

Housing Law Update

November 2025

1 Awaab's Law

The Hazards in Social Housing (Prescribed Requirements) (England) Regulations 2025

<https://www.legislation.gov.uk/ukdsi/2025/9780348273083> came into force on 27 October 2025. The Regulations are also known as 'Awaab's Law' in memory of 2 year old Awaab Ishak, who died in 2020 as a result of a severe respiratory condition due to prolonged exposure to mould in his home.

With immediate effect social landlords will have to address **all emergency hazards** and **all damp and mould** hazards that present a significant risk of harm to tenants within fixed timeframes.

This is the first phase of Awaab's Law. The Government has stated that in 2026 the scope of the regulations will be extended to include the following hazards where they present a significant risk of harm:

- excess cold and excess heat
- falls associated with baths etc., on level surfaces, on stairs and between levels
- structural collapse, and explosions
- fire, and electrical hazards
- domestic and personal hygiene and food safety

In 2027, the regulations will be extended to all remaining HHSRS hazards (apart from overcrowding) where they present a significant risk of harm.

At this stage Awaab's Law applies only to social landlords. The Renters' Rights Act 2025 contains provision for similar measures to be introduced in the private rented sector in due course.

Awaab's Law derives from [s10A Landlord and Tenant Act 1985](#), which implies into a tenancy of social housing a covenant that the landlord will comply with all prescribed requirements. S.10A requires the Secretary of State to make regulations which require landlords to take action in relation to prescribed hazards which affect the relevant property, within the period(s) specified in the regulations.

S.10A(4) provides that the regulations are enforceable against landlords only through actions for breach of the implied covenant.

In any proceedings for a breach of the covenant, it is a defence for the landlord to prove that they used all reasonable endeavours to avoid that breach.

Guidance on Awaab's Law for tenants can be found [here](#), and for social landlords [here](#). See also the [Explanatory Memorandum to the Regulations](#).

Policy purpose

The purpose of the Regulations is to impose timescales on social landlords for dealing with tenants' complaints concerning:

- **All emergency hazards:** an emergency hazard is one that poses 'an imminent and significant risk of harm' to the health or safety of the tenant in the social home. This is defined as a risk that "*a reasonable social landlord with the relevant knowledge would take steps to make safe within 24 hours*". Assessment of risk includes any particular vulnerabilities within the household and other circumstances.
- **All damp and mould hazards that present a significant risk of harm to tenants.** A significant risk of harm is defined as "*a risk of harm to the occupier's health or safety that a reasonable lessor with the relevant knowledge would take steps to make safe as a matter of urgency (but not within 24 hours)*".

In summary, the Regulations have the effect that landlords must:

- Investigate any potential emergency hazards and, if the investigation confirms emergency hazards, undertake relevant safety work as soon as reasonably practicable. The investigation and the work must both take place within **24 hours** of becoming aware of the hazard.
- Investigate any potential significant hazards within **10 working days** of becoming aware of them;
- Produce a written summary of investigation findings and provide this to the tenant within **3 working days** of the conclusion of the investigation.
- Undertake relevant safety work within **5 working days** of the investigation concluding, if the investigation identifies a significant hazard.
- Begin, or take steps to begin, any supplementary preventative work to prevent a significant or emergency hazard recurring within **5 working days** of the investigation concluding, if the investigation identifies a significant or emergency hazard. If steps cannot be taken to begin work in **5 working days** this must be done as soon as possible, and work must be physically started **within 12 weeks**.
- Satisfactorily complete supplementary preventative works within a reasonable time period.
- Secure the provision of suitable alternative accommodation for the household, at the social landlord's expense, if relevant safety work cannot be completed within specified timeframes.

- Keep the tenant updated throughout the process and provide information on how to keep safe.

The timelines set under Awaab’s Law are the maximum statutory timeframes in which landlords must act. Landlords can and should act more quickly if circumstances require, especially in situations where other legislation requires a faster response and/or according to their policies and procedures.

Enforcement

The landlord guidance suggests that the complaints system, including if necessary escalation to the Housing Ombudsman, will usually be a cheaper and quicker means of enforcement than court action. However, it should be possible for a tenant to obtain an interim injunction where the landlord is in breach.

The Regulations in outline

Regulation 1 introduces the Regulations and explains their application.

Regulation 2 defines terms used throughout the Regulations.

Regulation 3 defines “significant hazard” and “emergency hazard”.

- “Significant hazard” means, in relation to a social home, a relevant hazard that poses a significant risk of harm to the health or safety of an occupier of the social home;
- “Significant risk of harm” means a risk of harm to the occupier’s health or safety that a reasonable lessor with the relevant knowledge would take steps to make safe as a matter of urgency (but not within 24 hours);
- “Emergency hazard” means, in relation to a social home, a relevant hazard that poses an imminent and significant risk of harm to the health or safety of an occupier of the social home;
- “Imminent and significant risk of harm” means a risk of harm to the occupier’s health or safety that a reasonable lessor with the relevant knowledge would take steps to make safe within 24 hours

“Relevant hazard” means a hazard affecting a social home that—

(a) is a prescribed hazard where—

(i) in relation to a significant hazard, the risk of harm is associated with exposure to damp, mould or fungal growth, or

(ii) in relation to an emergency hazard, the risk of harm is not associated with a lack of adequate space for living and sleeping (or either of those things),

(b) arises from a deficiency in the social home, or in any building, part of a building or land in the vicinity of the social home, for which the lessor is responsible, and

- (c) is not wholly or mainly attributable to—
- (i) the lessee’s breach of a covenant under the lease, or
 - (ii) disrepair which the lessor is not obliged to make good because of an exclusion or modification under section 12 of the Landlord and Tenant Act 1985 (power of county court to authorise exclusions or modifications in leases in respect of repairing obligations).

Regulation 4 defines “required work” (i.e. work to make the property safe and ensure, so far as is possible, that the hazard does not recur).

Regulation 5 covers the requirements for social landlords to address emergency hazards within 24 hours, including emergency investigations.

Regulation 6 covers “standard” investigations – i.e. the investigations that would first take place when a social landlord becomes aware of a potentially significant hazard (unless they think it is potentially an emergency hazard).

Reg 6 provides that where a lessor of a social home becomes aware of an issue of concern in relation to the social home, but does not have reasonable grounds to believe that an emergency hazard exists, the lessor must secure that an investigation is completed by a competent investigator before the end of—

- (a) the standard investigation period (ie, 10 working days), or
- (b) if the lessee requests a physical inspection of the relevant matter before the investigation is completed, the extended investigation period (10 working days after the lessee requests the physical inspection).

Regulation 7 covers “renewed” investigations – which are investigations that must take place in person if a tenant requests it after a standard investigation has concluded.

Regulation 8 covers “further” investigations – which are when a standard, renewed or emergency investigation was unable to determine all the work needed, and a further investigation is required.

Regulation 9 covers the requirement to provide a written summary of findings to tenants after the investigation. The landlord must, within 3 working days after the relevant investigation is completed, give the tenant a document setting out the specified information, which must include:

- where the investigation was an emergency, standard or renewed investigation—
 - (i) whether or not the investigation identified a significant hazard or emergency hazard, and
 - (ii) where such a hazard was identified, what that hazard is;
- where further action is required under the Regulations, what that action is and a target timescale for beginning and completing the action;
- alternatively, that there is no further action required under the Regulations, and the reasons why;
- information about how the lessee may contact the lessor.

Regulation 10 explains how that summary should be given to tenants.

Regulation 11 is the requirement to complete relevant safety works within **5 working days** if the Regulations require work to address a significant hazard. Where temporary accommodation is provided for the tenant, the work must be done as soon as reasonably practicable.

Regulation 12, which applies in relation to both significant and emergency hazards, requires that a property must be kept safe until any required supplementary preventative work is completed.

Regulation 13 which applies in relation to both significant and emergency hazards, is the requirement to do supplementary preventative work (i.e. any work to prevent as far as possible the hazard from recurring) within 5 days of the further inspection, or otherwise as soon as reasonably practicable, subject to a maximum of 12 weeks. This does not apply to cladding work.

Regulation 14 requires the social landlord to keep the tenant updated about the timing and progress of required works.

Regulation 15 deal with the circumstances in which the landlord must provide suitable alternative accommodation, ie where the landlord is unable to secure that the relevant safety work is completed within the initial remediation period (meaning, in relation to an emergency hazard, 24 hours; and in relation to a significant hazard, 5 working days after the investigation is completed).

Regulation 16 sets out the specific requirements for securing suitable alternative accommodation.

Regulation 17 requires the social landlord to provide safety information if anyone will remain in the property.

Regulation 18 prevents attempts to contract out of the requirements in the Regulations.

Regulation 19 provides that where a landlord is in breach of an obligation under the Regulations, the court may order specific performance of the obligation.

Regulation 20 provides social landlords with a right of entry for the purposes of compliance with the Regulations at reasonable times of day and on 24 hours' notice.

Regulation 21 covers circumstances where a social landlord became aware of a relevant issue before the commencement of the Regulations.

Regulation 22 covers the application of the Regulations where a landlord ceases to be a social landlord or the interest of the landlord is transferred to a person that is not a social landlord.

Regulation 23 specifies that the Regulations must be reviewed at least every 5 years.

2 Renters' Rights Act 2025

The Renters' Rights Bill received Royal Assent on 27 October 2025. The most important changes will take effect on 1 May 2026 and other provisions come into force on 28 December 2025. Some provisions will be introduced from late 2026.

Commencement (s.144)

On 1 May these parts will be implemented:

- Assured shorthold and fixed term tenancies will cease to exist
- Changes to the grounds for possession of assured tenancies will take effect
- Rent will only be able to be increased using the section 13 procedure
- Rent in advance of the tenancy start date will be limited to one month
- Rent bidding wars will end
- Discrimination in letting on the basis of having children or being in receipt of benefits will be prohibited
- For tenancies created on or after 1 May landlords will need to provide a written statement of the terms of the tenancy containing certain prescribed information

On 1 May the new tenancy system will apply to all assured tenancies, whether new or already in existence.

The new assured tenancy regime will be applied to social housing assured tenancies at a later date. The Government must first update and consult on its Direction to the Regulator of Social Housing, and the Regulator will also be required to update its Tenancy Standard.

This Act comes into force for the purposes of making regulations on the day on which it is passed (s.145(2)). The following provisions will come into force on 28 December 2025:

- Chapter 2 of Part 1 (long leases cannot be assured tenancies);
- section 110 (Duty on local authorities to report to the Secretary of State on the exercise of their functions under the "landlord legislation", as defined in s.107(5);
- Chapter 3 of Part 4 (extension of local authorities' investigatory powers).

The Government has announced that in Phase 2 of the implementation, from late 2026, they will introduce the PRS Database and the PRS Landlord Ombudsman. In Phase 3 the Decent Homes Standard and Awaab's Law will be applied to the private rented sector.

Abolition of assured shorthold tenancies (sections 1 and 2)

The periodic assured tenancy

Section 1 of the Act inserts a new section 4A in the HA 1988:

"4A Assured tenancies to be periodic with rent period not exceeding a month

- (1) Terms of an assured tenancy are of no effect so far as they provide—
- (a) for a tenancy to be a fixed term tenancy, or
 - (b) for periods of the tenancy to be different from the periods for which rent is payable ("rent periods").

(2) Where terms of an assured tenancy are of no effect by virtue of subsection (1)(a) or (b), the tenancy has effect as a periodic tenancy under which the periods of the tenancy are the same as the rent periods.

(3) Terms of an assured tenancy which provide for the rent periods are of no effect unless each rent period is—
(a) a period of 28 days or shorter, or
(b) a monthly rent period...”

The effect of this section is that from 1 May, all assured tenancies will be periodic tenancies of a month or less and can no longer have fixed terms. Any term of an assured tenancy that tries to create a fixed term will have no legal effect. So if a landlord attempts to create a fixed term tenancy, the tenancy will instead be periodic and the periods of the tenancy will be the same as the rent period.

The periods of the tenancy must match the rent period (eg, monthly, weekly). Rent periods must be either monthly or no more than 28 days long. If a landlord tries to create an assured tenancy with any other length of period, this will be of no legal effect.

A tenant wishing to terminate a tenancy will have to give the landlord a minimum of two months’ notice (see section 20).

Abolition of assured shorthold tenancies

Section 2 of the Act abolishes the assured shorthold tenancy (AST) at a stroke by deleting sections 19A-23 of the HA 1988. All references to ASTs in other legislation are removed by the Act.

All existing tenancies will convert to Section 4A assured periodic tenancies on the commencement date (s.146). This includes existing fixed term tenancies. The tenancy periods will be of the same duration as the rental periods (subject to a maximum of monthly).

Transitional measures

Where a valid section 21 notice has been given before the commencement date:

- If the Claimant has “requested the court to issue the claim form”, the s.21 notice remains valid until the possession proceedings are concluded (Sch 6, para 3)
- If the Claimant has not yet requested the court to issue proceedings, the deadline for issuing proceedings is:
 - 3 months after 1 May, or (if earlier)
 - 6 months after the notice was given (Sch 6, para 4)

3 Case law

A Possession proceedings

Licence v tenancy: agreement for temporary accommodation was a licence

Kaur v Birmingham City Council

County Court at Birmingham 12 January 2025

See <https://nearlylegal.co.uk/2025/06/the-wrong-sort-of-exclusive/>

Ms K had complained about the conditions in the property which she and her family occupied, which was provided by the Council as temporary accommodation under s.193, Housing Act 1996. She brought proceedings in respect of disrepair and fitness. The Council argued that she was a licensee of the accommodation, and not a tenant, and that therefore the implied terms under s11 and s9 Landlord and Tenant Act 1985 did not apply. The property was privately owned, and Birmingham had a licence to use it as temporary accommodation for homeless applicants.

Ms K's agreement with the Council stated that K could be required to move to alternative accommodation at any time. K could be required to share with other applicants and could not invite anyone else to live at the property without the Council's permission. There were limits on how often she could be absent. The council could gain access the property without notice in an emergency and K was required to allow reasonable access at other times.

K argued that she had enjoyed exclusive occupation, and that this created a presumption in favour of a tenancy. The offer letter had referred to a non-secure tenancy and this should be taken as the intention of the parties. A requirement to move at any time was not incompatible with a tenancy in any event. The agreement did not provide a general right to Birmingham to enter the property. It was not reasonable to suggest that other persons could occupy the property at the same time, given the size of the property and K's household.

Birmingham argued that the purpose of the agreement was to provide temporary accommodation, and that it was intended to create a licence. Other terms of the agreement, such as being required to move to other accommodation at any time, potentially sharing with others, and restrictions on overnight visitors as well as K's absence were inconsistent with the grant of exclusive possession. K gave evidence that she was aware of these restrictions and had acted in accordance with them.

The Court held that the agreement generally gave the Council control over who could live or stay overnight at the property; control over how long K could be away from the property; and the power to terminate the agreement how and when it wished. All of these were inconsistent with a right to exclusive possession. However, the Council's limited right to enter the property under the agreement was consistent with the grant of exclusive possession.

On balance, taking account of the purpose of the agreement and the surrounding circumstances, the Court held that it did not confer on K a right to exclusive possession. Overall, the rights reserved to the Council demonstrated that the parties' intention was that the Defendant should and would retain legal possession and control over the Property. The agreement was a licence.

Disability discrimination: social landlord acting proportionately in seeking eviction

Thiam v Richmond Housing Partnership

[2025] EWHC 933 (KB)

[What else to do? Disability discrimination and justification - Nearly Legal: Housing Law News and Comment](#)

Ms T was an assured tenant of RHP. In 2020, RHP applied for possession on a number of grounds including rent arrears of £18,000, anti-social behaviour by T's son, failure to provide access to the premises, and the condition of the premises (due to hoarding). RHP stated that it considered T to be vulnerable and had treated her as a person under a disability and referred her to the relevant agencies, but it could not risk the health and safety of other residents.

The county court judge found all the grounds were made out. In relation to the condition of the property, T advanced a defence and counterclaim of disability discrimination. She argued that the decision to seek possession amounted to unlawful discrimination, since the conduct complained of arose from her disability, and that the possession claim was unfavourable treatment which was not justified under s.15(1)(b), EA 2010. On the basis of an expert report, the court accepted that T was disabled by reason of schizophrenia and a delusional disorder which resulted in her hoarding. However, the judge held that the claim had a legitimate aim and was proportionate.

On the issue of justification, the judge considered that RHP had done all it reasonably could to provide assistance and services to T, but that she had failed to engage.

T appealed to the High Court, arguing that the judge's conclusion that RHP had acted proportionately was wrong on the basis that RHP was unaware of the connection between her hoarding and her mental illness at the time it made its claim for possession; it had not arranged for specialist intervention; and it had not made an application to the Court of Protection for an order that would have enabled RHP to remove the refuse from the property.

T's appeal was dismissed. The nature of the proportionality inquiry under s.15 EA 2010 had to be considered in the context of the contractual relationship between T and RHP. RHP had no authority beyond that relationship. Whether RHP had formed a view that there might be a connection between T's disability and the hoarding was not central to the proportionality issue. When applying s.15(1)(b) to the facts of the case, it was more important to consider what RHP did and what else it might have done before deciding to seek possession. That was the approach taken by the judge. The judge had been entitled to find that the eviction was proportionate.

The court did not accept T's submission that the decision to commence possession proceedings was not proportionate because RHP did not first engage specialists with expertise in assisting hoarders to help address the situation. RHP's evidence had shown the lengths that it had gone to when seeking to address the hoarding problem. It had sought to involve other agencies, including social services. The obligation to act proportionately did not require RHP itself to engage specialist help for T.

T's submission that RHP should have applied to the Court of Protection would have required RHP to incur significant expenditure and would have been speculative. This would go well beyond any step that could legitimately be expected of a landlord and anything that could reasonably be considered as proportionate.

GCS sent by post in accordance with tenancy agreement deemed served

Khan v D'Aubigny

(2025) EWCA Civ 11

See Nearly Legal summary [here](#).

Ms D appealed against the county court's decision that service of the GCS (and other required documents) posted to her but not received had none-the-less been given to her, and therefore the subsequent s21 notice was valid.

Ms D's first ground was that the provision of section 7 Interpretation Act 1978 (which would have deemed service to be effected by properly addressing, pre-paying and posting a letter containing the document, unless the contrary was proved) did not apply because the Housing Act did not "authorise or require" service by post (it simply did not prohibit it). She was successful on this point.

Her second argument was that the term in the tenancy agreement saying "Any notice sent to the Tenant under or in connection with this agreement shall be deemed to have been properly served [if posted properly]" did not apply, as the GSC etc were not notices under or in connection with the agreement. The Court of Appeal did not agree. There was some discussion of what a notice was, concluding that it must be formal written notification of something and "the letter enclosing [the GSC etc] could be said to be a formal notice of the information contained in the documents." "I think it plain that they were sent "in connection with" the tenancy agreement. It was only because Mrs D'Aubigny was (or was to be) the tenant under the tenancy agreement that they had to be given to her at all." The deeming provision in the tenancy agreement, unlike that in s. 7 IA 1978, did not contain any provision enabling it to be rebutted by proof to the contrary. The documents were therefore deemed served under the tenancy agreement and this ground, and the appeal, therefore failed.

The Court of Appeal went on to consider the position at common law, and also how far a supposed recipient of a notice was required to advance positive evidence of the lack of receipt. They did not accept that there was a requirement to advance positive evidence. It was potentially sufficient to simply deny receipt, if the court was satisfied, on the balance of probabilities, that this was credible evidence. A notice sent by post engages a rebuttable presumption that it has been received – similar in practice to the position under s7 IA.

Only most recent two GCSs needed for valid s21 notice

Cassell & Cassell v Sidhu & Siddhu

<https://nearlylegal.co.uk/2025/10/redeeming-the-irredeemable-gas-safety-certificates-and-section-21/>

The main issue on appeal was on the same point as *Byrne v Harwood-Delgado* <https://nearlylegal.co.uk/2022/06/the-trecarrell-conundrum-revisited/>, which was whether the absence of a valid GSC at the start of the tenancy precludes service of a valid s21 notice. The Judge here came to the opposite conclusion, finding that a valid s21 notice could be served in this situation as long as the most recent 2 GSCs had been served.

The reasoning comes from Regulation 36(3), (5) and (6) of the Gas Safety (Installation and Use) Regulations 1998, which expressly only require the landlord to hold and make available GSCs until there have been two further checks. The landlord argued that parliament could not have intended them to keep the initial GSC after the regs themselves no longer required this. *Cassell* has the same weight as *Byrne*, leaving the law unclear on this point. The tenants have moved out and *Cassell* will not be appealed. With the Renters' Rights Act now passed, on 1 May 2026 this will all no longer be relevant.

Moratorium and non-moratorium debts cannot be separated

Bluestone Mortgages Ltd v Stoute

(2025) EWHC 755

See [Nearly Legal](#) summary.

This case addressed the question of whether an existing possession order could be enforced in respect of the non-moratorium debt during a moratorium where the judgment related to both non-moratorium and moratorium debts.

A 'secured debt' is not a moratorium debt under the terms of the regulations, but the arrears of mortgage payments/interest are. The High Court agreed with the judge at first instance that the two elements could not be separated out and therefore no part of the debt was enforceable during the moratorium.

Mortgage principal is not an eligible debt for moratorium

Forbes v Interbay Funding Ltd

[2025] EWCA Civ 690

The Court of Appeal held that the principal sum owed under a mortgage is not an eligible debt for a mental health crisis or breathing space moratorium. Only arrears can fall within the moratorium. So if the principal is called in (ie demanded immediately) where there are no arrears, breathing space will not help the borrower. This is only likely to be an issue in cases concerning bridging loans. For most residential mortgages, the lender will only call in the principal and seek possession where there are arrears of instalments, which would make the debt a mixed debt which is protected by breathing space.

B Succession

A 'stepchild' under a discretionary succession policy did not include a person whose parent was not married to, or in a civil partnership with, the deceased tenant

Abdelrahman v Islington LBC

[2025] EWCA Civ 1038

See [Nearly Legal](#).

Mr Seales (S) had been a secure tenant of Islington from 2015 until his death in 2021. Ms Patel had been in a relationship with S but they were not married and did not live together. Ms P's daughter, Ms Abdelrahman (A), however, had been living with S for 3 years before his death.

The Council had a succession policy on the death of a secure tenant which included a 'stepchild' as someone who could succeed to the tenancy, assuming the other conditions were

met. A applied for succession under the policy. Islington refused on the basis that she was not S's stepchild and brought possession proceedings. A possession order was granted. A appealed.

Her initial argument was that the court was wrong to exclude her from the definition of 'stepchild' just because A and her mother were not married; the Oxford English dictionary definition of stepchild included those in her position, and she was effectively a member of S's family.

The Court of Appeal noted that the OED definition was an outlier, with most definitions requiring marriage or civil partnership between the parent and step-parent. The statutory list of successors did not include de facto stepchildren. It held that the meaning of "stepchild" in a local authority's policy concerning those entitled to succeed to secure tenancies was a child of a person's spouse or civil partner by a previous marriage or civil partnership.

Lewison LJ noted that the council's policy is "*designed to be capable of implementation by a tenancy officer with the minimum of investigation*" and "*To adopt the meaning of 'stepchild' argued at trial is likely to lead to costly and time-consuming investigation or even litigation as to who is and who is not a stepchild. That is the sort of situation which the policy is designed to avoid. HHJ Bloom made that point at [43] and I agree with her.*"

In considering whether the council's policy amounted to "unlawful discrimination", Lewison LJ noted that the argument for A was that she had a "status" in that she was the biological child of one of two adults who were in an intimate relationship but were not married to each other, in contradistinction with a biological child of an adult who is married (or in a civil partnership). The court was prepared to assume that Ms A did have such a status, but did not decide this.

However, the court concluded that "*states also have a wide margin of appreciation to treat the children of unmarried couples (or couples not in a civil partnership) differently from the children of married couples (or civil partners)*". Excluding the children of unmarried couples from the definition of "stepchild" was a proportionate means of pursuing a legitimate aim and the policy was ECHR-compliant. There was no unlawful discrimination.

C Tenancy deposits

Prescribed information given when mistake obvious and signature in covering letter

Lowe v Governors of Sutton's Hospital in Charterhouse

[2025] EWCA Civ 857

See the Nearly Legal summary [here](#).

L appealed against a decision that his landlord had complied with the requirements of the Housing Act 2004 to provide the required prescribed information about a deposit. The landlord was required to provide information about the circumstances in which of the deposit might be retained, by reference to the terms of the tenancy. The landlord was also required to confirm, in the form of a certificate signed by the landlord, that the information given was accurate and that he had given the tenant the opportunity to sign the certificate.

The landlord had sent a signed letter to the tenant, enclosing an unsigned certificate of prescribed information. The certificate indicated that the deposit would be released following

the procedures set out in cl.6 of the attached tenancy agreement and referred to some provisions re consent to deductions. However, no tenancy agreement was attached, and the tenancy agreement did not contain a cl.6. Provisions relating to his deposit were in fact in cl.5, which made no mention of consent.

The tenant made an application under s214, alleging that the landlord had failed to properly serve the prescribed information. The judge determined that the certificate was compliant and dismissed the application. The High Court upheld that decision. The second appeal was also dismissed.

A reference to a provision in the tenancy agreement was sufficient to satisfy the requirements, when reading the provision as a whole and with the statutory purpose in mind. A reasonable reader would immediately realise that the reference to cl.6 was an error and that the information was intended to refer to the clause in the tenant's tenancy agreement dealing with deposits. The error was obvious. The statutory purpose of safeguarding deposits and facilitating dispute resolution in relation to deposits was fulfilled.

The signed covering letter and the certificate, taken together were "substantially to the same effect" as a signed certificate. It was sufficient that the tenant had been given the opportunity to check the details and it was not necessary for that to precede the landlord's confirmation.

D Housing conditions / disrepair

Issues arising from the Pre-Action Protocol for Housing Conditions Claims and the instruction of experts

Lancastle v Curo Group (Albion) Ltd

County Court at Bristol [2025] EWCC 48

See the detailed summary in Nearly Legal [here](#)

This was an application in two joined cases, *Lancastle v Curo Group* and *Bailey & Bennet v Curo Places*.

In both cases the tenants' solicitors had sent a protocol letter and proposed a Single Joint Expert (SJE) from a company with various surveyors on its books, but had not suggested a particular expert and had not included any indication of cost. In both cases Curo indicated that it considered the instruction of an expert premature, as it considered that an inspection by its own employed surveyor would resolve the matter or narrow the issues. The employed surveyor did inspect in both cases and while finding minor items largely did not support the tenants' cases.

In both cases the tenant's solicitors then instructed the proposed SJE as a sole expert before the time for the landlords' response under the protocol had expired. In both cases the tenant's expert found there was disrepair which would cost more than £1,000 to remedy.

Proceedings were subsequently issued and Curo applied for the claims to be struck out (although this was not vigorously pursued), or for an order debaring the claimants from relying on the expert evidence they had already obtained, directing the appointment of a future single joint expert and requiring the claimants to amend their Particulars of Claim.

Curo argued that:

It was not necessary for the tenants to get expert evidence in these cases as well as their own qualified surveyor, and the experts had been appointed in bad faith The court did not accept this argument. The protocol entitled the tenant to get expert evidence if they were unhappy with the landlord's response. The tenant's expert evidence was that there was disrepair which had not been identified or addressed by Curo, and this indicated that there was a dispute over repairs and works.

Instruction of the experts was premature The court agreed that the tenants' solicitors had not given a reasoned response to Curo's substantive response or notified Curo that they would proceed to instruct an expert, had instructed their experts before time limits had expired, and had not provided the experts with Curo's response or surveyor's reports. This was a breach of the protocol. It would however not be proportionate to order that claims be struck out or that the reports be debarred and the Particulars amended. The breach could be appropriately dealt with in costs.

A SJE should not be appointed because a landlord wouldn't be allowed to adduce their own surveyor's evidence, and they wouldn't be allowed get expert evidence because they had their in-house report The court rejected this argument. An in-house surveyor could act as an expert in litigation. Curo appeared to be trying to use their surveyor's report as if it had the weight of expert evidence while arguing that the tenant should not have expert evidence.

Curo's application was therefore dismissed, but an order was made that the claimant tenants could not recover the costs of instructing and obtaining the evidence of their experts, whatever the outcome of the litigation; and that the cost of any Part 35 questions to the experts by Curo should be borne by the claimants.

Although non-binding, the court set out some useful principles concerning the application of the protocol and instruction of experts:

1. It is open to a tenant to extend the initial period of 20 days for the landlord to respond under the Protocol, by agreement;
2. If the tenant so agrees, the period within the Protocol for instructing an expert is consequently extended;
3. A tenant is under an obligation to consider a landlord's response if given in this initial period prior to instructing an expert under the Protocol;
4. Exactly what a tenant's further response should be depends on the facts of the case, but at the least the tenant should notify the landlord that the landlord's response is not accepted and (if it be the case) that the tenant is proceeding to instruct an expert;
5. The decision on the part of the tenant to instruct an expert at this stage is contemplated by the Protocol; it is unlikely to be susceptible to challenge unless made in bad faith;
6. The landlord should be supplied with the charging rate or costs of the proposed expert prior to his being instructed;
7. If the expert is instructed as a sole expert he should be supplied with the landlord's letter of response;
8. A failure to comply with paras (3), (6) and (7) above may well give rise to sanctions preventing the tenant from recovering the costs of his expert from the landlord;
9. The mere fact that a landlord has obtained an in-house report from a qualified person does not necessarily mean that the landlord will be precluded by the court from

obtaining or relying on an expert's report, whether it is the same in-house report in a form compliant with CPR 35 or some other expert.

Seeking pre-action costs under the principle in Lee v Birmingham CC

Carter v Leeds City Council

County Court at Leeds 17 June 2025

Reported on [Nearly Legal](#) only

This was a hearing on costs only concerning a housing conditions claim which had been allocated to the small claims track. Damages were agreed at £600 shortly before trial, and it was agreed that the works (worth £1,228) had been completed 3 days before the claim was served. The tenant sought their pre-action costs and costs in the claim up to the time the works were completed, relying on *Lee v Birmingham City Council* (see [Nearly Legal](#) summary). Leeds argued that changes to the CPR since the *Lee* case prevented the tenant from obtaining a costs order once the claim had been allocated to track.

The District Judge held that the court held that the principle in *Lee v Birmingham CC* was unaffected by the rule change and that the court's power to order costs under CPR 44.2 continued.

However, where a case is justifiably issued after following the protocol but is likely to become a small claim, practitioners should pay careful attention to [Nearly Legal's](#) comment on the importance of seeking their costs before or at the stage of allocation:

“The first thing is that anyone seeking the protocol/pre-works costs at fast track rates in what is going to be a small claim (works and damages both at or below £1000, or damages below £10,000 where there the claim no longer seeks an order for specific performance of works), should be seeking an order for those costs prior to allocation to track – quite possibly in draft directions as in *Lee v Birmingham* itself.”

Internal complaints procedure not appropriate ADR

Hasan v Bristol City Council

County Court at Bristol 27 March 2025

[Bristol fashion - housing conditions claims - Nearly Legal: Housing Law News and Comment](#)

Bristol were attempting to force conditions claims into their internal complaints procedure (ICP) and in this case applied for a stay in order to go through stage 2 of the ICP. H did not oppose a stay, but proposed independent mediation. H had been unhappy with the outcome of stage 1 of the ICP, taking the position that the decision did not deal adequately with the issues in the letter before claim and the expert report, the compensation awarded was inadequate and there was limited if any acceptance of any issues at the property. There was no written procedure for a stage 2 complaint.

The judge was concerned that the ICP was not independent, there was no equality of arms between the landlord (with their litigation officer, surveyors and legal department) and the

tenant (the landlord had stated in correspondence that they did not engage with the tenant's solicitors as part of the ICP), and the ICP did not allow for resolution of all the issues. The judge also considered that the 27 page defence, which made allegations re ASB and rent arrears but did not plead any case based on this, did not suggest that this was a case where a stage 2 internal process was an appropriate form of ADR: "In my judgment an independent mediation, run by a professional mediator with professional representation for each party if they choose, where the merits of the respective cases can be taken into account in trying to reach a settlement, gives the most realistic prospect of achieving a total settlement." A 2 month stay was ordered for independent mediation (as proposed by H).

Not for landlord to decide works necessary and internal complaints procedure inadequate

Cawley & Cawley v Abri Group Ltd

County Court at Yeovil 5 February 2025

<https://nearlylegal.co.uk/2025/04/the-yeovil-imbroligo/>

Mr & Mrs C had been assured tenants of their home since 2006, originally with another HA landlord. They had been complaining about problems with the property since 2009. Abri became the landlord in 2021 and Mr & Mrs C had continued to make complaints to them. In particular, there were complaints about damp and mould to the rear ground floor extension, which Mr C used as a bedroom, since 2015. Abri attended on various occasions, noted problems including a roof leak and suggested use of a dehumidifier.

In November 2023, the Cs' solicitors sent a letter of claim. This proposed an SJE, or alternatively, a joint inspection. It made clear that the Cs were open to ADR by way of mediation, early neutral evaluation or without prejudice discussions. By way of response Abri told the Cs' solicitors that the letter had been passed to the complaints team and it would be processed as a complaint in the ICP.

Abri then stopped communicating with the Cs' solicitors, writing to Mr & Mrs C directly. Abri arranged for an inspection by its own in-house surveyor, Mr Walker, without any attempt at arranging a joint inspection with Cs' expert. There was no protocol response to the letter of claim.

Abri's provided its stage 1 response to the complaint in February 2024:

- upholding Mrs C's "... complaint about damp and mould in the dining room bedroom downstairs" (following which an offer of £5,722 was made to Mrs C);
- appearing to dismiss the letter before claim save in one very minor respect; an acknowledgment as follows – "For the lack of communication, we would like to offer our sincere apologies. It is for this reason that I am upholding your complaint." – (following which an offer of £50 is made to Mrs C).

Meanwhile, the Cs' expert had inspected and produced a report in December 2024. This was served on Abri, but was not addressed in the complaint response.

Proceedings were issued in July 2024 including a claim for specific performance in relation to the works set out in C's expert's report.

Abri made an application for:

- summary judgment on the claim for specific performance; and

- a stay for the matter to go through stage 2 of Abri's ICP

Abri's application was made on the basis that they asserted that they had carried out all necessary remedial works identified by Mr Walker save some minor external decoration, and therefore there was no prospect of an order for specific performance being made. The DJ noted "I have reservations regarding Mr Walker's impartiality and suitability to act as an expert witness as he is directly employed by Abri." The DJ also questioned whether Abri could rely in addition on the report of a second in house surveyor, given that they had the same expertise. There were differences between the opinions of the experts relied on by Abri, and between them and the Cs' expert, regarding the cause of the damp and the remedial works required.

Abri's argument was that it was up to them to determine what was reasonably required to remedy the disrepair.

The DJ disagreed and held that the court and not Abri was the arbiter of whether the solution proposed by Mr Walker was an effective and reasonable one. The Cs' expert report was credible. The DJ had some concerns about Mr Walker's report. The application for summary judgment was dismissed.

The C's letter of claim was pre-protocol compliant and had proposed various forms of ADR. Abri had wholly failed to respond. That and Abri's decision to treat the letter of claim as a stage 1 complaint was in breach of the pre-action protocol. The unilateral decision on the part of Abri to treat the Letter of Claim as a "complaint" was not what had been called for by Cs' solicitors and was not what paragraph 4.2 the Protocol calls for. Abri then failed to provide Cs' solicitors with any information about their ICP until 3 months after the stage 1 complaint decision had been made. Abri had refused to communicate with Cs' solicitors and the complaint response did not engage with Cs' expert's report.

Abri had not sent a 'landlord response' under the pre-action protocol, either para 6.2 or 6.3 forms. As per the protocol, the claimant was free to commence proceedings in view of that failure.

The DJ was also critical of Abri's response under the ICP, which did not deal adequately with the issues raised. Further, no written complaints procedure had been produced. The DJ could not be confident that the Cs would not be disadvantaged by following the ICP and the application for a stay was refused.

E Homelessness

1) Housing needs assessments

An authority's failure to produce a lawful housing needs assessment did not automatically invalidate a suitability decision

Norton v London Borough of Haringey

[2025] EWCA Civ 746 17 June 2025

N was a single parent who suffered from epilepsy and who lived with his son. He applied as homeless to the Council, which accepted the main housing duty. He accepted an offer of

private rented accommodation, but asked for a review of its suitability on account of its layout and noise nuisance. N pointed out that no up-to-date assessment of his housing needs, as required by s.189A HA 1996, was in existence before the reviewing officer made his decision. He had brought a claim for judicial review of the assessment, which was settled on the basis that the Council would carry out a revised housing needs assessment. However, before that assessment was completed, the reviewing officer made a decision that the accommodation offered was suitable.

On a s.204 appeal, N argued that the existence of a lawful housing needs assessment (HNA) and personal housing plan (PHP) under s.189A were pre-conditions of a valid suitability decision. The Judge did not accept this. N appealed. The sole issue was whether a local authority was precluded from determining the suitability of offered accommodation if it had not prepared a lawful HNA and PHP. The appeal was dismissed, and N appealed to the Court of Appeal.

Appeal dismissed. Lewison LJ said that the provisions governing suitability in HA 1996 Part 7 did not cross-refer to the duty to assess housing needs at s.189A. There was no doubt that s.189A imposed a duty on the local authority to conduct a HNA as an imperative requirement, but the section did not specify what the consequences were of a failure to comply. It was not the case that a failure to comply with an imperative statutory requirement necessarily invalidated everything the authority did.

The correct approach to a failure to comply with a provision prescribing the doing of some act before a power was exercised was to ask whether it was Parliament's intention that an act done in breach of that provision should be invalid. Parliament could not have intended that an otherwise lawful offer, which would have the direct effect of immediate relief of homelessness, would be invalid and unlawful for lack of an HNA. If it were so confined, a local housing authority would be partially paralysed and prevented from carrying out some of its duties under Part 7. In N's case, the point taken on his behalf was a "purely procedural and technical point". He had lost nothing of value: he was entitled to, and had received, a decision on suitability which contained no legal flaw.

The position would be different if the failure to carry out a s.189A assessment meant that the authority was not aware of a relevant fact which did impact on the suitability of the property offered. The proper question is therefore whether a deficiency in the HNA, or absence of an HNA and thus of relevant information, affected the suitability decision.

An alleged deficiency in a housing needs assessment does not invalidate subsequent decisions by the authority where such deficiencies have been addressed in the review decision

Fatolahzadeh v London Borough of Barnet

(2025) EWCA Civ 1174

18 September 2025

<https://nearlylegal.co.uk/2025/09/suitability-and-housing-needs-assessments-again/>

In August 2023, the Council issued a review decision that accommodation it had offered to Ms F and her disabled son was suitable. Her s.204 appeal was dismissed by the county court in July 2024.

F brought a second appeal concerning the suitability of the offer. The review decision had upheld the suitability of the property and there was no challenge to the conduct of the review

or its findings. The appeal was based wholly on the Council’s alleged failure to carry out a housing needs assessment under s.189A.

The main issue was whether an alleged failure by a local authority to carry out a lawful housing needs assessment totally invalidated any subsequent decision in fulfilling its duty to secure suitable accommodation. The appeal also addressed the role of the s. 202 review process in curing alleged deficiencies in an assessment.

F’s argument that Barnet did not carry out an assessment of her housing needs was held to be unsustainable. Having heard all of the evidence, the Judge found that the Council did make an assessment of her housing needs. The authority’s assessment was continuing and it had adopted a collaborative approach. A housing needs assessment did not have to be recorded in a single document such as the PHP, but the key was that the elements of the assessment would be available to any housing officer making an assessment of suitability.

The Council had consulted its Medical Team, which provided recommendations on F’s housing needs. It had prepared a personal housing plan (PHP), which had been sent to F. F had had the opportunity to challenge elements of the assessment. The continuing process of having regard to the assessment was then illustrated by the fact that the Council subsequently accepted that two properties which it had offered were unsuitable and withdrew the offers.

At no stage did F suggest that the Council’s assessment was deficient in relation to its assessment of her housing needs. There had been no judicial review of the alleged failure to comply with s.189A, which was the proper route of challenge.

While the Council had admitted a deficiency in the original assessment with regard to location and travel, that had been cured by the review of suitability which had addressed these matters in response to Ms F’s submissions.

Moreover, while s.195(3) required the local authority to have regard to their s.189A assessment, this did not invalidate a decision as to suitability – see *Norton v LB Haringey (2025) EWCA Civ 746*. Parliament had provided the s.202 review procedure, which is designed to remedy specified deficiencies in decisions made by a local authority. It would be “bizarre to the point of incoherence” to impute to Parliament an intention that a deficiency in the PHP which has been remedied should lead to invalidation of the review decision.

The second ground of appeal – that the PHP was unlawful in the absence of a housing needs assessment – also failed. In context, the PHP was an adequate document. But even if it had been deficient in some way, the issue that was reviewed at F’s request was that of suitability, which was fully investigated in the review decision.

Judicial review was the correct mode of challenge to a housing needs assessment

R (AA) v Waltham Forest LBC

[2025] EWHC 1625 (Admin)

3 July 2025

See [Nearly Legal](#)

Ms AA was a refugee from Yemen. She had a traumatic history of sexual assault and had a diagnosis of Complex Post Traumatic Stress Disorder. In January 2024 she applied as homeless to the Council and was placed in temporary accommodation in a Travelodge.

In June 2024, AA applied for judicial review, on the basis that the Council had not completed a lawful housing needs assessment and personalised housing plan (HNA/PHP). Those proceedings were withdrawn by consent after the Council had accepted that it owed the main housing duty to AA, issued a revised HNA/PHP and provided her with self-contained temporary accommodation. A further HNA/PCP was produced in August 2024.

In November 2024, AA brought a second claim in judicial review, challenging the contents of the HNA/PHP in accordance with s.189A, HA 1996. Her specific concern was that the assessment did not record her need for self-contained accommodation which was not in the private sector; and that it did not allow for steps to be taken to assist her in making an application for social housing under Part VI HA 1996.

The Council contended that AA had an alternative remedy, in that when it came to make a private rented sector offer to AA, that accommodation would have to be suitable and she would have the right to request a review of the suitability of accommodation and the ending of the s.193 main housing duty (under s.202(1)(b) and (g)) and subsequently to appeal to the county court.

Deputy High Court Judge Alegre found that the rights to request reviews in s.202 HA 1996 are explicit about which decisions can be reviewed. They did not include a right to review the HNA and/or PHP. The suggestion that judicial review challenges to the HNA/PHP under s.189A were not appropriate because sections 202/204 provided a “suitable alternative remedy” was novel and speculative. Section 189A was simply not included in what could be reviewed under s.202 and there was no other statutory provision for challenge:

Taking away the potential for challenge by judicial review in such cases would leave people like the claimant with no effective remedy unless and until the local authority makes a reviewable offer. That is not a legally sustainable proposition.

There was therefore no suitable alternative remedy. The Judge held that failure to include in the PHP the steps required to support AA in her application for an allocation of social housing, and instead only addressing private sector accommodation, rendered the PHP unlawful. While social housing allocation fell under Part 6 of the Act, it was one of the routes to bringing the housing duty under Part 7 to an end. It was not reasonable to exclude the kinds of support that could be provided to secure allocation under Part 6 from the steps included in the PHP, alongside the steps related to private sector rented accommodation. She ordered that a fresh PHP should be issued.

Failure to address needs of disabled child rendered a housing needs assessment unlawful
R (AN) v Barking and Dagenham LBC

[2025] EWHC 2265 (Admin) 3 September 2025

<https://nearlylegal.co.uk/2025/09/the-importance-of-being-adequate-housing-needs-assessments/>

Ms AN had been living in the Council’s area with a friend. She had a seven-year-old daughter, EB, who has autism spectrum disorder and special educational needs. AN applied as homeless to the Council in autumn 2024 when the friend told them to leave. EB had an education, health and care plan and attended a mainstream primary school in Barking, where

she received a high level of additional support. The evidence was that she struggles with public transport and becomes easily dysregulated when using it, which can then impair her learning if this happens on her way to school.

The Council failed to offer suitable interim accommodation, and AN and EB stayed with another friend in Lewisham, having nowhere else to go. In January 2025, the Council provided accommodation, first in a Travelodge and then a hostel, each in its district. It had undertaken two housing needs assessments (HNAs), in December 2024 and February 2025 (incorporated with a personal housing plan into one document).

AN challenged these HNAs by judicial review, on the grounds that they did not amount to a lawful assessment of AN's housing needs in accordance with s.189A HA 1996, s11(2) of the Children Act 2004, and the Public Sector Equality Duty (PSED) in s.149 of the Equality Act 2010. She submitted that the assessments did not recognise her need to remain in the borough, because of EB's need to remain at school in the area. The claim was listed for hearing in June 2025, by which time the Council had undertaken two further assessments.

Alan Bates (sitting as a deputy judge of the High Court) granted permission to AN to amend her grounds to challenge the further two assessments, holding that the lawfulness of the most recent assessment was relevant to any relief to be ordered and/or whether the claim had become academic. He rejected the Council's submission that there was an alternative remedy in that AN had an outstanding request for a review of the suitability of her accommodation, holding that the review was limited to the suitability of specific accommodation, and did not extend to the adequacy or content of the housing needs assessment which would inform future offers.

Analysing the four housing needs assessments, together with a separate 'suitability assessment', the judge found that each of them had failed to grapple with the key issue of whether EB's disability-related difficulties in travelling to school meant that she needed accommodation within 30 minutes' walk of the school. The educational needs of EB and any disruption to her education should she be forced to relocate were the "nuts and bolts", or "key needs", for a lawful assessment and had not been considered. The Defendant needed to "nail its colours to the mast" and explain what it has assessed AN's and EB's needs as being. These included whether there was a need for accommodation to be provided within the borough or not; and how far away from EB's school could a property be located without being unsuitable, and why.

That failure meant that the assessment did not comply with s.189A HA 1996 or the duty to safeguard and promote the welfare of children (Children Act (CA) 2004 s.11). There was also a breach of the PSED. The Judge made a mandatory order that the Council should promptly review its assessment and produce a lawful HNA by 1 October 2025.

The Judge said:

"In the context of extreme pressures on housing systems, it is critical for assessments to demarcate clearly what an applicant needs in terms of suitability (with the consequence that housing officers should not offer accommodation to the applicant which is incapable of meeting those needs), and what may be desirable. 'Hedging' between needs and desires deprives the HNA of its purported function, i.e. providing information to assist housing officers in properly allocating a suitable property, and enabling the applicant to understand what the local authority has assessed their needs as being."

AN had also challenged the Council's internal Temporary Accommodation Placement Policy on the basis that it failed to identify that the six-week limit for bed-and-breakfast accommodation for families with children was a mandatory limit. However, that ground was unsuccessful. The policy amounted to practical guidance, not a comprehensive statement of the law.

2) Homelessness / applications

A repeat homeless application must be accepted where it is based on new facts or adduces fresh evidence in support of previous factual assertions

R (Ivory) v Welwyn Hatfield Borough Council

[2025] EWCA Civ 21 17 January 2025

<https://nearlylegal.co.uk/2025/01/renewed-homeless-applications-and-new-facts/>

Ms I had become homeless in 2016 after being evicted for rent arrears. She subsequently lived in a YMCA and in supported housing. In her first homelessness application in 2020, Ms I said that the reason she had lost her last settled accommodation was because she had had a mental breakdown and was unable to manage her tenancy at the time. The Council found that insufficient evidence of the mental breakdown had been provided and decided that she was intentionally homeless. Her request for a review of that decision was unsuccessful and her appeal to the county court was dismissed.

In September 2023, Ms I made a fresh application. Her solicitors provided a report from a consultant psychiatrist, who had interviewed Ms I for 100 minutes and considered her medical records. The consultant concluded that, on the balance of probabilities, Ms I had suffered from severe depressive disorder and panic disorder in 2016 and did not have capacity to keep her tenancy at the relevant time.

The housing officer requested further information from the psychiatrist. Ms I's solicitors explained that the report had been obtained on legal aid, which would not cover the additional work, and so the Council would have to pay the fees involved. The Council declined to pay and refused to accept answers to their questions from Ms I's solicitors.

The Council then decided that it did not have to accept the new application as it was based on the same facts as Ms I's earlier application. It said that the expert report was not a new fact, but an opinion expressed some eight years after the eviction by someone who believed her version of events. It found that the information in the report was a repeat of the submissions made during the review process, and there was no evidence supporting a mental breakdown.

Ms I applied for judicial review of the Council's refusal to accept her homelessness application. She was refused permission to apply for JR and sought permission to appeal. The Court of Appeal granted permission to apply for judicial review and dealt with the substantive claim, which was upheld. The main issues were (1) whether I's latest application was based on the same facts as her previous application; and (2) whether the officer had been entitled to inquire into the expert report.

The Court acknowledged that councils are entitled to reject a second homelessness application if it is based on facts which are, to the authority's knowledge, and without further investigation,

not new, or are fanciful or trivial. However, that was not the case here. It was necessary to compare the new facts with the facts as determined by the Council on the first application.

The local authority was only entitled to reject a purported new application without undertaking inquiries in very limited circumstances. The expert report did not in itself represent a new fact, but provided evidence of certain facts. The Council had not accepted that I had suffered a mental breakdown, but the report stated that she had suffered from mental disorder and had lacked the capacity to keep her tenancy. The facts alleged in the new application were not identical to those found in the review decision, and were not fanciful or trivial. While it was not the first time that Ms I had claimed to have suffered a mental breakdown, there was fresh expert evidence which could not be dismissed as without significance.

The new application was not based on the same facts and the Council was obliged to entertain it unless it was unsupported by any new evidence of any significance. It had not been reasonably open to the Council to take that view.

While Newey LJ and Males LJ took somewhat different approaches to assessing the comparison between the facts alleged on the earlier and later applications, Phillips LJ stated that the common thread was that a further application had to be accepted if either:

(i) it is based on a factual assertion which has not previously been made and which is not trivial or fanciful; or (ii) it adduces significant fresh evidence in support of a previously made factual assertion, whether or not rejected. That appears to be an appropriately straightforward test for a housing authority to apply.

Further, the Council had had regard to an irrelevant consideration in making the decision, namely, the absence of a response to its questions to the psychiatrist. The Council had not been entitled to investigate the accuracy of alleged new facts before deciding whether to treat the application as valid. Questions might be raised as to the merits of the application, but were inappropriate at the stage of deciding to consider the application.

The Council's decision to reject the second application was therefore quashed. The application would be remitted for further s.184 inquiries, which should be made by a different officer.

3) Homelessness / discrimination

What is the correct route to challenge a homelessness decision on the basis of discrimination?

R (on the application of RZH) v London Borough of Sutton

(2025) EWHC 713 (Admin) 27 March 2025

Ms RZH was an assured tenant of a two-bedroom housing association flat, with a shared garden. Ms RZH and her son, DTU, had both been diagnosed with autism, and RZH had various physical health issues, including sleep apnoea. Both RZH and DTU needed their own bedrooms. When a daughter was born, RZH became entitled to bid for a three-bedroom property on the Council's allocations scheme, but there was no prospect of her receiving an allocation for a long time. She therefore applied as homeless, contending that the accommodation was overcrowded and not reasonable for her to continue to occupy.

The Council decided that RZH was not homeless, as it was reasonable for her to remain in her current accommodation, and confirmed that decision on review. She brought a s.204 appeal against that decision in the county court, on the basis that the Council's decision was irrational and gave inadequate weight to the views of experts that the household needed three bedrooms.

She also brought a claim for judicial review of the same decision. This claim was based on alleged indirect discrimination by the Council (s.19 Equality Act 2010) and a failure to make reasonable adjustments (s.20 EA 2010), on the ground that there was a "provision, criterion or practice" (PCP), which put her at a disadvantage as a disabled person. The PCP she identified was the Council's criteria for assessing the degree of overcrowding that would ordinarily cause the applicant to be statutorily "homeless". The Court of Appeal held in *Adesotu v Lewisham LBC* [2019] EWCA Civ 1405 that such an argument could not be made as part of a s.204 appeal (although breach of the Public Sector Equality Duty (PSED) could form part of the s.204 appeal, as it did in this case). RZH therefore resorted to a claim for judicial review to assert her case that the Council had unlawfully discriminated against her.

Permission for judicial review was granted and the s.204 appeal was transferred to the High Court for the two claims to be heard together.

Fordham J dismissed both the appeal and the claim. RZH's argument that the Council could not have been "satisfied" that it was reasonable to occupy in the light of health issues, and had not safeguarded and promoted the welfare of the children, was rejected. Representations and reports as to risk, safety and welfare had been "key themes" in the materials and had been "conscientiously recorded and then addressed" in the decision.

RZH argued that the PSED had been breached in that there was no sharp focus on her disability and that of her son when making the decision. This was again rejected. The Council had considered how the accommodation affected the family in the light of their disabilities and the steps it had taken to make adjustments. The decision had addressed the suitability of the property for that family, and did not simply apply the statutory test of overcrowding.

In relation to the alleged discrimination, the Judge rejected the submission that there was a PCP. RZH had not identified a "practice" that had affected the decision she complained of. The Council had simply applied the statute to the applicant's circumstances. The reviewing officer had not limited his decision to the statutory test for overcrowding, but had addressed the suitability of the property for this family in the light of the evidence of their needs. Each case was assessed on its own merits, not according to a rigid test. The decision that RZH was not homeless was one that the Council was lawfully entitled to reach

The Judge summarised the rules where a s.202 review decision may give rise to both a s.204 appeal and an Equality Act 2010 claim for unlawful discrimination as follows:

- The Equality Act claim cannot be part of the s.204 appeal (*Adesotu*).
- Points of law concerning the lawfulness of a s.202 review decision should be determined in the county court by way of s.204 appeal (*Bano*). A claim that a review decision is unlawful because of a breach of the Public Sector Equality Duty in s.149 Equality Act 2010 falls within the s.204 appeal (*Hotak*).
- The county court has jurisdiction for a CPR Part 8 discrimination claim on judicial review grounds, so a claim for judicial review was not the appropriate proceeding (see s.113(3)(a) and s.114(1), Equality Act 2010).

- The s.204 appeal and a Part 8 claim should therefore both be issued in the county court, case managed together and dual listed.

See also Nick Bano’s article on this case in *Legal Action*, July/August 2025 on what lawyers need to bear in mind about bringing homelessness appeals and discrimination claims.

4) Eligibility

An EEA national with pre-settled status was not residing “on the basis of the Withdrawal Agreement” and was not eligible for assistance unless exercising a qualifying right to reside

Fertre v Vale of White Horse DC

[2025] EWCA Civ 1057 31 July 2025

Ms F was an EEA national with pre-settled status (PSS). The Council rejected her homeless application on the basis she was ineligible for assistance, as although she had pre-settled status, she was not exercising a qualifying right to reside such as being a worker. That decision was upheld on review.

F brought a county court appeal. As a result of the wider issues the appeal was transferred to the High Court, where it was dismissed. F appealed to the Court of Appeal. There were five Interveners: the 3million, the Secretary of State for Housing Communities and Local Government, the Independent Monitoring Authority, Shelter and the AIRE Centre.

F argued that section 7A of the European Union (Withdrawal) Act 2018 confirmed that all domestic legislation was to be read and given effect in accordance with the Withdrawal Agreement (WA). She further argued (Ground 1) that she was residing in the UK on the basis of the Withdrawal Agreement (WA), by virtue of Article 13 of the WA, and was therefore protected by the equal treatment provisions contained in Article 21; and that the conditions which the UK imposed upon her (i.e having to prove she had a qualifying right) were directly discriminatory (Ground 2); or, if not, indirect and incapable of being justified (Ground 3).

F also argued that she was eligible on the basis that pre-settled status was a “new residence status” under Article 18(1) of the Withdrawal Agreement (WA), which amounted to the grant of limited leave to remain for five years without further conditions. F therefore fell within the equal treatment provisions in Article 23(1) of the WA because she was “residing on the basis of the agreement”. Shelter further submitted that F could rely on her rights under Article 21 of the Treaty of the Functioning of the European Union (TFEU), which had been preserved by Title II of the WA.

The Court of Appeal dismissed F’s appeal. The meaning of article 13(1) of the WA was that persons with PSS would still have to satisfy the relevant conditions of the Citizens’ Rights Directive (CRD), ie, they would have to show a qualifying right. Article 13(4) did not mean that the UK had effectively agreed to waive these rights for people with PSS. The Court found that Article 18 merely conferred a status or ‘badge’, and that it did not therefore automatically grant an applicant rights under the WA. Similarly, the Court also found that Article 23 of the WA only conferred equal treatment rights on those who were also exercising a right under the CRD. As ground 1 did not succeed, grounds 2 and 3 did not need to be determined.

In respect of Shelter’s argument regarding article 21 of TFEU the Court found that that right was not free-standing and again had to give way to the scheme of rights conferred by the CRD. The court did however leave open for determination in another case whether Article 21 of the TFEU may be applicable where EU law rights arise outside of the CRD, such as the derivative rights conferred in *Ibrahim* and *Teixeira*.

People with PSS can still rely on the EU Charter of Fundamental Rights following the ruling in *SSWP v AT (AIRE Centre and IMA intervening)* [2023] EWCA Civ 1307. Authorities are therefore required to consider whether the refusal of a homeless application would put a person with pre-settled status at risk of destitution, such that the refusal would be incompatible with human dignity under the Charter.

Changes to Eligibility Regulations

Eligibility for homelessness assistance in England has been extended by the **Allocation of Housing and Homelessness (Eligibility) (England) and Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Regulations 2025** SI No 891, in force from 18 July 2025.

Persons who are subject to immigration control and who were residing in a country or territory where the government provided public information to advise British nationals to leave or arranged an evacuation of British nationals, who have leave to enter or remain in the UK, who are not subject to a no recourse to public funds (NRPF) condition and who apply for an allocation of social housing or for homelessness assistance within six months from the government’s information or evacuation will be eligible (new class T in reg 3 and new class U in reg 5 of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 SI No 1294). British nationals and others who are not subject to immigration control who left in the same circumstances will be exempt from the habitual residence test (amendments to regs 4(2) and 6(2) of the 2006 Regs).

The explanatory memorandum explains that this is a general class, which avoids the need for specific legislation for future emergencies. Currently, it applies to people arriving from South Sudan after the government published advice to leave on 27 March 2025 (whose applications must be made on or before 26 September 2025) and people who left Israel or the Occupied Palestinian Territories after the government evacuated them from 23 June 2025 (whose applications must be made on or before 22 December 2025). Updates have been published to [Chapter 7](#) of the [Homelessness Code of Guidance for local authorities](#) and [Chapter 3](#) of [Allocation of accommodation: Guidance for local authorities](#).

Persons with pre-settled status

The [Homelessness Code of Guidance for local authorities](#) (MHCLG) was updated on 12 December 2024 to clarify the current eligibility rules governing EEA nationals who have pre-settled status (PSS). When considering eligibility for an applicant with PSS who was residing on the basis of EU law in the UK on 31 December 2020, but who is not, at the date of application, exercising a qualifying EU right to reside, local authorities should consider if a ‘not eligible’ decision would amount to breach of the applicant’s right to dignity under the EU Charter of Fundamental Rights (amended paras 7.17 and 7.18(g) and new para 7.35).

5) Intentional homelessness

Hotel accommodation that was not large enough for the applicant's children was reasonable to continue to occupy as a stepping stone to longer term accommodation

Beach v South Hams District Council

(2025) EWCA Civ 609 9 May 2025

<https://nearlylegal.co.uk/2025/05/hotel-rooms-and-intentional-homelessness/>

B applied to the Council as homeless following family breakdown. The Council accepted that he was in priority need, as it was intended that two of his six children would live with him. A Child Arrangements order was made in B's favour in respect of the two children. B was offered s.188 accommodation in a hotel, which he refused.

Later, it appeared that B was living in a shipping container with the children and his dog. The Council made further offers of hotel accommodation, both before and after the main duty was accepted. B occupied a room for one night on his own, but appeared intoxicated and the hotel refused to extend the booking. All other offers were refused.

Subsequently, the children were removed from his care following the container incident and they returned to live with their mother. The Council then booked B into the Seascope Hotel for five nights. The terms of the booking (which included that the hotel did not permit pets) were read and emailed to him and the consequences of not using the accommodation were explained to him. He made no mention of needing to have his dog with him. B spent one of these nights in the hotel, but did not return.

B stated that the hotel did not allow dogs, and he was reliant on his dog for his psychological wellbeing. The Council discharged duty, on the basis that B was intentionally homeless for failing to occupy the Seascope Hotel room. The decision was upheld on review. B appealed and the Council withdrew the review decision and reconsidered. In the meantime, the Family Court ordered that the children should reside with their mother. The second review decision confirmed the original decision. B's s.204 appeal to the county court was dismissed. He appealed to the Court of Appeal.

It was argued for B, first, that a seaside hotel room could not be reasonable to continue to occupy. There were no cooking facilities and no visitors were allowed, and the booking was only for 5 nights. The second ground of appeal was that such accommodation was not reasonable to continue to occupy on the facts of this case. The room had only been booked for B, and did not include his children despite the Child Arrangements order.

The Court of Appeal dismissed B's appeal. The first ground was not strongly pursued, as there was case law to the contrary (*Kyle v Coventry City Council* [2023] EWCA Civ 1360; *Hodge v Folkestone and Hythe DC* [2023] EWCA Civ 896; *Muse v Brent LBC* (2008) EWCA Civ 1447). If B's argument were correct, hotel accommodation could never be used as temporary accommodation.

On the second ground, the Court considered that B's individual circumstances had been taken into account. Since the children were living safely with their mother, and it would not be reasonable for them to live with B at that time, the council were under no obligation to provide temporary accommodation to include them. The correct analysis was that the duty may continue unaltered, but the manner in which the duty can properly be performed may change

as circumstances change. Therefore accommodation offered for B's occupation alone was suitable and reasonable to continue to occupy.

The hotel was temporary accommodation and while it was not ideal in terms of the restrictions placed on B, it was a stepping stone to longer term accommodation (which would be available to the children named in the residence order) and there was no reason to believe it would not continue to be available until such accommodation was offered.

6) Discharge of duty

Can a local authority prospectively discharge duty when making an offer of accommodation?

R (Bano) v LB Waltham Forest

(2025) EWCA Civ 92 7 February 2025

See [Nearly Legal](#)

The Council had accepted the main housing duty to Ms B and placed her in temporary accommodation in Newham. In June 2020 the Council made a private rented sector offer of a property in Derby. The offer letter stated that the offer would discharge the local authority's s193(2) duty whether B accepted or refused it. B refused. In later correspondence, the Council stated that it considered that its duty was at an end. B's solicitors requested a review of that decision, but the Council refused to accept it as it was out of time.

In November 2022, the provider of the temporary accommodation issued possession proceedings against B. B's solicitors wrote to the Council seeking its agreement that the main housing duty had not ended, which the Council did not accept.

B brought proceedings for judicial review and argued that, in the absence of a formal decision to discharge duty, the Council's s.193 duty continued. The Council should have made a further decision about whether its duty had ended. The Council accepted that its offer letter had been defective in that it had not mentioned the effect of s.195A (concerning the 're-application duty' within two years) as a consequence of accepting the offer, as s.193(7AA) required (as was held in *Norton v Haringey* (2022) EWCA Civ 1340). However, it argued that B had had alternative remedies to judicial review, namely a s.202 review (even though she was too late to exercise her right to review), and therefore JR was not appropriate.

Deputy Judge Dexter Dias KC upheld B's challenge in the High Court, holding that neither in the offer letter nor subsequently had the Council made a decision that its duty had ended. A s.202 review was only available where the authority had decided that the housing duty had ended. He rejected the Council's submissions that the duty had automatically ceased and that the offer letter was a prospective decision that the duty had come to an end. He made a declaration that, since the Council had not made a decision that the duty had ended, it continued to owe B the main housing duty

However, the Council's appeal to the Court of Appeal succeeded. Newey LJ said that HA 1996 s.193(7AA) states that a local housing authority "shall cease to be subject to the duty" when an applicant accepts or refuses a private rented sector offer, having been informed in writing of the matters mentioned at s.193(7AB). The duty therefore ceased automatically when the offer was accepted or refused. S.193 did not require a separate decision from the local housing

authority or notification to the applicant. A decision was reviewable under s.202 "even if only confirmatory of a prior automatic discharge".

Case law did not establish that an authority was obliged to inform an applicant that it considered its duty to have ceased, or even to make a decision to that effect. The judge had been mistaken in considering that refusal of a private rented sector offer would bring an authority's duty to an end only if and when the authority so decided. The better view was that the duty ceased automatically on refusal. In any event, B had been able to request a review under s.202(1)(b) when she received the offer letter. Regardless of whether a local housing authority's duty ceased automatically, the decision to make such an offer was a "decision . . . as to what duty (if any) is owed . . . under sections 189B to 193C and 195" within s.202(1)(b).

Although the offer letter had been defective in that it had not informed B of the effect of s.195A(2), that had not precluded a request for a review. In the correspondence after B had refused the offer, it was plain that the local authority had formed the view that its duty to B had ceased. Accordingly, B could have requested a review of a decision that the local authority's duty had ceased at that time. She had had a remedy other than judicial review available to her (even though she was out of time to exercise it).

Permission to appeal has been granted. The appeal is to be heard in the Supreme Court on 17 March 2026.

A council making a final offer of accommodation under s.193(7) did not have to make a separate decision that its duty was discharged. Issues concerning alleged breach of homelessness duties cannot generally be raised as a defence to possession proceedings

London Borough of Wandsworth v Young

[2025] EWCA Civ 1336 21 October 2025

See [Nearly Legal](#)

Mr Y applied to the Council as homeless. He was diagnosed as suffering from autism spectrum disorder with traits of ADHD. He was placed in interim accommodation under s.188 HA 1996. On 10 October 2019, the Council accepted that it owed Y the main housing duty under s.193. He continued to live in the same temporary accommodation.

On 18 March 2020, the Council made a "Final Offer of Accommodation" to Y under s.193(7) of the Act. Its letter stated "Please note that by accepting this offer of accommodation the council's homelessness duty to you will be discharged"; and "Please note that if you unreasonably refuse this offer of accommodation or fail to attend the viewing the Council's duty to you under s.193 of the Housing Act 1996 will cease". On 1 April 2020, Y signed a tenancy agreement in respect of the property offered.

Y's solicitor requested a review of suitability of the property. However, the reviewing officer upheld the decision that the property was suitable and that the Council's duty was discharged.

Subsequently, Y did not vacate the temporary accommodation and the Council issued possession proceedings. At the possession hearing, it was argued for Y that the Council's housing duty continued, since he should have been notified that the Council considered the s.193 duty to have come to an end and that he had a right to seek a review of that decision. The district judge made a possession order, and Y's appeal was dismissed by the circuit judge. Y appealed to the Court of Appeal.

Newey LJ noted that the appeal gave rise to two main issues: (1) Was Y still owed the main housing duty by the time of the possession hearing? (2) Was Y in any event precluded from raising the point in the possession proceedings rather than by way of review or appeal under ss. 202 / 204 of the HA 1996?

Y argued that the main housing duty could not have come to an end without the Council having informed him both of that (with reasons) and of his right to request a review of such a decision. Y said that the letter containing the review decision contained a distinct decision that the main housing duty had been discharged. The letter thus needed to inform Mr Young *both* of his right to appeal to the County Court against the review decision (as it did) *and* of his right to request a review of the discharge of duty decision (which it did not). The main housing duty had not, therefore, ended.

The Court noted that s.193(6)(c) states in unqualified terms that the authority “shall cease to be subject to the duty under this section if the applicant ... accepts an offer of accommodation under Part VI”. Y argued, however, that the combined effect of s.184(3) and (5) and s.202(3) [the 21 day time limit for requesting a review] is to require the applicant to be notified that the authority considers a condition specified in s.193(6) to have been satisfied and that there is a right to request a review of such a decision. It was incumbent on the Council to tell him that he was entitled to request a review of the decision that its duty was discharged.

However, it was held that s.184 has no application in relation to cessation of the main housing duty. Parliament had laid down in s.193(6) the requirements which are to apply in such cases. Even supposing (which was far from clear) that the letter containing the review decision incorporated a distinct decision which was susceptible to a further review, the Council was not obliged to inform Mr Young that he was entitled to request such a review..

If that was wrong and the Council had a duty to tell Y that he was entitled to another review, the Court did not accept that it was open to Y to rely on that as a defence to the claim for possession. In the context of Part 7 HA 1996, Parliament had established procedures for review and appeal. In general, accordingly, issues as to what duties are owed under Part VII are to be addressed through those procedures.

In any event, even if Y had a right of review, the conclusion would once again be that the Council had ceased to owe him the main housing duty as he had accepted the Council’s final offer of accommodation.

7) Suitability

Temporary restrictions on suitability requirements: persons from abroad

Art 5 of the **Homelessness (Suitability of Accommodation) (Amendment) (England) Order 2022/521** expired on 1 June 2025. The effect is that the temporary restrictions on suitability requirements for some newly arrived people from abroad (disapplying the 6 week limit on suitability of B&B and the requirement to take into account location when assessing suitability) introduced in 2022 now no longer apply.

Mandatory interim order to provide suitable accommodation within 3 weeks

R (AIN) v Tower Hamlets LBC

High Court (Administrative Court) 29 April 2025

Unreported, but see [Nearly Legal](#) and

<https://osborneslaw.com/case-studies/rehouse-housebound-woman/>

Ms AIN was disabled, with complex physical and mental health needs. She had been occupying temporary accommodation secured by the Council under the s193 main housing duty since May 2017. She could not leave her accommodation unaided. In 2022 there was a fire, and she had to be carried out. She felt trapped in her home and suffered from worsening physical health and PTSD as a result. In 2023 the Council had accepted that the accommodation was not suitable. Since then it had made six offers of accommodation, but all were then agreed to be unsuitable and withdrawn.

In December 2024 AIN issued proceedings for judicial review and sought interim relief in the form of a mandatory order that the Council comply with its statutory duty to provide suitable accommodation. In February 2025, the Council was ordered to file a statement of progress, which it failed to do. Another offer was made and then withdrawn as not suitable.

Judge Alegre said that there was no dispute that the Council was in breach of the immediate, non-deferrable and unqualified duty to secure suitable accommodation. She granted permission on that ground. In considering whether to make an interim mandatory order, the Court considered the five factors noted by the Court of Appeal in *Imam v Croydon LBC*:

- The first factor – *contingent arrangements* -- did not arise.
- *The Court cannot encourage a local authority to ignore its statutory duty*: The Council argued that it had taken reasonable steps to secure suitable accommodation. It had made offers, and was not sitting on its hands. However, the Court considered that the failure to check the suitability of properties offered, as shown by the pattern of unsuitable offers made, was in effect the same as sitting on its hands.
- *The impact of the breach on the claimant*: It was difficult to imagine a claimant with greater needs, being in effect housebound and at risk. The matter was of the utmost urgency.
- There was no sign of the Council trying to rectify the situation. There was an imperative to galvanise the authority to take adequate steps, given the history of unsuitable offers and the lack of progress since December 2024.
- *Unfairness to others*: The Council's witness statement referred to other families in need of accommodation, but gave no reasons why a mandatory order would result in unfairness to others, or why it would give undue priority to the claimant. A mandatory order would be for suitable accommodation, not for the provision of a perfect long term solution.

A mandatory order was made requiring the Council to provide suitable accommodation within three weeks.

Mandatory order to provide suitable accommodation within one month

R (Hammad) v Kensington and Chelsea RLBC

[2025] EWHC 2425 (Admin) 26 September 2025

<https://nearlylegal.co.uk/2025/10/unsuitability-and-a-mandatory-order/>

H applied as homeless in March 2024 after receiving a s21 notice. He lived with his wife and two sons, one of whom, aged 20, had serious physical health issues which made him dependent on a ventilator to maintain his breathing while sleeping and requiring monitoring at night, His consultant stated that it was imperative that he should live within 45 minutes of his treating hospital.

H himself also suffered from PTSD, depression and suicidal ideation. An update was provided on 16 April 2025 emphasising the urgency of the Service's concern for the Claimant's psychiatric health. It was noted that the Claimant had deteriorated further and that he was now unable to attend therapy or even leave his house.

The Council accepted the main housing duty, but no temporary accommodation was provided even after a possession order was made and the landlord indicated that he would issue a warrant. H made a complaint which escalated to the Local Government and Social Care Ombudsman, leading to a finding of maladministration and an Ombudsman's instruction in March 2025, which the council accepted, to provide suitable temporary accommodation within one month. In May 2025, an offer of accommodation outside the Council's area was made, but subsequently withdrawn. No suitable accommodation was forthcoming and H issued proceedings for judicial review and a mandatory order in July. Interim relief was refused but the claim was expedited.

Application granted. The Council accepted that it was in breach of its duty to provide suitable accommodation, and that the onus was on it to show why a mandatory order should not be made. The Council pointed to the difficulty in securing affordable accommodation in general terms, but there was no evidence apart from generalities as to the steps it had taken to secure suitable accommodation

Deputy Judge Glasson KC held that there was insufficient evidence to conclude that a mandatory order would serve no purpose even though suitable temporary accommodation was likely to be provided shortly. There was no explanation of the failure to provide accommodation as agreed with the Ombudsman. The Court accepted that the fact that the breach had only been ongoing for months rather than years (as in [R \(Imam\) v LB Croydon](#) (2023) UKSC 45 and [R \(Elkundi and others\) v Birmingham CC](#) (2022) EWCA Civ 601) could be relevant; but each case was judged on its facts and the s.193(2) duty is an immediate, non-deferrable, unqualified duty.

The Court made a declaration that the Council was in breach of its duty. The Council had not established that it had taken all reasonable steps, and so had not shown that it would be impossible to comply with a mandatory order. It was ordered to provide suitable accommodation within 45 minutes' travel of the hospital within one month.

Council's failure to notify an out-of-area placement to the host authority did not affect the lawfulness of a review decision on suitability

[London Borough of Enfield v A](#)

(2025) EWCA Civ 1355 27 October 2025

See [Nearly Legal](#)

Ms A was the victim of domestic abuse perpetrated by her ex-partner, who was convicted and sentenced to 20 months' imprisonment with a 5 year restraining order. The Council notified her that it accepted the full housing duty to her under s.193, HA 1996. Owing to her fear of

violence at the hands of her ex-partner and his associates, A did not wish to be accommodated in Enfield. The Council offered her temporary accommodation in 'Studio B', which was located in the neighbouring borough of Haringey, about 1½ miles from Enfield. A accepted the offer but requested a review of suitability.

A stated that although Studio B was in Haringey, it was not suitable because the bus route that Ms A used to visit her mother ran through areas where her ex-partner and his family resided. The reviewing officer decided that the property was suitable, since A had advised the Council that she was unable to reside in Enfield owing to a risk of violence, but she wished to continue to access support provided by her family in Enfield. The Council had taken account of A's wishes and of a DASH Risk Assessment. The property was not isolated and public transport links were good, including other bus services.

On appeal to the county court, it was argued for A that the Council was in breach of its duty under s.208(1) of the Act, which provides that "So far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district". In addition, A argued that the Council was in breach of s.208(2), which requires an authority which places a homeless applicant in accommodation outside its own area to give notice to the authority in whose district the accommodation is situated within 14 days of the placement. In fact, the Council had not notified Haringey Council of A's presence in its area until seven months after she moved into Studio B. The county court judge allowed the s.204 appeal

However, Enfield's appeal was allowed by the Court of Appeal. The contention that the Council was in breach of its duty under s.208(1) was plainly wrong. In this case it was not reasonably practicable to place A in Enfield, because she (and the professionals involved) all considered that she would be in danger if she lived there. Moreover, she had specifically requested *not* to be placed in Enfield. This was therefore a case in which the s.208 duty was in fact discharged by an out of borough placement.

On the issue of notification under s.208(2), there was no doubt that the Council was in breach of its duty to notify Haringey of the placement within 14 days. But the question was what were the consequences of the breach. The s.208(2) duty was not a duty to the homeless applicant, who did not have to be notified, and it gave rise to no ability to request a review. The likely purpose of s.208(2) was to enable the 'host' authority to refer any subsequent homeless application back to the notifying borough in the event of the person becoming homeless again within 5 years of the placement (s.199(4) HA 1996). The failure to notify did not affect the suitability of the accommodation and had not caused A any prejudice:

The duty to notify the host authority is an entirely collateral duty, breach of which does not in my view impugn the lawfulness of a review decision. It follows that since a failure on the part of the placing authority to notify the host authority under section 208 (2) and (4) does not affect the suitability of the offered accommodation, it falls outside the scope of any appeal under section 204 which is limited to grounds that go to the legality of the review decision.

Inclusion of female single parent on a database for people in unsuitable temporary accommodation did not amount to indirect discrimination

R (Anisa Begum) v Tower Hamlets LBC(1) Shelter (Intervenor) (2)

In May 2021, Ms B, a single parent with one child, applied to the Council as homeless and was provided with studio accommodation until longer-term accommodation could be found. In June 2022, when she was pregnant with her second child, she requested a transfer due to overcrowding. Her name was placed on a database which identified those applicants whose temporary accommodation had been acknowledged as unsuitable by the Council. In October 2022, the Council accepted the main housing duty to her.

In August 2023, B issued a claim for judicial review challenging the Council's failure to provide suitable alternative accommodation after it had found that her accommodation was unsuitable. She alleged that the Council was in breach of sections 19 and 149 of the Equality Act 2010. Subsequently she received an offer of suitable accommodation which she accepted, but she maintained her claim for indirect discrimination.

The issue was whether the inclusion on a database of those owed a homelessness duty and in unsuitable accommodation amounted to a provision, criterion or practice (PCP) that was indirectly discriminatory against women. The High Court judge held that the database did not amount to a PCP. B appealed to the Court of Appeal.

The Court of Appeal expressed some doubt as to whether operating a database of this kind involved the application of a PCP:

“On analysis, it appears to describe a state of affairs, that is, it describes persons to whom a duty under section 193(2) is owed, but who are not currently being provided with suitable accommodation in breach of that duty, and whose details are kept on the database to facilitate the provision of suitable accommodation and compliance with the duty. The state of affairs describes a group of persons but is not a means of differentiating between people and deciding who will be subjected to particular treatment and who will not.”

For the purposes of the appeal, however, the court was willing to assume that the element of providing unsuitable accommodation to some or all of the people on the database was a practice.

The Court therefore went on to consider evidence of differential treatment. However, the Court saw no evidence of this. While single parent households were the largest group in unsuitable accommodation, this was at least partly because of the demographic of those who are owed the main duty. There was nothing to indicate that a higher proportion of women with children, as compared with men with children, who were owed the section 193 duty were being shown on the database as being in unsuitable accommodation.

The Court considered that

“being placed on the database is not what causes the person to be in unsuitable accommodation. Being on the database does not, of itself, put a person at a particular disadvantage. Indeed, the evidence of the respondent is that placing a homeless applicant on the database is a means of seeking to address the fact that the respondent is not complying with its public law obligation to secure suitable accommodation by ensuring it had up to date information which would enable it to

secure suitable accommodation should it become available. I do not think therefore that the PCP relied upon does put women generally, or women with a child or children, at a particular disadvantage. I note that that is consistent with the submissions of Shelter which is that placing someone on a database does not, of itself, amount to putting the person at a particular disadvantage.”

There was therefore no evidence of discrimination against women. There was no breach of the Public Sector Equality Duty.

8) Allocations

There was no unlawful discrimination in a Council's decision not to award a homeless family additional preference for an allocation under Part 6, HA 1996

R (on the application of RR) v London Borough of Enfield

[\[2024\] EWHC 2501 \(ADMIN\)](#)

5 November 2025

RR was owed the main housing duty under section 193 HA 1996. He was a carer for his wife, ED, who was severely disabled. The couple had two children. The Council made a private rented sector offer under s.193(7AA), which RR accepted, but sought a review of suitability. RR and his family were also on the waiting list for the allocation of accommodation under Part VI of the Act. As a homeless family living in accommodation provided by the Council under its s.193 duty, they were awarded 200 points.

The allocation scheme identified six 'reasonable preference' groups, each of which was awarded a certain number of points. If applicants met more than one of the criteria under each of the groups, they would be put in whichever category would award them the highest level of points. The maximum number of points was 1000. Additional preference was given to those with health and wellbeing needs. Those with a low need could be awarded 50 additional points and those with a medium need could be awarded an additional 150 points. However, those who were homeless (such as RR) did not qualify for these additional points.

RR brought a claim for judicial review, on the ground that the provision of the allocation scheme, whereby homeless persons could not obtain additional points for a low or medium health and wellbeing need, amounted to a provision, criterion or practice (PCP) within the meaning of s.19 Equality Act 2010 (EA 2010) and was discriminatory. He also claimed that the Council had failed to make reasonable adjustments in accordance with its duty under section 20 of the 2010 Act by failing to give him additional preference.

In the High Court, RR's claims under sections 19 and 20 of the 2010 Act were dismissed. The Judge found that the Council was in breach of the Public Sector Equality Duty (PSED) under s.149 EA 2010 in failing to monitor and collect statistics relating to the allocation of housing to households with a disabled person. But she refused a remedy as the decision would not have been different if statistical evidence had been available, applying s.31(2A) of the Senior Courts Act 1981.

RR appealed to the Court of Appeal. The Council lodged a Respondent's Notice challenging the Judge's decision on the PSED issue.

RR identified the PCP as the provision in the allocation scheme which disentitled homeless applicants from accruing additional points in the case of health or wellbeing. He submitted

that that requirement placed homeless households with a disabled member at a particular disadvantage as compared with homeless households which did not include a disabled member. The disadvantage was the fact that homeless households with a disabled member waited for a longer period before being allocated social housing than homeless households without a disabled member. There were fewer accessible properties available under the allocation scheme. Homeless households with a disabled member, therefore, had a smaller pool of suitable properties for which they could bid as compared with homeless households with no disabled members.

RR's appeal was dismissed. The Court of Appeal held that there was no statistical or other material before the Judge which enabled her to determine the period of time that homeless households with a disabled member spent waiting for the allocation of Part VI social housing as compared with homeless households without a disabled member. There was nothing, therefore, to enable the Judge to conclude that homeless households with disabled members were put at a particular disadvantage, and were waiting longer to be allocated Part VI social housing, than homeless households without a disabled member.

Additionally, a causal connection had to be shown between the PCP and the particular disadvantage. However, there was no evidence that the inability to acquire an additional 50 or 150 points was the cause of the particular disadvantage being alleged. The evidence, such as it was, suggested that any time waiting to be allocated an appropriately sized property was linked to the shortage of available properties within the borough, not the PCP.

Section 136 (dealing with the burden of proof in proceedings concerning an alleged contravention of the Act) required a court to be satisfied from all the evidence before it that there were facts from which it could decide, in the absence of any other explanation, that there had been a contravention of the 2010 Act. However, it was necessary to establish primary facts from which an inference could be drawn under s.136.

In relation to the PSED, the Council had carried out an equality impact assessment prior to adopting its allocation scheme. The Judge was wrong to conclude that there had been a failure by the respondent to have due regard to the relevant equality considerations. There was no free-standing duty to monitor or collect statistics. There was no breach of the PSED.

Exemption from local connection restrictions for allocation purposes

The Allocation of Housing (Qualification Criteria for Victims of Domestic Abuse and Care Leavers) (England) Regulations 2025

<https://www.legislation.gov.uk/uksi/2025/706/contents/made>

The Regulations provide that from 10 July 2025 local authorities may not apply a local connection test for an allocation under Part 6 HA 1996 for someone who:

- is or has been a victim of domestic abuse carried out by another person, who needs to move for reasons connected with that abuse, including from accommodation initially occupied on a temporary basis, or
- is an eligible child, a relevant child or a former relevant child.

Sally Morshead / John Gallagher
Shelter
November 2025