

Neutral Citation Number: [2025] EWCA Civ 1049

Case No: CA-2024-002185

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM HIGH COURT

ADMINISTRATIVE COURT

MR DAVID PITTAWAY KC (sitting as a Deputy High Court Judge)

[2024] EWHC 2279 (Admin)

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 31 July 2025

**Before:**

LORD JUSTICE NEWEY

LORD JUSTICE LEWIS
and

LORD JUSTICE COBB

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**Between:**

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| --- | --- | --- |
|  | **THE KING (on the application of ANISA BEGUM)** | Claimant/Appellant |
|  | **- and -** |  |
|  | **LONDON BOROUGH OF TOWER HAMLETS** | Defendant/Respondent |

**SHELTER Intervener**

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**Karon Monaghan KC and Michael Sprack** (instructed by **Bindmans**) for the **Appellant**

**Kelvin Rutledge KC and Genevieve Screeche-Powell** (instructed by **London Borough of Tower Hamlets**) for the **Respondent**

**Liz Davies KC and Nick Bano** (instructed by Freshfields) for the **Intervener**

Hearing date: 17 July 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 31 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**LORD JUSTICE LEWIS:**

**INTRODUCTION**

1. This appeal arises out of an application by the appellant, Anisa Begum, for assistance with housing when she became homeless. The respondent, the local housing authority, accepted that it owed a duty under section 193 of the Housing Act 1996 (“the 1996 Act”) to secure that suitable accommodation was available for the appellant. There was, however, a period of time when the appellant was provided with unsuitable accommodation. That issue has been resolved and, at least since August 2023, the appellant has been provided with accommodation for her and her children which it is accepted is suitable.
2. This appeal concerns a different aspect of the claim. The appellant claimed that she had been subject to indirect discrimination, contrary to section 19 of the Equality Act 2010 (“the 2010 Act”). The claim, as amended, is that from October 2022 until at least 25 August 2023, the respondent applied a provision, criterion or practice, commonly referred to as a PCP, in “its system of allocating temporary accommodation to homeless applicants, which includes a ‘transfer list’ through which homeless applicants were provided accommodation which the [respondent] admitted was … unsuitable”. It was said that the application of that PCP put women, or women with children, at a particular disadvantage as compared with men, or men with children, which the respondent could not show was a proportionate means of achieving a legitimate aim. By an amendment to the claim form made on 1 December 2023, the appellant claimed that the respondent’s conduct constituted a breach of the duty under section 149 of the 2010 Act to have due regard to specified equality considerations.
3. David Pittaway KC, sitting as a deputy judge of the High Court (“the judge”), dismissed those claims. He found that the inclusion of information on a database did not amount to a PCP, did not put women as compared to men at a particular disadvantage and, if he were wrong on those matters, the PCP had been shown by the respondent to be a proportionate means of achieving a legitimate aim. He found no breach of the duty imposed by section 149 of the 2010 Act.
4. The appellant advances six grounds of appeal (and confirmed at the start of the hearing of the appeal that she was withdrawing a seventh ground of appeal). The six grounds are that the judge:
5. failed to properly identify the PCPs relied upon and in so doing misdirected himself when concluding that the respondent did not apply to the appellant and others a PCP for the purposes of section 19 of the 2010 Act;
6. erred in concluding that the operation of a database (“transfer list”) is not a PCP for the purposes of section 19 of the 2010 Act;
7. erred in concluding that the PCP relied upon did not place women at a “particular disadvantage” for the purposes of section 19 of the 2010 Act;
8. erred in finding there was no causal link between the operation of the database (transfer list) and the particular disadvantage, (namely, remaining in unsuitable accommodation);
9. was wrong to find that, if the creation and operation of the database (transfer list) amounted to a PCP, it was justified; and
10. misdirected himself as to the requirements of the public sector equality duty under section 149 of the 2010 Act and reached a decision not open to him on the facts.
11. Shelter was given permission to intervene by written and oral submissions and did so in relation to grounds 3, 5 and 6. It did not seek to intervene in relation to grounds 1, 2 and 4.

**THE LEGAL FRAMEWORK**

***The 1996 Act***

1. Part VII of the 1996 Act imposes a range of duties in respect of persons who are homeless, or threatened with homelessness, and who are eligible for assistance (that is, they are not excluded from receiving assistance because they are persons from abroad or asylum seekers or their dependants: see section 183 of the 1996 Act). The existence of the duties is dependent, in part, on the satisfaction of certain criteria such as whether a person is homeless, whether the person is intentionally homeless, and whether the person has a priority need. Each of those terms is defined in the 1996 Act. In particular section 189 provides that the following persons “have a priority need for accommodation”:

“(a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;

(b) a person with whom dependent children reside or might reasonably be expected to reside;

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

(d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster;

(e) a person who is homeless as a result of that person being a victim of domestic abuse.”

1. Different duties are owed in different circumstances. Most of the duties are owed for a limited or defined period. There is, by way of example, an interim duty to secure accommodation where the housing authority “have reason to believe” that the applicant may be homeless and have a priority need (section 188 of the 1996 Act). That duty continues whilst the housing authority conducts inquiries and decides whether the applicant is in fact homeless and has a priority need. Section 190 of the 1996 Act imposes a duty where an applicant is homeless but became homeless intentionally. Then the duty on the housing authority is to secure that accommodation is available “for such period as they consider will give him a reasonable opportunity of securing accommodation” together with advice and assistance.
2. Section 193 of the 1996 Act imposes a duty owed to those who are homeless, have a priority need and are not homeless intentionally. This is often referred to as “the full duty” or the “main duty”. The duty is to secure that accommodation becomes available for occupation by the applicant. The duty comes to an end where, amongst other circumstances, an applicant accepts an offer of accommodation from the housing authority under Part VI of the 1996 Act or accepts an offer of an assured tenancy from a private landlord. This appeal concerns men and women to whom this duty is owed.
3. The material provisions of section 193 for present purposes are as follows:

“(1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance, and has a priority need, and are not satisfied that he became homeless intentionally.

(2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.

(3) The authority are subject to the duty under this section until it ceases by virtue of any of the following provisions of this section.

…..

(5) The local housing authority shall cease to be subject to the duty under this section if—

(a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,

(b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and

(c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.

(6) The local housing authority shall cease to be subject to the duty under this section if the applicant—

(a) ceases to be eligible for assistance,

(b) becomes homeless intentionally from the accommodation made available for his occupation,

(c) accepts an offer of accommodation under Part VI (allocation of housing), or (cc) accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord,

(d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.

“(7) The local housing authority shall also cease to be subject to the duty under this section if the applicant, having been informed of the possible consequence of refusal or acceptance and of his right to request a review of the suitability of the accommodation, refuses a final offer of accommodation under Part 6.

…..”

1. A housing authority may discharge its functions by (a) securing that suitable accommodation provided by the local housing authority is available, (b) securing that the person obtains suitable accommodation from some other person or (c) by giving the person such advice and assistance as will secure that suitable accommodation is available from some other person (see section 206 of the 1996 Act). An applicant has a right to request a review of a decision of a housing authority, including a decision that accommodation is suitable, under section 202 of the 1996 Act. An applicant who is dissatisfied with a decision on a review may appeal to the county court under section 204 of the 1996 Act.
2. Section 193(2) imposes an “immediate, non-deferrable and unqualified duty”: see *R (Elkundi) Birmingham City Council* [2022] EWCA Civ 601; [2022] QB at paragraph 81. The duty is a public law duty owed personally to the individual and is enforceable by way of a claim for judicial review. A court may grant a mandatory order requiring an authority to comply with its duty although it may, as a matter of discretion, decline to grant such an order if it is satisfied, on proper evidence, that it is not possible for the authority to fulfil its duty: see, generally, *R (Imam) v London Borough of Croydon* [2025] AC 335 at paragraphs 36 to 70.

***The 2010 Act***

1. A service-provider, such as a local housing authority, must not discriminate against a person in the provision of a service or in the exercise of a public function: see section 29 of the 2010 Act. A housing authority will indirectly discriminate against a person in the circumstances defined in section 19 of the 2010 Act which provides, so far as material:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

…..

sex;

….”

1. The central issue on this appeal is whether the housing authority did, between October 2022 and August 2023, apply a PCP to men and women which put women at a particular disadvantage and, if so, whether the respondent has shown the PCP to be a proportionate means of achieving a legitimate aim.
2. A secondary issue is whether the respondent by its conduct towards the appellant during that period breached its duty under section 149 of the 2010 Act. That provides, so far as is material to this appeal, that:

“(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

**THE FACTUAL BACKGROUND**

***The Appellant’s Circumstances and the Provision of Accommodation.***

1. The appellant was born on 25 March 1999. In February 2021, she discovered that she was pregnant, and her family required her to leave the family home. Between February and May 2021, the appellant stayed with friends.
2. On about 28 May 2021, the appellant applied for assistance as a person who was homeless. On the same day, the respondent secured the provision of accommodation at Studio 2, 312 Verdant Lane, London SE 16 1TW. That is a self-contained studio flat. It measured 16.5 m2. On 24 October 2021, the appellant’s son was born. The appellant and her son continued to live at the studio flat. On about 6 June 2022, it is said that the appellant complained to the respondent that the accommodation was unsuitable but we were not provided with a copy of that complaint.

***The Acceptance of a duty under Section 193(2) of the 1996 Act***

1. By letter dated 5 October 2022, the respondent, following the completion of inquiries, accepted that the appellant was eligible for assistance, was homeless, had a priority need as defined by the 1996 Act and had not become homeless intentionally. The letter stated the respondent had a duty to provide the applicant with accommodation under section 193 of the 1996 and would “continue to provide accommodation to you at the below address until we find you longer-term accommodation or until the duty ends for another reason”. The address given, at which accommodation was to be provided, was the studio flat at 312 Verdant Lane.

***The Request for a Transfer and the Database***

1. On 13 October 2022, an e-mail was sent by a housing officer to another officer at the respondent. The subject of the mail was said to be “Transfer – Overcrowded Anisa Begum Ref: 3105010”. The details in the body of the e-mail show the appellant’s current address and gave the reason for the request for a transfer as “Overcrowded currently in a studio, baby 12 months”. Various other details were provided.
2. The respondent’s evidence (which the judge accepted) was that, at this date, it operated a database which was commonly referred to as a transfer list. That database recorded information about two categories of household, namely (a) those households who were in unsuitable accommodation and required an immediate move (the implication being that that was necessary to comply with Part VII of the 1996 Act) and (b) households which wished to be considered for alternative accommodation to their current accommodation as a part of a planned move if surplus accommodation of the type requested became available. Different codes were used to describe the reason for a transfer. There was one code for those in unsuitable accommodation. There was another code used for those in overcrowded accommodation seeking a transfer on a discretionary basis. As I understand it, the appellant was allocated a code showing that she was in overcrowded accommodation (not the code used for those in unsuitable accommodation) but my decision in this appeal is not dependent on that assumption. The basis on which data was collected changed after August 2023.

***The request for a review and subsequent events***

1. By letter dated 24 May 2023, a local law centre acting on behalf of the appellant wrote to the respondent requesting a review of the suitability of the studio flat that was being provided to the appellant. That letter indicated that the appellant was living in the studio flat with her son, and was now pregnant and expecting to give birth to her second child in September 2023. The letter set out arguments as to why the existing accommodation was unsuitable and did not meet the requirements of section 193(2) of the 1996 Act.
2. By e-mail dated 16 June 2023, a housing officer (not one who had previously dealt with the appellant’s case) replied saying that he had been advised that the appellant “is already on the transfer list in recognition of the fact that the property is overcrowded so a review would be academic”.
3. The judge accepted that the housing officer concerned had made a mistake in his response. The appellant was on the transfer list because the property was said to be overcrowded, not because that overcrowding led to the accommodation being unsuitable. A review would not therefore have been academic: it would have determined whether the accommodation occupied by the appellant and her son was unsuitable for the purposes of section 193(2) of the 1996 Act.
4. In view of the fact that the appellant had given up the opportunity for a review of the suitability of the accommodation because of an error on the respondent’s part, the respondent conceded that the accommodation was unsuitable for the purpose of meeting the duty owed to the appellant under section 193(2) from 16 June 2023 onwards. As it was put by Shamir Ahmed, an operations manager, housing management and procurement, in a witness statement filed on 19 January 2024, given that an error had been made by the respondent, and the appellant had given up her right to a review, “it is now only fair that the issue of suitability should be decided as having been resolved in her favour from this date”.
5. Although not relevant to the outcome of this appeal, I note one further matter. The respondent’s view, as explained by Shamir Ahmed, is that the accommodation was suitable under the relevant housing standards for 2 persons and was, in fact being occupied by the appellant and her 1 year old child. The respondent did not consider that it met the test for being statutorily overcrowded and was not unsuitable. Normally, the suitability of the accommodation would have been considered by a review under section 202 or an appeal to the county court under section 204. That did not happen. The judge did, however, consider that issue. He considered that the criticisms made in the letter from the law centre sent on 24 May 2023 “were as valid in October 2022 as in June 2023”. However, the fact that the respondent accepted in June 2023 that the accommodation was unsuitable was because it had failed to provide her with an opportunity for a review, not because it accepted that the criticisms in the May 2023 letter were correct and showed the accommodation to be unsuitable. It is not necessary for the purpose of this appeal to consider the correctness of the judge’s conclusion on this issue and there is no respondent’s notice raising this point. I would not, however, want it to be assumed that the accommodation in this case was unsuitable. That issue can be decided in cases where it arises, preferably in the context of an appeal under section 204 of the 1996 Act.

***The Claim for Judicial Review***

1. On 7 August 2023, a claim for judicial review was issued by the appellant. That sought to challenge the respondent’s failure to provide suitable alternative accommodation after it found that her accommodation was unsuitable in October 2022 and the date of the decision was given as 13 October 2022. That was the date of the e-mail sending the request for a transfer.
2. The appellant sought interim relief, and a mandatory order, on the basis that the respondent was in breach of section 193 of the 1996 Act. The claim form also contended that the respondent was in breach of sections 19 and 149 of the 2010 Act. Mr Richard Clayton KC, sitting as a deputy judge of the High Court, dealt with the application for interim relief at a hearing on 22 August 2023. He granted permission to apply for judicial review, and granted interim relief requiring the respondent to provide suitable accommodation, comprising at least one bedroom and one living room, or otherwise suitable accommodation, by 10 a.m. on 29 August 2023.
3. On 25 August 2023, the respondent offered, and the appellant, accepted accommodation in East London. It is accepted that that accommodation is suitable. The appellant has lived there since about 25 August 2023 with her son and her second child who was born on 9 September 2023. The judicial review claim was stayed. The claim based on the 1996 Act was, from that date, academic (as the judge found). An appeal against the finding that that aspect of the claim was academic was withdrawn by the appellant at the start of the hearing of the appeal.
4. The appellant wished, however, to maintain the claim for indirect discrimination. By order dated 19 December 2023, the appellant was granted permission to amend the claim form. The appellant added a claim for damages for indirect discrimination and reformulated the PCP as:

“its system of allocating temporary accommodation to homeless applicants, which includes a ‘transfer list’ through which homeless applicants were provided accommodation which the [respondent] admitted was … unsuitable”

1. In her written skeleton argument in the High Court, the appellant identified two different PCPs (although she had not sought, and had not been granted permission, as required, to amend her grounds of claim). They were:

“(a) the practice of operating a database for homeless applicants who seek a transfer (“the transfer list”) and providing to some or all of those applicants unsuitable accommodation while they remain on the list, and

(b) more broadly, the defendant's “system of allocating temporary accommodation to homeless applicants”.”

1. The written skeleton argument also included a chart showing figures from which it was said it could be shown or inferred that the PCP put women at a particular disadvantage as compared with men.
2. The respondent, in its detailed grounds and evidence, said that it had been doing its best to secure alternative accommodation at the material time against the background of a significant housing crisis and a shortage of accommodation available for homeless persons to whom it owed a duty. It provided evidence that it did not operate the transfer list as a waiting list where properties were allocated on the basis of the date of joining the list or the length of time on the list. Rather it said that it used the database to collect relevant data to enable the housing authority to identify the needs of persons in unsuitable accommodation and to assist it to match individuals with suitable accommodation as that accommodation became available.
3. Shelter intervened and also made submissions on whether the operation of the transfer list put women at a particular disadvantage when compared with men.

***The judgment***

1. The judge identified the two versions of the PCP referred to in paragraph 28 above. He referred to the statistical analysis provided by the appellant. He summarised the submissions of the appellant and the respondent.
2. The judge said at paragraph 44 of his judgment that women were more likely to be placed in what he referred to as temporary accommodation (which I understand to be a reference to persons owed duties under Part VII of the 1996 Act although that is not clearly stated to be the case) for the reasons set out in paragraph 27 of Shelter’s written submissions. Those submissions noted that women were, as they described it, over-represented in temporary accommodation (which I take to mean that women are more likely to be owed duties than men) because women were more likely than men to be single parents with children which is one of the largest categories of persons having a priority need.
3. The material parts of the judgment are at paragraphs 44 to 48. The judge found that the database did not amount to a PCP, that if it did the statistical evidence relied upon did not establish that it put women at a particular disadvantage as compared with men, and, if it did, he was satisfied that the respondent had shown that it was a proportionate means of achieving a legitimate aim. It was not therefore in breach of section 19 of the 2010 Act. He said this:

“44. I am not satisfied that the creation of a database in the manner described by the defendant is a PCP. I accept Ms Screeche-Powell's [counsel for the respondent’s] primary submission that the inclusion of information to manage and to organise information is not to apply a practice, provision, or criteria but is a tool that gives practical assistance to the defendant's housing officers in sifting through vast quantities of information and matching the demands on its service to supply. It is not a complete database for all the information which is available to the defendant's housing officers.

45. If that conclusion is incorrect, then I am not satisfied that the statistical evidence which has been produced shows true comparators that demonstrate that women are at a disadvantage. The analysis of the information available, as set out in Ms Screeche-Powell's submissions, raises too many imponderables as to the categories referred to make meaningful comparison to show that women are at a disadvantage. The fact that more women as a percentage are placed in unsuitable accommodation is recognised above but I am doubtful that the statistics relied upon show discrimination. I should say that I fully accept the helpful witness evidence of Ms Pennington which explains the adverse effects of women being placed in unsuitable accommodation.

46. Whilst I accept the generality of Ms Screeche-Powell's submissions on this issue, it seems to me that the crucial point is that in order to show that more women with children are affected by homelessness than men with children by being left in unsuitable temporary accommodation, it would be necessary to establish that the hypothetical male homeless applicant is statistically more likely to receive an offer of permanent suitable accommodation as a result of being on the database. There is no evidence that that is the case. I am also not satisfied that there is a causal link between the use of the database and the particular disadvantages identified by the claimant. As said by Ms Screeche-Powell, the database merely gathers together some of the information on tenants and acts as a “pivot tool” for the defendant's housing officers.

47. If that conclusion is incorrect, and the PCP is discriminatory, I have concluded that the creation of the database was a proportionate means of achieving a legitimate aim. I have been referred to the decision in *R (Elkundi) v Birmingham City Council* [2022] QB 604 , where the Court of Appeal held that it was unlawful for a local housing authority to postpone compliance with the duty under section 193(2) of the HA 1996 by placing applicants on a waiting list. I do not accept that the database operates as a waiting list or as a means of delaying the provision of suitable accommodation to applicants, in breach of the defendant's duties under Part VII of the HA 1996 . Its purpose is the exact opposite.

48. I accept Ms Screeche-Powell's submissions that the database is a tool that gives practical assistance to officers in sifting through vast quantities of information and matching the demands on its service to supply. It is a powerful point that it does not contain all the information before an officer, which typically includes the housing application, identification such as passports/birth certificates (eligibility), benefit entitlement documents, bank statements, affordability assessments, self-assessment medical forms, interview notes, medical records, medical reports (vulnerability) and could easily include other documents such as ECHP reports, Care Act assessments, MARAC assessments.”

1. The judge also found that the respondent was not in breach of its duty under section 149 of the 2010 Act.

**THE APPEAL**

1. In light of the grounds of appeal, the following issues arise:
2. did the respondent apply a PCP in the present case, and was the judge wrong to find that it had not? These are the issues in grounds 1 and 2 which can be taken together;
3. did the respondent apply a PCP to women, and to men, which put women at a particular disadvantage? That can be divided into two issues, namely (a) did the respondent’s conduct put persons at a particular disadvantage and (b) if so, did it put women at a particular disadvantage as compared with men? This is the issue in grounds 3 and 4 which, again, can conveniently be considered together;
4. if so, has the respondent shown that it, that is the PCP, is a proportionate means of achieving a legitimate aim? That is ground 5; and
5. was the respondent in breach of its duty under section 149 of the 2010 Act?

**GROUNDS 1 AND 2 – THE PCP**

1. Ms Monaghan KC, with Mr Sprack, for the appellant submitted that the judge failed to identify the PCP relied upon by the appellant, namely the two PCPs identified in the skeleton argument for the High Court hearing. Ms Monaghan accepted that, in fact, the second formulation did not add anything to the first formulation and, in reality, the appellant was relying on one PCP, as formulated in the skeleton argument. Ms Monaghan did not seek to rely on the PCP as formulated in the claim form.
2. Ms Monaghan submitted that that the PCP that she relied on had two elements, namely (1) the practice of operating a database for homeless applicants who seek a transfer and (2) providing to some or all of the applicants unsuitable accommodation whilst they remain on the list. Ms Monaghan submitted that the judge identified, and dealt with, a different PCP, namely the inclusion of information in a database – which reflected the first element, but did not include the second element, of the PCP relied upon. Ms Monaghan submitted that it was for the appellant to identify the PCP on which she relied, relying on the observation by Sedley LJ in paragraph 12 of his judgment in *Allonby v Accrington College* [2001] EWCA Civ 529; [2001] ICR 1189 that it “is for the applicant to identify the requirement or condition which she seeks to impugn”.
3. Alternatively, Ms Monaghan submitted that the judge was wrong to conclude that a database on which information was stored was not a PCP. She submitted that it was a state of affairs and that was sufficient, relying on the judgment of Simler LJ, with which Sir Jack Beatson agreed, in *Ishola v Transport for London* [2020] EWCA Civ 112; [20220] ICR 1204.
4. Mr Rutledge KC, with Ms Screeche-Powell, for the respondent submitted that the issue had to be put in context. The maintenance of the database was concerned with efficient data management. The circumstances of homeless applicants and their personal details, had to be assessed to determine their needs. This also enabled the respondent to respond speedily and effectively to secure accommodation which became available only for short periods of time. The database was a means of recording information and matching the needs of households against available accommodation. As such the judge was correct to conclude that the respondent was not applying a PCP.

*Discussion*

1. By way of preliminary observation, section 19(1) of the 2010 Act provides that a person discriminates where it applies a PCP which is discriminatory. That may necessitate determining if the conduct complained of is a PCP. It will also involve consideration of whether the PCP is discriminatory which involves considering each of the four elements identified in section 19(2)(a) to (d). It is, often, helpful to divide the issues into whether the conduct amounts to a PCP, and then to consider, so far as necessary, each of the four elements in turn. But it is worthwhile to remember that the meaning of each individual part of section 19(1) and 19(2) falls to be ascertained not simply by looking at the individual words in isolation (e.g. provision, criterion or practice) but in context and having regard to the words in the remainder of the section (see the observations of Lord Hodge at paragraph 29 of his judgment in *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2022] AC 255).
2. In the present case, the section contemplates a provision, criterion or practice which is capable of being applied to persons. It must be something capable of putting certain persons at a disadvantage when compared with other persons. A PCP, therefore, is something that by its nature gives rise to differentiation between groups. That appears from the judgment of Simler LJ in *Ishola*. There, the Court was dealing with a one-off act, namely requiring a person to return to work before his grievances had been investigated. The question was whether that was a provision, criterion or practice which put the individual at a particular disadvantage for the purpose of section 20 of the 2010 Act and the duty to make reasonable adjustments in respect of a disabled person. Simler LJ noted that the phrase had the same meaning in section 19 and 20 of the 2010 Act. She had regard (as do I) to the relevant statutory code of practice issued by the Equality and Human Rights Commission. Simler LJ concluded that the words “provision, criterion or practice” were intended to be broad and overlapping and were not to be narrowly construed or unjustifiably limited in their application. At paragraphs 36 to 38, Simler LJ said this:

“36. The function of the PCP in a reasonable adjustment context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. The PCP serves a similar function in the context of indirect discrimination, where particular disadvantage is suffered by some and not others because of an employer's PCP. In both cases, the act of discrimination that must be justified is not the disadvantage which a claimant suffers (or adopting Mr Jones’ approach, the effect or impact) but the practice, process, rule (or other PCP) under, by or in consequence of which the disadvantageous act is done. To test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. I accept of course … that the comparator can be a hypothetical comparator to whom the alleged PCP could or would apply.

37. In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability-related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

38. In context, and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that “practice” here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or “practice” to have been applied to anyone else in fact. Something may be a practice or done “in practice” if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily.”

1. Turning then to the facts of the present case, I consider that the maintenance of a database on which information is stored is not, of itself, likely to be a PCP. The inclusion of information with a view to the management, organisation and subsequent use of that information is unlikely, of itself, to amount to a PCP. It may, in isolation, be seen as a “practice”. It may amount to a state of affairs. But it is not a practice or state of affairs that of itself differentiates between different groups of persons. If, therefore, the judge was entitled to regard that as the PCP in issue, then I would be minded to find that grounds 1 and 2 were not made out.
2. Ms Monaghan’s point, however, is that the PCP relied upon in argument below had two elements: the practice of operating a database for homeless applicants seeking a transfer and providing to some or all of those applicants unsuitable accommodation while they remain on the list. I have some doubt as to whether operating a database for homeless applicants seeking a transfer and providing unsuitable accommodation while on the database involves 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 this appeal, however, I will assume that the element of providing unsuitable accommodation to some or all of the people on the database is a practice within the meaning of section 19(1) of the 2010 Act and I will consider whether, assuming it is a PCP, it is discriminatory.

**GROUNDS 3 AND 4 – WHETHER THE PCP PUTS WOMEN AT A PARTICULAR DISADVANTAGE**

1. Ms Monaghan and Mr Sprack both made submissions on behalf of the appellant. They submitted that female single parents with children, and women generally, were put at a particular disadvantage. They relied on a table, and arguments, set out in the skeleton argument first provided to the High Court, from which it was said that that inference could be made. The table is as follows.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Household make-up** | **Total in TA**  | **Info 1 – Total** | **Info 1 – Unsuitable**  | **Info 2 – Total** | **Info 2 - Unsuitable** |
| Single-female with child(ren) (1f+) | 91634.2% | 574(50.8%) | 262(50.4%) | 281(55.6%) | 77(55.8%) |
| Single-male with child(ren) | 963.6% | 60(5.3%) | 27(5.2%) | 29(5.7%) | 8(5.8%) |
| 2 or more adults with chid(ren) | 73327.4% | 447(39.6%) | 196(37.7%) | 188(37.2%) | 49(35.5%) |
| Lone female | 33412.5% | 23(2.0%) | 16(3.1%) | 3(1.8%) | 2(1.5%) |
| Lone male | 30011.2% | 20(1.8%) | 14(2.7%) | 3(0.6%) | 1(0.7%) |
| Other | 29811.1% | 5(0.4%) | 5(0.4%) | 1(0.2%) | 1(0.7%) |
| **TOTAL** | **2677** | **1129** | **520** | **505** | **138** |

1. In essence, the first column shows particular groups of persons. The second column shows persons in what was described as temporary accommodation. It was confirmed at the hearing that that phrase meant persons to whom duties were owed under Part VII of the 1996 Act. The data was taken from data published by the government and, it seems, provided to the government by the respondent. The data covered the period April to June 2023 as that was the period during which it was claimed the appellant had been subjected to indirect discrimination. It was the only period for which the appellant had data. The second column in the table provided to the court – headed “Total in TA” – showed only the proportion of persons in what was described as temporary accommodation. I have added the actual numbers of such persons to make analysis easier.
2. The columns headed Info 1 show data taken from the database on which the appellant’s name had been included. The reference to those listed in the Info 1 database as “Unsuitable” means those in the accommodation which was accepted by the respondent to be unsuitable for the applicant, which I understood from oral submissions made by counsel, to mean the accommodation did not fulfil the duty owed under section 193(2) to those persons to secure suitable accommodation for those to whom the duty was owed. The Info 1 database at the material time also included those who were in accommodation but wanted a planned move at some stage to other accommodation. That is why the Info 1 “Total” is larger than the “Info 1 – Unsuitable” column.
3. The gist of counsel’s submissions was to start by considering the composition of the group of single parents with a child or children who were placed in what was described as temporary accommodation in April to June 2023. 90.5% of such households comprised a female single parent with a child or children and 9.5% comprised a male single parent with a child or children. Counsel then considered Info 1 (the database on which the applicant had been placed). The proportion of households placed in accommodation which the respondent accepted was unsuitable comprised of a female single parent and a child or children was 50.4% in Info 1. Counsel sought to draw the inference that being placed on the database, or transfer list, therefore put woman with one or more children at a particular disadvantage as compared with men. A higher proportion of households headed by single women with one or more children as compared with those headed by single men were placed in unsuitable accommodation. Counsel submitted that the same picture emerged from Info 2, which was data of those on the database from a period when the basis for collecting the data had changed and when the appellant was no longer in unsuitable accommodation and was not on the database.
4. Alternatively, counsel for the appellant submitted that the proportion of people to whom the respondent admitted it provided unsuitable accommodation (the Info 1 figure) who were female was 72.79%. Whilst the calculation is not entirely clear, counsel seems to have arrived at that figure by adding up the groups of single females with children, ½ of the group of 2 or more adults with children (on the assumption that the likelihood was that the household would comprise one female and one male adult), lone females and, it seems, ½ of the group of others. In contrast, the proportion of people to whom it provided unsuitable accommodation who were male accounted for only 27.21%. Similar results were said to follow when the data for women and men in a household with children were considered. It is submitted that further, similar results were achieved when the Info 2 database was analysed.
5. Shelter also made submissions on this issue. Ms Davies KC, with Mr Bano, for Shelter submitted that the appeal was concerned only with those persons on the database who were in unsuitable accommodation (because the respondent was in breach of the duty owed to them under section 193(2) of the 1996 Act and waiting to be moved to suitable accommodation). It was submitted that no issue of discrimination arose in relation to those persons on the database who were not (or were not accepted by the respondent to be) in unsuitable accommodation and were awaiting a planned move in the event of surplus accommodation becoming available.
6. Ms Davies submitted that being in unsuitable accommodation (in breach of the duty in section 193(2) was a particular disadvantage. That was not because the list itself caused the disadvantage. It was the remaining in unsuitable accommodation that was the particular disadvantage. The question was whether a higher proportion of women as compared with men were put at that particular disadvantage. In essence, Ms Davies submitted that if one looked solely at single women with a child or children, they represented about a third (34.2%) of households in temporary accommodation (that is, persons provided with accommodation under Part VII of the 1996 Act). That proportion jumped once the PCP relied on was applied and they represented more than half of those in unsuitable accommodation (50.4% on the data in Info 1 and 55.8% on the data in Info 2). Similarly, Ms Davies submitted that if households with at least one woman in the household were considered, that increased from 74.1% of households provided with temporary accommodation (ie. accommodation provided under Part VII) to over 90% (91.2% on the data in Info 1 and 92.8% on the data in Info 2). Ms Davies submitted that it could be inferred therefore that a higher proportion of women than men were placed at a particular disadvantage by being placed on a transfer list and being required to wait in unsuitable accommodation.
7. Mr Rutledge KC, with Ms Screeche-Powell, for the respondent submitted that the first task was to identify the group to which the PCP relied upon was, or would be, applied. That was homeless applicants owed a duty to be provided with suitable accommodation by the respondent and whose details were put on the database. The question then was whether the homeless female applicants on the database were put at a disadvantage when compared with homeless male applicants on the database. Mr Rutledge submitted that the answer to that question was no, as there was no evidence to suggest that homeless male applicants on the database would, as a group, have any greater chance of being provided with suitable accommodation than homeless women applicants on the database.

*Discussion*

1. I do not consider that the various statistical analyses put forward do evidence circumstances from which it can be inferred that women with a child or children, or women generally, are being put at a particular disadvantage as compared with men.
2. In essence, the first submission made on behalf of the appellant is that the placing of households on the database and leaving them in unsuitable accommodation put households which included women with a child or children at a particular disadvantage as compared with men. That was said to be capable of being inferred from, among other things, the proportion of households comprising a female parent with a child or children being provided with temporary accommodation (that is, accommodation under Part VII of the 1996 Act), and also the increase in the proportion of such households in unsuitable accommodation in Info 1 as compared with the proportion of such households in temporary accommodation. The evidence does not, however, begin to establish that those inferences can be drawn.
3. Considering each individual category shown in the table, the evidence does not show any good evidence of an adverse differential effect. The proportion of households comprising a man with a child or children remain broadly constant in all categories. It comprises, approximately, 9.5% of single men with a child or children in the categories of the total number of people in temporary accommodation, 9.5% in the total for Info 1, 9.34% for unsuitable accommodation in Info 1, 9.35% for those in the total for Info 2 and 9.4% for those in unsuitable accommodation in Info 2. The proportion of women with a child or children in all of the categories also remains broadly constant. The evidence does not justify the drawing of any inference that households with a single female parent with a child or children are more likely to be in the group of unsuitable accommodation households than a single male parent with a child or children.
4. Nor does the increase in the proportion of women with a child or children shown in Info 1 as being in unsuitable accommodation, as compared with the proportion of such households in temporary accommodation generally, permit such an inference to be drawn. It is correct that there is an increase. The proportion of single female parent with a children or children is 34.2% of households provided with temporary accommodation (i.e. accommodation provided under Part VII). The proportion of such households in unsuitable accommodation is higher, at 50.4% in Info 1 (and 55.8% in Info 2). But the proportion of households with a male single parent and a child or children also increases from being 3.6% of the total number of households provided with temporary accommodation to 5.2% of the number of households in unsuitable accommodation in Info 1 (and 5.8% in Info 2). There is a higher proportion of single (male and female) parents in the group to whom a duty is owed under section 193(2) than in the “total temporary accommodation” category – because such persons are more likely to be in priority need and be owed the duty in section 193(2). But the proportions of women with a child or children in the group owed the section 193(2) duty is broadly constant, as is the group of men with a child or children. There is nothing to indicate that a higher proportion of women with a child or children, as compared with men with a child or children, are being assessed as owed the section 193(2) duty but are being shown on the database as being unsuitable accommodation.
5. Similarly, the alternative submissions of the appellant, and those of Ms Davies for Shelter, do not evidence circumstances from which it could legitimately be inferred that being on the data base and in unsuitable accommodation affects a greater proportion of women than men. Those submissions rely on the figures showing the change between all men and women, including lone men and lone women, in the groups of persons provided with accommodation generally under Part VII and those owed a duty under section 193(2) but in unsuitable accommodation. Lone women and lone men are less likely to be owed a duty under section 193(2) as they are less likely to have a priority need (as shown by the far smaller number of lone men and women being on the Info 1 and Info 2 database as being in unsuitable accommodation – although pregnant women, and people homeless due to domestic violence, which are statistically likelier to be female, are groups having priority need, along with vulnerable men and women). Once the figures for the groups of lone men and lone women are excluded from the overall calculation, and the groups of such lone men and lone women in unsuitable accommodation are considered separately, the figures do not evidence any adverse effect for women as compared with men.
6. Considering the position of lone women and lone men, there is a slight change with an increase in the proportion of lone male households in some categories and a decrease in the proportion of female lone households but again with relatively small numbers involved. The proportion of households with single men constitute the following proportions for each category: 47.3%% of the total number households with a lone person provided with temporary accommodation under Part VII, 46.5% of such households in the total showed in Info 1, 46.7% of the total of such households in unsuitable accommodation shown in Info 1, 50% of the total of households in Info 2, and 33.3% for households with lone persons in unsuitable accommodation in Info 2. The one category where there may be thought to be a significant difference between lone women and lone men is Info 2 unsuitable where there are only three people recorded, 2 women and 1 man, and where the numbers are so small that they cannot be regarded as statistically robust.
7. What is being measured in this case is whether the proportion of women who are owed a duty under section 193(2) which is not being complied with (so they are in unsuitable accommodation) is higher than the proportion of men in such circumstances. Across all categories, including single women with a child or children, or lone women, the proportion remains broadly the same. There is no good evidence that being on the database and being in unsuitable accommodation give rise to any adverse differential affecting women more than men.
8. The statistical material does not therefore provide evidence from which it could be inferred that a higher proportion of women with a child or children, or women generally, as compared with men with a child or children, or men generally, are put at any disadvantage. We were shown no other evidence from which such an inference could be drawn.
9. For completeness, I do not accept the submission made by Mr Sprack that the appellant had established facts from which it could be inferred, in the absence of any other explanation, that the respondent had contravened section 136 of the 2010 Act. The appellant has not begun to do so.
10. Those considerations deal with the question of the effect or impact of the PCP relied upon on women as compared with men. Ground 3 is therefore not made out and, as a consequence, the appeal must be dismissed as the appellant has not established any disparate impact (i.e. that the PCP puts women as compared with men at a particular disadvantage).
11. I do not consider however that the appellant has established any causal link between the PCP relied upon and the particular disadvantage said to be suffered by women. The PCP relied in this appeal upon is a composite one – operating a database for homeless applicants who seek a transfer and providing to some or all of those applicants unsuitable accommodation while they remain on the list. The operation of the database on the facts as found by the judge does not put any person at a disadvantage. It simply records information about individuals, including those individuals to whom a duty is owed under section 193(2) and who are not being provided with suitable accommodation in compliance with that duty. The fact that an applicant is, or is not, on the database is not what causes what is said to be the particular disadvantage here.
12. An applicant will be owed a duty whether he or she is on the list or not. The obligation to secure suitable accommodation will arise when the respondent accepts that the requirements of section 193(2) are met irrespective of whether or not he or she is placed on the database. Similarly, the fact that a person is being provided with accommodation which is unsuitable and does not satisfy the requirements of section 193(2) has nothing to do with being placed on the database. The failure to comply with the section 193(2) duty arises out of the fact that the respondent says it does not have enough accommodation, particularly the larger accommodation required in many cases, to enable it to fulfil its duty. 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.
13. There may an issue as to whether leaving persons in unsuitable accommodation in breach of section 193(2) is capable of amounting to a PCP and if so, whether that has placed women, or women with a child or children, at a particular disadvantage, for example because women are being left longer in unsuitable accommodation as compared with men (or vice versa). That, however, is not the PCP that is relied on here. Further, and significantly (as the judge pointed out) there is no evidence that men are spending less time in unsuitable accommodation than women (or vice versa).

**GROUND 5 – IS THE PCP A PROPORTIONATE MEANS OF ACHIEVING A LEGITIMATE AIM**

1. For the reasons given above, the appellant has not established that the respondent is applying a PCP which puts women generally, or women with a child or children, at a particular disadvantage. In those circumstances, the question of whether the respondent has shown that the PCP is a proportionate means of achieving a legitimate aim does not arise for decision.

**GROUND 6 – SECTION 149 OF THE 2010 ACT**

1. The appellant contends that the respondent failed to comply with its obligation under section 149 to have due regard in the exercise of its functions to the equality matters specified in section 149. Ms Monaghan relied on case law to establish the requirements of section 149.
2. This issue can be dealt with shortly. First, there is the question of whether there has been any breach. Section 149 applies to a public body “in the exercise of its functions”. It is important to identify the relevant functions. Here, as appears from the claim form, and repeated in the skeleton argument in the High Court, the function in question was the discharge by the respondent of its duties to the appellant under the 1996 Act during the period from October 2022 to 25 August 2023.
3. The general approach to whether the duty has been complied with is well established and it is not necessary to elaborate upon the extensive case law. In broad terms, the duty under section 149 is a duty to have due regard to the specified matters in the exercise of its functions not a duty to achieve a specific result. The duty is one of substance, not form, and the real issue is whether the relevant public authority has, in substance, had regard to the relevant matters, taking into account the nature of the decision and the public authority's reasoning (see, e.g, *Baker v Secretary of State for Communities and Local Government (Equality and Human Rights Commission intervening)* [2009] PTSR 809 at paragraphs 36–37, and *Bracking* [2014] Eq LR 60, at paragraph 25 ). As Lord Neuberger of Abbotsbury PSC observed at para 74 of his judgment in *Hotak v Southwark London Borough Council (Equality and Human Rights Commission intervening)* [2015] PTSR 1189 "the weight and extent of the duty are highly fact-sensitive and dependant on individual judgment".
4. The short answer in the present case is that it is clear from the nature of the function being exercised, and the actions that the respondent undertook, that it did have regard to the equality considerations specified in section 149 of the Act when exercising its functions in relation to the appellant during the material time. It accepted on 5 October 2022 that it owed a duty to secure suitable accommodation for the appellant. Its actions in recording information on the database were concerned with ensuring that it knew the needs of this appellant. It knew, as appears from the e-mail sent on 13 October 2022 by one of the respondent’s housing officers, that a request for a transfer was under consideration because the appellant was a single mother with a young child under 12 months of age. It had due regard to the relevant matters when it was seeking to secure accommodation which it considered suitable for the mother with her young child.
5. Secondly, while I have dealt with the question of breach, the reality is that this issue is academic. The question arose in connection with the exercise of functions under the 1996 Act about the provision of accommodation. There is no longer any live issue between the parties about that as the appellant accepts that the respondent has complied with its duty under section 193(2) duty since the end of August 2023. The issue relates to past events occurring between October 2022 and the end of August 2023. Given the issue is no longer live and is fact specific, raising no issue of general importance, the Court could simply have declined to deal with the issue: see *R (AY) v Vale of Glamorgan Borough Council* [2025] EWCA Civ 671. I would dismiss the appeal on Ground 6.

**CONCLUSION**

1. I would dismiss the appeal. There has been no breach of section 19, nor section 149, of 2010 Act.

**LORD JUSTICE COBB**

1. I agree.

**LORD JUSTICE NEWEY**

1. I also agree.