

Homelessness and Suitability

18 September 2019

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Suitability of accommodation

All accommodation provided or secured by LAs under Part 7 Housing Act 1996 duties must be **suitable** to the needs of the applicant. **s.206(1)**

This includes any accommodation which the authority has helped to secure for the applicant, and which has become available for a period of at least six months under either the Prevention (s.195) or Relief duties (s.189B).

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Importance of the suitability issue

- ❑ In terms of resolving a person's homelessness, suitability is the other side of the coin from "(un)reasonable to continue to occupy"
- ❑ But refusal of an offer which the LA considers suitable will usually lead to a decision of discharge of duty and eviction from the client's temporary accommodation...
- ❑ ...unless successfully challenged by review/appeal of suitability or of the decision to end the duty

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Right to review (s.202)

Right to request a review of the suitability of accommodation offered

- ❖ under s.189B, s.190(2), s.193 or s.193C, or on a local connection referral under s.200 : **s.202(1)(f)**
- ❖ by way of a private rented sector offer" : **s.202(1)(g)**
- ❖ by way of a final accommodation offer or a final Part 6 offer under s.193A or s.193C : **s.202(1)(h)**

Applicant may request a review whether or not s/he has accepted the offer : **s.202(1A) and (1B)**
Request must be made within **21 days** "beginning with the day on which he is notified of the authority's decision".

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Decisions not subject to s.202 review

But some decisions can only be challenged by **judicial review**:

- Failure to accept an application ('gatekeeping' cases)
- Refusal to provide interim accommodation
- Suitability of interim accommodation
- Refusal to extend temporary accommodation pending review

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Right of appeal to county court (s.204)

Applicant has right of appeal to the county court on a **point of law** where:

- the review decision is unfavourable; or
 - (s)he is not notified of review decision within 56 days
 - Appeal must be brought within 21 days of notification of decision
 - Court has discretion to extend 21 day time limit, but only where good reason for applicant being unable to bring appeal in time: see **Tower Hamlets LBC v Al Ahmed** [2019] EWHC 749 (QB)
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Suitability: factors to be considered

When determining whether a particular property is suitable for an applicant, LAs must consider certain specific factors:

- ❑ Provisions of Housing Act 1985 re slum clearance/overcrowding
 - ❑ Provisions of Housing Act 2004 (Housing Health and Safety Rating System; licensing of HMOs; selective licensing) **s.210(1)**
 - ❑ Affordability
 - ❑ Location
 - ❑ Public sector equality duty: s.149, Equality Act 2010
 - ❑ Duty to safeguard and promote welfare of children: s.11, Children Act 2004
 - ❑ Duty under art 2, 1st protocol, ECHR (to ensure that no-one is denied education)
 - ❑ Homelessness Code of Guidance: especially Chapter 17
 - ❑ The authority's own homelessness strategies or policies
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Suitability: general considerations

- ❖ Authorities must take into account the personal circumstances of the applicant and her/his household: **R v LB Brent ex parte Omar** (1991)
 - ❖ Families must be able to "live together" in the true sense, even if in two separate units: **Sharif v Camden LBC** (2013)
 - ❖ A standard of accommodation that may be suitable for a strictly limited period, or by way of emergency accommodation under s.188 may not be suitable for a longer period (Code 17.7). But there will be a line to be drawn below which the standard of accommodation cannot fall.
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Suitability: general considerations (2)

- 'Homeless at home': where an applicant's accommodation is, eg, overcrowded or in poor condition, the LA may accept a main housing duty, but may require the household (or the household may choose) to remain in the current accommodation in the short term pending suitable accommodation becoming available
 - If the time comes when it is not reasonable for the applicant to occupy the accommodation for one more night, then it will no longer be suitable accommodation
(**Ali v Birmingham CC**, 2009)
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Suitability: general considerations (3)

Suitability as a continuing obligation?

- If an applicant's circumstances change, so that the accommodation secured in performance of a duty ceases to be suitable, the authority has a duty to secure other, suitable accommodation: **R (Zaher) v Westminster CC** (2003)
 - An applicant can at any time request that the authority reconsiders its decision that accommodation secured under Part 7 duties is suitable: **R (B) v Redbridge LBC** (2019)
 - But where the applicant refused to move from 'main duty' temporary accommodation which had become unsuitable to new accommodation which the authority considered suitable for her, the authority were entitled to terminate their duty: **Muse v Brent LBC** (2008)
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Bed and Breakfast accommodation

The **Homelessness (Suitability of Accommodation) (England) (Order) 2003** provides that B&B accommodation is *not to be regarded as suitable for an applicant with family commitments*.

- ❑ B&B accommodation = accommodation which is not separate, self-contained premise and where there is a sharing of toilet, personal washing or cooking facilities...
- ❑ ...but does not include accommodation owned or managed by a local authority or housing association.
- ❑ But authorities **are** permitted to use B&B accommodation
 - where no other accommodation is available, but then
 - for **no more than six weeks**

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Private rented sector accommodation

Regulations set out enhanced standards of suitability to be expected of private rented sector accommodation where that accommodation is used to discharge any of the following duties:

- ❖ A 'private rented sector offer' under s.193(7F) (AST for a fixed term of **12 months**)
- ❖ A 'final accommodation offer' made at relief stage (s.193A) or following applicant's refusal to co-operate (s.193C) (AST for **6 months**)
- ❖ Private sector accommodation secured for a person in priority need in discharge of LA's functions under s.195 (Prevention duty) or s.189B (Relief duty) (accommodation for at least 6 months).

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Suitability of Accommodation Order 2012

The Order provides that private rented sector accommodation is not to be regarded as suitable where:

- it is not in a 'reasonable physical condition'
- it does not comply with gas or electrical safety regulations or does not have an Energy Performance Certificate
- it lacks reasonable fire safety precautions
- there is a risk of carbon monoxide poisoning
- it is an HMO which is subject to licensing, but unlicensed
- landlord is not a 'fit and proper person'
- landlord has not provided to LA a written tenancy agreement which the LA considers adequate

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Suitability of Accommodation Order 2012

What will prevent a landlord being a 'fit and proper person'?

- ❑ Where s/he has committed any offence involving fraud or dishonesty, or violence or drugs, or a Schedule 3 sexual offence; or
- ❑ practised unlawful discrimination in connection with business activities; or
- ❑ contravened any provision of the law relating to housing including landlord and tenant law; or
- ❑ has breached any code of practice relating to the management of HMOs.

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Affordability

The **Homelessness (Suitability of Accommodation) Order 1996**

In considering whether accommodation is suitable (or reasonable to continue to occupy), the authority must take into account whether the accommodation is **affordable**, and in particular:

- ❑ the financial resources available to him/her, including social security benefits;
- ❑ rent, mortgage and/or other costs of occupation;
- ❑ maintenance payments, and
- ❑ other reasonable living expenses.

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Samuels v Birmingham City Council

- Ms Samuels (S) and her four children were evicted from private rented accommodation due to rent arrears. She was receiving income support, child tax credits, child benefit and housing benefit.
- Arrears had built up as there was a shortfall of £151.49 per month between her housing benefit and her rent.

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Samuels v Birmingham City Council (2)

- ❑ S applied as homeless to Birmingham. The Council found that she had become intentionally homeless. They considered that she could have used her subsistence benefits to top up her rent
- ❑ The reviewing officer decided that S had been receiving sufficient income to pay the rent shortfall:
"I consider that it is a matter of normal household budgeting that you would manage your household finances in such a way as to ensure that you were able to meet your rental obligation."
- ❑ That decision was upheld in the county court and the Court of Appeal.

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Homelessness Code of Guidance 2006

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...[para 17.40]

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Samuels v Birmingham CC (3)

- ❑ Ms S appealed to the Supreme Court
 - ❑ S argued that the Council had failed to have regard to the starting point, that when an applicant is entirely reliant on benefits, such benefits are set at subsistence level to cover essential household expenses and are not designed to cover housing costs.
 - ❑ Shelter and CPAG intervened on the question of whether it is reasonable for a person to use subsistence welfare benefits to pay any shortfall between their housing benefit and their rent.
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Samuels v Birmingham CC (4)

The basis of the Shelter/CPAG intervention was:

- the impact of the Local Housing Allowance (LHA) freeze is having a drastic impact across the country on people's ability to find and keep an affordable home.
 - the LA assessment process is variable and lacks transparency
 - assessments do not have proper regard to the needs of children

 - 1 million households claim LHA: 37% are in work.
 - LHA rates have been frozen since 2016 and are not due to unfreeze until 2020.
 - As rents continue to rise, this means that there is a growing shortfall between the amount of LHA a household can claim and their rental costs
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Samuels v Birmingham CC (5)

- ❖ As of April 2018, for a 2 bedroom home, there is a shortfall between max LHA and actual cost of renting in the lowest 30% of the market in **95% of areas** in England (BRMAs).
 - ❖ From April 2018, for a 3 bed home, LHA rates fall short of rents in **97% of areas** in England.
 - ❖ Shortfalls are large: in over a quarter of areas, families in need of a 2-bed face a shortfall of at least **£100pcm**.
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Samuels v Birmingham CC (6)

Local authority approaches to assessing affordability

- April 2018 – Shelter Freedom of Information Act request to all authorities in England to ascertain how they assessed affordability and what, if any, benchmark figures they used.
 - Responses from 246 (out of 326) LAs:
 - Widely differing practices in carrying out affordability assessments, reference to Code of Guidance, using credit checks, etc
 - Where LAs used benchmark figures for household expenditure, these varied widely
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Samuels v Birmingham CC (7)

Household expenditure tools:

- ❑ **Standard Financial Statement (SFS):** income / expenditure form from Money Advice Services. Intended to bring greater consistency to the way finances are considered in debt advice.
 - ❑ **Common Financial Statement (CFS):** standard budget form from Money Advice Trust. Set up to help debt advice organisations to negotiate debt repayments with creditors.
 - ❑ **Association of Housing Advice Services (AHAS):** described as an evidence-based tool to assist caseworkers in calculating likely expenditure.
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Samuels v Birmingham CC (8)

Comparison of 'reasonable monthly expenditure' for couple families using the three most common benchmark figures:

Couple household	SFS	AHAS	CFS
with one child	£1,224.00	£927.33	£1,391
with two children	£1,426.00	£1,133.17	£1,593
with three children	£1,628.00	£1,339.00	£1,795
with four children	£1,830.00	£1,544.83	£1,997
with five children	£2,032.00	£1,755.67	£2,199

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Samuels v Birmingham CC (9)

Supreme Court:

- ❑ Court unanimously upheld S's appeal
- ❑ All sources of income, including welfare benefits, to be taken into account (Homelessness (Suitability of Accommodation) Order 1996)
- ❑ Income should then be compared with reasonable living expenses...
- ❑ ...which should be assessed objectively...
- ❑ ...not on the basis of the reviewing officer's subjective views of what was or was not reasonable

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Samuels v Birmingham CC (10)

Supreme Court:

- ❑ It was reasonable to take into account child-related benefits in the assessment of affordability
- ❑ But benefit levels were not "generally designed to provide a surplus above subsistence needs for the family"
- ❑ Reviewing officer had asked the wrong question...
- ❑ ... which was not whether, faced with the monthly shortfall of £151, S could somehow manage her finances to bridge the gap
- ❑ ...but what were her reasonable living expenses other than rent
- ❑ It was "hard to see on what basis the finding of intentional homelessness could be properly upheld".

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Homelessness Code of Guidance 2018

*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 specific to their circumstances. **Housing costs should not be regarded as affordable if the applicant would be left with a residual income that is insufficient to meet these essential needs.** Housing authorities may be guided by Universal Credit standard allowances when assessing the income that an applicant will require to meet essential needs aside from housing costs, but should ensure that the wishes, needs and circumstances of the applicant and their household are taken into account. [para 17.46]*

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Samuels v Birmingham CC (11)

Postscript

- ❑ The court noted that there was some ambiguity as to how para 17.46, in the new Code of Guidance, should be interpreted
- ❑ Significant degree of variation in the assessment of affordability across the country
- ❑ Government urged to consider the issues raised by the judgment and to give clearer guidance to authorities.

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Location of accommodation

So far as reasonably practicable, an authority shall secure that accommodation is available for the occupation of an applicant in its own district
(s.208(1), HA 1996)

Reg 2 of the **Homelessness (Suitability of Accommodation) (England) Order 2012** provides that LAs, when determining the suitability of accommodation, must take into account its location, including:

- > distance of the accommodation from the authority's district;
- > disruption to employment, caring responsibilities or education;
- > access to medical facilities and other support which are essential to the well-being of household members; and
- > access to local services, amenities and transport.

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Location of accommodation 3

- ❑ The courts accept that it is open to an authority to decide that it is not "reasonably practicable" for them to provide accommodation in its own district where this would be more expensive than elsewhere, even if this involves offering accommodation in a different part of the country: **R (Calgin) v Enfield LBC** (2005)
 - ❑ ...unless there are compelling personal circumstances, in which case accommodation must be provided in the authority's own area: **R v Enfield LBC ex parte Yumsak** (2002)
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Nzolameso v City of Westminster

- N and her children had lived in Westminster for several years
 - Rent covered by local housing allowance
 - Until she was evicted as a result of the benefits cap
 - Council accepted full housing duty under s.193 HA 1996
 - And offered her temporary accommodation in Bletchley
 - S.208 HA 1996: Authorities must "so far as practicable secure that accommodation is available for the applicant in their own district
 - N refused offer and Council discharged duty
 - Appeal to county court dismissed
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Alibkhiat v Brent LBC Adam v Westminster CC

- Ms Alibkhiat was offered a 2 bed flat in Smethwick despite accommodation being available in London
- Ms Adam was offered accommodation in Worcester Park, Sutton, but argued the authority should have allowed her to stay in temporary accommodation until in borough accommodation was available.

Court of Appeal -

- Even if there is in-borough accommodation, it need not be offered to a particular applicant
 - An authority does not have to wait "in the Micawberish hope that something better will turn up".
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Nzolameso v City of Westminster (2)

Supreme Court:

- Held that Westminster had failed to justify why it considered the accommodation to be suitable for the particular family
 - If it was not possible to accommodate an applicant in the LA's own area, the LA must try to find accommodation that is as close as possible to her/his previous home.
 - LA is required to give reasons for any decision on where to accommodate a homeless applicant, including details of enquiries it has made concerning how practicable it would be for the applicant and her family to move to a different area
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Nzolameso v City of Westminster (3)

- ❑ Section 11 Children Act 2004 requires public authorities to make arrangements for ensuring that:
 - (a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and
 - (b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.
 - ❑ LA had to assess the needs of the applicant's children and take account of them when making an offer of accommodation.
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Nzolameso v City of Westminster (4)

Supreme Court:

- Westminster had assumed that it could offer accommodation outside its area and that the burden was on Ms Nzolameso to show that it was necessary for the family to remain in Westminster.
 - Westminster had no evidence of what accommodation was available in or near its area.
 - The Court accepted that LAs are entitled to take account of the resources available to them
 - Each LA should have a policy for procuring sufficient units of accommodation to meet the demand and explaining the factors involved in allocating the available properties to homeless families.
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Anon v L.B. Lewisham (Central London County Court)

- A was placed in temporary accommodation some distance from the children's schools
- She had to take her two older children (10 and 5), together with a 2 year old, on the following journey:

The journey to your children's school from your temporary accommodation, should you leave at 6.57 a.m., would generally have taken you around eighty minutes. In summary, this would have required a two-minute walk from the temporary accommodation to the 314 or 233 bus stop, a six-minute bus journey to Eltham and then a six-minute walk to take a South Eastern train to London Bridge, which would generally have taken you a further twenty-two minutes. You would then have needed to take a Northern Line train to Clapham Junction (twelve minutes) and then a twenty-minute walk to your children's school. You would have arrived at approximately 8.17 and in time for your children's schooling.

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Anon v L.B. Lewisham (Central London County Court)

HHJ Parfitt held:

- Dismissing the first ground of appeal, the standard of suitability was no less for temporary accommodation than for longer term accommodation (allowing for the period for which the applicant was likely to be living there)
 - Allowing the second ground, the Council had failed in its duty under s.11 Children Act 2004 to have regard to the need to safeguard and promote the welfare of the children.
 - The reviewing officer had failed to satisfy that obligation in relation to the children's educational requirements and the impact on the youngest child, who had to accompany the rest of the family on four journeys a day.
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R (E) v L.B. Islington

- ❖ C fled domestic violence with her children, including E aged 9
 - ❖ The family were placed in Islington, then in Hammersmith and Fulham, then back in Islington
 - ❖ Throughout, Islington failed to make arrangements for E's education
 - ❖ Admin Ct: breach of article 2 of the First Protocol to the ECHR
 - ❖ Drew attention to the decision in *Nzolameso v Westminster CC*
 - ❖ Councils are under a duty to evaluate the impact of a move on children's education, and to record their decisions and reasoning, including (where children are placed in another borough) how the other authority will secure the child's educational welfare.
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Shelter

Public sector equality duty

- ❖ Section 149 of the Equality Act 2010 requires that public authorities must, in the exercise of their functions, have due regard to the need to eliminate discrimination and advance equality of opportunity.
- ❖ "The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities" (s.149(4)).

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Hackney LBC v Haque

- ❑ H was a disabled person
 - ❑ Council had placed him in a single room in a hostel
 - ❑ H complained that the room was too small
 - ❑ and about the "no visitors" policy
 - ❑ and about the lack of laundry facilities
 - ❑ Council concluded that the accommodation was suitable
 - ❑ H appealed to the county court
 - ❑ County court judge decided that the Council had not given adequate consideration to the effect of the Public Sector Equality Duty in reaching its decision that the accommodation was suitable
 - ❑ Council appealed to the Court of Appeal
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Hackney LBC v Haque (2)

Court of Appeal –

- ❑ Aim of the PSED was to bring equality issues into the mainstream
 - ❑ Duty had to be exercised rigorously and with an open mind
 - ❑ The PSED required the decision-maker to focus sharply on the extent and effects of H's impairments and on his particular needs when considering suitability
 - ❑ But it was not necessary for the reviewing officer to spell out this process, so long as he had demonstrated sufficient recognition of the consequences of H's disability
 - ❑ The review decision, when read as a whole, satisfied the PSED.
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Kannan v Newham LBC

- K asked for a review of the suitability of his accommodation because of mobility problems
- The authority accepted that climbing stairs caused him severe pain, but described his use of stairs as "uncomfortable and inconvenient"
- Reviewing officer claimed to have considered the PSED
- Ct Appeal: Council had failed to take into account K's longer term needs and his future
- Authorities are required to "focus sharply" on whether the applicant is under a disability, and the extent and likely effect of the disability
- It was not enough to say that many other people live in unsatisfactory accommodation that is "not ideal for their needs"
- Mere recitation of the PSED formula was no substitute for carrying out a proper assessment.

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Adesotu v Lewisham LBC

- Ms A was a single parent with 3 children
- Council accepted the main housing duty and made her an offer of temporary accommodation
- She felt it was unsuitable and did not meet the deadline to sign for the tenancy
- She said that her depressive condition affected her response
- Council discharged duty
- She appealed to the county court
- Among her grounds of appeal were:
 - Breach of s.19 Equality Act 2010: applying a provision, criterion or practice which was discriminatory
 - Breach of s.15 EA 2010: treating her unfavourably because of something arising in consequence of her disability
 - Breach of the Public Sector Equality Duty under s.149 EA 2010
- County Court: HHJ Luba QC struck out these grounds, as the court had no jurisdiction to deal with claims under the Equality Act

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Adesotu v Lewisham LBC (2)

Court of Appeal –

- Appeal dismissed
- Claims for a contravention of Part 3 EA 2010 are limited to claims in the county court
- There was an exception for judicial review claims, but this was not a JR
- The grounds of appeal raised issues of disputed fact – including whether A was disabled – which the county court cannot decide on a s.204 appeal
- The points of law were not "issues arising from the [s.202] decision": council had not been put on notice that A was suffering from a disability.

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Kalambayi v LB Brent (Central London County Court)

- K was offered accommodation in Wolverhampton in discharge of the main housing duty
- She refused it and appealed to the county court
- K's son was 14, in the first year of GCSE courses and due to take his Maths GCSE during the current school year
- HHJ Luba: decision was flawed
- Council had failed to take into account statutory guidance on taking into account the need to minimise disruption to education
- and had failed to have regard to its duty under s.11 Children Act 2004 to safeguard and promote the interests of children.

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Abdi v Waltham Forest LBC (Bow County Court, Jan 2013)

- Ms A owed full housing duty
- She was on maternity leave from part-time job in department store in Leytonstone
- Council offered her 3 year fixed term tenancy in Erith, Kent
- 18 miles from Leytonstone
- 2 hours' journey with 3 interchanges
- and A would need to leave baby with relatives in Walthamstow
- Council: offer suitable, given pressure on its resources

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Abdi v Waltham Forest LBC (2)

County court judge:

- A's appeal allowed
- Decision was beyond the spectrum of decisions which a reasonable council could take
- Decision varied to one that offer of accommodation was not suitable

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Begum v LB Newham
(Bow County Court, May 2013)

- Council accepted full housing duty to Ms B
 - and offered accommodation in Liverpool
 - B's son suffered from behavioural impairment, epilepsy and suicidal tendencies
 - and could not withstand long journey without becoming distressed
 - Council: no affordable accommodation within borough in light of benefits cap (forthcoming)
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Begum v LB Newham (2)

- B requested a review of suitability of offer
 - and applied for judicial review of Council's refusal to provide temporary accommodation pending review decision
 - Admin Ct: interim injunction ordering Council to provide suitable accommodation pending review
 - in light of son's medical and behavioural disabilities
 - Court criticised Council's failure to respond fully to pre-action protocol letter
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LB Tower Hamlets v Al Ahmed

- 6 April 2018: Mr A received review decision that he was intentionally homeless
 - Deadline for appealing to county court was 27 April
 - With the help of Crisis, A tried to find new solicitors to take his case, but no-one had capacity to do so
 - 23 May: A's case taken up by solicitors
 - 25 May: appeal lodged
 - A applied for permission to extend the 21 day time limit, on the basis that he had good reason for delay in filing his appeal because of the lack of legal representation
 - County court judge agreed
 - Council appealed to High Court.
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LB Tower Hamlets v Al Ahmed (2)

- High Court upheld Council's appeal
 - Although the appeal could only be pursued on a point of law, it was not necessary for a lawyer to be involved in drafting grounds of appeal
 - A could have drafted the appeal himself – it was a "relatively simple process" to lodge an appeal
 - Lack of legal representation could play only a limited, if any, part in examining whether there was good reason for exceeding the time limit
 - Application to extend time refused, and appeal dismissed.
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