Vulnerability after Panayiotou: *"Significantly"* and beyond

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Tessa Buchanan

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Introduction

1. This paper considers the consequences for homeless applicants of the recent Court of Appeal judgment in Panayiotou v Waltham Forest London Borough Council [2017] EWCA Civ 1624.[1] The focus here is, inevitably, on the main issue in that case, namely the meaning of *"significantly"*. My aim is to attempt to shed some light on, and contextualise, a judgment which is in places complex, but which has significant implications for homeless applicants.

"Significantly": a curveball from Lord Neuberger

The starting point: Pereira

2. In order to be owed the main housing duty, a person must be homeless; eligible for assistance; not intentionally homeless; and in priority need. Section 189(1) of the Housing Act 1996 sets out four categories of persons who will have a priority need for accommodation. (Further categories were created by the Homelessness (Priority Need for Accommodation) (England) Order 2002.) The most important provision for our purposes is section 189(1)(c), which refers to:

   > *...a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside*.

3. In R v Camden London Borough Council ex p Pereira (1999) 31 FLR 317 the Court of Appeal interpreted this as follows (at 330):

   > *…the council must ask itself whether Mr Pereira is, when homeless, less able to fend for himself than an ordinary homeless person so that injury or detriment to him will result when a less vulnerable man would be able to cope without harmful effects.*

4. This was repeatedly followed and applied, including in the later Court of Appeal case of Osmani v Camden London Borough Council [2004] EWCA Civ 1706 and in the *Homelessness Code of Guidance for Local Authorities* (July 2006).

[1] I was junior counsel for Mr Panayiotou, and was fortunate enough to be led by Martin Westgate QC, of Doughty Street Chambers, and instructed by Simon Mullings, of Edwards Duthie. This paper owes a great deal to their insights and observations although, of course, any mistakes are mine.

Hotak

5. However, this all changed with Hotak v Southwark London Borough Council [2015] UKSC 30. The Supreme Court had been asked to decide three issues, as described by Lord Neuberger at §35:

   i) Does the assessment of whether an applicant is vulnerable for the purposes of section 189(1)(c) of the 1996 Act involve an exercise in comparability, and, if so, by reference to which group of people is vulnerability to be determined? (ii) When assessing vulnerability, is it permissible to take into account the support and assistance which would be provided by a member of his family or household to an applicant if he were homeless? (iii) What effect, if any, does the public sector equality duty under section 149 of the 2010 Act have on the determination of priority need under section 189 of the 1996 Act in the case of an applicant with a disability or any other protected characteristic?

6. In response to the first issue, Lord Neuberger, with whom Lords Clarke, Wilson and Hughes agreed, held that vulnerability was a relative concept. Rejecting the submission that no comparator was needed, he said:

   51…As Lord Wilson JSC pointed out in argument, "vulnerable", like virtually all adjectives, carries with it a necessary implication of relativity. In the very type of case under consideration, it can fairly be said that anyone who is homeless is vulnerable, as Lord Glennie pointed out in Morgan v Stirling Council 2006 SLT 962, para 4. Accordingly, as he went on to suggest, it follows that section 189(1)(c) must contemplate homeless people who would be more vulnerable than many others in the same position (especially given the words "or other special reason" which show that vulnerability arising from many causes is covered).

   52 Mr Luba contended that anyone who cannot "cope without harm" with homelessness is "vulnerable". But that formulation merely restates the problem and does so by reference to non-statutory wording (including the word "cope" which may have similar problems to the expression "fend for himself"). Virtually everyone who is homeless suffers "harm" by undergoing the experience, and therefore one is thrown back on the notion of a homeless person who suffers more harm than many others in the same position.

53 Accordingly, I consider that the approach consistently adopted by the Court of Appeal that "vulnerable" in section 189(1)(c) connotes "significantly more vulnerable than ordinarily vulnerable" as a result of being rendered homeless, is correct…

7. He went on to hold that the correct comparator was "*an ordinary person, but an ordinary person if made homeless, not an ordinary actual homeless person*" (at §58).

What's in a word? The different interpretations

8. The inclusion of the word *"significantly"* was a surprise, not least because it seemed to come from nowhere. It is not found in section 189, which requires only that the person be *"vulnerable as a result of"* one of the specified factors. Nor does it have any precedent in case-law, despite Lord Neuberger's reference to *"the approach consistently adopted by the Court of Appeal"*:
    i. In R v Camden London Borough Council ex p Pereira (1999) 31 HLR 317, the Court of Appeal referred to an applicant being *"less able to fend for himself than an ordinary homeless person so that injury or detriment to him will result"* (at p.330). There was no reference to the vulnerability, ability to fend for oneself, or injury or detriment being significant.
    ii. In Osmani v Camden London Borough Council [2004] EWCA Civ 1706, the Court of Appeal made references to *"suffer greater harm"* (at §38(4)), *"suffer more harm"* (at §38(6)), and *"harm him more"* (at §38(8)) but there was no mention of *"significant".*
    iii. In Kanu v Southwark London Borough Council [2014] EWCA Civ 1085, the Court of Appeal stated that the question was whether Mr Kanu was *"less well able to cope"* (at § 48).

9. It then fell to local housing authorities, homeless applicants and their representatives, and circuit judges to grapple with the meaning of *"significantly more vulnerable"*. For a term which many local housing authorities claimed was an ordinary English word requiring no interpretation, it led to a great deal of uncertainty, as the following examples demonstrate:
    i. In Mohammed v London Borough of Southwark, County Court at Central London, *Legal Action*, July/August 2016, p.48, Recorder Hochhauser QC held that, in the absence of any guidance in Hotak as to what *"significantly"* meant, by analogy with

the definition of *"substantial"* in section 212 of the Equality Act 2010, *"significantly"* meant *"more than minor or trivial"*.

ii. In HB v Haringey London Borough Council, Mayors and City County Court, *Legal Action*, January 2016, p. 46, HHJ Lamb QC noted that there was a spectrum of meaning from *"noticeable"* to *"substantial"*. The appeal was allowed because, inter alia, it was impossible to discern from the reviewing officer's decision where on that spectrum he had placed it.

iii. In Eliot Ward v London Borough of Haringey, County Court at Central London, *Legal Action*, September 2016 p.38, Recorder Powell QC stated that he was *"not convinced"* that the term *"significantly"* merited further definition: *"the search for precise meaning by reference to synonyms…or by reference to the opposite…seems a fruitless search for unachievable certainty of meaning for a word of indefinable scope and penumbra"*. He found that *"significantly"* was a word *"whose meaning varies with context"* and a search for meaning by reference to its use in other contexts *"threatens error through analogy from inapposite and very different context"*. On a fair and reasonable reading, *"the degree of significance of Mr Ward's vulnerability is well within the core meaning of the word 'significant'"*.

iv. In Shaja Butt v London Borough of Hackney, County Court at Central London, 22 February 2016, HHJ Luba QC rejected the submission that *"significantly"* was an ordinary English word which should be given its ordinary meaning on the grounds that *"the word significantly is a word with at least two potential meanings or shades of meaning"*. It could mean *"something more than trifling"* or *"something of real importance"*. HHJ Luba QC considered that, by analogy with the definition of *"substantial"* in section 6(1)(b) of the Equality Act 2010 as meaning *"anything more than insubstantial"*, it might well mean *"something more than insignificantly different"*. That seemed to be *"the more natural reading or understanding of the term"*.

v. In DT v Lambeth London Borough Council, County Court at Central London, *Legal Action*, December 2016 p.41, HHJ Gerald expressly declined to decide the issue of *"significantly"* one way or the other but stated that if he had had to decide the point *"he would have concluded that the multi-faceted nature of the comparative exercise being undertaken takes in any number of often conflicting matters which may interrelate on each other in ways different on one case compared with another; and*

that it was simply not possible for any further clarity to be given to the comparative exercise".[2]

The arguments

10. Quite quickly, homeless persons' representatives developed a united front on the meaning of *"significantly"*. The general approach was:
    i. To call on the local housing authority, at the review stage, to define how it was using *"significantly"*;
    ii. To argue that its only lawful interpretation was no more than *"more than trivial"*; and
    iii. To challenge review decisions which failed to define the term and/or which adopted a higher threshold.

11. The Appellants in Panayiotou followed this line of thinking and argued that *"significantly"* must mean no more than *"more than* de minimis*"*. The arguments put forward by the Panayiotou term, which drew on and owed much to the arguments being run by colleagues in the County Court and at the review stage, can be summarised as follows:
    i. The passage in Hotak in which *"significantly"* appears was directed to a different point, namely the need for and identification of a comparator. The relevance of *"significantly"* was simply to highlight that the harm to which a person would be vulnerable would be such as to distinguish them from an ordinary person.
    ii. Baroness Hale dealt with the comparator issue at §92-3. She did not use the term "*significantly*" or its cognates at all yet at the end of §93 she expressly considered that her conclusions were consistent with Lord Neuberger.
    iii. Similarly, when Lord Neuberger referred back to the test at §63 (*"Virtually everyone is better off housed than homeless, but it is those people who will be more vulnerable in practice if they are homeless who could be expected to receive priority treatment"*) he did not use *"significantly"*.
    iv. Lord Neuberger considered that he was endorsing the approach *"consistently adopted by the Court of Appeal"*. However, that earlier case-law did not use the term

[2] *"When is an applicant 'significantly' more vulnerable than ordinarily vulnerable?"* Emma Dring, https://cornerstonebarristers.com/cmsAdmin/uploads/significantly-more-vulnerable_001.pdf, accessed 1st May 2017.

"significantly" and therefore Lord Neuberger could only have been using the term in the sense of more than trivial, as opposed to introducing a substantive threshold condition.

v. If *"significantly"* meant anything more than *"more than trivial"*, Lord Neuberger would have introduced a substantive gloss on the words of the section in a very casual way. This was unlikely, particularly given the care both he and Baroness Hale took to emphasise the need to adhere to the statutory language (§§40-2, 44, 59, 91).

vi. An interpretation which went beyond simply excluding *de minimis* matters would create a third category of person: the applicant who is more vulnerable than the ordinary person if made homeless, and who is therefore neither (1) the ordinary person if made homeless nor (2) someone who is in priority need by virtue of being significantly more vulnerable than the ordinary person if made homeless. This is incompatible with the legislation, which creates a binary approach (vulnerable/not vulnerable) and it encourages a race to the bottom.

vii. Further, the starting point is that the ordinary person is *"robust and healthy"*, as characterised by Pitchford LJ in the Court of Appeal in *Hotak* at §42 and referred to with approval by Lord Neuberger at §71. That being the case, were *"significantly"* to mean anything beyond more than *de minimis*, there would be an unsustainably large gap between the ordinary person and the person who is in priority need.

viii. If decision-makers were to be the sole judges of what *"significantly"* meant it would lead to a great deal of uncertainty.

ix. Further, an interpretation which favours or allows a higher threshold for vulnerability would be at odds with the purpose of the statute, which is to assist the homeless (per Lord Neuberger at §63 of *Hotak*).

x. Terms such as substantial or significant are often used to describe cases that are minimally substantial or significant. In *R v London Borough of Lambeth ex p Carroll* (1988) 20 HLR 142, the Court considered the lawfulness and meaning of a phrase in a previous version of the Homelessness Code of Guidance which referred to persons being *"substantially"* disabled or having a *"substantial"* disability. Webster J held at p.145 that if the words *"substantially"* and *"substantial"* were simply intended to exclude *"matters de minimis",* they would not be open to criticism. However, if they were to be read as imposing a higher test than that imposed by section 59(1)(c) of the Housing Act 1985 (the equivalent provision to section 189(l)(c) HA 1996 then in force), then this could not lawfully be done.

xi. Similarly section 212 of the Equality Act 2010 defines *"substantial"* as *"more than minor or trivial"*.

12. The approach generally taken by local housing authorities appeared to be:
    i. To refuse to define *"significantly"*;
    ii. To argue that it was an ordinary English word which needed no interpretation; and
    iii. To apply it in practice as meaning "a great deal".

13. Again, these arguments found their way to the Court of Appeal through the Respondents in Panayiotou and Smith. The Respondent in Panayiotou argued in its skeleton argument that *"significantly"* meant *"sufficiently great or important in the eyes of the reviewer"* to distinguish the applicant from an ordinary person. Similarly, the Respondent in Smith argued that the lack of further definition of the term in Hotak was deliberate and the reason was because it was to be left to the reviewing officer to decide *"how the criterion is to be applied in the context of any given case"*.

The hearing

14. The matter came on for hearing at the Court of Appeal on 9th and 10th October 2017.

15. The Appellants in both cases went first, with Martin Westgate QC for Mr Panayiotou focusing on the meaning of *"significantly"* and Toby Vanhegan for Mr Smith concentrating on their second ground, which challenged the contracting out of the Public Sector Equality Duty.

16. It was during the submissions of the Respondent in the Panayiotou appeal that matters took a surprising turn. Taking a stance which had not been anticipated – by either of the Appellants, at least - from his skeleton argument, David Lintott for Waltham Forest argued that *"significantly"* meant, in essence, *"relevant"*. His position was that *"significantly"* did not denote a particular threshold, but instead indicated that the vulnerability must relate to being without accommodation. It is worth quoting from my note of his argument:

    What did Lord Neuberger mean when he used the word significantly? He could have just said more vulnerable than ordinarily vulnerable so why did he use it? Mr Westgate seeks to explain it by reference to some sort of threshold – more than de minimis. But Lord

Neuberger wouldn't need to use significantly for that – would be just saying more vulnerable than ordinarily vulnerable. Answer is apparent from combination of paragraphs 37 and 62 [of Hotak]. *Paragraph 37 is saying that vulnerability is vulnerability if homeless. Wouldn't necessarily be case - s189(1)(c) doesn't link to any specific situation. Context is clear – vulnerability if not provided with accommodation. Type of vulnerability which is significant is vulnerability that bears on how A will deal with matters when not provided with accommodation.*

…

Can look at what Baroness Hale says at paragraph 93 [of Hotak] – *must be at risk of harm from being without accommodation. That's significant vulnerability.*

…

Question – what does significant mean. It means in a way that matters, to use My Lordship's phrase, in context of seeing how applicant will manage practically taking account of their physical and mental abilities when without accommodation to carry out activities he needs to carry out. That's all it means. In a significant way.

17. This was a surprising, and not unwelcome, development for a number of reasons.

18. Firstly, its consequences were entirely consistent with our own arguments. The problem which homeless applicants had faced since Hotak was that of reviewing officers interpreting *"significantly more"* to mean *"substantially more"*, or *"a great deal more"*, or *"much more"*. Clearly, a finding that *"significantly"* meant only *"relevant"* would put paid to this interpretation. Indeed, when asked by Lewison LJ to confirm that he was not saying that *"significant"* meant *"substantial"*, Mr Lintott emphatically denied it, saying that it would *"remarkable if that were to be the case"*.

19. Secondly, it was in many ways neutral, because it was already the case that vulnerability connoted some sort of difficulty enduring homelessness. After all, this was at the heart of the original Pereira test (at):

*…the council must ask itself whether Mr Pereira is, **when homeless**, less able to fend for himself than an ordinary homeless person so that injury or detriment to him will result when a less vulnerable man would be able to cope without harmful effects.*[3]

20. Similarly, in Osmani the test was put as follows (at §38: emphasis added):

*Pereira establishes that a person is vulnerable for the purpose if he has such a lesser ability than that of a hypothetically "ordinary homeless person" to fend for himself that he would **suffer greater harm from homelessness** than would such a person. One has only to attempt to apply the Pereira test to any particular case by asking the question whether the applicant would, by reason of whatever condition or circumstances assail him, **suffer greater harm from homelessness** than an "ordinary homeless person", to see what a necessarily imprecise exercise of comparison it imposes on a local housing authority.*[4]

21. When the time came for the reply, therefore, it was indicated on behalf of the Appellants that, if all *"significantly"* did was specify the context for the enquiry, rather than establish a particular level of harm, they did not disagree.

The decision

What they said

22. The Court of Appeal dealt with *"significantly"* at paragraphs 45 to 64 of the judgment. Lewison LJ, who gave the leading judgment, started by asking himself whether any guidance at all should be given on its meaning: *"In* Hotak *Lady Hale said at [91] that glossing the words of a statute is a dangerous thing. It might be thought to be even more dangerous to gloss the words of a gloss"* (at §45). He went on to note that there were, however, a number of other applications for permission to appeal on the same point and *"Clearly Lord Neuberger's use of the adverb is causing practical difficulty"* (at §50). Therefore, despite his *"reluctance"* to do so, he proceeded to consider its meaning.

[3] Emphasis added.

[4] Emphasis added.

23. Lewison LJ started his explanation of *"significantly"* by citing the different definitions given in the Oxford English Dictionary. He then noted the three places where the word was used in the law report of Hotak. These were:
    i. The crucial paragraph 53: *"Accordingly, I consider that the approach consistently adopted by the Court of Appeal that "vulnerable" in section 189(1)(c) connotes "significantly more vulnerable than ordinarily vulnerable" as a result of being rendered homeless, is correct…"*;
    ii. At paragraph 85, during the consideration of Mr Johnson's case: *"…the earlier passages, read fairly, amount to a finding that his drug problems would have no significant effect on Mr Johnson's situation if he was homeless…"*;
    iii. During the argument, where Bryan McGuire QC, who was representing Shelter and Crisis, said *"A demonstrated liability to a real or serious risk of significant harm from homelessness thus renders a person vulnerable within the meaning of the statute"*.

24. Lewison LJ considered but dismissed the argument that an analogy could be drawn with the meaning of *"substantial"* in the Equality Act 2010, finding that (at §56-58):
    i. It was a different word.
    ii. The duty to make reasonable adjustments arising from a finding of disability was different from the duty arising from a finding of priority need. A finding of priority need gave rise to a blanket duty to accommodate regardless of whether the test *"is only just satisfied or is obviously satisfied by a wide margin"*. In contrast, the reasonable adjustments required for a disabled person are more nuanced and will depend on the extent of the disability.
    iii. The Equality Act *"takes an ability to carry out normal day to day activities as a starting point"* but the Housing Act 1996 *"is all about finding accommodation"*: the focus is not on the extent of disability but on the impact of that disability to deal with homelessness.
    iv. The definition in the Equality Act focuses on only some of the characteristics in section 189(1)(c) whereas the concept of vulnerability applies to all.

25. Lewison LJ then considered previous, now superseded, formulations of the test for vulnerability, noting that none of them imposed a quantitative test.

26. His conclusions are set out at §64:

I do not, therefore consider that Lord Neuberger can have used "significantly" in such a way as to introduce for the first time a quantitative threshold, particularly in the light of his warning about glossing the statute. Rather, in my opinion, he was using the adverb in a qualitative sense. In other words, the question to be asked is whether, when compared to an ordinary person if made homeless, the applicant, in consequence of a characteristic within s.189(1)(c), would suffer or be at risk of suffering harm or detriment which the ordinary person would not suffer or be at risk of suffering such that the harm or detriment would make a noticeable difference to his ability to deal with the consequences of homelessness. To put it another way, what Lord Neuberger must have meant was that an applicant would be vulnerable if he were at risk of more harm in a significant way. Whether the test is met in relation to any given set of facts is a question of evaluative judgment for the reviewer.

27. Lewison LJ found that the decision-maker in Panayiotou had not applied a quantitative threshold. He quoted in support of this the following extract from the decision letter:

    I am not satisfied that, as a result of your condition, you would be at more risk of harm from being without accommodation than an ordinary person would be.

28. However, the reviewer in Smith (Minos Perdios) had imposed such a threshold. The offending passages read:

    …a person is not vulnerable simply because they will suffer from harm. They are vulnerable if, when homeless, they will suffer significant more harm or even more harm than an ordinary person if made homeless. It is without doubt that you will suffer harm by being homeless but I am not satisfied that this is to the extent that you will suffer more harm that means that you are significantly more vulnerable than ordinarily vulnerable.

What they meant

29. First, all *"significantly"* does is remind reviewers that the vulnerability must be related to the homelessness. It must affect *"a person's ability to find accommodation or, if he cannot find it, to deal with the lack of it"* (at §44). If a person was to suffer or be at risk of suffering harm but that harm would not affect his *"ability to deal with the consequences of homelessness"* (at §64), then it will not be *"significant"* or, in other words, relevant.

30. An illustration of this was discussed during the course of argument. The example given was that of Mr Johnson, one of the appellants in Hotak. He suffered from knee and back pain. The decision-maker had found that these had *"no significant impact"* on him (§21(iv)). In Hotak, Lord Neuberger explained this as meaning that *"his physical ailments were irrelevant to the issue of vulnerability"* (§84). These conditions might be *"significant"*, i.e *"relevant"*, to his ability to cope if mountain climbing, but they were not – on the finding of the reviewing officer as interpreted by Lord Neuberger – relevant to his ability to cope when homeless.

31. Clearly, there will be cases where knee or back pain could be relevant (or, in other words, significant). If, for example, the pain would be worsened by cold weather, then it may be relevant, particularly if the application was being made in winter. Similarly if the condition meant that they could not sit or lie on hard surfaces, that could be relevant.

32. What is clear is that *"significantly"* does not import a quantitative threshold. It does not mean that there must be a particular *"amount"* or *"degree"* of harm. Being *"significantly more vulnerable than ordinarily vulnerable"* does not mean *"much more vulnerable"* or *"a great deal more vulnerable"* and any decision letter that makes this finding is likely to be unlawful.

33. However, and secondly, this does not mean that any iota of vulnerability, however small, will suffice. The harm must *"make a noticeable difference"*.

34. Third, the harm or detriment which the person would suffer or be at risk of suffering must be something which the ordinary person would not suffer or be at risk of suffering. It is, however, important to remember, and to remind reviewing officers, that the ordinary person is *"robust and healthy"* (as characterised by Pitchford LJ in the Court of Appeal in Hotak at §42 and referred to with approval by Lord Neuberger at §71 in Hotak). This does mean, as has always been the case, that not every harmful effect of homelessness will cause a person to be vulnerable. Being cold and uncomfortable, for instance, is something which the ordinary person would experience if homeless - but the ordinary person does not have, for example, arthritis, or another condition exacerbated by cold weather. Similarly, the ordinary person is likely to suffer some deterioration in mood if homeless, but they do not suffer from pre-existing mental health problems.

35. Fourth, this vulnerability must arise from one of the characteristics specified at section 189(1)(c) HA 1996, i.e. *"old age, mental illness or handicap or physical disability or other special reason".*

36. Finally, it is worth remembering that Panayiotou does not replace Hotak, it simply interprets it. Quoting the phrase *"significantly more vulnerable"* will not, on its own, make a decision unlawful.

Going forward

Extant decisions

37. The judgment in Panayiotou has implications for a number of other decisions on priority need.

38. Several decisions have been withdrawn in light of it. However, in some cases local housing authorities are continuing to defend decisions which predate Panayiotou by arguing that the decision-maker did in fact apply a qualitative, not quantitative, test. This seems unlikely to be correct. The argument that *"significantly"* imposed such a threshold was not, to my knowledge, being run by either appellants or councils in appeals in the County Court; it did not appear to be presaged in the Respondent's skeleton argument; and it came as something of a surprise in court. It is difficult to see how certain reviewing officers were aware of the true meaning of Lord Neuberger's judgment when it appears that nobody else was.

39. That being said, however, it is fair to note that Mr Panayiotou's appeal was itself dismissed on the basis that there was *"no trace of any quantitative threshold being applied"*. Frustrating though this was, given that other parts of the decision did seem to demonstrate such a test being imposed, this must mean that not every decision on this issue which predates Panayiotou is unlawful – although many will be.

Other issues

40. Just as Hotak gave rise to new questions even as it answered old ones, Panayiotou itself may not represent the last word on the topic. What, for example, does *"noticeable"* mean? In my view

it is much closer to *"trivial"* but no doubt reviewing officers will be looking for other interpretations.

41. Similarly, one issue in which the panel in Panayiotou appeared interested was the relevance of resources and/or an ability to find accommodation to a determination of vulnerability. This arose from a discussion during argument about whether a person who was well afford their own accommodation could be vulnerable. The example given by one of the judges was the deaf millionaire: assuming deafness would make a person vulnerable for the purposes of section 189(1)(c), would a deaf person who could easily afford to obtain their accommodation still be vulnerable? In my view, yes, and therefore resources are irrelevant to the question of vulnerability. Ability to obtain accommodation may go to homelessness, if it is the case that the person does in fact have accommodation available to them. Alternatively it may go to the discharge of the duty: the local housing authority could fulfil their obligations by booking a room at an expensive hotel and charging it to the applicant under section 206(2) HA 1996. However, the Court of Appeal took the view – obiter – that it was relevant to vulnerability. This requires further attention.

42. A third matter which remains unresolved is whether or not the reviewing officer must assume that the applicant is or would be street homeless when considering whether or not they are vulnerable. Some reviewing officers have recently shown a fondness for the argument that because people can be homeless whilst in precarious accommodation – the homeless at home scenario - then it is permissible to decide whether or not they are vulnerable based on their ability to cope in temporary accommodation. This cannot be right. Firstly, even though Lord Neuberger expressed caution about use of the phrase *"street homeless"* (at §42), he also made clear that vulnerability *"is concerned with an applicant's vulnerability if he is not provided with accommodation"* (at §37). Secondly, the argument is illogical. Temporary accommodation is, almost by definition, provided pending a future event. That future event for homeless applicants is the decision on whether or not they are owed a duty. If they are not in priority need and therefore not owed a duty, the temporary accommodation will cease. In short, the very finding that somebody can cope in temporary accommodation will put an end to that accommodation.

Conclusion

43. Panayiotou achieved the aim of putting an end to decisions that people were vulnerable but not vulnerable *"enough"*, although sadly it came without benefit to Mr Panayiotou himself. However, the Court of Appeal gives and the Court of Appeal takes away: it is clear that the judgment has thrown up other issues. The fight goes on.

TESSA BUCHANAN
GARDEN COURT CHAMBERS
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