Neutral Citation Number: [2020] EWHC 1478 (Admin)

Case No: CO/4506/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 June 2020

Before :

MR JAMES STRACHAN QC
(Sitting as a Deputy Judge of the High Court)

- -

Between :

THE QUEEN	**Claimant**
-on the application of-	
CHRISTOPHER MITCHELL	
- and -	
LONDON BOROUGH OF ISLINGTON	**Defendant**

- -
- -

Toby Vanhegan (instructed by **Hodge Jones & Allen Solicitors**) for the **Claimant**
Catherine Rowlands (instructed by **London Borough of Islington**) for the **Defendant**

Hearing date: 24th March 2020

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am on 10 June 2020.

James Strachan QC (sitting as a Deputy Judge of the High Court):

Introduction

1. By this claim for judicial review the Claimant challenges a decision by the London Borough of Islington ("the Council") in a letter dated 11 November 2019 to refuse to provide him with temporary accommodation him under section 188(1) of the Housing Act 1996 ("the 1996 Act").

2. In his Claim Form the Claimant sought a final order that the Defendant "do forthwith secure that suitable accommodation is available for occupation by the claimant until they lawfully discharge their duty under section 189B of the 1996 Act." He also sought urgent consideration of his application for permission to claim judicial review and interim relief in the form of the provision of suitable accommodation.

3. Permission to proceed was granted by Ms Margaret Obi (sitting as a Deputy Judge of the High Court) by Order dated 4 December 2019. The application for interim relief was refused in light of the balance of convenience on the basis that the Claimant was living with his brother at the time. The Deputy Judge expedited the hearing to be heard as soon as possible after 17 February 2020.

4. The hearing was listed to be heard on 24 March 2020. In light of the practical restrictions that arose from the Covid-19 pandemic, the Court proposed that the hearing should proceed by way of telephone conference on that date. The parties initially sought to have the hearing adjourned by consent. On reading the papers, my initial view was that the claim could he heard effectively by telephone. I communicated this to the parties through the Administrative Court office. The parties decided they were content to proceed in this way. I conducted the hearing by telephone on 24 March 2020. I record my thanks to the parties and their representatives for enabling the hearing to proceed.

5. Mr Vanhegan, Counsel for the Claimant, and Ms Rowlands, Counsel for the Defendant, informed me during the hearing that the Claimant was residing with his brother and had been offered assistance with obtaining private rented accommodation. Both therefore agreed that the original urgency for determination of the claim had dissipated.

6. The remaining issue is how and when a local authority's interim duty under section 188 of the 1996 Act comes to an end, in light of amendments made to section 188 by the Homelessness Reduction Act 2017 ("the 2017 Act").

7. I record my gratitude to both Counsel for the assistance they provided to me with their clear and helpful submissions both in writing and during the telephone hearing itself.

Factual Background

8. The Claimant is of no fixed abode. He is 30 years of age. He suffers from a number of medical issues. It is unnecessary for determination of this claim to set these out. One consequence of them is that he finds it hard to go outside or to be around other people.

9. On 15 June 2018 the Claimant contacted the Defendant for homelessness assistance. Having assessed that initial application, the Defendant was satisfied that the Claimant

was homeless and eligible for assistance. On 15 July 2018 the Defendant completed an Assessment and Personalised Plan Form with the Claimant which set out agreed steps the Claimant and the Council were to take to secure suitable accommodation. These events are set out in a later letter dated 12 December 2019. That later letter deals with a revision to the Assessment and Personalised Plan Form following the Claimant's subsequent change of circumstances to which I will come to in a moment. The letter of 12 December 2019 identifies its subject-matter as being:

> "S189A Assessment and Personalised Plan (Housing Act 1996 as amended) & S189B (Housing Act 1996 as amended) – Relief Duty"

10. The Defendant has stated that the Claimant was initially residing with a friend before he approached the Defendant for assistance and the Claimant subsequently moved in with his brother. The Defendant states that it provided the Claimant with temporary accommodation at an address in Islington from 28 August 2018.

11. On 22 August 2019 the Claimant applied to the Defendant for homelessness assistance under Part VII of the Housing Act 1996. By letter dated 5 October 2019 a Senior Housing Practitioner of the Defendant wrote to the Claimant at his temporary accommodation address in response to that application. The letter was headed "RE: Notification of Decision - Part VII of the Housing Act 1996." The opening paragraph of the letter stated:

> "I write further to your homeless application made to this authority on 22 August 2019 and this Authority's decision pursuant to Section 184(3) of the Housing [A]ct Part VII. You have been interviewed and enquiries have been made on the information that you have given. I have taken into account all of the information provided. I have also considered the Homelessness Act 2002 and the Code of Guidance in reaching this decision."

12. Pausing there, it is clear from this opening paragraph that the letter was intended to notify the Claimant of the Defendant's decision under section 184 (3) of the 1996 Act. The issue that arises on this claim is whether the letter also had the effect of ending the Defendant's interim duty to the Claimant under section 188 of the 1996 Act.

13. The letter listed information and evidence that had been taken into account by the Defendant and stated as follows (with underlining in the original):

> "Following consideration of all the information provided and available we have decided that:
>
> You are threatened with homelessness
> You are eligible
> <u>You do not have priority need for housing assistance</u>"

14. The letter then set out detailed reasons in numbered paragraphs as to why the Defendant did not consider the Claimant to have a priority need in light of the relevant definition

in section 189(1)(c) of the 1996 Act. That decision and those reasons are not the subject of challenge in these proceedings, so it is not necessary for me to set them all out here.

15. The letter concluded in the following way:

> "13. For the reasons set out above and having considered all of the information and situation as a whole; I have concluded that you are not in priority need. You are not significantly more vulnerable than an ordinarily vulnerable person as a result of being rendered homeless.
>
> 14. I regret that I cannot be of further help and the council will not be prov[id]ing you with accommodation on a temporary or permanent basis. Please note that your stay at this temporary accommodation … has been cancelled and you will be required to leave on Monday 14 October 2019, last night is Sunday 13 October 2019.
>
> 15. You can seek advice and assistance from our Housing Advice Team … located at 222 Upper Street, London N1 1XR telephone 020 7527 6371. The office is open Monday-Friday, 9am-4pm. If you wish to speak with someone you should present to the reception desk and ask to see an advice worker.
>
> 16. If you disagree with my decision you have the right to ask for a review of the decision which must be done in writing to the review officer and returned to us within the next 21 days. You may wish to seek independent legal advice at this point. You can email the Reviews and Appeals team on housing.review@islington.gov.uk."

16. By email dated 16 October 2019 a support worker at Shelter wrote to the Defendant's Reviews and Appeals team to request a review of the "S184 non-priority decision" on the basis of the Claimant's medical conditions. The email and subsequent correspondence also asked the Defendant to provide accommodation to the Claimant under its discretionary power in section 188(3) of the 1996 Act pending the outcome of that review. The Defendant agreed to carry out a review, but it refused to provide accommodation pending the outcome of that review.

17. The request for accommodation pending the outcome of the review was repeated in a letter dated 31 October 2019 from solicitors acting on behalf of the Claimant, and then in pre-action protocol correspondence dated 5 and 6 November 2019. The Claimant's solicitors sought to rely on the factors set out in *R(Mohammed) v Camden LBC* [1997] 30 HLR 15 in support of the request. The Defendant maintained its decision not to exercise its discretion to provide such accommodation. It is fair to observe that in none of that initial correspondence did the Claimant advance the point that is now in issue in these proceedings.

18. By further pre-action letter dated 8 November 2019 the Claimant's solicitors wrote to the Council reiterating a potential challenge to the failure to exercise that discretion; this time, however, the letter also included what was described as "fresh matter being

challenged", namely an alleged failure to provide accommodation in accordance with an ongoing duty under section 188(1) of the 1996 Act.

19. The letter contended that the Defendant's duty under section 188(1) of the 1996 Act could only be brought to an end in the ways specified in section 188 of the 1996 Act as now amended and, in the Claimant's case, pursuant to section 188(1ZA) as a result of the 2017 Act. The Claimant's solicitors also placed reliance upon paragraph 15.8 of the Secretary of State's Code of Guidance and the outcome of a claim in *R(Harris) v London Borough of Islington* CO/1282/2019.

20. The letter concluded by alleging:

> "In Mr Mitchell's matter as outlined above, the Defendant [which must be a reference to the Claimant] has not been informed of any decision to end the S.189B Duty nor has he been informed of his right to review. Your Authority made the Section 184 Decision within 56 days and therefore, currently, the S189B Duty has not been discharged until there is formal notification of the same. Therefore, the relief duty is still ongoing and the duty has not been discharged under s188(1)."

21. The Defendant responded to this new allegation by email on 11 November 2019 in the following way:

> "… My clients have considered your submission that as the relief duty has not come to an end, the duty to provide interim under accommodation under s188(1) continues. Your letter refers to paragraph 15.8 of the Code of Guidance but importantly it does not go on to refer to paragraph 15.9. This states – "So, an application who the housing authority has found to be not in priority need within the 56 day 'relief stage' will no longer be owed a section 188(1) interim duty to accommodate, but will continue to be owed a section 189B(2).
>
> My clients have found that Mr Mitchell is not in priority need and therefore the authority's position is that he is no longer owed the s.188(1) interim accommodation duty."

22. The Claimant then filed this application for permission to claim judicial review on 15 November 2019.

23. In the meantime, the Defendant wrote to the Claimant on 12 December 2019 with a revised Assessment and Personalised Plan. The Plan is identified as made under section 189B of the 1996 Act. It sets out steps to be taken by the Claimant and the Defendant towards securing accommodation. The Form attached a Housing Options Advice letter dated 12 December 2019. This is said to reflect options discussed with the Claimant during a telephone interview with him. That letter states that the Claimant was given advice about securing his own accommodation and he was advised that he could seek supported housing, but the Claimant stated that he was not interested in this.

24. On 26 February 2020 the independent reviewer conducting the Claimant's requested review under section 202 of the 1996 Act sent a letter to the Claimant stating that she was minded to make an adverse decision upholding the Defendant's decision that the Claimant was not in priority need; the letter stated that as further information had been obtained, this information was being put to the Claimant for comment before any final review decision was made. The Claimant sought further time to make submissions and submit further medical evidence and further correspondence ensured. In the event, the independent reviewer issued a decision on 16 March 2020 upholding the Defendant's decision.

Legal Framework

The 1996 Act (as amended)

25. Section 184 in Part VII of the 1996 Act sets out a local housing authority's duty to make inquiries into cases of persons who may be homeless. It provides, so far as material, 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 owed 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 applicant 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).
>
> (6) Notice required to be given to a person under this section shall be given in writing and, if not received by him, shall be treated as having been given to him if it is made available at the authority's office for a reasonable period for collection by him or on his behalf."

26. The Defendant's decision letter dated 5 October 2019 identified itself as being notification of a decision under Part VII of the 1996 Act. The first paragraph of the

letter refers to the Defendant's decision under section 184(3) of the 1996 Act. It seems clear to me that the letter of 5 October 2019 is intended to be written notice of the Defendant's decision under section 184 of the 1996 Act as a result of its inquiries. The letter seeks to observe the requirements set out in subsections 184(3), (5) and (6) of the 1996 Act.

27. Section 188 of the 1996 Act deals with a local authority's interim duty to accommodate an individual in a case of "apparent priority need" whilst the local housing authority is carrying out its inquiries under section 184 of the 1996 Act.

28. It is important to note that Part VII of the 1996 Act, including section 188, was significantly amended by the later 2017 Act. In addition to creating the new duties which appear in sections 189A and section 189B (dealt with further below), it amended the requirements on a local housing authority in respect of the interim duty under section 188 of the 1996 Act.

29. Section 188 of the 1996 Act in its amended form 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 must secure that accommodation is available for the applicant's occupation.
>
> (1ZA) In a case in which the local housing authority conclude their inquiries under section 184 and decide that the applicant does not have a priority need—
>
> (a) where the authority decide that they do not owe the applicant a duty under section 189B(2), the duty under subsection (1) comes to an end when the authority notify the applicant of that decision, or
>
> (b) otherwise, the duty under subsection (1) comes to an end upon the authority notifying the applicant of their decision that, upon the duty under section 189B(2) coming to an end, they do not owe the applicant any duty under section 190 or 193.
>
> (1ZB) In any other case, the duty under subsection (1) comes to an end upon the later of—
>
> (a) the duty owed to the applicant under section 189B(2) coming to an end or the authority notifying the applicant that they have decided that they do not owe the applicant a duty under that section, and
>
> (b) the authority notifying the applicant of their decision as to what other duty (if any) they owe to the applicant under

> the following provisions of this Part upon the duty under section 189B(2) coming to an end.
>
> (1A) But if the local housing authority have reason to believe that the duty under section 193(2) may apply in relation to an applicant in the circumstances referred to in section 195A(1), they shall secure that accommodation is available for the applicant's occupation until the later of paragraph (a) or (b) of subsection (1ZB)] regardless of whether the applicant has a priority need.
>
> (2) The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see sections 198 to 200).
>
> (2A) For the purposes of this section, where the applicant requests a review under section 202(1)(h) of the authority's decision as to the suitability of accommodation offered to the applicant by way of a final accommodation offer or a final Part 6 offer (within the meaning of section 193A), the authority's duty to the applicant under section 189B(2) is not to be taken to have come to an end under section 193A(2) until the decision on the review has been notified to the applicant.
>
> (3) Otherwise, the duty under this section comes to an end in accordance with subsections (1ZA) to (1A), regardless of any review requested by the applicant under section 202. But the authority may secure that accommodation is available for the applicant's occupation pending a decision on review."

30. Section 188(1) therefore contains an important interim duty to secure accommodation for an applicant if the local housing authority "have reason to believe" the applicant may be homeless, eligible for assistance and have a priority need. There is no dispute in this case that the interim duty was triggered by the Claimant's application for homelessness assistance on 22 August 2019. At that point, the information about the Claimant's circumstances gave the Defendant reason to believe that he may be someone who met each of the three criteria.

31. The issue that arises is when and how that interim duty comes to an end. The Claimant contends that the answer is provided by section 188 itself in subsections (2A) and (3). In circumstances where subsection (2A) does not apply, subsection (3) provides that the duty comes to an end "in accordance with subsections (1ZA) to (1A)". By contrast, the Defendant contends the interim duty will come to an end if the Defendant decides that an applicant is not in priority need – at that point the Defendant no longer has the relevant reason to believe that a person may be in priority need for the purposes of section 188(1) of the 1996 Act. The Defendant relies on an observation of Haddon Cave J (as he then was) in *R(Faizi) v Brent LBC* [2015] EWHC 2449 (Admin) at [17] to the effect that: "… as from the moment of refusal, the duty of the authority "ceases". In order to raise an argument that that duty either revives or continues, it is necessary, as a matter of construction, to point to another provision which serves that duty."

32. It is relevant to observe that the amendments made by the 2017 Act to section 188 involved not just the insertion of subsections (1ZA) and (1ZB) to which subsection (3) refers, but also new wording to subsection (3) itself. Section 188 as originally enacted did not contain the mechanisms set out in (1ZA) and (1ZB). At that time, section 188(3) provided for the cessation of the interim duty under section 188(1) in the following way:

> "(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 continue to secure that accommodation is available for the applicant's occupation pending a decision on a review."

33. Section 188(3) in this original form therefore provided for the cessation of the interim duty on notification of the authority's "decision" to the applicant. Although not explicit, I assume that this was a reference to the authority's decision under section 184(3) of the 1988 Act. On this basis, a letter of the type that the Defendant sent to the Claimant on 5 October 2019 would have brought the Defendant's interim duty to the Claimant if section 188(3) had remained in its original form. I understood Mr Vanhegan to accept this. Indeed, he positively relies upon this to emphasise the change now made to the statutory scheme by the 2017 Act. His contention is that the amendments to section 188 by the 2017 mean that a letter in that form notifying an application of a decision under section 184(3) of the 1996 Act is no longer sufficient.

34. Section 189 deals with the question of "priority need for accommodation". It defines who is in priority need for the purposes of the 1996 Act. It includes "a person who is vulnerable as a result of … mental illness or handicap or physical disability or other special reason": see section 189(1)(c) of the 1996 Act.

35. Section 189A of the 1996 Act is a provision inserted by the 2017 Act. It sets out (amongst other things) a duty on a local housing authority to make an assessment of an applicant who they are satisfied is homeless, or threatened with homelessness and eligible for assistance. The authority must then try and agree steps with the applicant to take for the purposes of securing that the applicant has and is able to retain accommodation. Section 189A(9) provides that until such time as the authority consider that they owe the applicant no duty under any of the following sections of Part VII, the authority must keep their assessment of the applicant's case under review.

36. Section 189B was also inserted by the 2017 Act. This created a new initial duty owed by a local housing authority to all eligible persons who are homeless. The local housing authority is required to help an applicant to secure that suitable accommodation becomes available for certain minimum periods. It is not a duty to accommodate of itself.

37. Given the references in section 188 (as amended) to the new section 189B duty, I set out the latter out more fully as follows:

"**189B Initial duty owed to all eligible persons who are homeless**

(1) This section applies where the local housing authority are satisfied that an applicant is—

(a) homeless, and

(b) eligible for assistance.

(2) Unless the authority refer the application to another local housing authority in England (see section 198A(1)), the authority must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least—

(a) 6 months, or

(b) such longer period not exceeding 12 months as may be prescribed.

(3) In deciding what steps they are to take, the authority must have regard to their assessment of the applicant's case under section 189A.

(4) Where the authority—

(a) are satisfied that the applicant has a priority need, and

(b) are not satisfied that the applicant became homeless intentionally,

the duty under subsection (2) comes to an end at the end of the period of 56 days beginning with the day the authority are first satisfied as mentioned in subsection (1).

(5) If any of the circumstances mentioned in subsection (7) apply, the authority may give notice to the applicant bringing the duty under subsection (2) to an end.

(6) The notice must—

(a) specify which of the circumstances apply, and

(b) inform the applicant that the applicant has a right to request a review of the authority's decision to bring the duty under subsection (2) to an end and of the time within which such a request must be made.

(7) The circumstances are that the authority are satisfied that—

(a) the applicant has—

> (i) suitable accommodation available for occupation, and
>
> (ii) a reasonable prospect of having suitable accommodation available for occupation for at least 6 months, or such longer period not exceeding 12 months as may be prescribed, from the date of the notice,
>
> (b) the authority have complied with the duty under subsection (2) and the period of 56 days beginning with the day that the authority are first satisfied as mentioned in subsection (1) has ended (whether or not the applicant has secured accommodation),
>
> (c) the applicant has refused an offer of suitable accommodation and, on the date of refusal, there was a reasonable prospect that suitable accommodation would be available for occupation by the applicant for at least 6 months or such longer period not exceeding 12 months as may be prescribed,
>
> (d) the applicant has become homeless intentionally from any accommodation that has been made available to the applicant as a result of the authority's exercise of their functions under subsection (2),
>
> (e) the applicant is no longer eligible for assistance, or
>
> (f) the applicant has withdrawn the application mentioned in section 183(1).
>
> (8) A notice under this section must be given in writing and, if not received by the applicant, is to be treated as having been given to the applicant if it is made available at the authority's office for a reasonable period for collection by or on behalf of the applicant.
>
> (9) The duty under subsection (2) can also be brought to an end under—
>
> (a) section 193A (consequences of refusal of final accommodation offer or final Part 6 offer at the initial relief stage), or
>
> (b) section 193B and 193C (notices in cases of applicant's deliberate and unreasonable refusal to co-operate).

38. Section 189B therefore has its own mechanisms for the way in which that initial duty is brought to an end. In a case of this kind where the local housing authority has

concluded that the applicant does not have a priority need, the duty can be brought to end if any of the circumstances set out in section 189B(7) apply, and the authority decide to give notice to the applicant bringing the duty to an end – see section 189B(5).

39. Section 190 deals with a local authority's duties after its duties under section 189B(2) come to an end in respect a person who is homeless and eligible for assistance and in priority need, but became homeless intentionally. Section 193 deals with the duties for a person in the same situation but who did not become homeless intentionally.

40. Section 202 sets out the right to request a review of various decisions by a local housing authority under Part VII of the 1996 Act. There is subsequent right of appeal to a county court on a point of law under section 204 of the 1996 Act.

The Secretary of State's Code of Guidance

41. Section 182 of the 1996 Act requires a local housing authority exercising its functions relating to homelessness to have regard to guidance issued by the Secretary of State. The Secretary of State has issued the "Homelessness Code of Guidance for Local Authorities".

42. Chapter 15 deals with accommodation duties and powers. Paragraphs 15.4 -15.6 deal with the interim duty to accommodate under section 188. They explain that the threshold for triggering the section 188(1) duty is low, as the local housing authority only has to have a reason to believe (rather than being satisfied) that the applicant may be homeless, eligible for assistance and have a priority need.

43. Paragraphs 15.7 -15.12 deal with "Ending the section 188 interim duty". Paragraph 15.7 states that it comes to an end when applicants are notified of certain decisions in relation to their application. Paragraph 15.8 deals with a case where a local housing authority concludes that an applicant does not have a priority need and states (with emphasis in the original):

> "**15.8** Following inquiries, where the housing authority concludes that **an applicant does not have a priority need**, the section 188(1) duty ends when **either:**
>
> a. the housing authority notifies the applicant of the decision that they do not owe a section 189B(2) relief duty; **or**,
>
> b. the housing authority notifies them of a decision that, once the section 189B(2) relief duty comes to an end, they do not owe a duty under section 190 (duties to persons becoming homeless intentionally) or section 193(2) (the main housing duty owed to applicants with priority need who are not homeless intentionally)."

44. Paragraph 15.8 closely reflects section 188(1ZA). However, paragraph 15.9 (on which the Defendant relies) goes on to state as follows:

> "**15.9** So, an applicant who the housing authority has found to be not in priority need within the 56 day 'relief stage' will no

> longer be owed a section 188(1) interim duty to accommodate, but will continue to be owed a section 189B(2) relief duty until that duty ends or is found not to be owed."

The Parties' Submissions

45. Mr Vanhegan for the Claimant submits that section 188 of the 1996 Act (as amended) now provides an exhaustive description of when the absolute interim duty to accommodate arises and when it finishes. He relied on the amendments made by the 2017 Act. He noted that there was no dispute that the interim duty to accommodate had arisen. He submitted that as the Defendant agreed that section 188 (1ZA)(a) was not applicable, section188(1ZA)(b) applied; this meant that the interim duty to accommodate the Claimant could only come to an end upon the authority notifying the applicant of a decision that, upon the local authority's duty under section 189B(2) coming to an end, the local authority do not owe the applicant any duty under section 190 or section 193 of the 1996 Act. He submitted that the Defendant had not provided the Claimant with any such notice and so the interim duty had continued.

46. He contended that the section 188 duty was not brought to end by the completion of the Defendant's review of its decision as to whether or not the Claimant was in priority need. Whilst he argued that would have been the position under section 188(3) of the 1996 Act in its previous form, the position was now governed by section 188(1ZA). Nor, he submitted, was the section 188 interim duty now brought to an end by notification of a decision under section 184 of the 1996 Act that an applicant was not considered to be in priority need, as this did not comply with the requirements of section 188(1ZA). He argued that if that had been intended, section 188(1ZA) could simply have said that the duty comes to an end when a local authority notifies an applicant of their decision under section 184 of the 1996 Act. He also sought to distinguish the approach of the Court of Appeal in *Omar v Birmingham City Council* [2007] HLR 639 relied upon by Ms Rowlands as to the absence of a need to adhere slavishly to the requirements of the statute, by referring to the more recent approach of the Court of Appeal in *Ravichandran v Lewisham LBC* [2010] EWCA Civ 755; [2011] PTSR 11. He submitted the Court of Appeal in that latter case had confined the decision of *Omar* to its own facts and he relied on the fact that the Court of Appeal in *Ravichandran* had in fact concluded that when making an offer of accommodation under section 193 of the 1996 Act, the local authority should always make it clear whether the offer was intended to be one of temporary accommodation under section 193(5) to meet the duty under Part VII of the 1996 Act or of permanent accommodation under section 193(7) pursuant to the local authority's housing allocation scheme under Part VI of the 1996 Act.

47. Ms Rowlands agreed that where a local authority had reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, then there was an interim duty to secure accommodation for that applicant under section 188(1) of the 1996 Act and that duty had been triggered in the Claimant's case. She submitted that interim duty only lasted until a decision was reached under section 184(1) of the 1996 Act. Thereafter the local authority had a discretion to provide accommodation pending a requested review, but no duty. She submitted that section 188 and section 189B impose different duties which run in parallel to each other. The duty under section 188 is to procure that accommodation is available, whereas the duty under section 189B is a lesser duty to take reasonable steps to help an applicant, but the duty is time limited

and it is not a duty to provide accommodation in itself. She submitted it was sufficient to notify the applicant under section 184 of the 1988 Act that the authority had decided he was not in priority need to bring the interim duty to an end. She noted that the duties under sections 190 and 193 are both predicated on an applicant being in "priority need" so an applicant would know that these duties did not apply if the Defendant had notified the applicant of its decision that the applicant was not in priority need. She argued that the letter of 5 October 2019 told the Claimant everything he needed to know as to the cessation of the duty.

48. She relied on the approach of the Court of Appeal in *Omar v Birmingham* to offers that had been made by letter to an applicant for the purposes of section 193 of the 1996 Act, including (amongst others) the following passages from the judgment of May LJ:

> "29. I accept of course that subsection (7A) is expressed in mandatory terms, but I do not in any event accept that literal slavish repetition of the exact words of the subsection is an immutable statutory requirement when, as in this case, every single matter of substance which the statute requires was expressly contained in the letter, including that required by subsection (7F), if indeed it was a final offer of accommodation under Part VI. In the context of section 193, the explicit reference to a final offer could only mean that it was an offer within Part VI and for that reason it may be possible to say that subsection (7A) was indeed, as a matter of construction, complied with.
>
> 30. In any event, the mere addition of the words "for the purposes of subsection (7)" told the homeless applicant nothing useful in this case. What the homeless applicant needed to know was that the local housing authority considered the offered accommodation to be suitable, and that it was reasonable for him to accept the offer and the possible consequences of refusal. I find support for this view in Slater v Lewisham London Borough Council [2006] EWCA Civ 394; [2006] HLR 37, where the question was whether subsection (7F) had been sufficiently complied with. Ward LJ (with whose judgment Sir Martin Nourse and Sir Charles Mantell agreed) said at paragraph 32 that he did not suggest that the wording of the communication must slavishly follow those forms of words, but it must convey both points (see also Tower Hamlets Borough Council v Rahanara Begum [2006] HLR 9 at paragraph 27). The letter in the present case conveyed everything which mattered to the homeless applicant.
>
> 31. Even if that were wrong, I am quite clear that the judge was correct to hold that Mr Omar's refusal of the offer of 7th March 2006 was or would have been a refusal within section 193(5). If it was not a refusal within subsection (7) for want of the statutory words in subsection (7A), there is no duplication of statutory purpose to impede it being within subsection (5) as a fallback unless, as Mr Nabi submits, subsection (5) is incapable of applying to a final offer of permanent accommodation, but is

> only capable of applying to an offer of temporary accommodation.

49. Reference was also made to the observations of Lloyd LJ in agreeing that the appeal should be dismissed as follows:

> "Be that as it may, it seems to me that if the offer fails to satisfy subsection (7) because of the omission of that little bit of legalistic phraseology, it nevertheless is capable of satisfying, and did satisfy, subsection (5). On that ground, it seems to me that the appeal must fail."

50. In her skeleton argument for the hearing, Ms Rowlands also submitted that the claim had become academic as a result of the completion of the independent review on 16 March 2020. She submitted that the claim was for accommodation pending that review and so it could not be maintained once the review had been completed. She also relied upon the fact that the Claimant had secured accommodation with his brother which was suitable and the Defendant was not required to offer the applicant accommodation under section 188(1) of the 1996 Act in these circumstances: see *Birmingham City Council v Ali or R(Aweys) v Birmingham City Council* [2009] UKHL 36; [2009] 1 WLR 1506, HL at [18].

Analysis

The Interim Duty

51. In my judgment, the correct starting point for establishing when and how the interim duty under section 188 comes to an end is the wording used in the statute itself, and specifically as it now stands amended by the 2017 Act. Section 188 provides a clear answer to this question. Where section 188(2A) does not apply (which it does not in this case), the word "Otherwise" at the beginning of section 188(3) means that the cessation of the interim duty is governed by section 188(3).

52. Section 188(3) identifies that the duty under section 188 comes to an end in accordance with subsections (1ZA) to (1A), regardless of any review requested by the applicant under section 202. This means it is necessary to turn to those subsections to understand when and how the duty is brought to an end, and section 188(1ZA) in particular in this case.

53. Subsection (1ZA) applies where a local housing authority has concluded their inquiries under section 184 and decided that an applicant does not have a priority need. That is the situation that applies here.

54. Subsection (1ZA) is predicated on a decision having been made under section 184, but that is not identified as sufficient of itself to bring the duty to an end. It is only a threshold criterion for what then follows.

55. I agree with Mr Vanhegan that if the intention had been that a decision under section 184 that a person is not in priority need was sufficient of itself to bring the interim duty to an end, subsection (1ZA) could have readily articulated this. It does not. Instead, it

sets out two alternative ways in which the local housing authority can bring the interim duty to an end in such circumstances.

56. The first is expressed in (1ZA)(a). It applies where the local housing authority decide that they do not owe the applicant a duty under section 189B(2). If an authority reaches that decision, the interim duty under section 188(1) comes to an end when the authority "notify the applicant of that decision". What needs to be notified to the applicant to bring the interim duty to an end under subsection (1ZA)(a) is the decision that the authority have decided that they do not owe the applicant a duty under section 189B(2).

57. It is common ground that the interim duty did not come to an end under this provision in the Claimant's case. The Defendant did not make a decision that it did not owe the Claimant a duty under section 189B(2), so the question of notice of any such decision is academic.

58. The second way of bringing the duty to an end for a person that the authority decides is not in priority need is set out in subsection (1ZA)(b). It applies in any other case not covered by (1ZA)(a). That is clear from the use of the word "otherwise" with which subsection (1ZA)(b) begins. The subsection continues by providing for the duty to come to an end "upon the authority notifying the applicant of their decision that, upon the duty under section 189B(2) coming to an end, they do not owe the applicant any duty under section 190 or 193."

59. The language here is less simple than in subsection (1ZA)(a). But I consider it is still clear in its effect. The duty is brought to an end if the authority notify the applicant of the "decision" identified in subsection (1ZA)(b). What is the decision that has to be notified? It is a decision by the authority to the effect that when the duty they owe to the applicant section 189B(2) comes to an end, they will not owe the applicant any duty under section 190 or 193 of the 1996 Act.

60. On analysis, that requirement reflects the general logic of the statutory scheme as amended. The duties under section 190 or 193 of the 1996 Act are duties that are only owed by a local housing authority <u>after</u> its duties under section 189B(2) come to an end. Those are also duties which only apply to a person "in priority need". If a local housing authority has determined that a person is not in priority need – which must be the case for section 188(1ZA) to apply – the authority will know that they will not owe that person a duty under section 190 or section 193 when the initial duty under section 189B(2) comes to an end. In this situation, section 188(1ZA)(b) also enables a local housing authority to bring the interim accommodation duty under section 188(1) to end. This can be done even where the duty under section 189B(2) to help the applicant to secure accommodation continues. But in order to bring the interim duty under section 188(1) to an end, the local housing authority is required to notify the applicant that it has decided that when its (different) duty under section 189B(2) comes to an end, it will not owe that applicant a duty under section 190 or section 193 of the 1996 Act.

61. In my judgment, the letter from the Defendant to the Claimant dated 5 October 2019 did not provide the type of notification set out in subsection (1ZA)(b). It did notify the Claimant that the Defendant had decided that he is not in priority need and gave reasons for that decision. It also notified him of a right to request a review. It therefore satisfied the requirements of section 184(3), (5) and (6) of the 1996 Act. But it did not comply with the notification requirement set out in section 188(1ZA)(b) by failing to

inform the applicant of a decision that when the authority's section 189B(2) duty comes to end, the local authority would not owe him a duty to provide him with accommodation under section 190 or section 193 of the 1996 Act.

62. The letter may well have been sufficient to have brought the interim duty to an end under section 188(3) when it was first enacted. The legislation has now been amended. In my judgment, the letter was not sufficient notice to bring the duty to an end under section 188(3) in that amended form. That requires notification by the local housing authority of the specific decision prescribed in subsection (1ZA)(b).

63. It is fair to acknowledge that the letter did notify the Claimant that the Defendant would not be providing him with accommodation on a temporary or permanent basis. The Defendant argues that notification of a decision that the Claimant is not in priority need, and that he will not be provided with accommodation on a temporary or permanent basis, tells the Claimant everything he needs to know. The Defendant submits it is therefore effective to bring the interim duty to an end. Moreover, the Defendant submits that slavish adherence to subsection (1ZA)(b) should not be required, by analogy with the principles expressed in the *Omar* case. Ms Rowlands also points out that an applicant for homelessness assistance is not likely to be materially enlightened by a letter which refers specifically to statutory provisions, or adopts the language of the statute.

64. In my judgment, these submissions both overlook what is expressly required by way of notification under subsection (1ZA)(b) to bring the interim duty to an end, but also the likely reasons for introducing those requirements.

65. I recognise that an applicant may not derive any particular benefit from detailed recitation of statutory provisions. In this respect, however, there is some contradiction in the Defendant's stance in practice. By way of illustration, I note that the Defendant's letter of 5 October 2019 does in fact refer specifically to the decision being taken "pursuant to Section 184(3)". It also goes on to refer expressly to the application of section 189(1)(c) and caselaw on the question of "priority need". The Defendant therefore clearly considered it appropriate to draw the Claimant's attention to those legal provisions. By the same token, it would at least have been consistent with that approach to refer the Claimant to notification of a decision under subsection section 188(1ZA)(b), particularly as it is this provision which brings the interim duty to an end.

66. More significantly, however the notification to which an applicant is entitled under subsection (1ZA)(b) makes a specific and deliberate connection with the duty under section 189B(2), both being introduced by the 2017 Act.

67. In the scenario where subsection (1ZA)(b) is applicable, an applicant for homelessness assistance will be benefitting both from the interim duty to accommodate under section 188(1) and the parallel duty to assist with securing accommodation under section 189B(2). Section 188(1ZA) enables a local housing authority to bring the interim duty to accommodate to an end where it has concluded its inquiries under section 184 and decided that the applicant does not have a priority need. It is permitted to do this even though the separate and different initial duty under section 189B(2) is continuing. This is what is specifically contemplated and provided for in section 188 (1ZA)(b). In these circumstances, it is an understandable requirement that in order to bring that interim duty under section 188(1) to an end, the applicant must receive notice of a decision

from the local authority that makes reference to the continuing initial duty under section 189B(2). The statute requires, and the applicant is entitled to, notification that upon the continuing section 189B(2) duty coming to an end, the local authority will not be under an obligation to provide accommodation to the applicant under section 190 or 193. Notification in that form provides some safeguard against an applicant wrongly assuming that the section 189B(2) duty has also come to an end when that is not the case.

68. In light of this analysis, I do not consider the observations of the Court of Appeal in *Omar* to be directly relevant to the proper interpretation of the requirements of section 188(1ZA)(b). The Court of Appeal was necessarily considering a different statutory provision and, moreover, did not have the provisions of section 188 in its amended form before it. It was considering a different question of whether the substantive requirements for an offer of accommodation had been met.

69. For the reasons set out above, I do not consider the need to comply with the requirements of subsection (1ZA)(b) in the way set out above can be characterised as mere unnecessary slavish adherence to the statutory provisions. To contrary, they ensure that requisite notice is provided to an applicant which should assist in preventing potential prejudice to an applicant occurring. The specific notification requirements under subsection (1ZA)(b) in order to bring the housing authority's interim duty to an end will serve to reduce any misapprehension on the part of the applicant that the local housing authority's different, but continuing, initial duty under section 189B has also come to an end. It seems to me that there is a potential danger of such misapprehension arising from the form of letter used in this case, particularly where there is no mention of the continuing separate duty under section 189B(2).

70. In any event, I consider that some care must be taken to avoid interpreting *Omar* as having a wider application than was intended, as the subsequent analysis provided by the Court of Appeal in *Ravichandran* explains.

71. Similarly, I do not consider that the decision in *Faizi* on which the Defendant relies assists the Defendant's interpretation of these provisions. Amongst other things: the Court in *Faizi* was dealing with the question of whether there was any duty to accommodate an applicant pending an appeal against a decision under section 193 of the 1996 Act; and in any event, although consideration is given to the cessation of the interim duty under section 188, the Court was not referring to section 188 in its form as now amended by the 2017 Act.

72. I also do not consider the Secretary of State's Code of Guidance alters the conclusions I have reached as to the statutory requirements. In fact, paragraph 15.8 generally reflects the requirements in section 188(1ZA). It is these statutory requirements that govern the position, rather than any summary of them in the Code of Guidance. The Code cannot alter the legal requirements of the statute. Paragraph 15.9 does seek to summarise the effects of those requirements, as the use of the word "so" suggests. But a summary is just that - it cannot be treated as a substitute for the statutory provisions themselves. I expect this paragraph was only intended to be read in that way. Like any gloss, it carries the risk of distortion if read too literally. In any event, it is not correct that a finding that someone is not in priority need of itself brings the interim duty to accommodate to end. Section 188(3) prescribes how that interim duty comes to an end. If paragraph 15.9 is to be interpreted in that way (and I am not convinced that it should), it is wrong.

73. I note that the Claimant sought to rely upon a consent order in a claim brought by Mr Harris in support of its case. I have not placed any reliance upon that in determining this claim as I do not consider it provides any assistance. It does not reflect any reasoned conclusion on the statutory provisions.

74. Finally, I consider there is some artificiality in the approach that has been adopted by both parties in these proceedings.

75. The issue in question was not originally raised by the Claimant's representatives in response to the Defendant's letter of 5 October 2019. It is therefore difficult to see how the Claimant was substantially prejudiced by failure of the letter to comply with the notification requirements under section 188(1ZA)(b). The Claimant's legal representatives appear to have assumed in the first place that letter had brought the interim duty to an end. That is presumably why they sought discretionary provision of accommodation pending the Claimant's review, until the point now in issue was subsequently raised in the last pre-action protocol correspondence letter. And even when raised in that letter, it appears at that stage that the Claimant's representatives were contending that the interim duty cannot not come to an end until the initial duty under section 189B comes to an end, which is not what section 188(1ZA)(b) provides. In addition, although I have found the letter of 5 October 2019 did not provide the requisite notice to comply with section 188(1ZA)(b), the Claimant will be in no doubt now that it was the Defendant's intention to bring that duty to an end by that letter, notwithstanding continuation of the initial duty under section 189B of the 1996 Act.

76. As to the Defendant, once the issue in these proceedings was raised, its approach has been to defend the decision of 5 October 2019 as providing the requisite notice to bring the interim duty to an end (as set out in its Detailed Grounds for Resisting the Claim). Whilst the Defendant was entitled to pursue those arguments as to the effect of that letter, it strikes me that the Defendant could have rendered the dispute academic by the simple expedient of sending a letter that actually reflected the notification requirements of section 188(1ZA)(b), without prejudice to its position that the same result had already been achieved by the letter of 5 October 2019. It seems to me (and this may be true of many cases) the provision of notification which meets the requirements of subsection (1ZA)(b) can readily be provided in conjunction with notification of the decision under section 184 if the local housing authority wants to bring the interim duty under section 188(1) to an end.

77. In its skeleton argument prepared for the hearing, the Defendant did argue that the claim had become academic as a result of a final section 202 review decision having been issued and the Claimant only seeking accommodation pending the review. I am not convinced that is necessarily the case. Whilst the Claimant originally requested accommodation pending the review, this was when he was seeking to persuade the Defendant to exercise its discretionary power to provide such accommodation, rather than arguing that the duty to provide such accommodation had not come to an end. I also note that Section 188(3) of the 1996 Act as amended now makes it clear that the interim duty comes to an end in accordance with subsections (1ZA) to (1A) regardless of any review requested under section 202 of the 1996 Act. Even if (despite what is stated in section 188(3)), the review decision issued shortly before the hearing and after the grounds of claim arose did have the effect of terminating the interim duty, I would have been inclined to treat this as one of those rare cases where it would have been

appropriate for the Court to deal with the underlying issue, despite it potentially having become academic on the facts shortly before the hearing.

78. The Defendant also claimed that the claim was academic because the Claimant had secured accommodation with his brother and this was sufficient to discharge the duty under section 188 if continuing. As far as I can see, this point was not advanced by the Defendant in its original responses to the Claimant's request for accommodation under the interim duty, nor in the Defendant's Detailed Grounds for Resisting the Claim. This in itself gives me cause for concern as it is an argument which has been raised late in the day for treating the claim as being academic. The passage of the judgment in *Aweys* on which it is based also identifies that any such accommodation must still be suitable. One of the issues that the Claimant was raising was the unsuitability of living with his brother given the nature of his medical conditions. In the event, the question of the suitability of that accommodation is not an issue which either of the parties addressed me on and is not the subject of reasoning in the Defendant's decision. I therefore do not treat the claim as necessarily having become academic on this ground.

79. I do, however, invite Counsel to try to agree an appropriate Order disposing of this claim in light of my judgment (or to provide short written submissions in the event of any disagreement). I have concluded that the letter of 5 October 2019 was not effective notification to bring the Defendant's interim duty to an end. But it is not clear to me that what was originally sought by way of relief in the claim form would now be appropriate or necessary relief in this case.

Consequential Matters

80. Following circulation of this judgment in draft, I have received helpful submissions on behalf of the Claimant and the Defendant on the terms of appropriate relief and costs.

81. As to relief, the Claimant seeks a declaration that the Defendant's duty to the Claimant under section 188(1) of the 1996 Act has not ceased. He also seeks an order quashing the Defendant's decision contained in their email sent on 11 November 2019 to the effect that they no longer owed a duty to the Claimant under section 188(1) of the 1996 Act and an order requiring the Defendant to secure that suitable accommodation is available for occupation by the Claimant pursuant to that duty. The Claimant submits that he is entitled to such relief in consequence of the Defendant continuing to owe him the duty under section 188(1) of the 1996 Act. He refers to having suffered significant prejudice in consequence of having been evicted from his temporary accommodation on 14 October 2019.

82. The Defendant agrees in principle to relief in the form of a declaration that the Defendant's duty to the Claimant under section 188 of the 1996 Act had not come to end. Ms Rowlands, however, confirms that the Defendant is of the view that when its duty to the Claimant under section 189(B)(2) of the 1996 Act comes to an end, it does not owe the Claimant any duty under sections 190 or 193 of the 1996 Act. She stated in her written submissions that the Defendant is formally notifying the Claimant of that decision. In a subsequent email on 8 June 2020 at 18:16 (copied to the Claimant's representatives), Ms Rowlands informed the Court that a letter to that effect had now been sent to the Claimant.

83. I have not seen a copy of the notification letter itself, but my judgment recognises in principle that the Defendant is able to bring the section 188(1) duty to an end in this matter. In light of this information, I do not consider it necessary or appropriate to grant relief beyond a declaration reflecting the fact that the letter of 5 October 2019 did not bring the Defendant's duty to an end.

84. As to costs, the Claimant submits the Defendant should pay his costs as he is the successful party. The Defendant submits that there should be no order as to costs as the Claimant's victory is technical because it provides him with no actual benefit and his representatives would have been aware of the Defendant's intention to bring the section 188(1) duty to an end. The Defendant also submits that there was inadequate pre-action protocol compliance and the Claimant has not succeeded in full. The Defendant also submits that the Court had to a resolve a difficult question of law on which there is no reported authority and where official guidance is potentially misleading, and it is not appropriate that the Defendant should bear the costs of clarifying the law.

85. There is some force in the Defendant's observations that the Claimant's victory is, to some degree, 'technical'. The Defendant did not provide the requisite notice to bring the interim duty to an end, even though the Defendant had the relevant intention and power to do so if it had complied with the statutory requirements. Ultimately I do not see this as a reason to justify departing from the normal rule of requiring the unsuccessful party to pay the successful party's costs in this case. The Claimant has been successful in its contention that the letter relied upon by the Defendant did not bring the duty to an end and proper notice is required under the 1996 Act to bring that duty to an end. This was the principal issue that was raised by the claim. It is right to note that the initial pre-action protocol correspondence between the parties was intimating a different challenge which was not pursued. I would not expect any of the costs associated with those arguments to be recoverable as part of these proceedings. But the claim that the Claimant did ultimately bring focused on the legal issue which I have decided in the Claimant's favour and which the Defendant opposed. Although I have not considered it necessary or appropriate to grant any further relief beyond a declaration, that takes account of the pragmatic response of the Defendant to this draft judgment. As to the official guidance, I am not convinced it should be read in the way that the Defendant suggested. In any event, even if it were read in that way, I do not regard either this, or the fact that the claim has involved deciding a legal issue on which there does not appear to be any reported authority, as a basis for departing from the normal approach to costs in this particular case.