

**R (oao Oday Yabari) v The Lord Mayor and Citizens of the City of  
Westminster [2023] EWHC 185 (Admin)**

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**R (oao Oday Yabari) v The Lord Mayor and Citizens of the City of  
Westminster [2023] EWHC 185 (Admin)**

The High Court held that a local housing authority was in principle able to perform the duty to provide interim accommodation under s188(1) of the Housing Act 1996 [“the Act”] by advising an applicant to remain in their current accommodation. Although there is no statutory requirement to notify a decision in relation to the s188(1) duty, it is a principle of procedural fairness that a person liable to be directly affected by an administrative act should be given notice of what is proposed.

Annabel Heath was instructed by Lawstop Solicitors on behalf of the Claimant and Ian Peacock was instructed on behalf of the Lord Mayor and Citizens of the City of Westminster [“Westminster”].

**Facts**

The Claimant, who had a long history with Westminster’s housing department, applied to Westminster as homeless on 10 August 2022. He was an assured shorthold tenant but asserted that he was statutorily homeless as the property did not meet his medical needs. There was no recent medical evidence provided with his application and he failed to provide details of his GP. The Claimant asserted in his application that he was a wheelchair user and the property was not wheelchair accessible and he was not able to exit the property or the building without carers assisting him. Historically Westminster had conducted a number of occupational therapy assessments, the most recent in 2021, which indicated that his disabilities were not as extensive as the Claimant stated in his application.

Following the application, Westminster interviewed the Claimant on 12 August 2022 and asked for additional information. It was in dispute as to whether these requests were non-statutory enquiries. The requested information was provided on 26 August 2022. Ritchie J held that it was around this time that the s188(1) duty arose. However, Westminster had not offered the Claimant interim accommodation under s188(1) of the Act. On 21 September 2022 the Claimant issued a claim for judicial review and on 22 September 2022 the Claimant applied for urgent interim relief.

On 26 September 2022 the Claimant was made an oral offer of s188(1) accommodation via his carer, which was rejected, and on 29 September 2022 Westminster accepted the relief duty under s189B of the Act, completed a housing needs assessment and personalised housing plan. The Claimant pursued his application for interim relief which was refused by Deputy High Court Judge Padley.

#### The nature of the s188(1) duty

It was common ground between the parties that the s188(1) duty was an immediate one which could not be deferred. However, the parties disagreed as to whether a local housing authority could comply with its duty under s188(1) by advising an applicant to remain in their current accommodation. The Claimant argued that that could not happen unless the applicant made an informed choice to remain in that accommodation.

The Judge rejected this contention, relying on earlier caselaw and holding that s206(1)(c) of the Act was wide enough to enable a local housing authority to secure interim accommodation by advising the applicant to remain homeless at home. However, whether this was appropriate should be taken on a case by case basis, dependant on the evidence.

On the facts of the case, the Judge held that Westminster's decision to advise the Claimant to remain in his current accommodation was irrational, as Westminster had failed to consider the fire safety risk of him doing so. However, as the Claimant, via his carer, had rejected an offer of s188(1) accommodation on 26 September 2022, the effect of that was to suspend or discharge the s188(1) duty. He further found that the Claimant had failed to co-operate with Westminster by failing to provide his medical records or consent for the housing department to contact his GP/ provide his GP contact details.

#### **Duty to notify**

Although there is no statutory requirement to notify an applicant in relation to a decision as to the s.188 duty, the Judge held that it is a principle of procedural fairness that a person liable to be directly affected by an administrative act is given notice of what is proposed. Accordingly, procedural fairness required Westminster to inform the Claimant as soon as reasonably practicable after they had made the decision to accept the applicability of the s188(1) duty.

#### **Non-statutory enquiries**

The Judge held that, notwithstanding the rule against non statutory enquiries, this did not make Westminster a post box or tick box, it is a judgment call. He held that consideration should be given to the assertions in the application and whether there was evidence to support them, consideration of any historic files and clarification on medical matters which could be clarified quickly.

The Judge recognised that this must be in the context of each application and, in the context of street homelessness with apparent priority need, the timescale would be shortened to hours or a day. However, more time may be permitted in the cases of those who are “homeless at home”.

Overall, the Judge dismissed the application.

### **Conclusion**

This judgment is important in confirming that in appropriate circumstances an authority can perform the s188 duty by advising an applicant to remain in their current accommodation. However, that is dependent on the accommodation properly being considered suitable for the time being and the applicant should be told of the authority’s decision.

A link to the judgment can be found here:

<https://caselaw.nationalarchives.gov.uk/ewhc/admin/2023/185>

**Annabel Heath and Ian Peacock**

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