Neutral Citation Number: [2025] EWHC 713 (Admin)

Case No: AC-2024-LON-001672

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

27th March 2025

Before:
FORDHAM J

- -

Between:
RZH **Appellant**
- and -
LONDON BOROUGH OF SUTTON **Respondent**

Between:
THE KING (on the application of (1) RZH
(2) DTU (by his litigation friend RZH)) **Claimants**
- and -
LONDON BOROUGH OF SUTTON **Defendant**

- -

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Nick Bano and **Ricky Blennerhassett** (GT Stewart Solicitors) for the **Appellant/Claimants**
Catherine Rowlands (London Borough of Sutton) for the **Respondent/Defendant**

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Hearing date: 6.3.25
Draft judgment: 17.3.25

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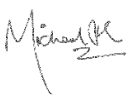
Approved Judgment



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FORDHAM J

This Judgment was handed down remotely at 10am on 27.3.25 by circulation to the parties or their representatives by email and by release to the National Archives.

FORDHAM J:

Introduction

1. This is a "dual-listed" case – where the Court is hearing an appeal and a judicial review claim together – about homelessness decision-making under Part 7 of the Housing Act 1996, about disability-related housing needs, and about the Equality Act 2010. There are grounds of appeal and grounds for judicial review. Each of those grounds challenges the lawfulness of the same target decision. Seven legal duties are relied on. An anonymity order and reporting restrictions are in place. In this judgment I will address the legal issues raised. At the end, I will also make some observations as to whether the county court should remain the primary forum, even for a dual-listed case.

Part 6 of the 1996 Act

2. Part 6 of the 1996 Act is about the allocation of housing accommodation. There is Allocation Statutory Guidance (s.169), called the Allocation of accommodation: guidance for local housing authorities in England. Part 6 ensures that a person in a local authority area who is eligible (s.160ZA) can make an application for an allocation of housing accommodation (s.166(3)), under the local authority's allocation scheme (s.166A). The scheme must be framed (s.166A(3)) ensuring reasonable preference to statutory categories including: (a) people who are homeless under Part 7 (including intentionally or not in priority need); (b) people occupying "overcrowded" accommodation; and (c) people "who need to move on medical or welfare grounds (including any grounds relating to a disability)".

Part 7 of the 1996 Act

3. Part 7 of the 1996 Act is about homelessness. There is Homelessness Statutory Guidance (s.182) called the Homelessness Code of Guidance for Local Authorities. There is a statutory concept of "homeless" (s.175(1)). Applicable to that statutory concept is a test (s.175(3)) which I will be calling the "RCO Test": see §5 below. Also applicable is a provision about ability to secure entry (s.175(2)(a)). Relevant to the RCO Test (§5 below) is a provision about family members (s.176), and a provision about victims of violence and domestic abuse (s.177). Other statutory concepts include eligibility for assistance (s.185(2)), "priority need for accommodation" (s.189), "housing needs" (s.189A(2)(b)), "suitable" accommodation (s.210), having become homeless intentionally (s.191), and refusing an offer of suitable accommodation (s.193(5)). Priority need has five statutory descriptions (s.189(1)), one of which includes "a person who is vulnerable as a result of … mental illness or handicap or physical disability …" (s.189(1)(c)). Becoming homeless intentionally incorporates the RCO Test and ideas of acting "deliberately" (s.191). Determining "suitability" involves, as a statutory-relevancy, "overcrowding" under the Housing Act 1985 (s.210(1)). There is a duty of inquiry (s.184) and a duty of assessment (s.189A). There is statutory guidance (s.182). There are, in statutorily-prescribed circumstances, local authority duties including to provide advisory services (s.179), to secure that accommodation is available (ss.188, 190), and to take reasonable steps to help secure suitable accommodation (s.189B). There are rights of review (s.202) and appeal (s.204). The review procedure is governed by regulations (s.203): the Homelessness (Review Procedure etc) Regulations 2018.

The Target Decision

4. The target for appeal and judicial review is the same 13-page Decision Letter. It is a Part 7 (homelessness) decision. It is dated 16 February 2024 and written by Alexandra Maniatis, as the Reviews Officer for Sutton LBC ("the Council"). It was a reasoned review decision pursuant to s.202 of the 1996 Act. The review arose out of an application made by the Appellant ("the Mother") dated 11 August 2023. It asked the Council for homeless assistance under Part 7 of the 1996 Act. Central to the application was the Mother's contention that "it was not reasonable for her to continue to occupy" the two-bedroom flat in Carshalton SM5 ("the Flat") where she lived, and still lives, with the Second Claimant ("the Son") and his sister ("the Daughter"). The Son was born in August 2013 and is now 11½. The Daughter was born in February 2022 and is now aged 3. That contention was rejected in a decision dated 30 October 2023, pursuant to s.184(3) of the 1996 Act. It was rejected by the Reviews Officer in the February 2024 Decision Letter. There is no challenge before me to any target other than the Decision Letter. The Decision Letter recorded that Ms Maniatis had referred the Son and the Daughter to Children's Social Services. That three-page Safeguarding Referral has been provided to the Court and looms large in the family's arguments in this case.

The RCO Test

5. The question whether it was "reasonable" for the family to "continue to occupy" the Flat is a question which Parliament required the Council to answer, in deciding whether the family were "homeless" under Part 7. I am going to use the label the "RCO Test" – for "reasonable to continue to occupy" – to describe this statutory test. It is found in s.175(3) of the 1996 Act. The starting point is that, by s.175(1), a person is homeless if they have no accommodation available for their occupation. Then, by the RCO Test:

> ***A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for [them] to continue to occupy.***

It was the adverse conclusion in the application of the RCO Test which meant that the family was found not to be homeless. I have to decide whether that adverse conclusion – applying the RCO Test – was lawful. In doing so, I have considered all the circumstances and features of the case. I was informed of two post-decision developments. One is that the family dog no longer lives with them in the Flat. The other is that the Mother has stopped using the CPAP machine. Nobody has suggested that these points materially affect my analysis of the legality of the Target Decision, but it was right that the Court was told about them. I have read and considered the witness statement evidence produced for these proceedings, which I have put alongside the materials before the decision-maker the legality of whose decision is being challenged.

"Dual-Listing"

6. The Mother filed a s.204 appeal to the county court on a point of law, on 8 March 2024. She and the Son filed a claim for judicial review to the High Court on 16 May 2024. Permission for judicial review was granted by the High Court on 17 October 2024. By that order, and a subsequent order in the Central London County Court on 27 November 2024, the s.204 appeal has been transferred to the High Court. That was so that the appeal and claim could be considered together. They were listed to be heard together.

Disability

7. Disability is a protected characteristic under s.4 of the 2010 Act. Under s.6(1) – which is applied together with Sch 1 – a person has a disability if they have "a physical or mental impairment" which has "a substantial and long-term adverse effect on [their] ability to carry out normal day-to-day activities". Everyone in this case agrees that the Mother and the Son are each a person with a disability for the purposes of s.6 of the 2010 Act. The Decision Letter – which was addressed to the Mother – said:

> ***You have been diagnosed with an Emotionally Unstable Personality Disorder, sleep apnoea, fibromyalgia and autism. There is also a question as to whether you have ADHD. Your son … has been diagnosed with autism and is known to have challenging behaviour with violent outbursts.***

It later said, by reference to the 2010 Act:

> ***I accept you and your son are covered and have a disability under the Act.***

Autism

8. The Mother's autism was diagnosed in January 2023. The Son's autism had been diagnosed in July 2021. I was told that "autism" and "autism spectrum disorder" (ASD) are used interchangeably in the papers before the Court. The Equal Treatment Bench Book gives all judges the following introductory overview:

> ***Autism … is a lifelong developmental disability affecting how people communicate with others and sense the world around them. It is estimated that 1.1% of people in the UK are on the autistic spectrum. Autism is a spectrum condition and although autistic people will share certain characteristics, everyone will be different. To have a diagnosis of autism a person will have difficulties with social communication and integration, and will often demonstrate restricted, repetitive patterns of behaviour, interests or activities.***

9. The family's solicitors made a series of representations to the Council about the implications of the Mother's autism and the Son's autism. Among these was a letter dated 8 December 2023. It enclosed a report by a Consultant Psychiatrist (Dr Pranveer Singh) dated 24 March 2023; a report by an Occupational Therapist (Meera Vitarana) dated 14 July 2023. It also enclosed research into housing needs of those with neuro diverse conditions, especially autism. That included a report Supporting Autistic Flourishing at Home and Beyond (2020), written by the National Development Team for Inclusion; and a Checklist for Autism-Friendly Environments (2016). These sources were all listed within the 37 items of materials identified in the Decision Letter.

10. Dr Singh's report included this overview:

> ***Autism spectrum disorder is a development disorder which starts in childhood. Daily living skill deficits commonly co-occur in individuals with ASD. These deficits in adolescence are characterised by poor outcomes in both employment and independent living skills as adults. People suffering from ASD involve having persistent challenges with social communication and restricted interest. The assessment carried out by Psychiatry-UK on 26.01.2023 notes that [the Mother] is suffering from ASD level 1. As noted in the DSM-V, people suffering from level 1 ASD require support. Without support in place, they would have deficits in social communication that cause noticeable impairments. This may include difficulty initiating social interactions, and clear examples of atypical or unsuccessful response to social overtures of others. They may appear to have decreased interest in social interactions. For example, a person who is able to speak in full sentences and engage in communication but whose to-and-fro conversations with***

> ***others fail and whose attempts to make friends are odd and typically unsuccessful. Their inflexibility of behaviour causes significant interference with functioning in one or more contexts. They have difficulty switching between activities. They have problems of organisation and planning that hampers their independence.***

11. The points made by the family's solicitors on 8 December 2023 included these:

> ***Our client's 10-year-old son has autism and this leads to frequent outbursts, including violent episodes, and to him regularly becoming emotionally dysregulated. Our client also has autism, together with anxiety, depression and a personality disorder… For neurodiversity, space is key … With autism spectrum disorder (ASD) there is also an importance in having defined and distinct areas within the home for different activities eg. space for sleeping, space for eating etc. Therefore, with households that are overcrowded, and which include members who have ASD using the living room as a sleeping space is not a viable option… The need for separate and distinct spaces is evidenced in the … research paper entitled Supporting Autistic Flourishing at Home and Beyond… Our client needs a separate space to decompress and relax, due to the combination of her autism, her anxiety and depression…***

Duties (1) to (7)

12. Seven legal duties on local authorities have been relied on in this case. The following five are relied on in the s.204 appeal. Duty (1): The statutory duty imposed on a local authority under s.184 of the 1996 Act to make such inquiries as are necessary to satisfy itself as to whether any Part 7 duty was owed to the family, which meant being "satisfied" as to the RCO Test under s.175(1) of the 1996 Act. Duty (2): The statutory duty on the Reviews Officer under s.203(4) of the 1996 Act to give "the reasons for the decision". Duty (3): The common law duty imposed on a public authority decision-maker to make a reasonable decision. Duty (4): The statutory duty imposed on a local authority under s.11(2) of the Children Act 2004 to discharge the decision-making function having regard to the need to safeguard and promote the welfare of children. Duty (5): The statutory public sector equality duty (PSED), imposed on a public authority pursuant to s.149(1)(b) and (3)(a) and (b) of the 2010 Act, to have due regard to the needs (i) to advance equality of opportunity between persons who do and do not share the protected characteristic of disability, (ii) to remove or minimise disadvantages and (iii) to take steps to meet different needs. The following further two duties have been relied on in the judicial review claim. Duty (6): The statutory reasonable adjustments duty, imposed on a person exercising a public function pursuant to s.29(7)(b) of the 2010 Act, to take objectively reasonable steps under s.20 to avoid a substantial comparative disadvantage at which a practice puts a disabled person. Duty (7): The statutory duty, imposed on a person exercising a public function pursuant to s.29(6) of the 2010 Act, not indirectly to discriminate by a disproportionate practice putting a disabled person at a particular comparative disadvantage (s.19). All seven duties are, in principle, applicable. Each of them, in principle, matters.

The 1998 Act

13. This case is about the Equality Act, not the Human Rights Act 1998. But I have found it helpful to remember the 1998 Act as a reference-point. The Homelessness Statutory Guidance refers to s.3 of the 1998 Act (the internal inhibition which requires legislation to be read and given effect, if possible, in a Convention rights-compatible way) and s.6 of the 1998 Act (the external prohibition which prohibits public authorities from acting incompatibly with Convention rights). It then says this (at §§1.20 and 1.21):

> ***housing authorities and other agencies that carry out public functions on behalf of housing authorities must do so in a way that is compatible with Convention rights. Housing authorities should pay particular attention to the promotion and protection of rights of vulnerable and disadvantaged groups such as people with disabilities, ethnic minorities, victims of sexual discrimination, children and elderly people.***

14. Sometimes, there will be a clear overlap between the statutory design of Part 7 of the 1996 Act and acting compatibly with Convention Rights. An example is the way family life (Article 8) is protected by 1996 Act s.176(a) which provides that:

> ***Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with … any other person who normally resides with him as a member of his family …***

A local authority which ignored s.176(a) could also contravene Article 8. The Article 8 contravention could, in principle, raise a question about damages under the 1998 Act s.7.

2010 Act Duties: An Encapsulation

15. Duties (5), (6) and (7) are imposed by the 2010 Act. The way they were relied on by the family is illustrated by this encapsulation of reasons why the Reviews Officer should reverse the s.184(3) decision. It comes from the family's solicitors' representations dated 8 December 2023. The encapsulation was:

> ***The decision-maker does not appear to have considered the extent of [our client] and her son's disabilities and fails to consider the effects of those disabilities on our client. The decision-maker also fails to focus on the needs of our client in relation to accommodation which arise from her disabilities, and the extent to which the current accommodation meets those needs. Nor does the decision recognise that, in considering whether it is reasonable for our client to continue to occupy the Property, she might need to be treated more favourably than others without her disabilities. This is especially relevant in relation to her need for an additional bedroom and a private garden.***

Uddin

16. The family's solicitors had said this, in the Mother's application for homeless assistance on 11 August 2023:

> ***The July 2023 court case of Uddin v Hackney found that the room and space standard should not be mechanically applied to families with autism, because they need more space than average. There should also be consideration of the impact on other children in the family of a sibling with autism.***

17. As a county court judgment, Uddin was not included in the bundle of authorities: see Practice Direction (Citation of Authorities) [2001] 1 WLR 1001 at §6. But I asked to see it, to understand the solicitors submissions made in August 2023. I am glad I did. I found in Uddin a helpful working illustration. It was a one-day s.204 appeal argued in Central London County Court before HHJ Monty KC. A family of 6 was living in 3-bedroom local authority accommodation. Two of the four children, aged 9 and 12, had severe autism. The judge said there was an "overwhelming history showing a need for two bedrooms" for those two children, which had been "emphasised in report after report over the years". He ruled that the adverse application of the RCO Test in the s.202 review decision was not unreasonable (beyond the range of reasonable responses). But the decision was nevertheless unlawful. The review decision-maker had failed lawfully to take into account the previous reports. They had unlawfully failed to conduct further

inquiries. And they had failed to have due regard as required by the PSED (Duty (5) in the present case) and s.11(2) of the 2004 Act (Duty (4) in the present case).

The Uddin Error

18. One feature of Uddin – emphasised by the family's solicitors in the August 2023 application for homeless assistance – is this. The review decision had spoken of the local authority, in the application of the RCO Test, as having "adequately assessed Mr Uddin's needs in accordance with the legislation", having "provided him accommodation based on his household size". HHJ Monty KC ruled, in the context of the PSED and s.11(2), that this was "the room and space standard as set out in the 1985 Housing Act", which "cannot be applied to children with autism".

The Room and Space Standard

19. I have described how the family's solicitors had submitted in this case that "the room and space standard should not be mechanically applied to families with autism". I have described how the judge in Uddin found it unlawful for the local authority – in the application of the RCO Test – to assess "needs in accordance with the legislation" and "accommodation based on … household size", by reference to "the room and space standard as set out in the 1985 Housing Act". What do they mean by "the room and space standard"?

20. The Room and Space Standard addresses "overcrowding" under the 1985 Act ss.324-326. The "room standard" (s.325) is contravened where "two persons of opposite sexes" over the age of 9 "must sleep in the same room", leaving aside a couple "living together as a married couple or civil partners". The "space standard" (s.326) gives a "permitted number" based on rooms "available as sleeping accommodation" and floor space, where a "living room" is statutorily-included within the meaning of "a room available as sleeping accommodation" (s.326(2)(b)). The Allocation Statutory Guidance says this about Part 6 allocation schemes (at §4.8):

> ***Overcrowding. The Secretary of State takes the view that the bedroom standard is an appropriate measure of overcrowding for allocation purposes, and recommends that all housing authorities should adopt this as a minimum. The bedroom standard allocates a separate bedroom to each: [i] married or cohabiting couple; [ii] adult aged 21 years or more; [iii] pair of adolescents aged 10-20 years of the same sex; and [iv] pair of children aged under 10 years regardless of sex.***

In the Council's Housing Allocation Policy for the purposes of Part 7 of the 1996 Act, there is a "bedroom standard" under which "children of different sexes where one is over the age of 10 will not be expected to share a bedroom". The Room and Space Standard has been prescribed by Parliament as a statutory-relevancy for determining Part 7 "suitability" (1996 Act s.210(1)). The Homelessness Statutory Guidance says this at §17.28:

> ***Part 10 of the 1985 Act is intended to tackle the problems of overcrowding in dwellings. Section 324 provides a definition of overcrowding which in turn relies on the room standard specified in section 325 and the space standard in section 326. Housing authorities must be mindful of these provisions when securing or helping to secure accommodation for homeless applicants.***

2010 Act Duties and Part 7

21. In invoking the 2010 Act Duties (Duties (5) to (7)), Mr Bano and Mr Blennerhassett emphasise the structured 2010 Act approaches to specific equality rights and duties, when put next to reasonableness review (Duty (3)). They cited R (Gallaher Group Ltd) v CMA [2018] UKSC 25 [2019] AC 96, where equality is described as one of the "aspects" of reasonableness (§26), having "a particular application" (§50). Reasonableness has many aspects with particular applications. Equality as a sub-species of unreasonableness will have its own contours. But these do not require analysis in the present case.

22. There are two reference-points for consideration of 2010 Act duties – including the PSED but also other duties – in the context of Part 7 (homelessness) decision-making. The first is the Homelessness Statutory Guidance, which says this at §1.10 (square brackets added):

> ***Housing authorities need to ensure that policies and decisions relating to homelessness and threatened homelessness [i] do not amount to unlawful conduct under the Equality Act 2010 and also [ii] comply with the public sector equality duty.***

Point [ii] is a reference to the PSED duty under 2010 Act s.149. But point [i] is a reference to a local authority's substantive 2010 Act duties. That would include Duty (6) (reasonable adjustments) and Duty (7) (indirect discrimination). The second reference-point is Lomax v Gosport BC [2018] EWCA Civ 1846 [2019] PTSR 167. That was a case about the application of the RCO Test. The Court of Appeal treated s.19 of the 2010 Act as relevant to the arguments: see §§14, 48.

How Disability Features in Part 7

23. It is helpful to think about ways in which disability would – or at least could – be legally relevant in individualised decision-making under Part 7 of the 1996 Act. I am focusing on disability because it is the relevant protected characteristic in this case. The references in the following list are to sections in the 1996 Act and paragraphs in the Homelessness Statutory Guidance. These are some examples.

    i) Disability will be relevant to the application of the RCO Test (s.175(3)), in deciding whether an individual is homeless (s.175). The RCO Test is "a judgement on the facts of each case, taking into account the circumstances of the applicant" (§6.23). and "all relevant factors" (§6.40). It would, for example, include physical characteristics of accommodation "unsuitable for the applicant because … they are a wheelchair user" (§6.39a).

    ii) Disability will be relevant to whether a person is vulnerable (s.189(1)(c)), and so relevant to having "a priority need for accommodation". Parliament referred to "a person who is vulnerable as a result of … mental illness or handicap or physical disability". The decision-maker, "mindful" of the 2010 Act "should assess the extent of such disability and the likely effect of the disability" and will "need to decide whether the impact of this makes the applicant significantly more vulnerable as a result" (§8.18). Relevant factors include "the nature and extent of the illness and/or disability; the relationship between the illness and/or disability and the individual's housing difficulties; and the relationship between the illness and/or disability and other factors such as drug/alcohol misuse, offending behaviour, challenging behaviour, age and personality disorder (§8.26).

iii) Disability will be relevant to the local authority's s.189A assessment of relevant "circumstances"; and of "housing needs"; including of what accommodation would be "suitable" (s.189A(2)(a)-(c)). Assessing "the housing needs of an applicant" involves considering "any requirements to meet the needs of a person who is disabled" (§11.10). And deciding what is "suitable" accommodation involves a "need to consider carefully the suitability of accommodation for households with particular medical and/or physical needs" (§17.5).

iv) Disability can be relevant to whether a person has deliberately done or not done something, so as to have become homeless intentionally (s.191). This can involve considering what can "explain such behaviour"; whether there is "reason to believe the applicant is incapable of managing their affairs, for example, by reason of … disability"; and whether "the act or omission was the result of limited mental capacity; or a temporary aberration or aberrations caused by mental illness [or] frailty" (§9.17). Similarly, disability can be relevant to whether a person has acted to refuse an offer; and to whether the local authority is satisfied that the offer was of suitable accommodation (s.193(5)). And disability can be relevant to whether there is a deliberate and unreasonable refusal to cooperate (s.193B(6)), where a refusal may be "as a result of" circumstances; just as it may be as a result of mental illness or absence of support or a communication difficulty (§14.54).

v) Disability could be relevant to a question whether to grant an extension of time for a review (s.202(3)) or for written representations (reg.5); to a question about whether a person seeking a review should be afforded an oral hearing (s.203(2)(b)); and to questions about appropriate arrangements for such a hearing.

Illustrations of a "Practice"

24. I have described the family's reliance on Duty (6) (reasonable adjustments) under s.29(7)(b) of the 2010 Act, as requiring objectively reasonable steps to avoid a substantial comparative disadvantage. I have described Duty (7) (indirect discrimination) under s.29(6) of the 2010 Act, as requiring no disproportionate "practice" putting a disabled person at a particular comparative disadvantage. The full expression for both duties is "provision, criterion or practice" or PCP (see s.20(3) and s.19(1)). What is alleged in the present case is a "practice" and so that is my focus.

25. Lomax was a case about the lawfulness of a review decision applying the RCO Test. In that case, the Court of Appeal found unlawfulness by reference to the PSED (§§50-51). But there is this preceding passage which interestingly touches on PCP and s.19 (at §48):

> ***In essence Mr Hodgson, supported by Mr Drabble, submits that to compare Ms Lomax with the generality of persons on the council's housing list applies a generalised provision, criterion or practice (a "PCP") which does not take account of her particular disabilities, and fails to comply with the PSED. To equate undifferentiated medical and social impact with the documented impact on Ms Lomax of remaining in her current accommodation puts her at a disadvantage compared with the generality of people on the council's housing list. She is less able to cope with her accommodation than others, particularly others who have no more than a social need to move. It thus amounts to indirect discrimination against her. The point is reinforced by the council's PSED.***

26. At the hearing, I suggested to Counsel two illustrations of what could be a "practice" for the purposes of Duties (6) and (7). First, suppose an oral hearing on a s.202 review (as to

which, see s.203(2)(b)) is approached by communicating in spoken English, putting deaf people at a substantial disadvantage. The disadvantaged applicant says the adverse review decision was unlawful because the review decision-making process breached Duty (6) (reasonable adjustments) and/or Duty (7) (indirect discrimination). Secondly, suppose a local authority reviews officer answers the RCO Test by using the following floorspace standard: a bedroom has sufficient floor space if a mattress can fit in the room. The disadvantaged applicant is a wheelchair user and says the adverse decision was unlawful because of breach of Duty (6) (reasonable adjustments) and/or Duty (7) (indirect discrimination). In my judgment, in each of these two illustrations the adverse review decision could in principle be contrary to law by reason of these Duties.

27. Ms Rowlands maintains that there is no need for Duties (6) or (7) in the context of a s.204 appeal in such cases. That is because the first illustration could be procedural unfairness at common law; the second illustration could be substantive unreasonableness at common law; and each could be a PSED breach. I accept that there will be overlap. Equality considerations can be aspects of reasonableness (§21 above). Uddin and Lomax (§§17, 25 above) are illustrations of a PSED analysis. But Duties (6) and (7) are part of the disciplined structured approach to equality rights and remedies, just as the 1998 Act is for human rights. The Homelessness Statutory Guidance and Lomax treat them as relevant (§22 above). An overlap with statutory rights and duties does not mean exclusion of those rights and duties. It is dangerous to assume that the overlap is complete, without conducting the disciplined structured approach. It must in principle be open to a homeless applicant to challenge a s.202 review decision as being contrary to law for breach of the 2010 Act substantive duties, and not just the PSED process duty. Added to which there is the question of damages, which can be a relevant remedy for breach of Duties (6) and (7), since those duties fall within Part 3 of the 2010 Act (see ss.114 and 119).

The Flat

28. The Flat occupied by the family is rented from a housing association. Bedroom 1 is 13.04m2. Bedroom 2 is 9.58m2. The living room is 17.47m2. There is a bathroom and a kitchen. It is on the ground floor. There is a communal garden, shared with other flats in the same building.

Dr Singh

29. In these proceedings, Mr Bano and Mr Blennerhassett for the family submitted (in writing) that there were "assessments from a consultant psychiatrist and an occupational therapist, which clearly established the need for a three-bedroom home"; and that the Decision Letter "rejected the evidence of the consultant psychiatrist and occupational therapist …, which had established that the household needs an additional bedroom". But they accepted (in oral submissions) that this characterisation could not be sustained, so far as concerns the consultant psychiatrist (Dr Singh). I agree. What Dr Singh said in his March 2023 report was that a three-bedroom home would be positively beneficial. Here is the key passage:

> ***[1] Given the nature of ASD and EUP that [the Mother] experiences, it appears that she is able to function in an independent living accommodation where is she is able to provide support to her children. [2] For ASD adults, the environment in which they live can have a profound impact on their wellbeing. If it does not suit their needs, it can exacerbate behaviours that may inhibit their progress and diminish motivation and confidence. [3] But housing that is designed around them and their condition has been shown to have a positive effect, helping them to feel more***

> ***settled, enhancing their confidence and motivation to take part in their community. [4] She identifies that in the current accommodation she feels trapped and when her son has an outburst of anger, this impacts on her mental health adversely. She reports that it is not possible for her son to have a place where he can manage his anger outburst. [5] An accommodation where [the Mother] is able to manage her mental health symptoms such as anxiety, mood fluctuations would be beneficial. [The Mother] identifies that an accommodation with an extra bedroom and with a private outside space to which she has direct access is likely to be beneficial. Such a provision, in my opinion, is likely positively [to] benefit [her] mental health wellbeing.***

Ms Vitarana

30. In her July 2023 occupational therapist's report, Ms Vitarana describes the following: the Son's ASD and his aggression and challenging behaviour, including violent behaviour towards the Daughter during the night, including risk of injuring her; the Mother's ASD, disturbed sleep including panic attacks, and use of a loud and noisy CPAP machine which needs to be on throughout the night (for her sleep apnoea); the non-use of the communal garden due to lack of privacy and anxiety, and the Son's challenging behaviour; the large trees in the garden which block a significant amount of sunlight into each room in the property; and the identified risks being deterioration of the Mother's and the Son's mental health and increased risk of injury to the Son due to his challenging behaviour.

31. The OT report includes this, describing the Son and Daughter sharing in Bedroom 2:

> ***As a result of sharing a room with her brother, [the Daughter's] sleep was disturbed, and she would become increasingly upset during the night. In addition, if she was to wake up during the night and disturb [his] sleep, this will trigger an episode of challenging behaviour and risk injuring [her]. As a result of this, [the Daughter] is now sleeping in her cot in her mother's bedroom …***

32. There are these passages in the OT report, describing the Mother and Daughter sharing in Bedroom 1:

> ***[The Daughter] is now sleeping in her cot in her mother's bedroom, however [the Mother] is having difficulty with this, and this is impacting on her mental health. [The Mother] sleeps with a CPAP machine, which is noisy and needs to be on throughout the night whilst she is sleeping. Due to the noise of the machine, this has woken up [the Daughter] on several occasions, resulting in her becoming upset and finding it difficult to settle back to down to sleep… She does not want to wake up [the Daughter] and make her upset. Her night is also broken up by attempting to encourage [the Son] back to bed… [The Daughter] generally sleeps well, however due to other circumstances, her sleep is being broken, and this will ultimately have an impact on her sleep patterns in the future. Studies have shown that having poor sleep quality and disturbance can lead to academic, behavioural, developmental and social difficulties. They may also have trouble paying attention to tasks and develop impulsive behaviours. To ensure [the Daughter's] well-being, she will benefit from her own room, where her cot can be set up, and she can be away from [the Son's] disruptive behaviours and her mother CPAP machine. This will also allow [the Mother] a chance to relax more in the evening and allow [the Daughter] to develop effectively.***

33. There is this passage in the OT report describing the Mother's need for "retreat" space:

> ***[The Mother] expressed that during times when she and her son are struggling with their disabilities, she requires a designated place to seek solace, regulate her emotions, and find comfort. Having a space to cry, calm down, and take deep breaths is essential for her to continue caring for her children. Her bedroom serves as the only safe and calming space she can retreat to alone whenever needed. This becomes challenging when her daughter is also present in the room, as it can disturb her and lead to heightened stress and upset. Currently, [the Mother] and her son lack a secure area where they can both find emotional balance and regulation. She emphasized the importance of having those moments to regain composure, enabling her to return***

> ***to parenting with reduced stress and emotional strain. However, she feels she is unable to have these moments …***

34. Finally, the OT report concludes with these recommendations:

> ***I recommend that the family are moved into a 3-bedroom property, to ensure their wellbeing and safety. The property will benefit from: 3 bedrooms. Ground floor property or 3-bedroom house with a box room for [the Daughter]. Not advised to be on other floors as [the Son's] disruptive behaviour will impact on the neighbours. Private garden with high walls and no external access. Separate kitchen that can be locked Bathroom with toilet in good condition. To remain in the area if possible, however happy to move [the Son's] school. Property to allow service dogs. Property to have access to natural light… The current accommodation is not meeting her or her family's needs, and therefore will benefit from being rehoused to ensure their well-being.***

Housing Needs

35. Ms Rowlands submits that there is a distinction between the specific RCO Test (s.175(3)) and a broader idea of "housing needs". I agree. To speak of housing "need" for a 3-bedroom property does not, of itself, answer the RCO Test in respect of a current 2-bedroom property. If Parliament had intended "homeless" in s.175 to mean meeting "the housing needs of the applicant", that is what s.175(3) would have said. In fact "the housing needs of the applicant" – a phrase "including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides" – is found within the Part 7 assessment duty (s.189A(2)(b)).

The Disability Housing Panel

36. As the Defendant's Part 6 Housing Allocation Policy explains (§9), the Council has a Physical and Social Disability Housing Panel. This is a multi-agency body assessing the needs of households with a physical disability and households with children who have a social disability. The Panel's membership includes all services working with disabled households and responsible for identifying and meeting their housing needs.

The Panel's Home Visit Assessment

37. In the present case, the Disability Housing Panel undertook a Home Visit Assessment at the Flat on 20 April 2023. That assessment recorded that additional bedroom was not "agreed". It was assessed as not being a "necessity". There was "significant disruption", being a reference to the Mother's CPAP machine in Bedroom 1, described as keeping the Daughter awake when she sleeps with her mother. As to Bedroom 2, the assessment recorded that the Daughter is "unable to share the bedroom with her brother due to the brother's loud and sometimes violent meltdowns". It then says that, when the Daughter "turns nursery age in a year's time", it would be "beneficial for her to have a quiet space for her to sleep in", which she does not have while "sharing with either her Mother or Brother". Mr Bano and Mr Blennerhassett recognised that the Panel's assessment was part of the Part 6 (allocation) process.

On the Part 6 Waiting List

38. Mr Bano and Mr Blennerhassett's submissions emphasised that the Council had "accepted that the family does have at least some degree of need for a three-bedroom home", having acknowledged that they are "entitled to a three-bedroom property for the purposes of the council's social housing 'waiting list'". This is a reference to Part 6

allocation. A decision letter dated 29 August 2023 accepted the Mother's application for housing (a property with 3 bedrooms), confirming that the family had been placed in Band C under the Council's Part 6 Housing Allocation Policy (§4.9). The Son had turned 10 that month. On 21 May 2024 this was revised to priority Band C+, because the Mother's "medical circumstances" had been assessed and she had been "awarded Medical priority 2".

The Safeguarding Referral

39. The Decision Letter includes this passage:

> ***Your solicitor stated that you had no choice but to allow your daughter to share a room with your son. You clearly had a choice as she said your daughter is now in your room. You stated in the past you were transitioning your daughter to share with him and then you had them sharing although you stated it was unsafe for your daughter to share with him. However, you still allowed them to share a room and she was hurt as a result even though it was stated by you this was a danger. Now, your solicitor has stated that the risk grew and your daughter got hurt which prompted you to move her back into your bedroom. Due to this, I have referred your children to Children's Services for support.***

40. The Safeguarding Referral (also dated 16 February 2024) identifies the Son and the Daughter. It records as the primary reason for the referral: "Mental Health – Parent/Carer". It includes this:

> ***Concerns. Client has a 10 year old son who is violent. She has a 1 year old daughter. She has given varying accounts. She told housing that her baby slept in bed with her, but she was concerned that the cord from her CPAP machine would get wrapped around the baby's neck. This is when her baby was much younger. She also said that she tends to thrash around in her sleep, but shared a bed with the baby. She said that her daughter cannot share a room with her son due to not only his violence, but is sexually inappropriate. Yet, she is now saying they are sharing a room. She has stated she cannot keep her son safe in the kitchen. Due to her disabilities, she is unable to leave the house on her own, needs constant help calming down, is unable to bring her son to school or needs significant assistance with daily life.***
>
> ***Other information. I am very concerned about the mental health of the mother. She has declined mental health help although she has stated her mental health is so severe she cannot manage and needs significant help. I am also concerned the contradictory information she has given such as she is known to violently thrash around in her sleep, but then said she was sharing a bed with her baby. She has said that her children cannot share a room due to her son's violent behaviour, but then said she was transitioning her daughter to share a room with him and is now sharing. She has said he is violent and should not share a room. She has been demanding a three bedroom property with a garden even before her daughter was born. It is unclear if she is being truthful with the things she has said.***

Reasonableness

41. I can now turn to the grounds of challenge. The points about reasonableness fall within the grounds of the s.204 appeal. In this part of the case, reliance is placed on Duty (3) (the duty to make a reasonable decision) and Duty (2) (the duty under s.203(4) to give reasons, which means legally adequate reasons).

42. Here is the essence of the argument on behalf of the family, as I saw it. The Target Decision is beyond the range of reasonable responses. It was incumbent on the Reviews Officer – if she was going to arrive at an adverse decision applying the RCO Test – to identify at least one sleeping arrangement within the Flat which could reasonably be

expected. That identified arrangement needed to be tenable on the evidence, and in logic. The Decision Letter failed to meet these basic requirements of a reasonable decision:

i) The sharing by the Son and the Daughter of Bedroom 2 is untenable, including on the Reviews Officer's own reasoning and logic. The Decision Letter at one point refers to circumstances which "would lead me to conclude that they are able to share a bedroom and have been doing so since last year". But it later records (see §39 above) that the Mother allowed the siblings to share a room and the daughter "was hurt as a result"; that "the risk grew and your daughter got hurt"; and that "due to this, I have referred to your children to Children's Services for support". The Safeguarding Referral (§40 above)) records concerns including that the siblings "cannot share a room" and "cannot share a room due to her son's violent behaviour". The Disability Housing Panel's April 2023 Home Visit Assessment records that the Daughter: "is unable to share the bedroom with her brother due to the brother's loud and sometimes violent meltdowns". A witness statement from the Reviews Officer (31 January 2025) – which the Court should admit notwithstanding general concerns about post-decision evidence from a decision-maker – says "I understood that her son needed his own room". This is an express abandonment of sibling bedroom sharing (Bedroom 2) for the purposes of the RCO Test.

ii) The sharing by the Mother and the Daughter of Bedroom 1 is untenable, including on the decision-maker's own reasoning and logic. The Decision Letter refers to the noise from the CPAP machine, and the fact that the Mother will "violently thrash around at times". The recorded concerns about the hose from the CPAP machine wrapping around the Daughter's neck or the Mother rolling onto her were part of the basis for the Safeguarding Referral to children's social services. The Reviews Officer must have been accepting this, or she would not have acted on it. Her January 2025 witness statement describes her view that the Mother "could sleep in the living room which was spacious, and her daughter could sleep in [Bedroom 1]", and that it was "not unreasonable for the [Mother] to sleep in the living room". This is an implied abandonment of mother-daughter bedroom sharing (Bedroom 1) for the purposes of the RCO Test.

iii) The Mother sleeping in the living room is untenable, including on the decision-maker's own reasoning and logic. The Decision Letter contains no description, anywhere, of this as a solution. That is for good reason, given the clear evidence in the OT report about the Mother's own need for retreat space, and all the evidence about autism and the needs of people with autism for distinct space for living and for sleeping. This was nowhere addressed. The January 2025 witness statement refers to this option. Although admissible, it is out of step with the Decision Letter. In any event, it and the Decision Letter fail to grapple with the evidence.

iv) The conclusion and reasoning involve a departure – without reasoned justification – from the opinions of relevant professionals. The duty to make a reasonable decision with legally adequate reasons means that a decision-maker can only depart from expert evidence directed to a key point in issue if she provides a reasonable explanation for why she has done so: see Guiste v Lambeth LBC [2019] EWCA Civ 1758 [2020] HLR 12 at §64. Here, there is no reasonable explanation and the reasons do not meet the requisite standard (cf. Guiste §§64-65).

43. I have been unable to accept these submissions. Here are my reasons. First, the Decision Letter does not depart from the expert opinion of the consultant psychiatrist, Dr Singh. As I have explained, it is rightly conceded – on reflection – that Dr Singh's report does not "clearly establish the need for a three-bedroom home" and for "an additional bedroom". Dr Singh says a three-bedroom home would be positively beneficial. The Decision Letter does not disagree with that. Secondly, the Decision Letter contains a finding that the Mother and the Daughter could reasonably be expected to sleep in Bedroom 1. The family's skeleton argument acknowledged that "the reviewing officer concludes that [the Daughter] should sleep in the same room as her mother". In fact, the Decision Letter is not telling the family what it "should" do. The Decision Letter finds, in the application of the RCO Test, that the Mother and Daughter could share Bedroom 1. Thirdly, the Decision Letter also confronts head-on the point repeatedly emphasised within the OT report, about the Mother's CPAP machine being "loud" and "noisy". That was reported by the Mother. It was a strong theme in the OT report. The Reviews Officer gives a reasoned rejection of it. She says this:

> ***In my experience, a CPAP machine is not loud as it is designed to be used whilst someone is sleeping. The average sound is 30dcb which is around a whisper in a library. In other words, it is barely audible.***

There was no evidence adduced capable of undermining this as unreasonable. Fourthly, neither the Decision Letter nor the Safeguarding Referral – nor the OT report – accepts that the Daughter would be at risk in Bedroom 2 because the Mother is said "violently" to "thrash around in her sleep" or because of a concern that the "cord from her CPAP machine would get wrapped around the baby's neck". Ms Maniatis did not refer the children to Children's Social Services because of a risk of harm to the Daughter from the Mother thrashing around in her sleep, or because of a risk from a cord. The professional reports did not identify these risks. She had given "varying accounts" and "contradictory information" including statements that the Daughter had been exposed to risks of physical harm. She had described severe mental health needs, and yet had "declined mental health help". The Referral was a precautionary step, to trigger consideration of intervention and support, by reference to the Mother's mental health. There has been no rejection or abandonment of Mother and Daughter sharing Bedroom 1 for the purposes of the RCO Test.

44. There is also this. The Decision Letter does not describe anyone sleeping – or nobody sleeping – in the Living Room. But the fact of the Living Room is obviously relevant. The point in the OT report about "retreat" space is a powerful one. Within the Flat there are – day and night – three rooms and three family members. The Decision Letter records the Mother's position that she "would not want to disturb [the Daughter] by moving her from the living room to another room when she is asleep". It also describes the Mother's own with to have her "own place to wind down". Mr Bano and Mr Blennerhassett have taken the position that Ms Maniatis's January 2025 witness statement is admissible and I should have regard to views expressed in it. They have relied on it. They have built an argument, about implied abandonment of Bedroom 1, on what is said about the Mother sleeping in the Living Room. The Reviews Officer's view – for the purposes of the RCO Test – is that "the Claimant could sleep in the living room", which is "spacious". In my judgment, and in the context of the RCO Test, no professional opinion undermines that view; and I cannot conclude that it is unreasonable.

Welfare

45. The points about welfare also fall within the grounds of the s.204 appeal. In this part of the case, reliance in placed on Duty (1) (the duty under s.184 of the 1996 Act to make such inquiries as are necessary to be "satisfied" as to the RCO Test) and Duty (4) (the duty under s.11(2) of the Children Act 2004 to discharge the decision-making function having regard to the need to safeguard and promote the welfare of children).

46. The essence of the arguments on behalf of the family, as I saw it, came to this:

    i) The Reviews Officer cannot have discharged the s.184 duty to be "satisfied". The contemporaneous Safeguarding Referral to children's social services records the serious concerns about the Daughter, arising from risks relating to sharing Bedroom 2 with her brother, and risks to her relating to sharing Bedroom 1 with the Mother. These safety and welfare concerns were unresolved and unanswered. So were concerns about the welfare of the Mother. The Reviews Officer could not be satisfied and, if she was, this was not a reasonable or legally adequately reasoned conclusion.

    ii) The Reviews Officer cannot have discharged the distinct 2004 Act s.11(2) duty to discharge her decision-making function having regard to the need to safeguard and promote the welfare of children. This is an important duty in Part 7 decision-making: see the Homelessness Statutory Guidance §1.30. Children's welfare, which has a broad meaning, must be "actively promoted" in individual decision-making, with children's needs assessed explicitly and recorded in the decision-maker's reasons: see R (YR) v Lambeth LBC [2022] EWHC 2813 (Admin) [2023] HLR 16 at §§41-42, 46, 83, 88. The Decision Letter failed to satisfy these standards. Important questions as to safeguarding and welfare concerns were reflected within the Safeguarding Referral. They could not be referred and deferred. They needed to be answered, so as to be actively promoted, explicitly within a lawful decision applying the ECO Test.

47. I have been unable to accept these submissions. First, questions about risk, safety and welfare were a central feature of the decision-making. They were key themes within the materials. They were key to the representations made by the family's solicitors, conscientiously recorded and then addressed within the Decision Letter. They were a key theme within the Decision Letter itself. The OT report addressed wider aspects of welfare, including sleep-disturbance, the implications of the garden being shared and the effects on natural light of nearby large trees. All of that was addressed in the Decision Letter. The OT report had identified the following risks:

> ***11. Risks identified. 11.1. Risk of deterioration of mental health for [the Son]. 11.2. Risk of deterioration of mental health for [the Mother]. 11.3. Increased risk of injury to [the Son] due to his challenging behaviour.***

Elsewhere, the evidence – including the OT Report itself – considered other aspects of risk and welfare. That included the Daughter. The Decision Letter actively engaged with how welfare could be promoted: using nearby Grove Park (including in training a family dog); using the communal garden with the children supervised; asking for the trees to be again cut back; and reducing the amount of furniture and clutter. Secondly, the Safeguarding Referral – as a precautionary step, to trigger consideration of intervention

and support, by reference to the Mother's mental health – was not inconsistent with a legally sufficient enquiry, or with the discharge of the decision-maker's legal duties. The fact that the Reviews Officer was thinking about the bigger picture, the children's welfare and the Mother's mental health, is illustrated by the fact that she proactively considered alerting children's social services and decided to take a proactive step. That thinking and action itself fits with the broader purposes of s.11(2). Thirdly, the Reviews Officer did not make the Uddin error (see §53 below). I am unable to see a breach of either of the Duties.

PSED

48. The PSED points are the final ground of 1999 Act s.204 appeal. In this part of the case, reliance is placed on Duty (5): the 2010 Act s.149 duty to have due regard to the needs (i) to advance equality of opportunity between persons who do and do not share the protected characteristic of disability, (ii) to remove or minimise disadvantages and (iii) to take steps to meet different needs. Again, I am focusing on those aspects of the statutory duty which are relevant to the arguments advanced in this case.

49. Here is the essence, as I saw it, of the arguments on behalf of the family:

    i) The necessary first stage involves understanding the PSED. It is an important "process duty". In the present case, "process" does not mean the procedure that was adopted. It means the Reviews Officer's "thinking process". The PSED makes a difference. It means the RCO Test (s.175(3)) will be applied differently, because the underlying thinking is different. What was needed was: a sharp focus on the extent of the Mother's disabilities and the Son's disabilities; a sharp focus on the effect of the disabilities, taken together with other features, on all family members; a comparison between their accommodation needs and those of others without their disabilities; and a recognition that when considering the RCO Test they might need to be treated more favourably than others without their disabilities. See Lomax at §§43, 45. This idea of a possible "need to be treated more favourably" engages the statutory PSED "need" to remove or minimise disadvantages (s.149(3)(a)) and to taking steps to meet different needs (s.149(3)(b)). The PSED makes it important not to downgrade medical evidence or fail to take some specific feature into account: Kannan v Newham LBC [2019] EWCA Civ 57 [2019] HLR 22. It is legally insufficient that a decision letter contains a "discussion of the PSED": Lomax §52.

    ii) The second stage is to assess whether these standards have been complied with. In the present case the answer is clearly no. That is for several cumulative reasons, any of which would suffice. The Decision Letter involved no sharp focus on the extent of the Mother and Son's disabilities; nor their effect. There was no sharply focused considerations. Instead, there were generalities as seen in observations about the Mother "not coping when you are alone and need support". The evidence of Dr Singh and Ms Vitarana was downgraded. The Decision Letter is not saved by the fact of a discussion of the PSED. The disability-related disadvantages could be removed – and the disability-related needs met – straightforwardly, by applying the RCO Test favourably. The PSED has been breached.

50. I have been unable to accept these submissions. My reasons, which relate to the second stage, are as follows. First, questions about disabilities, their nature and extent and effect,

were at the heart of this decision. They were put there – rightly – by the family's solicitors, in the encapsulation (§15 above) and all the supporting submissions and materials. They were conscientiously addressed by the Reviews Officer in the 13-page Decision Letter. This case is not about the impacts on a family of three with a 2 year old daughter (now 3) and a 10 year old son (now 11). It is not about a generalised Room and Space Standard (§20 above). It is about the impacts and implications – as disability-related impacts and implications – of living in this accommodation, for all of these individuals. The Mother's and the Son's disabilities (§7 above) are identified by the Reviews Officer within the Decision Letter, in the first paragraph identifying relevant "background". Consideration is given to whether the Mother has a condition which precludes her from going to public parks, but it is (lawfully) concluded that the family (at that time training the family dog) could visit nearly Grove Park, just as they could go for walks on holidays.

51. Secondly, the Decision Letter does include a sharp focus on disability-related needs and impacts. The family's solicitors had relied on public domain materials regarding autism. For example, the Decision Letter includes this passage:

> ***The report entitled, "Supporting autistic flourishing at home and beyond: Considering and meeting the sensory needs of autistic people in housing" gives detailed information on how people with autism perceive the world and how housing provides a sanctuary from the outside world. In my considerable experience with autism, I fully accept that housing is an important feature.***

This is a decision-maker, with uncontested "considerable experience with autism" explaining that she has considered the report, that she had understood what is being described in the literature relied on, and that she "fully" accepts the housing implications for people with autism. The Decision Letter makes reference to how the Flat is "for someone with autism". It also makes reference to "reasonable adjustments". An example is the landlord having in the past rectified issues "in order to assist you and your son" by cutting back trees. There is express recognition that the Mother's autism and emotionally unstable personality disorder "affects your everyday functioning"; which is the context for Dr Singh agreeing that a garden and third bedroom "would be beneficial". There is focused consideration of the CPAP machine – put forward as a disability-related need given the Mother's sleep apnoea – and the impact for the Daughter. Reading the Decision Letter fairly and as a whole, the Reviews Officer was making a meaningful point of substance when she recorded at the end:

> ***I have considered the Equality Act 2010 and whether to treat you more favourably. I accept you and your son are covered and have a disability under the act. Even doing so, and after carefully looking at each reason given and as a whole, I conclude that your property is not unreasonable for you and your son. I accept that it may not be ideal for someone with autism, but adjustments have been made and you can also make some adjustments to help you feel better such as decluttering. You have taken on the training of a dog to assist you and your son. This means you are willing to go outside the home to give it daily walks and training. I also note that you were asking for a third bedroom even before your daughter came along when you wanted your partner to move in with you. Given the above, I am satisfied that you are not homeless or threatened with homelessness as per S175 of the Housing Act 1996 as you have accommodation that is available to you for more than 56 days and reasonable for you to continue to occupy.***

52. Thirdly, the references by Parliament (s.149(3)) to the "need" to "(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic" and "(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who

do not share it" call for a focus on whether and when a disabled person or persons might need to be treated more favourably than others without their disabilities, in decision-making applying the RCO Test. In a case where accommodation involves an impact which is especially burdensome for an individual by reason of their disability, Parliament has not imposed a statutory duty to equalise that burden through the grant of accommodation or a finding of homelessness or a favourable finding under the RCO Test. The PSED is a "due regard" duty (s.149(1)). It is in having "due regard" to the need to advance equality of opportunity that there must then be "due regard" to (a) and (b) (s.149(3)). The test is the RCO Test. It applies by reference to all the circumstances, including – very importantly – disability-related needs and impacts, approached by applying the PSED. But the fact that accommodation involves an impact which is especially burdensome for an individual by reason of their disability is not, in and of itself, the beginning and end of the application of the RCO Test. That outcome would be easily achievable by Parliament, but by differently designed statutory provisions.

53. Fourthly, the Reviews Officer did not make the Uddin error (§18 above). The judge in Uddin found it unlawful for the local authority found it unlawful for the local authority – in the application of the RCO Test – to assess "needs in accordance with the legislation" and "accommodation based on … household size", by reference to "the room and space standard as set out in the 1985 Housing Act". That meant there had been a failure to have due regard as required by the PSED, and as required by s.11(2) of the 2004 Act. In the present case the decision was not the application of the Room and Space Standard (§§19-20 above). The Room and Space Standard was something which the family's solicitors, initially by reference to Uddin (§16 above), emphasised did not provide the answer. The Reviews Officer agreed with that. In the Decision Letter, she specifically recorded the solicitors' point:

> ***Your solicitor stated that the bedroom standard would not be appropriate in your case and you require a three bedroom property to be adequately housed.***

What follows are a further 4 pages of reasons about the family, the circumstances, the impacts and the application of the RCO Test. There is no application of the "bedroom standard". There is no further reference to it. The entirety of the Decision Letter stands as an assessment of the application of the RCO Test in light of the specific facts and circumstances. That was the assessment unperformed in Uddin, which was why the local authority in that case had to reconsider the decision.

"Practice"

54. The "practice" points are within the grounds for judicial review. One ground relies on Duty (6): the statutory reasonable adjustments duty, imposed on a person exercising a public function pursuant to s.29(7)(b) of the 2010 Act, to take objectively reasonable steps under s.20 to avoid a substantial comparative disadvantage at which a practice puts a disabled person. The other ground relies on Duty (7): the statutory duty, imposed on a person exercising a public function pursuant to s.29(6) of the 2010 Act, not indirectly to discriminate by a disproportionate practice putting a disabled person at a particular comparative disadvantage (s.19).

55. I am going to take these two distinct grounds together, because each Duty starts in the same place: with a "practice" (§§12, 24 above). Each begins with the claim that the decision-maker has applied, in this case, a "practice". The 2010 Act at s.20(3) involves a

"provision, criterion or practice [which] puts a disabled person at a substantial [comparative] disadvantage"; and at s.19(2) a "provision, criterion or practice" which "applies" and puts persons sharing the characteristic at a particular comparative disadvantage. The torts are distinct and have precisely-formulated parameters. But, in the present case, the essence of the arguments on behalf of the family, as I saw it, started in the following place:

i) This case involved a relevant "practice", which has been applied in this decision-making applying the RCO Test. It is the "practice" of approaching overcrowding in terms of the number and size of rooms for the family composition and characteristics of the family members, viewed without reference to disability. Put another way, it is the "practice" which applies the general Room and Space Standard.

ii) If this is what happened, it meets the test for a "practice": see Ishola v Transport for London [2020] EWCA Civ 112 [2020] ICR 1204 at §38; and cf. Lomax §48.

iii) There is a sufficient indication of this in two places. One place is the original decision letter (30 October 2023), emphasising this part of the text:

> ***As I understand it, you have been put on the Council's housing register for a 3 bedroom property because you lack a bedroom. However, that does not mean that your property is statutory overcrowded, since all living spaces could be used as a sleeping space… Given the above, I am not satisfied that it is unreasonable for you and your family to continue to reside in your current property …***

The other is the Home Visit Assessment by the Disability Housing Panel (20 April 2023), explaining why an additional bedroom was not then being agreed. These are facts from which a court could decide that there is such a "practice", absent any other explanation (2010 Act s.136(2)). That puts the burden on the Council (s.136(3)). It has failed to disprove the practice. This is the gateway to each of the Duties, and the finding of breach.

56. That is the starting-place. In terms of what would follow, it is sufficient if I outline the family's case. Once there is a "practice", for each of the comparative exercises the ultimate focus is on "people with autism". The "practice" is of looking at numbers and sizes of rooms by comparison with family composition and characteristics of family members, independently of disability considerations (or applying the Room and Space Standard). That is what involves the comparative substantial disadvantage (s.20(3)), or the comparative particular disadvantage (s.19(2)(b)), for people with autism. That puts the focus on the absent and objectively reasonable adjustment steps (s.20(3)), and on the present and disproportionate unadjusted practice (s.19(2)(d)). The burden will shift to the Council and it cannot discharge that burden (s.136). These are not thinking process duties. They are substantive outcome duties. The legal consequence of the disproportionate and/or unadjusted practice is that a favourable conclusion under the RCO Test – rather than adverse one – must be reached. After all, the disabled victim of the unlawfulness is experiencing the disability-related burdensome impact of overcrowding, not experienced by persons who do not have a disability. The s.20 reasonable adjustment – or the s.19 proportionate means of achieving a legitimate aim – must involve the favourable application of the RCO Test. That is a crisp encapsulation of a detailed and sustained multi-stage argument under two distinct statutory provisions. But it does not always hurt to reduce a line of argument to its essentials.

57. I have not been able to accept these submissions. That is because the arguments are missing their necessary launch-pad. The Decision Letter was not the application to the RCO Test of a "practice" of approaching overcrowding in terms of the number and size of rooms for the family composition and characteristics of the family members, viewed without reference to disability. The Decision Letter was not the application to the RCO Test of a "practice" which applied the Room and Space Standard. That was the Uddin error. The Reviews Officer addressed the point being raised and did not make this mistake: see §53 above. That reconsideration on review would have been curative of any defect in the original decision. But the Uddin error was not made by the initial decision-maker either. The text which was emphasised (§55iii above) misses out key reasoning, preceding "given the above". Here is the fuller passage:

> ***As I understand it, you have been put on the Council's housing register for a 3 bedroom property because you lack a bedroom. However, that does not mean that your property is statutory overcrowded, since all living spaces could be used as a sleeping place. Although your solicitor has opined that your family cannot use the living room as a bedroom because you need separate space for living and sleeping, there is no medical evidence available to me to show that your living room cannot be a sleeping place. There is no clear medical evidence available to me to indicate that sharing a bedroom with your 1 year old daughter makes the accommodation unreasonable to occupy, despite your medical conditions and the use of a CPAP. Given the above, I am not satisfied that it is unreasonable for you and your family to continue to reside in your current property on medical grounds. Having considered the medical and other information available to me, I am not satisfied that the lack of a bedroom would mean that your property is not suitable for you to continue to occupy to be deemed homeless. From information available to me, it is already well established that you have an emotionally unstable personality disorder and some evidence of autism spectrum disorder. However, it cannot be reasonably concluded that the accommodation itself or the sleeping arrangements with your children is causative of this. I am also not satisfied that your daughter sharing your bedroom with you has significantly exacerbated your mental health conditions such that it is unreasonable for you to continue to occupy.***

58. There are – for the purposes of s.136(2) – no facts from which the court could decide, in the absence of any other explanation, that the Review Officer's decision applied the "practice" being relied on. The Council does not need to justify failing reasonably to adjust, or to justify as proportionate, the practice – in the application to the RCO Test – of approaching overcrowding in terms of the number and size of rooms for the family composition and characteristics of the family members, viewed without reference to disability. Nor of applying the Room and Space Standard. The "practice" was and had to be the consideration of all the circumstances, impacts and implications – and especially those which are disability-related – approached in the discharge of the PSED. I agree that, if the "practice" suggested were supported on the evidence, it would engage the duties invoked.

59. Having said all that, Uddin and Lomax (§§48, 51) are both illustrations of cases where in the Part 7 decision-making an unjustified "practice" was being identified for 2010 Act purposes. And in both of those cases, the s.204 appeal route succeeded by reference to the PSED. It is possible that a damages remedy could follow. But none of this gets off the ground in the present case.

Conclusion

60. It follows from the reasoning set out above that the appeal and judicial review claim fail and will be dismissed. I have not needed to invoke the principle which requires review decision letters to be read with benevolence: Lomax §37; McMahon §16. I have applied

a close scrutiny and my decision does not turn on calibration of the intensity of review Before leaving the case, I will make observations about dual-listing: why and where.

Dual-Listing and s.204 Appeals

61. The scope of a s.204 appeal extends to "any point of law arising from the decision or, as the case may be, the original decision" (s.204(1)). This extends to a point of law which "concerns or relates to the lawfulness of the [appealed] decision": James v Hertsmere [2020] EWCA Civ 489 [2020] 1 WLR 3606 at §31. The s.204 jurisdiction "is in substance the same as that of the High Court in judicial review", with the purpose of relocating homelessness judicial review cases to the county court, and standing as an alternative remedy: R (Bano) v Waltham Forest LBC [2025] EWCA Civ 92 at §§8-9, 35.

62. There is power pursuant to ss.41-42 of the County Courts Act 1984 and CPR 30.3 to transfer a s.204 appeal to the High Court: Bankole-Jones v Watford BC [2020] EWHC 3100 (Admin) [2021] HLR 33 at §8. In James at §32 this guidance was given:

> ***if, in a small minority of cases, the County Court considers that the issue raised is one of general public importance, it is open to it to transfer it to the High Court under section 42 of the County Courts Act 1984 in accordance with the criterion at CPR r 30.3(2)(e)… [T]he County Court should be slow to identify an issue as one that it cannot determine for itself… But … there may be cases where the general importance of the challenge is such that transfer will be appropriate.***

63. A limitation has been identified in the scope of s.204 appeals, so far as certain species of 2010 Act unlawfulness are concerned. Here is how Adesotu v Lewisham LBC [2019] EWCA Civ 1405 [2019] 1 WLR 5637 is described in James at §26:

> ***Adesotu concerned the question of whether a discrimination claim under the Equality Act 2010 could be brought by way of a section 204 appeal. This court held that it could not. Section 114 of the 2010 Act gave the County Court a distinct jurisdiction, and that should be used. Further, a discrimination claim, unlike a section 204 appeal, involves fact-finding.***

As Adam Straw KC says in Discrimination in Public Law (LAG, 2022) at §7.3:

> ***The county court had no jurisdiction on an appeal under s.204 of the Housing Act 1996 to determine a claim of discrimination, which should have been brought under EA 2010 s.113.***

Here are ss.113 and 114(1)-(4) and (7) of the 2010 Act:

> ***113. Proceedings. (1) Proceedings relating to a contravention of this Act must be brought in accordance with this Part. (2) Subsection (1) does not apply to proceedings under Part 1 of the Equality Act 2006. (3) Subsection (1) does not prevent – (a) a claim for judicial review; (b) proceedings under the Immigration Acts; (c) proceedings under the Special Immigration Appeals Commission Act 1997 … (4) This section is subject to any express provision of this Act conferring jurisdiction on a court or tribunal. (5) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule. (6) Chapters 2 and 3 do not apply to proceedings relating to an equality clause or rule except in so far as Chapter 4 provides for that. (7) This section does not apply to – (a) proceedings for an offence under this Act; (b) proceedings relating to a penalty under Part 12 (disabled persons: transport).***
>
> ***114. Jurisdiction. (1) The county court … has jurisdiction to determine a claim relating to – (a) a contravention of Part 3 (services and public functions); (b) a contravention of Part 4 (premises); (c) a contravention of Part 6 (education); (d) a contravention of Part 7 (associations); (e) a contravention of section 108, 111 or 112 that relates to Part 3, 4, 6 or 7. (2) Subsection (1)(a) does not apply to a claim within section 115. (3) Subsection (1)(c) does not apply to a claim within section 116. (4) Subsection (1)(d) does not apply to a contravention of section 106… (7) In***

> ***proceedings … on a claim within subsection (1), the power under section 63(1) of the County Courts Act 1984 (appointment of assessors) must be exercised unless the judge is satisfied that there are good reasons for not doing so.***

64. Adesotu was a s.204 appeal in which three 2010 Act grounds (ss.15, 19 and 149) were "addressed to other, prior decisions" and struck-out on that basis (Adesotu §§6-7, 27-29). An independent basis for strike-out basis involved ss.113-114, disputed facts and assessors (§§12-19), all of which supported the s.114(1) county court claim route; not a s.204 appeal (§§21-26); nor judicial review (§22). Two PSED grounds which addressed to the s.202 review decision (§6) remained within the scope of the appeal (§7), in line with cases like Hotak v Southwark LBC [2015] UKSC 30 [2016] AC 811. Since a PSED-breach is surely "a contravention of this Act", s.113(1) cannot be all-embracing. The PSED rationalisation may be about it not being "freestanding" but a duty which "applies" to a 1996 Act "function": cf. McMahon v Watford BC [2020] EWCA Civ 497 [2020] PTSR 1217 at §48. I observe that 2010 Act s.19 featured in the s.204 appeal context in Lomax (at §§14, 48), in a case involving an intervention by the Equality and Human Rights Commission.

65. Drawing all this together, this is the position as I see it:

    i) Points of law concerning or relating to the lawfulness of a 1996 Act s.202 review decision should in principle be determined in the county court by way of s.204 appeal (Bano). A claim that a review decision is unlawful because of a PSED-breach contravention of the 2010 Act falls within the s.204 appeal (Hotak). Transferring a s.204 appeal to the High Court is available, in particular for points of general public importance or issues which the county court considers it cannot determine for itself (James §32).

    ii) A claim that a s.202 review decision is unlawful because of a discrimination contravention of the 2010 Act has been held not to fall within the s.204 appeal (Adesotu). But the county court remains an appropriate forum by s.114(1) (Adesotu, James §26). Where such a claim would be susceptible to judicial review (s.113(3)(a)) it would also be conducive to CPR Part 8 claim in the county court.

    iii) Dual-listing to promote the overriding objective with the parties' cooperation (CPR 1.3) sensibly ensures that discrimination grounds impugning a s.202 review decision are decided alongside PSED and other appeal grounds.

    iv) This, however, is achievable in the county court: by dual-listing the s.204 appeal and Part 8 s.114(1) claim. The s.114(1) claim can be case-managed. Divergent appeal avenues are surmountable by acting to ensure, in an appropriate case, that issues of law arrive at the Court of Appeal together. Putting it another way, s.204 appeal (county court) listed with s.114(1) claim (county court) provides the solution in the county court; and avoids transferring an appeal to join a s.113(3)(a) judicial review.

Order

66. Having circulated this judgment as a confidential draft, I am able to deal here with the Order including any consequential matters. In light of my judgment, Counsel were agreed as to the following. I am ordering: (1) The appeal is dismissed. (2) The claim for judicial review is dismissed. (3) As to costs: (i) The Claimants shall pay the Defendant's costs of

the claim for judicial review. (ii) The Appellant shall pay the Respondent's costs of the appeal. (iii) The Respondent shall be entitled to set off, against the sums payable to it under this Order, any sums payable by it in accordance with the order dated 30 August 2024 of HHJ Hellman in Central London County Court. The orders for costs at (3)(i) and (ii) above shall not be enforced without a detailed assessment of the Claimants' and Appellant's means pursuant to s.26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. (5) There shall be a detailed assessment of the Claimants' and Appellant's publicly funded costs pursuant to the 2012 Act.

Permission to Appeal

67. That leaves the contested application for permission to appeal. Mr Bano and Mr Blennerhassett advance a single ground of appeal. They say their true "practice" is unaddressed in the judgment and has a realistic prospect of prevailing on appeal. The true "practice" – which they say is "clear from the facts" and would "engage the duties invoked" – was the Council's "tendency to decide that the Claimants' degree of overcrowding does not usually meet the RCO test" or that the Council "will usually require a much more serious degree of overcrowding than the Claimant's before they will usually accept that the RCO test is met". I have identified (§55i above) the "practice" which I had understood was being relied on. I also identified the "two places" relied on in Mr Bano's oral submissions as indications of the "practice" (§55iii above). Ms Rowlands observes that the pleaded grounds for judicial review described the practice as the Council's "usual approach to bedroom need and homelessness", quoting the family's letter before claim which described the practice as "allowing families with 2 children up to and including the age of 10 one bedroom". I will focus on substance. The answer is one of substance. It embraces all of the ideas being described, and all the language being used. There would need to be a "practice" which was being "applied" to the family, so as to need reasonable adjustment (Duty (6)), or so as to be disproportionate (Duty (7)). The judgment finds that the "practice" which was "applied" in this case, in "the Review Officer's decision", was "the consideration of all the circumstances, impacts and implications – and especially those which are disability-related – approached in the discharge of the PSED" (§58). It is not said that there is a realistic prospect of overturning that finding. I have not been enabled to see how any argument based on a "practice" of what would "usually" meet the RCO test has a realistic prospect of prevailing in the Court of Appeal. I will therefore refuse permission to appeal.