Case No: CO/5514/2015

Neutral Citation Number: [2016] EWHC 1240 (Admin)
**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 May 2016

**Before** :

**JUDGE A GRUBB**
**(sitting as a Deputy High Court Judge)**

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**Between :**

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| **THE QUEEN** (ON THE APPLICATION OF **GS)** | **Claimant** |
| **- and -** | |
| **LONDON BOROUGH OF WALTHAM FOREST** | **Defendant** |

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**Mr Lindsay Johnson** (instructed by **Hopkin Murray Beskine, Solicitors**) for the **Claimant**
**Mr Michael Mullin** (instructed by **London Borough of Waltham Forest Legal Services**) for the **Defendant**

Hearing dates: 20 April 2016

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# Judgment

**Judge Grubb:**

## Introduction

1. This is a claim for judicial review brought against the defendant, the London Borough of Waltham Forest alleging that, having concluded that the claimant was not a 'priority need', it failed to perform its duty under Part VII of the Housing Act 1996, in particular to provide appropriate advice and assistance (s.192(2)) and accommodation in the exercise of its discretion (s.192(3)).

## The Factual Background

2. The claimant, GS is a single woman who is an Albanian national. She arrived in the United Kingdom on 1 May 2014. She claimed to have been the victim of human trafficking and, following investigation by the Competent Authority, on 4 September 2015 it was accepted that she was a victim of human trafficking and she was granted one year's discretionary leave until 4 September 2016.

3. On 29 October 2015, the Helen Bamber Foundation ("HBF") wrote on the claimant's behalf to the defendant in respect of her need for assistance under Part VII and Part VI of the Housing Act 1996. The basis of her homelessness claim was that she had been given notice to leave the accommodation which she occupied in a family's home; she was not intentionally homeless; she was eligible as a result of the grant of leave to her; she was a priority need as she was vulnerable as a survivor of trafficking and the consequences to her of that; and she had a local connection with the defendant as she had been living in the borough since May 2014 (see letter at pages 3-2 to 3-3 of the bundle).

4. The letter was supported by a letter from Dr Katy Robjant, a Consultant Clinical Psychologist and Head of Therapies at the HBF (also dated 29 October 2015 and at pages 3-4 of the bundle) setting out Dr Robjant's view that the claimant suffered from mental health problems including symptoms consistent with a diagnosis of Post-Traumatic Stress Disorder ("PTSD") as a result of traumatic events associated with her history of being trafficked. Dr Robjant sets out the importance of safe and suitable accommodation and continued treatment at HBF as follows:

> "Miss S's treatment plant at HBF involves an holistic package of care. She has completed a course of Narrative Exposure Therapy with Jackie Roberts (psychotherapist) under my supervision and she currently attends the creative art programme, and also accesses welfare support and ongoing safeguarding contact support from my colleagues. Although Miss S's symptoms improved through her course of therapy, the next 6-12 months are absolutely vital in consolidating her recovery. Any period of uncertainty or instability places her recovery at risk and would likely exacerbate her symptoms again and cause a significant relapse in her mental health, undermining the improvements that have been made to date.

> Miss S requires safe and suitable accommodation in Walthamstow. It is my clinical experience that mental health problems can be exacerbated significantly by instability and lack of adequate housing protection. The impact is far-reaching, and can increase the risk of self-harm and suicide. In addition, it is well recognised that destitution or inadequate housing can, and often does, put vulnerable people at risk of further exploitation, abusive transactional relationships, or re-trafficking. Given Miss S's history it is therefore vital that she is supported into appropriate and safe housing. Any period of homelessness would in no doubt exacerbate her mental health symptoms and put her at serious risk of harm from others."

5. On 30 October 2015, Helen Malpass, Welfare & Housing Caseworker Co-ordinator at HBF also wrote a supporting letter (addressed to the claimant's solicitors) setting out the claimant's financial position, namely that she had been in receipt of s.95 asylum support (subsistence only) which had terminated on the grant of her leave to remain. The claimant had made an application for Job Seeker's Allowance and had received a weekly payment of approximately £21. Following discussion with the claimant, Miss Malpass reported that the claimant had decided to apply for Employment and Support Allowance as she did not feel able to work. The HBF had made a one-offer emergency relief payment of £20 to the claimant to meet her basic need that week.

6. On 2 November 2015, the claimant's application under the Housing Act 1996 was registered as received by the defendant.

7. Also on 2 November 2015 the claimant's legal representatives sent a pre-action protocol letter to the defendant in relation to her application for assistance under Part VII and under Part VI to join the housing register. In that letter, the claimant's representatives repeated the substance of the letter sent by the HBF on 29 October 2015 and quoted from Dr Robjant's letter of 29 October 2015. The letter draws attention to the circumstances of the claimant's attendance at the Homeless Persons Unit on 30 October 2015. The letter repeats the claimant's position that she is vulnerable and requests that the defendant comply with its duties under ss.184 and 188 of the Housing Act 1996, namely to carry out proper enquiries into the applicant's claim as a homeless person and to accommodate her pending the decision under s.184. The letter seeks confirmation that the claimant will be accommodated in self-contained accommodation in the interim period and that any such accommodation must be "suitable" which, given that the claimant is a victim of sexual violence, means that only self-contained accommodation was suitable. On 2 November 2015, the defendant confirmed that the claimant would be provided accommodation pending the outcome of the s.184 assessment.

8. On 3 November 2015, the claimant's legal representatives wrote to the defendant expressing concerns that the claimant was to be accommodated in Welwyn Garden City and that this was not suitable for four reasons (at pages 3-16 of the bundle):

> "1. She is a vulnerable victim of trafficking. She does no speak English. She has a small support network

locally: she needs help from her friends, only available locally.

2. She has significant mental health problems which mean that the help she requires is even more important. A move to Welwyn Garden City would leave her more isolated and at risk of significant deterioration in her fragile mental health, and possibly at risk of re trafficking.

3. She attends college in London.

4. She attends the Helen Bamber Foundation weekly for therapy. This is highly specialised treatment and only available at HBF. She would not be able to travel and would not be able to afford the fares, thus disrupting her treatment."

9. On 3 November 2015, the claimant's legal representatives again wrote to the defendant indicating that the accommodation initially offered in Welwyn Garden City was not suitable: suitable accommodation could only be in London given the claimant's circumstances. It appears that following the claimant's attendance at the defendant's offices, the offer of accommodation in Welwyn Garden City was withdrawn.

10. Also on 3 November 2015 the claimant's legal representatives emailed the defendant pointing out the unsuitable nature of accommodation outside London; that mixed gender accommodation was not suitable but in the short term there was "no reason why shared single sex (women only) accommodation would not in principle be suitable" (see pages 3-22 of the bundle). That email attached a letter from Dr Robjant from the HBF (pages 3-23 of the bundle) which again confirmed the importance of suitable accommodation being in London:

> "I write with regard to Miss GS in respect of your recent decision to offer her temporary accommodation outside of London. This letter should be read in conjunction with my letter dated 29 October 2015 which clearly details Miss S vulnerability and need for appropriate accommodation in the Walthamstow area.
>
> Miss S is a vulnerable victim of trafficking and suffers from symptoms concurrent with a diagnosis of post-traumatic stress disorder. She is acutely anxious and finds it difficult to relate to and to trust others. It is extremely important that the small network of support she has managed to establish in London is therefore maintained.
>
> Miss S receives specialist treatment at the Helen Bamber Foundation (HBF) which involves an holistic package of care. It is extremely important that she is able to continue attending

> HBF weekly, which will be impossible if she is housed outside of London.
>
> As detailed in my previous letter any period of uncertainty or instability places her recovery at risk and would likely exacerbate her symptoms again and cause a significant relapse in her mental health, as well as potentially putting her at risk of harm or exploitation from others."

11. On 4 November 2015, the claimant was again offered accommodation in Welwyn Garden City. The claimant's representatives again emailed the defendant on two occasions on 4 November 2015 pointing out the unsuitability of the accommodation. However, on that date the claimant took up the offer of accommodation in Welwyn Garden City.

12. On 5 November 2015 the defendant (through Ascham Homes) issued the defendant's decision under s.184 on the claimant's application for assistance under Part VII of the Housing Act 1996. That letter, which is the subject of challenge in these proceedings, is at 3-39 to 3-45 of the bundle and although it is dated "10 November 2015" it was agreed before me that that is a typographical error and it should read "5 November 2015".

13. In that decision, the defendant accepted that the claimant was eligible for assistance, was homeless (but not intentionally) but did not have a priority need for housing within s.189(1)(c) of the Housing Act 1996 on the basis that she was not "vulnerable". The defendant's conclusions are set out at paras 22-26 of that letter as follows:

> "**Conclusion**
>
> 22. I have considered the extent of your disability and the affect upon your wellbeing when homeless from information which you have made available to this council and information obtained from our enquiries/assessment of your personal circumstances. I can confirm that there is no information to satisfy me that your Equality rights will be adversely affected by a determination confirming that you are not in priority need for the purpose of this application.
>
> 23. I have considered your support network and remain satisfied that you are currently supported by The Helen Bamber Foundation, and from information available to this office you are likely to continue to enjoy such support if this office were not to assist you with housing.
>
> 24. I have taken a full and careful evaluative assessment of your condition/s, and its affects when having regard to your overall circumstances. I remain satisfied that you have not been treated in a discriminatory nor inconsiderate manner and that this council's

determination has been based on the facts of your application whilst applying the correct legal test.

25. I have made my decision with full regard to the Homelessness Code of Guidance as set out in Section 182 of the Housing Act 1996. I have particularly had regard to 10.12-10.41 of the Code of Guidance 2006 and remain satisfied that the decision I have reached is not at odds with the guidance in the Code. I have also had regard to this Local Authorities Homelessness Strategy as specified in Section 1 (5) of the Homelessness Act 2002.

26. In summary I am satisfied that you are not in priority need for the purpose of this application and this local authority does not have a duty to secure accommodation for you. We do however, have a duty to offer you advice and assistance to help find your own accommodation (see alternative below). Kindly refer to the copy of the information booklet *Housing Advice and Options in Waltham Forest* that was given to you to assist you in your securing alternative accommodation."

14. At paragraph 27 of the letter, the defendant indicated that the claimant's interim accommodation would terminate seven days later on 13 November 2015.

15. Paragraph 28 of the letter sets out the claimant's right to request a review within 21 days of being notified of the decision.

16. At the conclusion of the letter under the heading "access to alternative accommodation" the defendant stated this:

> **"Long Term Hostels**
>
> Housing Associations and other voluntary organisations run these hostels. In most cases residents have their own room and share other facilities with other residents. These hostels are however only suitable for single people. If you are interested and would like to apply to be registered on the scheme please contact the Housing Advice Team Tel: 020 8496 5575."

17. On 6 November 2015, the claimant's representatives wrote to the defendant indicating that they wished to seek a review of the defendant's decision of 5 November 2015 under s.202 of the Housing Act 1996. The letter is headed to include:

> "**Request for accommodation pending review (Section 188(3) Housing Act 1996)**
>
> **Request for accommodation under Section 192(3) Housing Act 1996**"

18. The representatives' letter takes issue with the defendant's s.184 decision and its consideration of the medical evidence submitted by the claimant and obtained by the defendant independently. The letter argues that the defendant's s.184 decision fails properly to consider the evidence submitted including that from the HBF and the claimant's circumstances as a victim of trafficking in assessing her as not being "vulnerable" and therefore not having a priority need. The letter also deals specifically with the claimant's case to be accommodated pending review under s.188(3) as follows:

> **"The impact on our client of a refusal to house pending review**
>
> Our client has limited informal support. Because she was trafficked by Albanians for prostitution, she is wary not only of strangers but particularly of Albanians. This creates a difficult because she cannot speak much English. She is going to college and learning English but her English at the moment is limited. She cannot trust others easily and is very scared of contact which may lead to her traffickers becoming aware of her whereabouts. It may be that some of her anxiety is rational and that there is a real risk of violence/discovery by traffickers and/or retrafficking. It may be that some of her anxiety is related to PTSD. In any event this restricts the pool of potential friends and sources of support. One Albanian family that she has learned to trust have she says been very very good to her and provided shelter but they are unable to do so further. She has very limited access to support this is in contrast to a homeless person with a network of family and friends and good English who might be able to manage for a short period during review. Her mental health problems are so serious and are so linked to anxieties about her personal safety and about sexual attack that she is particularly likely to suffer what may be very extreme consequences even for a short period if she is not accommodated. Given the progress she has made in difficult therapy, the risk of relapse (which is evidenced) is particularly serious and a factor which should weigh heavily in deciding whether to accommodate her.
>
> For all these reasons you should either withdraw the 5th November 2015 decision or agree to accommodate pending review.
>
> **We require your decision on accommodation pending review by 4pm on Monday 9th November 2015**. We must ask you to reply by then because we need to know your position in good time so that we can comply with the pre-action protocol in the event that it is necessary to challenge it."

19. The representatives' letter then turns to s.192(3) of the Housing Act 1996 which confers a power upon the defendant to accommodate a person to whom s.192 applies (as it did on the basis of the defendant's assessment under s.184) as follows:

**"Section 192 (3)**

If you will not agree to accommodate our client under Section 188(3) please exercise your power to accommodate her under Section 192(3), at least whilst you determine whether or not her assertion that she requires self contained accommodation is correct (because she cannot obtain housing benefit to pay for self contained private sector accommodation) and whilst you determine her housing register application (she is entitled to a reasonable preference and needs to know whether or not and if so when accommodation appropriate to her needs will become available for allocation to her.)

When considering whether to exercise this power you must have regard both the PSED and to the Code of Guidance which relevantly provides:

*In addition to determining whether an applicant is owed any duty under Part 7, housing authorities are reminded that they have a power to provide further assistance to applicants who are eligible for assistance, homeless (or threatened with homelessness) unintentionally and do not have a priority need. Under s.192(3), housing authorities may secure that accommodation is available for applicants who are eligible, unintentionally homeless and do not have a priority need (see Chapter15 for further guidance). Under s.195(9), housing authorities may take reasonable steps to secure that accommodation does not cease to be available for applicants who are eligible for assistance, unintentionally threatened with homelessness and do not have a priority need for accommodation (see paragraph 14.7 for guidance on steps to secure that accommodation does not cease to be available).*

**Suitability**

You are on notice that we do not consider accommodation in Welwyn Garden City to be suitable. This is because of the distance from London, HBF, college and support. A primary hurdle is the cost of travel: this also makes the accommodation effectively unaffordable. In the event that you agree to accommodate either pending review or under Section 192(3), you are bound to provide suitable accommodation. You are already on notice of our view that the accommodation provided is not suitable and accordingly if you agree to accommodate but do not move our client we will immediately take steps to issue an application for judicial review which will be substantially the same as the application we had prepared yesterday but that became academic once the Section 188(1) duty came to an end. We do not consider that on this issue alone a further preaction protocol letter will be required."

20. On 10 November 2015, the claimant's legal representatives made further submissions in respect of the claimant's request to be accommodated under s.188(3) pending review and her request for accommodation under s.192(3). The letter again drew attention to the claimant's circumstances as a young single woman with mental health problems arising as a result of her being a victim of trafficking. The letter drew the defendant's attention to the case of R v Camden LBC exp Mohammed (1997) 30 HLR 315 setting out the criteria that should be applied in deciding whether or not to exercise discretion under s.188(3) in providing accommodation pending review.

21. On 10 November 2015, the defendant (through Ascham Homes) refused the claimant's request for interim accommodation pending review. This is the first "Mohammed decision". It is the second decision challenged by the claimant in these proceedings.

22. The decision is a lengthy one running to some ten pages (at pages 3-67 to 3-76 of the bundle). The letter sets out the three criteria identified in Mohammed relevant to the authorities' decision namely: (i) the merits of the case; (ii) whether there is new material, information or argument which has a real effect on the review decision; and (iii) the individual's personal circumstances. The letter deals (at 3-69 to 3-72) with the arguments made concerning the merits of the claimant's case in respect of her claim to be "vulnerable" (and hence having a priority need) including the correct legal approach. For these purposes, it is important that I set out the defendant's response to a number of points made in respect of the s.184 decision in relation to the extent to which the evidence from the HBF was considered and the treatment of the medical evidence. The letter states as follows (at 3-70 to 3-71 of the bundle):

> "• *The S.184 letter mentions enquiries made by the decision maker but there were no enquiries made. Particularly Mr Gibbs had not carried out enquiries into the nature of the service provided by the Helen Bamber Foundation.*
>
> I am satisfied that the council did take the medical evidence in question into consideration. I am also satisfied that the council made the right enquiries and only the enquiries that would satisfy the local authority in reaching a conclusion as it did on 5th November 2015.
>
> ....
>
> The medical information (including the letters from the Helen Bamber Foundation cited above) were all referred to our independent Medical advisers (Now Medical) who recommended that having considered your mental health problems, they did not think your medical issues render you significantly more vulnerable that an ordinary person. This council concurred with that recommendation because it did not depart from the fact of your case. I note that by your own admission you are fit and able to undertake remunerative work (hence why you are claiming Jobseeker's Allowance). Whilst this is not an indication of vulnerability it does however add to the assertion that you are not at the extreme polar end of the

spectrum when compared to a robust ordinary person who becomes homeless. The council has concluded that you have a good level of functionality and awareness in time space and person and those representing you have offered no compelling arguments to the contrary.

I am satisfied that this ground lacks merit and is bound to fail if the decision letter is read as a whole as it must be.

- *The decision maker adopts the reasoning of a Dr Thackore from Now Medical. Dr Thackmore has never met you and has not seen your medical records. She has not made any enquiries of the treating professionals. She can only have carried out the briefest of consideration of the documents. This is in contrast to the staff at HBF who are specialists and who have known you since July 2014.*

In addition to the issues under this ground your representatives also assert that, in this case the views of the organisation providing long-standing professional therapy must be afforded greater weight than the view of a non-specialist Dr who has never met you, has not had access to your full medical records and almost certainly will have spent a very short period of time considering scant paperwork. It is assumed that Dr Thackmore may not have had the second Dr Robjant report.

....

It is trite law that a local authority can use and rely on the recommendations of an independent Medical adviser who has not examined an applicant.

It is not for HBF personnel, your GP, those representing you or indeed Dr Thackore to apply the legal test in determining if you are vulnerable. The comments of the parties mentioned are noted, considered and weighed by the decision maker and it is solely for the decision maker to apply the correct legal test on vulnerability.

From information held on your housing file, I am satisfied that Mr Gibbs did consider Dr Robjant's second letter (3rd November 2015) as he referred the document to Dr Thackore for his views. The S.184 is an administrative decision and need not mention every detailed aspect of the council's enquiries in order for it to be seen to be lawful. Equally there is no requirement for the decision maker to exhibit judicial exactitude in expressing himself when writing a decision."

23. The letter concludes, under the first Mohammed criterion, that the claimant's arguments "in support of the review lack merit".

24. The letter then turns to the second Mohammed criterion, namely new information and materials as follows (at 3-72):

> "**New information, material or argument**
>
> I do not believe there is any new information or material which is relevant at this stage. I have considered the representations made by your solicitor, however, I am satisfied that:
>
> - The council did consider the second Dr Robjant letter.
>
> - There were no significant amount of relevant information that was not put before Mr Gibb and if that not to be accurate, it is for the applicant to set out what is 'lacking' in her application and for Mr Gibb to determine which enquiries he needs to make and how much weight to give to information sought in the assessment process.
>
> - The Supreme Court has already warned local authorities to avoid the use of statistics and non-personal general information in such matters. Hence any comments on the prevalence of PTSD in survivors of sex trafficking and how best to address the needs of survivors to facilitate recovery would only be relevant if you not only have a medical diagnosis of PTSD but that it is the prescribed treatment for you personally and without such you would be significantly more vulnerable than the ordinary person.
>
> - Information in relation to your past experiences were taken into account and guidance sought from the reports of those who had an awareness of your forensic history at HBF.
>
> - Despite cultural stigma, it is a fact that you are not in receipt of any medications or treatment which would normally be associated with someone who has a severe or unstable mental health diagnosis. This was confirmed by HBF.
>
> - By completing the Single Homeless questionnaire, Mr Gibbs relied on information that you provided with the aid of an Albanian interpreter. There is no dispute offered in relation to the information contained in the completed questionnaire.
>
> Given the above there is no new material provided that would lead me to conclude that your case has any assumed merits, such as would persuade me to consider the provision of

discretionary accommodation pending this Council's review decision?"

25. Turning to the third Mohammed criterion the letter deals with the claimant's personal circumstances at pages 3-73 to 3-75 as follows:

"**Personal circumstances**

Those representing you make the following submissions in relation to the impact of a refusal to provide you with discretionary accommodation pending a review.

- That you have limited support – this is not dissimilar to most single homeless persons.

- *Because you were trafficked by Albanians for prostitution, you are wary not only of strangers but particularly of Albanians. This creates a difficulty because you cannot speak much English. You are attending college and learning English but your command of English at the moment is limited*. – I truly empathise with you in terms of the traumas you have been exposed to and I accept that English is not your first language. Similarly to Mr Gibbs, I commend your efforts to improve yourself and particularly praise your efforts to integrate into a new community and country. However I am not satisfied that this aspect of your personal circumstances on its own would affect your ability to bring a review.

- *As you are very scared of contact which may lead to your traffickers becoming aware of your whereabouts, such restricts the pool of potential friends and sources of support.* – This is noted but it also true that you did enjoy the services and support of Albanian friends who provided you with shelter when you arrived in London.

- *Your metal health problems are so serious and are so linked to anxieties about your personal safety and about sexual attack that you are likely to suffer what may be very extreme consequences even for a short period if you are not accommodated* – it would be irrational to underplay your anxieties and the effects of your traumatic experiences and I do not intend or propose to make such an evaluative judgment. I am however of the opinion that a close examination of your history gives rise to a strong feeling of your determination to overcome your anxieties and deal with the trauma of your past. In my opinion having to make your own accommodation arrangements against the backdrop of your forensic past and buttressed by the support from

those treating you at HBF is only one more hurdle for you to overcome in your quest for a better life. It cannot be said to be any more difficult than having to deal with being trafficked as a sex slave and escaping the clutches of those who abused you so unashamedly.

- *It is agreed that you have made progress in therapy but suggested that there is a risk of relapse which should weigh heavily in deciding whether to accommodate you* – It is not said that you will lose the support and access to therapy if this office were not to accommodate you pending the review and indeed it would be irrational to suggest that HBF would withdraw their support if this council does not accommodate you.

From the above I do not consider that your circumstances are sufficiently serious to justify exercising the Council's discretion to provide temporary accommodation pending the review.

You are entitled to housing benefit and other income benefits to allow you to try and find accommodation; however, we suggest that you look at other areas in addition to Waltham Forest where housing may be more affordable.

I am also satisfied that you will not suffer severe or significant prejudice in bringing a review if this office were not to provide you with interim accommodation pending a review. In my opinion you are represented by a reputable organisation that appears to be familiar with your medical and social problems and the facts of your case, such that they can reasonably be expected to undertaken any litigation without further instructions from you.

In my opinion, if you were to be homeless, there is network of support and short-term accommodation available and at your disposal. Whilst we have considered the statutory duty to assist you as best as we lawfully can, the homelessness service must also work with other agencies to help you explore the various options available to you."

26. The letter then sets out the "balancing exercise" to be undertaken as follows:

**"The Balancing Exercise**

Furthermore the Council has regard to extreme shortages of housing available to it and the need to balance your needs against those of other applicants seeking interim accommodation to whom we owe a duty. Taking all the above into account, the Council declines to exercise its discretion to provide interim accommodation for you pending the review.

> I have had to balance the various factors against each other and in all the circumstances, have formed the view that there are no exceptional reasons, new information or merits of success, which should result in the provision of interim housing at this stage. However if you are able to provide evidence that confirms *prima facie* merits, priority need or *exceptional circumstances*, I will be willing to give consideration to providing interim accommodation pending the review of this authority's decision.
>
> It is of note that Lord Neuberger emphasised in *Holmes-Moorhouse v Richmond upon Thames RLBC [2009] UKHL 7 in paragraphs 47-51* that a nit-picking approach should not be adopted in the interpretation of these kinds of decisions, but a benevolent one and decision should be read as a whole. Your solicitor's letter of 6th November 2015 seems to be doing exactly the same thing that the courts warned against."

27. Having considered those matters, the letter then concludes that interim accommodation is to be provided in the following terms:

> "Having had regard to the Primary legislation in this matter and the Code of Guidance issued to assist local authorities in such matters, I am not satisfied that this local authority should exercise its discretionary powers under Section 188(3) or under Section 192(3).
>
> **At this stage your request to provide interim accommodation is denied."**

28. I interpolate at this point that the claimant's case is that the defendant acted unlawfully when the initial s.184 decision letter of 5 November 2015 is read with the refusal of interim accommodation in the letter of 10 November 2015 (the first "Mohammed decision") because:

    1) the defendant failed to make any decision in respect of claimant's request to be accommodated pursuant to the defendant's discretion under s.192(3);

    2) in any event, the letters read together demonstrate that the defendant failed (as it was required to do) to carry out a 'housing needs' assessment prior to reaching a decision, if one was made, under s.192(3); and

    3) the letters read together do not amount to an adequate and lawful consideration or exercise of the defendant duty under s.192(2) to provide the claimant with advice and assistance in relation to her securing accommodation.

29. The documentary narrative between the parties does not, however, rest here.

30. On 11 November 2015, the claimant's legal representatives sent a further pre-action protocol letter to the defendant challenging, inter alia, the defendant's decision not to exercise discretion in the claimant's favour under s.188(3) and under s.192(3).

31. On 11 November 2015, the defendant (through Ascham Homes) responded to the PAP letter indicating that the defendant did not intend to exercise its discretion to provide the claimant with interim accommodation pending a determination of the review. In that letter, the defendant stated its position to be that the only mechanism for challenging the refusal to accommodate under s.188(3) pending review was by judicial review.

32. On 12 November 2015, the claimant issued the present proceedings challenging the defendant's decision not to accommodate under s.188(3) and also under s.192(3).

33. On 12 November 2015, Ouseley J granted interim relief requiring the defendant to provide the claimant with suitable accommodation pending the determination of her application for review.

34. Pursuant to the judge's order, an oral hearing on the interim relief issue took place on 20 November 2015. HHJ Gore QC (sitting as a Deputy High Court Judge) made an order extending the interim relief granted by Ouseley J to seven days after notification of the review decision made under s.202 of the Housing Act 1996.

35. On 4 December 2015, the claimant issued a second set of judicial review proceedings against the defendant seeking to challenge the s.184 decision including the suitability of the temporary accommodation provided to the claimant pending the determination of her application.

36. On 14 December 2015 William Davis J ordered that permission in respect of both claims should be determined together on the papers.

37. On 31 December 2015, Mark Ockelton (sitting as a Deputy High Court Judge) granted the claimant permission in her first claim (namely the current one) but refused permission in respect of the second.

38. In respect of the first claim, the defendant's Acknowledgement of Service stated that the defendant did not intend to defend the application to accommodate the claimant, and which led to the interim order made by HHJ Gore QC on 20 November 2015, requiring the defendant to provide suitable accommodation to the claimant until seven days after the notification of the review decision.

39. On 29 January 2016, the defendant notified the claimant of the Review Officer's decision under s.202 of the Housing Act 1996. That decision runs to 21 pages and is found at pages 4-1 to 4-21 of the bundle. The review upheld the defendant's decision that the claimant was not "vulnerable" and thus was not a priority need engaging the defendant duty to accommodate.

40. That decision is directed towards the defendant's decision in respect of s.184. It does not purport to deal with the claimant's application for temporary accommodation whether under s.188(3) (pending a review) or under s.192(3). It does, however, set out at pages 4-16 to 4-17 the "personal circumstances" relied upon by the claimant in respect of her application for discretionary accommodation pending a review. I must set it out at some length as the defendant relies upon in defence of the claim. It is in the following terms:

"**Personal circumstances**

Those representing you make the following submissions in relation to the impact of a refusal to provide you with discretionary accommodation pending a review and I presume they will rely on the same in response to any finding that you are not owed the full housing duty pursuant to this application.

- *That you have limited informal support*. – this is not dissimilar to most single homeless persons in the UK.

- *Because you were trafficked by Albanians for prostitution, you are wary not only of strangers but particularly of Albanians. This creates a difficulty because you cannot speak much English. You are attending college and learning English but your command of English at the moment is limited*. – I truly empathise with you in terms of the traumas you have been exposed to and I accept that English is not your first language. Similarly I note that this assertion is not entirely accurate as rather than being wary of strangers, you sought out strangers and moved into their home for almost 2 years. Not only was your benefactor a stranger, he was also an Albanian and to add further to that he was a man you had never met. I commend your efforts to improve yourself and particularly praise your efforts to integrate into a new community and country. However I am not satisfied that this aspect of your personal circumstances on its own would affect you such as to render you vulnerable.

- *As you are very scared of contact which may lead to your traffickers becoming aware of your whereabouts, such restricts the pool of potential friends and sources of support*. – This is noted but it also true that you did enjoy the services and support of Albanian friends who provided you with shelter when you arrived in London. The mere fact that the said Albanian friends were previously unknown to you yet you sought their assistance, is proof of your coping mechanism when you arrived in the UK with nowhere to sleep.

- *Your metal health problems are so serious and are so linked to anxieties about your personal safety and about sexual attack that you are likely to suffer what may be very extreme consequences even for a short period if you are not accommodated* – it would be irrational to underplay your anxieties and the effects of your traumatic experiences and I do not intend or propose to make such an evaluative judgment. I am however of

the opinion that a close examination of your history gives rise to a strong feeling of your determination to overcome your anxieties and deal with the trauma of your past. In my opinion having to make your own accommodation arrangements against the backdrop of your forensic past and buttressed by the support from those treating you at HBF is only one more hurdle for you to overcome in your quest for a better life. Whilst this does not relate to the legal test it is however an important aspect of your current functionality and how you have found coping mechanisms to tackle unfortunate situations including homelessness.

- *It is agreed that you have made progress in therapy but suggested that there is a risk of relapse which should weigh heavily in deciding whether to accommodate you* – It is not said that you will lose the support and access to therapy if this office were not to accommodate you. It would be irrational to suggest that HBF would withdraw their support if this council does not accommodate you. Equally it cannot be said that the services of HBF are exclusive to those who have accommodation or perhaps those who live within Waltham Forest. Dr Wilson's comments capture my thoughts accurately under this subject."

41. On 3 February 2016, Holroyd J, on oral renewal, refused the claimant permission in the proceedings challenging the defendant's s.184 decision. I understand from both representatives that the claimant is seeking to appeal that decision to the Court of Appeal.

42. Following correspondence from the claimant's representatives on 3 February 2016 and 5 February 2016, on 5 February 2016 the defendant made a decision (the second 'Mohammed decision') in relation to a further request for interim accommodation pending an appeal to the County Court under s.204 of the Housing Act 1996 against the adverse review decision of 29 January 2016. That decision is at pages 4-31 to 4-41 of the bundle. The request for interim accommodation pending an appeal was dealt with by the defendant despite the fact that no appeal had then been lodged. An appeal was, in fact, lodged on 8 February 2016 and, I was told, is listed for hearing on 26 May 2016.

43. I set out the terms of the decision letter of 3 February 2016 as the defendant relied upon it in defence of the claim.

44. The decision-maker applied the three Mohammed criteria merits, new material and personal circumstances as follows:

"**Merits**

It is trite law and indeed good practice to consider the grounds of your appeal in any determination of the merits of your case

and prior to a decision on the request to exercise the council's discretion in this matter.

As such I note that the proposed grounds listed as follows

(1) *The reviewing officer failed to conduct a review y way of re-hearing, i.e. considering afresh the merits of the appellant's application: the decision is a review of the matters take into account at the initial (section 184) stage and is replete with such references*. – This ground is inconceivable given that fresh enquiries were made of those treating you and you were interviewed afresh to ascertain your concerns and functionality. The review decision must e read as a whole.

(2) *The reviewing officer wrongly interprets the law*.

(a) *At page 3, the reviewing officer identifies the test as whether an applicant is significantly more vulnerable than an ordinary person (sic) as a result of being rendered homeless. The statutory test is that an applicant is vulnerable for one a of a list of reasons, including mental illness. It is not as a 'result' of being rendered homeless*. –

This is simply a nit picking exercise as the review decision clearly sates *in doing so I need to compare you with an ordinary person if made homeless and decide whether you are significantly more vulnerable than the ordinary person would be when made homeless.* The letter also goes on to say *under the legal test cited, I have compared you with an ordinary person if made homeless, not with an ordinary person that is actually homeless.*

(b) *The reviewing officer (correctly) adopts a low threshold test for vulnerability – finding (page 4) that a person is significantly more vulnerable than the ordinary person if they are more than minimally more vulnerable – but proceeds to find that a person with PTSD who requires extensive mental health input is not minimally more vulnerable than an ordinary person entirely confuses the test*. – This is a finding of fact. As the arbiter of fact in this matter it is my responsibility to weigh the facts of the case and conclude on the aspect of the assessment in question using the appropriate legal test. The review decision concludes that you are not significantly more vulnerable than the ordinary person would be when made homeless it does not say you are *minimally more vulnerable.*

(c) *The reviewing officer wrongly concludes (pages 14-15) that an applicant's starting point is a relevant factor for determining the question of vulnerability and that vulnerability is to be determined by reference to deterioration from that starting point. That is to entirely misunderstand the statutory*

*test (and to return to the test expressly rejected by the Supreme Court in Johnson v Solihull MBC that the homeless person was to be deemed to suffer some illness).* –

The review decision carefully sets out the balancing exercise for determining if you are *significantly* more vulnerable by commencing an assessment with a view of the *De minimis* position. The assumed deterioration in your health was then discussed with a conclusion that there is no evidence to support any assertion that your condition is likely to deteriorate when you are homeless. This is substantiated by the fact that there was no evidence to satisfy this office that your health deteriorated at your lowest ebb (the day you arrived in the UK), nor is there any evidence to satisfy me that you deteriorated significantly after you were made homeless by your Albanian friends London.

(d) *The reviewing officer concludes that the support currently provided to the appellant will continue if homeless and that therefore her progress will be maintained. While it is correct that the availability of support may be relevant to determining vulnerability (Hotak v Southwark LBC) the reviewing officer confuses two concepts: (i) whether assistance will be provided when homeless, which has never been denied, and (ii) whether the state of homelessness (even with support) will cause a relapse and an increased susceptibility to trafficking*. –

This ground of appeal is convoluted to say the least. I am not particularly certain as to what is intended in the sentence *whether assistance will be provided when homeless, which has never been denied*. The review decision clearly concludes that you will continue to be supported by the Helen Bamber Foundation irrespective of whether this council accepts a duty to provide you with accommodation or not. There is no information to suggest otherwise. The review decision also concludes that there is no information to substantiate any claims you will relapse and be more susceptible to trafficking if this council were not to accommodate you.

*(3) The reviewing officer erred in his approach to the medical evidence. It is not disputed that an authority can use medical advisors. Nor is it disputed that the final decision and assessment of vulnerability is a matter for the reviewing officer. The appellant nonetheless asserts that the approach of the reviewing officer was wrong because –*

*(a) The reviewing officer was wrong to consider that he was comparing like with like – the appellant asserts that where the prevailing medical issues are complex and require specialist knowledge and experience (as is accepted even by*

*Now Medical), the specific (rather than the general) view of a general psychiatrist cannot be considered of any use or any weight. Insofar as this proposition is accepted but dismissed (page 9) the reviewing officer was wrong to do so*. –

By their own admission those representing you agree that this office can seek the opinion of an independent Medical Adviser. In your particular the review decision clearly tackles the question of weight to be given to the evidence in this case.

Parliament has always intended that the local authority is not only the arbiter of fact but that the weight to be given to the evidence is solely for the local authority to determine in making decisions under s.184 and S.202 (see ***R v L.B. Hillingdon ex p. Puhlhofer (1986) 1 A.C. 484 H.L. per Lord Brightman at p.518)***.

This is still the correct approach under the 1996 Act (*See* ***Adel William v Wandsworth (2006) HLR 42 at 19-20*** as well as in ***Bubb v Wadsworth LBC CA EWCA Civ 1284 [2012] H.L.R. 13 per Neuberger L.J at [19]-[21]***. (Two cases that I am very familiar with).

The review decision sets out the reasons for giving weight to the relevant evidence at the tail end of page 8 of the review decision.

(b) *The reviewing officer was wrong in fact to assert that Jackie Roberts had only one consultation session with the appellant: she had been her attending psychiatrist at the Helen Bamber Foundation. The report from Ms Roberts notes that 'I began NET treatment with her on 19 February 2015. The treatment finished on 3 September 2015. Given that is so crucial to his conclusion that he refers to it on several occasions to diminish the relevance of the evidence, the error of fact is sufficient to undermine the reviewing officer's decision and cast doubts on the extent to which he has comprehended the factual background and the intensity of support provided*. –

The review information took into account the totality of evidence provided by Jackie Roberts and indeed the Helen Bamber foundation in this matter. It does not restrict the findings to any single or isolated session in treating you. The finding made is not in any sense crucial to the determination as to whether you are vulnerable for the purpose of this application as it was merely a reference to the fact that Jackie Roberts only had one consultation session with you during the review process. By her own admission Jackie Roberts had concluded her treatment session with you on *3 September 2015*. It was not until the council had issued its decision on 5th

November 2015 that your solicitors requested further consultation/input from Jackie Roberts. Her views and the familiarity with your case were neither dismissed nor disregarded. The review decision simply appropriated weight to her findings based on the overarching unsubstantiated general statements in relation to her assertions that your health is likely to deteriorate.

(c) *The evidence of Now Medical expressly applied the wrong test, addressing whether the claimant would be able to cope with the effects of homelessness.*

The simple response to this ground is carefully set out in the penultimate paragraph on page 8 of the review decision.

*Please note that it is not for Dr Wilson, Jackie Roberts, the HBF consultants or those representing you to apply the legal test on vulnerability in this matter. That responsibility is solely for the local authority. The comments of the parties mentioned are noted, considered and weighed by the decision maker and it is solely for the decision maker to apply the correct legal test on vulnerability.*

(d) *The evidence – even that of NowMedical – supported the appellant's assertion that she suffered from considerable mental illness as a result of her experience and required extensive continued treatment*.

There is no dispute as to whether you suffer from a mental condition. The question before this office is "are you vulnerable for the purpose of this application. After extensive consideration and having taken into account the all the facts available to this office the review decision concludes that you are not vulnerable as defined. This may not be a decision that you find favourable but it is nonetheless a decision that is available for this office to make in these circumstances.

(4) *The decision was one which was outside of the range of decisions open to the reviewing officer.*

(a) *This is one of those rare decisions which is so unreasonable as to be perverse. A finding that a woman who is the victim of trafficking for sexual exploitation and has as a consequence considerable mental illness, is more minimally more vulnerable when homeless than the ordinary person is a decision so perverse that no reasonable reviewing officer could have reached it*. –

This office is satisfied that the decision that you are not in priority need was one that was lawfully open to this office for reasons set out in the letter of 29th January 2016. No

determination was made to suggest that you were *more minimally more vulnerable (sic)* and it was not a decision that borders on the absurdity such as to suggest it is perverse. It is accepted that you are a victim of trafficking but the personal facts of your case (note the general overview of all victims of trafficking) is testament to the conclusion that you are not vulnerable for the purpose of this application.

It cannot be said with any conviction nor was it intended by Parliament that a specific client group save for those set out in S.189 of the Housing Act 1996 and The Homelessness (Priority Need for Accommodation) (England) Order 2002 will always be deemed to have a priority need out rightly.

As such a determination in this respect must be objective and case specific. In your case the facts support a finding that you are not vulnerable.

(b) *The (central) conclusion that because the appellant had secured accommodation on first arrival to the UK with a man previously unknown to her, she would be able to do so again is perverse and ignores the evidence that the decision to accept accommodation with a stranger was a symptom of her vulnerability* –

It is fact that you accepted an offer of accommodation from a male stranger on the day you arrived in the UK. It is also noted that you were desperate when you accepted the offer of accommodation in question. It is wholly unacceptable to suggest that the review decision 'ignores' the evidence in relation to this act as a symptom of vulnerability. On the contrary the review decision discusses this situation at length, commends you for you resourcefulness and concludes that your ability to secure such assistance was out of luck but indicative of your survival attitude.

I am satisfied that your proposed grounds of appeal lack merit and any intended appeal is bound to fail if the decision letter is read as a whole as it must be.

**New Material**

Having perused the arguments in your solicitors' letters of 3rd and 5th February 2016, I must confess that I can find no new material to support a request for a discretionary accommodation pending an appeal.

I am satisfied that there is no new information that would render the council's decision as a whole.

**Personal circumstances**

> No grounds are advanced to suggest that your ability to conduct the appeal without accommodation will be highly diminished such that you will suffer prejudice unless this office exercises its discretion in this matter.
>
> I am however satisfied that the council's decision dated 29th January 2016 is a lawful and rational decision within the *Wednesbury* sense and as such I have no reasons to withdraw or waive that decision and it still stands.
>
> In my opinion, if you were to be street homeless, there is network of support and short-term accommodation available and at your disposal to enable you maintain contact with your support network and your solicitors. Whilst we have considered the statutory duty to assist you as best as we lawfully can, the homelessness service must also work with other agencies to help you explore the various options available to you.
>
> We have determined that you are not a person to whom we owe a statutory duty to provide accommodation under the above legislation. It is a fact that you are represented by a reputable firm of solicitor who have a firm awareness of the facts of your case (given their numerous litigation thus far. In my opinion you can reasonably give instructions to your representatives irrespective of whether this office accommodates your or not."

45. The letter then states:

> "Having balanced the merits of this case the lack of new information and your personal circumstances, I can confirm that this Council declines to exercise its discretion to provide interim accommodation for you pending an appeal under Section 204."

46. The letter goes on to point out that the claimant may appeal that decision under s.204A of the Housing Act 1996.

47. The letter concludes that the claimant's accommodation arrangements made with the defendant are due to cease on 8 February 2016 but will be extended, as a gesture of goodwill, to 15 February 2016 after which the claimant will be expected to make her own accommodation arrangements.

48. On 12 February 2016, Lang J granted the claimant interim relief and ordered that the accommodation should continue to be provided to the claimant until the final determination of this claim.

49. On 23 February 2016, the defendant applied to discharge the order of Lang J but that application was withdrawn by consent on 16 March 2016.

**The Relevant Legal Provisions**

50. Part VII of the 1996 Act deals with homelessness and those threatened with homelessness and what, if any, duties are owed by a housing authority to those who are homeless.

51. Section 184 sets out a local housing authority's duty to make enquiries in relation to a person whom it has reason to believe is homeless or is threatened with homelessness. Section 184 provides, so far as relevant as follows:

> "**184.– Inquiry into cases of homelessness or threatened homelessness.**
>
> (1) If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves–
>
> (a) whether he is eligible for assistance, and
>
> (b) if so, whether any duty, and if so what duty, is owned to him under the following provisions of this Part.
>
> ....
>
> (3) On completing their inquiries the authority shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision.
>
> ....
>
> (5) A notice under subsection (3) or (4) shall also inform the application of his right to request a review of the decision and of the time within which such a request must be made (see section 202)."

52. The reference in s.184(1)(b) to what "duty", if any, the authority's owes under Part VII depends upon the authority's assessment of whether the individual is homeless (or threatened with it) and, if so, is intentionally or unintentionally homeless; is eligible for assistance; has a local connection; and finally, has a priority need. If the authority is satisfied on all those matters in an individual's favour then, in general, the authority has a duty to secure suitable accommodation (see s.193). Where however the authority is not satisfied on one or more of those matters, a lesser duty is owed along, what was described in argument, as a spectrum. In this case, the relevant provision is s.192 which applies where the authority is satisfied that the individual is eligible for assistance, is homeless (but not intentionally homeless) but is not satisfied that the individual has a priority need. Section 192 provides as follows:

> **"192.– Duty to person not in priority need who are not homeless intentionally.**

(1) This section applies where the local housing authority–

(a) are satisfied that an applicant is homeless and eligible for assistance, and

(b) are not satisfied that he became homeless intentionally,

but are not satisfied that he has a priority need.

(2) The authority shall provide the applicant with (or secure that he is provided with) advice and assistance in any attempts he may make to secure that accommodation becomes available for his occupation.

(3) The authority may secure that accommodation is available for occupation by the applicant. [...]

(4) The applicant's housing needs shall be assessed before advice and assistance is provided under subsection (2).

(5) The advice and assistance provided under subsection (2) must include information about the likely availability in the authority's district of types of accommodation appropriate to the applicant's housing needs (including, in particular, the location and sources of such types of accommodation)."

53. In this case, as the above narrative will have made plain, the claimant argues that the defendant has failed properly to carry out her legal obligation under s.192(2) to provide advice and assistance and under s.192(3) to provide accommodation to the applicant in exercise of the defendant's discretion.

54. Section 202 provides, inter alia, a right to request a review of a s.184 decision in the following circumstances:

"**202.– Right to request review of decision.**

(1) An applicant has the right to request a review of–

....

(b) any decision of a local housing authority as to what duty (if any) is owed to him under sections 190 to 193 and 195 and 196 (duties to persons found to be homeless or threatened with homelessness), ...."

55. It is pursuant to that provision that the claimant sought a review of the defendant's s.184 decision that she was not "vulnerable" and thus did not have a priority need such as to engage the duty to accommodate under s.193.

56. Section 204 provides a right of appeal to the County Court on a point of law, to be brought within 21 days of being notified of a review decision with which the individual is dissatisfied. The appeal is on a point of law only. It is pursuant to s.204 that the claimant has appealed to the County Court against the adverse review decision taken on 29 January 2016.

57. Part VII of the Housing Act 1996 also provides for, in certain circumstances, the provision of interim accommodation pending a review. Section 188, so far as relevant, provides as follows:

> **"188.– Interim duty to accommodate in case of apparent priority need.**
>
> (1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part.
>
> ....
>
> (3) The duty ceases when the authority's decision is notified to the applicant, even if the applicant requests a review of the decision (see section 202).
>
> The authority may secure that accommodation is available for the applicant's occupation pending a decision on a review."

58. The claimant initially relied upon s.188(3) in seeking accommodation pending a review of the defendant's s.184 decision. As the earlier narrative identifies, the defendant dealt with its power under s.188(3), if not in its s.184 decision on 5 November 2015, in the first Mohammed decision made on 10 November 2015. Mr Johnson, who represented the claimant placed no reliance on s.188(3) before me or the challenge to the defendant's consideration of its duty to accommodate under that provision as the review process under s.202 has been completed and the claimant, as a result of the court's interim orders, had been accommodated in any event pending a decision on the review.

59. Section 204 which, as I have already indicated, deals with the right of appeal to the County Court by a person dissatisfied with a review decision, also confers a discretion upon a housing authority to secure that accommodation is available during the period for appealing to the County Court and, if brought, until the appeal is finally determined. Section 204(4) provides as follows:

> "(4) Where the authority were under a duty under section 188, 190 or 200 to secure that accommodation is available for the applicant's occupation, or had the power under section 195(8) to do so, they may secure that accommodation is so available–
>
> (a) during the period for appealing under this section against the authority's decision, and
>
> (b) if an appeal is brought, until the appeal (and any further appeal) is finally determined."

60. The Defendant's decision under s.204(4) on the claimant's request for interim accommodation pending her appeal was the subject of the second Mohammed decision taken on 5 February 2016.

**The Issues**

61. The claimant challenges the defendant's decisions of 5 November 2015 (the s.184 decision) and 10 November 2015 (the first Mohammed decision). The claimant's case may be summarised as follows.

    1) The defendant failed properly or at all to make a decision under s.192(3), namely in exercising its discretion to secure (including providing) accommodation to the claimant;

        a) by failing to make any decision at all; and

        b) by failing to make a housing needs assessment prior to making any decision.

    2) The defendant failed properly to carry out its duty under s.192(2) to provide the applicant with advice or assistance in any attempt she may make to secure accommodation available for her occupation;

        a) by failing to carry out, prior to giving any advice, a housing needs assessment as required by s.192(4); and

        b) any advice and assistance provided was inadequate.

62. The claimant seeks declarations that the defendant has unlawfully failed to carry out its duties under s.192(2) and (3) in the decisions of 5 November 2015 and 10 November 2015 and a mandatory order requiring the defendant to make a "housing needs" assessment and, thereafter, fresh decisions under s.192(2) and s.192(3). In addition, the claimants seek a mandatory order that the defendant provide the claimant with accommodation pending the conclusion of that process.

63. The defendant's case may be summarised as follows.

    3) In response to the claimant's case in (1) and (2) above, the decision of 5 November 2015 read together with the decision of 10 November 2015 demonstrate a full and proper consideration of the defendant's obligation under s.192(3) (the discretion to secure (including to provide) accommodation) and s.192(2) (to provide the applicant with advice and assistance) including that a "housing needs" assessment has been carried out;

    4) In any event, the decisions of 5 November 2015 and 10 November 2015 are superseded by the defendant's subsequent decisions of 29 January 2016 (the s.202 review) and 5 February 2016 (the second Mohammed decision). As a consequence the court should not grant any discretionary relief;

    5) The claimant's challenge is premature. The defendant had no obligation to consider the exercise of its discretion to accommodate under s.192(3) at the time of making the s.184 decision which is still under challenge by appeal and

in separate judicial review proceedings with an outstanding application to the Court of Appeal challenging the refusal of permission;

6) An alternative remedy exists, in that the challenges to the defendant's obligations under ss.192(2) and (3) are amenable to review (and subsequent appeal) under ss.202 and 204.

**Discussion**

*Issues 1(a) and (b): s.192(3)*

64. On behalf of the claimant, Mr Johnson made two principal submissions under issues 1(a) and (b) in respect of s.192(3).

65. First, Mr Johnson submitted that the defendant had failed to consider whether to exercise its discretion to accommodate the applicant under s.192(3) in the decisions of 5 November 2015 and 10 November 2015.

66. Secondly, Mr Johnson submitted that if any decision was reached, then it was not lawful as the defendant had failed to make a "housing needs" assessment prior to making any decision not to accommodate the claimant on a temporary basis.

67. Mr Johnson accepted that the defendant had no duty to accommodate the claimant under s.192(3) but her application raised the issue of temporary accommodation pending determination of her application for assistance under Part VII of the Housing Act 1996 and also to join the housing register under Part VI.

68. Mr Johnson accepted that the discretion to accommodate under s.188(3) of the Housing Act 1996 pending the s.184 decision and subsequent review had fallen away by the effluxion of time and because the claimant had, in fact, been accommodated as a result of the interim relief granted by the court.

69. Nevertheless, Mr Johnson submitted that it was clear when reading the s.184 decision of 5 November 2015 and the first Mohammed decision made on 10 November 2015 that the defendant had not, as he put it, made an assessment of the "nuts and bolts" of the claimant's needs for housing. In particular, he relied upon the evidence from the HBF and the medical opinion that the claimant should be housed in self-contained accommodation in London, that her past experiences necessitated that she could not live with others, that she was a single young person who would only be eligible for housing benefit at the shared accommodation rate and therefore could not effectively obtain accommodation in the private sector.

70. Mr Johnson submitted that the s.184 decision on 5 November 2015 was focused exclusively upon the question of whether the claimant had a "priority need" as a result of being "vulnerable" apart from the reference to advice at para 26 of the decision.

71. In relation to the first Mohammed decision made on 10 November 2015, Mr Johnson submitted that, apart from the reference to s.192(3) on page 9 of the decision, the letter was focused upon the statutory discretion under s.188(3) to provide accommodation pending review under s.202. The decision was, Mr Johnson

submitted, a decision dealing with the structure required by the case of Mohammed in relation to the exercise of discretion under s.188(3).

72. Mr Johnson accepted that it was not necessary, as a matter of law, for the defendant expressly to set out a "housing needs" assessment which may be implied from the decision letters (see R (Savage) v Hillingdon LBC [2010] EWHC 88 (Admin)). Nevertheless, Mr Johnson submitted that a "housing needs" assessment concerned the practical issues of the number of rooms required by the individual, the space and arrangements of any accommodation, the nature of accommodation, the suitability of accommodation, its affordability, the ability to maintain a tenancy and the likelihood of obtaining accommodation (see, for example, [48], [51] and [55] of Savage).

73. Mr Johnson submitted that the case of Savage was distinguishable in its unfavourable outcome to that claimant because there the relevant housing authority had at various stages of the application process been in contact with the individual and was, as the Deputy Judge found in that case, "well aware of the needs of the [individual] and "knew, also, what kind of accommodation she required" (see [55]).

74. Mr Johnson submitted that, by contrast in this case, the defendant's decision failed to grasp the claimant's "needs" based upon her particular circumstances as a victim of trafficking who needed to be accommodated in London (rather than as was proposed in Welwyn Garden City); and not in shared accommodation.

75. Mr Mullin on behalf of the defendant, in his submissions, sought to refute the claimant's contention that a "housing needs" assessment had not been implicitly carried out in the decisions of 5 November 2015 and 10 November 2015. However, the focus of his oral and written submissions was that the challenged decisions had been superseded by the later decisions of 29 January 2016 (the review decision) and 5 February 2016 (the second Mohammed decision). Nevertheless, as I understood Mr Mullin's submissions, he contended that the two decisions under challenge when read together demonstrated first, that the defendant had made a decision under s.192(3) and that, impliedly, a "housing needs" assessment had been made.

76. Mr Mullin did not seek to argue that a "housing needs" assessment was not required prior to an exercise of discretion under s.192(3) or that Mr Johnson's characterisation of the content of such an assessment – the "nuts and bolts" of an individual's needs reflected in Savage – was other than correct. He, however, submitted that the court should not adopt an "unfair or unrealistic approach" to the defendant's decisions made by housing officers rather than lawyers. He relied upon a passage in the speech of Lord Neuberger in Holmes-Moorhouse v Richmond upon Thames London Borough Council [2009] UKHL 7 at [47]. He submitted that, in particular, the first Mohammed decision of 10 November 2015 was concerned with the exercise of discretion by the defendant to accommodate the claimant on an interim basis. That, Mr Mullin submitted, involved a detailed consideration of the circumstances and needs of the claimant.

77. The statutory obligation to make a "housing needs" assessment prior to providing advice and assistance under s.192(2) is specifically provided for in s.192(4). There is no corresponding provision requiring a "housing needs" assessment prior to consideration of whether to exercise discretion to secure accommodation under s.192(3). Neither party drew my attention to any relevant authority in respect of this

issue. It was not suggested before me by either party that a housing authority (such as the defendant) did not have an obligation to carry out a "housing needs" assessment prior to deciding whether to exercise its discretion to accommodate an individual under s.192(3). Indeed, Mr Mullin's case for the defendant was that such an assessment had in fact been made.

78. The case of Savage was concerned with a different statutory provision in Part VII of the Housing Act 1996 – namely s.190 – and specifically with the statutory obligation to assess an individual's "housing needs" prior to providing advice and assistance under that section. Nevertheless, it seems to me that the interconnected obligations upon a housing authority under s.192, where an individual fails to establish that they have a "priority need," require an assessment of "housing needs" in order to decide whether to secure (including to provide) accommodation as well as to provide any advice and assistance to an individual in order to secure accommodation, albeit that in respect of the latter it is expressly required by s.192(4). Those two obligations will usually inter-connect and be 'part and parcel' of the process by which a housing authority's decides how to discharge its obligations to an individual under s.192. In any event, it seems to me that as a matter of public law in order to assess whether and how to exercise discretion to accommodate under s.192(3) a "housing needs" assessment is required otherwise any decision would necessarily be uniformed about the crucial issue of the individual's "needs". The contrary was not, as I have said, argued before me.

79. I accept, again as both Mr Johnson and Mr Mullin acknowledged, that a "housing needs" assessment may be implied in a housing authority's decision-making, in particular in the context of a s.184 decision and any Mohammed decision whether to accommodate an individual temporarily pending a decision on their housing application or subsequent review of any decision. In Savage, the Deputy Judge (Timothy Corner QC) said this at [56]:

> "56. To require the council to perform a new assessment of the claimant's needs, once the section 184 decision had been taken, would in my view be wholly artificial. It would in effect be to require the council to put out of its mind the knowledge it had thus far acquired, and to acquire it again as part of a new investigative process. I do think that was intended by the legislature. Under s.190(4) the council was required to assess the claimant's needs. It did so, by applying the knowledge of the claimant that it already had."

80. There is, in this case, two interlinked issues in respect of the s.192(3) decision.

81. The first is whether a decision in respect of s.192(3) was made (issue 1(a))?

82. It is clear to me that in the decision letter of 5 November 2015 (the s.184 decision), the defendant did not make any decision in respect of s.192(3) or indeed in respect of the provision of interim accommodation under s.188(3).

83. It is not entirely clear that prior to 5 November 2015 the claimant was, in fact, relying upon s.192(3). The letter from HBF dated 29 October 2015 makes no reference to it although it does (at page 3-3 of the bundle) set out a claim by the claimant for "suitable self-contained accommodation in Walthamstow" pursuant to the defendant's

duty to provide accommodation under s.188(3) of the Housing Act 1996. Likewise, in the pre-action Protocol letter dated 2 November 2015, the claimant's representatives again rely on s.188 but make no reference to s.192(3). It is, perhaps, therefore not entirely surprising that no specific reference is made to s.192(3) by the defendant in its letter of 5 November 2015. However, that letter also makes no reference to s.188(3) which was relied upon by the claimant. To the extent that it is argued that in para 27 of the letter of 5 November 2015 dealt with either statutory provision, the argument is untenable. Simply because in para 27 the defendant stated that the claimant could remain resident in any accommodation she was currently occupying for a period of seven days does not, in my judgment, come anywhere near a decision whether to exercise discretion under s.188(3) or s.192(3).

84. However, following that decision on 5 November 2015 the claimant's representatives wrote to the defendant requesting a review of that decision and clearly in that letter relied not only upon s.188(3) but also upon s.192(3) both in the heading and explicitly at pages 12 to 13 of the letter where it was stated that:

> "If you do not agree to accommodate our client under S.188(3) *please exercise your power to accommodate her under S.192(3)*, at least while you determine whether or not her assertion that she requires self-contained accommodation is correct (because she cannot obtain housing benefit to pay for self-contained private sector accommodation) and whilst you determine her housing register application (she is entitled to a reasonable preference and needs to know whether or not and if so when accommodation appropriate to her needs will become available for allocation)." (emphasis added)

85. Reference is also made at page 13 to the need for the provision of "suitable accommodation" whether "pending review or under s.192(3)."

86. Here it is clear that the claimant's representatives were relying upon s.192(3) seeking interim accommodation pending review and also pending a determination of her housing register application.

87. Section 192(3) was further relied upon in the pre-action Protocol letter of 10 November 2015.

88. In its letter dated 10 November 2015 (the first Mohammed decision), the defendant dealt with the claimant's request for interim accommodation pending review. That letter, as I have set out above, is structured around the criteria set out in the Mohammed decision and specific reference and citation is made of s.188. The only reference in that letter to s.192(3) is at page 9 of the letter where it is stated:

> "having regard to the Primary legislation in this matter and the Code of Guidance issued to assist local authorities in such matters, I am not satisfied that this local authority should exercise its discretionary powers under S.188(3) or S.192(3)."

89. That would appear to be an explicit decision to refuse to exercise in the claimant's favour discretion to provide accommodation under s.192(3).

90. In my judgment, it cannot be said that the defendant has failed to make a decision under s.192(3) in the light of the wording (albeit briefly stated) that I have set out in the decision letter of 10 November 2015. I have reached the conclusion that I do in respect of there being a decision under s.192(3) with little enthusiasm. I say this because it remained the defendant's position, as put by Mr Mullin in his submissions, that the s.192(3) obligation did not arise at the point of the s.184 decision but only, as I understood his submissions, when that decision has run its course through the system namely has been subject to any review under s.202. On the face of it, therefore, it remains somewhat incongruous for the defendant to argue that, in fact, it did decide whether to exercise its discretion to accommodate the claimant under s.192(3). Nevertheless, given the explicit wording of the decision letter, I accept that such a decision was, in fact, made. Consequently I decide issue 1(a) in favour of the defendant.

91. The crucial issue is, in my judgment, therefore whether the decisions of 5 November 2015 and 10 November 2015 read together (as they must be) demonstrate that the defendant made a "housing needs" assessment prior to reaching its decision. That is issue 1(b): whether the defendant properly or at all made a "housing needs" assessment prior to making a decision under s.192(3) whether to accommodate the claimant and, of course, although I have not yet reached this issue, prior to providing advice and assistance under s.192(2).

92. There are, in my judgment, considerable difficulties faced by the defendant in seeking to argue that the decision of 5 November 2015 (the s.184 decision) can be said to demonstrate that such an assessment of the "nuts and bolts" of the claimant's housing needs has been made given its focus on the claimant's "vulnerability" and whether a "priority need" and its total absence of focus on providing the claimant with accommodation under s.192(3). I accept Mr Johnson's submission that the specific housing needs of the claimant are not demonstrated to have been considered (and therefore assessed) by the defendant expressly or by implication in that decision.

93. A number of matters specific to the claimant's circumstances were put forward by the HBF (together with supporting medical opinion) and the claimant's representatives on 29 October 2015 and 2 November 2015 respectively (see above). First, the decision letter fails to grapple with the claimant's case (supported by the material) that she required self-contained accommodation because of her past experiences. At best, reference is made to "long-term hostels" where "in most cases residents have their own room and share other facilities with other residents". Secondly, whilst consideration is given to the evidence from the HBF concerning their ongoing support, the letter fails to deal with the evidence from the HBF that their support would be "impossible if she is housed outside of London." Thirdly, the decision fails to take into account that the claimant would only be eligible for housing benefit – if she was to be housed not by the authority – at the shared accommodation rate and therefore would be disadvantaged in terms of obtaining what she required, namely self-contained accommodation, in the private sector.

94. I accept Mr Johnson's submission that, unlike in Savage, the interaction between the claimant and the defendant was not such as I am able to imply that detailed investigations were undertaken by the defendant into the claimant's housing needs. In Savage, the individual had visited the housing authority's offices on numerous occasions seeking housing advice (see [51] and [55]). In this case, the interaction

prior to the decisions was, apart from representations made on behalf of the claimant, altogether more limited (see e.g. the witness statement of Rebekah Carrier, employed by the claimant's solicitors, dated 19 April 2016 at para 8).

95. In my judgment, the letter of 5 November 2015 lacks an assessment of the claimant's housing needs and I am not satisfied that any such assessment was made but, if it were, that assessment is patently inadequate for the purposes of making decisions under s.192(3).

96. Turning now to the letter of 10 November 2015, that letter, of course, on its face deals with the request to accommodate the claimant pending review under s.188(3) and, at least concludes with a decision not to provide interim accommodation under s.192(3). The letter, unlike the earlier s.184 decision, directly engages with the claimant's application for interim accommodation. It does so on the basis of the well-established Mohammed criteria. The decision is, as a result, focused upon the provision of accommodation on an interim basis. To that extent, it goes further than the earlier letter of 5 November 2015. It does not, however, in my judgment disclose that a proper "housing needs" assessment has been made.

97. First, the letter is premised upon there being no "new information or material" which is relevant to the claimant's merits at the review stage. That is, therefore, focussed upon the claimant's case to have a "priority need".

98. Secondly, I accept that the decision does deal with discretionary accommodation under the heading "personal circumstances" (see above). That, quite properly, acknowledges that the claimant is the victim of trafficking. However, the reasoning leaves me in no doubt that the defendant has failed properly or at all to carry out a "housing needs" assessment. The letter is, again, consistent in stating that the claimant is entitled to benefits which will allow her to obtain accommodation in areas other than Waltham Forest where housing may be more affordable. That, in my judgment, fails to grapple with the case put forward by the claimant that she has a need for self-contained accommodation which would be unaffordable if she could not live in accommodation provided in Waltham Forest.

99. Thirdly, although the letter refers to the support received by the claimant, including from HBF, it states that the claimant's case is not that she will lose "support and access to therapy" if not accommodated pending review and then adds that it would be irrational for HBF to withdraw their support if the council does not accommodate her. That, in my view, flies in the face of the evidence, particularly from HBF, that it would be impossible to provide the level of care and support required for the claimant if she was forced to live outside London. The HBF's position is patently not driven by an unwillingness to support the claimant but rather by the practical impossibility of doing so unless she lives in London.

100. Fourthly, in considering the provision of interim accommodation the decision letter fails to engage with the claimant's case that not only does she seek accommodation pending the outcome of the challenge to her s.184 decision under the review procedure but also pending a decision on her Part VI application to be included on the housing register.

101. The decision letter of 5 November 2015 should not be considered in isolation in determining the legality of the defendant's response to an application for interim accommodation (or indeed advice and assistance). It must, in my judgment, as a matter of practicality and reality be read together with the decision letter of 10 November 2015 which, when taken together, is the defendant's response to the claimant's application for interim accommodation. However, read together, it is clear to me that those letters do not establish that a "housing needs" assessment was made or was properly made prior to the defendant's decision not to exercise its discretion to provide accommodation under s.192(3). I reach that decision mindful of what was said by Lord Neuberger in the Holmes-Moorhouse case at [47] and by the Deputy Judge in Savage at [56] and, in particular, the need to adopt a fair and realistic approach when reading decisions made by housing authorities.

102. Subject to the points raised by Mr Mullin on behalf of the defendant as to issues 4-6 (on which see below), the claimant has, in my judgment, established that the defendant acted unlawfully in failing properly to carry out a 'housing needs' assessment as required prior to making a decision under s.192(3) of the Housing Act 1996.

*Issues 2(a) and (b): s.192(2)*

103. In essence, the legality of the defendant's decision in respect of its duty to provide advice and assistance under s.192(2) of the Housing Act 1996 is resolved by the conclusion I have reached above.

104. There is no doubt that the defendant in its decision of 5 November 2015 did in para 26 of that decision purport to carry out its duty to offer advice and assistance to help the claimant obtain accommodation by referring to the copy of the information booklet, *Housing Advice and Opinions* in Waltham Forest which had been given to the claimant prior to the decision.

105. I do not accept Mr Johnson's submission that simply because the booklet was provided to the claimant prior to the decision of 5 November 2015 necessarily meant that the defendant had failed to fulfil its duty under s.192(2). If, having made a proper and adequate "housing needs" assessment, the defendant reasonably and lawfully discharged its duty to provide advice by reference to this booklet, the fact that it had been given to the claimant earlier would be neither here nor there.

106. However, the crucial point is that I have concluded that in reaching the decisions of 5 November 2015 and 10 November 2015, I am satisfied that the defendant has not carried out at all, or adequately, a "housing needs" assessment. That is contrary to s.192(4) and, as a consequence, the defendant has failed lawfully to carry out its duty under s.192(2).

107. As a consequence, it is not necessary for me to determine whether the provision of that booklet together with the further advice given in the letter of 10 November 2015 in relation to "access to alternative accommodation" in long-term hostel run by housing associations or other voluntary organisation would, had a "housing needs" assessment been made properly, have been sufficient to discharge the obligation of the defendant under s.192(2) in relation to advice and assistance. Any such decision could only lawfully be reached after a proper "housing needs" assessment.

108. Subject to the points raised by Mr Mullin on behalf of the defendant in issues 4-6 (see below), the claimant has, in my judgment, succeeded under issue 2(a) and established that the defendant failed to carry out its duty under s.192(4) to undertake a housing needs assessment prior to carrying out its duty to provide advise and assistance under s.192(2).

109. I turn now to consider the three issues raised by the defendant (issues 4-6) which are relied upon to support the defendant contention that the claimant cannot succeed.

*Issue 4: decisions of 5 and 10 November are superseded by later decisions*

110. Mr Mullin, submitted that the claimant could not succeed, even if the decisions of 5 November 2015 and 10 November 2015 were legally flawed, because they had been superseded by the defendant's review decision under s.202 on 29 January 2016 and by the decision of 5 February 2016 in respect of interim accommodation pending an appeal against the adverse review decision to the County Court under s.204. Mr Mullin made a number of submissions in relation to those later decisions which I have set out in detail above.

111. First, Mr Mullin submitted that these decisions demonstrated that the defendant, at the latest by 5 February 2016, but more properly by 29 January 2016, had effectively made a "housing needs" assessment but, nevertheless had refused the claimant interim accommodation and had carried out, as I understand it, its duty to provide advice and assistance under s.192(2). Mr Mullin accepted, correctly in my view, that this issue went to the court's discretion to grant relief. Further, the decisions superseded any claim to be accommodated pending a review which occurred on 29 January 2016.

112. Mr Johnson submitted that the defendant could not properly rely on the decisions of 29 January 2016 and 5 February 2016. Mr Johnson submitted that the review decision of 29 January 2016 was concerned solely with the s.184 decision. It was not concerned with the exercise of discretion to provide accommodation under s.192(3) nor with the duty to provide advice and assistance under s.192(4). Further, he submitted the decision of 5 February 2016 in respect of interim accommodation pending appeal to the County Court against the review decision did not consider s.192(3) and did not provide any support to the defendant's contention that it superseded the earlier flawed decisions.

113. I do not accept Mr Mullin's submissions on this issue. I prefer, in substance, those of Mr Johnson.

114. First, the claimant sought interim accommodation not limited to the review period but also whilst her Part VI application to be put on the housing register was pending. The claim for interim relief was not, therefore, 'spent' by the date of the review decision on 29 January 2016. In any event, I would be reluctant to refuse discretionary relief on this basis alone.

115. Secondly, the review decision on 29 January 2016 is focused upon the s.184 decision and the "vulnerability" and therefore the "priority need" of the claimant. It is not focussed on her "housing needs". That said, in any event, the decision's content under the heading "personal circumstances" (at pages 4-16 to 4-17 of the bundle) largely mirrors the consideration under the same heading ("personal circumstances")

in the first Mohammed decision of 10 November 2015) (at pages 3-73 to 3-74 of the bundle). That consideration does not, in my judgment, reflect that a proper "housing needs" assessment has expressly or impliedly been undertaken. The letter, and the reasoning to which I have referred and set out above, is simply not directed towards the defendant obligations under s.192(3) or, indeed, s.192(2). Whilst the defendant considered, towards the end of the letter (at page 4-20), the claimant's current accommodation "at the discretion" of the council, it did so only to the extent of noting that it would come to an end seven days after the completion of the review. That is not self-evidently said in the context of the discretion to accommodate under s.192(3) which the claimant challenges. It is instructive that the letter states: "pursuant to Housing Act 1996 you are only owed a duty of advice and assistance ..." (my emphasis).

116. The letter then turns to "advice and assistance" in the following terms:

> "Please continue to approach the Housing Solutions Service if you would like further advice and assistance.
>
> Advice and assistance is available free of charge to all people in the borough; at your initial interview, you have been provided with a copy of the information booklet entitled Housing Advice and Options in Waltham Forest.
>
> Should you wish to find your own accommodation via Waltham Forest Social Fund Scheme, you will need to find private rented accommodation, in the following way;
>
> 1. Find a property to rent with a private landlord or letting agent, I suggest you look in local newspapers and shop windows or online on DSS cribs or rightmove.co.uk.
>
> 2. Find out with Housing Benefit the local housing allowance you qualify for, you can visit Waltham Forest Direct Shop at 137 Hoe Street, E17 4RT or call them on 0208 496 3000 before signing any tenancy.
>
> 3. You may also consider registering with Waltham Forest Credit Union, where you can apply for a loan towards a deposit and rent in advance to enable you secure your own accommodation."

117. Whilst the letter goes further in providing advice and assistance than did the decision of 5 November 2015, it remains the case that without a proper "housing needs" assessment, the defendant has breached its obligation under s.192(4) and, as a consequence, had failed to carry out lawfully its duty under s.192(2).

118. For these reasons, the decision of 29 January 2016 does not have the effect of "superseding" the earlier unlawful decisions such that I should exercise discretion not to grant relief.

119. Turning now to the second Mohammed decision made on 5 February 2016 relied upon by Mr Mullin, this is explicitly concerned with a request by the claimant representatives to the defendant to provide interim accommodation under s.204(4) pending an appeal against the adverse review decision under s.204.

120. The letter again refers to the criteria set out in Mohammed. I set out earlier the consideration of the "merits" above which, in large measure, deals with the the s.184 letter of 5 November 2015 and its consideration of the issue of "vulnerability" and, therefore, "priority need" The letter concludes that there is "no new information" which would render the defendant's decision worthy of further reconsideration or impact upon the decision as a whole. The thrust of the decision is that the "review" took into account the totality of the evidence. For the reasons that I have already given, the review decision did not disclose a proper consideration of the claimant's "housing needs" in order to inform the defendant's decision under s.192(3) and s.192(2). Nothing in the second Mohammed decision of 5 February 2016 displaces that conclusion or replaces it with any consideration, properly or at all, of the claimant's "housing needs." There remained a failure to consider in accordance with the defendant's legal obligation the claimant's circumstances and "housing needs" based upon the material relied upon relating to the claimant's need for self-contained accommodation, that the accommodation be in London, and that there are financial constraints which affect her ability to provide such accommodation for herself (even with state support) in London.

121. Consequently, I reject Mr Mullin's submission that either the letter of 29 January 2016 or of 5 February 2016 'superseded' the flawed decisions of 5 November 2015 and 10 November 2015 such that the claimant should not be granted relief by this court for the earlier failure by the defendant to carry out its statutory duties under s.192.

122. Before turning to Mr Mullin's other submissions, there is one matter which he raised under the heading that the challenged decisions were superseded with which I must deal, albeit briefly. Mr Mullin submitted that the discretion to provide accommodation under s.192(3) was, in any event, for a limited period as recognised in Chapter 15F of the Homelessness Code of Guidance for local authorities at para 15.10 where it was stated:

> "…they should be provided as part of a managed programme of accommodation to give the applicant an opportunity to secure a more settled housing solution in due course."

123. Mr Mullin pointed out that, as a result of the court's interim orders, the claimant had been accommodated since the first order for interim relief made on 12 November 2015. Whilst that is undoubtedly the factual position, the fact that the Code recognised that the discretion under s.192(3) was to provide accommodation only for a "limited period" is not inconsistent with the provision of accommodation for more than five months and including a potential period until the appeal proceedings are completed and the claimant's application to be put on the housing register is determined. That was the basis of the claimant's application for accommodation and I see nothing inconsistent with the wording of the Code and the reality of the claimant's claim to date. The fact that the court has ordered interim accommodation can, in no

way, discharge the defendant's obligations under the legislation or be such that, in the circumstances of the claimant, relief should be refused.

*Issue 5: the claim is premature*

124. Mr Mullin submitted that the claim is premature on the basis that it should await the outcome of the review and appeal process in respect of the s.184 decision and the judicial review proceeding (currently before the Court of Appeal) challenging the legality of the s.184 decision. Mr Mullin submitted that if either of these two routes resulted in success for the claimant, the s.184 decision would be quashed and this claim would fall away as the defendant would have to reach a fresh decision in respect of s.184 and which, if any, of the duties in Part VII of the Housing Act 1996 applied to the claimant.

125. Linked to that submission, Mr Mullin submitted that the defendant was not required to consider its obligations under s.192, in particular to consider exercising its discretion to accommodate under s.192(3) until sometime later in the s.184 review and appeal process. Mr Mullin did not specify precisely the later point in time when the obligation under s.192(3) arose other than to indicate he was not submitting that it only arose when the process was complete.

126. Mr Johnson accepted that if the claimant was successful in her appeal against the s.184 decision or in her judicial review claim against the s.184 decision, then this claim would "fall away." However, he submitted that once the defendant made a decision that brought the claimant within the terms of s.192, namely that she was homeless but not intentionally, she was eligible, but had no priority need, then the obligations under s.192(3) and (2) were engaged and were not held in suspense until the completion of any review or appeal procedure. He relied upon the case of R (Conville) v Richmond upon Thames LBC [2006] HLR 1 at [57] for the proposition that the obligations under s.192 arose when the defendant was satisfied that the claimant met the s.192 criteria even if the "priority need" issue was challenged.

127. In my judgment, Mr Johnson's submissions are correct. First, the defendant's obligations under s.192 were engaged once the s.184 decision was made. Section 192(1) specifically states that it applies where a housing authority is "satisfied" that an individual is homeless (but not intentionally) and is eligible for assistance but is "not satisfied" that she had a priority need. In this case, that defendant was "satisfied" when the s.184 decision was made on 5 November 2015. At that point, the discretion to provide accommodation to the claimant arose under s.192(3) as did the duty to provide advice and assistance also arose under s.192(2). That, in my judgment, is supported by Conville at [57] where, Goldring J, when considering s.190 of the Housing Act 1996, said this:

> "Although as will become apparent not necessarily for my decision in this case, it does seem to me Mr Hutchings is right. S.190(1) provides that the local authority's obligation under section arise only if it is satisfied both of intentional homelessness and the eligibility for assistance. Here the defendant was satisfied of intentional homelessness on February 22. That is the date from which its obligation arose.

> The fact that the applicant sought a review and the nature of that review does not change that."

128. Although the criteria by which the duties in s.190 are engaged are different from that in s.192, the general approach is applicable to s.192. When the housing authority is "satisfied" on the relevant criteria, the obligations under the relevant provision in Part VII, whether s.190 or s.192, are engaged.

129. Mr Mullin sought to argue that the statement by Goldring J in Conville should not be followed as the Court of Appeal reversed Goldring J's decision (see [2016] EWCA Civ 718). However, Mr Mullin was not able to direct me to any passage in the judgment of Pill LJ (with whom Keene and Gage LJJ agreed) inconsistent with Goldring J's statement in [57] of his judgment. I am able to discern nothing inconsistent in the Court of Appeal's reasoning and at [19] Pill LJ states the position wholly consistently, in my judgment, with Goldring J's view as follows:

> "19. The duty of inquiry into cases of homelessness or threatened homelessness arises by virtue of section 184(1). The authority are required to satisfy themselves whether a person is eligible for assistance and, if so, whether any duty, and if so what duty, is owed to him under Part VII. It is common ground that the duty in section 190(2)(a) arises when, and only when, the decisions required by section 190(1), following those inquiries, have been made by the authority."

130. I respectfully agree.

131. It is self-evident that the duty to provide advice and assistance arises at the point of the s.184 decision regardless of any challenge that might be brought to that decision: the need for such advice and assistance arises then and not merely sometime later. Parliament could not have intended otherwise. In my judgment, the power to accommodate also arises at this point as part of the inter-connected duties of the housing authority under s.192. In fact, of course, the defendant sought to provide such advice and assistance in the s.184 decision letter albeit, as I have determined, unlawfully without a prior "housing needs" assessment.

132. In my judgment, once the matters which brought the claimant within s.192 were determined ("satisfied") by the defendant in the s.184 decision, both the discretion to accommodate and the duty to provide advice and assistance under s.192(3) and s.192(2) respectively were engaged even if the claimant intended to dispute the defendant's s.184 decision by seeking a review (and thereafter to further appeal if unsuccessful).

133. Likewise, the s.192 obligations arose even if, as in this case, the claimant sought to judicially review the s.184 decision. The fact that, if the claimant was successful in either of her challenges, the obligations under s.192 would from that point fall away, would simply require that the defendant should then comply afresh with its Part VII obligations as it now determined to be applicable on a reconsideration under s.184.

134. Consequently, I reject Mr Mullin's submission in respect of issue 5.

*Issue 6: alternative remedy*

135. Mr Mullin also sought to argue that the claimant's challenge to the defendant's decisions relating to ss.192(2) and 192(3) should not be brought by judicial review because any challenge could be brought within the review procedure under s.202 and, ultimately, be considered by the County Court on further appeal under s.204.

136. Mr Mullin acknowledged that in Savage the Deputy Judge concluded (albeit *obiter*) at [101]-[103] that the review and appeal procedure was only concerned with what, if any, duty arose under Part VII of the Housing Act 1996 made in a s.184 decision, and not with the discharge of those duties which was the substance of the claimant's challenge in this case. Mr Mullin nevertheless pointed out that the Deputy Judge had left the point open and the contrary had been conceded to be the position in R (Ahmed) v Waltham Forest London Borough Council [2001] EWHC 540 (Admin) at [17].

137. Mr Johnson placed reliance upon the judge's *obiter* comments in Savage and submitted that the review and appeal procedure was only concerned with what if any duty arose under Part VII and not with the issue of whether the relevant duty had been properly (or lawfully) discharged.

138. In my judgment, Mr Johnson's submission is correct. So far as relevant s.202(1) provides that:

> "(1) An applicant may request a review of - ...
>
> (b) any decision of a local housing authority as to what duty (if any) is owed to him under ss.190 to 193 and 195 and 196 (duties to persons found to be homeless or threatened with homelessness) ..."

139. Putting it succinctly, the s.184 decision determines what, if any, of the duties set out to persons who are homeless or threatened with homelessness arise under Part VII. Consequently, a decision (such as the s.184 decision in the present case) that determines that the housing authority is satisfied that the individual is homeless (but not intentionally), eligible for assistance but is not satisfied that she has a priority need, means that a decision is made that the duties in s.192 are owed to the claimant rather than (if the defendant had also been satisfied that the claimant was a "priority need") that the 'full' duty in s.193 is owed to the claimant. The claimant's dispute with the defendant that she has a "priority need" is a dispute as to "what duty" is owed to the claimant under "ss.190 to 193 and 195 and 196" falling within s.202(1)(b). By contrast the claimant's challenge to the discharge or exercise of the obligation under s.192 – to provide advice and assistance under s.192(2) and to consider whether to provide accommodation on a discretionary basis under s.192(3) – is not a challenge to a decision as to "what duty" is owed to the claimant falling within s.202(1)(b) of the Housing Act 1996. It is a challenge to the legality of the exercise (or failure to exercise) the statutory duty which it is accepted applies to the claimant.

140. That was the *obiter* view of the Deputy Judge in Savage where he said this (at [101]-[103]):

> "101. I see force in Ms Bretherton's [counsel for the claimant] submission that the present case is not covered by section 202(1)(b) and that the subsection is concerned with whether duties exist, as identified by a decision pursuant to section 184, and not with the discharge of those duties. As Ms Bretherton argues, if section 202(1)(b) were to apply to questions of the discharge of duties, then section 202(1)(f) would be otiose.
>
> 102. Ms Bretherton's submission gains further force from the fact that *Conville*'s case appears to have proceeded by way of judicial review, without any suggestion that the review and county court appeal procedure should have been followed instead. That was a case under section 190(2)(a) only, of course, but it would be strange if a different route through the courts were required for claims relating to section 190(2)(b).
>
> 103. A conclusion that section 202 did not apply in such cases would be inconsistent with the view expressed by Harrison J in *Ahmed*'s case [2001] EWHC (Admin) 540. However, it appears from para 11 of that judgment that it was common ground that the procedure of review and appeal to the county court were available in cases about the discharge of duties under section 190(1), so that the judge did not hear argument on both sides."

141. Ahmed was, as the Deputy Judge observed at [103], a case where the scope of the review and appeal provisions was conceded. I agree with the Deputy Judge's tentative view as to the scope of s.202(1)(b). It will be noticed that, referring to the submissions made by counsel for the claimant in that case, Ms Bretherton, at [101] the judge noted that if a challenge to the discharge of a duty under Part VII fell within the review and appeal provision in s.201(1)(b) then s.202(1)(f) would be otiose. That provision adds into the category of decision in respect of which an applicant has a "right to request a review" under s.202(1) the following:

> "(f) Any decision of a local housing authority as to the suitability of accommodation offered to him in discharge of their duty under any of the provisions mentioned in paragraph (b) or (e) or as to the suitability of accommodation offered to him as mentioned in s.193(7) ..."

142. If Mr Mullin's submissions were correct then s.202(1)(f) would, indeed, be otiose because the "suitability of accommodation" offered to an individual in discharge of a local housing authority's duty under, for example, s.192 would already be captured by s.202(1)(b).

143. For these reasons, therefore, I reject Mr Mullin's submission that the claimant had an alternative remedy, namely the review and appeal procedure under the Housing Act 1996, in which she could challenge the defendant's failure to carry out its obligations under ss.192(2) and 192(3).

**Disposal and Relief**

144. For the reasons I have given, the defendant has acted unlawfully by failing to carry out its duties under ss.192(2) and 192(3) of the Housing Act 1996.

145. I propose to make the following orders sought by the claimant:

1) A declaration that the defendant has failed properly to carry out its duties under s.192(2) and (3) and a mandatory order requiring the defendant to make lawful decisions in respect of s.192(2) and s.192(3) and, in that context, a "housing needs" assessment.

2) I will consider any submission on the precise wording and, if possible, the wording to be agreed between the parties in an agreed draft order for the court.

3) However, I decline to make the mandatory order, which I am invited to make by the claimant, that the defendant provide accommodation pending the making of lawful decisions under ss.192(2) and (3). The defendant has a discretion to provide accommodation under s.192(3) and it would not be appropriate for the court to order in these proceedings that accommodation be provided pending any decision under s.192(3) unless the discretion could not be exercised lawfully otherwise. That was not the basis of the claimant's challenge in these proceedings and it remains for the defendant to make the relevant statutory decisions afresh.