Claim J40CL088

**IN THE COUNTY COURT AT CENTRAL LONDON**  Thomas More Building

Royal Courts of Justice  
Strand

London WC2A 2LL

Date: 29th September 2023

**Before**:

**HIS HONOUR JUDGE SAUNDERS**

**Between:**

|  |  |  |
| --- | --- | --- |
|  | **NIMOTA AYINLA** | **Appellant** |
|  | **- and -** |  |
|  | **LONDON BOROUGH OF NEWHAM** | **Respondent** |

**Mr Iain Colville of Counsel** (instructed by**) for the Appellant**

**Ms Tina Conlan of Counsel (**instructed by the Respondent’s legal department) **for the** **Respondent**

Hearing date: 31st July 2023

**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 SAUNDERS:**

1. This is an appeal against the Respondent local housing authority’s review decision dated 13 April 2022 that 80 Monega Road, Forest Gate, London E7 8EW (‘the property’), being a private rented sector offer made in discharge of their duty under s.193 of Housing Act 1996 (as amended) (“the Act”), was suitable accommodation provided for the purposes of s.206 of the Act, and that the Appellant’s refusal of the property discharged that duty.
2. At the hearing before me, the Appellant was represented by Mr Colville of Counsel: the respondent by Ms Conlan of Counsel. They are both experienced counsel in this field and I am indebted to them for the helpfulness of their respective submissions based on their skeleton arguments which I have considered in detail.
3. I have also been able to consider the detailed appeal bundle which contains the review decision itself and various other relevant documents from the housing file. Unusually, in a case of this nature, I heard oral evidence from Mr Khalilur Rahman particularly with regard to the issue of what additional information may have been before the reviewing officer, having given permission to do so based upon his witness statement dated 21 September 2022.

Background

1. As ever, the background of this appeal is important but, in this case, it has a particularly lengthy chronology.
2. Following the Court of Appeal’s decision on the 13 December 2021 (nearly two years ago) in *Ibrahim Hajjaj v City of Westminster; Morium Akhter v London Borough of Waltham Forest* [2021] EWCA Civ 1688, on 13 December 2021, the local authority settled a second appeal made by the appellant against an order dated 12 March 2021 which dismissed her appeal against a first review decision on the terms that, upon the Respondent withdrawing their review decision and undertaking to carry out a fresh review, the appeal would be allowed.
3. How did events reach that stage? On 15 January 2018 the Appellant and her 4 children approached the respondent seeking assistance as a homeless person. Ms Ayinla suffers from a number of medical conditions with Bell’s palsy on the right side of her face, fibroids and hypertension.
4. On 6 January 2020, the Respondent accepted that they owed the main housing duty under s.193 of the Act to the Appellant. She (and her children) had been placed in temporary accommodation in Ilford. On 14 August 2020 Ms Ayinla requested a review of the suitability of her temporary accommodation because of disrepair.
5. That position appears to have been accepted by the Respondent as, on 24 November 2020, she was offered the property, the Respondent indicating that:

“You have been approved by the London Borough of Newham for a private rented sector offer as defined in s.193(7AC) of the Housing Act 1996. This offer is made in pursuance of arrangements made by the Council with the landlord, to make the property available for your occupation. The Council has approved the offer with a view to bringing to an end its housing duty towards you. The tenancy is for a fixed term of 12 months.”

1. The property was to be held under an assured shorthold tenancy under this fixed term. The Respondent was satisfied that the property was suitable having considered the criteria and Article 3 of the Homelessness (Suitability of Accommodation) (England) Order 2012 (“the 2012 Order”) and that she should meet the landlord, “Ibrahim” (later discovered to be a Mr Ahmed) on the 25 November 2020 to view it.
2. That viewing went ahead but the appellant was unhappy with its suitability. The following day, she wrote:

“Also, the private offer that the council made to me was not suitable for me and my children as the property was in poor condition. Also due to my health condition I cannot accept living in an accommodation that would worsen my health. The mould and dampness in this property offered would further adversely affect my health”.

1. In reply to the Respondent’s Housing Choices Officer inquiries regarding the condition of the property, the Council’s Lettings Agency Officer advised:

“I believe if there were damp, or condensation client would have stated that during my conversation with her yesterday and in her initial emails. She made it clear to me that she is only interested in a permanent property”. The officer was also advised: “client had a suitability assessment which also takes into account affordability. Client is in employment and the property rent is the LHA red, which makes the rent affordable. Suitability assessment will not recommend zone A (Newham) and the areas within London if affordability will be an issue. We check Revenues & Benefits and call clients prior to offers to confirm that they are still in employment. The landlords request below is how much will be the client’s personal contribution towards the rent. This is the after HB/UC payment. If the client accepts the offer, I will do a trial calculation for the agent”.

1. On 26 November 2020, Mr Khalilur Rahman, a Housing Supply Officer (who gave evidence at the hearing), stated: “I inspected the property and confirm that there were no evidence of damp or condensation”.
2. On the 27 November 2020, an officer from the Respondent telephoned the Appellant to reiterate the consequences of refusing the offer. She was advised once more that the property had been inspected prior to offer and that there was no evidence of damp. The Appellant stated that she would not be accepting the property.
3. Having considered this evidence, on 30 November 2020, the respondent wrote to the appellant to explain that, so far as they were concerned, her refusal of the property meant that their duty was discharged. That letter reads:

“Further, I am satisfied that the offer letter set out the reasons why the Council considered the property, and the landlord met the requirement of Article 3 of the Homelessness Suitability (England) Order 2012”.

1. On 2 December 2020, the Respondent told the appellant the review of the Ilford property was redundant “and would be withdrawn”. On 17 December 2020 she asked for a review of this decision. On 12 March 2021, the Council upheld their decision that the property was suitable, and their duty was finally discharged.
2. On 5 August 2021 this court dismissed the Appellant’s appeal. Ms Ayinla appealed to the Court of Appeal, and on 12 October 2021 Bean LJ directed that the time for filing a skeleton be extended to 28 days after judgment was handed down in *Hajjaj*. Given the Court’s decision, by order, dated 13 December 2021, the local authority consented to the appeal being allowed upon their withdrawal of the review decision.
3. On 31 March 2021, further representations were made on behalf of the Appellant on review, including that the local authority had failed to consider the 10 bars to suitability set out in Art.3(1) of the 2012 Order and there was no evidence that the property satisfied these requirements.
4. Within the housing file, part of the evidence revealed was an attendance note dated 12 April 2022. That evidence shows that the reviewing officer was of the view that he had “considered the full file and note the documents on file” and, upon that basis formed the conclusion that he was “satisfied on the basis of the evidence that the requirements of suitability in Article 3(1) were met”.
5. As helpfully set out by Mr Colville, the now disclosed additional housing file contained some further documents, not previously disclosed, which consisted of the following:
6. An email dated 28 October 2020, in which Mr Ibrahim Ahmed (the landlord) provided the Respondent with the Electric Installation Condition Report (“EICR”), dated 19 August 2019; the Gas Safety Certificate, dated 1 September 2020, and an EPC for the property, dated 13 August 2019. The EICR recommended that Mr Ahmed interlink the smoke and heat alarms.
7. That Mr Ahmed provided, on the 16 November 2020, a Certificate of Accreditation awarded to him by the London Landlord Accreditation Scheme.
8. A Property Condition Form which the landlord has completed, stating the Gas Safety Certificate expired on 7 October 2022; the electrical safety certificate expired on 11 October 2024, and the EPC expired on 13 August 2029. He also stated that the property had smoke detectors and Carbon Monoxide Detectors and the property was safe and in a good condition, and, as such, free from Category 1 hazards.
9. A tenancy agreement, which appears to be incomplete.
10. An email dated 29 October 2020, in which Mr Rahman confirms that he inspected the property and that the landlord needed to complete various works, to include the installation of a mains connected heat sensor in the kitchen, along with a fire door into that area, that a fire blanket was required in the kitchen, that smoke detectors should be installed in the hallway and landing, and that various redecoration and “making good” works be carried out to the property such as replacing carpets, cleaning, and fixing broken items.
11. Much of what the Appellant relies upon is based upon this new disclosure. Her concern is that, following Mr Ahmed being asked to let the local authority know when the works had been completed, that the evidence of it being dealt with satisfactorily is somewhat scant. The documents reveal (and I will deal with this later in relation to his oral evidence) that he reinspected the property on 17 November 2020 but that the housing file does not contain a copy of the property inspection report, only some internal photographs. The only identifiable comment is in an email form Mr Rahman dated 26 November 2020 in which he says:

“The property was initially inspected on 29th October 2020 and then re-inspected on 17/11/20, during both inspections there was no evidence of dampness or condensation, please see attached pictures.”

1. On 13 April 2022, the Respondent upheld their original decision on review since the property “was a reasonable offer of which you unreasonable refused” and, therefore, the decision to discharge the duty owed was lawful. The Appellant appealed that decision on the 3 May 2022.

The relevant law

1. Although comprised of several grounds, the central issue of this appeal relates to the Respondent’s consideration (or lack of consideration) on review of Article 3(1) of the 2012 Order. Since the Localism Act 2011, local housing authorities have been able to discharge the main homelessness duty by offering private sector accommodation (“PRSO”). Article 3 outlines a list of ten circumstances in which a PRSO will not be regarded as suitable. In this appeal, of relevance is a failure to have a current gas safety or energy performance certificate.
2. There are two specific areas where it is important, in relation to this appeal, to set out the position in some detail.
3. First, S.193 (7AA) of the Act states that a local housing authority can bring an end to its main housing duty by making an offer of PRSO provided that it meets the requirements of S.193 (7AC), that is that it must be of an assured shorthold tenancy of available accommodation, made with a view of bringing the main housing duty to an end, and that it must be of 12 months duration.
4. Significantly, as provided by S193 (7F), the local authority must not approve a PRSO (such as this one) unless it is suitable. That is where Article 3 of the 2012 Order comes into play. It sets out the circumstances when a PRSO is **not** to be regarded as suitable.
5. For the purpose of this appeal, it is worth setting it out:

“3. For the purposes of a private rented sector offer under section 193(7F) of the Housing Act 1996, accommodation shall not be regarded as suitable where one or more of the following apply–

1. the local housing authority are of the view that the accommodation is not in a reasonable physical condition;
2. the local housing authority are of the view that any electrical equipment supplied with the accommodation does not meet the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994(1);
3. the local housing authority are of the view that the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied with it;
4. the local housing authority are of the view that the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation;
5. the local housing authority are of the view that the landlord is not a fit and proper person to act in the capacity of landlord, having considered if the person has:
   * 1. committed any offence involving fraud or other dishonesty, or violence or illegal drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003(2) (offences attracting notification requirements);
     2. practised unlawful discrimination on grounds of sex, race, age, disability, marriage or civil partnership, pregnancy or maternity, religion or belief, sexual orientation, gender identity or gender reassignment in, or in connection with, the carrying on of any business;
     3. contravened any provision of the law relating to housing (including landlord or tenant law); or
     4. acted otherwise than in accordance with any applicable code of practice for the management of a house in multiple occupation, approved under section 233 of the Housing Act 2004(3);
6. the accommodation is a house in multiple occupation subject to licensing under section 55 of the Housing Act 2004 and is not licensed;
7. the accommodation is a house in multiple occupation subject to additional licensing under section 56 of the Housing Act 2004 and is not licensed;
8. the accommodation is or forms part of residential property which does not have a valid energy performance certificate as required by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007(4);
9. the accommodation is or forms part of relevant premises which do not have a current gas safety record in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(5); or
10. the landlord has not provided to the local housing authority a written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate.”
11. It is also important to consider the explanatory memorandum to the 2012 Order which describes where Article 3 is directed:

“7.5 During the passage of the Localism Act 2011, members and peers of both Houses of Parliament and homelessness organisations raised concerns about the quality of private rented sector accommodation. Particular issues of damp, cold, mould and the possibility of using rogue landlords were raised. In response to those concerns, the Government decided that additional regulatory safeguards were necessary to prevent the use of poor quality accommodation for households owed the main homelessness duty, given the some homeless households may be vulnerable and offered accommodation over which they have less choice. The circumstances set out in the Order were chosen specifically to address those concerns raised. To determine which factors would be effective in protecting vulnerable tenants yet would not place such a burden on local authorities and landlords that no accommodation would be made available, the Government looked at existing landlord accreditation schemes across the country.”

1. At paragraph 17.17 of the Code of Guidance, emphasis is placed on those matters which are relevant to this appeal (and others):

“To determine whether or not accommodation meets the requirements set out in Article 3 housing authorities are advised to ensure it is visited by a local authority officer or someone able to act on their behalf to carry out in an inspection. Attention should be paid to signs of damp or mould and indications that the property would be cold as well as to a visual check made of electrical installations and equipment (for example; looking for loose wiring, cracked or broken electrical sockets, light switches that do not work and appliances which do not appear to have been safety tested).”

1. The second relevant matter to consider is of course the decision in *Hajjaj*.
2. What is clear from the judgment (and, indeed, a reading of Article 3) is that before a local housing authority can offer a PRSO, it must “approve” the accommodation.
3. By S.193(7F) of the Act, to “approve” the accommodation they must decide the accommodation to be offered, pursuant to their arrangement with the private landlord, is “suitable” for the applicant.
4. In *Hajjaj,* the Court held that local authorities should not approve a PRSO unless they were satisfied that the accommodation was suitable. The local authority must be satisfied based on **evidence** rather than **assumptions** of this – as at the time of making the offer. (My specific highlighting and underlining).
5. In other words, upon my reading of the decision, a local housing authority has to be satisfied, on the basis of evidence rather than assumption, that none of the bars to Article 3(1) suitability apply.
6. The local housing authority cannot rely on the applicant objecting – that is contrary to the intention of the order as it would shift the burden upon the prospective tenant. The authority is clear, in my view, that a local housing authority cannot simply rely on the applicant objecting; it would be contrary to the scheme of the Act to shift the burden onto the prospective tenant to object, particularly since a failure to accept the offer had potentially drastic adverse consequences if the objection was not upheld. That is set out in the judgment of Bean LJ at paragraph 70:

“70. For my part, I do not think that the negative wording of Article 3 is as significant as the Respondents suggest. Section 193(7F) of the 1996 Act is quite clear. It says that the LHA shall not approve a PRSO unless they are satisfied that the accommodation is suitable. Suitability is a multi-faceted concept. It includes size, location, accessibility if the applicant is elderly or disabled, as well as the physical condition and other matters listed in Article 3(1). The local housing authority must in my judgment be satisfied that none of the ten bars to suitability established by Article 3(1) applies. Moreover, I accept Mr Colville’s central submission that they must be satisfied on the basis of evidence rather than assumptions. Taking “reasonable physical condition” as an example, it is not enough to take the view that because the proposed landlord is established and respectable, therefore all properties owned by that landlord should be assumed to be in a reasonable physical condition unless a “red flag” is raised either by the applicant or by some other adverse information which happens to be to hand about the particular property.” (my underlining)

1. Moreover, the Court rejected the local authorities’ argument that the Article did not say that accommodation was only to be regarded as suitable if all 10 positive criteria were fulfilled, only that accommodation would not be regarded as suitable where one or more of 10 negative criteria applied. The onus must, therefore, be on the authority to assess whether the accommodation is suitable.
2. That is set out by Bean LJ at paragraph 71 of the judgment, where he says:

“71. It cannot be right that it is for the applicant for the accommodation to raise a red flag. At the time the PRSO is made, the applicant has had no input at all. It would be contrary to the scheme of the Act to shift the burden onto the prospective tenant to object, particularly since a failure to accept the PRSO has potentially drastic adverse consequences if the objection is not upheld. The PRSO must not be made unless the LHA are satisfied that the accommodation is suitable: section 193(7F).”

1. There is a rider to this, I accept, which is described by Bean LJ at paragraph 72 and that is that the local housing authority does not have to have first-hand evidence such as could be placed before a jury at a criminal trial (so that satisfactory hearsay evidence would be sufficient) but, as in *Hajjaj*, much depends upon the facts in any case to see whether or not Article 3 is established or not.
2. I remind myself that, as an overarching point, that I should not overlook the principles relating to suitability itself. I recognise that, in accordance with *R v Hillingdon LBC ex p Puhlhofer* [1986] AC 484 (HL) an issue of suitability is one to be determined by the local housing authority in the first instance, and that it can only be challenged on *Wednesbury* grounds.
3. I accept that it is a high hurdle to overcome- in accordance with *R v Haringey London Borough Council ex p Karaman* (1996) 29 HLR 366 (QBD)
4. In relation to reviews, it is appropriate for me to consider the decision in *Omar v Westminster City Council* [2008] EWCA Civ 421; [2008] H.L.R. 36 (which was applied in *London Borough of Waltham Forest v Saleh* [2019] EWCA Civ 1944; [2020] H.L.R. 15﻿) and, in particular, the judgment of Waller LJ who, at paragraph 25 of that decision said as follows:

“Before turning to the authorities, I have asked myself what I would think should be the proper approach so that I can then see whether the authorities point in the same or a different direction. It seems to me that the question of what facts may be taken into account on the review will depend on what is being reviewed and must, unless there is some compelling legislative provision which dictates to the contrary, be dictated by what fairness requires. Common sense may often dictate the taking into account of facts as at the date of review. So, for example, if accommodation is still available, because the homeless person has taken up the offer and, in that context, asked for a review, it makes sense to look at the matter as at the date of review when the accommodation is still available. But if accommodation has been offered and rejected and the council has taken the decision that it has fulfilled its duty and so no longer makes available that property or any property, it does not seem fair on either the homeless person or the council to look at the matter at the date of review. The question in such cases, it seems to me, ought to be whether the council was correct in taking the view that it had offered suitable property; and that can only be fairly tested by reference to the circumstances as they existed as at the date of that decision.”

1. I discern from this judgment that the correct approach is to consider the circumstances as they existed at the time of the decision.

The Grounds of Appeal

1. There are three grounds of appeal. I will deal with each of these in turn.
2. Did the local housing authority err in law by concluding that the offer was “a private rented sector offer” – PRSO – for the purposes of S193 (7F) of the Act? (Ground 1 (a))
3. Did the local housing authority act in breach of their duty under S203(4) of the Act to give reasons for their conclusion that the property was a PRSO? (Ground 1 (b))
4. Did the respondent local housing authority err in law in assessing the property’s suitability at the date of the review decision? (Ground 2).

Ground 1 (a) – No evidence of Article 3 being satisfied at the date of the offer, rather that it was assessed at the date of review?

1. The Respondent, in effect, says that the Appellant’s approach to this appeal is largely over – technical and that demonstrates the weakness of the appellant’s case.
2. It says that there has been more than enough evidence that Article 3 was met as at the date of the offer. The offer letter itself acts as a warranty (or some kind of certification) that this was the case. As a result, unless it is infected by some obvious error, or the Appellant has raised an issue regarding its application, the reviewing officer would have been entitled to be satisfied as to those matter upon review.
3. In any event, Ms Conlan argues that there is more than enough evidence to show that the local housing authority had considered each of the criteria set out in Article 3.
4. I am indebted to her for setting this out in a table which I reproduce, as it is relevant, for the purpose of this judgment.

|  |  |  |  |
| --- | --- | --- | --- |
| **Art 3** | **Criterion** | **Evidence** | **Ref** |
| (a) | The authority is of the view that the accommodation is not in a reasonable physical condition | * Inspection on 29 October 2020 of the property by Khalil Rahman, housing supply officer (*cf* email of even date from Mr Rahman to Ibrahim Ahmed, the landlord of the property, outlining certain works to be completed * Email of 16 November 2020 from the landlord to Mr Rahman noting that the works had been completed. * Email exchange between Mr Rahman and landlord regarding a re-inspection. * Re-inspection on 17 November 2020 by Mr Rahman (*cf* photographs). * Email exchange between Isatou Jobe (lettings agency officer and author of the offer letter) and Mr Rahman on 26 November 2020 (*cf* Northgate entries). When the Appellant refused the offer on the basis of the condition of the property, Mr Rahman was asked for his comment. He confirmed that the property had been inspected and there was “no evidence of dampness or condensation”. * Further email from Mr Rahman to Ms Jobe and others (including Akintola Fatunmise, who was making inquiries into whether the s193(2) duty could be discharged) confirming the re-inspection on 17 November 2020 * Undated Property condition report completed by the landlord |  |
| (b) | The authority is of the view that any electrical equipment supplied with the accommodation does not meet the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994 | * Electric Installation Condition Report, dated 19 August 2019, provided by email dated 28 October 2020 from the landlord to Mr Rahman |  |
| (c) | The authority are of the view that the landlord has not taken reasonable fire safety precautions | See (a) above |  |
| (d) | The authority is of the view that the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning | See (a) above and (i) below. |  |
| (e) | The authority is of the view that the landlord is not a fit and proper person to act in the capacity of landlord (having considered if he has been committed of certain offences, practised unlawful discrimination, contravened any provision of housing law or breached code of practice for management of a HMO). | * By email of 16 November 2020 to Mr Rahman, the landlord provided a Certificate of Accreditation awarded to him by the London Landlord Accreditation Scheme, dated November 2020 |  |
| (f) | The accommodation is an unlicensed HMO. | Not applicable |  |
| (g) | The accommodation is a HMO subject to additional licensing but is not. | Not applicable |  |
| (h) | The accommodation does not have a valid EPC. | * EPC for the property, dated 13 August 2019, provided by email dated 28 October 2020 from the landlord to Mr Rahman |  |
| (i) | The accommodation does not have a current gas safety record. | * Gas Safety Certificate, dated 1 September 2020, provided by email dated 28 October 2020 from the landlord to Mr Rahman |  |
| (j) | The landlord has not provided to the local housing authority a written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate. | * Property condition form contains confirmation by the landlord that a copy of the terms and conditions (standard AST) provided Copy of standard NRLA AST agreement |  |

1. The Respondent says, armed with all the above information, that this case is very much similar in content to that of Ms Akhter (heard with *Hajjaj*). In that case, it was found that the reviewing officer’s consideration of Article 3 was somewhat cursory but, more importantly, the housing file contained copies of the property snagging list, electrical installation certificate, asbestos report, fire risk assessment and EPC. That led the Court of Appeal to conclude that the local authority concerned, Waltham Forest, had sufficient evidence before them such that the reviewing officer was entitled to find that the property was in a reasonable condition and that the “safety check” aspects of Article 3 had been satisfied.
2. As such, it is said that the Appellant’s approach to this appeal is overly – technical because, as can be seen from the above, the reviewing officer clearly considered Article 3 because of the information that was passing between Mr Rahman and the review officer at the time of the offer.
3. Examples of this are said by the respondent to include the following:

(a) The Appellant in her representations of 31 March 2022 requested that the reviewing officer consider whether there was evidence as at the date of offer that Article 3 had been met.

(b) The reviewing officer made an express finding, at the outset, that the offer letter was not infected by any form of error:

(c) It is also said that this demonstrated by his explanation: “It was for the Authority to decide whether further enquiries were required as to the matters in Article 3. In this case, I am satisfied that the Authority were entitled to rely on the findings in the offer letter and reiterated in the discharge letter that the offer was valid PRSO under s 193 (7F)”

(d) This is further reinforced by a later explanation where he says: “The issues therefore was whether or not this Authority had complied with Article 3 requirements”

(e) The reviewing officer’s conclusion indicates he had in mind the question of what evidence was before the authority at the date of offer where he says:

* + 1. “at the date of this re-review /fresh review, I was bound to address whether the requirements in Article 3 of the 2012 Order has been satisfied and the test of whether the offer is a PRSO. Tangible evidence has been obtained and I can also confirm that the requirements of Article 3 have been fulfilled.”
    2. “The Council *was* satisfied that the accommodation should be regarded as suitable, and the offer *was* a valid PRSO made under s 193 (7F).”

1. With the burden falling, it is said, fully upon the Appellant to prove that there has been an error of law, it is said that this ground cannot succeed.
2. I appreciate the similarities with Akhtar and recognize that this is not a case without some consideration on the part of the local authority in this case as is set out in Ms Conlan’s very helpful table. However, the consideration must be sufficient, in my view, to render the decision lawful. The emphasis of *Hajjaj* and the provisions of the 2012 Order are very much directed towards their compliance, particularly it seems to me to impress upon local authorities that, when dealing with the private sector, where there is possibly a greater potential for abuse by private landlords, in offering up accommodation to local authorities, that there are certain hoops which must be gone through before such properties are deemed “suitable”. A prime example of this is the requirement that all the 10 bars must be met before the property is deemed to be suitable.

1. A local housing authority can only discharge its main housing duty by offering suitable accommodation. A PRSO cannot be approved “unless [the authority] is satisfied with the accommodation is suitable” – applying S.193 (7A). Before an offer is made, then a local authority must be satisfied that none of the 10 bars to suitability apply. It follows, therefore, that, if the accommodation is unsuitable, then the local authority cannot discharge its duty and cannot discharge its duty if one or more of the requirements cannot be met. It further follows that, if the accommodation offered is deemed not suitable, either because of the absence of any direct or hearsay evidence which would discharge the burden for each hurdle, that offer cannot bring the duty owed to an end.
2. I agree that, following *Omar*, where a PRSO is made and rejected, any review must be limited to the facts at the date of the offer. It follows that any review is limited to the facts as known on the 24 November 2020. Mr Colville is right, in my view, in his submission that the Respondent made an error when it said at paragraph 2 of the decision letter, “the review is a reconsideration of the facts, including any fresh facts coming to light after the making of the original decision”. That simply cannot be correct. In this case, the PRSO had not been accepted – and the only time that the local authority can take facts of the date of review into account is where the PRSO has been accepted – in accordance with *Saleh* (Patten LJ at paragraph 39)
3. Despite this, the Respondent has submitted that there is ample evidence (as expressed in the table) of consideration of suitability as at the time of the offer. On the face of it, that may appear to be a compelling argument.
4. However, that is not what paragraph 2 of the decision letter says.
5. Even if I am to accept that that statement alone is not, on the face of it, determinative, because I need to consider the context in which that is said, it must follow that there is some evidential weakness in the Respondent demonstrating that, as at the date of the offer, it had material before it to demonstrate a consideration of the requirements of Article 3 (1) of the 2012 Order.
6. The reviewing officer’s attendance note dated 12 April 2022 is revealing. He applied Article 3 (1) in accordance with the information on the file as at the date of the review. The additional material (which surfaced following this appeal) and which I have set out in paragraph 19 above, has a vague history – no one appears to be certain when these documents came to light – some (such as the Property Condition Report and the tenancy agreement are undated).
7. That was the thrust of Mr. Rahman’s oral evidence. Although I found him a credible witness, he was not able to explain these discrepancies – and, indeed, I find that was not a matter within his control. It was not for him to determine if the PRSO is to be approved, that was a matter for the housing officer/reviewing officer. I accept that he is experienced and carries out many inspections of various properties (and he indicated that he visited the property in question here twice) but he relied on another officer’s photographs (in part) and, for reasons he could not explain, had not prepared an inspection report relating to the property. In any event, the housing officer/reviewing officer cannot delegate their powers to Mr. Rahman.
8. That leaves the position somewhat open to question – with the position complicated by the late disclosure of additional material from the housing file where it is uncertain (to put it at its lowest) as to whether they were ever before the housing officer who made the original decision.
9. To this extent, and in my view, there is a duty upon the local housing authority to make decisions based on the evidence and not, as it appears here, to use Mr. Colville’s words, “a vacuum”.
10. The importance of this is set out in *Hajjaj.* It cannot be the case that the local authority is able to retrospectively find a property that is suitable by making further enquiries on the points not addressed prior to the date of the offer. Significantly, they appear to do this by reference to paragraph 37 of the decision letter, where it is said:

“I can confirm that at the date of this re-review / fresh review, I was bound to address whether the requirements in Article 3 … has been satisfied … Tangible evidence have been obtained and I can confirm that the requirement of Article 3 have been fulfilled.”

1. In my judgment, and for these reasons, this ground succeeds.

Ground 1 (b) - the reviewing officer gave inadequate reasons as to why he believed that the property was suitable under Article 3

1. In relation to this ground, however, I do not consider that insufficient reasons were given – in accordance with the principles laid down in Nzolomeso v City of Westminster [2015] UKSC 22.
2. It is of considerable assistance to me that I have considered the judgment of Lord Brown in *South Bucks DC v Porter (No 2)* [2004] UKHL 33, (supported by *Alibkhiet v Brent LBC* [2018] EWCA Civ 2742) where paragraph 36 is helpful in his review of several authorities on adequacy of reasons:

“36. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute and not to every material consideration… Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced.”

1. I am satisfied that the offer letter gave the local authority’s reasons for suitability – even if they were brief – in line with *Alibkhiet*. They deal with Article 3 – setting out the requirements and, interestingly, the factual position is similar to *Akhter.*
2. Matters raised by the Appellant have been dealt with. For example, the allegations of disrepair are considered between paragraphs 21 and 24 and there is reference to Mr. Rahman’s inspections, the offer letter, and the discharge letter - concluding that the local authority were entitled to make a PRSO.
3. In my view, that approach was lawful. This ground fails.

Ground 2 – the reviewing officer failed to properly deal with the question of whether Article 3 had been satisfied regarding the condition of the property and the adequacy of the assured shorthold tenancy agreement.

1. The Respondent’s position regarding this ground is quite simple. It says that it did consider the condition of the property, and that this is entirely contrary to the Appellant’s case that it was not open to the authority to find that it was in reasonable condition because there was no evidence that the works recommended by Mr Rahman (his email of 29 October 2020) had been completed.
2. The only sensible assessment of the evidence, it says, is that Mr Rahman was satisfied in that regard. Having requested that the works be carried out, he received confirmation from the landlord that the works had been completed (an email of 16 November 2020) He did not take that at face-value but carried out a re-inspection on 17 November 2020 (with photographs taken and retained as a record). The local housing authority says that there is no record of any further issue arising and the property was made available for offer.
3. In relation to the assured shorthold tenancy agreement, the Respondent says that any suggestion that the template AST on the file was not sufficient without a record that it had been approved as adequate, is without merit. The template was a standard document approved by the National Residential Landlords Association. The Respondent says that there was no reason why it would not have been approved. Article 3 does not require more than the authority considers such proposed agreement to be adequate.
4. Moreover, it says that it should be borne in mind that any terms and conditions provided will only ever amount to a proposed agreement. As any agreement is between landlord and applicant, the actual agreement may well differ. Importantly, the point was considered in *Hajjaj*, where the Court of Appeal dismissed Ms Akhter’s appeal on this point even though the local housing authority did not even have a draft tenancy on the housing file.
5. On the face of it, these are well – made points. However, for reasons that I have already set out, in my view, compliance with Article 3(1) should not simply be a technicality. The terms of the Order as interpreted in Hajjaj place great importance on local authorities in observing their obligations for all the reasons that I have already set out – not least issues of disrepair and safety.
6. Mr. Rahman, in his email of the 29 October 2020, set out 13 items of work that were required to be undertaken. The required work ranged from safety measures (such asmains connected detectors, window restrictors and fire blankets) to repair works (such as a leaking toilet, fire door installation, and faulty window handles).
7. There is no record of these works being completed, except that Mr. Rahman attended the property again on 17 November 2020 and stating that there was no evidence of dampness or condensation and producing photographs to demonstrate the point. The problem for the local housing authority is that Mr*.* Rahman’s Property Condition Report is not only undated, but it fails to address these issues, and that renders it insufficient to satisfy the requirement that at the date of approving the making of the offer to Ms. Ayinla, the property was in a reasonable physical condition.
8. As a result, and there was nothing in Mr. Rahman’s oral evidence to convince me otherwise, was it open to the Respondent to form “the view” that the property is in “a reasonable physical condition”? Indeed, some evidence points to the contrary – such as, as the electrician recommending that detectors should be hard- wired into the property. That lends considerable weight to the Appellant’s argument that Articles 3(1) (c) and (d) were not satisfied – thereby rendering the property unsuitable. It raises appropriate concerns about the safety of the property.
9. I am also not entirely sure that acceptance of a blank AST form (albeit it one produced by the National Residential Landlords Association) could be described as “adequate”. There is no apparent record of any consideration of its terms. That is necessary pursuant to Article 3 (1) (j). I would have expected some record at least, or some reference to , for example a term in respect of the required deposit in the offer letter (but there is none).
10. In the absence of any steps taken to “approve” the PRSO before the offer was made and in the silence on the issues arising under Art.3, it was not open to the review officer to conclude that “*sufficient account was taken of*” the 2010 Order when the offer was made.
11. In my view, this renders the decision unlawful, and the ground must succeed.

Conclusion

1. The decision is unlawful.

Relief

1. The appeal having succeeded, I must decide the appropriate relief.
2. I reject the Respondent’s suggestion that, even if one or more of the grounds are made out, that the decision is academic on the basis of Mr Rahman’s evidence as any fresh review would reach the same conclusion.
3. There are a number of “gaps” in the evidence, and, by virtue of my finding, the property was not suitable as at the date of the offer. It follows that the local housing authority respondent must continue to owe Ms Ayinla a main housing duty.
4. I vary the decision to reflect that.

**HHJ Saunders**

**29th September 2023**