Case No: **M00OX619**

IN THE COUNTY COURT AT OXFORD

IN THE MATTER OF AN APPEAL UNDER
SECTION 204A OF THE HOUSING ACT 1996

St Aldate's
Oxford
OX1 2TL

Date: 5 December 2025

B e f o r e :

HER HONOUR JUDGE MELISSA CLARKE

- -

B e t w e e n :

MR AUGUSTINE NTIM **Appellant**

-and-

OXFORD CITY COUNCIL **Respondent**

- -
- -

Mr Abe Chauhan (instructed by Advocate) for the **Appellant**
Mr Tazafar Asghar (instructed by Oxford Legal Services) for the **Respondent**

Hearing date: 4 December 2025
- -

JUDGMENT (Reasons)

Her Honour Judge Melissa Clarke:

A. Introduction

1. The Appellant appeals under s.204A of the Housing Act 1996 ("**the Act**") a decision of the Respondent not to grant him under s.204(4) of the Act interim accommodation pending his s.202 homelessness appeal ("**Decision**"). In that appeal the Appellant seeks to challenge the decision of the Respondent of 29 August 2024 that he does not have priority need for housing within the meaning of s189(1)(c) of the Act because he is not significantly more vulnerable than an ordinary person would be if they were homeless.

2. The Appellant appeals under s.204A on grounds which fall into two broad categories. The first category covers the first three grounds, being that the Respondent misapplied the principles arising from *R v Camden LBC ex parte Mohammed* [1998] 30 HLR 315 (the "***Mohammed* criteria**" and each a "***Mohammed* criterion**") rendering the Decision unlawful, and the second category covers the remaining two grounds pursued at the appeal hearing, being that there are other public law errors which render the Decision unlawful:

   i. The Respondent in the Decision provided mere lip-service to assessing the merits of the Appellant's section 204 appeal as required by the 1st *Mohammed* criterion ("**Ground 1**");

   ii. The Respondent failed to turn its mind to new information arising since the date of the s204 review decision in the proper way as required by the 2nd *Mohammed* criterion ("**Ground 2**");

   iii. The Respondent failed properly to engage with the personal circumstances of the Appellant as required by the 3rd *Mohammed* criterion ("**Ground 3**")

   iv. The Respondent has taken into account irrelevant considerations ("**Ground 4**"); and

   v. The Respondent has failed to take into account relevant considerations, namely the public sector equality duty ("**Ground 5**")

3. The Appellant's case is that the Decision should be quashed pursuant to the Court's power in section 204A(4) of the Act and he asks the Court to order the Respondent to provide interim housing pending appeal pursuant to s.204A(5), on the basis that he would otherwise be substantially prejudiced in his ability to pursue the main s.204 appeal.

4. The Appellant was acting in person but has now obtained the assistance of Advocate and I am grateful to Mr Chauhan for appearing on his behalf, and for his helpful skeleton argument and oral submissions. The Respondent is represented by Mr Asghar and I am also grateful to him for his skeleton argument and oral submissions.

5. At the end of the appeal hearing I notified the parties of my decision, which was that the Appellant had satisfied me that Grounds 1, 3, 4 and 5 were made out such that the Decision should be quashed, and that I was satisfied that failure to accommodate him pending appeal would substantially prejudice his ability to pursue the main appeal such that I would order the Respondent to provide him with such accommodation. I told them that I would provide my reasons in writing. These are my reasons.

D. The Law

Statutory provisions

6. Under s.182 of the Act, a local housing authority must have regard to such guidance as may from time to time be given by the Secretary of State in the exercise of their functions relating to homelessness and the prevention of homelessness. Pursuant to this provision, the Secretary of State of Ministry of Housing, Communities and Local Government has issued the Homelessness Code of Guidance for Local Authorities of December 2024 (the **"Homelessness Code**").

7. Part VII of the Act sets out a local authority's duties relating to homelessness applications. If an applicant is unhappy with an adverse decision made by the authority pursuant to s.184 of the Act, it may seek a statutory review of that decision pursuant to section 202 of the Act.

8. S.188(1) of the Act imposes a duty on the local authority to provide interim accommodation ("***must*** *secure that accommodation is available for the applicant's occupation*") if it has reason to believe that an applicant **may be** homeless, eligible for assistance and have a priority need (my emphases). Pursuant to s.188(3) of the Act, this duty comes to an end when the authority concludes its inquiries under s.184 of the act and rejects the application, regardless of any review requested by the applicant under section 202, but it gives the authority a discretion to provide interim accommodation until the review decision is determined.

9. S.204A(4) provides that on appeal under s.202 of the Act:

> "the Court (a) may order the authority to secure that accommodation is available for the applicant's occupation until the determination of the appeal (or such earlier time as the court may specify); and (b) shall confirm or quash the decision appealed against;
>
> and in considering whether to confirm or quash the decision the court shall apply the principles applied by the high court on an application for judicial review. In other words, the court is to be concerned with challenges to the lawfulness and vires of the decision and as to *Wednesbury* unreasonableness."

10. Where a court quashes a s204(4) decision on public law terms, it may order that accommodation is provided by the authority on an interim basis pursuant to s204A(5), but only "*if the court is satisfied that failure to exercise the section 204(4) power in accordance with the order would substantially prejudice the applicant's ability to pursue the main appeal*" (s.204A(6)(a)).

11. Mr Chauhan submits that the meaning of 'substantial prejudice has received little judicial attention, but asks me to consider that the Court of Appeal in the very different context of s2(2) Contempt of Court Act 1981 where the issue was whether there was a "*substantial risk that the course of justice will be seriously prejudiced*" held that "substantial" "does not have the meaning of weighty, but

rather means 'not insubstantial or not minimal' (*A-G v News Group Newspapers Ltd* [1987] QB1 at p.15D-E per Sir John Donaldson MR). I will return to that.

Principles governing S204A appeals

12. *Mohammed* is the leading case in respect of the exercise of the s.188(3) discretion. The guidance given by Latham J (as he then was) at page 321 of *Mohammed* applies, adapted for the circumstances of an appeal under section 204A (per *Francis v Kensington and Chelsea* LBC [2003] HLR 715). He said:

> "The important question is whether… it is apparent that the officers of the respondent Council have either failed to take into account material considerations, have taken into account immaterial considerations or have otherwise displayed irrationality. The need that I identify as the underlying requirement of the exercise of this discretion is to keep, on the one hand, well in mind the object of fairness between those who are homeless in circumstances where the local housing authority has in its first decision decided that there is no duty to the particular applicant and, on the other hand, to give proper consideration to the possibility that the applicant may be right, and that to deprive him or her of accommodation could result in the denial of an entitlement".

13. Latham J went on to state that in carrying out that balancing exercise, three matters will always require consideration, and these are the *Mohammed* criteria previously referred to in this judgment. They are not the only matters which may be material considerations in a case, but they are always material considerations in a case. The *Mohammed* criteria conveniently set out at paragraph 15.26 of the Homelessness Code to which local authorities must pay regard:

    i. The merits of the case itself (in this case the Appellant's grounds of appeal before the County Court) must be considered, and the extent to which the decision is either one which appears contrary to the merits, or one which required a very fine balance of judgment, which could have gone either way (the "1st *Mohammed* criterion").

ii. Any new material, information or argument, which has been put to the Authority, which could have a real effect on the decision under appeal (the "2nd *Mohammed* criterion").

iii. The personal circumstances of the Appellant and the consequences of the decision not to exercise the discretion, and to accommodate the Appellant in the interim (the "3rd *Mohammed* criterion").

14. The Appellant submits that the authorities show that there must be substantial engagement with *Mohammed* criteria, and I accept that submission. In *R (Saint Sepulchre) v The Royal Borough of Kensington & Chelsea* [2023] EWHC 2913 (Admin), Ms Kirsty Brimelow KC sitting as a deputy judge of the High Court, held at [31], after setting out the *Mohammed* criteria, that "*it is not sufficient to refer to the above factors in Mohammed without demonstrating that the balancing exercise has been fully or properly carried out R(Paul-Coker) v Southwark LBC [2006] HLR 32 Forbes J. In other words, there should not be lip-service to the considerations.*" See also at *R (Jackson) v London Borough of Waltham Forest* [2016] EWHC 685 (Admin) [55].

15. The Appellant relies on guidance from Robin Knowles J at [6] of *R (Laryea) v London Borough of Ealing* [2019] EWHC 3598 (Admin) that in considering the 3rd Mohammed criterion it is not sufficient to merely assert, as happened in that case, that "*Mr Laryea has previously shown himself capable of engaging support from friends and family…*", as this does not (i) identify the likely consequences of a negative decision and then (ii) go on to analyse where that consequence should bear on the decision. I accept the Appellant's submission that the statement quoted by Robin Knowles J is an example of an authority providing mere lip-service to the considerations, whereas if it had taken the steps which he described, that would be substantial engagement with the 3rd Mohammed principle enabling the balancing exercise to be fully and properly carried out.

16. The Appellant submits that another relevant consideration outside the *Mohammed* criteria is the public sector equality duty under s 149 Equality Act 2010 ("**PSED**") and I accept that submission. I will come back to the PSED.

17. The leading authority on the approach to be taken by the reviewing court remains the House of Lords case of *R v Hillingdon LBC ex p Puhlhofer* [1986] AC 484. Lord Brightman gave the leading judgment with which the other members of the court agreed, and said at page 518:

> "The ground upon which the courts will review the exercise of an administrative discretion is an abuse of power – e.g. bad faith, a mistake in construing the limits of the power, a procedural irregularity or unreasonableness in the *Wednesbury* sense – unreasonableness verging on absurdity… Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision to the public body to whom Parliament has entrusted the decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely."

Vulnerability

18. The Appellant's case in the main appeal is that he has priority need pursuant to s.189(1)(c) of the Act, namely that he is "*a person who is vulnerable as a result of… mental illness… or physical disability…"*

19. The test is that from *Hotak v Southwark LBC* [2015] UKSC 30, [2015] HLR 23 per Lord Neuberger at 59, whether, if homeless, the applicant would be significantly more vulnerable than an ordinary person would be if they became homeless. The assessment is a qualitative composite one taking account of all of the relevant facts and circumstances.

20. Mr Asghar has set out the relevant sections from the Homelessness Code relating to vulnerability at para 8.16, 8.17 and 8.18 and I have those in mind.

Public Sector Equality Duty ("PSED")

21. The Equality Act 2010 defines disability in s.6(1) as follows:

> "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."

22. S.149 of the Equality Act 2010 sets out the PSED which I will not set out here for reasons of space.

23. In *Hotak v Southwark* [2015] UKSC 30, [2015] 2 WLR 1341 (SC), Neuberger LJ stated in paragraph 78 of his judgment that:

"…the equality duty, in the context of an exercise such as a section 202 review, does require the reviewing officer to focus very sharply on (i) whether the applicant is under a disability (or has another protected characteristic), (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other features, on the applicant if and when homeless, and (iv) whether the applicant is as a result 'vulnerable'."

24. In *London Borough of Hackney v Haque* [2017] EWCA Civ 4, [2017] HLR 14, HHJ Luba KC said at first instance, allowing Mr Haque's appeal from the reviewing officer's decision that accommodation was suitable for him, that the decision letter failed to demonstrate sufficient evidence of compliance with the public sector equality duty, and that the reviewing officer had paid *"insufficient regard"* to the Equality Act 2010. The Court of Appeal disagreed, as summarised in the headnote at H22 to H24:

> *"H22 (2) In the context of the case, the public sector equality duty required the authority's reviewing officer: (i) to recognise that the appellant had a disability; (ii) to focus on specific aspects of his impairments to the extent that they were relevant to the suitability of the accommodation; (iii) to focus on the disadvantages he might suffer when compared to a person without those impairments; (iv) to focus on his accommodation needs arising from those impairments and the extent to which the accommodation met those needs; (v) to recognise that the appellant's particular needs might require him to be treated more favourably than a person without a disability; and (vi) to review the suitability of the accommodation, paying due regard to those matters [43], [59], [60].*
>
> *H23 (3) A reviewing officer is not always required to spell out his reasoning as to whether the public sector equality duty is engaged and if so with what precise effect, although such an approach may put the issue of compliance with the duty beyond reasonable doubt; in cases*

where an applicant's criticisms of the suitability of his accommodation derive from precisely identified aspects of his disabilities and their alleged consequences, an officer considering those objections in a focused manner would be likely to comply with the public sector equality duty even if unaware of its existence as a separate duty [47], [59], [60].

H24 (4) A fair "stand-back" approach to the decision letter, reading it in its context, showed that the reviewing officer had carried out the six-stage analysis necessary to comply with the public sector equality duty [50] – [56], [59], [60]."

C. Factual background and procedural history

25. The Appellant is 38 years of age (DOB 6.7.1987). He has two children who live with their mother. He had accommodation at Room 5, 159 Harefields, Oxford. He is currently employed.

26. There is no dispute that the Appellant has diagnoses of depression, chronic sciatica, Gilbert's Syndrome and Seborrhoeic Keratosis. The Appellant says that he has suffered from sciatica resulting in constant hip pain since 2017 and that he was also recently diagnosed with a lumbar degenerative condition, the combined effect of which is constant severe pain, mobility restrictions and fatigue. The Appellant says that he has suffered from anxiety and depression since 2022, which is worsened by the physical pain caused by his other conditions. He says that he has been prescribed medication which currently includes pregabalin, omeprazole, naproxen, codeine and sertraline.

27. On 10 February 2025 the Appellant applied to the Authority as a homeless person under Part VII of the Act following receipt of a s.21 Notice from the landlord of the accommodation he was then occupying. At that time he was employed by Luxxotica Retail UK.

28. On 20 February 2025 the Authority carried out a full assessment the Appellant's needs ("the Prevention of Homelessness Duty"). The Appellant was provided with a Personal Housing Plan which explained how the Authority would assist the Appellant and what the Appellant was required to do to try and retain his home or secure alternative accommodation in accordance with the Authority's duty to take reasonable steps over a period of 52 days to assist the Appellant to

secure accommodation ("the Relief Duty"). The Appellant was informed of his right to request a review. The Appellant did not request a review.

29. On 29 August 2025 the Authority notified the Appellant that the Authority's duty to assist the Appellant under the relief duty had come to an end ("End of Relief Duty"). The Appellant was informed of his right to request a review. The Appellant did not request a review.

30. On 29 August 2025 the Authority, by its Section 184 decision, found that the Appellant was homeless, but that he was not in priority need. Accordingly, the "full" duty under section 193 of the Act was not owed to him.

31. The Appellant sought a review of that decision under Section 202 of the Act.

32. The Appellant says that he his employment on 1 September 2025 with Luxxotica. There is no dispute that he is now in receipt of Universal Credit.

33. On 11 September 2025 the Appellant requested the Authority to exercise their power under Section 188(3) of the Act in his case, namely, to secure that accommodation is available for the Appellant's occupation pending a decision on review, and provided new information about medication that he was taking for his health conditions.

34. On 11 September 2025 a reviewing officer on behalf of the Authority refused to provide the Appellant with accommodation pending a decision on review stating that the new information did not alter the merits of his appeal and the Appellant's personal circumstances did not warrant accommodation pending review on the basis that the Appellant had "*stated that you are sleeping rough but this has been verified once*". The Appellant did not challenge that decision.

35. On 12 September 2025 the Appellant's GP Dr Doris provided the Respondent with the Appellant's full medical records since 2022 and explained that the Appellant suffers with significant sciatica and that "*he has had significant depression and anxiety since 2023 which is having a profound impact on his wellbeing*".

36. On 18 September 2025 the Respondent wrote to Dr Doris requesting clarification of certain issues with the Appellant's medical record. Dr Warren, another GP at the same practice responded on 22 September 2025 stating that "*a recent MRI of Sept 2025 showed narrowing of nerve exists from the spinal column*", that the Appellant had informed the surgery that he has "*almost daily pain*" and that he had been referred to orthopaedics for consideration of treatment options including surgery.

37. The Authority's Reviewing Officer made a decision of 23 September 2025, which was adverse to the Appellant, upholding the conclusion that he was not in priority need. This is the decision under review in the substantive appeal.

38. The Appellant filed his Appellant's Notice at the County Court on 8 October 2025. Within that notice it sought to appeal a refusal to provide him with interim accommodation pending appeal, but upon review by me it did not appear that he had evidenced that he had formally requested such interim accommodation, and so there was no decision which could be appealed. On 17 October 2025 the Court emailed the Appellant to tell him that he should ask for temporary accommodation and inform the court if that was refused.

39. The Appellant requested accommodation pending appeal on 17 October 2025. He explained in an email that he "*remained street homeless and suffer from chronic sciatica lumbar spinal degenerative disease, depression, anxiety, vitamin D deficiency*" and that his "*conditions have worsened due to sleeping rough and lack of access to proper rest and hygiene facilities".*

40. This request was refused on 22 October 2025, and the Appellant's appeal of this decision under s204A was listed by the Court. The Appellant filed evidence that he has been street homeless since August 2025, and has been sleeping either outside, in his car which is a VW Golf, or in cafés since then. He says that as a tall man of 6'2" the cramped conditions of sleeping in his car have exacerbated his sciatica in particular and caused his lumbar condition to continue to deteriorate. He says that the instability of his living conditions has caused him to miss GP and hospital appointments and sometimes to go without medication

due to the lack of routine and rest and an inability to access hygiene facilities. He says that all of this has been deleterious to his mental health.

41. At the appeal hearing, Mr Asghar informed the Court that it appeared upon consideration of the file that the fact that the Appellant had lost his employment and was now reliant on universal credit had not been taken into account when reaching that decision. Accordingly Court ordered that the Respondent consider the application afresh.

42. The Respondent did so and made the Decision on 28 November 2025 concluding that it would not grant him interim accommodation pending the resolution of his main appeal. The Appellant filed an appeal notice in respect of that decision on 2 December 2025 and this appeal was listed on an expedited basis today.

D. The Decision

43. The Decision was made by David Weston, a highly experienced reviews and appeals officer at the Respondent. He was also the reviewing officer in relation to the ss.204 decision the subject of the main appeal.

44. In his introductory paragraphs he correctly noted that the Authority had a wide discretionary power under section 204(4) of the Act to house an applicant pending appeal. He set out the *Mohammed* criteria as summarised in the Homelessness Code. He structured his letter in accordance with the Mohammed criteria, under the headings "Merits", "New information and material", "Personal circumstances etc" and "Balancing Exercise" before giving his conclusion to decline to exercise the Respondent's discretion to provide interim accommodation under s.204(4)(b) of the Act and provide details of the Appellant's right to appeal.

45. Under the heading "Merits" on page 2 of the Decision Mr Weston stated, "*I am satisfied my review decision is clear in its reasoning and explains clearly the legal basis for a not in priority need decision (upholding the original decision)[… that you] are not significantly more vulnerable than an ordinary person would be if they were homeless*". He then said, "*I have carefully*

considered your latest request, but I am not persuaded that your personal circumstances warrant accommodation pending appeal". He then deals in the next two and a half paragraphs with new information. He returns to the merits of the review decision in his last paragraph, which reads:

> "The appeal will be decided before the County Court and, clearly, I cannot to know the outcome. My function, at this stage, is to make a broad assessment of the general merits of the appeal. Applying a broad assessment, I have reached the conclusion, based on your representations as summarised above, that whilst you *might* succeed on your appeal, it is more probable than not that you will fail. Your appeal is by no means hopeless, but it has a prospect of success of less than 50%. The appeal will turn substantially on matters of law. There was no "finely balanced judgment". (emphasis in the original)

46. He returns to the merits of the underlying appeal on page 3 of the Decision, under the heading entitled "The 'balancing exercise'", saying "*I have also addressed the question of whether you may be right and the Authority wrong. I have already decided that the prospect of this being found to be the case by the County Court is not one which is more probable than no*t."

47. In relation to new information, this is addressed under both "Merits" and "New information and material" headings (and the Appellant takes no point on that) in the following terms:

> "You have explained about your physical conditions, but these are similar or the same to those considered in the review. You have medication available to treat as may be necessary and does not require refrigeration. There is no reason why you cannot take your prescriptions on a continuing basis.
>
> You stated that your mental health had deteriorated. I enquired whether you had sought further medical assistance but stated… that you are taking Sertraline regularly, on a repeat prescription. I can understand that you may have felt that your mental health has deteriorated but that is not the legal test. There is no doubt that it is likely that you would suffer harm or detriment when homeless, but I am satisfied that you would not suffer harm or detriment that the ordinary person would not suffer if homeless.

> You explained that although you had lost employment, you are receiving Universal Credit. If you were able to find accommodation, housing costs within the Local Housing Allowance, would be covered.
>
> …
>
> I do not believe that there is any new information or. Material which is relevant at this stage. I have considered your representations. However, I am satisfied that the decision under section 202, which found you were not in priority need for assistance, was correct and find nothing in the letter which would affect the Authority's review decision of 23 September 2025."

48. Under 'Personal circumstances etc', Mr Weston noted that the Appellant had lived in private rented accommodation before "*and could do so again*" and was in receipt of Universal Credit. He stated *"…there is nothing to suggest that you do not have the capacity, with or without assistance from others, to find such accommodation for yourself*". He said, "*Although you have stated that you have nowhere to go during the days to keep warm, there are several places in Oxford offering such facilities (and libraries are also available)*". Otherwise, he merely stated that he had "*considered your personal circumstances and the effects on you of the Authority's decision not to exercise its discretion in your favour. Your personal circumstances are such that there is no other exceptional reason to provide you with accommodation. The Council did not provide you with accommodation pending review*".

49. Under 'The balancing exercise', Mr Weston emphasised that "[*t]he Authority has a chronic housing shortage reflected in a current housing waiting list of over 3,800 people awaiting allocation of accommodation. Social housing is a scarce and precious resource. The Authority's own stock is finite, as is the stock of other social housing to which it may have recourse. In maintaining fairness between different homeless persons, and different types of housing applicant, it would not be right… to house you in the interim, when such a large number of other unsuccessful applicants are not so housed*". As previously mentioned, he stated that it was more probably than not that his underlying appeal would not succeed.

50. He then turned to the question of whether the decision to refuse discretionary accommodation pending appeal "*might result in a denial of your entitlement, if*

any, under Part VII of the Act" stating that he did not believe it would, because "the Authority would (subject to any right of appeal) be bound to act in accordance with the County Court's conclusions."

51. In relation to whether the failure to exercise the discretionary power would substantially prejudice the Appellant's ability to pursue his section 204 appeal, he said "*I am confident you will be well able to pursue your statutory appeal to conclusion notwithstanding the Authority's decision not to exercise its discretion*".

E. Determination of Grounds of Appeal

Ground 1: the Respondent provided mere lip-service to the proper legal test of its assessment of the merits of the Appellant's appeal

Submissions

52. The Appellant submits the reviewing officer did not substantively engage with the merits of the case as mandated by the 1st Mohammed criterion and so was unable to carry out the full and proper balancing exercise required, making the Decision unlawful per Saint-Sepulchre.

53. Although he does not take issue with the fact that the review officer considered new information within the 'Merits' section of the decision, the Appellant submits that once those paragraphs are put to one side for consideration in relation to the 2nd Mohammed criterion, what is left in relation to the consideration of the merits is little more than a statement that "*whilst you **might** succeed on your appeal, it is more probable than not that you will fail*" (emphasis in the original) which is a mere assertion of an assessment of the merits, rather than substantive engagement with them.

54. The Respondent submits that the reviewing officer made a broad assessment of the merits of the appeal to consider whether, but for its exercise, the Appellant might well be unable to pursue the main appeal. He submits that neither the reviewing officer nor the court should embark upon a review of the merits of the main appeal as, per *R v Brighton and Hove Borough Council Ex parte Nacion* 1999 31 HLR 1095 at 1100 "*It*

would take a significant amount of court time and in large part mirror the very exercise which ultimately will have to be conducted on the hearing of the main appeal".

55. On vulnerability, the reviewing officer was satisfied that the Appellant's medical condition did not make the appellant significantly more vulnerable than an ordinary person in need of accommodation as he had medication available for his treatment, having lost employment the Appellant was in receipt of universal credit, and that would cover the costs of him finding housing.

Determination

56. I am with the Appellant. It does not seem to me that the review officer has engaged with the relevant material relating to the merits of the underlying claim at all, let alone analysed it in order to properly take it into account in the balancing exercise he has to undertake. He has merely set out the test to be applied, and concluded that although the appellant may succeed on appeal, it is more probable than not that he will not. He has not provided any reasons for why he has reached that conclusion. The most that can be said is that he has made what could be called a qualitative assessment that the appeal is "*by no means hopeless*", but as an analysis goes, that is inadequate. He also has expressed in terms that he reached that conclusion (that it is more likely than not that the appeal will fail) "*based on your representations as summarised above*". Those representations are the new information that the Appellant provided to the Respondent since the review, and so are not relevant material for the purposes of the 1st Mohammed criterion, but for the 2nd Mohammed criterion. By the reviewing officer's own statement, therefore, he appears to have conducted the merits analysis by taking into account irrelevant material.

57. I further accept the Appellant's submission that there was relevant material for the reviewing officer to engage with. In particular, the Appellant made submissions to the Respondent that it was wrong to find that he is not priority need because of his vulnerabilities because the reviewing officer "[i]gnored cumulative effects of chronic pain, medication and mental-health symptoms". There is no indication in the Decision that this issue, which is also a submission which the Appellant argues the letter from the Respondent's GP Dr Bird provides some support, has been engaged with let alone

properly and fully considered. Mr Asghar for the Respondent submitted in oral submissions that the Appellant had been homeless at the time of the underlying s202 decision and the fact that he was still sleeping in his car meant there was no material change, but this also does not engage with the Appellant's new information that sleeping in his car was exacerbating his sciatica and causing deterioration to his lumbar issues, and the cumulative effects of this on his mental health. To the extent that Mr Asghar submitted that the review officer must have found that there was no further deterioration, I do not accept this submission. There is nothing in the Decision which would lead me to infer that such a finding was made.

58. The lack of proper assessment of the merits pursuant to the 1st Mohammed criterion as required by the Homelessness Code in breach of s.182 of the Act means that the decision is unlawful on Ground 1, in my judgment.

Ground 2: The Respondent failed to turn its mind to new information in the proper way.

59. The Appellant submits that despite the last 204A decision being quashed for failure to consider new information about the Appellant's loss of employment, the reviewing officer failed to consider that information because he stated in terms that "*I do not believe that there is any new information or material which is relevant at this stage*".

60. The Respondent submits that is not correct and indeed Mr Chauhan accepted for the Appellant in oral submissions that the review officer did in fact engage with the new information about his employment in the Decision, noting that he was on universal credit, as well as referring in the Decision to representations made by the Appellant about his physical and mental health. However Mr Chauhan submits that the review officer did not consider the new information with the merits of the underlying appeal in mind as assessed pursuant to the 1st Mohammed criterion (because he had not conducted a merits review of the underlying appeal) and how the new information may affect the merits of the underlying appeal. So, for example, he submits that the fact of the Appellant's employment was used as evidence by the reviewing officer in assessing the effect on the Appellant of his mental and physical health conditions. The fact that he had lost his employment changed that evidential picture.

61. The Respondent submits that the review officer's reference to '*not relevant at this stage*" was a confirmation that he did not consider the Appellant's case to be exceptional so as to merit the exercise of discretion in favour of the Appellant based on the new information and material.

Determination

62. There does appear to me to be infelicitous phrasing of the Decision in relation to the consideration of the 2nd Mohammed criterion by the reference to "*[no] new information*" when new information provided was clearly considered by the review officer because he referred to it in the decision. I bear in mind the guidance in the case of *Holmes-Moorhouse v Richmond upon Thames* LBC [2009] 1 WLR 413, in particular per Lord Neuberger at paras 48-52 and do not consider that gives rise to unlawfulness *per se*.

63. The Appellant submits that the new information was not considered fully and properly but it was all noted in the Decision and in my judgment must have been in the review officer's mind. In relation to the Respondent's submission set out in paragraph 61 above, the relevant test is not one of exceptionality, and the review officer did not state that he was applying that test. I do not infer that into the Decision and it would not assist the Respondent if I did.

64. It seems to me that the real criticism is not that the new information was not considered fully and properly but that the review officer did not properly consider how that new information affected the merits assessment. That is because, as I have found, no proper assessment of the merits of the appeal was carried out. Mr Chauhan described this in his oral assessment as a knock-on error to the error from the failure to consider the merits in the first place. That is one way of looking at it but I consider that in fact the public law failure was in not carrying out the merits assessment which meant that he could not properly weigh the new information, rather than a failure to consider the new information itself. For those reasons the Appellant has not satisfied me that Ground 2 is made out.

Ground 3 – The Respondent failed properly to engage with the personal circumstances of the Appellant

65. The Appellant submits that the review officer:

    i. took into account irrelevant information, namely that Appellant had rented accommodation before, and that the Respondent had not provided him with accommodation pending review, when it is the Appellant's current situation at the time of the Decision which the review officer should have been taking into account;

    ii. made no explicit consideration of the Appellant's physical and mental conditions and how they were affected by his homelessness which at the time of the Decision had been ongoing for 3 months, and likely to continue to be affected if his homelessness continued until the hearing of the appeal; and

    iii. paid lip-service to the effects of homelessness by alluding only to the fact that the Appellant could find warm places to go including libraries.

66. He submits that as in *Laryea*, this is insufficient to amount to substantial engagement with the 3rd *Mohammed* criterion.

67. The respondent submits that the reviewing officer did consider the impact of homelessness on the Appellant as he said so in terms "*I have considered your personal circumstances and the effects on you of the Authority's decision not to exercise its discretion in your favour*". In oral submissions, Mr Ashar despite being invited to make additional submissions addressing the Appellant's submissions merely submitted that the review officer did not pay lip-service to the 3rd *Mohammed* criterion, and did engage with them.

Determination

68. I am with the Appellant, whose submissions I accept. There does not in my view appear to have been a proper identification by the review officer of the Appellant's personal circumstances and the likely consequences of a negative decision or any analysis of how, if at all, those consequences should bear on the decision. In my judgment that is a public law error which means that Ground 3 also succeeds.

Ground 4 – The respondent took into account irrelevant considerations

69. The Appellant submits that the Respondent has taken into account further irrelevant conditions independent of the Mohammed criteria, in particular the Respondent's chronic social housing shortage. He relies on the Supreme Court decision of R (Imam) v Croydon LBC [2023] UKSC 45 that a local authority's obligations under Parts VI (allocation) and VII (homelessness) of the Act are legally distinct, and submits that whether the Respondent has a shortage of social housing available for allocation under Part VI is not relevant to a consideration of interim accommodation pending appeal under Part VII which could be temporary housing in a hotel or hostel.

70. The Respondent submits that the Appellant's reliance on R (Imam) v Croydon LBC is misplaced, as the distinction in this case is not between Parts VI and VII but rather between the duty to provide temporary accommodation and the exercise of the discretion. The Authority is under no duty to provide temporary accommodation pending appeal, which is in the discretion of the Authority albeit that discretion must be lawfully exercised. In the exercise of its discretion the Authority can legitimately take into account the chronic housing shortage.

71. As we discussed during the course of submissions, I do not think this addresses the point which the Appellant seeks to make, which is the distinction between social housing under Part VI (which I am satisfied that the review officer was solely taking into account, looking at the language of this section of the Decision) and temporary housing under Part VII. The fact that the Respondent is under significant pressure arising from a social housing shortage is not relevant to the question of whether it will exercise its discretion to provide temporary housing by means of, for example, accommodating the Appellant temporarily in a room in the local Travelodge or similar hotel.

72. I am satisfied that this is an irrelevant consideration amounting to public law unlawfulness and I allow the appeal on Ground 4.

73. **Ground 5 – Failed to take into account relevant considerations**

74. The Appellant finally submits that the Respondent failed to take into account its PSED in relation to the Appellant, which it accepted in the original s185 decision was

relevant as it accepted that the Appellant may have a disability within the meaning of the Equality Act 2010.

75. The Respondent submits that a decision is not to be faulted simply because not every single matter is mentioned. The PSED was considered at length in the review decision, and the reviewing officer considered vulnerability in the s204A decision. There is no proper basis for the contention that the reviewing officer did not consider the PSED in relation to the s204A decision because it was not mentioned.

76. In my judgment, if the Respondent had properly engaged in a discussion of the merits of the appeal pursuant to the 1st Mohammed criterion, and if it had then considered the effect of the new information on the merits of the appeal following the 2nd Mohammed criterion, then it would very likely have sharply focussed on the question of the Appellant's likely disability, the extent of that disability, the likely effect of the disability if he remained homeless pending appeal, and whether he was as a result vulnerable, and as such complied with the PSED as required by *Hotak*, even if the PSED was not mentioned in the Decision explicitly. The fact that the Respondent did not properly engage in consideration of the merits of the appeal, which raised issues relating to the Appellant's mental and physical health, or bring the new information into consideration of the merits of the appeal or properly consider the Appellant's personal circumstances, as I have found means, in my judgment, that it also did not comply with its PSED duties.

77. For that reason Ground 5 is made out.

F. Remedy

78. The Appellant asks me to order the Respondent to provide interim housing as he would otherwise be substantially prejudiced in his ability to pursue his main appeal because:

    i. He is legally unrepresented in his main appeal, and the fact that he is homeless, sleeping in his (non-functioning) car with his possessions around him, reliant on a single mobile phone for communication, having to spend significant time every day dealing with the difficulties of obtaining food and lacking hygiene facilities, with deteriorating mental

health (as the review officer appeared to accept was the case), is significantly impacting on every part of his life and making it very difficult for him to understand and prepare for the appeal;

ii. this deterioration in his mental and physical health will intensify over the Christmas period as the nights grow longer and the weather grows colder and the Appellant's social isolation continues;

iii. the broken sleep of the Appellant in these circumstances has caused him to miss GP and hospital appointments and that tiredness also affects his ability to prepare for the appeal;

iv. he is also having to prepare for parallel Children Act proceedings in relation to access to his children with a two day hearing scheduled in January.

79. The Respondent submits that the Appellant has been able to bring review proceedings, the s204 appeal, and this appeal so lack of legal representation has not impeded his ability to pursue the appeal, but I think that misunderstands the point which the Appellant seeks to make. It is not that he cannot pursue the appeal, but that trying to run litigation himself, without representation, whilst homeless and living out of a car etc substantially prejudices his ability to pursue the appeal.

80. In my judgment I do consider that without temporary accommodation, in the circumstances that I have set out in the factual background of this case and relied on by the Appellant in his submissions above, the Appellant will be substantially prejudiced in his ability to pursue the appeal.

G. Conclusion

81. I have found public law unlawfulness in relation to 4 out of 5 grounds of appeal such that in my judgment the Decision must be quashed. I order temporary accommodation pending appeal for the reasons given above.