Housing Law Practitioners' Association

Minutes of the Meeting held on 12 March 2014
University of Westminster

Homelessness

Speakers: **Jamie Burton, Doughty Street Chambers**
Rebekah Carrier, Hopkin Murray Beskine Solicitors

Chair: **Giles Peaker, Anthony Gold Solicitors**

Chair: I am Giles Peaker, HLPA Chair, welcome to this meeting on Homelessness. Could I first ask if there are any correction to the Minutes of the previous meeting? If not, I will introduce our speakers for tonight, Jamie Burton and Rebekah Carrier, who will be giving a joint presentation.

Jamie Burton is from Doughty Street Chambers and his chambers' profile notes, in what we can only describe as a rare fit of honesty, that his work is often conducted on an emergency basis. He does go on to explain why but we will skip over that. He has been described as impressing with his eagle eye for detail and reassuring manner and singled out as being clever, quick and very good with clients. If there is a way forward he will find it, say his many admirers. Cases that Jamie has dealt with you may well be familiar with include *James v LB Wandsworth* and *Dorish v LB Westminster*, which concerned important issues on the entitlement of homeless women subjected to domestic violence and in particular whether refuge accommodation could be as of choice. Also *Almedia v LB Kensington & Chelsea* on the right of severely unwell EEA nationals to receive healthcare and accommodation under Section 21 which was one of the very few successful human rights related community care claims.

Rebekah Carrier of Hopkin Murray Beskine Solicitors and formerly of Southwark Law Centre should also need no introduction. She earned the undying thanks, I think, of many in the Legal Aid sector with Southwark Law Centre and the Legal Services Commission in 2007 which unmessed up Legal Aid funding for homeless cases. Also for *Farrar v LB Southwark*, again, a remarkable allocation case at that time before the Supreme Court effectively put an end to allocation cases. She is, of course, fresh from the Court of Appeal in *MA and others* and also *SG and others*, the bedroom tax disability cases and the benefit cap challenge.

Rebekah Carrier: We had a conversation about how we were going to present this talk and I think we agreed that it is a really important time to be doing homelessness work and that the usual presentation of HLPA talks of counsel giving a quick run through all the cases and the solicitor outlining how we put those cases into practice did not really address the completely changed world that we are in when we are looking at homelessness. So we have decided to run through the things that we think are the interesting challenges ahead of us or challenges now when dealing with any homelessness work, because so much has changed and we wanted to look at how we change the way we work to address that changed world.

Jamie Burton: Thanks very much Rebekah and thanks very much Giles and HLPA for inviting us to talk today. It is a particular debt of gratitude, actually, to Giles because doing any kind of update on housing law has become infinitely easier as now know because one of the best websites out there. In fact the time has greatly reduced; it could almost be done on an emergency basis. But as Rebekah says, we thought it really important in this session to set the scene a little bit about what is actually happening out there. Most of you will know it all. You will know it because your clients will be telling you about it or, more likely, experiencing it. But we still thought, looking at all the evidence that is accumulating, that it would be very useful just to set out the picture in Britain at the moment, beginning with poverty in the UK; the triple whammy that a lot of our clients are experiencing which, of course, directly impinges on a key issue that we will come on to discuss which is affordability. But it is really important to note that there has been a massive inflation in basic costs for necessities for people in the UK in recent times. There has also been complete stagnation in the real value of wages and on top of that we have seen a reconstruction, to put it neutrally, of the welfare state and social security systems,

all of which have had very serious implications on the life implications of our clients and so we have got to keep all of that in mind when we come on to address the key issues.

Just a quick couple of points about benefits; we all know about the plethora of changes this Government has introduced in a relatively short period of time to a welfare benefits system that has not existed unchanged for a very long time but it has certainly never experienced this scale of reform in such a short period of time. This recently led the European Committee of Social Rights to find at least in relation to some benefits they are now manifestly inadequate in terms of a comparison with European benefits, particularly in relation to those not in work but also in relation to in work benefits, which really scuppers any suggestion that Britain is somehow a particularly generous member state of the European Union when it comes to benefits. Another very important issue is benefit sanctions. We are seeing it more and more now that people are finding themselves disqualified from benefits not always for relatively short periods of time, some of them are quite long periods of time, it can be up to 26 weeks that people have their benefit levels docked or even removed altogether which has a very serious impact on people's capacity to accommodate themselves. We have also seen the localisation of the social fund, a key safety net for people to obtain capital most often to buy essential necessities and of course, that is money that has always had to be paid back and often deducted from their benefits too. It has recently become apparent that the Government intends to abolish even the localised social fund as of 2015 and, crucially, in the context of benefits, there is no more Legal Aid available for benefits advice.

Is this reconstruction, as I have put it, of the welfare state ideological or it is based on economics? Well, David Cameron gave a very short answer to that question when the Archbishop of Westminster suggested that the changes to the welfare benefits system were forcing people into destitution where he said that the Government's economic plan for Britain was all "about doing what is right" and "nowhere is that more true than in welfare. For me the moral case for welfare reform is every bit as important as making the numbers add up." So again, we have got to understand the context in which these changes to the welfare state are being made. This is about moral issues; it is not about the bottom line in economics. Again, I have already canvassed this point, but we are seeing a real change in the employment environment in Britain; real term wages, as I say, stagnating. There have been some improvements in recent times in employment levels but the evidence is pretty clear that a lot of those new jobs are either part-time or very poorly paid. As we see, the last statistic there I think is an interesting one for homelessness lawyers, that the number of people receiving wages that fall below an accepted living wage is approaching 5 million. If you think of the number of people who are obviously dependent upon those wage earners, you start to realise just how significant a fact that is. Just looking at basic necessities, food prices have increased massively in Britain in recent times with a 22% increase. Compared with the equivalent levels in Germany and France it is almost double, particularly fruit and vegetables. It is really interesting when we are trying to make people eat more healthily that there has been that kind of increase in fruit and vegetables. There are a couple of interesting statistics there about food; they are probably not directly relevant to what we are doing but it is interesting, it seems to me, that UK experts have now said that a household budget that requires expenditure on food of more than 10% tends to suggest that they are living in food poverty. The average for Britain is 11.6% and certainly in the lowest 20% of households, who are particularly food poor, that is as much as 16%.

None of you need any reminding about the basic fact that housing costs are also increasing massively in Britain, but they are also increasing as a percentage of people's income. The generally accepted international standard is that people should not have to spend more than 30% of their income on their housing costs. The average in Britain is 41%. What is the effect of all of this? Just a couple of statistics which I think are interesting, and you may not agree, but an 8% increase in anticipated child poverty is a huge number; it is a massive increase in the number of children in Britain living in poverty and, of course, we all know about the equally huge rise in the use of food banks. You may have picked up recently that the Government's internal report into why people are using food banks indicated that it was demand led, not supply led. The argument that people were using food banks because one happened to open up around the corner is nonsense. It is there because more people are in states of food poverty. What effect is all of this having on homelessness? You probably picked up that Crisis produced a 5 year report towards the end of last year into what was happening with homelessness, really post-crash in 2008 in Britain. None of this will surprise you very much; a big increase in "visible" homelessness, i.e. street homelessness. After falling sharply for 6 years the number of people deemed to be statutorily homeless has also increased by 34% over the past 3 years, although recently the pace of acceleration has slowed down a bit. A larger number of people are being made homeless from their private sector accommodation and you will hear more from Rebekah about why that might be so. In particular Crisis has found that the welfare reforms have had

a very significant impact on homelessness. Temporary accommodation, again, after years of going down in terms of the numbers of people who are finding themselves in B & Bs and such like are going back up. So that is the context and Rebekah is now going to carry on with some of the relevant law, in particular in relation to the issues of suitability and affordability.

Rebekah Carrier: We have this slightly strange position where we have the three suitability of accommodation orders, with which I am sure you are familiar. I will take you through them because I think we need to remember that they are there even though some of them have been there for a long time. We need to remember to be looking at them at every stage so when our client is first presenting and going into temporary accommodation, if that is the route that they are choosing to take, we need to be thinking about what we have in our armoury for looking at where they are likely to be housed. That is where I think a lot of the battleground has moved forward to where people go, where people are placed when they first become homeless, because if they are moved to Hull that is it; we will not be seeing them and they will not necessarily be getting advice.

So the 1996 Order is the oldest one and has perhaps become the most important. Whether or not accommodation is affordable shall be taken into account in determining suitability and the Order specifies that financial resources including the cost of the accommodation, child support and other reasonable living expenses must be taken into account. It actually says these are points that the local authority, when determining whether or not accommodation is suitable, has to look at and I think it is useful to go back and look at the wording of that and see if in your client's particular case you can find something that you can use to run an argument on affordability. We have here an example of a weekly budget, where did we get this from Jamie?

Jamie Burton: It is from a very nearby local authority, incredibly nearby local authority, a determination on suitability of accommodation and this was deemed to be an acceptable budget for a family.

Rebekah Carrier: So nothing is included for leisure, for example. In these hard times perhaps we might be immediately thinking maybe we don't really need to have anything for leisure, but what does leisure mean? Does leisure include things like swimming lessons for the kids, taking the kids out in the school holidays? Unforeseen contingencies seems to me to be the biggest gap and the issue that is hardest for clients to think about and where we can do quite a lot of work to help present that part of the case properly. So I would think that is issues like if your washing machine has broken down you may not be able to afford to buy a new washing machine but you may have to spend money going to the launderette. Kids' shoes and kids changing school needing new uniforms are big items that are fairly likely, so I suppose they are not unforeseen but they are irregular expenditures. Medical needs; if somebody is not on passporting benefit obviously there is the cost of prescriptions which we might not think to ask our clients about. So there are quite a lot of things we can ask about that can go in and help to make the case. Does your child wet the bed? Then you need to laundry more often; that costs a lot of money. Clients do not volunteer that sort of information.

Jamie Burton: The point that quite often arises in these cases is a family who considers their accommodation to be unaffordable naturally puts forward what they are actually spending their money on, their actual costs. Quite often what a local authority will do is look at those costs and rule out those ones that they consider to be too expensive. For example you will see there £6 for mobile phones for a single parent and two teenage daughters who, of course, claim that not only do they need their mobile phone to socialise but also to stay in touch because they were going off to school and suchlike. They were also not allowed any pocket money by the way.

Rebekah Carrier: They probably need it to bid for accommodation as well, don't they? And to look for a job.

Jamie Burton: But what the local authority often does not do at that stage is ask themselves the question, what basic necessities is this family doing without because they can't afford it that they need to reincorporate into their assessment of their budget? One of the classics in that regard is, perhaps, unforeseen contingencies. People don't tend to save any money for those sorts of things when they are really, really cash strapped. People don't tend to spend too much money on leisure, people don't tend to give their kids pocket money or buy gifts for birthdays and that sort of thing but should they not be entitled to? What the law says is basic necessities and there is a serious question mark about whether or not any of those might be considered basic necessities. It is sometimes up to us to fill that gap when we are representing families on reviews or, indeed, on appeals, if you can say that the local authority failed to have regard to those matters. It is no excuse to say, well when the family told us

what they were spending their money on they didn't identify any of those things. That does not mean that they are not basic necessities; that just means that the family is doing without basic necessities.

Rebekah Carrier: When looking at an applicant's residual income after meeting the cost of the accommodation, the 2006 Code of Guidance tells local authorities that if the applicant would be left with a residual income which is less than the level of income support or income based job seekers allowance that is applicable for them then that is not affordable. So we are looking at, do your expenses bring you down? Do your housing costs bring you down to below income support levels? That is a slightly different exercise than the exercise of actually looking at what this family needs, of course. The Secretary of State also recommends avoiding "placing applicants who are in low paid employment in accommodation where they would need to resort to claiming benefits to meet the costs of that accommodation and to consider opportunities to secure accommodation at affordable rent levels where this is going to reduce perceived or actual disincentive to work." Now that sounds so out of date, doesn't it?

Jamie Burton: So an in-work family should be applying for housing benefit to top up their income to meet the costs of accommodation provided by a local authority.

Rebekah Carrier: But also the suggestion there, because it is coming from 2006, is that we should be looking at cheaper accommodation for people who are working whereas now there is this perverse incentive for local authorities to place people who cannot afford accommodation because they are on benefits in the cheapest accommodation. So we are certainly starting to see people managing to get social housing because they are benefit capped because they have a big family and therefore, literally, the only accommodation that they can afford is social housing. I think it is interesting that that Guidance has not been replaced and is still there, but it does not feel to me like it is very permanent.

So we come on to the benefit cap; now it seems to me that certainly in the geographical area where I practice you cannot even start to do homelessness work without having an awareness of the benefit cap. We had a very brief conversation, "oh, I don't need to tell people abut the benefit cap, everybody knows what the benefit cap is" and Jamie persuaded me that we should put in a slide and we should at least, in passing, say how the benefit cap works. The benefit cap is an amendment to the Housing Benefit Regulations so the detail is in Regulation. The Regulations provide that no family will receive in benefits more than the average working family's income from work. So it is currently set at £26,000 for everybody apart from single people and that sum is to be regularly reviewed by the Secretary of State, but I think there is no indication that that is going to go up; in fact I am sure you have seen in the press that they have talked about that going down. One of the points which is misleading, I think, is the use of the word "average", because actually what they mean is the median which is not what I think of as the average at all. Anyway, that is another issue.

So here we have a list of all the benefits that count towards the benefit cap, so there are two points that you need to look at to have an idea of whether your client is benefit capped. The first is what their income adds up to. I suppose the other way round there are groups of people who are exempt and I have not put them in, but broadly speaking it is where the claimant or their partner or their dependent child receives DLA or receives the support element of ESA or there are exemptions for families who have been in work. So you need, first of all, to see if your client will be exempt from the benefit cap. Do not assume that local authorities get that right because I have had clients where local authorities are saying, "you can't stay here, you've got to move, you've got to go, you've got to go to Bedford, you've got to go to Hull, you can't live here, you can't afford it." In fact, that client was exempt because she was receiving the support element of ESA. Immediately you see why this is relevant to homelessness because it is about where homeless people are living. The other reason it is relevant to homelessness is because of (g) in that list. So if housing benefit is included then anyone who is in very expensive accommodation will be benefit capped and I am sure you all have clients who have accommodation that itself costs £500 a week. So benefit cap at the moment before universal credit comes in works by reducing your housing benefit down to 50p. So if your accommodation costs £500 then will lose all of that £500 minus 50p and you will be left just with your income, but your rent will not be paid. So anyone who is benefit capped, plainly their accommodation is not going to be affordable.

So now we have a very nice little quote here because it seems to me that it is quite good to lose a case and produce some nice laws that are very helpful to the area of law that we practice in. So *JS* is the challenge brought by a number of benefit claimants to the benefit cap, which has been unsuccessful so far, unsuccessful in the first instance, unsuccessful in the Court of Appeal but we have not finished yet. But this is part of the judgement in the divisional court and it says very, very clearly that if accommodation is unaffordable because of the benefit cap you will be homeless and it

says very clearly that they don't think that you could be intentionally homeless if you become homeless because of the benefit cap. Now I think that is a very simplistic statement of the law, a statement of the current position with homelessness law because you can think of so many circumstances where somebody might end up in unaffordable accommodation and might not be able to get homelessness assistance. This comes from a passage in this case in the judgement where the Court basically said it does not really matter if the benefit cap makes people homeless because local authorities will have to house them anyway. I think that we all know that for years, for example, families who are intentionally homeless are likely to have received support in getting private rented accommodation so they are in private rented accommodation; they are there because they were intentionally homeless and that private rented accommodation is unaffordable. If you are in most of London and have three children and you are not working then you are likely to be benefit capped, because local housing allowance rates will leave you benefit capped. So it is not only people with very large families and it isn't only people in temporary accommodation.

But you can imagine, what would happen then? You are in that accommodation, it becomes unaffordable because of the benefit cap and you have a prior intentionality finding. There are lots of scenarios that I think we can imagine which would show that this is not the answer to every bit of homelessness caused by benefit cap. But it is, I think, something that is just starting to happen because the DWP have to tell local authorities to apply the cap. Most of the clients that I have worked with in a number of different authorities across London have had the cap applied very late, so I have a lot of clients to whom I can say: "I can see you are going to be benefit capped, we need to get you out of there, we need to do a suitability review, we need to say it is not affordable. You need to make a homelessness application if you are in private rented accommodation. Is it accommodation that is reasonable for you to continue to occupy? If you can't pay for it because of the benefit cap, let's make a homelessness application." But it is being slow to be applied so I think there is actually a bottleneck of all these people who are just starting to be benefit capped and there is a lot of delay in benefit capping them.

Also when people have become homeless and move into temporary accommodation it is clear that at that rent they will be benefit capped, but there is another hitch in the system because it has to go on a list to the DWP who then send a list back to the local authority who then have to apply the cap. So we will be seeing all sorts of different scenarios where clients will be in real difficulties, not just that the benefit cap will reduce their income but they will be homeless or unable to afford their accommodation. We should not, actually, confine ourselves to thinking about the benefit cap because, of course, there are similar arguments for people affected by earlier housing benefit reform, such as the local housing allowance which has gone down to the 30th centile or under 35s who can only get the shared accommodation rate. So there are many other circumstances where benefit changes are leaving people unable to pay for their accommodation.

The 2003 Order was designed to reduce, cut and prohibit the use of bed and breakfasts for families, so it defines those people for whom bed and breakfast accommodation is not usually suitable as applicants with family commitments and the definition is fairly obvious; you are with children. But it also defines bed and breakfast in a way that I think local authorities have moved to get around because the definition of bed and breakfast accommodation is accommodation which has shared bathroom, kitchen or washing facilities. So many of my clients say to me, "Oh, I'm in a hostel, I'm in a B & B, I'm in a hotel." "Oh, that's okay because you can't stay there for more than six weeks because you've got a baby" but in fact, when they then describe their hotel accommodation they are in one room with a cupboard with a toilet and a shower in it and another cupboard with a cooker in it, so they are not in B & B accommodation. I think one of the issues that we need to consider is how we make the cases for clients living for quite long periods of time in that sort of accommodation as to whether or not that is suitable. In any event, if they happen to be sharing some of those facilities then they are not supposed to be in bed and breakfast accommodation unless there is no other accommodation available and it is an emergency, and then only for a period of six weeks. But again, I think there have been various Ombudsmen's reports about the increasing use even of this sort of B & B accommodation which is supposed to be prohibited. Of course, this particular kind of accommodation is particularly expensive and is therefore particularly likely, also, to be unaffordable. We should also therefore be looking at DHP at the point that our clients are going into temporary accommodation, because if we are seeing that it will be unaffordable we should be saying, "Right, where are you going to go to get help to complete your DHP application?" It is worth pointing out to the local authority that it is open to them to make all sorts of different decisions on DHP that they are not usually making. So there is Guidance which specifically says that they can determine DHP applications in advance, so if you know your client is going to be benefit capped you can write to the local authority saying, "Can somebody help them apply for DHP and please can you determine this in advance of the application

to cap because when the cap comes it will be £500 a week and after a month they will be £2000 in arrears." So we need to factor that in when we are also looking at hotel accommodation and how expensive it is.

Jamie Burton: So this neatly fits with the question of location because, of course, the unaffordability of accommodation often means that local authorities have to try and find accommodation outside of their borough or, indeed, sometimes very far away from their borough. But that accommodation still has to be suitable, so we just need to remind ourselves what the law says about out of borough placements. There are really three pieces of law which are relevant in that regard, or at least three. One is Section 208 of the Housing Act 1996, one is Regulation 2 of the Homelessness (Suitability of Accommodation) (England) Order 2012 that Rebekah just alluded to and then there is a specific paragraph in the Supplementary Guidance to that Order which I will deal with in due course. Dealing with the first, Section 208; it has obviously been on the statute book for some while and it says that insofar as it is reasonably practicable the respondent must secure accommodation within its district. So the "must" is somewhat offset by the reasonably practicable but what does that actually mean? Well, there is a nice quote in the case of *Calgin* 2005. "There will be a discretion given to the authority (that is about whether or not to make an out of borough placement) but there must be a proper evidential basis for determining that the provision of local accommodation is not reasonably practicable. It is important that an authority bears in mind that the requirement is not simply what is reasonable but what is reasonably practicable, which is a higher test." Now that point about having a proper evidential basis has morphed for us lawyers into what normally looks something like this; the local authority including in their 202 review decision letter when making clear that the accommodation is suitable a passage at the end that says, "I am also satisfied that it is not reasonably practicable to provide you with accommodation within the borough". Then you bring a ground of appeal which says we don't necessarily accept that and prove it based on that quote in *Calgin* and indeed a couple of other authorities. Unfortunately, the local authorities now find it very easy to prove fundamentally because they provide a list which says this is the number of people on our housing waiting list, this is the amount of affordable accommodation within our borough; the two don't match up; we have to go elsewhere to find accommodation. It is incredibly difficult to unpick that type of evidence not least, of course, because the local authority really has exclusive possession of the material from which that evidence is developed.

Rebekah Carrier: It is nice to see that in juxtaposition to their position when they say you can go and find your own accommodation because there is lots of accommodation available. Your housing option is to find it yourself.

Jamie Burton: Related to that is the argument that local authorities say, and we will develop this a bit further, that it is not simply the case that they can go and look at what accommodation is available generally in the private rented sector but there are also very strict requirements about providing suitable accommodation, which means they have to obtain accommodation from their identified providers. Now, of course, those identified providers happen to all be quite far away from their borough and then they say it is simply not reasonably practicable to spend individual effort, if you like, researching the property market to try and find something else within the borough.

The 2012 Suitability Order has tried to give some meat to the bones to the idea that providing accommodation in a location that is suitable requires local authorities to go through a number of specific issues mentioned in Regulation 2. Most of these were pretty well established, one might think, in the common law anyway but some of the language used is interesting. I won't read it all out now but if any of you are not familiar with it, as soon as you get a suitability case which has a location element to it, turn up Regulation 2 and see whether or not you can make anything of it to try and develop a case as to why you say the particular accommodation offered to your client is not suitable.

Paragraph 48 of the associated Guidance is quite an interesting one. It won't be interesting for very long, I suspect, because I gather the Court of Appeal is considering a particular case concerning an allocation of accommodation in Milton Keynes from another extremely proximate London authority. But what does 48 say? Well, it says, "where it is not possible to secure accommodation within district and an authority has secured accommodation outside their district" so the first point is this paragraph only kicks in when we are in a 208 case where it has already been accepted that it is not reasonably practicable to provide accommodation within borough. "The authority is required to take into account", we all know what that means in public law terms, "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." So there we see what essentially amounts to the following reasoning: even if it was not reasonably practicable to make available accommodation in, let us say, Westminster, and a particular property, 92 X Road, not in Westminster was otherwise suitable for the appellant's needs it was not, absent a "justifiable reason", lawful of the Respondent to offer 92 X Road as being suitable accommodation if suitable alternative temporary accommodation nearer to Westminster was available. So that is quite interesting. You might have a case where accommodation is offered outside of the borough which, even when you look at the requirements of Regulation 2, is suitable in the sense that it is a decision of the local authority which is not irrational or otherwise challengeable, but is nonetheless unlawful if it can be shown that accommodation that is otherwise suitable, including being affordable of course, was simply nearer because this dovetails with Section 208.

Once you have decided that it is not reasonably practicable to provide accommodation within borough then the only constraint otherwise for Paragraph 48 and what accommodation you offer is normal terms of suitability. We all know the kinds of points that local authorities come up with; you don't need to be in the same city as your relatives, you can use Skype, for example. You don't need to see your relatives three times a week; you can see them twice a year or something like that. They can really stretch that concept of suitability. But potentially it is all blown away if you can show that, in fact, otherwise reasonable and suitable and affordable accommodation was available which was nearer the subject borough. The other point that might be made is that can we, by analogy with the principle in *Calgin,* say that in order to satisfy Paragraph 48 the local authority must be able to provide an evidential basis for it because, arguably, and this is only arguable for the time being I suspect, this requires a more bespoke or individualised assessment of the availability of accommodation than Section 208 does. Because surely a local authority, if it was to properly have regard to whether or not there is a justifiable reason not to provide accommodation which is nearer to the borough than the accommodation they have actually secured, needs to know whether such accommodation is indeed available in the first place. Otherwise what they are entitled to do, and indeed they are arguing they are entitled to do, is simply use the reasonably practicability type of test to say, "Look it is not really open to us to start searching for accommodation that is nearer. Once we have decided somebody can go out of borough we do what we always do; we see what accommodation comes up, we match them to it and off they go. We don't then ask ourselves the question at that point in time, is there something else available that might have been nearer but we are duty bound by virtue of Paragraph 48 to give to that applicant subject to having reasons one might argue that are specific to that particular piece of allocation, such as to mean that they are justified in not allocating it to that individual. So, again, there is something that one can perhaps play with there. Obviously it is difficult to always assert that such accommodation is nearer but you can do things here. You can think about trying to obtain your own evidence. You can even think about doing an internet enquiry and finding if there is private sector accommodation which plainly was nearer than Milton Keynes, for example, to Westminster which plainly was otherwise affordable, which plainly was otherwise suitable. Local authority, why aren't you providing this nearer accommodation in Lambeth or Southwark, say, why are you forcing me all the way to Milton Keynes?

Rebekah Carrier: So a little bit of audience participation now. We have some headlines here, so on this day The Sun was interested in Bradley Wiggins being knocked over by a van driver and The Guardian was concerned about the Tories wanting Cameron to bring in more press regulations, and various other things. But who know what day this was and why it is important? ! might now tell you the date. It is 9 November 2012. I was hoping someone would remember all those things happening. So you probably do now know why it is important and if you don't, you need to. We have a slide here which actually fits well with the talk about discharge into the private sector. I wanted to have here a nice little slide I was trying to make from Tripadvisor with its review of the services at Heston Motorway Services on the M4. The reason I wanted to do that was because in the last month I had a client with five children who was given accommodation on a motorway service station on the M4 and actually also did not have any money. There were no cooking facilities and I just can't get away from the idea of his kids playing in the sandpit on the motorway service station.

So, more generally, of course, we have talked a lot about specific things which particularly focused on homelessness. There are a lot of points in the Localism Act which are relevant to homelessness work but I will not talk about them in any detail but just run through them. Security of tenure, of course the Localism Act brings in flexible and fixed term tenancies, abolishes security of tenure really for local authorities who want to abolish it. So I think the reason that is relevant to homelessness is that if you have a client who is trying to decide where to apply for accommodation, one of the points that I would want to know if I was deciding where to go was what sort of accommodation was I going to end up with. Wouldn't it be a relevant factor whether you were going to get a nice secure tenancy or a one year introductory tenancy followed by a five year tenancy and what was going to happen then. If you

had a child who would no longer be a child in five years' time you might think twice about whether the best authority for you to apply to was the authority which gave flexible tenancies. Although I have to say, it is quite hard to give any meaningful advice about that because we don't know what other local authorities will do in the future and we don't know, of course, if a homelessness application is ever going to lead to an offer of social housing any more.

We also need to know what is happening locally and that relates back to the Localism Act, because the big news on 9 November 2012 was that anybody who made a homelessness application after that date could have the full Section 193 duty, assuming that was accepted, discharged by an offer of private rented accommodation. Certainly where I work one of the neighbouring authorities is Enfield and I know that Enfield's policy is to make an offer of private rented accommodation to every accepted homeless family as soon as possible and not even let them join the housing register. So if you were choosing whether to apply to Enfield you would want to know that the consequence of a successful homelessness application in Enfield was assistance in finding private rented accommodation. This does actually mean that in some ways we need to rethink what we call a homelessness case and how we approach homelessness cases because it does change the focus of what we are talking about. Because if we have someone who is maybe intentionally homeless we might say, "Well, we don't think you should leave your assured shorthold tenancy because we are not sure if that deposit, safeguarding information, quite complies with the SI and if you leave before you have to the local authority might find you intentionally homeless. What will happen then? Oh well, you might get help finding private rented accommodation." "Well what if I wait and get a finding that I am not intentionally homelessness?" "Oh yes, you'll get help finding private rented accommodation." It is a different decision-making process for your client.

The other points about the Localism Act that are worth signalling before we go on to private rented accommodation and back to suitability are that the reasonable preference criteria in Part 6 of the Housing Act 1996 are retained, so the fact that the Localism Act has led lots of local authorities to re-write their allocation policies to exclude swathes of people who are in reasonable preference categories does not mean that it is lawful for them to do that. Where it takes you is a different question but I think we need to remember that homeless people are still supposed to be given a reasonable preference and if you are not allowed to join the housing register it is hard to see how you are given a reasonable preference, but there has not been that much success in the Courts in following that argument yet. The other point, I think, is that we that we do need to be alert to other ways that clients could solve their housing crises so, typically, to somebody fleeing domestic violence we might have to say, "Oh yes, it's not reasonable for you to occupy that accommodation because plainly you are at risk of violence there and an injunction might sort you out, but if you do that you'll never get moved and do you really want an injunction when I can plainly get you a Section 193 duty?" If the property that the violent partner is living in is a council property and if a Section 193 duty is going to lead to help finding private rented accommodation it might well be that your best place is saying "I think you need to go and see my colleague down the road who can talk to you about getting an occupation order, getting him out, getting you in and also, if you might be benefit capped, getting you some maintenance because that doesn't count towards the benefit cap." So I think it is the same story; we need to be knowing the whole of the landscape that these homelessness clients or homelessness applications are appearing in.

So we have the 2012 Regulations. Jamie took you through Regulation 2, so Regulation 3 talks about a whole list of issues that the local authority has to be satisfied about with regard to this accommodation that is being offered as private rented accommodation; whether the accommodation is suitable. We need to revisit issues such as knowing about affordability, knowing about Regulation 2 on locality and look at time and time again at these Regulations because there might be something there that helps the particular client. So there are points about landlords; the local authority has to make sure that the landlord who is offering this private rented accommodation to discharge the duty is a suitable person and they have not supposed to have contravened any provision of the law relating to housing, including landlord or tenant law. It may be that it is very difficult for us ever to know that a particular landlord has contravened any provision of the law relating to housing. On the other hand, it may be that we have that information quite readily available because it might be the private landlord who we just happen to have had an unlawful eviction case against last year or even a disrepair case, because Section 11 is a provision of the law. So don't discount looking at the provisions of Regulation 3 about the landlord themselves. It is also the case that the landlord has to provide a written tenancy agreement and I think it is worth asking local authorities if they have actually seen the written tenancy agreement because I don't think we should assume that they always have. The Regulations provide some meat for us but so does the November 2012 Guidance which we also looked at earlier on. So there are a couple of paragraphs that we thought were particularly potentially useful. So paragraph 62

of this Guidance says that authorities should ensure that the property has been visited by either a local authority officer or someone acting on their behalf to determine its suitability before an applicant moves in.

Jamie Burton: Not the landlord, one might think, someone acting on their behalf, just be careful of that.

Rebekah Carrier: I think it would be naïve of us to assume that local authorities always do that and, of course, if they have visited it there should be some evidential trail. They should be able to show you exactly who visited it and I think it follows on from that that if they are visiting they are visiting for a purpose and they are visiting to make sure that the property is suitable having regard to both the Guidance and the Regulations. So the Guidance also, at paragraph 63, tells us that in determining whether the property is in a reasonable physical condition the local authority should pay attention to signs of damp, mould, indications that the property would be cold, for example cracked windows, any other physical signs that would indicate the property is not in a good physical condition. We had a little bit of debate about this. I think we would all usually say to clients disrepair doesn't make an offer of accommodation unsuitable; you have a remedy, it is suitable. But we may need to be revisiting some of that, particularly if there is nothing else we can do, to challenge offers that are not suitable for other reasons, but the condition of the property is something the local authority is supposed to have looked at. I think in practical terms it is another reason why you should always encourage your client to go and view the accommodation. Even if they are saying, "I am not moving to Milton Keynes" if there is a way of them going to see the property that is being offered in Milton Keynes they can take photos and we can see its condition.

Now the next slide comes from a local authority's file, I do not know why it is called Certificate of Supply but it seems to me that this is an example of the sort of record keeping you might see by a local authority designed to show that they had made sure that the property that they were offering was suitable. If you look at it, do we think that that demonstrates adequate inspection of the property? I suppose it might but if you look towards the bottom of the page it says, *Property and all furniture meets current fitness standards, yes. Any outstanding repairs, no*. Would you like to see some photos of this property? This is a nice one, there were lots of these but we thought we couldn't have hundreds of pictures of mice!

There were also requirements that the furniture is supposed to pass fire tests. If furniture is provided it is supposed to be fit for purpose or condition. It is certainly supposed to have passed all the relevant tests. So I don't think we should assume that a tick box has done it, so if a client goes and takes photographs then you have some fairly good evidence which you can at least start to work with. I am not suggesting that any of this is easy but they are things that we need to be thinking about.

How do we go about framing suitability review requests or providing evidence on suitability reviews? This is for the same accommodation that you have just seen some photographs of and what we have here is a suitability review request that was not produced by me or any of my colleagues but that had, unknown to my client, been produced by an advice agency before she came to see me. She did not even know they had made this request. This suitability review request gives a little bit of information about the client's personal circumstances but note, she has eight children and that should tell us something immediately about what is likely to be a risk for her in terms of how she will get suitable accommodation, bearing in mind it has to be affordable. It talks about her health problems; the fact that there are 12 to 13 internal stairs with bedrooms at the top and she has problems navigating the stairs. Her kids can't use the bedrooms at the top of the stairs. The accommodation is in the next door borough, too far from central support. She can't get the help from her friends with her shopping, she needs more help, problems with the toilet. "We know you have got a terrible time, we know you haven't got very much accommodation but she should not have indoor stairs and please take account of Article 8 and Section 20 of the Equality Act." You may think, unsurprisingly, the local authority said, "Yes, well, right, that doesn't sound like the sort of review request that is going to succeed, does it?" So a fairly standard response; we recognise her circumstances, her mental illness isn't diagnosed, she is not seeing a psychiatrist. She said on her form she could climb stairs, the support isn't too far away and that is right, it is just in the adjoining borough. There is a nearby bus stop, the kids are old enough to manage upstairs without supervision and that is the sort of thing that we should be thinking about rewriting. The children can't be upstairs without supervision; let us check first of all how old they are. They are all teenagers. It is a house and that is mostly the sort of temporary accommodation we have and yes, so what about her Article 8 and Section 20 rights? What have they got to do with it?

So I thought it was a good example because it is showing how there are many things that we can do if we prepare our cases properly. So in fact, how else might that case have been approached? So the rent is £380 per week and she had eight kids so it will not be affordable and she is not working; she is not exempt from the benefit cap, she is going to be benefit capped and she is not going to be able to afford that accommodation. This is why I say I think there is a bottleneck of a whole load of crises waiting to happen, because she can't live there because it is not affordable but there isn't anywhere in the United Kingdom where she can live with her eight kids because there isn't anywhere that has accommodation that cheap. In any case this rent is not affordable. Those are actually her own photographs but I have had an EHO go into that property and he has reported that "the accommodation is statutorily overcrowded" and we all know that is quite high standard. The accommodation is furnished but the beds are broken and there is no working cooker. As we have seen, there is mice infestation and I can tell you there are lots of awful pictures of the mice. Significant disrepair throughout the property, traumatic, penetrating and condensation related damp, statutory nuisance and a large amount of Housing Act 2004 hazards. So actually there is a huge amount there that can be used to challenge the decision that that accommodation is suitable. I hope that demonstrates that we need to be trying everything we can, looking at all the different resources we have available, thinking about how we build up the evidence. There is no reason why the Legal Aid agency won't pay for you to go and get expert evidence about the condition of the accommodation that is supposed to be suitable. Once you have seen photographs like that you might think you don't need expert evidence, but it was pretty obvious that the expert evidence was going to be really persuasive and really quite moving. That house was one of the worst reports that I have seen in many, many years and yet it is accommodation that is being provided by the local authority and supposed to be suitable. So there are some ideas about suitability.

Jamie Burton: That was the main part of what we wanted to talk about which was to try and tackle the emerging financial crisis and how one might approach suitability and location questions with a view to try to at least have something to say. Because as local authorities find themselves increasingly forced into very difficult decision making, they are affected by these rules like anybody else and they will be forced to make increasingly extreme decisions. We will have to accept that we might not be able to rely on the judges to accept our submissions that an offer of accommodation like that is just inherently perverse or unreasonable. You still have to unpick precisely why you say it is and you still have to try and rely on conventional grounds to establish why a local authority, for example, hasn't sent somebody to go and look at the property, hasn't actually checked whether or not all the furniture in the property is useable, hasn't actually established a proper evidential base for showing that accommodation which was nearer shouldn't have, in fact, been provided instead even if the accommodation you've been offered is ostensibly suitable.

There is something a little similar potentially developing in the next subject which is priority need, in particular in the case of *Johnson v Solihull MBC* and a principle which has developed as a result of that case. As I understand it, the Supreme Court might be asked to look at it if the LAA will be sufficiently generous in due course. So Mr Johnson, who was a heroin addict and ex-prisoner and persistent offender in fact, was essentially trying to make good; he had been abstinent from drugs for some period although had had a recent relapse at the time of his review decision. He had spent long periods of time in prison at, of course, great cost to society and had approached the local authority on the basis of saying, look I am a drug addict, when I am using drugs I commit lots of crimes and I end up in prison. I am trying to get off drugs but one of the most important things I need is a place to live. As we all know, and there areareams of evidence for this, homelessness is one of the direct causes of relapses into drug addiction. The Court of Appeal rejected the argument that was run on behalf of Mr Johnson, which was to say that the relevant comparator for the *Pereira* test was not in fact the ordinary homeless person but an ordinary person who is homeless. Of course that was directly relevant here by virtue of a finding made by the reviewing officer who said, essentially, the vast majority of street homeless people have drug problems, therefore you are no different from them and therefore you are not likely to suffer any greater harm than them if you are street homeless, i.e. a relapse into drugs and therefore you are not vulnerable. Indeed it is pretty obvious, I am afraid to say, that the Court of Appeal's conclusion is probably consistent at least with the literal meaning of the words that were used in *Pereira*. The words are "ordinary homeless person" and therefore the Court of Appeal thought it acceptable for the reviewing officer to try and decide and gauge what the ordinary homeless person looked like and what kind of frailties or vulnerabilities he or she would commonly suffer from.

But I consider it to be very dangerous and one of the great advantages about giving a talk to lawyers rather than being in Court is one can use hyperbole like the "death spiral" because this is what I think this might lead to. The more people, obviously, who have features of vulnerability who are rejected for

housing the more such vulnerable people are homeless and on the street and this becomes a self-perpetuating story, of course. We see that the general standard of an ordinary homeless person gets worse and worse and worse and that means the category of person who can establish that they be more vulnerable than the ordinary homeless person gets higher and higher and higher and it becomes increasingly difficult to establish that. It is worsened, it seems to me, by the acceptance in the *Osmani* decision which many of us rely on as being a positive decision in priority need cases because of the fact it made it abundantly clear that local authorities must approach the exercise in comparison on the assumption that the applicant is, in fact, street homeless. That when making determinations about vulnerability and priority need it was accepted that it was a "highly judgemental" exercise, not least because the local authority was "charged with local application of a national scheme of priorities put against its own burden of homeless persons and finite resources." Now what has the local authority's finite resources got to do with this question? Whether somebody is vulnerable or not in comparison with the ordinary homeless person cannot change simply because the local authority won't be able to do anything about if they have to find that person vulnerable. In other words, they won't be able to do it if they haven't got accommodation to provide to them. But is perhaps relevant in a perverse way because the less accommodation the local authority makes available for homeless people within its district, the more such people will in fact be homeless, the more such people will in fact be street homeless and almost by definition one might think that that is going to have implications for, if you like, the characteristics of homeless people and the extent to which they might share vulnerabilities.

So how do we spiral stop or stop the spiral or some other silly phrase? Well the first point is a question about evidence. The reviewing officer in this decision didn't simply assert that homeless people were more likely to have drug problems but he used a report which showed that 92% of homeless services are involved in dealing with drug issues and the more you think about it the more you think, what on earth has that got to do with it? That could mean any number of things. That could simply mean that money which is available to fund homeless services tends to go towards those services which help people who have drug problems. The mere fact that people who are homeless and also have drug problems use up a disproportionate amount of homelessness services does not mean the average homeless person has a drug problem. Indeed, to her credit Lady Justice Arden acknowledged a problem with the evidence which did not in any way show that the average homeless person had drug problems on anything like the scale that Mr Johnson was suffering from. But there was nothing at all, either before the reviewing officer or indeed before the Court, to gainsay the basic principle, or if you like, the basic observation that had been made by the reviewing officer. It was really put forward in a rather blunt way and it was dealt with in a rather blunt way.

So there may be an opportunity here for us to start thinking more about what we can do about evidence in the context not only in fact, one might say, about priority need and vulnerability but generally in homelessness appeals. There is a sense that because an expert report, for example, or some other such evidence wasn't available to the reviewing officer it is completely irrelevant on an appeal. Well there might be ways around that; you might be able, for example, to point to well publicised, well acknowledged public reports about what it is in fact like to be homeless in Britain. Whether or not people do intend to have drug problems, whether or not in fact it really is true as some reviewing officers wish to say that everybody who is homeless must be depressed and therefore the mere fact that you are depressed doesn't make you vulnerable, irrespective of the reasons why or the scale of that depression or whether or not you have ever been street homeless before and you might simply not be able to cope with it on that basis alone. So the first point we need to start thinking much more imaginatively is about evidence in this context. If local authorities are going to be permitted which, of course, why should they not be, to rely on evidence that is out there which informs their opinion as to what an average homeless person is indeed like, then we should be in a position to think about that evidence and either try to unpick it or make observations about it so as to suggest the conclusions that are being drawn from it might not necessarily be correct or, indeed, try and obtain our own evidence.

Another little reminder of a statutory provision here which has just about survived is Section 3 of the 2002 Homelessness Act, which requires local authorities to devise a strategy that ensures there is sufficient accommodation available within their local authority for homeless people, but that is not just homeless people who have a priority need and otherwise are entitled to accommodation pursuant to Section 193. There is a duty on local authorities to try and ensure that homelessness does not get out of control in their district. They are supposed to take steps to try and pre-empt it and try to deal with it when it arises, so be wary about a local authority which relies too readily on the comments in *Osmani* about the extent to which they can point to the situation in their own borough, the state of general homelessness and the general lack of available accommodation as justifying imposing a very high threshold in effect when assessing vulnerability.

There is another decision which people might want to read, it concerns a very well known phenomenon which is where an ostensibly able bodied male reasonably young homeless person applies for accommodation at a homeless person's unit and their 184 is produced after an hour long interview, if they are very lucky, with the housing officer. The housing officer says, well you look alright to me, you haven't been in a psychiatric hospital before, there is no reason for me to assume that you are going to pass this very high threshold I have now got lodged in my mind as to the kind of people who I am going to accept as being homeless. Anthony Thornton QC, a judge in the High Court, because this is a 183 Mohammed judicial review, is pretty scathing about why that is so completely wrong. And also goes perhaps a little further than the law really requires by suggesting that although the applicant in that case was a refugee, a former asylum seeker who had been accepted as being a genuine asylum seeker where there was some evidence he was completely isolated in the UK and had been given no support whatsoever, had no family and may be suffering from PTSD, this simply was not enough even necessarily to make the kind of basic medical enquiries and that a psychiatric report might actually have to be obtained. So it is quite a good read and one can pick out some useful points in dealing with 184 decisions which are defective. The relevance of that comes strongly into play when we look at Regulation 8(2)

Local connection; there is a decision of *NJ v Wandsworth* which is a Court of Appeal decision which rejected a suggestion that NJ, who had escaped very serious domestic violence in Leicester, had run away to London, effectively, and accepted the first offer of a place in a refuge that was made to her. That refuge just happened to be in Lambeth. After 6 months of psychiatric counselling and treatment and getting over the trauma of what really was horrific domestic violence, NJ and the counsellors and people at the refuge felt she was able to move back into mainstream accommodation. She made an application not to Lambeth but to Wandsworth on the basis that that is where she had the beginnings of a support network and that was also where her young daughter wanted to go to school. Wandsworth said no, you have to go back to Lambeth because that is where you have a local connection because your residence in Lambeth was of choice. In effect the Court of Appeal didn't like that argument, they disagreed with the first instance judge and found that, effectively, because NJ could have, instead of going into the refuge said, well actually I'm not going to do that, I'm going to go and make a Part VII application to a local authority and go into temporary accommodation under 188, that made her choice to go to the refuge and therefore that made her choice to go to Lambeth a choice she had made freely for the purposes of the Act and therefore she had a local connection with Lambeth.

The Court of Appeal distinguished her circumstances from those which were prevalent in the asylum seekers case in *Al-Ameri* where the choice for those asylum seekers was either go to Glasgow where NASS was going to provide them with accommodation or get nothing from the state. The Court of Appeal felt that that situation was qualitatively different which, no doubt, as a question of fact it was but the question was whether or not the principle about choice was broad enough to encapsulate the type of choice that NJ had been required to make. There are a couple of points to consider in that regard, for example, what happens when somebody is told by their employer that if they don't move to another part of the country because they are being placed there as part of their work they are not going to be employed any longer because they will be made redundant, and they feel forced to accept that two year placement, say. That job then comes to an end and they find themselves homeless in a place of the country they have never been to before and the only reason they went there was because their job required them to go there. Does that mean their residence there was of choice?

That aspect, of course, of that appeal failed but the other aspect of it succeeded and that was a Regulation 8(2) point. What had happened in this case was that, in effect, NJ had said that she could not live in Lambeth because she was at risk of violence in Lambeth because she felt the perpetrator of the domestic violence who, of course, had previously been in Leicester had discovered the fact that she was in Lambeth and she put that forward in brief terms at the 184 stage; the local authority rejected it with some reasons. There was then produced a really excellent review submission letter by NJ's solicitor which set out in far more detail and in a far more persuasive way why that conclusion wasn't a sound one and that, in fact, she was at much greater risk of domestic violence in Lambeth were she required to remain there than the local authority that Wandsworth had previously considered. In so doing, making that very thorough submission on the review, NJ's solicitor identified a couple of facts that were effectively new and some of them had occurred after the 184 letter. There weren't necessarily of themselves that persuasive, but taken together they might have suggested that the risk in Lambeth was greater than Wandsworth had accepted. The review decision, which was ultimately produced without the benefit of a minded to letter first dealt with the question of whether or not NJ was at risk of violence in Lambeth over some two pages whereas the 184 decision had dealt with it,

effectively, in a single paragraph. So it was argued on behalf of NJ that a minded to letter was necessary, because otherwise NJ had no opportunity to engage with the reasons why despite the very full and thorough submissions that had been made on her behalf. On the review it was considered that she would not be at risk of domestic violence in Lambeth and she had something to say about the conclusions that had been drawn and the statements that had been made, so the absence of a minded to letter had denied her that opportunity. The Court of Appeal agreed, as indeed as the first judge did, and said that was the right kind of territory for a minded to letter to be provided because there was clearly a deficiency or irregularity in the 184 decision.

Now that comes from a principle that was developed in an earlier case of *Banks* in 2008 which says that when a local authority is considering whether or not the 184 has a deficiency or irregularity, in effect, to paraphrase, they have to do that with the benefit of hindsight. That means new matters which arise after the 184 but clearly are relevant to the issues at stake and require consideration and could not by definition have been dealt with at the 184 stage does not necessarily mean that a reviewing officer can decide that the 184 decision letter did not suffer from a deficiency or an irregularity. Because the test of deficiency or irregularity is not based on some sort of error of law; you don't have to show that it was bad at public law because the reviewing officer failed to have regard to a relevant matter. You simply take the facts, in effect, that are known at the review stage, you compare them back to the 184 and you say, does that 184 in some way deal adequately with the facts as known at the review stage and if they don't there is therefore a deficiency or irregularity in the 184 and a minded to letter is necessary. It is clearly a purposive interpretation of the Regulation and it is designed to protect that very important safeguard that an applicant should always have an opportunity to comment, not just on the decision but the reasons for a decision and particularly the reasons why an assertion made by an applicant has been rejected.

In a slightly more recent case, in fact it comes from the other day, *Naima Mohamoud v Birmingham City Council* was an argument that the *Banks* principle only applied to facts that had arisen after the 184 and before the review decision and therefore could not by any means have been raised before the 184 decision. That was rejected and that *Banks* was broad enough to encapsulate the sorts of facts that might only have come to the attention of the local authority at the review stage even though they in fact happened before the 184. The argument on behalf of Miss Mohamoud was that she had been very confused at the time she had rejected her offer of accommodation and that that should have been taken into account and the local authority decided on review to discharge its decision. They accepted that principle but they didn't accept that they had to send a minded to letter explaining why. Although Miss Mohamoud had contended she had misunderstood what was happening that did not mean the local authority had acted unlawfully in discharging duty. The only slightly difficult issue in *Mohamoud* is that Regulation 8(2) as we all know is a bit of bête noire from the point of local authorities, who find it very cumbersome. It was suggested in the Court of Appeal that if the reviewing officer had been able to say that the contention made by Miss Mohamoud that she had been confused at the time she had rejected her offer of accommodation was inherently implausible, then there would have been no deficiency or irregularity in a 184 even on the with hindsight test and therefore the local authority would have been entitled to not send a minded to letter. Which does seem to me to simply reverse the principle to some extent because how is a local authority to conclude that the contention is inherently implausible without providing some reasons why they have taken that view. If they have some reasons for it that suggests that there might be, possibly, some counter-reasons as to why that view is not a sound one. If they might be in scope for counter-reasons then it seems to me that you might be in the territory of Regulation 8(2) because why should that particular applicant not have the opportunity to come back on those reasons and say, no it is not inherently implausible; it is very much plausible and here are the reasons why. So there are still some territory for battle, it seems to me, in relation to Regulation 8(2).

Just a couple of further points that we felt we should mention because of recent developments which may become relevant to homelessness. Some of you may have picked up that there is now new Guidance, albeit it is issued to housing benefit departments, about how it is that an EEA national can establish that they are a worker for the purposes of EU law and in particular so as to show that they have a right to reside in the UK. The test is as set by the ECJ that their work should be "genuine and effective". This Government has said that work should only be considered genuine and effective where the person has been working for three months at least and earning at least £150 a week, which is not, of course, an insubstantial amount of money, particularly if they are working part-time. Now it is clear and it must be said that the Guidance does not say that that is the only way in which somebody can establish whether or not they are in genuine and effective employment but it is certainly a strong steer towards finding that they are not unless they meet that minimum earning threshold. We will look forward to seeing what the Courts make of that when the inevitable discrimination challenge is raised.

A general point that we all need to think about PSED. We all know the *Peretti* decision; it is quite an important decision. It has somewhat reversed the decision in *Cramp* about raising certain specific medical enquiries at the review stage and whether or not a failure to raise specific issues like obtaining a psychiatric report means a local authority can never have acted unlawfully in not obtaining such evidence. Of course, *Peretti* reversed that to some extent and made very sure that through the auspices of the public sector equality duty it would always be incumbent on a local authority when it appeared that, for example, disability might be relevant to one of the issues before the local authority that they should obtain evidence and take pro-active steps to establish whether indeed that person has a disability for the purposes of the Equality Act and whether or not it does indeed impinge upon the decisions they have to make. As you all know, the Equality Act and the PSED rather, applies to every single function carried out by local authorities and that includes every single decision made under Part VII of the Housing Act. What one just needs to keep in mind in particular is that at moments of discretion like, for example, where a local authority decides that although you meet the requirements for a referral to another local authority on the basis that you have a local connection, it is still a discretionary decision as to whether or not you do in fact refer. Therefore, when you are exercising that discretion you must have regard to the public sector equality duty and ask yourself the question whether or not the decision to refer, for example, a woman who suffered domestic violence and has only ended up in the local connection prism because she was forced into a refuge really ought to then be required to move to a local authority where she does not wish to live. Then you then have to ask the question whether or not that is consistent with the stated goals as established in the public sector equality duty.

Finally, just to remind you all that the Supreme Court is due to hear the appeal in *CN v Lewisham* soon, which is the latest decision of the Court of Appeal which says the principle that interim accommodation provided under Section 188 does not constitute accommodation let as a dwelling and therefore does not enjoy the due process protections of Protection from Eviction Act 1977. Of course, what effectively that argument amounts to is that post *Pinnock* and *Powell* it is no longer acceptable to say that potential judicial review is enough of a decision to terminate temporary accommodation and that the basic requirements of a court order are necessary before a local authority can seek possession of interim accommodation. An ambitious argument and we shall have to wait and see whether or not the Supreme Court agrees with the claimant in that case.

Chair: We have time for a couple of questions.

Nik Nicol, 1 Pump Court Chambers: I would like to make a couple of points. Firstly about the disrepair of suitable accommodation, normally I think we have said that disrepair does not make it unsuitable but that has been on the basis that the landlord has been a local authority and it would be difficult to argue they are the kind of landlord who won't repair, despite obvious problems with local authority housing stock. Whereas, in this instance the lack of repair will be indicative of the nature of the landlord and you can say that it is unsuitable to move in because there is disrepair. In the example you gave perhaps that is the case, but others might be more borderline but because this is clearly the kind of landlord who can't be trusted to look after their tenant properly.

What I really wanted to comment on, though, was the use of statistics to define the ordinary homeless person. In *Johnson* one statistic was used in passing and, I have to say, reading the decision letter as a whole as set out in the judgement it rather struck me as one of those typical cases that Neuberger was talking about in *Homes Morehouse* where you could excise the offensive bit and still leave the decision intact. I don't like thinking of it in that way but I think there is a strong argument there. I was faced with a different decision. Many of you will deal with Minos Perdios of Homeless Reviews Ltd and I would be really interested to know whether anyone has come across his use of statistics to define the ordinary homeless person? He came up with some statistics and I looked at the Homeless Pages, which has an online resource containing every bit of homelessness research there has ever been. We should consider using statistics and research evidence when appropriate. But, for example, Minos Perdios said that 69% of homeless people according to research suffer from mental health problems. If you looked at the research he talked about, it was done by St Mungos, the providers of homeless persons hostels, and they said that 69% of their residents had slept rough which is obviously a tiny sub-set of homeless people. He also said, according to research, 30% of homeless people attempt suicide. This wasn't quite so clear but again, looking at the research paper, this was a small sample, a sub-set of a small sample who had been chosen for qualitative interviews. The interpretation of the statistics was nothing like what he meant. Also, he listed a whole load of statistics and then mentioned problems homeless people suffer and said; therefore it doesn't mean if you have those problems you are vulnerable. The list of statistics he gave had nothing to do with the

conclusion. These are all points which can be made. I would be interested to hear what other people have been hearing about this but the proper use of statistics is important and I would urge people to use research evidence and quote it in review submissions when they can and to challenge this kind of statistics abuse.

Rebekah Carrier: I think the other point is that, of course, a landlord who has a property in that condition is a landlord who has breached housing law. Another point which I thought was interesting was where you have one local authority placing a client in another local authority in privately owned accommodation and the other local authority has a statutory duty to investigate and prosecute if there is a statutory nuisance. So that is another issue that I think we could be considering. We have this bizarre situation where people from Islington are in Enfield, people from Enfield are in Harrow, etc, so we can use that to try and get local authorities to take action against private landlords even if they are placed there by other local authorities.

Chair: Thank you to both Rebekah and Jamie for such a comprehensive talk. The next meeting will be held on 21 May on the topic of Anti-Social Behaviour Strategy and is being organised by HLPA Junior.

Homelessness Update March 2014

REBEKAH CARRIER
JAMIE BURTON

POVERTY IN THE UK

The triple whammy

- Massive inflation in essential costs: housing, food and energy
- Real term value of wages falling for 3 decades
- Real term value of in and out of work benefits decreasing whilst eligibility rules narrowing

BENEFITS

- Changes to benefits including sanctions, bedroom tax, ATOS, DLA, PiP, CPI instead of RPI,fees for tribunals to come?

- In January 2014, the European Committee of Social Rights found that the minimum levels of UK welfare entitlements, particularly short-term incapacity benefits(£71 p/w) and job seeker's allowance (£67 p/w,) were **manifestly inadequate** in the meaning of Article 12(1) of the European Social Charter as they fell below 40% of the Eurostat median equivalised income.

BENEFITS CONTD/

- Benefit sanctions: no clear numbers but in JSA alone – over 500,000 in 2013 alone – 13 or 26 wks (or 3 years)
- Internet based job seeking
- Localisation of social fund (abandoned in 2015??)
- No more legally aided benefits advice

IDEOLOGY OR ECONOMICS?

David Cameron, responding to Archbishop of Westminster's statement on 19 February that welfare reform is leaving people in destitution, said that the government's economic plan for Britain was "*about doing what is right*".

"*Nowhere is that more true than in welfare. For me the moral case for welfare reform is every bit as important as making the numbers add up.*"

EMPLOYMENT

- Unemployment increased substantially from the beginning of the 2008 recession to 2013 – 8.4% in Nov 11 (highest since 1995 – OFNS 2012)
- There have been recent improvements and one view the UK rate of employment has held up well
- But…

EMPLOYMENT CONTD/

- Recent rates of employment bolstered by poorly paid temporary work (OFNS/Resolution Foundation)
- The post 2010 fall in real wages amounts to the longest period of decline since 1964 (OFNS)
- Taking these factors into account, the number of workers earnings less than a living wage, the amount considered adequate to achieve a minimum standard of living and access adequate food, rose from 3.4 million to 4.8 million between 2009 and 2012.

FOOD

- Food prices have increased more in the UK than in comparative economies, rising by 22% in the UK between January 2007 and May 2013, while increasing by only 12% in Germany and 13% in France (DEFRA).

- Inc fruit and vegetables (34% and 31% respectively)

FOOD CONTD/

- UK experts have defined households living in food poverty as those which have to spend more than 10% of their income on food, thus giving a useful domestic indicator for food affordability.

- In the UK, an average 11.6 per cent of household spend went on food in 2012, while for the lowest 20 per cent of households by equivalised income it was higher at 16.6 per cent. (Kellogg's and the Centre for Economics and Business Research, Hard to Swallow, The Facts about Food Poverty, 2013.)

HOUSING

- Housing costs have gone up in many parts of the country
- As a percentage of income housing costs have increased most for renters, particularly social renters (DCLG English Household Survey)
- UK average 41% of income spent on housing costs (Internationally accepted HR standard: 30%)

EFFECTS

- Projections by the Institute for Fiscal Studies show that relative child poverty will be 5.7 ppts higher in 2020 as a result of indexation and other reforms, and absolute child poverty 8.3ppts higher.
- 500,000 people now reliant on food aid (Oxfam 2013) – because of benefit sanctions (30%), benefit changes (15%), debt (10%) and otherwise low income (15%) (Trussell Trust).

- HOMELESSNESS?

COURTESY OF 'CRISIS' DECEMBER 2013 REPORT

- An upward trend has remained evident in 'visible' forms of homelessness – including rough sleeping and statutory homelessness – over the past year, but with a slowed rate of increase

- Thus in 2012 rough sleeping in England rose 6%, as compared with 23% in 2011. In London, there was a rise of 13% in recorded rough sleeping in 2012/13, pushing the two year increase to over 60%.

CRISIS CONTD/

- After falling sharply for six years, the number of statutory homelessness acceptances has risen substantially (by 34%) over the past three years, but the increase in 2012/13 (at 6%) is lower than the previous year (14%). Strongly concentrated in London & SE
- There are sharply rising numbers being made homeless by the loss of private sector tenancies, accounting for 22% of all homelessness acceptances at national level in 2012/13. This is now the single largest cause of statutory homelessness in London.

CRISIS CONTD/

- The most problematic aspects of the welfare reforms introduced in 2013 include: the overall benefit caps; the 'spare room subsidy' limits for social sector tenants (widely referred to as the 'bedroom tax'); and localisation of the Social Fund.
- Of these it is the social sector bedroom limits that is currently giving rise to the greatest concerns, particularly in the North and Midlands

CRISIS CONTD/

- Temporary accommodation placements rose 10% during 2012/13, with B&B placements rising even faster (14%). ‘Out of district’ temporary accommodation placements have doubled since 2010. Use of both temporary accommodation and out of district placements remain overwhelmingly concentrated in London.

suitability

- The Homelessness (Suitability of Accommodation) Order 1996
- The Homelessness (Suitability of Accommodation) Order 2003
- The Homelessness (Suitability of Accommodation Order) 2012
- Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation Order) 2012

1996 Order

- Whether or not the accommodation is affordable shall be taken into account un determining affordability
- Specifies that financial resources , costs of the accommodation, child support and other reasonable living expenses must be taken into account

Example weekly budget?

- For a single parent plus 2 teenager daughters
- £26 heating/hot water/electricity
- £6 water
- £3 TV license
- £6 mobiles phones
- £4 council tax
- £9 toiletries
- £12 clothing
- £10 books/uniforms/school trips/sport
- £40 travel (both travelling to school and family in LA district)
- £60 food
- £0 Leisure?
- £0 Unforeseen contingencies?
- £0 gifts/socialising?
- £0 medical needs?
- ????

2006 Code of Guidance para 17.40

In considering an applicant's residual income after meeting the costs of the accommodation, the Secretary of State recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseekers allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit.

Housing authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials…

The Secretary of State recommends that housing authorities avoid placing applicants who are in low paid employment in accommodation where they would need to resort to claiming benefit to meet the costs of that accommodation , and to consider opportunities to secure accommodation at affordable rent levels where this is likely to reduce perceived or actual disincentives to work.

Benefit cap

- Part 8A Housing Benefit Regulations 2006/2013
- **75G. Interpretation**
- For the purposes of section 96 of the Welfare Reform Act 2012 and this Part—
- *"couple"* has the meaning in regulation 2 unless the claimant is a member of a polygamous marriage, in which case it means the claimant and the member of the polygamous marriage to whom the claimant was first married and references to the claimant's partner are to that member of that marriage;
- *"reference period"* means a benefit week;
- *"relevant amount"* is—
- (a) for a single claimant, £350; and
- (b) for all other claimants, £500;
- *"welfare benefit"* means—
- (a) bereavement allowance;
- (b) carer's allowance;
- (c) child benefit;
- (d) child tax credit;
- (e) an employment and support allowance;
- (f) guardian's allowance;
- (g) housing benefit;
- (h) incapacity benefit;
- (i) income support;
- (j) a jobseeker's allowance;
- (k) maternity allowance;
- (l) severe disablement allowance;
- (m) widowed mother's allowance ;
- (n) widowed parent's allowance;
- (o) widow's pension.

JS

- “But it seems to us inconceivable that an applicant, whether already housed or seeking housing, could properly be regarded as intentionally homeless w here the rent has become unaffordable simply through the application of the benefit cap. Moreover, it would no longer be reasonable to expect the to remain in the accommodation. There will of co urse be cases where the question arises whether the reduced income resulting from the application of the cap is the real reason for being made homeless, but that does not affect the principle”

2003 order

- B and B accommodation not suitable for an applicant with family commitments unless there is no other accommodation and the period of occupation does not exceed 6 weeks

- (note the cost of hostels, hotels and B and B is usually high enough to increase the income of families with children to over £500 a week)

LOCATION

- S.208 Housing Act 1996
- Regulation 2 of Homelessness (Suitability of Accommodation) (England) Order 2012.
- Paragraph 48 of the *Supplementary Guidance on the Homelessness (Suitability of Accommodation) (England) Order 2012*

s.208

- Insofar as is reasonably practicable the Respondent must secure accommodation within its district (s.208).
- "Similarly here; there will be a discretion given to the authority but there must be a proper evidential basis for determining that the provision of local accommodation is not reasonably practicable. And it is important that an authority bears in mind that the requirement is not simply what is reasonable but what is reasonably practicable, which is a higher test." (Calgin [2005] EWHC 1716 (Admin)

Reg: **2. Matters to be taken into account in determining whether accommodation is suitable for a person**

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.

- 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

THIS MEANS?

- *even if* it was not reasonably practicable to make available accommodation in (e.g) Westminster; and,
- 92 X Road ECXXX was otherwise suitable for the Appellant's needs,
- it was not, absent a "justifiable reason" lawful of the Respondent to offer 92 X Road ECXXX Road as being suitable accommodation if;
- suitable alternative temporary accommodation nearer to (e.g) Westminster was available.

Or at least?

- By analogy with Calgin it must be correct that in order for the Respondent to show that it has complied with paragraph 48 of the *Supplementary Guidance on the Homelessness (Suitability of Accommodation) (England) Order 2012* it must provide a proper evidential basis for its decision.

Hold the front page

WANT A CLUE?

Localism Act 2011

- Part 7 :security of tenure in locality(tenancy strategies)
- S145(2) taking transfers out of Part 6 n(limited significance)
- Importance of understanding implications of discharge of duty into private sector
- Reasonable preference criteria retained
- Removal of homeless applicants from housing registers (by amendment to allocation scheme or de facto removals by practice)
- Importance of considering other routes to housing , including Part 6 and family law remedies

Reg 3. Circumstances in which accommodation is not to be regarded as suitable for a person

(i) committed any offence involving fraud or other dishonesty, or violence or illegal drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 [1] (offences attracting notification requirements);

(ii) practised unlawful discrimination on grounds of sex, race, age, disability, marriage or civil partnership, pregnancy or maternity, religion or belief, sexual orientation, gender identity or gender reassignment in, or in connection with, the carrying on of any business;

(iii) contravened any provision of the law relating to housing (including landlord or tenant law); or

(iv) acted otherwise than in accordance with any applicable code of practice for the management of a house in multiple occupation, approved under section 233 of the Housing Act 2004;

(f) the accommodation is a house in multiple occupation subject to licensing under section 55 of the Housing Act 2004 and is not licensed;

(g) the accommodation is a house in multiple occupation subject to additional licensing under section 56 of the Housing Act 2004 and is not licensed;

(h) the accommodation is or forms part of residential property which does not have a valid energy performance certificate as required by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 [2];

(i) the accommodation is or forms part of relevant premises which do not have a current gas safety record in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998; or

(j) the landlord has not provided to the local housing authority a written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate.

November 2012 Guidance

- Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012
- Paragraph 62 *'Authorities should ensure that the property has been visited by either a local authority officer or someone acting on their behalf to determine its suitability before an applicant moves in'*
- Paragraph 63 *'In determining whether the proeprty is in reasonable physical condition attentions should be paid to signs of damp, mould, indications that the property would be cold for example cracked windows and any other physical signs that would indicate the property is not in good physical condition'*

CERTIFICATE OF SUPPLY

HOUSING ASSOCIATION: [redacted] Housing Association

DATE OF ISSUE: 2 October 2013

ADDRESS: [redacted]

BED SIZE / SPACES: 5 / 8

BOROUGH:

FLOOR: HSE **LIFT:** N

EXTERNAL STAIRS: 0 **INTERNAL STAIRS:** 0

HEATING TYPE: FULL GAS CENTRAL HEATING **RENT:** 346.00

LEASE START DATE: 02/09/2013 **LEASE END DATE:** 01/09/2018

SPECIFIC COMMENTS ON PROPERTY:

ALL UTILITIES CONNECTED: YES

ANY OUTSTANDING REPAIRS: NO

PROPERTY AND ALL FURNITURE MEETS CURRENT FITNESS STANDARDS: YES

DATE OF PROPERTY AVAILABLE FROM: 03/09/2013

RELET **VOID DATE:** 03/09/2013

ISSUED BY: [redacted] **HOUSING OFFICER:**

LETTING INFORMATION:

Housing Officer: Housing Officer Tel:

COT Date: _____ New Tenants Name: _____

NEW / DECANT / TRANSFER * Delete as appropriate Borough Ref Number _____

Date above information faxed: _____ by Whom: _____

Suitability review request

41

- I write to provide information in support of her request to be transferred back to The Lovely Borough .
- You may already be aware of the family circumstances but I outline them briefly below:
- My client is a recognised refugee from Somalia and has recently been joined in the UK by her 8 children (ages 10-17) under family reunion rules.
- She suffers from chronic physical and mental illnesses including Post Traumatic Stress Disorder, standing back pain and left sided leg pain. She is due an operation but she decided to wait for her children to arrive before agreeing to it. She has been prescribed anti-depressants.
- The family have been placed in a house with at least 12/13 internal stairs, with the bedrooms at the top. Ms Smith cannot navigate the stairs due to the constant pain in her legs and back. Her children use the bedrooms at the top of the stairs so she cannot attend them when they are upstairs and they need her.
- In addition the accommodation in The next door Borough is too far from the essential support she receives from friends in The next door Borough . She needs help from friends to do the weekly shop and she will need more help now that her children have arrived.
- The toilet in the property is very low so she finds it hard to use without falling due to her back problems. Transversely she finds the bath difficult to use as her left leg is too weak to take her wait alone when she gets in & out of the bath
- I am conscious of the fact that the demand for affordable housing far outstrips the number of properties available in the borough. Nevertheless you will be aware that the application of a blanket policy without regard to individual circumstances could be deemed as unlawful. The allocation of a property with indoor stairs suggests that Ms Smith's medical needs were not considered when this property was chosen.
- In your response I request that you refer directly to my clients rights; firstly, under Article 8 of the Human Rights Act; her family life is at risk if she is forced to move away from the necessary support of her friends *and* secondly; s20 Equality Act 2010 and your duty to make reasonable adjustments and how these rights are met if she is forced to move away from such support for long periods.

The Lovely Borough's response

- Client's circumstances recognised
- She doesn't have a diagnosed mental illness and isn't seeing a psychiatrist
- She said on medical form she could climb stairs
- Support described isn't too far away
- Bus stop is 160 meters away
- Children are old enough to manage upstairs without supervision
- The property is a house and that's mostly what we have
- I've had regard to her rights under S20 Equality Act 2010 and consider the accommodation to be suitable

How else might suitability have been approached?

- Rent is £380 per week.
- Accommodation is statutorily overcrowded
- Accommodation is furnished with broken beds and has no working cooker
- Accommodation is infested with mice
- There is significant disrepair throughout the property, evidence of traumatic, penetrating and condensation related damp, and there is a statutory nuisance
- There are a variety of hazards under Housing Act 2004

Priority need

- JOHNSON v SOLIHULL MBC [2013] EWCA Civ 752
- Heroin addict/ex-prisoner & persistent offender trying to make good
- Risk of relapse if street homeless accepted but LA satisfied that not vulnerable – no PN
- Evidence that drug use/issues widespread in homeless client group

Priority need contd/

- CA rejected argument that comparator for purposes of Pereira test is an ordinary person who is homeless (i.e. not a drug addict) and not an ordinary homeless person (who, it was said, was likely to have drug issues).
- Conclusion consistent with words in Pereira: "*ordinary homeless person*"
- But very dangerous…

THE DEATH SPIRAL

- More people who have features of vulnerability rejected for housing the more vulnerable becomes the ordinary homeless person
- Worsened by the acceptance in Osmani that PN decisions are likely to be "highly judgemental" precisely because each LA is "*charged with local application of a national scheme of priorities put against its own burden of homeless persons and finite resources*"

Spiral Stopping

- Evidence: get some or get forensic – evidence in Johnson relied on by LA not great – 92% of homeless services are involved in dealing with drug issues – so what?
- Arden LJ admitted that this did not mean that the ordinary homeless man has serious drug issues
- Homelessness Act 2002 S.3 – strategy which secures sufficient accommodation for all homeless not just those with PN

PN AND INQURIES

- R (IA) v. Westminster [2013] EWHC 1273
- Inquiries – one off interview in the homelessness department not good enough – a psychiatric report also might be necessary
- Good read from Anthony Thornton QC!

Local connection

- NJ v WANDSWORTH [2013] EWCA Civ 1373
- NJ escaped serious DV in Leicester and took up first Refuge available in London which happened to be in Lambeth –was her residence in Lambeth "of [her] own choice" for s.198
- Argued that was not her choice as 'placed' in Lambeth and that although she 'chose' London the Act requires the applicant to choose the specific LA district

Local connection contd/

- CA disagreed with HHJ Welchman and found LA entitled to say NJ chose to live in Lambeth because she could have chosen to forgo refuge and take up Part VII accommodation anywhere
- Therefore not the same as choice made by Asylum seekers in Al-Ameri as that was more extreme choice (Glasgow or destitution)
- Where does that leave the work placements for example?

Regulation 8(2)

- NJ v WANDSWORTH [2013] EWCA Civ 1373
- LA was required to send a 'minded to' letter when new facts had arisen post-s.184 even though s.184 decision maker decided no risk of DV in Lambeth and the new facts made no difference to that conclusion. Otherwise NJ had no opportunity to comment on *the reasons why* the new facts were said to make no difference
- Clear that not all new matters will have this effect: depends on whether further representations "*could have made a difference to the decision that the reviewing officer eventually made*". [76].

Regulation 8(2) contd/

- **NAIMA MOHAMOUD v BIRMINGHAM CITY COUNCIL** [2014] EWCA Civ 227
- CA rejected argument that the principle developed in Banks [2008] EWCA Civ 1443 (that the s.184 might contain a deficiency or irregularity only with the benefit of hindsight) was limited to matters that could not have been raised before the s.184 decision maker (as in NJ).
- However appeared to imply that if the new issue so implausible it can be rejected out of hand then no obligation to send a minded to letter would arise: but how can you know if indeed implausible if no opportunity given to address the reasons why it is said to be implausible?

ELIGIBILITY AND MIGRANT WORKERS

- DWP issued guidance (Circular A3/2014) to LA housing benefit departments that EEA nationals should not be considered to have a RTR on basis that they are exercising EU Treaty rights as a 'worker' until they have passed the ""Minimum Earning Threshold" of £150 p/wk for three months.

- Clear that does not displace the "genuine and effective" test but designed to elucidate what it means

PSED

- S149 Equality Act 2011
- Due regard to the need to advance equality of opportunity between persons who share and do not share a relevant protected characteristic includes due regard to need to remove or minimise disadvantages that are connected to the characteristic

- Where might it be used in homelessness cases?
- Case law largely consists of unsuccessful attempts to use PSED but see

  R (Bracking) v SSWP CA [2013]EWCA Civ 1345

Temporary accommodation and PEA 1977

- S3 PEA: no eviction of premises let [or licensed] as a dwelling without due process – i.e. court proceedings
- Manek [1995]: B&B TA pending inquiries not let as a dwelling = no protection
- Desnousse [2006]: HRA made no difference, but since then Pinnock/Powell etc.
- CN v. Lewisham [2013] EWCA Civ 804: JR of decision to evict enough (post adverse s.202 decision) =no Art8 incompatibly (did not decide ownership issue): Will SC agree?

The end!!