Case No: C40CL371

IN THE COUNTY COURT AT CENTRAL LONDON

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

Date: 6 October 2017

Hearing date: 5 July 2017

BEFORE:

HIS HONOUR JUDGE LUBA QC

BETWEEN:

MARGHERITA VUKASOVIC

Appellant

- and -

LONDON BOROUGH OF BRENT

Respondent

MR KEVIN GANNON (of Counsel) appeared on behalf of the Appellant

MR MATT HUTCHINGS (Queen's Counsel) appeared on behalf of the Respondent

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JUDGMENT
(Final)

INTRODUCTION

1. This is an appeal in a homelessness case.

2. In April 2015, the present Appellant ('Ms Vukasovic') applied to the Respondent ('the Council') for accommodation when she was homeless. In July 2015, the Council accepted that it owed a duty to secure accommodation for her. In September 2015, the council offered her accommodation in Wolverhampton. In October 2015, the Council treated the refusal of that offer as releasing it from its duty towards her.

3. Ms Vukasovic sought a review of that decision. The review was undertaken by Mrs Jenina Abbeyquaye ('the reviewing officer') for the Council. In a decision notified by letter dated 3 October 2016, the reviewing officer upheld the Council's earlier finding that the accommodation offered had been suitable and that its duty had been discharged by the refusal of it. This appeal is from that decision. The appeal is limited to points of law: Housing Act 1996 section 204.

4. The appeal was listed for a one-day hearing on 5 July 2017. It was called on shortly before 11am. It took 30 minutes to deal with a contested application relating to evidence. In the appeal itself, 10 grounds of appeal were pursued, several with multiple sub-grounds. The Appeal Bundle exceeded 360 pages. I heard well-presented and detailed oral argument in support of Skeleton Arguments filed by counsel for both sides. The Joint Bundle of Authorities contained 27 items. On the conclusion of the hearing at 4.15pm there was, unsurprisingly in those circumstances, no time remaining for judicial reflection and the delivery of an immediate judgment. It is a matter of regret that, due to the pressure of the lists at this Court, it has not been possible to find an earlier opportunity to prepare and deliver this reserved judgment.

THE ESSENTIAL FACTS

5. Ms Vukasovic is a married woman. Living with her and her husband are her son (now aged 5) and her own mother (now aged 78). Unhappily, Ms Vukasovic has both physical and mental health difficulties. She suffers from bipolar disorder with ongoing recurrent psychosis and recurrent depressive disorder. She receives Disability Living Allowance (DLA).

6. In early 2015, the family lost the private rented accommodation they were occupying. Ms Vukasovic applied to the Council for homelessness assistance. She gave full particulars of her health issues and the medication and other medical assistance she was receiving by completing a Medical Assessment Form and, separately, a Suitability of Accommodation Form, on 2 May 2015.

7. On 22 July 2015 the Council notified her that it accepted that she was eligible for assistance, unintentionally homeless and in priority need. The letter set out that the Council would perform its duty towards her by securing the provision of privately rented accommodation and that she would only receive one offer of such accommodation.

8. Initially, she had been provided with rooms in hostel-style accommodation in Kilburn but then at the end of July 2015 she was moved to alternative self-contained temporary accommodation, in order to prevent to Council breaching the legal maximum provision of B&B for six weeks. She initially objected to making that move on the grounds that she was "petrified" by the prospect of doing so. When the move was underway, severe medical issues arose for her and a senior officer agreed to her remaining in Kilburn accommodation.

9. This provision of essentially short-term temporary accommodation needed to be replaced with something more stable. The information in the Council's files on Ms Vukasovic's application included an expression of opinion in August 2015 by the Council's medical adviser, a Dr Keen, that "Suitable medical and support services exist in all areas, It isn't medically essential they reside in-borough". A filenote of 9 September 2015 recorded that Ms Vukasovic had no employment in the Council's area and that even accommodation outside that area might be suitable.

10. By a letter dated 17 September 2015, the Council reminded Ms Vukasovic of its earlier indication that it would end its duty by securing an offer of private rented accommodation for her. The letter contained such an offer – a two bedroomed flat at an address in Wolverhampton, West Midlands.

11. The letter explained that the Council considered the accommodation to be suitable and that, whether the offer be refused or accepted, it marked an end of the Council's duties. The letter indicated that an arrangement had been made for Ms Vukasovic to meet the letting agent at the property the following Monday to sign the tenancy agreement. It concluded by stating that Ms Vukasovic had the right to seek a review of the suitability of the accommodation and that if she wished to exercise that right she could protect her position by both accepting the offer and pursuing a review.

12. On the afternoon of 17 September 2015, Ms Vukasovic went to the Council's offices with a support worker. She said that she wanted to be accommodated in Brent, all her family were vulnerable, she could not leave "her known area" and "would not go". The Council's officer went through the material on the Suitability of Accommodation Form in the meeting and decided that the offer should stand. The officer warned both Ms Vukasovic and her support worker of the consequences of refusing the offer.

13. Ms Vukasovic marshalled forceful representations from her medical and health advisers as to why she could not move from the area. The Council's file note of 29 September 2015 records that it had received "very strong opposition by mental health professionals who seem to suggest this client is unable to reside anywhere other than in Brent." That is a fair summary of the material which I was shown. The Council decided to obtain further medical advice, this time from Dr James Wilson, a psychiatric adviser.

14. Dr Wilson provided a report dated 2 October 2015 setting out the medical information and representations he had considered covering the previous three years. He did not think that the material suggested that the Wolverhampton offer was unsuitable on psychiatric grounds. He did not consider it to be "necessary that the applicant only resides in the Brent area. Neither do I believe that there is clear evidence to indicate the

applicant's mental health would deteriorate on the balance of probabilities". He shortly stated his reasons for those opinions.

15. Armed with that advice, the Council's officer concluded on 5 October 2015 that, having taken all the medical information into consideration, the offer in Wolverhampton was of suitable accommodation. Ms Vukasovic's support worker was told that she had until noon on the following day to accept the offer.

16. The offer was not accepted. Ms Vukasovic did not travel to Wolverhampton. She engaged the assistance of the charity Shelter which made written representation to the Council on her behalf in a letter of 23 September 2015.

17. By a very full letter dated 8 October 2015 the Council's officer explained why the Council considered that the offer made had been of suitable accommodation. The letter set out that the Council's duties had ended and again reminded Ms Vukasovic of her right to seek a review.

18. Ms Vukasovic exercised that right and the review was undertaken by Mrs Abbeyquaye. It took some time. On 13 July 2016 the reviewing officer wrote to Ms Vukasovic (who at that date was still living in the guest house annexe in Kilburn) and to Shelter indicating the decision she was minded to make and giving her reasons in considerable detail.

19. On 14 September 2016 Shelter made some further written representations on behalf of Ms Vukasovic. The reviewing officer was unpersuaded by them and, by letter dated 3 October 2016, gave her decision on the review.

THE DECISION OF THE REVIEWING OFFICER

20. The decision, and the reasons for it, are set out over 17 pages of typescript running to 121 paragraphs with 4 Appendices. I cannot do it justice by summarising it.

21. I have read it in full, more than once. I agree with Mr Hutchings' description of it as "unusually detailed and lucid". I did not understand Mr Gannon to disagree.

22. I shall reproduce extracts from it in dealing with the various grounds of appeal but it is important that it be read and appreciated as a whole.

THE STATUTORY PROVISIONS

23. Housing authorities are now able to choose to satisfy the duties owed to the unintentionally homeless by the provision of privately rented accommodation that

meets certain prescribed standards. That is the effect of modifications made by the Localism Act 2011 to the homelessness provisions of the Housing Act 1996 Part 7.

24. Whatever accommodation is offered in exercise of that power must be accommodation which is suitable for the applicant and for members of his or her household: HA 1996 sections 193(7F) and 210.

25. There is a statutory presumption that the offered accommodation will be in the housing authority's own area. To that effect, HA 1996 section 208 provides that:

> "So far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district".

26. In recent years, housing authorities have increasingly been securing the provision of accommodation for the homeless outside their own districts. The legal parameters of that course were recently summarised by Lady Hale in these terms in ***Nzolameso v City of Westminster*** [2015] UKSC 22 at paragraphs 14-19:

> 14. Under section 182(1) of the 1996 Act, local housing authorities are required to have regard to such guidance as may from time to time be given by the Secretary of State. The current general guidance is contained in the Homelessness Code of Guidance for Local Authorities (Department for Communities and Local Government, 2006). As to the duty in section 208(1), this provides:
>
> > "16.7. Section 208(1) requires housing authorities to secure accommodation within their district, in so far as is reasonably practicable. Housing authorities should, therefore, aim to secure accommodation within their own district wherever possible, except where there are clear benefits for the applicant of being accommodated outside of the district. This could occur, for example, where the applicant, and/or a member of his or her household, would be at risk of domestic or other violence in the district and need to be accommodated elsewhere to reduce the risk of further contact with the perpetrator(s) or where ex-offenders or drug/alcohol users would benefit from being accommodated outside the district to help break links with previous contracts which could exert a negative influence."
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> 15. As to suitability, the Code says this about the location of the accommodation:
>
> > "17.41. The location of the accommodation will be relevant to suitability and the suitability of the location for all the members of the household will have to be considered. Where, for example, applicants are in paid employment account will need to be taken of their need to reach their normal workplace from the accommodation secured. The Secretary of State recommends that local authorities take into account the need to minimise disruption to the education of young people, particularly at critical points in time such as close to taking GCSE examinations. Housing authorities should avoid placing applicants in isolated accommodation away from public transport, shops and other facilities, and, wherever possible, secure accommodation that is as close as possible to where they were previously living, so they can retain established links with schools, doctors, social workers and other key services and support essential to the well-being of the household."
>
> 16. This has since been expanded upon. Under section 210(2), the Secretary of State may by order specify (a) the circumstances in which accommodation is or is not to be regarded as

suitable, and (b) the matters to be taken into account or disregarded in determining whether accommodation is suitable for a person. During the passage of the Localism Act 2011, the Government undertook "to remain vigilant to any issues that arose around suitability of location". It had come to light that some local authorities were seeking accommodation for households owed the main homelessness duty "far outside their own district". The Government was therefore "willing to explore whether protections around location of accommodation need to be strengthened and how this might be done" (Department for Communities and Local Government, *Homelessness (Suitability of Accommodation) (England) Order 2012 – Consultation*, May 2012, para 38). A full consultation exercise showed widespread support for strengthening that protection (Department for Communities and Local Government, *Homelessness (Suitability of Accommodation)(England) Order 2012 – Government's Response to Consultation*, November 2012):

> "Government has made it clear that it is neither acceptable nor fair for local authorities to place households many miles away from their previous home where it is avoidable. Given the vulnerability of this group it is essential that local authorities take into account the potential disruption such a move could have on the household."

17. The method chosen was to make it a matter of statutory obligation to take the location of the accommodation into account when determining whether accommodation is suitable. Hence, in October 2012, shortly before the decisions were taken in this case, the Secretary of State made the Homelessness (Suitability of Accommodation) (England) Order 2012 (SI 2012/2601). Article 2 provides:

> "In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including -
>
> (a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;
>
> (b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household;
>
> (c) the proximity and accessibility of the accommodation to medical facilities and other support which - (i) are currently used by or provided to the person or members of the person's household; and (ii) are essential to the well-being of the person or members of the person's household; and
>
> (d) the proximity and accessibility of the accommodation to local services, amenities and transport."

18. The Government's response to consultation had emphasised that the Order "does not prevent or prohibit out of borough placements where they are unavoidable nor where they are the choice of the applicant". However, the Department also issued *Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012 (November 2012),* which strengthened the obligation to secure accommodation as close as possible to where the household had previously been living:

> "48. Where it is not possible to secure accommodation within district and an authority has secured accommodation outside their district, the authority is required to take into account the distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority's district than the accommodation which it has secured, the accommodation

which it has secured is not likely to be suitable unless the authority has a justifiable reason or the applicant has specified a preference.

49. *Generally, where possible, authorities should try to secure accommodation that is as close as possible to where an applicant was previously living.* Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Local authorities are required to take into account the significance of any disruption with specific regard to employment, caring responsibilities or education of the applicant or members of their household. *Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support.*" (Emphasis supplied)"

The guidance goes on to deal with employment, caring responsibilities, education, medical facilities and other support, and also with cases where there may be advantages in the household being accommodated somewhere outside the local authority's district, including employment opportunities there.

19. The effect, therefore, is that local authorities have a statutory duty to accommodate within their area so far as this is reasonably practicable. "Reasonable practicability" imports a stronger duty than simply being reasonable. But if it is not reasonably practicable to accommodate "in borough", they must generally, and where possible, try to place the household as close as possible to where they were previously living. There will be some cases where this does not apply, for example where there are clear benefits in placing the applicant outside the district, because of domestic violence or to break links with negative influences within the district, and others where the applicant does not mind where she goes or actively wants to move out of the area. The combined effect of the 2012 Order and the Supplementary Guidance changes, and was meant to change, the legal landscape as it was when previous cases dealing with an "out of borough" placement policy, such as *R (Yumsak) v Enfield London Borough Council* [2002] EWHC 280 (Admin), [2003] HLR 1, and *R (Calgin) v Enfield London Borough Council* [2005] EWHC 1716 (Admin), [2006] HLR 4, were decided.

27. So that applicants, their advisers and others might best appreciate how, when and in what circumstances a particular local housing authority may make use accommodation outside its own district, Lady Hale went on to give guidance at paragraphs 38-39 in these terms:

38. But how, it may be asked, are local authorities to go about explaining their decisions as to the location of properties offered? It is common ground that they are entitled to take account of the resources available to them, the difficulties of procuring sufficient units of temporary accommodation at affordable prices in their area, and the practicalities of procuring accommodation in nearby authorities. It may also be acceptable to retain a few units, if it can be predicted that applicants with a particularly pressing need to remain in the borough will come forward in the relatively near future. On the other hand, if they procure accommodation outside their own area, that will place pressures on the accommodation, education and other public services available in those other local authority areas, pressures over which the receiving local authority will have no control. The placing authority are bound to have made predictions as to the likely demand for temporary accommodation under the 1996 Act and to have made arrangements to procure it. The decision in any individual case will depend upon the policies which the authority has adopted both for the procurement of temporary accommodation, together with any policies for its allocation.

39. Ideally, each local authority should have, and keep up to date, a policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year. That policy should, of course, reflect the authority's statutory obligations under both the 1996 Act and the Children Act 2004. It should be approved by the democratically accountable members of the council and, ideally, it should be made publicly available. Secondly, each local

authority should have, and keep up to date, a policy for allocating those units to individual homeless households. Where there was an anticipated shortfall of "in borough" units, that policy would explain the factors which would be taken into account in offering households those units, the factors which would be taken into account in offering units close to home, and if there was a shortage of such units, the factors which would make it suitable to accommodate a household further away. That policy too should be made publicly available.

28. On an appeal under HA 1996 section 204 the function of the court is limited to the scrutiny of a reviewing officer's decision on points of law only. In essence, the Court is to apply the familiar public law principles that would apply had the decision been subject to judicial review.

THE PRESENT APPEAL

29. Mr Gannon set out 10 grounds (with multiple sub-grounds) in his Amended Grounds of Appeal. They were developed in his helpful skeleton argument and detailed oral submissions. I had the benefit of succinct responses from Mr Hutchings, developing his cogent skeleton argument.

30. I hope I do no disservice to Mr Gannon in considering the thrust of his grounds as directed at two aspects of the reviewing officer's decision:

    (1) that on the date that the offer was made, it was not reasonably practicable to secure accommodation for Ms Vukasovic in the Council's own area ('the section 208 aspect'); and

    (2) that the offered accommodation had been suitable ('the suitability aspect').

31. Mr Gannon expressly accepted that if what had been offered did constitute 'suitable' accommodation and it had not been reasonably practicable to offer Ms Vukasovic in-borough accommodation then she had indeed "refused" the offer and the Council's duty had ended.

The Section 208 Aspect

32. As to whether it was reasonably practicable for Brent to have secured that accommodation was available for the occupation of Ms Vukasovic in its district, the reviewing officer included in her decision a section of text headed "Placement considerations". That opens with references to section 208 and an extract from the Code. Then the reviewing officer expressly finds that:

    12...No. 7 Harrison House, Marston Road [Wolverhampton] was the closest accommodation to Brent at the time of the offer, which is affordable to your household needs.

Although the reviewing officer has used the adjective 'affordable' in that sentence it is clear from the way she expresses herself in the rest of the letter, and in her witness statement, that she is using it interchangeably with 'suitable'.

33. The reviewing officer then goes on to set out, in turn, each of the various forms of accommodation that might otherwise have been available to the Council to use for the homeless within Brent and to describe why it had not been practicable to secure accommodation from those sectors.

34. First, as to the possibility of the Council securing social housing accommodation for Ms Vukasovic she said this:

> *14. The demand for social housing in Brent significantly outweighs supply. Despite steps taken to reduce the number of applicants on the waiting list, we have in excess of 4291 people on our housing register. The average time it takes a family to secure a 2 bed unit under our choice based lettings scheme for someone in band C is 8 to 9 years and the average waiting time for a 3 bed property takes 13 years. This means that social housing is not a realistic option for resolving the housing needs of the majority of homeless households to whom we owe a housing duty.*

35. The reviewing officer then illustrates the point with material showing that although Ms Vukasovic herself was on the waiting list, and actively bidding for properties, she had no realistic prospect of obtaining social housing accommodation in any reasonable timeframe.

36. Second, as to the availability to the council of use of local privately owned housing for rent, she wrote this:

> *16. The above pressures have placed the Council in a position to secure private rented sector properties in order to resolve homelessness for many of applicants who approach Brent for assistance. Nonetheless, as already mentioned, there is a chronic shortage of affordable, private rented sector accommodation within the Brent area and also more widely within London and the South East.*

37. The decision letter then illustrates that proposition in some detail.

38. Lest the point might be taken that accommodation could become available to the Council if it was to agree to top-up housing benefit payments which a homeless applicant might receive so that they could pay rents higher than might otherwise be 'affordable', the reviewing officer wrote this:

> *19....it is not possible for Brent Council to operate a general policy of subsidising the rents paid by the households which it places in-borough or [in] Greater London. In 2015/2016, the Council's budget for temporary accommodation was £2.4m, as against which there was a very substantial*

overspend. At the end of December 2015 Brent Council was accommodating 2,942 households in temporary accommodation. Over 400 of those households are affected by the overall benefit cap and are being supported with discretionary housing payments (DHP). This position is not sustainable as DHP is a temporary measure.

39. In short, there was not the money to secure enough private sector properties by a topping-up process.

40. The position facing the Council (detailed in the material appended to the reviewing officer's decision) is then summarised in these terms:

> *20. For the reasons explained above, it has become difficult for Brent Council to secure accommodation within its district or areas near to Brent for the majority of accepted homeless households*

41. It is not, of course, sufficient for a reviewing officer to simply set out the problems the Council faces. Despite the general difficulties, a council must actively and continuously seek to source accommodation from within its area and, if that cannot be found, to source accommodation from as near to its own district as possible.

42. As it became clear that the grounds of appeal involved a criticism that Brent had not done enough in that direction, I allowed the Council to rely on a Witness Statement of the reviewing officer made on 13 February 2017. That statement explained that the Council had five 'procurement officers' engaged to source accommodation for its homeless applicants. Two were dedicated to finding in-borough accommodation and in-London accommodation. Two worked on sourcing accommodation in the immediate areas around London. One officer was seeking to find accommodation beyond that ring and specifically in the Midlands. The outcome of their efforts to secure accommodation is summarised as being that "In practice, it means that very little accommodation is available in the private rented sector in London and the south east" [9].

43. The witness statement goes on to explain that on the date the offer was made to Ms Vukasovic, the property offered to her in Wolverhampton was "the closest available accommodation that was suitable" [13]. That proposition is then sustained by reference to tabulated print-outs showing the limited quantity of property that the Council had secured and was generally available for the homeless on that date. After eliminating those of the wrong size, the list reduces to just two properties in Wolverhampton, the most suitable of which was offered to Ms Vukasovic.

44. On this material, Mr Hutchings submitted that it was plain that in relation to the section 208 aspect, the reviewing officer had manifestly considered the statutory presumption, the Code of Guidance and all the relevant factual material in satisfying herself that it had not been reasonably practicable, at the date the offer was made, to accommodate Ms Vukasovic in Brent.

45. Grounds (1) to (3) contend that the reviewing officer's approach and conclusions on the section 208 aspect were based on a fundamental misapprehension of the way in which

the housing benefit system works by reference to rates of "Local Housing Allowance" (LHA). Mr Gannon submitted that the reviewing officer had been wrong to hold that the Council had done sufficient to source private rented sector accommodation in its own or neighbouring areas to demonstrate that it had not been reasonably practicable to find something in Brent (or nearer to Brent). He invited my attention, in some not inconsiderable detail, to an exposition of how LHA rates work and how they might affect the local market for private rented property. Mr Hutchings did not accept that Mr Gannon had marshalled the detail correctly.

46. In my judgment, this form of challenge was misdirected. The reviewing officer was doing no more than reflecting the *actual* results obtained by two staff members specifically dedicated to sourcing affordable private rented sector properties in the district and nearby. They had, as the witness statement demonstrates, been able to turn up nothing that might meet Ms Vukasovic's needs. That, to my mind, is the beginning and the end of the matter. Whatever a correct understanding of the impact that housing benefits, LHA rates and the like *might* have on the availability of local housing supply considered in a vacuum, the actuality was that in and around Brent nothing was available to the Council at affordable rents on the material before the reviewing officer.

47. Ground (4) asserts that the reviewing officer erred in law by, in effect, discounting the potential effect of the availability of DHP. As Mr Gannon correctly pointed out, there is no statutory limit on the amount a council can pay by way of DHP to top-up housing benefit to help a tenant pay rents at levels normally out of reach to benefit claimants. Nor any legal fetter on the period for which that could be done. But as the reviewing officer set out in her paragraph [19], reproduced above, the Council had had to use available funds to actually provide temporary shelter for the many homeless applying to it. It had already overspent its available budget. It did not consider that it should use its monies to meet the shortfall between restricted housing benefit levels (set, in effect, by national Government) and higher level private sector rents (set by market forces). The reviewing officer was simply stating the effect or consequences of that policy. There was no challenge to that policy decision. In those circumstances, I cannot understand how the reviewing officer can be said to have erred.

48. Grounds (1A), (4) [in part] and (5) are directed to what is said, in summary, to have been a failure by the reviewing officer to ask herself whether it might *in fact* have been reasonably practicable to source something in the private rented sector for this particular applicant. Mr Gannon explained that because she receives DLA, Ms Vukasovic is not subject – like many other homeless applicants – to the overall 'benefit cap'. He drew my attention to earlier Council documents on the file which incorrectly stated Ms Vukasovic's position in that respect and the reflection of that misapprehension in the reviewing officer's decision. That was the thrust of Ground (1A).

49. That point linked with the proposition advanced in Ground (4), that the reviewing officer had been in error in treating DHP as a time-restricted top-up. Ground (5) took a point that the reviewing officer had not drilled-down into the personal circumstances of Ms Vukasovic to be able to consider whether she might be able - through a combination of the sources of household income, her disability benefits and any DHP award – to be

able to afford accommodation that the Council might source for her in its own area from a willing private sector landlord.

50. One answer to these propositions from Mr Hutchings, was that the reviewing officer had plainly set out in her minded-to letter the approach she was going to take in much the same terms as it appears in her final letter. Although the representations made by the expert advisers at Shelter make the 'benefit cap' point, there is no suggestion in the representations that Ms Vukasovic can afford (or more properly 'could have' afforded) to obtain private rented sector accommodation in the Brent area. That may be, self-evidently, because (having appreciated that she had no realistic prospect of securing social housing in the area) Ms Vukasovic would herself have obtained in Brent an available private rented home had one in fact been or become available. It was not suggested by Shelter that there were any such properties or that such properties might become available shortly and that the Council should have stayed its hand in relation to the Wolverhampton offer and accessed one for Ms Vukasovic to take up.

51. Ultimately, what the reviewing officer made was a finding of fact that when the offer was made it was not reasonably practicable to provide Ms Vukasovic with suitable accommodation in Brent. Despite the ingenuity and technicality of the attack on that conclusion in the Grounds that I have already examined, I do not consider that any error of law has been demonstrated on the section 208 aspect.

The Suitability Aspect

52. The remaining grounds of appeal proceed from a premise that the reviewing officer was right about the section 208 point and that it was not reasonably practicable for the Council to secure accommodation for Ms Vukasovic within its own district.

53. That being so, the law (as expressed in the statutory materials, the Code and the judgment in *Nzolameso*) required the Council to secure the next nearest and most suitable accommodation for Ms Vukasovic to the Brent district. A cluster of grounds of appeal contend that the reviewing officer had been wrong in law to conclude that the offered property had been the product of a search for the next nearest suitable property.

54. By Ground (6), it is contended that the reviewing officer relied on the Council's *Placement Policy for Temporary Accommodation and Private Rented Sector Accommodation.* That is certainly true: see paragraph [20] of the reviewing officer's decision. The ground of appeal is that the policy itself was unlawful and therefore the reviewing officer's decision is flawed. As Lady Hale explained in ***Nzolomeso*** at [41] in a section 204 appeal such as this "...an individual must be able to rely upon any point of law arising from the decision under appeal, including the legality of the policy which has been applied in her case".

55. The illegality complained-of is in respect of two sub-paragraphs of the policy that are said to be unlawful.

56. The first is paragraph 3.1.5 which reads, so far as material;

> "**Education:** attendance at local schools will not be considered a reason to refuse accommodation, though some priority will be given to special educational needs and students who are close to taking public examinations in determining priority for in-borough placements."

57. Mr Gannon submits that this is an unlawful derogation from the Council's statutory duty to have regard to the well-being and interests of children in discharging its functions: Children Act 2004 section 11.

58. As to that, he prayed-in-aid this extract from Lady Hale in ***Nzoloameso:***

> 27. The question of whether the accommodation offered is "suitable" for the applicant and each member of her household clearly requires the local authority to have regard to the need to safeguard and promote the welfare of any children in her household. Its suitability to meet their needs is a key component in its suitability generally. In my view, it is not enough for the decision-maker simply to ask whether any of the children are approaching GCSE or other externally assessed examinations. Disruption to their education and other support networks may be actively harmful to their social and educational development, but the authority also have to have regard to the need to promote, as well as to safeguard, their welfare. The decision maker should identify the principal needs of the children, both individually and collectively, and have regard to the need to safeguard and promote them when making the decision.

59. Although her Ladyship is there referring to what the reviewing officer must do, the point made here was that the policy unlawfully inhibited her from doing it. Mr Gannon contended orally that paragraph 3.1.5 says, in effect, "These are the only things about children that we are going to consider" in deciding whether an out of district offer is suitable.

60. I am not satisfied that that point is made out. First, as a matter of fact, the reviewing officer did not treat herself in this case as so inhibited. She did consider the issues around the well-being of Ms Vukasovic's child. Second, even taken in the abstract, there is nothing unlawful about para 3.1.5. Read in context, it is making the rather obvious point, by way of policy guidance, that the mere fact that a child of the household is registered at a school in the borough does not give them a trump-card against an out of district offer. If it did, any sensible scheme of prioritisation would collapse because, as is well known, the most common reason why a homeless household is in priority need is because there is at least one dependent child in the household.

61. The other criticised paragraph of the policy is 4.2. That reads:

> "In placing households in temporary accommodation and private rented accommodation there will be a general presumption that placements outside of London will be used to discharge housing duties where suitable, where affordable accommodation is not available locally.

62. That is said to be unlawful because it is "contrary to section 208 and/or the requirement to secure accommodation as close as possible to where an applicant was formerly living."

63. I cannot accept either of those alternatives. As to the first, the last seven words of the sub-paragraph amply respect the presumption in section 208. As to the second, the whole thrust of the sub-paragraph is that the Council cannot find sufficient accommodation in its own area or surrounding areas. It is for that reason that the general position is going to be that, subject to the priorities elsewhere in the Policy, an offer will be outside London. I can detect no illegality in that.

64. The last point links to the third element of Ground (6) in respect of the alleged illegality of the policy. It is that the policy is structured by reference to only three zones – Brent, London and outside London. That is unlawful, it is said, because the breadth of the third zone means the Council is directing itself that if there is nothing in Brent or in London there is no further fetter on where it might source an offer from. This fails to reflect the approach of the judgment in *Nzolameso* and the statutory guidance i.e. that the Council should work incrementally out from a council's own district, concentrically, to find the next nearest source rather than treat itself as free to source anything from anywhere.

65. I do not consider this ground to be made out. The policy is necessarily couched in broad straightforward language. Any sensible reading of it enables rather than inhibits the Council from doing what the evidence says it is doing, namely sourcing accommodation from areas that form the rings around London and, as necessary, thereafter beyond that from other areas.

66. Ground (7) in part develops the theme. It contends that (1) there was no evidence that Wolverhampton was the closest source of available accommodation and (2) no reasoning why a nearer property was not offered.

67. In the light of the content of the Witness Statement, Mr Gannon made a series of factual submissions in support of his first point about whether other properties in the list annexed to it, were nearer to London than Wolverhampton and would have been suitable. He had not required the reviewing officer to be called and examined on her statement so that Mr Hutchings complained, rightly, that the point took him by surprise. I permitted him to obtain further instructions. That produced further tabulated material plainly demonstrating that none of the listed properties nearer than Wolverhampton were in fact suitable. That was the end of that point.

68. The second contention is simply wrong. The reviewing officer *has* set out a finding that the offered property was the nearest one available to the Council and how that came to pass.

69. The final part of Ground (7) contends that the reviewing officer was wrong not to consider whether, in effect, Ms Vukasovic's household could be left where it was i.e. in the guest house annexe in Kilburn, presumably until (however long it might take) something suitable in Brent might come up.

70. In my judgment that point is not made out. The reviewing officer had satisfied herself that it was not reasonably practicable to offer Ms Vukasovic accommodation in Brent. To have allowed her to stay would have cut completely across the Council's policy for determining who should occupy the tiny amount of in-borough accommodation that the Council can provide for the homeless. Lady Hale had encouraged the adoption of precisely such a policy. I have held that none of the grounds advanced show it to be unlawful.

71. The remaining grounds of appeal focus on aspects of the suitability or otherwise of the Wolverhampton property given the circumstances of the particular members of Ms Vukasovic's household.

72. At Ground 6(b) it is said that the reviewing officer failed to discharge the Council's responsibilities to have due regard to the interests of Ms Vukasovic's son as required by Children Act 2004 section 11 in determining that the property was suitable for him.

73. At the date of the offer, the son - Nikolas - was a pre-schooler in the nursery section of a primary school. The reviewing officer wrote this in her consideration of his circumstances in the context of the offer in Wolverhampton:

> *46. When making our decision about suitability we must have due regard to the need to safeguard and promote the welfare of your children as required by the Supreme Court's finding on the case of* ***Nzolomeso v Westminster CC*** *[2015] UKSC 22. The primary needs of your children clearly include a good education that meets their needs as well as a supportive home environment in which to develop.*
>
> *47. Your senior support worker, Pamela Crowie asserted in her letter dated 18/09/2015 that moving would disrupt your 4 year old Nikolas Dekovic's education at Salisbury Junior School.*
>
> *48. I acknowledge that moving to 7 Harrison House, Marston Road would have required a change of schools for your son's education which can be difficult for him. I accept that stability and security are important to children. However, it is not uncommon for parents to support their children through periods of change. I believe that at the point of offer, your 4 year old was not within the statutory education age (5 to 16 years) and there is no evidence that Nikolas is specifically vulnerable to this type of change. In my view, any adverse impact on his welfare in terms of moving schools would have been temporary. I believe that you provide him with a good level of parental support and that he is emotionally healthy and robust. Your solicitors have not provided any evidence to suggest otherwise.*
>
> *49. In addition, I consider that the disruption to your child's education must be balanced against the benefit of having settled accommodation, which would have been affordable for you in the long term. Moving to Wolverhampton would mean benefiting from the lower cost of living in (including the significantly lower rental rates). It can also be reasonably argued that having secure,*

affordable accommodation is important to the wellbeing of a child and must precede most other considerations.

50. There is no evidence to confirm that your child was receiving specialist educational support in Brent that cannot be accessed elsewhere.

51. I have checked and discovered there are three primary schools within two miles of the property offered. Our experience of relocating households to the Midlands is that even where the receiving education authority has confirmed a school place, there is no guarantee that a school place is still available when the family moves into the accommodation. We make enquiries on school placement; however, the absence of a confirmed place on the day of enquiry does not mean that a school place will not become available within a matter of days.

52. My enquiries show that there are nursery schools and Children's Centres within close proximity to the accommodation in Wolverhampton and Whitmore Reans Children's Centre is the closest (1. 4 miles).

53. In addition, Brent Council has employed a Relocation Officer in the West Midlands whose role is to assist our clients to manage the period of transition in their new environment as quickly as possible. Our officer provides support specifically tailored to the needs of the individual household and has in the past assisted many households to secure school places, nurseries, doctors and other services. Our officer can even accompany families to the nearest town centre or on a shopping trip to familiarise themselves with their new environment. Our officer has in-depth knowledge of local services in the West Midlands and in our experience, he assisted many households to find school places and pre-school quickly for children moving into the area.

54. It should also be borne in mind that there is a statutory duty on the local education authority to ensure that there are sufficient places for every child of school age under s.15ZA (1)(a) of the Education Act 1996.

55...

56. Furthermore, your household did not meet the criterion under 4.3.2 of our placement policy which states that households with a child or children who are enrolled in public examination courses in Brent, with exams to be taken within the next six months. Wherever practicable we will seek to place such households within 60 minutes travelling distance of their school or college.

57. Overall, I consider that any adverse effect on your child's pre-school education and development that might have resulted from the move would have been temporary only and was not sufficient to render the property unsuitable.

74. The complaint here is that a more fully-rounded consideration of the child's interests was required. More specifically, the reviewing officer must have overlooked a GP's letter indicating that "a move would be very upsetting and destabilising for" Nikolas given his need for the additional stability a school was providing to him in light of his mother's health problems. That was important given the reference in the Placement Policy at 4.2.5 to the circumstances of children where "change would be detrimental to their well-being"

75. But that GP's letter was among the material the reviewing officer had referenced and considered. She had given extended attention to the school-stability point. She had had regard to the boy's interests. In those circumstances the Court can only intervene on the basis of irrationality and this case comes nowhere near that.

76. Ground (8) relates to the health and medical circumstances of Ms Vukasovic. Mr Gannon took me to the many and detailed representations made on her behalf about the treatment she was receiving and the importance of continuity of it. Much of it was couched in very direct terms about the need for Ms Vukasovic to have continuity of treatment in Brent. It was all before the reviewing officer and she considered it.

77. The complaint is that she erred in not finding that Ms Vukasovic fell within para 4.2.3 of the Placement Policy which addresses:

> "applicants with a severe and enduring mental health problem who are receiving psychiatric treatment and aftercare provided by the community mental health services and have an established support network where a transfer of care would severely impact on their well-being"

78. I agree with Mr Gannon that, on the representations made by Ms Vukasovic and on her behalf, there was a strong basis for a decision that Ms Vukasovic was within the terms of that policy. Mr Gannon couples this with the other elements of Ground (8) which contend that the reviewing officer failed to grapple with the significance of all this material and failed to satisfy herself that alternative health care and support provision was available in Wolverhampton. To make good these points, Mr Gannon highlighted many of the supporting documents dealing with Ms Vukasovic's medical conditions (particularly as to her mental health) and treatments.

79. The difficulty that Mr Gannon faced, and in my judgment could not surmount, was that the reviewing officer dealt exhaustively with the material before her. She weighed and assessed it. It was not all one way. She reviewed it in detail. She finally expressed her reasons why it did not carry the day in these paragraphs:

> *100. I note that after we made the offer of the accommodation in Wolverhampton, we received additional information from the professionals working with your household including Dr Bahia (Principal Clinical Psychologist), Klarita Velkova (Principal Clinical Psychologist), Dr Heather Davies (GP), Pamela Crowie, Longsdale Medical Centre, West Hampstead Physiotherapy, witness stated signed by you and Brent Assessment & Brief*

Team. These information repeats the fact that you and your mother suffer from multiple medical conditions.

101. I have taken account of all the advice by the above professionals and I still believe that there support services you are receiving in Brent can be accessed elsewhere. Although it is advised that after we made the offer, your condition suddenly worsened and you had a thought of suicidal ideation, however, Dr Bahia's report dated 21/09/2015 also stated that you had made threats of self-harm in 2008 and having engaged with the Crisis Resolution services after a long period, you managed to establish very productive and positive relationship with the various medical professionals.

102. As already discussed elsewhere in this letter, you would have been able to access similar psychiatric treatments and psychological interventions in the Wolverhampton area. I accept that you would experience some kind of disruption in relation to household medical support, however, this would be on a temporary basis. As you become familiar with your new environment, you and your family would develop means of engaging with the local support services. I believe similar NHS service is provided across different localities and postcodes.

103. I reiterate that the purpose of having a Relocation Office in the Midlands is to assist household to access local support services quickly.

104. I also believe that there is no guarantee that you would be seeing the same mental health professionals on a continuous basis. Usually, these professionals may change from time to time due to unforeseeable circumstances such as absence, transfer and termination of employment. For example, you have been seeing Dr Bahia for the past 2 years, however, information from Brent Adult Mental Health Team suggests that Dr Bahia has moved to a new Team and you were recently seen by a new Consultant Dr Lapinja. While I accept that moving to a new environment would have impact on your medical condition, any move to a different geographical location will inevitably cause some degree of disruption temporarily.

80. I may not myself have reached the same conclusions. Other reviewing officers may have reached a different conclusion. But I cannot say that it was irrational of this reviewing officer to hold that Ms Vukasovic was not within the material paragraph of the Placement Policy and that the offered accommodation was suitable for her.

81. Ground (9) took a point on the size of the accommodation made available in Wolverhampton. Mr Gannon did not pursue it and I say nothing more about it.

OUTCOME

82. For the reasons given above, this appeal fails. It shall be dismissed. To save costs, I shall hand down this Judgment in the absence of the parties on the basis that I will be provided with an agreed draft order disposing of the appeal. If the parties cannot agree, I shall hear them briefly on the occasion of handing down this judgment.

Judge Luba QC

6 October 2017