



Neutral Citation Number: [2026] EWCA Civ 626

Case No: CA-2025-001797

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**KING’S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**DEPUTY JUDGE SUSIE ALEGRE**  
**[2025] EWHC1625 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19 May 2026

**Before:**

**LORD JUSTICE LEWIS**  
**LADY JUSTICE ELISABETH LAING**  
and  
**LORD JUSTICE JEREMY BAKER**

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**Between:**

**THE KING (on the application of AA)**

**Respondent**  
**/Claimant**

- and -

**LONDON BOROUGH OF WALTHAM FOREST**

**Appellant/**  
**Defendant**

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**Matt Hutchings KC and Michael Mullin (instructed by London Borough of Waltham Forest) for the Appellant**

**Lindsay Johnson (instructed by Miles and Partners LLP) for the Respondent**

Hearing date: 6 May 2026  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 19 May 2026 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 concerns assessments and personal plans made for persons who are homeless. Part 7 of the Housing Act 1996 (“the 1996 Act”) imposes various duties owed to homeless persons. Section 189A of the 1996 Act requires an authority to carry out an assessment of the person’s case and to identify the steps the authority are to take under Part 7 of the 1996 Act for the purposes of securing that the person concerned is able to have and retain accommodation. Part 6 of the 1996 Act concerns the allocation of what is often referred to as social housing. Homeless persons who apply for assistance under Part 7 may also apply for the allocation of housing accommodation under Part 6. The principal issue on this appeal is what steps, if any, taken in connection with the allocation of housing accommodation under Part 6 of the 1996 Act may be included within a personal plan made pursuant to section 189A of the 1996 Act.
2. In brief, the respondent, AA, is a 29-year-old woman who has been granted refugee status in the United Kingdom. AA applied for housing assistance under Part 7 of the 1996 Act. The appellant, Waltham Forest London Borough Council (“the authority”), accepted that they owed a duty under section 193(2) of the 1996 Act to secure suitable accommodation for her. AA was provided with suitable accommodation on a temporary basis.
3. One of the principal areas of dispute between AA and the authority concerned what permanent accommodation, if offered, would bring the duty under section 193(2) to an end. AA contended that private-sector rented housing would not be suitable and that the only accommodation that would be suitable for her would be social housing provided under Part 6. The authority disagreed and considered that private-sector rented accommodation, with reasonable adjustments, would meet her needs. The personal plan prepared for AA identified that the steps to be taken by the local authority were steps to identify suitable private-sector rented accommodation.
4. AA brought a claim for judicial review. Deputy High Court Judge Alegre (“the judge”) dismissed those aspects of the claim which had alleged that the authority had erred by concluding that private-sector rented accommodation would be suitable for AA. There is no appeal against that aspect of the decision.
5. The judge, however, also concluded that the authority’s failure to include what she described as “steps to support [AA] in her application for allocation of social housing in the [personal plan] was unreasonable”. The judge allowed the claim on this ground.
6. The local authority appeals on two grounds:
  - “(1) The Judge was wrong to hold that steps to be taken by a local housing authority to secure social housing under Part 6 of the Housing Act 1996 for a homeless applicant are within the scope of section 189A(4)(b) and (6)(c) of the [1996 Act] (paragraph 68 of the judgment).

(2) Further or alternatively, the Judge was wrong to hold that it was unreasonable for the [authority] not to have included in the Personal Housing Plan dated 22 August 2024 steps to support [AA] to apply for accommodation under Part 6 (paragraph 69 of the judgment). This holding was based on a misunderstanding of the [authority's] case and/or there was no evidence to support it.”

7. The authority's primary case is, in essence, that Part 6 and Part 7 are separate parts of the 1996 Act dealing with separate issues. The steps to be included in a personal plan are those to be taken “under this Part” (i.e. Part 7) and do not include any acts relating to an application for, or the allocation of, housing accommodation under Part 6. Alternatively, if such steps could include steps to assist a person to make an application, or to bid, for accommodation under Part 6, it was not irrational for the authority not to include such steps in AA's personal plan.
8. AA's case, in essence, was that steps concerning applications for, or the allocation by the authority of, Part 6 accommodation were steps taken under Part 7 and it was wrong, unreasonable and unlawful to exclude the taking of any such steps from her personal plan. Alternatively, it was submitted that AA's claim for judicial review could be interpreted as concerning the failure of the local authority to state what steps it would take (1) to assist AA in making an application for Part 6 accommodation and (2) to bid for Part 6 accommodation and the judge was entitled to find that it was unreasonable of the authority not to include such steps in AA's personal plan.

## **THE LEGAL FRAMEWORK**

### *Part 7 of the 1996 Act: the homelessness provisions*

9. Part 7 imposes duties in respect of those who are homeless or threatened with homelessness. The provisions of Part 7 have been amended over time, including by the Homelessness Reduction Act 2017 which introduced, amongst other things, section 189A of the 1996 Act.
10. A person is homeless if he has no accommodation available for occupation by him and any person who normally resides, or might reasonably be expected to reside, with him as a member of his family. See sections 175 and 176 of the 1996 Act. Persons may apply for assistance and, if the authority has reason to believe that he may be homeless, or be threatened with homelessness, it shall make inquiries: see sections 183 and 184 of the 1996 Act.
11. Section 189A appears in Part 7 under a heading “Duty to assess every eligible applicant and agree a plan”. Section 189A is headed “Assessments and personalised plan”. Section 189A(1) provides that an authority “must make an assessment of the applicant's case”. Section 189A(2) deals with the assessment and provides that:

“(2) The authority's assessment of the applicant's case must include an assessment of—

- (a) the circumstances that caused the applicant to become homeless or threatened with homelessness,

(b) the housing needs of the applicant including, in particular, what accommodation would be suitable for the applicant and any persons with whom the applicant resides or might reasonably be expected to reside (“other relevant persons”), and

(c) what support would be necessary for the applicant and any other relevant persons to be able to have and retain suitable accommodation.”

12. The authority must notify the applicant of the assessment that has been made (section 189A(3)). In addition, the authority must seek to agree the steps that the applicant and the authority must each take. Section 189A(4) provides that:

“(4) After the assessment has been made, the authority must try to agree with the applicant—

(a) any steps the applicant is to be required to take for the purposes of securing that the applicant and any other relevant persons have and are able to retain suitable accommodation, and

(b) the steps the authority are to take under this Part for those purposes.”

13. If the authority and the applicant cannot reach agreement, the authority must record in writing why they could not agree, the steps that the authority consider it reasonable for the applicant to take, and the steps the authority are to take under Part 7 for the purposes mentioned in section 189A(4)(a).

14. Part 7 imposes a variety of duties on the authority. For present purposes, it is sufficient to note that they include an initial duty to take reasonable steps to help the applicant secure that suitable accommodation becomes available for specified periods. That duty ends after 56 days if the authority is satisfied that the person has a priority need and is not intentionally homeless (see section 189B of the 1996 Act).

15. The duty under section 193(2) of the 1996 Act, often referred to as the “main” or “full” duty, applies when an authority is satisfied that the person is homeless, has a priority need (as defined by section 189) and is not homeless intentionally. Then section 193(2) provides that:

“(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.”

16. Section 206 provides that an authority may only discharge their functions in one of three ways:

“(1) A local housing authority may discharge their housing functions under this Part only in the following ways—

- (a) by securing that suitable accommodation provided by them is available,
- (b) by securing that he obtains suitable accommodation from some other person, or
- (c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person.”

17. An applicant may request a review of certain decisions of an authority, including whether a particular duty is owed, or whether accommodation is suitable. If the applicant is dissatisfied with the decision taken on the review, he may appeal to the county court. See sections 202 to 204 of the 1996 Act.

18. Section 193(3) of the 1996 Act also deals with the cessation of the duty imposed by section 193(2) of the 1996 Act. It provides that:

“(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.”

19. There is then a series of subsections setting out the circumstances in which the duty ceases. These include circumstances in which the duty will cease because of the acceptance or refusal of an offer of accommodation under Part 6 or private rented sector accommodation. These subsections provide, so far as material, that:

“(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
- (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.

(7A) An offer of accommodation under Part 6 is a final offer for the purposes of subsection (7) if it is made in writing and states that it is a final offer for the purposes of subsection (7).

(7AA) The authority shall also cease to be subject to the duty under this section if the applicant, having been informed in writing of the matters mentioned in subsection (7AB)–

- (a) accepts a private rented sector offer, or
- (b) refuses such an offer.

(7AB) The matters are–

- (a) the possible consequence of refusal or acceptance of the offer, and
- (b) that the applicant has the right to request a review of the suitability of the accommodation.

(7AC) For the purposes of this section an offer is a private rented sector offer if–

- (a) it is an offer of an assured tenancy made by a private landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation,
- (b) it is made, with the approval of the authority, in pursuance of arrangements made by the authority with the landlord with a view to bringing the authority's duty under this section to an end.”

20. Finally, section 179 of the 1996 Act, which appears under the heading “general functions in relation to homelessness or threatened homelessness”, provides that each local housing authority in England must provide or secure a service, available free of charge, for providing information and advice, amongst other things, for “securing accommodation when homeless”, and “any help that is available whether under this Part or otherwise” and “how to access that help”.

#### *Part 6 housing accommodation*

21. Part 6 deals with the allocation of housing accommodation. Section 159(1) provides that a local housing authority “shall comply with the provisions of this part in allocating housing accommodation”. Section 159(2) then defines when a local housing authority allocates housing accommodation. Broadly, that occurs when a person is selected or nominated to be a tenant of housing accommodation held by the authority itself or by a registered social provider of social housing or by a registered social landlord.
22. Section 166A of the 1996 Act provides that a local housing authority must have a housing allocation scheme. Section 166A provides, so far as material in that regard, that:

“(1) Every local housing authority in England must have a scheme (their “allocation scheme”) for determining priorities,

and as to the procedure to be followed, in allocating housing accommodation. For this purpose “*procedure*” includes all aspects of the allocation process, including the persons or descriptions of persons by whom decisions are taken.

(2) The scheme must include a statement of the authority's policy on offering people who are to be allocated housing accommodation—

- (a) a choice of housing accommodation; or
- (b) the opportunity to express preferences about the housing accommodation to be allocated to them.

(3) As regards priorities, the scheme shall, subject to subsection (4), be framed so as to secure that reasonable preference is given to—

- (a) people who are homeless (within the meaning of Part 7);
- (b) people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);
- (c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
- (d) people who need to move on medical or welfare grounds (including any grounds relating to a disability); and
- (e) people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).”

23. Importantly, the authority must allocate housing accommodation in accordance with its scheme. That appears from section 166A(14) which provides that:

“(14) A local housing authority in England shall not allocate housing accommodation except in accordance with their allocation scheme.”

24. For completeness, I note that section 166 makes provision for advice and assistance in relation to the allocation of housing accommodation. It provides, so far as material, that:

“(1) A local housing authority shall secure that—

- (a) advice and information is available free of charge to persons in their district about the right to make an application for an allocation of housing accommodation; and

(b) any necessary assistance in making such an application is available free of charge to persons in their district who are likely to have difficulty in doing so without assistance.”

## **THE FACTUAL BACKGROUND**

25. The relevant facts, so far as they can be ascertained, are taken in part from the judgment and in part from the material before us.

### *The application for housing assistance*

26. AA is a 29-year-old woman. She has a traumatic history of sexual assault (including rape) and has been diagnosed with post-traumatic stress disorder. She came to this country and was granted asylum.

27. On 26 January 2024, AA applied for housing assistance. On the same day, the authority accepted that she was homeless and eligible for assistance and that the initial duty under section 189B was owed to her. She was referred to the Single Persons Homeless Prevention Service (“the service”).

28. The applicant did not wish to have long-term accommodation provided through the private sector. She preferred to be allocated social housing.

### *The assessment and the personal plan*

29. The authority assessed her case. It issued a document entitled “personal housing plan” which included the assessment of her case, dealing with the matters referred to in section 189A(2) of the 1996 Act, and setting out the steps that were to be taken by AA and by the authority. The personal plan was revised on 22 August 2024 following representations by AA’s solicitors. It is only necessary to deal with that revised personal plan.

30. The personal housing plan dealt with the circumstances causing AA to be homeless. It then assessed her needs. It assessed AA, who was a single person, as needing a “one bedroomed self-contained accommodation, in borough (Zone A)”. The accommodation needed to be in borough to enable AA to continue to have access to certain refugee services and to attend classes at a local college. It noted that AA had been provided with self-contained accommodation at a flat (the address of which was given).

31. The assessment continued by noting that AA’s solicitors had informed the authority that AA did not consider that private sector rented accommodation would be suitable. The assessment disagreed and noted that the authority had not been provided with substantial evidence to show that private-sector rented accommodation could not be suitable. It said:

“The authority is able to secure [private-sector rented] accommodation with reasonable adjustments (if required) for those groups of applicants that are vulnerable and this is done in compliance with the authority’s Public Sector Equality Duty. If the authority was to secure alternative [private-sector rented]

accommodation, the authority will ensure that accommodation has reasonable adjustments so that it is suitable for your needs.”

32. The assessment also referred to the possibility of permanent social housing (that is accommodation provided under Part 6 by the authority, or by a registered provider of social housing or a registered social landlord). It noted that:

“You will need to apply online for the Housing Register. Once your application is accepted, the authority will provide you with a bidding reference. You will need to use that reference to log on and bid for permanent properties. Please ensure that you maintain your weekly bidding and you will need to bid consistently, as you are more likely to have a better chance in securing a permanent accommodation for yourself with consistent bidding.”

It gave the link to apply to be on the housing register and said:

“Long term accommodation was discussed – you need to register with housing register and start bidding for permanent properties in the borough (once you have been provided with a bidding reference).”

33. The assessment then dealt with support. It noted that AA had never had a tenancy and would not understand how to live independently and pay living costs. It said that AA “will be referred to TARS (Temporary Accommodation Resettlement Services) tenancy sustainment team who will support you with completing the housing benefit and managing your utility bills”.
34. The assessment, therefore, dealt with the matters identified in section 189A(2), that is, the circumstances causing AA to become homeless, her needs and what support would be needed. The personal plan then dealt with the steps to be taken by AA and by the authority pursuant to section 189A(4).
35. Under the heading “What actions/reasonable steps the Housing Options Officer will do next” appeared the following:

Action Type	Content	Date to be achieved	Date achieved
Seek to identify suitable PRS accommodation	I will forward details of the PRS accommodation sourced by the TA team	14/06/2024	Not achieved
Seek to identify suitable PTS accommodation	I will refer you to TARSO who will be able to help you with resettlement when you move to alternative accommodation.	14/06/2024	Not achieved

*The claim for judicial review*

36. AA brought a claim for judicial review. There were four grounds of claim. The first to third grounds were concerned with the assessment that private-sector rented accommodation, with reasonable adjustments if required, would be suitable accommodation. The fourth ground was that the authority acted unlawfully when specifying the steps to be taken by the authority pursuant to section 189A(4)(b). That ground stated that one route by which the authority could discharge the main housing duty under section 193(2) of the 1996 Act was “the allocation of accommodation via the authority’s housing register” (see paragraph 55 of the statement of facts and grounds). The grounds alleged that the personal plan made it clear that the authority would not take steps “to assist with securing social housing” and the only steps they would take were limited to seeking to identifying suitable private rented sector accommodation (paragraph 56). It was alleged that it was unlawful – either in the *Wednesbury* sense of being unreasonable or as a breach of the statutory duty to secure accommodation – “to limit the support to be provided to [AA] to support to obtain privately rented accommodation” (paragraph 57).
37. An application for housing accommodation under Part 6 was also made on behalf of AA. The authority’s detailed grounds states that the applicant was given advice pursuant to section 189A(7) on how to access social housing under Part 6 by registering online on the authority’s register. The detailed grounds state that she had not done that as at the date that the personal plan was issued on 22 August 2024. We were told, however, at the very end of the hearing (in the authority’s reply) that, in fact, an application had been made on behalf of AA many months before that date (AA was unaware that an application had been made on her behalf). It is not clear how incorrect information was included in the authority’s detailed grounds for the judicial review hearing (nor why that was not corrected until the end of the appeal hearing).
38. In any event, it is clear that by the time of the hearing of the claim for judicial review, an application had been made on behalf of AA for the allocation of housing accommodation under Part 6. AA had been assessed under the authority’s housing allocation scheme and placed in Band 3 with effect from 17 June 2024. That information was known to the judge hearing the claim for judicial review as it was recorded in the authority’s written skeleton argument for the hearing.

*The Judgment*

39. The judge dismissed the first three grounds of claim. There is no appeal against the judge’s decision to dismiss those three grounds of claim.
40. The judge described the fourth ground, which is the subject matter of this appeal, at paragraph 16 d) of her judgment in the following terms:
- “d) Are steps to be taken by a local housing authority to secure social housing for the homeless applicant within the scope of section 198A(4)(b) and (6)(c), Housing Act 1996?”
41. The judge recorded AA’s argument at paragraph 66 of her judgment. In essence, she recorded that AA’s case was that by identifying only one route to securing

accommodation (by way of private rented sector accommodation) in AA's personal plan, the authority acted unlawfully because it had fettered its discretion on how to secure suitable accommodation or had acted unreasonably in the public law sense because it was perverse knowingly to exclude from consideration a mechanism identified by statute for resolving homelessness (that is, an offer of social housing) and limiting an applicant to private rented sector accommodation. The judge recorded the authority's submissions in response.

42. The judge's analysed the issue in two paragraphs of her judgment in the following terms:

"68. While I accept that social housing allocation falls under Part VI as Mr Hutchings has argued, the duty to secure suitable accommodation, of whatever kind, arises out of section 193(2) under Part VII. It is not logical to exclude the kinds of support that could be provided to secure allocation under Part VI from the steps included in the PHP. This is because allocation of suitable accommodation under Part VI is one of the routes to bringing the housing duty under Part VII to an end. Therefore, steps to support the claimant to secure allocation under Part VI are, in effect, steps taken to discharge the duty under Part VII .

69. In cases such as the claimant's where a person requires support from the local authority to apply for accommodation under Part VI , it would, therefore be unreasonable to exclude such support from the steps set out in the PHP under Part VII. In the circumstances I find that it was unreasonable for the defendant to exclude such support from the PHP alongside the steps related to private sector rental accommodation."

43. The judge expressed her conclusion on this issue at paragraph 70d) in the following terms:

"d) The Defendant's failure to include steps to support the Claimant in her application for allocation of social housing in the [personal plan] was unreasonable".

44. The judge therefore made an order allowing the claim on this ground, and making a declaration that the authority:

"acted unlawfully by failing to include in the [personal plan] dated 22 August 2024 under section 189A(6) of the Housing Act 1996 any steps that the [authority] was to take to support [AA] in her application for an allocation of social housing under Part 6 of the Housing Act 1996."

45. The judge also made an order that the authority "shall produce a fresh Personal Housing Plan under section 189A(6)" of the 1996 Act in accordance with the judgment.

## **THE APPEAL**

### ***The Submissions***

46. It is convenient to take both grounds of appeal together. Mr Hutchings KC, with Mr Mullin, for the authority submitted that the issue was whether any steps to be taken to secure Part 6 accommodation could fall within the scope of a personal plan made under section 189A of the 1996 Act. That, he submitted was a question of interpreting the words of section 189A. The task was to identify the meaning of the words used, read in the context of section 189A and other sections of the 1996 Act.
47. Mr Hutchings submitted that sub-sections 189A(4) and (6) of the 1996 Act were concerned with recording in a personal plan the steps to be taken “under this Part”, that is under Part 7. Social housing was accommodation provided under Part 6 and steps connected with securing social accommodation were steps taken under Part 6 not Part 7 and could not be included in a personal plan issued under section 189A. He submitted that Part 7 itself recognised that as various sections in Part 7 referred to “an offer of accommodation under Part 6”: see, for example, section 193(6)(c) and (7). Consequently, he submitted, the judge erred in concluding that steps to be taken under Part 6 could be included in a personal plan and in concluding that it was unreasonable of the authority to fail to include such steps.
48. Mr Johnson, for AA, submitted in his written skeleton argument that the purpose of the duties imposed under section 189A of the 1996 Act was to provide a road map to inform subsequent decisions, relying on observations of Lewison LJ in *Norton v Haringey London Borough Council* [2025] EWCA Civ 746; [2026] PTSR 49 at paragraph 32. He submitted that one such decision was how an applicant’s need for housing may be met, and how an authority will discharge its duty under section 193(2) to secure accommodation for an applicant. An authority could only perform this function through the provision of Part 6 social housing, an offer of private-sector rented accommodation or accommodation provided by a private landlord other than by way of private-sector rented accommodation. The authority accepted it could include steps taken to secure private-sector accommodation in a personal plan (it had done so for AA). Mr Johnson submitted that there was no basis for excluding from a personal plan the possibility of housing under Part 6. It was perverse to exclude from a personal plan one mechanism (Part 6 accommodation) identified by statute as a means of resolving a person’s homelessness.
49. In oral argument, Mr Johnson submitted that the claim could in the alternative be understood, or interpreted, as requiring the provision of assistance to AA in making an application for Part 6 accommodation and in making bids for such accommodation.

### ***Discussion and analysis***

#### The correct approach

50. The issue in the present case involves an interpretation of the words in section 189A of the 1996 Act. That involves considering the words of that provision, read in their statutory context and having regard to the purpose underlying the statute, and bearing in mind any legitimate aids to statutory interpretation. Here, section 189A needs to be read in the context of the wider group of sections comprising Part 7 of the 1996 Act dealing with homelessness and also Part 6 dealing with the allocation of housing

accommodation. See generally, *R (O) v Secretary of State for the Home Department* [2023] AC 255, paras 29–31.

### The statutory context

51. Section 189A appears in Part 7 of the 1996 Act. Part 7 deals, as the heading to Part 7 makes clear, with “Homelessness”. It is concerned with the various duties owed by local housing authorities to persons who are homeless or threatened with homelessness. Section 189A(2) is concerned with an assessment of the case of an applicant for housing assistance under Part 7. It requires a local housing authority to assess the circumstances in which the applicant became homeless, the housing needs of the applicant (including in particular what accommodation would be suitable), and the support services necessary to enable the applicant to have and retain suitable accommodation. The assessment will, therefore, contain information likely to be relevant to the duties imposed by Part 7. A particular duty may, for example, require regard to be had to the assessment made under section 189A: see e.g. section 189B(3). Or a particular duty may involve securing suitable accommodation and the assessment will include information on that issue. That is consistent with the purpose of an assessment under section 189A as identified by Lewison LJ in paragraphs 32 to 34 of *Norton*. It fulfils an important role in the “overall framework for helping the homeless”. It will contain information which will inform subsequent decisions on the duties owed to the homeless.
52. Sub-sections 189A(4) and (6) of the 1996 Act are concerned with (1) the steps that an applicant for housing assistance is required to take for the purposes of securing that the applicant has and is able to retain suitable accommodation and (2) the steps that the local housing authority is to take “under this Part”, i.e. Part 7, for that purpose.
53. It is also right to bear in mind that Part 6 of 1996 Act deals, as the heading of Part 6 makes clear, with the “allocation of housing accommodation”, that is, accommodation held by the local housing authority (or, broadly, a registered provider of social housing or a registered social landlord). There is a limited and declining stock of such housing accommodation. It may only be allocated in accordance with an allocation scheme prepared in accordance with section 166A (which appears in Part 6 of the 1996 Act). Persons who are homeless, and persons who are not homeless, may apply for the allocation of housing accommodation under Part 6. It is important not to confuse the duties owed under Part 6 with those owed under Part 7 (as emphasised by Baroness Hale in *Birmingham City Council v Ali* [2009] 1 WLR 1506, para 14). It is right to note, however, that there are certain circumstances when action taken under one Part may have an effect on duties owed under another Part. The acceptance of an offer of accommodation made under Part 6, for example, may bring about the end of the duty owed under section 193(2) in Part 7 of the Act (see section 193(6)).

### The wording of section 189A(4) and (6) of the 1996 Act

54. Section 189A(4)(b) and (6)(d) deals with the steps to be taken by a local authority. They must be “steps taken under this Part” (that is Part 7) which are to be taken for the purpose of securing that an applicant for housing assistance has and is able to retain suitable accommodation.

55. In order to determine whether particular steps can be included in a personal plan under section 189A, it is helpful to identify the particular steps in question and the powers or functions that the local housing authority would be exercising when it took those steps. That is important in the context of considering whether, and to what extent, steps taken by an authority in connection with the allocation of housing accommodation under Part 6 can be included in a personal plan made under section 189A of the 1996 Act.
56. Broadly, there are three steps that an authority may take in relation to the allocation of Part 6 housing accommodation. It may (1) assess an application (2) decide whether to allocate housing accommodation to a particular applicant and (3) if so, to make an offer of housing accommodation. Firstly, those steps are taken under Part 6. They are not taken under Part 7. Secondly, they can only be done in accordance with the allocation scheme made under section 166A: see section 166A(14) of the 1996 Act. That allocation scheme will have been framed to include a reasonable preference for, amongst other persons, people who are homeless. In those circumstances, there is no scope for steps to be taken by a housing authority aimed at assessing, allocating or offering Part 6 accommodation to be included in a personal plan made under section 189A of the 1996 Act. Nor could any purpose be served by including such steps in such a plan. A personal plan could not include any particular steps or action on the part of the authority that would materially influence the allocation by it of housing accommodation under Part 6 nor could it relax the criteria for eligibility for the allocation of such accommodation – because that would be contrary to its obligation under Part 6 to allocate housing accommodation in accordance with the allocation scheme used to determine priorities between competing groups.
57. There may be other steps that an authority can take in relation to a person who is homeless and who also applies for housing accommodation under Part 6. An authority may take steps to advise, or assist, a homeless person on how to make an application for housing accommodation under Part 6. It may also assist a homeless person to bid for housing accommodation for which they are entitled to enter a preference under the authority's housing allocation scheme. An example discussed in argument was a blind homeless person who applied for housing accommodation. An authority may decide to include within a personal plan made under section 189A steps that the authority will take to assist the person to make an application or to assist him by telling him what properties are, or have become, available and helping him to bid. The authority has a function under section 179 (which is contained within Part 7) to provide or secure a service for providing information and advice on, amongst other things, securing accommodation when homeless, and accessing help. Such steps may be capable of being included in a personal plan. Whether it would be irrational, or unreasonable in the public law sense, and so unlawful, not to include steps governing the giving of such advice or assistance will depend on the facts, the material before the authority, and the other powers that the authority have and may use to provide advice or assistance (such as section 166).
58. The submissions made by Mr Johnson for AA do not cause me to reach a different view on the steps that are capable of being included within a personal plan made under section 189A.
59. First, I do not accept that the approach I consider to be correct involves excluding social accommodation from consideration. A person who is homeless (like any other

person) may apply for housing accommodation, and may bid for any available accommodation for which he is eligible, in accordance with the housing allocation scheme made under section 166A. A person who is homeless will also be able to apply for housing assistance under Part 7 and may be owed duties under Part 7. In either case, the homeless person's applications for housing accommodation under Part 6 and housing assistance under Part 7 can each be considered by the appropriate route.

60. Nor is strictly accurate, or relevant, to talk of Part 6 accommodation being a means of "discharging" the section 193(2) duty to secure that accommodation is available. The acceptance of an offer of accommodation under Part 6 will bring the duty under section 193(2) to an end. But it is clear that the allocation of housing accommodation is done under Part 6 and the offer is made under Part 6 (as appears from the wording of section 193(6) and (7)). In any event, even if the allocation of housing accommodation were to be seen as a means of performing the duty under section 193(2) of the 1996 Act, it is clear that the steps for allocating and offering housing accommodation are taken under Part 6, not Part 7.
61. Finally, there is no inconsistency or illogicality in a personal plan being able to include steps by an authority to secure an offer of private-sector rented accommodation but not steps to allocate social housing accommodation falling within Part 6. Offers of private-sector rented accommodation are made "in pursuance of arrangements made by the authority with the landlord": see section 193(7AC)(b) of the 1996 Act. Steps to make such arrangements may, therefore, be included within a personal plan made under section 189A. Steps to allocate or offer social housing accommodation falling within Part 6 are steps taken under an allocation scheme made under section 166A.
62. None of the other submissions made by Mr Johnson on behalf of AA demonstrate any reason why steps to allocate housing accommodation falling within Part 6 can be included within a personal plan made under section 189A.

### The judge's decision

63. The next question is whether the judge's decision is correct. The judgment does not clearly identify the steps that the authority has to take or relate them to the powers or functions exercisable under Part 7. Reading the judgment as a whole, it is clear, however, that the judge was dealing with steps which she considered in some way would be of assistance to AA in helping her to be allocated housing accommodation under Part 6.
64. First, in paragraph 68, the judge refers to the "kind of support that could be provided to secure allocation under Part 6". The judge considered it illogical to exclude such steps from a personal plan as "the allocation of suitable accommodation under Part 6 is one of the routes to bringing the housing duty under Part 7 to an end". That is correct. But it does not mean that the steps that a local authority takes (which achieves that end) are steps taken under Part 7. Secondly, in the final sentence of paragraph 68, the judge refers to "steps to support [AA] to secure allocation under Part 6 are, in effect, steps taken to discharge the duty under Part 7". It is clear that the judge there is considering that a personal plan may include steps taken by the authority to assess, allocate and offer housing accommodation under Part 6.

65. In paragraph 69, the judge refers to cases where “a person requires support from the Local Authority to apply for accommodation under Part 6”. It is clear that the judge there was not dealing with a situation where the steps to be taken by the local authority are steps to help the applicant make an application for Part 6 accommodation (which are capable of falling within section 189A). The judge knew that an application had been made for AA and she had been assessed under the authority’s housing allocation scheme. The judge cannot, therefore, have been contemplating a need for steps to be taken to help AA to make an application. Further, it is clear from the last sentence of paragraph 69 that the judge was dealing with steps which would lead to AA obtaining Part 6 accommodation – she is dealing with what she refers to as “support” in relation to Part 6 which is provided alongside “the steps related to private sector rental accommodation” – i.e. steps to ensure that the accommodation (whether Part 6 or private-sector rented accommodation) is made available to AA. She is not contemplating steps to help the applicant to make an application.
66. That is also reflected in her conclusion at paragraph 70d). The judge refers to the failure to include “steps to support AA in her application” (not to “make an application”) for allocation of social housing. That also appears from the order which is in similar terms. The order also orders that the authority prepare a fresh personal plan in accordance with the judgment. That cannot have been addressed to producing a plan which included steps by the authority to assist AA to make an application for accommodation under Part 6 – the existing personal plan had already included advice on that (AA would have to register and would have to bid) and an application (and an assessment of priority under the allocation scheme) had been made.
67. I am satisfied, therefore, the judge considered it unreasonable, and therefore unlawful, to fail to include in the personal plan steps on the part of the authority which would lead or assist in the allocation and offer of housing accommodation under Part 6 of the 1996 Act. The judge was wrong in her conclusion. Such steps are not ones to be included in a personal plan under section 189A. They are steps that are taken, and can only be taken, in accordance with the housing allocation scheme prepared under Part 6 of the 1996 Act. It was not unreasonable on the part of the authority to fail to include such steps as they were not steps capable of inclusion in a personal plan.
68. For completeness, I consider Mr Johnson’s submission in oral argument that the claim could be read, or interpreted, as a claim that the authority take steps to assist AA to make an application and to bid for properties. That submission depends on what was alleged in the claim form and the accompanying statement of facts and grounds. It will also depend on the facts of the case. The facts would have to be established by evidence or, as is often the case in claims for judicial review, be agreed or appear from the documentary material. The claim does, however, have to be substantiated by relevant facts.
69. In the present case, it is clear that AA was not claiming that the authority had acted unlawfully by failing to include steps in the personal plan to assist AA to make an application or bid for properties. The claim concerned in substance whether the provision of private-sector rented accommodation was suitable for AA, as appears from a fair reading of the statement of facts and grounds. Further, there is no admissible evidence whether from AA herself, or in any documentary form, that AA had difficulty in making an application or in bidding for properties. In any event, even

if the claim could be construed as being concerned with whether the personal plan should include steps on the part of the authority to assist AA to make an application or to bid for properties under Part 6, there would be no basis for concluding that it was unreasonable in the public law sense not to include such steps in the personal plan.

## **CONCLUSION**

70. The steps that an authority may take under Part 7 for the purposes of securing that an applicant for housing assistance has and is able to retain suitable accommodation do not include steps concerned with the allocation of housing accommodation under Part 6 of the 1996 Act. Steps such as assessing such an application and allocating and making an offer of housing accommodation falling within Part 6, are steps taken under Part 6. They are not steps that an authority can include in a personal plan. The judge, therefore, was wrong to conclude that the authority acted unlawfully by failing to include such steps in the personal plan it prepared for AA under section 189A of the 1996 Act. I would, therefore, allow the appeal on both grounds.

## **LADY JUSTICE ELISABETH LAING**

71. I agree.

## **LORD JUSTICE JEREMY BAKER**

72. I also agree.

