grenade Parade, Forty Avenue, Wembley, HA9 9JS ('the Wembley Flat'). The Appellant was asked to provide further information, including bank statements and a Universal Credit notification letter. The Appellant provided copies of his bank statements, which were seen by the Respondent on 13 December 2019[36].

28. On 11 December 2019, Yemi Cooker, Discharge of Duty Officer at the Respondent's Benefits and Housing Needs Team, wrote to the Appellant[37]. Ms Cooker notified the Appellant that the Respondent decided that it had discharged its duty to provide him with interim accommodation under s.188 of the Act, pending his homelessness application. The basis for the decision was the Appellant's alleged refusal of the offer of temporary accommodation at the Wembley Flat.

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[32] TB 309
[33] TB 302-308
[34] 330
[35] TB 311
[36] TB 322-327
[37] TB 313-314

29. On 12 December 2019, the Appellant had an appointment with Ms Grimes. Another personal assessment of his current housing circumstances was undertaken and the Personalised Housing Plan updated[38].

30. The Respondent's Ms Grimes sent the Appellant an email dated 31 January 2020[39], which set out the updated Personalised Housing Plan following a meeting between the Appellant and Ms Grimes on 29 January 2020.

31. On 26 March 2020, Ms Grimes notified the Appellant of the Respondent's vulnerability decision that the Appellant was not in priority need[40].

32. On the same day, 26 March 2020, the Respondent notified the Appellant of its decision under s.184 in respect of the relief duty under s.189B[41]. The letter states, among other things:

    i) A period of 56 days had elapsed, from the date when the Respondent notified the Appellant that the duty was owed to him and the Respondent had complied with the relief duty;

    ii) Interim accommodation at Room 6, Pine Lodge had been offered, but refused by the Appellant;

    iii) The Appellant had been provided with "comprehensive and tailored advice regarding Welfare Benefits and Eligible Housing Costs and calculation of affordable rent for you.

    iv) The Appellant had been provided with lists of landlords and a step by step guide of action and checks he must make in order to secure accommodation and to qualify for help with rent in advance/deposit and/or landlord incentive payment;

    v) The Appellant's application had been referred to the Respondent's Housing Supply Team who help applicants secure accommodation within Private Housing Sector.

    vi) The Appellant's application was reviewed on 18 December 2019. The Respondent met with the Appellant to discuss actions he had taken to secure accommodation and any problems he faced. The Respondent contacted the DWP and re-negotiated deductions they were making from his monthly Universal Credit;

    vii) The Appellant's application was reviewed on 3 February 2020 and the Respondent's officer met with the Appellant and telephoned him on several other occasions to verify information and to discuss his application;

[38] TB 315-319
[39] TB 334
[40] TB 70-79
[41] SB 68-70

viii) The Appellant had been referred to Peter Bedford and ELHW for consideration. Both providers mainly offered shared accommodation, which may not be within or close to Hackney;

ix) The Appellant had insisted that he would only consider self-contained accommodation within or close to Hackney;

x) On 15 January 2020 the Appellant's name was put forward for viewing a studio flat, but the landlord would not consider him because of his criminal record;

xi) On 8 January 2020 the Appellant met with an agent that the Housing Supply Team had referred him to. He was invited to view a studio flat but he declined the offer as the accommodation was too small;

xii) The officer had assessed his support needs and discussed with him support that might be available. The Appellant had advised of his current physical health and issues that he had with his digestive system. He said that he was seeking diagnosis and did not require further support at that time.

33. On 3 April 2020 the Appellant telephoned the Respondent, stating that he did not accept the temporary accommodation as he was ill and when he telephoned the hostel, he was advised that the accommodation provided was not suitable for him if he was ill. He was told that the Respondent had telephoned the hotel manager and had been told that the Appellant had called the hotel, asked for a description of the facilities and said that he would not accept the offer, as it had shared facilities.

34. On 8 April 2020, the Appellant's legal representatives wrote to the Respondent[42] requesting a review of the s.184 non-priority decision. On 28 April 2020 the Appellant's legal representatives wrote to the Respondent[43] requesting a review of the relief duty decision.

35. On 18 April 2020 the Respondent wrote to the Appellant, referring to the fact that it had accepted an interim duty to accommodation (pending review) and on 1 April 2020 the Appellant had been offered Room 9, Shuttleworth Hotel, London E9 7QZ. The Appellant had telephoned the accommodation provider and requested a description of the accommodation. He told them that he would not be accepting the accommodation as it had shared facilities. The Respondent telephoned and emailed the Appellant on 2 April 2020 and he responded stating that he had become ill and that the accommodation provider had advised that the room was not suitable. The Appellant was advised that no interim accommodation would be provided.

36. On 21 May 2020 the Respondent sent an email[44] to the Appellant stating that they were discharging their duty to provide him with interim accommodation because they said he had failed to accept three offers.

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[42] TB 80
[43] TB 81
[44] TB 107-109

37. By a letter dated 4 June 2020[45] the Appellant's representatives wrote to the Respondent, attaching a re-amended witness statement of the Appellant. In his re-amended witness statement[46], the Appellant says,

> "7. … As a result of my physical problems, I am rarely able to eat properly. I would say that I am only able to eat properly probably one or two days per week.
>
> 8. When I do eat, this often leads to problems, for example, vomiting and this is also partly due to an acid reflux I have. I have had the issues for about 2 to 3 years and believe, as a result, I am underweight.
>
> 9. The problems cause me chronic pain and with my anxiety this makes it more difficult for me to continue to search for private sector accommodation. I often have to rest and I get spasms and sharp pain. It causes lots of physical problems which with my anxiety makes it more difficult for me to look for accommodation and I am, effectively, afraid of having to move to a new area."

38. On 5 June 2020[47] the Respondent contacted the Appellant's General Practitioner's surgery, asking them to answer a series of questions. The Appellant's General Practitioner, Dr Shui, responded to the Respondent's medical questionnaire on 18 June 2020[48], as follows:

> "What is the patient's diagnosis? Physical and Mental
>
> 1. Chronic gastritis
>
> 2. Reflux oesophagitis
>
> 3. Post traumatic stress disorder
>
> 4. Victim of physical assault and abuse in past.
>
> In relation to Mr Perrott's diagnoses, has his symptom(s) significantly deteriorated in the last 12 months …
>
> 1. Yes, his recurrent abdominal pain, vomiting, anorexia have worsened in the past 2 years, associated with increased stress homelessness.
>
> 2. Medication has been increased.
>
> 3. Been referred three times but because of lack of fixed address & lockdown many appointments cancelled.

[45] TB 123-124
[46] TB 125-127
[47] TB 355
[48] TB 356-360

> …
>
> Does the patient require support to attend to his physical health and hygiene and other activities of daily living?
>
> - Needs good hygiene for fresh food, clean hand washing and bathing toileting facilities.
>
> - as to avoid any gastrointestinal infections
>
> - personal facilities rather than shared facilities.
>
> In your professional opinion, would you consider the patient severely impaired as a result of his medical condition(s) thus making him significantly more vulnerable than ordinarily vulnerable if rendered homeless?
>
> - Yes
>
> - he is often debilitated by his abdominal pain and vomiting with weakness.
>
> Would the patient's treatment be otherwise untreatable if made homeless? …
>
> Yes
>
> - difficult for him to receive hospital appointments
>
> - difficult for him to control his environment for hand washing, food preparation
>
> - difficulty keeping his medication in a safe place."

39. By a letter dated 23 June 2020[49] from the Appellant's legal representatives to the Respondent, they enclosed a report, dated 22 June 2020, from the Appellant's GP, Dr Shui[50].

40. On 14 July 2020, the Respondent's Reviewing Officer wrote a regulation 7(2) letter to the Appellant's legal representatives[51]. Ms Slade noted that, whilst she accepted that the Non-Priority Need Decision was deficient, she was minded to uphold the decision that the Appellant was not in priority need for accommodation.

41. On 26 August 2020, the Respondent made a review decision, upholding the decision to end its s.189B(2) relief duty[52]. On 28 August 2020, this decision was sent to the Appellant by email. In the review decision, the Respondent says it has considered:

    i) The decision of 26 March 2020;

[49] TB 132
[50] TB 135-138
[51] TB 139-156
[52] SB 79-84

ii) Representations;

iii) Witness statement of the Appellant;

iv) PHP;

v) R (Harris) v Islington LBC;

vi) Medical correspondence;

vii) History of the Appellant's criminal record;

viii) All files;

ix) HA 1996;

x) HRA 2018;

xi) Information on file;

xii) Prevailing housing satiation in the borough.

Grounds of Appeal

42. There are two amended grounds of appeal[53]:

i) The Respondent has misdirected itself in law when it considered itself entitled, in the circumstances, under s.189B(7)(b) of the Act to end its duty to the Appellant under the s.189B(1) of the Act ('Ground 1');

ii) The Respondent was in breach of its public sector equality duty under s.149 of the 2010 Act when it failed to have regard to the housing needs related to the Appellant's disability ('Ground 2').

43. S.189A of the Housing Act provides,

> "S.189A: Assessments and personalised plan
>
> (1) If the local housing authority are satisfied that an applicant is—
>
> (a) homeless or threatened with homelessness, and
>
> (b) eligible for assistance,
>
> the authority must make an assessment of the applicant's case.
>
> (2) The authority's assessment of the applicant's case must include an assessment of—

[53] TB 22-24

(a) the circumstances that caused the applicant to become homeless or threatened with homelessness,

(b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside ("other relevant persons"), and

(c) what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation.

(3) The authority must notify the applicant, in writing, of the assessment that the authority make.

(4) After the assessment has been made, the authority must try to agree with the applicant—

(a) any steps the applicant is to be required to take for the purposes of securing that the applicant and any other relevant persons have and are able to retain suitable accommodation, and

(b) the steps the authority are to take under this Part for those purposes.

(5) If the authority and the applicant reach an agreement, the authority must record it in writing.

(6) If the authority and the applicant cannot reach an agreement, the authority must record in writing—

(a) why they could not agree,

(b) any steps the authority consider it would be reasonable to require the applicant to take for the purposes mentioned in subsection (4)(a), and

(c) the steps the authority are to take under this Part for those purposes.

(7) The authority may include in a written record produced under subsection (5) or (6) any advice for the applicant that the authority consider appropriate (including any steps the authority consider it would be a good idea for the applicant to take but which the applicant should not be required to take).

(8) The authority must give to the applicant a copy of any written record produced under subsection (5) or (6).

> (9) Until such time as the authority consider that they owe the applicant no duty under any of the following sections of this Part, the authority must keep under review—
>
> (a) their assessment of the applicant's case, and
>
> (b) the appropriateness of any agreement reached under subsection (4) or steps recorded under subsection (6)(b) or (c)."

44. S.189B of the Housing Act provides,

> "189B: Initial duty owed to all eligible persons who are homeless
>
> (1) This section applies where the local housing authority are satisfied that an applicant is—
>
> (a) homeless, and
>
> (b) eligible for assistance.
>
> (2) Unless the authority refer the application to another local housing authority in England (see section 198(A1)), the authority must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least—
>
> (a) 6 months, or
>
> (b) such longer period not exceeding 12 months as may be prescribed.
>
> (3) In deciding what steps they are to take, the authority must have regard to their assessment of the applicant's case under section 189A.
>
> (4) Where the authority—
>
> (a) are satisfied that the applicant has a priority need, and
>
> (b) are not satisfied that the applicant became homeless intentionally, the duty under subsection (2) comes to an end at the end of the period of 56 days beginning with the day the authority are first satisfied as mentioned in subsection (1).
>
> (5) If any of the circumstances mentioned in subsection (7) apply, the authority may give notice to the applicant bringing the duty under subsection (2) to an end.
>
> (6) The notice must—
>
> (a) specify which of the circumstances apply, and

(b) inform the applicant that the applicant has a right to request a review of the authority's decision to bring the duty under subsection (2) to an end and of the time within which such a request must be made.

(7) The circumstances are that the authority are satisfied that—

(a) the applicant has—

(i) suitable accommodation available for occupation, and

(ii) a reasonable prospect of having suitable accommodation available for occupation for at least 6 months, or such longer period not exceeding 12 months as may be prescribed, from the date of the notice,

(b) the authority have complied with the duty under subsection (2) and the period of 56 days beginning with the day that the authority are first satisfied as mentioned in subsection (1) has ended (whether or not the applicant has secured accommodation),

(c) the applicant has refused an offer of suitable accommodation and, on the date of refusal, there was a reasonable prospect that suitable accommodation would be available for occupation by the applicant for at least 6 months or such longer period not exceeding 12 months as may be prescribed,

(d) the applicant has become homeless intentionally from any accommodation that has been made available to the applicant as a result of the authority's exercise of their functions under subsection (2),

(e) the applicant is no longer eligible for assistance, or

(f) the applicant has withdrawn the application mentioned in section 183(1).

(8) A notice under this section must be given in writing and, if not received by the applicant, is to be treated as having been given to the applicant if it is made available at the authority's office for a reasonable period for collection by or on behalf of the applicant.

(9) The duty under subsection (2) can also be brought to an end under—

(a) section 193A (consequences of refusal of final accommodation offer or final Part 6 offer at the initial relief stage), or

> (b) sections 193B and 193C (notices in cases of applicant's deliberate and unreasonable refusal to co-operate)."

Ground One

45. Ground One provides: the Respondent misdirected itself in law when it considered itself entitled, in the circumstances, under s.189B(7)(b) of the Act to end its duty to the Appellant under the s.189B(1) of the Act.

46. The Appellant's case under ground one falls into two parts. Firstly, Mr Grütters submits that the Respondent has taken the position that under s.189B(7)(b) of the Act the mere passing of 56 days following notice of its acceptance of the relief duty allows the Respondent to end that duty. He says that this can be found in,

    i) The Respondent's notice of its acceptance of the relief duty, dated 18 December 2019, in which it is said[54],

    > "This homelessness relief duty will come to an end if the Council notifies you that it is satisfied that one of the following events has occurred: (…)
    >
    > A period of 56 days has elapsed, from the date of this notice";

    ii) The Respondent's decision ending the s.189B relief duty, dated 26 March 2020, in which it is said[55],

    > "The reason for this decision is that the Council is satisfied that:
    >
    > A period of 56 days from the date when we notified you that this duty was owed to you has elapsed and the Council has complied with the relief duty (…)"

    iii) The Review Decision, dated 26 August 2020, in which the Respondent says[56],

    > "The S189B(2) relief duty can be brought to an end if any of the following occurs: (…)
    >
    > (b) out of time 56 day limit"

47. Mr Grütters submits that this position is wrong in law. A local housing authority may only end the relief duty after 56 days if during that period it has complied with its duty to take reasonable steps to help the applicant. In deciding what steps they must take the authority must have regard to the assessment conducted pursuant to s.189A of the Act. In turn, the assessment under s.189A and the Personalised Housing Plan based thereupon must always be kept under review. In short, a proper assessment and Personalised Housing Plan, and the implementation of reasonable steps are conditions precedent before the 56 days period can be relied upon to end the relief duty.

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[54] SB 66
[55] SB 68
[56] SB 80

48. Secondly, Mr Grütters submits that the question is whether on the facts the Respondent conducted and kept under review:

    i) a proper assessment of the Appellant's case, including the matters set out in s.189A(2);

    ii) an appropriate Personalised Housing Plan;

    and complied with its duty to take reasonable steps to help the Appellant to secure suitable accommodation.

49. He says that the Respondent failed to do so because they failed to identify that the Appellant's physical illness and disability, namely chronic gastritis and duodenitis, would have an impact on what accommodation would be suitable for him. He submits that the clearest explanation of this impact was set out by Dr Shui in her response[57] on 18 June 2020 to a medical questionnaire sent by the Respondent during its review of the Non-Priority Need Decision. In response to a question about support, Dr Shui said that the Appellant required good hygiene for fresh food, clean hands for washing, and bathing and toileting facilities to avoid any gastrointestinal infection. She said that he required personal facilities rather than shared facilities.

50. The Reviewing Officer said in the relief duty review decision, dated 26 August 2020, that he considered "[a]ll medical correspondences on file" as well as "[a]ll files"[58]. Mr Grütters submits that the Respondent should therefore have been aware of the evidence of Dr Shui that shared accommodation was not suitable for him by reason of his physical illnesses. Further, Mr Grütters submitted that the Appellant also provided details about his physical illness to the Respondent on multiple occasions when he completed the two health[59] and three housing[60] questionnaires. However, he argues that there is no evidence the Appellant's physical illness was considered as part of the needs assessment or the Personalised Housing Plan and neither of these was reviewed in light of new medical evidence provided by those representing the Appellant.

51. Mr Grütters submits that as a consequence of these failings, the Respondent did not take reasonable steps for 56 days to help the Appellant secure accommodation because whatever steps the Respondent took ignored crucial questions about what accommodation would be suitable for him. He says that the most pertinent example of this failure – and the potentially unreasonable steps taken by the Respondent – is its reaction to the Appellant's opposition to shared accommodation. Whilst his medical conditions entirely justified the Appellant's opposition, the Respondent appeared to have viewed it as simply unconstructive behaviour.

52. In short, Mr Grütters concludes that the Respondent misdirected itself in law as to its entitlement to end the relief duty it owed towards the Appellant on the basis of s.189B(7)(b) of the Act.

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[57] TB 356-362
[58] SB 80
[59] TB 198-205 (23.11.17) and TB 254-2590 (08.01.19)
[60] TB 207-216 (21.12.17), TB 235 (13.11.18) and TB 280-292 (02.10.19)

Respondent's case

53. Ms McKeown submits that the Respondent did not take the position that the "mere passing for 56 days following notice of its acceptance of the relief duty allows it to end that duty". She submits that the review decision, dated 26 August 2020, states[61],

> "19. … Given that the 56 days for relief have elapsed since that decision was made, the Council is entitled to end the Relief duty even though you may still be homeless or threatened with homelessness.
>
> 20. In reaching this decision I am satisfied that the Council has complied with the reasonable steps it had stated that it would take as per the assessment and Personalised Housing Plan."

54. Ms McKeown submits that the reviewing officer says at paragraph 4 of his review decision, dated 26 August 2020, that he has considered *R (Harris) v Islington LBC* ((Admin) CO/1282/2019), which is an unreported decision set out by Ms McKeown in her skeleton argument at paragraph 39. In this case, it was argued that it was clear that mere effluxion of time did not bring the s.189B duty to an end.

55. Ms McKeown submitted that the matters addressed in the relief duty decision letter and the review letter show that the Respondent was clearly stating that the reason for its decision is that it has complied with the duty under s.189B and the period of 56 days (beginning with the date on which it was first satisfied of the matters set out in. s.189B(1)) had ended. If the Respondent had simply relied on the fact that 56 days had elapsed since the decision of 18 December 2019:

    i) it could have written that decision after 12 February 2020; and

    ii) both letters would simply have relied on the passage of time, something that could have been dealt with in one line.

56. Dealing with the second part of ground one, Ms Keown argues that the Respondent was live to the Appellant's medical issues and it cannot be contended that the Personalised Housing Plan and steps taken pursuant to s.189B were done with a total disregard for the medical information on file and the issues at the heart of the "main" decision (i.e. whether the Appellant was vulnerable as a result of physical disability). Further, she says that the review decision states that it had taken account of representations, the witness statement of the Appellant and medical correspondence. In addition, there had been meetings/conversations with the Appellant, including on 18 December 2019 to discuss any problems he faced.

57. Ms McKeown argued that the reviewing officer in the s.202 decision in respect of the "main" duty, noted at paragraph 36[62] that,

> "Mr Perrott was made interim offers of accommodation with both shared and non-shared facilities … whilst any

[61] SB 82-83
[62] TB 174

> accommodation with shared facilities may not be ideal, I am not satisfied that it is essential to preclude the use of shared facilities in your client's case."

58. She submitted that in any event, the Respondent was entitled to find that it had taken "reasonable steps to help" the Appellant "to secure that suitable accommodation" became available for his occupation. She submitted that the Respondent had:

    i) Provided the Appellant with information and advice regarding finding suitable and affordable accommodation within the private sector;

    ii) Said that it would consider helping the Appellant with deposit/rent in advance if he found a suitable property;

    iii) Referred the Appellant to the Private Initiative Team;

    iv) Provided the Appellant with "comprehensive and tailored advice regarding Welfare Benefits and Eligible Housing Costs and calculation of affordable rent: he was advised of how to check Local Housing Allowance Rates and of his Welfare Benefit Cap restricting the amount of housing costs he could receive;

    v) Provided the Appellant with lists of landlords and a step by step guide of action and checks he had to make in order to secure accommodation and to qualify for help with rent in advance/deposit and/or landlord incentive payment;

    vi) Referred the Appellant's application to its Housing Supply Team who help applicants secure accommodation within Private Housing Sector;

    vii) Discussed with the Appellant the Respondent's private sector schemes which provided financial assistance to rent privately, including the PSI Scheme, Hackney Discretionary Crisis Support Scheme, DHP.

    viii) Met with the Appellant on 18 December 2019, to discuss actions he had taken to secure accommodation and any problems he faced. The officer contacted the DWP and re-negotiated deductions they were making from the Appellant's monthly Universal Credit;

    ix) Reviewed the Appellant's application on 3 February 2020 and the officer had met with the Appellant and telephoned him on several other occasions to verify information and to discuss his application;

    x) Referred the Appellant to Peter Bedford and ELHW for consideration.

59. Ms McKeown submitted that the PRS Team also offered a second viewing appointment for Flat 8, Pacific House, London N4 1FQ, but the Appellant was not interested. She said that in the Personalised Housing Plan, the Appellant agreed to look for accommodation and, if he found something suitable, he should contact the Respondent, which would facilitate the move, but there was no record of the Appellant contacting the PRS Team or Ms Grimes.

60. Ms McKeown submitted that s.189A(5) of the Act provided an opportunity for the Appellant to challenge the local authority if he believed that it was not taking sufficient or appropriate steps to help him secure accommodation. She said the Appellant did not bring any such challenge and only acted after being notified that the relief duty was at an end.

Findings as to Ground One

61. It is common ground between the Parties that a proper assessment and Personalised Housing Plan, and the implementation of reasonable steps are conditions precedent before the 56 days period can be relied upon to end the relief duty. The question is whether the Respondent took the position that under s.189B of the Act, the mere passing of 56 days following notice of its acceptance of the relief duty allowed it to end that duty.

62. I bear in mind that a benevolent approach should be adopted to the interpretation of review decisions. The Court should not take too technical a view of the language used[63].

63. Mr Grütters refers to the Respondent saying in the notice of its acceptance of the relief duty[64], dated 18 December 2019,

> "This homelessness relief duty will come to an end if the Council notifies you that it is satisfied that one of the following events has occurred: (…)
>
> A period of 56 days has elapsed, from the date of this notice";

64. Whilst I accept that the passage quoted by Mr Grütters is an incorrect statement of the law, when the letter is read in context, I find that it is clear that the Respondent understood that it had to take reasonable steps to help the Appellant secure suitable accommodation. The Respondent says in the same letter[65],

> "Under s.189B of the above legislation, the Council has a duty to take reasonable steps over the next 56 days, to help you to secure accommodation." (my emphasis)

The Respondent goes on in the letter to remind the Appellant of the Personalised Housing Plan and says,

> "Please follow up on the action points identified and note the actions the Council intends to take on your behalf."

65. Regarding the decision letter ending the s.189B relief duty, dated 26 March 2020, I find that the sentence quoted by Mr Grütters does not point to the conclusion submitted by him. The use of the conjunctive 'and' and the words, "The Council has complied with the relief duty" is in my judgment a shorthand for saying that the Respondent has taken reasonable steps to help the Appellant secure suitable

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[63] *Holmes-Moorhouse v Richmond upon Thames* [2009] WLR 413. Lord Neuberger at paragraphs 50-51.
[64] SB 66
[65] SB 66

accommodation. Further, the Respondent goes on to describe in this letter the steps it has taken in support of its contention that reasonable steps have been taken under the headings, "Interim accommodation", "Self-sourcing" and "Housing Supply Team".

66. Finally, regarding the review decision letter, whilst I accept Mr Grütters' submission that the summary of the relief duty at paragraph 5 is incorrect, when one stands back and views the letter in the round, it is clear that the Respondent was aware of its duty to take reasonable steps to help the Appellant secure reasonable accommodation. The Housing Benefits and Needs team manager sets out the steps which have been taken by the Respondent at paragraphs 6 to 19.

67. For the above reasons, I reject the Appellant's submission that the Respondent took the position that the mere passing of 56 days following notice of its acceptance of the relief duty allowed it to end that duty.

68. I go on to consider the second part of the Appellant's submission that the Respondent failed to conduct and keep under review:

    i) A proper assessment;

    ii) An appropriate Personalised Housing Plan

    and to comply with its duty to take reasonable steps to help the Appellant to secure suitable accommodation.

69. I bear in mind that in *Rother District Council v Freeman-Roach* [2018] HLR 22, it was held that on an appeal under section 204 of the Act it is for the appellant to show that the review decision contains an error of law.

70. In my judgment in the vulnerability appeal, I found that the Respondent failed to lawfully process, consider and/or address the medical evidence relating to the Appellant in this matter. I found the Respondent's assessment deficient in five respects.

71. Firstly, the Reviewing Officer at paragraph 41 of the vulnerability review decision[66] drew an equivalence between the report of Dr Hornibrook of NowMedical, dated June 2019, and the report of the Appellant's General Practitioner, Dr Shui, in June 2020 by saying that the report of Dr Hornibrook and those of Dr Shui were "not significantly different".

72. I found that the reports were fundamentally different. Dr Hornibrook concluded that the Appellant's medical issues were not of particular significance compared to an ordinary person[67]. Dr Shui concluded that the Appellant was severely impaired as a result of his medical conditions, thus making him significantly more vulnerable than ordinarily vulnerable if rendered homeless[68]. She described significant symptoms not mentioned by Dr Hornibrook because the Appellant's case was that his condition has worsened in the year between Dr Hornibrook's and Dr Shui's reports. Furthermore,

[66] TB 175-176
[67] TB 270
[68] TB 359

Dr Shui said that the Appellant needed personal, not shared, facilities, which was not stated by Dr Hornibrook.

73. Secondly, I found that the Reviewing Officer misunderstood and mis-stated the conclusion of Dr Shui. The Reviewing Officer said at paragraph 41[69],

> "I have given equal weight to Dr Shui's report and I am not satisfied it concludes that Mr Perrott is significantly more vulnerable than the ordinary person if made homeless."

74. This was wrong. The Respondent asked Dr Shui the question[70], "In your professional opinion, would you consider the patient severely impaired as a result of his medical condition(s) thus making him significantly more vulnerable than ordinarily vulnerable if rendered homeless?". Dr Shui answered,

> "- Yes
>
> - he is often debilitated by his abdominal pain and vomiting with weakness."

75. Thirdly, I found that the Reviewing Officer erred in her decision at paragraph 41[71] of the review decision in failing to provide any explanation for giving equal weight to the evidence of Dr Shui and Dr Hornibrook.

76. Fourthly, I found that if the Reviewing Officer was going to depart from Dr Shui's conclusion that the Appellant was significantly more vulnerable than ordinarily vulnerable if rendered homeless, she was required to provide a rational explanation of why she was doing so. I found that she did not do so. The reasons that she gives in the review decision at paragraphs 34, 35, 36 and 48 do not deal with the points made by Dr Shui in her response to the Respondent's medical questionnaire, dated 18 June 2020[72].

77. I repeat paragraph 76 of my judgment dealing with the vulnerability review:

> "Fifthly, in my judgment, the Reviewing Officer failed to consider and engage with the reasons given by the Appellant, Dr Shui and Dr Sami for the Appellant being significantly more vulnerable than an ordinary person if made homeless. Although the Reviewing Officer refers as a matter of narrative to the evidence of the Appellant, Dr Shui and Dr Sami in the case, she does not apply it with a focus to the issues she had to decide. In particular, she does not apply the following evidence to the question of whether the Appellant is significantly more vulnerable than an ordinary person if made homeless:
>
> His need for clean handwashing and bathing and toileting facilities to avoid gastrointestinal infections. Dr Shui says that

[69] TB 175
[70] TB 359
[71] TB 175-176
[72] TB 356-360

> he needs "personal facilities rather than shared facilities". The Reviewing Officer says at paragraph 36 of the review decision that the Appellant has the ability to follow adequate hygiene measures but this does not address the issue that if he shares accommodation, he cannot control the potential lack of adequate hygiene measures of the persons with whom he is sharing facilities.
>
> In her report, dated 18 June 2020, Dr Shui says, that the Appellant needs good hygiene for fresh food, clean hand washing and bathing toileting facilities so as to avoid gastrointestinal infections. Whilst the Reviewing Officer quotes this passage at paragraph 40 , she does not consider how the Appellant would meet these requirements if he was homeless. The Reviewing Officer says at paragraph 46 that she is satisfied that the Appellant would be able to cope with homelessness as well as an ordinary person but she gives no reasons for this assertion. Reasons are required, particularly if the Appellant is homeless or sharing accommodation, especially bearing in mind his vulnerability to gastrointestinal infections.
>
> The Reviewing Officer never deals with Dr Sami's and Dr Shui's evidence of the ways in which the Appellant's symptoms and medical condition have worsened, other than to baldly deny this. The Reviewing Officer says at paragraph 53[73] of the review decision,
>
> "I acknowledge that Dr Shui has consider (sic) Mr Perrott to be a vulnerable adult. However, it is not enough for a doctor to simply state that their patient is vulnerable."
>
> Dr Shui does not merely state that the Appellant is significantly more vulnerable than ordinarily vulnerable but gives reasons for so saying in her report of 18 June 2020. The Reviewing Officer never engages with those reasons.
>
> The Reviewing Officer never engages with the Appellant's evidence that he is only able to eat properly one or two days a week and when he eats, this often leads to him vomiting and as a consequence, he is underweight.
>
> The Reviewing Officer never engages with Dr Shui's evidence that the Appellant is often debilitated by abdominal pain and vomiting with weakness."

78. On about 2 October 2019 the Respondent's Benefits and Housing Needs Officer conducted a needs assessment[74] and completed a Personalised Housing Plan. In reply

[73] TB 179-180
[74] SB 86-143

to the question[75], "Do you or any of your household members have any self-reported vulnerabilities – including physical or mental health needs?" the option "no" has been selected. In reply to the question, "Do you or any member of your household have any confirmed medical conditions?" the option "no" has again been selected. In reply to the question "Are you or your family members on any medication?" the option "yes" has been selected and seven types of medication are listed. In reply to the question "Does your current housing situation impact on your medical condition?" the answer "no" has been selected.

79. Ms McKeown submitted that when the needs assessment was completed, the Appellant would have been present. The Respondent provides no explanation. The Respondent's case is that they were fully aware of the Appellant's physical medical conditions and medical evidence but they provide no explanation as to how the questions in paragraph 78 above were answered in the negative. This is further compounded by the fact that the Respondent lists seven medications taken by the Appellant.

80. The Reviewing Officer says in his decision letter dated 26 August 2020 that he has considered representations, the witness statement of the Appellant and medical correspondence. However, I find neither in the needs assessment, personalised housing plan nor any other document does the Respondent carry out an assessment of the Appellant's medical condition and his housing needs, including what would be suitable for him, in the light of that evidence. S.189A(2) of the Act provides,

> "The authority's assessment of the applicant's case must include an assessment of-
>
> …
>
> (b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside ('other relevant persons')" .

81. The needs assessment does not even identify the Appellant's medical conditions, let alone assess his housing needs, including what accommodation would be suitable for him.

82. S.189A(9) of the Act provides,

> "(9) Until such time as the authority consider that they owe the applicant no duty under any of the following sections of this Part, the authority must keep under review –
>
> (a) their assessment of the applicant's case …"

I find that the needs assessment was not updated to take into account the Appellant's medical conditions, the effects of those conditions and his consequent housing needs

[75] SB 105

following the receipt of Dr Shui's response to the Respondent's medical questionnaire, dated 18 June 2020, and her report, dated 22 June 2020.

83. The Personalised Housing Plan, dated 25 November 2019[76], is not signed by the Appellant, although it is signed by the Housing Options Officer[77]. The Personalised Housing Plan contains no assessment of the Appellant's medical conditions, the effects of those conditions and his consequent housing needs.

84. The Personalised Housing Plan[78] was updated on 12 December 2019. Again, it contains no assessment of the Appellant's medical conditions, the effects of those conditions and his consequent housing needs. There is no reference to the matters referred to by Dr Sami, in his letter of 13 September 2019, referred to at paragraph 21 above.

85. The Respondent's Ms Grimes sent the Appellant an email dated 31 January 2020[79], which set out the updated Personalised Housing Plan[80] following a meeting between the Appellant and Ms Grimes on 29 January 2020. Again, the Personalised Housing Plan contains no reference to the Appellant's medical conditions, the effects of those conditions and his consequent housing needs.

86. I find that the Personalised Housing Plan was never updated, as it should have been, to comply with s.189A(9)(a) of the Act after receipt of Dr Shui's report, which was in response to questions from the Respondent. Dr Shui said, inter alia, says in her response to the Respondent's medical questionnaire, dated 18 June 2020, that the Appellant[81],

> "- Needs good hygiene for fresh food, clean hand washing and bathing toileting facilities.
>
> - as to avoid any gastrointestinal infections
>
> - personal facilities rather than shared facilities."

87. The Respondent offered the Appellant accommodation which was shared as well as accommodation which was not shared. Neither the needs assessment, Personalised Housing Plan nor any other document provides any reasons why the advice of Dr Shui was not followed.

88. Ms McKeown submitted that the Appellant made no challenge to the steps which the Respondent decided to take under the relief duty. This is correct but in my judgment, the fact that the Appellant did not exercise this right to have his disagreement recorded in writing, pursuant to s.189A(6) of the Act, does not release the Respondent from their duty to conduct and keep under review a proper assessment and to take reasonable steps to help the Applicant secure suitable accommodation during the period of 56 days.

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[76] TB 302-308
[77] TB 308
[78] TB 315-319
[79] TB 334
[80] TB 334-337
[81] TB 358

89. I conclude that as a consequence of the Respondent's failure to engage with the Appellant's physical illness and disability, it failed to consider what accommodation would be suitable for the Appellant and to take reasonable steps to help the Appellant to secure that suitable accommodation and thereby failed to discharge the relief duty. As a consequence the review decision of 26 August 2020 must be quashed.

Ground 2

90. Ground Two provides: The Respondent was in breach of its public sector equality duty under s.149 of the 2010 Act when it failed to have regard to the housing needs related to the Appellant's disability ('Ground 2').

Appellant's submissions

91. Mr Grütters submits that the Appellant suffers from a physical impairment (i.e. chronic gastrointestinal problems), which has had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities (e.g. eating). He submitted that the Appellant had a disability under s.6 of the Equality Act 2010, which is a protected characteristic. Mr Grütters submits that the Respondent is required by the PSED to have regard to the need to take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it. He said that the Appellant's chronic gastrointestinal problems meant that he has housing needs that are different from the housing needs of persons without such problems.

92. Mr Grütters submits that the Respondent should have carried out a needs assessment in respect of the Appellant's medical and support needs at the outset and kept that assessment under review. He argues that the Respondent failed to do so. He says that the Respondent did not appreciate the physical problems from which the Appellant suffered nor their impact on his housing needs. He says this failure breached the PSED.

93. Mr Grütters referred me to the case of *McMahon v Watford BC* [2020] EWCA Civ 497, in which the Court of Appeal found that there was a danger of the PSED being used as a peg on which to hang a highly technical argument that an otherwise unimpeachable vulnerability assessment should be quashed. Mr Grütters submits that this criticism is only applicable to PSED challenges where vulnerability is also in issue. This is because, as the Supreme Court held in Hotak, in relation to questions of vulnerability the PSED is "complementary". Simply put, in determining vulnerability a local housing authority should be considering mental and physical impairments in any event, and the PSED is not fundamentally different to that exercise.

94. However, in relation to needs assessments and Personalised Housing Plans under s.189A and the reasonable steps under s.189B, the PSED of a local housing authority does not have the same overlap. The authority must not merely consider what an applicant's needs are: it must have regard to how the needs of an applicant with a protected characteristic are different from the needs of applicants who do not share it. Indeed, in *McMahon*, the Court of Appeal held at [68]:

> "What matters is the substance of the assessment not its form. Provided that a reviewing officer appreciates the actual mental or physical problems from which the applicant suffers, the task will have been properly performed. (…) the task of the reviewing officer is not to label; it is to understand. Just as a failure to mention the PSED or a failure to tabulate each feature of it will not necessarily vitiate a vulnerability assessment, so a mere recitation of the PSED will not save such an assessment if it has failed in substance to address the relevant questions.

Respondent's submissions

95. Ms McKeown submits that in the review decision in respect of the main duty, the Respondent found that the Appellant does not suffer from a disability, although the Appellant was treated as though he was disabled.

96. Ms McKeown says that, when considering what reasonable steps the Respondent had to take under s.189B(2) of the Act, the Respondent was very well aware of the Appellant's medical issues and aware that he would not consider shared facilities.

97. Ms McKeown further submitted that the Appellant made no challenge to the steps which the Respondent decided to take under the relief duty.

98. She argued that the main issue was whether the Appellant was vulnerable, and that was what the investigations, information and submissions focused upon. She said this was the focal issue of the letter on the "main" decision. She argued that the s.184 decision on the relief duty and the steps taken to discharge the relief duty could not be looked at in isolation. She referred to the fact that the Respondent does not simply rely on offers of accommodation which had shared facilities. She said the Respondent was entitled to rely upon the steps it had taken to discharge the relief duty.

Findings as to Ground Two

99. S.6 of the Equality Act 2010 provides:

> "(1) A person (P) has a disability if—
>
> (a) P has a physical or mental impairment, and
>
> (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

100. Schedule 1, Part 1 of the Equality Act 2010 provides:

> "2 (1) The effect of an impairment is long-term if-
>
> (a) it has lasted for at least 12 months,
>
> (b) it is likely to last for at least 12 months, or

> (c) it is likely to last for the rest of the life of the person affected."

101. Section 149 of the Equality Act 2010 provides (so far as material):

> "(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; …
>
> …
>
> (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; …
>
> (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.
>
> …
>
> (7) The relevant protected characteristics are … disability."

102. In *Hotak v Southwark LBC* [2016] A.C. 811, Lord Neuberger said in relation to the operation of the PSED in s.149 in the context of homelessness,

> "[74] … the weight and extent of the duty are highly fact-sensitive and dependent on individual judgment."
>
> "[75] … as Elias LJ said, at paras 77–78, in the Hurley case [2012] HRLR 374, it is for the decision-maker to determine how much weight to give to the duty: the court simply has to be satisfied that 'there has been a rigorous consideration of the duty'. Provided that there has been 'a proper and conscientious focus on the statutory criteria', he said 'the court cannot

> interfere … simply because it would have given greater weight to the equality implications of the decision'."
>
> "[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. …"

103. *Hackney LBC v Haque* [2017] H.L.R. 14 was a case involving a challenge to the suitability of accommodation offered under Part 7. Briggs LJ said at paragraph 43 that when considering the PSED in s.149 of the Equality Act 2010, the reviewing officer should:

i) recognise that the appellant had a disability;

ii) focus on specific aspects of his impairments to the extent that they were relevant to the suitability of the accommodation;

iii) focus on the disadvantages he might suffer when compared to a person without those impairments;

iv) focus on his accommodation needs arising from those impairments and the extent to which the accommodation met those needs;

v) recognise that the appellant's particular needs might require him to be treated more favourably than a person without a disability; and

vi) review the suitability of the accommodation, paying due regard to those matters.

Briggs LJ said at paragraph 44,

> "… the PSED did not in my judgement require Mr Banjo [the reviewing officer] to consider whether Mr Haque needed accommodation which was more than suitable for his particular needs. It required him to apply sharp focus upon the particular aspects of Mr Haque's disabilities and to ask himself with rigour, and with an open mind, whether the particular disadvantages and needs arising from them were such that Room 315 was suitable as his accommodation."

104. In my judgment in the vulnerability appeal, I said,

> "92. It is common ground that the Appellant has been suffering from chronic gastritis and reflux oesophagitis for more than one year. His condition has caused him to suffer from recurrent abdominal pain, vomiting and anorexia, which Dr Shui says in her report, dated 18 June 2020[82], has worsened in the past two years. Dr Shui says that the Appellant is often debilitated by his abdominal pain and vomiting with

[82] TB 356-362

> weakness[83]. The Appellant says he can only eat properly on one or two days a week, and when he does, it often leads to him vomiting.
>
> 93. I find that the Reviewing Officer erred in law in finding that the Appellant was not suffering from a physical disability within the meaning of s.6 of the Equality Act 2010. The Appellant has a physical impairment, chronic gastritis and reflux oesophagitis, from which he has suffered from more than one year, and this has an adverse effect on his ability to carry out normal day to day activities, such as eating. However, the Reviewing Officer says at paragraph 11[84] of her review decision that she has treated the Appellant as if he was disabled and therefore this error has not, in itself, prevented her from considering the PSED. "
>
> 94. Although the Reviewing Officer says at paragraph 10[85] of the review decision that she has considered the PSED and
>
> 'Focused sharply on (i) whether he has a disability (or another relevant protected characteristic), (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other',
>
> she never applies these criteria to the facts before her. Rather curiously, she sets out these legal criteria before going on in paragraph 11 to say that she finds that the Appellant is not disabled."

105. In the Respondent's decision to end the s.189B(2) relief duty, dated 26 August 2020, the Reviewing Officer makes no reference to the PSED.

106. I find that although the Reviewing Officer was well aware of the Appellant's physical illnesses and medical evidence, he did not assess with a sharp focus the extent of the Appellant's impairments and his accommodation needs arising from those impairments. Neither the needs assessment nor the Personalised Housing Plan, in its original form or updated forms, make reference to the Appellant's medical conditions, the effects of those conditions or his consequent housing needs. Neither of these documents was updated to take into account the issues raised in Dr Shui's response to the Respondent's medical questionnaire, dated 18 June 2020. No reasons have been given by the Respondent for departing from Ms Shui's opinion that the Appellant requires personal facilities rather than shared facilities in order to avoid gastro-intestinal infections. I conclude that although the Reviewing Officer was aware of the Appellant's physical illnesses, which I have found constitute a disability under s.6 of the Equality Act, he never focused on the specific aspects of the Appellant's impairments in the Needs Assessment, Personalised Housing Plan or any other document, and as a consequence the Respondent failed to discharge the PSED.

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[83] TB 359
[84] TB 166
[85] TB 165

107. In the circumstances, I uphold ground two of the grounds of appeal and order that the review decision of 26 August 2020 must be quashed.