



IN THE COUNTY COURT AT CENTRAL LONDON

Case No: G40CL220

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

Date: 03/02/2021

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

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.

.....

HHJ RICHARD ROBERTS

HIS HONOUR JUDGE RICHARD ROBERTS :

1. This is an appeal, pursuant to s.204 of the Housing Act 1996 ('the Act'), of the review decision by the Respondent of 29 July 2020¹ 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 appeal was heard by Microsoft Teams.
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.
 - ii) Supplemental trial bundle of 177 pages. References to this bundle are prefixed SB.
 - iii) Authorities bundle.
 - iv) Supplemental authorities bundle.
3. Mr Grütters of Counsel appeared on behalf of the Appellant. I am grateful for his perfected skeleton argument, dated 5 January 2021. Ms McKeown of Counsel appeared on behalf of the Respondent. I am grateful for her skeleton argument, dated 12 November 2020 and perfected on 5 January 2021².

Factual background

4. The Appellant was granted an assured shorthold tenancy, dated 13 August 2015 and signed on 12 August 2015³, for 1 Beaumont Court, Lower Clapton Road, London, E5 8BG ('the Hackney Flat'). The Hackney Flat was a one-bedroomed self-contained flat.
5. 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 1988⁴.
6. On 20 November 2017, the Appellant had an appointment with the Respondent's Housing Advice Team⁵ to discuss his potential homelessness following the service of the first s.21 Notice.
7. On 23 November 2017, the Appellant signed the Respondent's completed health questionnaire for rehousing⁶. At section 17, the Appellant indicated that he had "reoccurring chest problems", was "finding it difficult to breath" and was suffering from "headaches and nausea". The Appellant also mentioned 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 questionnaire⁷.

¹ TB 165-186

² SB 45-63

³ TB 190-192

⁴ TB 195-196

⁵ TB 197

⁶ TB 198-205

⁷ TB 207-216

The Appellant 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. On 11 January 2018, the Medical Assessment Team (Housing) at the Respondent’s Benefits and Housing Needs Service referred the Appellant to NowMedical Limited for consideration of homelessness vulnerability on medical grounds⁸. The Respondent obtained a report from Dr Hornibrook of NowMedical, dated 12 January 2018⁹. 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 assessment¹⁰, 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, Athena Medical Centre, recommending the Appellant was prescribed helicobacter therapy to alleviate his symptoms¹¹.
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 questionnaire¹². 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 Hospital¹³ 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 performed on 29 November 2019¹⁴. 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.

⁸ TB 217

⁹ TB 218-219

¹⁰ TB 220-221

¹¹ TB 222

¹² TB 235

¹³ TB 246-247

¹⁴ TB 253

16. On 20 December 2018, the Appellant signed another copy of the Respondent's completed health questionnaire for rehousing¹⁵. 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 1988¹⁶. On 25 March 2019, the landlord filed a claim form¹⁷ 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 order¹⁸ for the Hackney Flat, which required the Appellant to give possession on or before 24 June 2019.
18. On 5 June 2019, Dr Hornibrook of NowMedical provided a further medical report¹⁹ 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.”
19. 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. The Appellant was subsequently referred to the Department of Gastroenterology at University College London Hospitals (UCLH).
20. On 13 September 2019, Dr Sarmed Sami, Consultant Gastroenterologist at UCLH, wrote to Athena Medical Centre, following a consultation with the Appellant²⁰. 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.”

¹⁵ TB 254-259

¹⁶ TB 260-261

¹⁷ TB 262-267

¹⁸ TB 270

¹⁹ TB 268-269

²⁰ TB 275-276

21. 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 Eviction²¹ 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 questionnaire²². The Appellant wrote of his “gastro problems currently being diagnosed”; that he was “seriously ill”; and that he felt “very weak most days”.
24. During this meeting, Jacqueline Grimes, Benefits and Housing Needs Officer, conducted a needs assessment²³ and drafted a Personalised Housing Plan (‘Personalised Housing Plan’)²⁴ for and with the Appellant.
25. On 3 October 2019, the Appellant underwent another esophagogastroduodenoscopy at UCLH, where the attending clinician, Farooq Rahman, diagnosed gastritis²⁵. Following the diagnosis by Mr Rahman, the Appellant’s Medical Report Path from Athena Medical Centre recorded the Appellant as suffering from “chronic gastritis”²⁶.
26. On 4 December 2019, the Appellant started ‘sofa-surfing’²⁷, following his eviction from the Hackney Flat on the same day.
27. On 11 December 2019, Yemi Cooker, Discharge of Duty Officer at the Respondent’s Benefits and Housing Needs Team, wrote to the Appellant²⁸, notifying him that the Respondent 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 a flat in Wembley.
28. On 12 December 2019, the Appellant had a further appointment with Ms Grimes. Another personal assessment of his current housing circumstances was undertaken and his Personalised Housing Plan updated²⁹.
29. On 29 January 2020, the Appellant had another appointment with Ms Grimes at which his Personalised Housing Plan was updated. On 31 January 2020, Ms Grimes wrote to the Appellant³⁰, setting out the advice that had been provided two days earlier.

²¹ TB 277

²² TB 280-292

²³ SB 86-143

²⁴ TB 302-308

²⁵ TB 209-301

²⁶ TB 309

²⁷ TB 330

²⁸ TB 313-314

²⁹ TB 315-319

³⁰ TB 334-337

30. On 26 March 2020, Ms Grimes notified the Appellant of the Respondent's decision that he was not in priority need³¹. Ms Grimes noted that the Respondent therefore did not have a duty to find him a home.
31. On the same day, Ms Grimes also notified the Appellant that, following his application for assistance on 2 October 2019, the Respondent had decided that its duty to assist him under s.189B of the Act had come to an end³².
32. On 8 April 2020, the Appellant's legal representatives wrote to the Respondent³³ requesting a review of the s.184 non-priority decision.
33. By a letter dated 4 June 2020³⁴ the Appellant's representatives wrote to the Respondent, attaching a re-amended witness statement³⁵ of the Appellant, in which it is said,

“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.”

34. Dr Shui, the Appellant's General Practitioner, provided a report, dated 18 June 2020³⁶, at the request of the Respondent, answering questions posed by them. Dr Shui says in her report,

“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.

³¹ TB 70-79

³² SB 68-70

³³ TB 80

³⁴ TB 123-124

³⁵ TB 125-127

³⁶ TB 356-362

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.

...

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."

35. By a letter dated 23 June 2020³⁷ from the Appellant's legal representatives to the Respondent, they enclosed a report, dated 22 June 2020, from the Appellant's GP, Dr Shui of Athena Medical Centre³⁸.

³⁷ TB 132

³⁸ TB 135-138

36. On 14 July 2020, the Respondent’s Reviewing Officer wrote a regulation 7(2) letter to the Appellant’s legal representatives³⁹. She 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.
37. On 29 July 2020, the Reviewing Officer wrote a review letter to the Appellant’s legal representatives⁴⁰, in which she concluded at paragraph 62,

“I have reached the decision that Mr Perrott is not considered to be in priority need for accommodation. I am also satisfied that your client would not be significantly more vulnerable than an ordinary person if they became homeless.”

Law - Vulnerability

38. S.189(1)(c)⁴¹ of the Act states that,

“Priority need for accommodation.

(1)The following have a priority need for accommodation—

...

(c)a person who is vulnerable as a result of old age, mental illness or handicap or physical disability ...

39. The Homelessness Code of Guidance for Local Authorities, February 2018, provides at paragraph 8.16⁴²:

“When assessing an applicant’s vulnerability, a housing authority may take into account the services and support available to them from a third party, including their family. This would involve considering the needs of the applicant, the level of support being provided to them, and whether with such support they would or would not be significantly more vulnerable than an ordinary person if made homeless. In order to reach a decision that a person is not vulnerable because of the support they receive the housing authority must be satisfied that the third party will provide the support on a consistent and predictable basis. In each case a housing authority should consider whether the applicant, even with support, would be vulnerable.”

40. Vulnerability is not defined in the Act. In *Hotak v Southwark LBC* [2016] A.C. 811⁴³, the Supreme Court held that whether a person is considered to be vulnerable inevitably requires comparison with persons who would not be vulnerable. In carrying out this exercise, the local housing authority should compare the applicant with an ordinary

³⁹ TB 139-156

⁴⁰ TB 161- 182

⁴¹ Authorities Bundle 12

⁴² Authorities Bundle 377

⁴³ Authorities bundle 34-71

person if made homeless, not an ordinary, actually homeless person. Lord Neuberger held at paragraph 53⁴⁴ that ‘vulnerable’ in s.189(1) connotes “significantly more vulnerable than ordinarily vulnerable as a result of being rendered homeless.” Baroness Hale said in *Hotak*⁴⁵,

93. [...] The person who is old, mentally disordered or disabled, or physically disabled, must as a result be more at risk of harm from being without accommodation than an ordinary person would be. This is what I understand Lord Neuberger to mean by "an ordinary person if homeless". I agree. The comparison is with ordinary people, not ordinary homeless people, still less ordinary street homeless people. And it is ordinary people generally, not ordinary people in this locality.

41. In *Panayiotou v Waltham Forest BC* [2017] 27 HLR 48⁴⁶, the Court of Appeal considered the meaning of the word ‘significantly’. Lewison LJ said⁴⁷,

35. One of the themes that runs through previous decisions of this court is that there must be a causal link between the particular characteristic (old age, physical disability etc) and the effect of homelessness: in other words some kind of functionality requirement. We now know that the functionality is not an ability to "fend for oneself" nor an ability "to cope with homelessness without harm". But if it is not that, what is it? The nearest that Lord Neuberger came to providing an answer was in saying that section 189 (1) (c) is concerned with:

‘an applicant's vulnerability if he is not provided with accommodation.’ (*Hotak* at [37])

44. It seems reasonable to conclude, therefore, that the relevant effect of the feature in question is an impairment of a person's ability to find accommodation or, if he cannot find it, to deal with the lack of it. The impairment may be an expectation that a person's physical or mental health would deteriorate; or it may be exposure to some external risk such as the risk of exploitation by others.

64. I do not, therefore consider that Lord Neuberger can have used "significantly" in such a way as to introduce for the first time a quantitative threshold, particularly in the light of his warning about glossing the statute. Rather, in my opinion, he was using the adverb in a qualitative sense. In other words, the question to be asked is whether, when compared to an ordinary person if made homeless, the applicant, in consequence of a characteristic within section 189 (1) (c), would suffer or be at risk of suffering harm or detriment which the ordinary person

⁴⁴ Authorities bundle 59

⁴⁵ Authorities bundle 69

⁴⁶ Authorities bundle 209-244

⁴⁷ Authorities bundle 230-232, 236-237

would not suffer or be at risk of suffering such that the harm or detriment would make a noticeable difference to his ability to deal with the consequences of homelessness. To put it another way, what Lord Neuberger must have meant was that an applicant would be vulnerable if he were at risk of more harm in a significant way. Whether the test is met in relation to any given set of facts is a question of evaluative judgment for the reviewer.

42. In *Rother DC v Freeman* [2018] EWCA Civ 368, it was said that the authority does not need explicitly to spell out the comparison, provided that it can be discerned that it has approached the issue correctly. It was sufficient for the review officer to have correctly set out the *Hotak* test and given reasons why he did not consider the applicant's health conditions made him more vulnerable than an ordinary person who was homeless.

Grounds of Appeal⁴⁸

Ground One: The Respondent failed to lawfully process, consider and/or address the medical evidence relating to the Appellant in this matter

43. Mr Grütters submitted that the Respondent failed to engage with the substance of the medical evidence relating to the Appellant's gastrointestinal problems and how those problems impacted on his vulnerability. Mr Grütters made five points.
44. Firstly, he said that the Reviewing Officer erred in drawing an equivalence in the reports between the report of Dr Hornibrook of NowMedical, dated 5 June 2019, and the reports of the Appellant's GP, Dr Shui, dated 18 and 22 June 2020. The Reviewing Officer says at paragraph 41 of the review letter⁴⁹,

"I have also considered the Council's Medical Advisor's recommendation dated 5th June 2019. A second opinion was not sought from the Council's Medical Adviser as the medical information represented as part of the review request are not significantly different from Mr Perrott's medical information presented in support of his homelessness application. "

45. The report of Dr Hornibrook MBBS MRCGP of NowMedical, dated 5 June 2019⁵⁰, was based on information supplied towards the end of 2018. Dr Hornibrook did not meet the Appellant. In her report she says he has a "History of gastritis and duodenitis." She describes his medication. She says,

"He is said to be awaiting further tests. However, there remains nothing to suggest any sinister underlying condition causing his gastritis and nothing to suggest that he requires any urgent operative intervention."

46. Mr Grütters said that the evidence shows that the Appellant's medical condition seriously deteriorated between the end of 2018 and June 2020. He referred to the

⁴⁸ Amended grounds of appeal, dated 8 October 2020; TB 22-24

⁴⁹ TB 175-176

⁵⁰ TB 268-269

report of Dr Sarmed Sami, Consultant Gastroenterologist MBChB MRCP PhD, dated 13 September 2019⁵¹. Following his examination of the Appellant, Dr Sami noted in his report, complaints which were different from the past medical history and refers to wanting to repeat tests, including endoscopy and ultrasound “in view of his worsening symptoms and weight loss”. He says,

“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 is difficult to ascertain whether it is actually regurgitation or vomiting. He tells me that he could wake up in the morning and find bits of food or bile on the pillow. He also describes a feeling of dyspepsia, epigastric pain and burning after eating. He denies any acid regurgitation. He also tells me that the regurgitant food tastes acidic. Dysphagia could happen with either solids or liquids. There was also mild chest discomfort and he reports weight loss of about a stone or two over the last year, however, his weight loss appears to be stable in the last few months.”

These medical conditions or symptoms were not referred to by Dr Hornibrook.

47. In her report, dated 18 June 2020⁵², Dr Shui says in answer to the question “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.”

In reply to the question, “It is reported that Mr Perrott has gastrointestinal problems with underlying problems yet to be identified. Please can you confirm if this is the case and what was the outcome or is an outcome pending?” she answered,

“Yes. Still undergoing more extensive investigations as he has recurrent vomiting.”

In reply to the question, “Does the patient require support to attend to his physical health and hygiene and other activities of daily living?”, she answered,

“- Needs good hygiene for fresh food, clean hand washing and bathing toileting facilities.

- as to avoid any gastrointestinal infections

⁵¹ TB 275-276

⁵² TB 356-362

- personal facilities rather than shared facilities.”

In reply to the question, “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?”, she answered,

“- Yes

- he is often debilitated by his abdominal pain and vomiting with weakness.”

In reply to the question, “Would the patient’s treatment be otherwise untreatable if made homeless?”, she wrote,

“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.”

48. Dr Shui’s references to the Appellant’s “recurrent vomiting” and being “often debilitated by his abdominal pain and vomiting with weakness” were new information that was not contained in the report of Dr Hornibrook, dated 5 June 2019.
49. Mr Grütters referred me to *Shala v Birmingham CC* [2008] H.L.R. 8⁵³, in which it was held by the Court of Appeal that:
- i) Housing officers should not be expected to make their own critical evaluation of applicants’ medical evidence and should have access to specialist advice;
 - ii) The function of an authority’s medical adviser is to enable housing officers to understand the medical issues and to evaluate for themselves the expert evidence; and,
 - iii) At H18⁵⁴ it was said,

“The respondent authority had overlooked the GP’s reports and had dismissed the psychiatrist’s reports on the grounds that they did not raise any new information; that was wrong as [these reports] ... arguably portrayed a more serious condition; the authority was not entitled to treat those reports as adding nothing to its existing knowledge of the wife’s condition.”
 - iv) At H22⁵⁵ it was said,
“(5) Where an authority’s medical expert is not a psychiatrist, in weighing his comments against a psychiatrist’s

⁵³ Authorities bundle 292-305

⁵⁴ Authorities bundle 294

⁵⁵ Authorities bundle 294

report, the authority must not fall into the trap of thinking that it is comparing like with like.”

v) At H23⁵⁶ it was said,

“(6) The function of an authority’s medical adviser is to enable the authority to understand the medical issues and to evaluate for themselves the expert evidence; absent an examination of the patient, the medical adviser’s evidence cannot itself ordinarily constitute expert evidence; while there is no rule that a doctor cannot advise on the implications of other doctors’ reports without examining the patient, if he does so, the decision maker needs to take the lack of examination into account.”

50. Secondly, Mr Grütters submitted that the Reviewing Officer erred in that she gave no reasons for departing from the evidence of the Appellant’s treating GP, Dr Shui. He referred to *Guiste v Lambeth LBC* [2020] HLR 12⁵⁷, in which Henderson LJ said at paragraph 64⁵⁸,

“This evidence, from a distinguished consultant psychiatrist, and directed to the key legal point in issue, could not in my view be disregarded, and if the review officer was going to depart from it, I think it was necessary for her to provide a rational explanation of why she was doing so. The difficulty which I have is that, even on a benevolent reading, I am unable to find any such rational explanation in the Review Decision.”

51. Mr Grütters submitted that the first ten pages of the Reviewing Officer’s report provided a summary of the Appellant’s case. The Reviewing Officer asserts at paragraph 34⁵⁹ that the Appellant’s condition has not worsened and says regarding his medication,

“Whilst the quantity may have increased, the dosage has remained the same.”

At paragraphs 35⁶⁰, she says,

“I have not found any evidence from Dr Shui’s report indicating that Mr Perrott’s appointments were considered as urgent or an emergency.”

⁵⁶ Authorities bundle 294-295

⁵⁷ Authorities bundle 181-188

⁵⁸ Authorities bundle 186-187

⁵⁹ TB 173

⁶⁰ TB 173

She argues that the cancellation of his appointments does not leave him significantly more vulnerable than ordinarily vulnerable if rendered homeless. At paragraph 36⁶¹ she argues that,

“I have found no evidence to indicate that Mr Perrott could not control of (sic) his environment in terms of hand washing, food preparation and keeping his medication. Neither have I found any evidence to suggest that Mr Perrott does not have the ability to maintain good hygiene in order to prepare fresh food, clean hands and washing and bathing and toileting facilities in order to avoid any gastrointestinal infection if living in shared accommodation.”

52. Mr Grütters accepted that the Reviewing Officer could depart from the conclusion of Dr Shui but said that such a departure required a rational explanation of why she was doing so and she failed to provide such explanation.
53. Thirdly, Mr Grütters submitted that without any reasoning and wrongly the Reviewing Officer gave equal weight to the recommendation in Dr Hornibrook’s report dated 5 June 2019⁶², which is from a non-specialist and non-treating doctor who had not examined the Appellant, and the report of the treating doctor, Dr Shui, who had examined the Appellant. The Reviewing Officer says at paragraph 41⁶³,

“I have also considered the Council’s Medical Advisor’s recommendation dated 5th June 2019. ... However, I am mindful that where a medical professional has examined a person or has direct contact with them, due weight must also be given when reaching a decision. I have given equal weight to Dr Shui’s report.”

54. Mr Grütters referred me to *R (Bishop) v Westminster CC* (1993) 25 H.L.R. 459 as authority for the proposition that where there is a conflict in the available medical evidence, the local authority should consider whether or not the opinions are based on an examination of the applicant.
55. Fourthly, Mr Grütters submitted that the Reviewing Officer categorically misstated the conclusion by Dr Shui. The Reviewing Officer said at paragraph 41 of the review decision⁶⁴,

“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.”

However, in reply to the question, “In your professional opinion, would you consider the patient severely impaired as a result of his medical condition(s) thus making him

⁶¹ TB 174

⁶² TB 268-269

⁶³ TB 175-176

⁶⁴ TB 176

significantly more vulnerable than ordinarily vulnerable if rendered homeless?”, Dr Shui answered⁶⁵,

“- Yes

- he is often debilitated by his abdominal pain and vomiting with weakness.”

56. Fifthly, Mr Grütters submitted that rather than engaging with the totality of the medical evidence, the Reviewing Officer focussed on irrelevant considerations. In particular, she concluded at paragraph 46⁶⁶ that the Appellant was “able to carry out all the essential tasks needed for daily living” and that he was “resilient enough to manage with a reasonable level of functionality.” The medical evidence did not suggest the Appellant was not functional or not resilient: his problem was not a *functional* inability to prepare food or wash himself. Instead, it was the fact that his physical problems required him to have a clean place to prepare and consume his food and to maintain his personal hygiene. As acknowledged by the Reviewing Officer herself, those requirements are not present when one becomes homeless. Mr Grütters argued that the Reviewing Officer was required to engage with these facts and, if their logical conclusion were rejected, to provide a rational explanation and she failed to do so.

Respondent’s submissions

57. Ms McKeown began her submissions by reminding the Court that the appeal is on a point of law and does not entitle the Court to make the decision afresh. The sole question for the Court under s204 of the Act is whether the decision was reached lawfully. She referred the Court to *Holmes-Moorhouse v Richmond Upon Thames LBC* [2009] [2009] 1 W.L.R. 413⁶⁷, and Lord Neuberger’s guidance at paragraph 50⁶⁸ that the Court should adopt a benevolent approach to the interpretation of review decisions and not take too technical a view of the language used or adopt a ‘nit-picking’ approach.
58. Ms McKeown referred to *Osmani v Camden LBC* [2004] HLR 22⁶⁹, in which Auld LJ said at paragraph 38 9)⁷⁰ that decision letters should not be treated as if they were statutes or judgments and subjected to “pedantic exegesis” and that it was important, when looking for the reasoning, to read the letter as a whole, to get its full sense.

Ground One

59. Ms McKeown submitted that the Reviewing Officer considered all the medical evidence provided on behalf of the Appellant, which Ms McKeown lists at paragraph 38 of her skeleton argument. She said that paragraph 4 of the review decision⁷¹ refers to Dr Shui’s report and the submissions made upon it by the Appellant’s legal

⁶⁵ TB 359

⁶⁶ TB 178

⁶⁷ Authorities bundle 72-88

⁶⁸ Authorities bundle 87

⁶⁹ Authorities bundle 325-343

⁷⁰ Authorities bundle 342

⁷¹ TB 162

representatives. She said that paragraphs 29-30⁷² and 32-33⁷³ specifically address the Appellant's witness statement and the report of Dr Shui.

60. Ms McKeown submitted that the Reviewing Officer acknowledges at paragraph 41⁷⁴ of the decision letter that where a medical professional has examined a person, or has had direct contact with them, due weight must be given to that report. The Reviewing Officer says she gave equal weight to Dr Shui's report. The Reviewing Officer was not satisfied that the Appellant was significantly more vulnerable than the ordinary person if made homeless, and that was a decision she was entitled to reach. Ms McKeown argued that the Reviewing Officer was correct when she said that the report of NowMedical and Dr Shui "do not really disagree"⁷⁵. She said that the Reviewing Officer explained her reasons as follows:
- i) Paragraph 34⁷⁶ of the review decision, for not accepting the contention that the Appellant's condition had worsened over the previous two years, or that his medication had not significantly increased or changed. Ms McKeown argued in her oral submissions that the Appellant's medication had not significantly changed.
 - ii) Paragraphs 35⁷⁷ and 48⁷⁸ of the review decision, for finding that the Appellant could continue (and had continued) to receive information about his appointments, and that the cancellation of his appointments during the lockdown were not exceptional, and did not leave him significantly more vulnerable than ordinarily vulnerable if rendered homeless;
 - iii) Paragraph 36⁷⁹ of the review decision, for finding that the Appellant could follow adequate hygiene measures and keep his medication (which did not require special storage).
61. Ms McKeown submitted that even if the Reviewing Officer had preferred the view of Dr Hornbrook of NowMedical, she was entitled to do so. She referred me to the case of *Wandsworth LBC v Allison* [2008] EWCA Civ 354⁸⁰, in which the Court affirmed that it was for the local authority to decide what weight to give to the various pieces of medical evidence.
62. Ms McKeown submitted that it was not contended by the Appellant that there was a failure to make enquiries but in any event, she said the letter from Dr Sami⁸¹ does not contain any new information in any material sense. The doctor still cannot ascertain the cause of the symptoms, and the tests that he recommended had not, as at the date of the review, been carried out.

⁷² TB 171

⁷³ TB 172

⁷⁴ TB 175-176

⁷⁵ Paragraph 41 of Ms McKeown's skeleton

⁷⁶ TB 173

⁷⁷ TB 173

⁷⁸ TB 178

⁷⁹ TB 173-174

⁸⁰ Authorities bundle 266-291

⁸¹ TB 275-276

63. Ms McKeown submitted that it was not enough for Dr Shui to state that the Appellant was vulnerable. She said that the determination of vulnerability was not based on simply having a health condition but rather the extent to which the condition causes functional limitation.
64. Ms McKeown submitted that the Appellant’s ability to carry out the essential tasks for daily living and/or his level of functionality were not irrelevant considerations. She referred to *Hotak* (supra) as authority for the proposition that what was required was a contextual and practical assessment of the applicant’s physical and mental ability if he were to be rendered homeless.
65. She submitted that the Reviewing Officer engaged with the information provided to her. It was for the Reviewing Officer to decide if the Appellant would be at risk of suffering harm or detriment that the ordinary homeless person would not be at risk of suffering. Even if she concludes this is the case, she then has to ask whether the harm or detriment would make a noticeable difference to the Appellant’s ability to deal with the consequences of homelessness.
66. She said that the Reviewing Officer did this and concluded at paragraph 44 of the review decision⁸² that the harm the Appellant would “suffer, or be at risk of suffering, is likely to be similar to” the harm that an ordinary person would suffer. The Reviewing Officer went on to say that in any event she did not “believe that the harm he would suffer would make a noticeable difference to his ability to manage and cope with being homeless when compared to an ordinary homeless person”.
67. Ms McKeown says that the Reviewing Officer acknowledged at paragraph 46⁸³ of the review decision that if the Appellant were to remain without accommodation (including having to sleep rough), there may be some deterioration in his health, but that it would not be,

“to a level where the harm he is likely to experience would be more significant than an ordinary person would experience if they were to be in the same situation as him. I am satisfied that Mr. Perrott is able to carry out all the essential tasks needed for daily living and he would be able to cope with homelessness as well as an ordinary person...”.

Findings as to Ground One

68. I bear in mind that this appeal is on a point of law and does not entitle the Court to make the decision. I further remind myself that the Court should adopt a benevolent approach to the interpretation of the review decision and not take too technical a view of the language used.
69. Ground one of this appeal goes to the very heart of the Respondent’s review decision. Firstly, I find that the Reviewing Officer erred in law in drawing 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. Dr Hornibrook was

⁸² TB 177

⁸³ TB 178

not a treating doctor and had never examined or interviewed the Appellant. In contrast, Dr Sarmed Sami, the Appellant's Consultant Gastroenterologist and Dr Shui, the Appellant's General Practitioner, had both examined and interviewed him. Ms McKeown argues that the reports of Dr Hornibrook and Dr Shui "do not really disagree". That submission is contradicted by the medical evidence. Dr Hornibrook's report⁸⁴ was based on the medical evidence prior to the end of December 2018. The Appellant's treating doctor, Dr Sami, Consultant Gastroenterologist at UCH, refers in his report of 13 September 2019⁸⁵ to the Appellant's "worsening symptoms and weight loss"⁸⁶. Dr Sami says that the Appellant has been referred because of "dysphagia, dyspepsia, weight loss for over a year now"⁸⁷. He says that the Appellant reports that his food gets stuck in his throat and he has to push it down every day with water, he regurgitates food or vomits and wakes in the morning to find bits of food or bile on the pillow. In addition, he has a feeling of dyspepsia, epigastric pain and burning after eating. He also suffers retrosternal and lower sternal dysphagia and mild chest discomfort. The Appellant's eating problems, dysphagia, dyspepsia and weight loss for over a year are not referred to by Dr Hornibrook in her report dated 5 June 2019. These matters amounted to the worsening symptoms noted by Dr Sami.

70. Dr Shui was asked by the Respondent to state in terms whether the Appellant's symptoms had deteriorated in the last twelve months and answered⁸⁸,

"Yes, his recurrent abdominal pain, vomiting, anorexia have worsened in the past 2 years, associated with increased stress homelessness."

Dr Shui refers to the Appellant being often debilitated by abdominal pain, vomiting with weakness and difficulty if made homeless in controlling his environment for handwashing and food preparation.

71. In my judgment, Dr Shui refers to symptoms which are different and more severe than those reported upon by Dr Hornibrook, and it is perverse to say, as the Reviewing Officer does, that the reports are "not significantly different". Both Dr Sami and Dr Shui say that the Appellant's symptoms have worsened and set out the symptoms which demonstrate that proposition. The Reviewing Officer's error goes to the very heart of the review and vitiates her decision. As a consequence, the review decision, dated 29 July 2020, must be quashed.

72. Secondly, I find that the Reviewing Officer misunderstood and mis-stated the conclusion of Dr Shui. The Reviewing Officer said at paragraph 41⁸⁹,

"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."

⁸⁴ TB 268-269

⁸⁵ TB 275-276

⁸⁶ TB 276

⁸⁷ TB 275

⁸⁸ TB 356

⁸⁹ TB 176

The Respondent asked Dr Shui the question⁹⁰, “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.”

The Respondent displays a fundamental misunderstanding of the evidence of Dr Shui. Dr Shui says in terms that in her opinion, the Appellant is severely impaired as a result of his medical conditions, which makes him significantly more vulnerable than ordinarily vulnerable if rendered homeless. The Reviewing Officer’s misunderstanding goes to the very core of the case and as a consequence, the review decision, dated 29 July 2020, must be quashed.

73. Thirdly, I find that the Reviewing Officer erred in her decision at paragraph 41⁹¹ of the review decision in failing to provide any explanation for giving equal weight to the evidence of Dr Shui and Dr Hornibrook.
74. If the Reviewing Officer gave the evidence of Dr Shui and Dr Hornibrook equal weight because she believed that they were not significantly different, she erred in law for the reasons stated at paragraphs 69-71 above. Bearing in mind that Dr Hornibrook was a non-treating doctor and Dr Shui had examined the Appellant and provided an up-to-date report dealing with his worsening symptoms, it was beholden on the reviewing officer to give reasons for giving equal weight to Dr Shui and Dr Hornibrook’s reports and she failed to do so. I find this vitiates the review decision.
75. Fourthly, I find 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 find 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 report, dated 18 June 2020⁹². Again, I find that this failure vitiates her decision.
76. 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:
 - i) His need for clean handwashing and bathing and toileting facilities to avoid gastrointestinal infections. Dr Shui says that he needs “personal facilities rather

⁹⁰ TB 359

⁹¹ TB 176

⁹² TB 356-362

than shared facilities”. The Reviewing Officer says at paragraph 36⁹³ 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.

- ii) In her report, dated 18 June 2020, Dr Shui says⁹⁴, 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 40⁹⁵, she does not consider how the Appellant would meet these requirements if he was homeless. The Reviewing Officer says at paragraph 46⁹⁶ 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.
- iii) 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 53⁹⁷ 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.

- iv) 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.
 - v) The Reviewing Officer never engages with Dr Shui’s evidence that the Appellant is often debilitated by abdominal pain and vomiting with weakness.
77. For completeness, whilst the Reviewing Officer was entitled to consider the fact that the Appellant was able to carry out all the essential tasks needed for daily living and manage with a reasonable level of functionality, she also had to bear in mind that these matters were not put in issue by the Appellant.
78. For the above reasons, I conclude that ground one is made out and the review decision of 29 July 2020 must be quashed.

⁹³ TB 174

⁹⁴ TB 358

⁹⁵ TB 175

⁹⁶ TB 178

⁹⁷ TB 179

Ground Two: The Review Decision fails to properly apply the Public Sector Equality Duty

Law

79. 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.”

80. 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.”

81. Section 149⁹⁸ 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; ...

⁹⁸ Authorities bundle 30-32

(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.”

82. In *Hotak v Southwark LBC* (supra), Lord Neuberger said in relation to the operation of the public sector equality duty (PSED) in s.149 in the context of homelessness⁹⁹,

“[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. ...”

83. *Hackney LBC v Haque* [2017] PTSR 769¹⁰⁰ was a case involving a challenge to the suitability of accommodation offered under Part 7. Briggs LJ, as he then was, said at paragraph 43¹⁰¹ 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

⁹⁹ Authorities bundle 64-65

¹⁰⁰ Authorities bundle 245-265

¹⁰¹ Authorities bundle 260-261

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

84. Briggs LJ said at paragraph 44¹⁰²,

“... 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.”

Appellant’s submissions

85. The Reviewing Officer says in the decision letter at paragraph 11¹⁰³,

“I have formed the opinion that he does not suffer from a disability that comes under the definition for protected characteristic as set by the Equality Act 2010. For the purposes of the Act, a disability is defined as ‘a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on Mr Perrott’s ability to carry out normal day-to-day activities. The effect of an impairment is defined as “long term” if it has lasted for at least 12 months, likely to last for at least 12 months or is likely to last for the rest of his life. I have found no evidence to indicate that Mr Perrott has a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your client’s ability to do normal daily activities in order to persuade me to believe that he falls within the definition of a disability as set out in s.6 (1) of the Equality Act. The reason for this opinion will be explained and demonstrated in my response. However whether Mr Perrott has a disability or not, I have treated him as such during this review process.”

86. Mr Grütters submitted that the Appellant’s gastrointestinal problems were a physical impairment which had a substantial and long-term effect on his ability to carry out normal day-to-day activities, such as eating. He submits that the decision of the Reviewing Officer that the Appellant is not suffering from a disability is perverse.

87. Mr Grütters referred to the Homelessness Code of Guidance for Local Authorities (February 2018). Paragraph 8.25 says¹⁰⁴,

“Mental illness or learning disability or physical disability

Housing authorities should have regard to any advice from medical professionals, social services or current providers of

¹⁰² Authorities bundle 261

¹⁰³ TB 166

¹⁰⁴ Authorities bundle 379

care and support. In cases where there is doubt as to the extent of any vulnerability authorities may also consider seeking a clinical opinion. However, the final decision on the question of vulnerability will rest with the housing authority. In considering whether such applicants are vulnerable, authorities will need to take account of all relevant factors including:

- (a) the nature and extent of the illness and/or disability;
- (b) the relationship between the illness and/or disability and the individual's housing difficulties; and,
- (c) the relationship between the illness and/or disability and other factors such as drug/alcohol misuse, offending behaviour, challenging behaviour, age and personality disorder.”

88. Mr Grütters submitted that in order to comply with the PSED, the Reviewing Officer was required to focus very sharply on:
- i) Whether the Appellant suffered from a disability;
 - ii) The extent of such disability;
 - iii) The likely effect of the disability, when taken together with any other features, on the Appellant if and when homeless; and
 - iv) Whether the Appellant was as a result ‘vulnerable’.
89. Mr Grütters conceded that the PSED is not a ‘free-standing’ duty and, in the case of a vulnerability assessment, there is substantial overlap between the requirements of the homelessness code and the PSED. He submitted that what matters is the substance of the assessment not its form. However, he said that the Review Decision does not in substance look at the nature or extent of the Appellant’s physical problems or disability nor does it deal with their relationship with his housing difficulties.
90. The Reviewing Officer accepted that, if the Appellant, like an ordinary homeless person, were to become homeless, his personal hygiene would deteriorate (paragraph 42 d¹⁰⁵). Mr Grütters argued that the Appellant would suffer significantly greater harmful symptoms because of his medical condition and as a consequence, the Reviewing Officer should have considered that the Appellant’s needs might require him to be treated more favourably than a person without a disability.

Respondent’s submissions

91. Ms McKeown submitted that the review decision looks at the nature and extent of the Appellant’s physical problems and deals with their relationship with his housing difficulties and the effect they have on his ability to deal with the consequences of being homeless. She said that the Reviewing Officer clearly appreciated the problems from which the Appellant suffers.

¹⁰⁵ TB 176

Findings as to Ground Two

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 2020¹⁰⁶, has worsened in the past two years. Dr Shui says that the Appellant is often debilitated by his abdominal pain and vomiting with weakness¹⁰⁷. 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 11¹⁰⁸ 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 10¹⁰⁹ 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. She says at paragraph 11¹¹⁰,
- “I acknowledge that client has relevant protected characteristics such as age, race and sex.”
95. I find that the Reviewing Officer did not in fact assess with a sharp focus the matters referred to in *Hackney LBC v Haque* at paragraph 43 (see paragraph 83 above). I repeat paragraph 76 herein.
96. I conclude that the Reviewing Officer has failed to properly apply the PSED and as a consequence the review decision of 29 July 2020 must be quashed.

¹⁰⁶ TB 356-362

¹⁰⁷ TB 359

¹⁰⁸ TB 166

¹⁰⁹ TB 165

¹¹⁰ TB 166

Ground 3: The Review Decision failed to lawfully consider whether the Appellant was vulnerable in all the circumstances of the case

Appellant's submissions

97. Mr Grütters submitted that the Appellant's vulnerability, in terms of s.189(1)(c)¹¹¹ of the Act, had to be assessed by reference to his situation if and when homeless. He says the Reviewing Officer was required to pay close attention to the particular circumstances of the Appellant in the round. She had to make a contextual and practical assessment of his physical and mental ability when rendered homeless. He argued that this required the Respondent to pay close regard to the medical evidence submitted in support of the Appellant's application. In particular, the Reviewing Officer was required to consider the medical reports by Dr Shui, which were based, in part, on her examination of the Appellant. She was then required to compare that assessment with the ability of an ordinary person when rendered homeless.
98. Mr Grütters submitted that Dr Shui stated unequivocally that, due to the Appellant's medical conditions and the related symptoms, she considered him to be significantly more vulnerable than ordinarily vulnerable if rendered homeless, noting he was "often debilitated by abdominal pain and vomiting"¹¹². Dr Shui specifically stated that, in order to deal with his physical health, he required facilities that meant he could ensure he maintained proper hygiene, both in terms of food preparation, and in terms of washing and bathing. These facilities had to be personal rather than shared. This was considered necessary to avoid any gastrointestinal infection¹¹³.
99. Mr Grütters concluded that the respondent knew that the symptoms that the Appellant had suffered as a result of his existing gastrointestinal infections were substantial. He argued that the harm of those symptoms was plainly more significant than those that an ordinary person would experience if they were to be homeless. As a consequence, the review decision was unlawful and/or *Wednesbury* unreasonable.

Respondent's submissions

100. Ms McKeown submitted that ground three added nothing to the first two grounds. She argued that it was no more than a disagreement with the Respondent's decision and did not raise a point of law. She submitted that the Respondent had assessed the situation of the Appellant if and when he was rendered homeless.

Finding as to Ground Three

101. I find that the Appellant has made out ground three of the Notice of Appeal. The Reviewing Officer never in fact applied the evidence of the Appellant, Dr Shui and Dr Sami to the issue as to whether the Appellant was significantly more vulnerable than an ordinary person if rendered homeless. I repeat paragraph 76 above.

¹¹¹ Authorities bundle, 12

¹¹² TB 359

¹¹³ TB 358

Conclusion

102. I find the three grounds of appeal are made out and I allow this appeal and quash the review decision made on 29 July 2020.
103. I leave it to the Parties to agree a minute of order.