

Ten Years On

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When the Supreme Court did housing



2015

There were four housing cases that year

01

*Akerman-Livingstone v
Aster Communities Ltd*
[2015] UKSC 15

02

*

*Nzolameso v City of
Westminster* [2015] UKSC
22

03

*

*Hotak v London Borough
of Southwark* [2015] UKSC
30

04

*Haile v London Borough of
Waltham Forest* [2015]
UKSC 34

We are going to talk about 2

01

HOTAK

Vulnerability, priority need

02

NZOLAMESO

Housing outside the borough



Hotak



Hotak

Three joined cases

Hotak v LB of Southwark
Kanu v LB of Southwark
Johnson v Solihull MBC

189 Priority need for accommodation

(1) The following 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...

The *Pereira* test

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

What did Hotak rule?

01

Vulnerable when?

The vulnerability with which section 189(1)(c) is concerned is an applicant's vulnerability if he is homeless [37].

02

Assessing vulnerability

When assessing whether or not an applicant is vulnerable, an authority must pay close attention to the particular circumstances of the applicant and look at his particular characteristics and situation when homeless in the round [38].

03

One or two stage test?

Given that there will in many cases be a mixture of reasons for considering someone vulnerable, it is probably not necessary to carry out a two-stage analysis of whether someone is within one of those classes before deciding that they are vulnerable [46].

What did Hotak rule?

01

Comparator

Assessing whether someone is vulnerable involves carrying out a comparison with an **ordinary person** who is homeless (or in need of accommodation) [51].

02

The test

The question for the local authority is whether the applicant is significantly more vulnerable as a result of being homeless than an ordinary person in need of accommodation [53, 59]

03

Support

Support from whatever source may be taken into consideration. This includes medication: an applicant with a physical or mental condition which, if not treated, would render him vulnerable, but which can be satisfactorily treated by regular medication, even if homeless, would not be considered vulnerable [64].

What did Hotak rule?

01

Not all in

There will be many others who are homeless and vulnerable but not in priority need [51].

02

Vulnerability is not enough

Anyone who is homeless is vulnerable. Even the strongest person (not just the ordinary person) is likely to decline if left without anywhere to live [93].

03

PSED

Any decision as to whether an applicant with an actual or possible disability falls within section 189(1)(c), must be made with the equality duty well in mind, and must be exercised in substance, with rigour, and with an open mind [78].



What happened next?

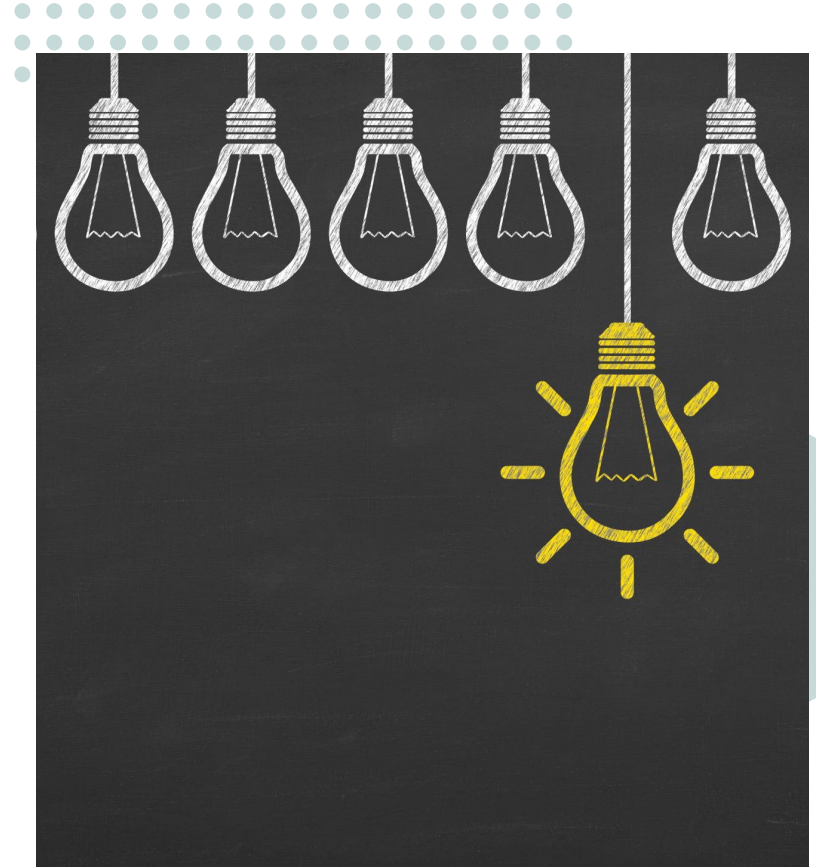


SIGNIFICANTLY

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

The word “significantly” did not feature in any previous cases or the parties’ submissions.

What did “significantly” mean?





SIGNIFICANTLY

- there must be a causal link between the particular characteristic (old age, physical disability etc) and the effect of homelessness: in other words some kind of functionality requirement.
- That is vulnerability in the context of housing including finding accommodation for themselves
- Not the same as “disability”
- Not “quantitative”
- the question to be asked is whether, when compared to an ordinary person if made homeless, the applicant, in consequence of a characteristic within section 189(1)(c), would suffer or be at risk of suffering harm or detriment which the ordinary person would not suffer or be at risk of suffering such that the harm or detriment would make a **noticeable difference** to his ability to deal with the consequences of homelessness.

Panayiotou v LB Waltham Forest, Smith v LB Haringey [2017] EWCA Civ 1624



SIGNIFICANTLY

- Use of NowMedical approved (with caveats)
- If not following evidence of psychiatrist who has met A, reviewing officer must set out reasons for doing so
- Reviewing officer not obliged to accept A's contentions at face value
- BUT there is no secondary requirement of "functionality" – just causal link between the relevant characteristic and the impact of homelessness

Guiste v Lambeth London Borough Council
[2019] EWCA Civ 1758



PSED - very sharp focus

s. 149 EA 2010

It is therefore appropriate to emphasise that the equality duty, in the context of an exercise such as a section 202 review, does require the reviewing officer to focus very sharply on (i) whether the applicant is under a disability (or has another relevant protected characteristic), (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other features, on the applicant if and when homeless, and (iv) whether the applicant is as a result vulnerable.

Hackney LBC v Haque [2017] EWCA Civ 4 – comments also apply to suitability PSED required: (i) recognition that A suffered from a physical or mental impairment having a substantial and long term adverse effect on his ability to carry out normal day to day activities; i.e. that he was disabled within the meaning of EA s.6, and therefore had a protected characteristic; (ii) a focus upon the specific aspects of his impairments, to the extent relevant to the suitability of the accommodation for him; (iii) a focus upon the consequences of his impairments, both in terms of the disadvantages which he might suffer in the accommodation, by comparison with persons without those impairments; (iv) a focus upon his particular needs in relation to accommodation arising from those impairments, by comparison with the needs of persons without such impairments, and the extent to which the accommodation met those particular needs; (v) recognition that his particular needs arising from those impairments might require him to be treated **more favourably** in terms of the provision of accommodation than other persons not suffering from disability or other protected characteristics; and (vi) a review of the suitability of the accommodation which paid due regard to those matters.

PSED: more discussion

Lomax v Gosport BC [2018] EWCA Civ 1846

- Issue was whether accommodation was reasonable to continue to occupy
- the PSED applies at all stages of the decision making process, and is not to be compartmentalised.
- When considering general housing conditions in the area, reviewing officer must concentrate on how A's circumstances differ from those in general

McMahon v Watford BC, Kiefer v Hertsmere BC [2020] EWCA Civ 497

- No need to make express finding as to whether A is disabled
- PSED not a duty to achieve a result, not a free standing duty

PSED: more discussion

***Biden v Waverley Borough Council* [2022] EWCA Civ 442**

- Transgender + inquiries
- PSED did not mean local authority had to make inquiries with specific LGBT+ officer of the Police

***Webb-Harnden v Waltham Forest LBC* [2023] EWCA Civ 992**

- Suitability of accommodation outside area
- PSED was not breached where reviewing officer had had regard to all relevant matters
- No need to wait to see if something better came up
- PSED does not require the result that A wants

Appeals

***Rother District
Council v
Stephen
Freeman-Roach
[2018] EWCA Civ
368***

**It's for A to
show error of
law, not for R
to show it's
right!**



What has been forgotten...





Support – no caselaw since *Hotak*



Nzolameso



***Nzolameso v Westminster City Council* [2015] UKSC 22**

Decision challenged: the offer of temporary accommodation to the applicant and her children under Part 7 of the Housing Act 1996 which was out-of-borough and around 50 miles away from their current home (upheld following a s.202 review which concluded the accommodation offered was suitable).

Key issue: whether authority had complied with the duty to provide accommodation within its area “*so far as reasonably practicable*” and where not possible, to secure accommodation as close as possible to where the applicant was previously living ” (s. 208 HA 1996 + guidance).

Outcome: the authority’s decision was unlawful because there was no evidence it had attempted to find closer accommodation or given serious consideration to its obligations under ss. 206 and 208 HA 1996 or s. 11 of the Children Act 2004.

Significance: the leading case on the requirements of lawful out-of-borough offers of accommodation made under Part 7 HA 1996.

The legal framework

- **s. 206(1)** provides that a local housing authority may discharge their housing functions under Part 7 HA 1996 (incl. duties towards homeless applicants) **only by securing “suitable” accommodation.**
- In accordance with **s.208(1)**, the authority must, in discharging their Part 7 HA 1996 housing functions **“so far as reasonably practicable... secure that accommodation is available for the occupation of the applicant in their district.”**
- It has long been recognised by the courts that the accommodation offered has to be suitable to the needs of the particular homeless person and each member of her household and that the **location of that accommodation can be relevant to its suitability**: *R (Sacupima) v Newham London* [2001] 1 WLR 563 at 575.

Art 2. Homelessness (Suitability of Accommodation) (England) Order 2012

*"In determining whether accommodation is suitable for a person, **the local housing authority must take into account the location of the accommodation**, including—*

*(a) where the accommodation is situated outside the district of the local housing authority, **the distance of the accommodation from the district of the authority**;*

*(b) **the significance of any disruption which would be caused by the location of the accommodation** to the employment, caring responsibilities or education of the person or members of the person's household;*

(c) the proximity and accessibility of the accommodation to medical facilities and other support which—

(i) are currently used by or provided to the person or members of the person's household; and

(ii) are essential to the well-being of the person or members of the person's household; and

(d) the proximity and accessibility of the accommodation to local services, amenities and transport."

Homelessness Code of Guidance for Local Authorities (Ministry of Housing, Communities & Local Government) - updated July 2025 see paras. 17.49-17.65 – “Location of accommodation” (must have regard to s.182(1) HA 1996)

“17.51 Where it is not reasonably practicable to secure accommodation within district and an authority has secured accommodation outside their district, the housing authority is required to take into account the distance of that accommodation from the district of the authority. Where accommodation which is otherwise suitable and affordable is available nearer to the authority’s district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the applicant has specified a preference...”

17. 52 Generally, where possible, housing authorities should try to secure accommodation that is as close as possible to where an applicant was previously living. Securing accommodation for an applicant in a different location can cause difficulties for some applicants. Where possible the authority should seek to retain established links with schools, doctors, social workers and other key services and support.”

The facts [2]-[12]

- Appellant was single mother with 5 dependent children. She had serious health problems.
- Family lived in a four-bedroom house for several years until it became unaffordable due to new benefit cap – applied to Westminster for homelessness assistance under Part 7 HA 1996.
- Following temporary hotel accommodation, authority offered five-bedroom property near to Milton Keynes. Offer letter explained “*There is a severe shortage of accommodation in Westminster*” so that it was “*not reasonably practicable*” to offer accommodation within the district.

The facts cont...

- Appellant rejected offer due to disruption to children's schooling, distance from social support network and her GP.
- Authority informed A by letter that property was suitable for family, was around 1 hr 15 mins journey to Westminster, and children weren't doing GCSEs so could move school. Because of refusal main housing duty discharged.
- s.202 review requested by A upheld the decision. The letter included what the Supreme Court found (at [8]) to be a standard para. incl... *"Given the shortage of housing in Westminster and all of your circumstances, including the above, I believe that it was reasonable for the council to offer your household this accommodation outside of the Westminster area."*
- s. 204 appeal in County Court and appeal to the Court of Appeal unsuccessful.

Baroness Hale DPSC

General observations:

- The effect of ss. 206, 208, Art. 2 of the Order and the Code of Guidance is as follows:
- Local housing authorities have a statutory duty to accommodate within their area so far as this is reasonably practicable. ***“Reasonable practicability” imports a stronger duty than simply being reasonable.*** If it is not reasonably practicable to accommodate “in borough” local authorities must generally, and where possible, try to place the household as close as possible to where they were previously living [19].

Baroness Hale DPSC

- Local authorities are under duties to evidence and explain their decisions.
- They are required to take the Code and Supplementary Guidance into account – if they decide to depart from them there must be clear reasons for doing so [31].
- The authority must have a proper evidential basis for their decision [31].
- It must be clear from the decision that proper consideration has been given to the relevant matters required by the Code and the Act. While the court should not adopt an overly technical or nit-picking approach to the reasons given in the decision, these do have to be adequate to fulfil their basic function [32].

Baroness Hale DPSC

- s.11 Children Act 2004: local authorities (among others) must “*make arrangements for ensuring that – (a) their functions are discharged having regard to the need to safeguard and promote the welfare of children...*”
- The question of whether the accommodation offered is “suitable” for the applicant and each member of her household clearly requires the local authority to have regard to the need to safeguard and promote the welfare of any children.
- Disruption to their education and other support networks may be actively harmful to their social and educational development, but the authority also have to have regard to the need to promote as well as safeguard their welfare.

Baroness Hale DPSC

- Applying these principles the decision was unlawful because [36]-[37]:
- There was little to suggest that serious consideration was given to the authority's legal obligations under HA 1996 or CA 2004 before the decision to offer to the property was made.
- Inquiries were not made (prior to the offer) as to how practicable it would be for the family to move out of the area...
- or what the impact on the children's education or Appellant's medical condition would be.

Baroness Hale DPSC

- The review decision was based on the premise that, because of the general shortage of available housing in borough, the authority could offer accommodation *anywhere else*, unless the applicant could show that it was necessary for her and her family to remain in Westminster.
- No indication of accommodation available in Westminster and why that had not been offered.
- No indication that s.202 reviewing officer had recognised that if it was not reasonably practicable to offer accommodation in Westminster, there was an obligation to offer it as close as possible.
- Standard paragraph could not properly evidence and explain decision [42].

Baroness Hale DPSC

- Guidance on making and explaining lawful out-of-borough decisions [38]-[39].
- Each local authority should have, and keep up to date, a policy for procuring sufficient units of temporary accommodation to meet the anticipated demand during the coming year (i.e. **procurement/acquisitions policy**).
- Policy should reflect authorities' obligations under HA 1996 and CA 2004.
- Should also have a policy for allocating those units to individual homeless households and where shortfall of in-borough units, explaining factors to be taken into account in offering units closer to home, or which would make it suitable to offer accommodation further away (i.e. **allocations policy**).
- Such policies should be made publicly available.

Nzolmeso – Key Takeaways

1. Reaffirmed significance of obligation on local authorities to place applicants within their own district so far as reasonably practicable, and if not, to place the applicant as close as possible to where he/she was previously living.
2. Offer letters should evidence consideration of art. 2 of Homelessness (Suitability of Accommodation) (England) Order 2012 and assessment of how practicable it would be for applicant to be moved away from their area, including disruption to education/treatment for medical conditions etc (remember s.11 CA 2004).
3. Local authorities must evidence compliance with ss. 206, 208 HA 1996 – demonstrating adherence to published procurement and allocations policies in decision letters effective way of evidencing compliance.



What happened next?



Offers in accordance with a lawful policy

The Code of Guidance (July 2025) post-Nzolameso para. 17.51:

*“17.51 ... Where accommodation which is otherwise suitable and affordable is available nearer to the authority’s district than the accommodation which it has secured, the accommodation which it has secured is not likely to be suitable unless the applicant has specified a preference, or **the accommodation has been offered in accordance with a published policy which provides for fair and reasonable allocation of accommodation that is or may become available to applicants.**”*



Alibkhiet v Brent LBC [2018] EWCA Civ 2742

Court of Appeal considered two challenges to decision to offer accommodation out-of-borough. Both authorities operated policies to determine who had greatest need for accommodation within or near borough and factors to be applied.

Lewison LJ at [46]: *(i) A housing authority is entitled to take account of the resources available to it, the difficulties of procuring sufficient units of temporary accommodation at affordable prices in its area, and the practicalities of procuring accommodation in nearby boroughs.*

(ii) If there is available accommodation within-borough, it does not follow that the authority must offer it to a particular applicant because it may be acceptable to retain a few units, if it can be predicted that applicants with a particularly pressing need to remain in the borough will come forward in the relatively near future.

Alibkhiet v Brent LBC [2018] EWCA Civ 2742

(iii) The decision in an individual case may depend on a policy that the authority has adopted for the procurement and allocation of accommodation.

(iv) The policy should explain the factors which would be taken into account in offering households those units, the factors which would be taken into account in offering units close to home, and if there was a shortage of such units, the factors which would make it suitable to accommodate a household further away.

(v) The policy should be publicly available.

See [48] and [53]: in principle, where a public authority has a lawful policy, then provided that it implements the policy correctly its decision in an individual case will itself be lawful

Alibkhiet v Brent LBC [2018] EWCA Civ 2742

In summary Lewison LJ held (see [65], [89]) that:

- Review decisions in both cases had sufficiently explained limited supply of accommodation within districts and authorities had to allocate in accordance with policies...
- ... that applicants did not fall within criteria for allocation within district (or Greater London) which was reserved under the policies for applicants with a greater level of need in accordance with adopted criteria...
- ... the review decisions did not have to explain why the applicants had not been offered one of the few potentially available units closer to the local authority's district (Brent) when it was sufficiently clear that the policy was being applied.

... but must still evidence compliance

***Abdikadir v Ealing LBC* [2022] EWCA Civ 979:**

- what steps are reasonable to take to fulfil the s.208(1) duty is to be answered by reference to an authority's lawfully adopted policies [54].
- Ealing's acquisition policy contemplated the acquisition of private sector rented property and the making of private sector rental offers to discharge Part 7 duties. Policy stated acquisition officers liaise with accommodation providers and "*check relevant websites on a daily basis for new supply*" [57].
- Ealing only made reference to what Part VI properties available at the time of the offer via LOCATA – failed to evidence or explain whether they had investigated availability of private rental sector accommodation. Therefore, **failed to evidence compliance with policy and s. 208(1) HA 1996 so appeal allowed.**

... but must still evidence compliance

Zaman v Waltham Forest LBC [2023] EWCA Civ 322:

- The post-Nzolameso reference to offering accommodation in accordance with a published policy in the Code of Guidance para. 17.50, does **not** serve “*to excuse local housing authorities from seeking to provide accommodation as near as possible to their districts*” [47].
- Waltham Forest’s acquisition policy which specifically provides for properties to be “*as close to the borough as is reasonably practicable*” was lawful [48], [52].
- Applicant, placed in “Zone C” banding – offered accommodation in Stoke-on-Trent. The case was analogous to *Abdikadir*. While there was nothing wrong with the LA’s acquisitions policy “*there is a dearth of evidence to show that it was followed, and common sense rather suggests that it was not*” [52]. **Appeal allowed.**

... but must still evidence compliance

Moge v Ealing LBC [2023] EWCA Civ 464 at [121]-[130]:

- *"It is plainly not the law that in every case, a local authority should have to give chapter and verse on each and every internet search and property inquiry that its officers made..."*
- *"A local authority facing a challenge under section 208(1) on review should **generally be entitled to meet that challenge by pointing to a relevant published policy and explaining in general terms what is done to apply that policy**"*
- **The question of how detailed and specific the information provided or evidence adduced will depend upon the facts of the particular case.** There was *"(just) sufficient evidence"* before the Court to show that at the relevant time, the LA's acquisitions officers carried out appropriate searches for private sector properties, and no evidence more suitable accommodation was available.

Some final points...

- *“Where accommodation which is also suitable exists closer to the housing authority’s district it is likely, all other things being equal, to displace on grounds of suitability other available accommodation which is further away. To that extent, the housing authority is required to carry out a comparative exercise”*: **Waltham Forest v Saleh [2019] EWCA Civ 1944 at [26]**.
- An authority is generally entitled to consider available accommodation at the date of the offer and not be expected to wait until something more suitable becomes available: **Alibkhiet at [75]**. It will be rare for an authority’s decision to offer accommodation on a particular date to be susceptible to challenge: **Bromley v Broderick [2020] EWCA Civ 1522 at [42]**.
- If an applicant **refuses** an offer, the decision challenged is that the duty has ended, so suitability is judged by reference to the position **at the date of the offer**: **Broderick at [46]**. If an applicant **accepts** accommodation, then requests a review of its suitability, the review decision should consider whether closer accommodation is available **at the date of the review**: **Saleh at [39]**.



Haile

... and farewell



Haile: breaking the chain of causation

- A had accommodation in a refuge which she left for no good reason
- but she was pregnant and would have been asked to leave once the baby had arrived
- the operative reason why she was homeless was therefore the pregnancy
- she was not intentionally homeless

Look at the real operative reason

There have been no similar cases that have reached the COA. The chances of there being a real unrelated reason for the homelessness remain very small, but should nonetheless be borne in mind.

Thank you

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